

**Oregon Water Resources Department  
Water Rights Services Division**

Water Rights Application  
Number G-16904

**Final Order**

*Hearing and Appeal Rights*

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

*Application History*

On July 2, 2007, David Elder and Valley Falls Ranch Inc submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on April 28, 2009. The protest period closed June 12, 2009. A timely protest was filed by the applicant.

On July 2, 2012, the applicant withdrew the protest to the Proposed Final Order.

On July 2, 2012, the applicant amended the application by proposing a basalt well in order to avoid the finding of potential for substantial interference with surface water. The applicant also amended the application by proposing the irrigation of 229.9 acres, located in a different section than originally requested. In addition, the applicant amended the application by requesting a higher rate than originally requested.

On July 11, 2012, the Department's Ground Water Section staff completed a second Public Interest Review of the new well location and construction.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the location of the amended well, the location of the amended place of use, and the allowed rate for the reduced acreage.

*Findings of Fact*

An assessment of ground water availability has been completed by the Department's Ground Water/Hydrology section. A copy of this assessment is in the file. Ground water will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights.

Ground Water Findings Under OAR 690-009

Based on the July 11, 2012 Public Interest Review for the new proposed basalt well, the Department determined, consistent with OAR 690-009-0040(4), that the proposed ground water use will not have the potential for substantial interference with surface water.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

The standard allowable rate for irrigation from ground water is 1/80 cubic foot per second (CFS) per acre. Therefore, the Department finds that no more than 2.9 CFS for irrigation of 229.9 acres would be necessary for the proposed use. The amount of water allowed shall be restricted to 2.9 CFS.

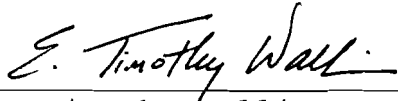
Conclusions of Law

The Department concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

**Order**

Application G-16904 therefore is approved with the above modifications to the Proposed Final Order, and Permit G-16970 is issued as limited by the conditions set forth therein.

**DATED October 26, 2012**



E. Timothy Wallin, Water Rights Program Manager  
for Phillip C. Ward, Director  
Water Resources Department

*This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.*

*If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.*

*If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.*

*Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.*