

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application,)
G-17445, Deschutes County)

FINAL ORDER

Appeal Rights

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.

Application History

On December 22, 2010, The Diamond Peaks at Leisure Woods I & II Homeowner's Association Inc submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on February 25, 2014. The protest period closed April 11, 2014, and no protest was filed.

As required by OAR 690-505-0615, the applicant must submit mitigation that meets the requirements of OAR 690-505-0610(2)-(5). Pursuant to OAR 690-505-0620, a permit shall not be issued until the applicant provides documentary evidence that mitigation water, in an amount satisfying the mitigation obligation, is legally protected instream.

The mitigation obligation for the proposed use is 5.0 acre-feet, which must be provided in the Little Deschutes Zone of Impact, located anywhere in the Little Deschutes River Basin above the mouth.

Mitigation for this proposed use will be provided with that of two other applications, as described in the Proposed Final Order.

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 identify the total mitigation required for Applications G-17415, G-17445 and G-17465 as 17.2 acre-feet (AF), being 3.4 AF from Big Marsh Creek and 13.8 AF from Little Deschutes River.

Conclusions of Law

The Department therefore concludes that, with mitigation, water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Order

Application G-17445 is therefore approved with the above modification to the Proposed Final Order. Upon submission of documentary evidence that satisfactory mitigation has been obtained, a permit shall be issued authorizing the proposed water use.

This Final Order is issued approving application G-17445 contingent upon the required mitigation being provided. This Final Order shall expire 5 years after issuance unless the required mitigation is provided. OAR 690-505-0620(2).

DATED November 19, 2014



E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

This order was produced by Kim French. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0816 or Kim.R.French@wrds.state.or.us.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". 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, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF KLAMATH

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

THE DIAMOND PEAKS AT LEISURE WOODS I & II HOMEOWNERS ASSOCIATION INC
PO BOX 1021
CRESCENT LAKE OR 97733

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-17445

SOURCE OF WATER: A WELL (KLAM 340) IN CRESCENT CREEK BASIN

RATE: 0.19 CUBIC FOOT PER SECOND, WITH A MAXIMUM VOLUME OF 12.6 ACRE FEET

DATE OF PRIORITY: DECEMBER 22, 2010

USE: QUASI-MUNICIPAL

PERIOD: YEAR-ROUND

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	7 E	WM	7	NE SW	120 FEET SOUTH AND 1065 FEET WEST FROM C1/4 CORNER, SECTION 7

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
24S	7 E	WM	7	NW NE
24S	7 E	WM	7	SW NE
24S	7 E	WM	7	SE NE
24S	7 E	WM	7	NE NW
24S	7 E	WM	7	SE NW
24S	7 E	WM	7	NE SE
24S	7 E	WM	7	NW SE
24S	7 E	WM	7	SE SE

Measurement, Recording and Reporting Conditions:

A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation, and maintain the device(s) in good working order. The permittee shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water-use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

B. The permittee shall allow the watermaster access to the meter; where the meter is located within a private structure, the watermaster shall request access upon reasonable notice. The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Ground Water Mitigation Conditions:

1. Mitigation Obligation: 5.0 acre-feet of mitigation water in the Little Deschutes Zone of Impact from mitigation credits or a mitigation project, which must be legally protected instream for the life of the permit and subsequent certificate(s). That mitigation will be part of 17.2 acre-feet (AF) of water in total, required for Applications G-17415, G-17445 and G-17465, being 3.4 AF of water protected from Big Marsh to Lake Billy Chinook during April 1 through July 15, and 13.8 AF of water protected from River Mile 59 on the Little Deschutes River to Lake Billy Chinook during July 7 through October 31, shall be required under permits and subsequent certificates issued for Applications G-17415, G-17445 and G-17465.
2. Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.
3. The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.
4. If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the maintenance and terms and conditions of a valid contract or satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department.
5. Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, and proposing to cancel the ground water permit, or subsequent certificate(s).

Scenic Waterway Condition:

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right, or as those quantities may be reduced subsequently. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the required mitigation is maintained.

STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
3. If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

4. The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.
5. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
6. Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.
7. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best-practice technologies or conservation practices to achieve this end.
8. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged comprehensive land-use plan.
9. Completion of construction and complete application of the water to the use shall be made within five years of permit issuance. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.
10. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT – NOT A PERMIT

for, Thomas M. Byler, Director
Oregon Water Resources Department