

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-13097))	
and G-13098 in the name of the City of Bend,))	SETTLEMENT
<i>Applicant</i>))	AGREEMENT
)	
WaterWatch of Oregon,))	
<i>Protestant</i>))	
_____))	

The Oregon Water Resources Department (“OWRD”), the City of Bend (“Applicant”), and WaterWatch of Oregon, Inc. (“Protestant”), referred to collectively as “the Parties” and each individually a “Party,” do hereby stipulate and agree in this “Settlement Agreement” as follows:

Stipulations

- I. On August 27, 1992, the City of Bend filed Applications G-13097 and G-13098 with OWRD.
- II. On August 29, 1995, OWRD issued Proposed Final Orders (PFOs) recommending approval of Applications G-13097 and G-13098.
- III. On October 20, 1995, WaterWatch of Oregon, Inc. filed a protest against the PFOs for Applications G-13097 and G-13098.
- IV. The Parties agree that all issues raised in the protest to the PFOs on Applications G-13097 and G-13098 are fully resolved with regards to these applications on the following terms.

Terms of Agreement

- 1. In signing this Settlement Agreement, Protestant withdraws its protests and requests for hearing related to the PFOs for Application G-13097 and G-13098 with prejudice.
- 2. Regarding water right Applications G-13097 and G-13098, Applicant and Protestant hereby expressly waive all right and opportunity to file protests or requests for contested case hearing, requests for reconsideration, exceptions, or to seek judicial review of the Final Orders or Permits, and also expressly waive any right and opportunity to challenge this Settlement Agreement or the attached Draft Final Order and Draft Permit which are part of this Settlement Agreement.
- 3. The Applicant acknowledges that the condition in the Permits resulting from Applications G-13097 and G-13098 that reads,

"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"

may result in a requirement for (1) provision of increased mitigation on a prospective basis, and (2) provision of "make-up" mitigation to address prior instances when the amount of mitigation provided was less than the Department's estimated average annual consumptive use of the subject appropriation for the time period used.

For example:

100 acre feet of mitigation was provided for use of water under a permit resulting from Application G-13097 and the Department's estimated average annual consumptive use under the subject permit was 90 acre feet (assume 125 acre feet appropriated in August and 50 acre feet appropriated in October). 125 acre feet multiplied by the Department's applicable summer-month municipal water use consumptive use coefficient in the Deschutes Basin (currently 60 percent), plus 50 acre feet multiplied by the Department's applicable non-summer-month municipal water use consumptive use coefficient in the Deschutes Basin (currently 30 percent) -- $(125 \text{ acre feet} \times .60 + 50 \text{ acre feet} \times .30 = 90 \text{ acre feet of estimated annual consumptive use})$ then "make-up" mitigation could not be required.

On the other hand, if the Department's estimated average annual consumptive use under the subject permit was 105 acre feet (assume 175 acre feet appropriated in August multiplied by the Department's applicable summer-month municipal water use consumptive use coefficient (currently 60 percent) then 5 acre feet of "make-up" mitigation could be required.

4. The Applicant agrees that the following condition shall be in the Permits resulting from Applications G-13097 and G-13098.

"The permittee shall provide timely written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit."

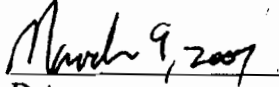
5. After the Applicant and Protestant sign this Settlement Agreement, they will mail the entire signed original, including attachments, back to the Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.
6. Within 30 days after OWRD receives the original Settlement Agreement signed by all Parties, OWRD will issue Final Orders that are consistent with the Draft Final Orders attached to this Settlement Agreement. The Final Orders will incorporate this Settlement Agreement by reference and as an attachment. Within the 30-day time period described above, OWRD will also refund the protest fees (\$400.00 total) paid by Protestant regarding water right applications G-13097 and G-13098.

7. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
8. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of their own free will and accord. Each Party to this Settlement Agreement also certifies that it has read the entire Settlement Agreement, Draft Final Orders, and Draft Permits, and understands and fully agrees with the contents thereof.
9. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together shall constitute one and the same Settlement Agreement.

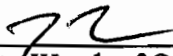
**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT ON
WATER RIGHT APPLICATIONS G-13097 AND G-13098**



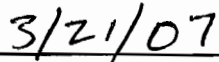
Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department



Date



Water Watch of Oregon, Protestant




Date

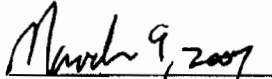
City of Bend, Applicant

Date

**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT ON
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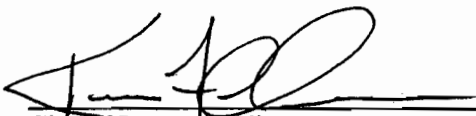
Dwight French, Administrator,
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Oregon Water Resources Department



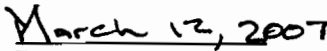
Date

WaterWatch of Oregon, Protestant

Date



City of Bend, Applicant



Date

RECEIVED

MAR 15 2007

WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-13097

DEAF Final Order Incorporating Settlement Agreement

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 above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for orders other than contested case. This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of this order must be filed within the 60 day time period specified by ORS 183.484(2).

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 August 27, 1992, the City of Bend submitted an application to the Department for a water use permit.

On August 29, 1995, OWRD issued a Proposed Final Order (PFO) recommending approval of Application G-13097.

On October 20, 1995, WaterWatch of Oregon filed a protest against the PFO for Applications G-13097.

On June 1, 2001, the applicant was notified of an opportunity to continue an administrative hold on Application G-13097 pending the adoption of ground water mitigation rules for the Deschutes Basin.

Administrative rules governing ground water applications in the Deschutes Ground Water Study Area were adopted by the Water Resources Commission in September 2002.

On August 25, 2003, the applicant was notified of the mitigation obligation for the proposed use. The mitigation obligation was determined to be 3,479.3 acre-feet (AF) for the use of 12.0 cubic

feet per second (cfs) for year round (24 hours per day, 7 days per week) municipal use.

On July 29, 2005, House Bill 3494, enacted by the 73rd Oregon Legislative Assembly, was signed by the Governor. Under Section 2 of this 2005 Act, Oregon Administrative Rules (OAR) 690-505-0600 through 690-505-0630, certified effective by the Secretary of State on September 27, 2002, satisfy the requirements relating to mitigation under ORS 390.805 to 390.925, 537.322 to 537.360, and 537.505 to 537.795.

On September 1, 2006, the Department notified the applicant of the opportunity to provide mitigation on an incremental basis. On November 29, 2006, the City of Bend, through its agent, Adam Sussman, of CH2MHill, submitted an incremental development plan pursuant to OAR 690-505-0625. The City also modified its application to limit annual volume to 3,223 AF. The incremental development plan was based upon the use of 12.0 cfs for year round municipal use, a modified annual volume of water limited to 3,223 AF, and a consumptive use coefficient of 40 percent. This resulted in a mitigation obligation of 1,289 AF.

On December 1, 2006, the Department sent a notice to Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality, and Oregon Department of State Lands (DSL) and requested comments regarding the applicant's mitigation proposal. Only one agency (DSL) responded to the notice, and their comment was that they had no comment.

On February 5, 2007, the City of Bend revised its incremental development plan to be consistent with the pending settlement agreement with WaterWatch of Oregon, Inc. The revised incremental development plan uses a 50 percent consumptive use coefficient to determine the mitigation obligation. Based on the requested annual volume of 3,223 AF, the resultant mitigation obligation is 1,611.5 AF.

On March 2007, a Settlement Agreement was entered into between the City of Bend, WaterWatch of Oregon, Inc., and the Department. The Settlement Agreement is incorporated into this Final Order by reference and as an attachment.

Mitigation

The Department has determined that the proposed use will have the potential for substantial interference with the Deschutes River. The Department also finds that, without the required mitigation, there is a preponderance of evidence that the proposed use will measurably reduce surface water flows necessary for the Deschutes River Scenic Waterway (ORS 390.835(9)). Without appropriate mitigation, the Department would be required to deny the application. The proposed ground water use is located within the Deschutes Ground Water Study Area and, pursuant to the Settlement Agreement, is subject to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

As required by OAR 690-505-0615, the applicant must submit proposed 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.

Because the applicant is a municipal ground water permit applicant, the mitigation obligation may be satisfied by incrementally obtaining and providing mitigation to coincide with the incremental development of the permit, provided that mitigation is provided prior to each stage of development of the permit and in accordance with the standards in OAR 690-505-0610 (2) - (5).

The mitigation proposed by the applicant will occur within the General Zone of Impact. The incremental mitigation shall be provided, subject to the rate of permit development, as follows:

INCREMENT #	DATE OF PROPOSED IMPLEMENTATION	MAXIMUM VOLUME	MITIGATION AMOUNT	MITIGATION SOURCE
1	2006	409.0 AF	204.5 AF	Qualifying mitigation credits or a mitigation project
2	2011	717.0 AF	358.5 AF	Qualifying mitigation credits or a mitigation project
3	2016	673.0 AF	336.5 AF	Qualifying mitigation credits or a mitigation project
4	2021	673.0 AF	336.5 AF	Qualifying mitigation credits or a mitigation project
5	2026	751.0 AF	375.5 AF	Qualifying mitigation credits or a mitigation project

Pursuant to the Settlement Agreement, for the purposes of calculating the permittee's mitigation obligation, a consumptive use coefficient of 50 percent will be applied, subject to other provisions of the Permit.

In 1995, the Department found that a rebuttable presumption had been established that the use will not impair or be detrimental to the public interest. However, since that finding was made a joint study of ground water resources by the Department and U.S. Geological Survey has established a hydraulic connection between ground water and surface water within the Deschutes Ground Water Study Area. Based on the conclusions on the study, the Department determined that groundwater appropriations within the Deschutes Ground Water Study Area have the potential for substantial interference with surface water rights as described in OAR 690, Division 9, and will measurably reduce scenic waterway flows as defined in ORS 390.835 unless mitigation is provided. Thus, continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe permit conditions as required by OAR 690-050-0620 necessary to ensure the preservation of the public welfare, safety and health. The mitigation conditions, along with other conditions in the attached draft permit shall be contained in the permit.

Mitigation Obligation: 1,611.5 acre-feet in the General Zone of Impact (anywhere in Deschutes Basin above the Madras gage, which is located below Lake Billy Chinook.)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

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 terms and conditions of a valid contract, or a 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 prior to use of water.

The permittee shall provide additional mitigation if the Department determines that the average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

The permittee shall provide timely written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit.

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).

Measurement, recording and reporting conditions

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each well. The totalizing flow meter(s) must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

Order

Application G-13097 therefore is approved with the above modifications to the Proposed Final Order, and as conditioned, will ensure the preservation of the public welfare, safety and health.

A permit consistent with the attached draft permit shall be issued only upon submission of documentary evidence demonstrating that 204.5 AF of mitigation water (credits or mitigation project), or an alternate amount of mitigation in conjunction with a modified incremental development plan, meeting the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact, have been obtained and satisfy the first stage of incremental development. Once the permit is issued, the permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

This final order shall expire 5 years after issuance unless the required first increment of mitigation is provided. OAR 690-505-0620(2).

DATED [REDACTED] 2007

DRAFT – DO NOT SIGN

Dwight French, Administrator
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds 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.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS **DRAFT** PERMIT IS HEREBY ISSUED TO:

THE CITY OF BEND
PO BOX 431
BEND, OR 97709

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

APPLICATION FILE NUMBER: G-13097

SOURCE OF WATER: THREE WELLS IN THE IN DESCHUTES RIVER BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE/VOLUME: 12.0 CUBIC FEET PER SECOND, LIMITED TO A MAXIMUM ANNUAL VOLUME OF 3223.0 ACRE FEET (AF), FURTHER LIMITED BY THE CORRESPONDING MITIGATION PROVIDED UNDER THE INCREMENTAL DEVELOPMENT PLAN

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: AUGUST 27, 1992

WELL LOCATIONS:

BEAR CREEK WELL #3 SE ¼ SE ¼, SECTION 33, T17S, R12E, W.M.; 766 FEET NORTH & 813 FEET WEST FROM SW CORNER OF SECTION 33

BEAR CREEK WELL #4 SE ¼ SE ¼, SECTION 33, T17S, R12E, W.M.; 966 FEET NORTH & 733 FEET WEST FROM SW CORNER OF SECTION 33

BEAR CREEK WELL #5 SE ¼ SE ¼, SECTION 33, T17S, R12E, W.M.; 1114 FEET NORTH & 736 FEET WEST FROM SW CORNER OF SECTION 33

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE SERVICE BOUNDARY OF THE CITY OF BEND

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each well. The totalizing flow meter(s) must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

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 subsequently reduced. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows so long as mitigation is maintained.

GROUND WATER MITIGATION CONDITIONS

Mitigation Obligation: 1611.5 acre-feet of mitigation water in the General Zone of Impact (anywhere in the Deschutes River above the Madras gage, which is located below Lake Billy Chinook.)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

The amount of incremental development water with mitigation credits originating from mitigation projects

Pursuant to the provisions of a Settlement Agreement, for the purposes of calculating the permittee's mitigation obligation, a consumptive use coefficient of 50 percent will be applied, subject to other provisions of this Permit.

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for life of the permit and subsequent certificate(s). Regulation of the use and/or

cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

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 terms and conditions of a valid contract, or a 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 prior to use of water.

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.

The permittee shall provide timely written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit.

The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

The permittee shall not increase the volume of water diverted, as described in the incremental development plan, prior to increasing the corresponding mitigation.

The permittee shall seek and receive Department approval prior to changing the incremental development plan and related incremental mitigation obligation for each stage of permit development.

The permittee shall report to the Department the progress of implementing the incremental development plan and related mitigation consistent with the timelines in the permittee's approved incremental development plan. The report shall be provided no later than April 1 of the reporting year. This notification is not necessary if the permittee has completed development and submitted a Claim of Beneficial Use to the Department.

The permittee shall submit a new or updated Water Management and Conservation Plan pursuant to OAR Chapter 690, Division 86 no later than January 1, 2010.

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).

STANDARD CONDITIONS

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 not be valid unless the Department authorizes the change in writing.

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.

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.

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.

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.

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.

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 practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The permit holder shall commence and complete the construction of any proposed works within 20 years from the date of permit issuance. The Department may order and allow an extension of time to complete construction or to perfect a water right beyond 20 years from the date of permit

issuance.

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 (CWRE).

Issued [REDACTED], 2007

DRAFT - DO NOT SIGN

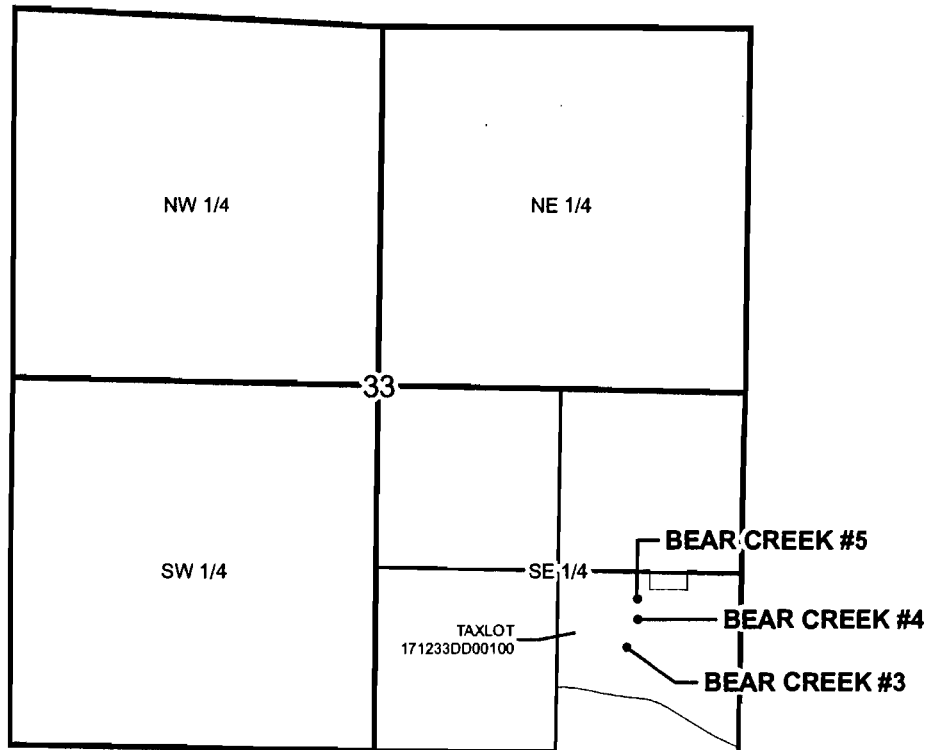
Dwight French, Administrator
Water Rights and Adjudications
for
Phillip C. Ward, Director
Oregon Water Resources Department

RECEIVED

DEC 01 2006

WATER RESOURCES DEPT
SALEM, OREGON

**BEAR CREEK WELLS #3, #4, #5
SE 1/4 SE 1/4 SECTION 33,
TOWNSHIP 17S, RANGE 12E, W.M.**



BEAR CREEK WELL #3 - 766' NORTH & 813' WEST OF SW CORNER OF SE 1/4 SE 1/4 SECTION 33, TOWNSHIP 17S, RANGE 12E

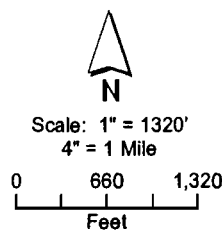
BEAR CREEK WELL #4 - 966' NORTH & 733' WEST OF SW CORNER OF SE 1/4 SE 1/4 SECTION 33, TOWNSHIP 17S, RANGE 12E

BEAR CREEK WELL #5 - 1114' NORTH & 736' WEST OF SW CORNER OF SE 1/4 SE 1/4 SECTION 33, TOWNSHIP 17S, RANGE 12E

LEGEND

- Proposed Wells
- 1/4 1/4 Sections
- 1/4 Sections
- Tax Lots

NOTE: This map was prepared for the purpose of identifying the location of water rights only and is not intended to provide legal dimensions or locations of property ownership lines.




**City of Bend
Application G-13097
Proposed Well Locations
November 2006**



Mailing List for FO Copies

Application #**G-13097**

Mailing List Print Date: 

Original mailed to:

THE CITY OF BEND, PO BOX 431, BEND, OR 97709

Copies sent to:

1. WRD - File # G-13097
2. Water Availability: Ken Stahr
3. WRD - Laura Snedaker

FO and Map Copies sent to:

4. WRD - Watermaster # 11
5. DRC- Genevieve Hubert

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

Adam Sussman, CH2MHill, PO Box 428, Corvallis, OR 97339-0428

John Short, Deschutes Irrigation, LLC.

CASEWORKER : huffmaam

Copies Mailed
Date:

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-13098

DRAFT Final Order Incorporating Settlement Agreement

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feet per second (cfs) for year round (24 hours per day, 7 days per week) municipal use.

On July 29, 2005, House Bill 3494, enacted by the 73rd Oregon Legislative Assembly, was signed by the Governor. Under Section 2 of this 2005 Act, Oregon Administrative Rules (OAR) 690-505-0600 through 690-505-0630, certified effective by the Secretary of State on September 27, 2002, satisfy the requirements relating to mitigation under ORS 390.805 to 390.925, 537.322 to 537.360, and 537.505 to 537.795.

On September 1, 2006, the Department notified the applicant of the opportunity to provide mitigation on an incremental basis. On November 29, 2006, the City of Bend, through its agent, Adam Sussman, of CH2MHill, submitted an incremental development plan pursuant to OAR 690-505-0625. The City also modified its application to limit annual volume to 3,223 AF. The incremental development plan was based upon the use of 12.0 cfs for year round municipal use, a modified annual volume of water limited to 3,223 AF, and a consumptive use coefficient of 40 percent. This resulted in a mitigation obligation of 1,289 AF.

On December 1, 2006, the Department sent a notice to Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality, and Oregon Department of State Lands (DSL) and requested comments regarding the applicant's mitigation proposal. Only one agency (DSL) responded to the notice, and their comment was that they had no comment.

On February 5, 2007, the City of Bend revised its incremental development plan to be consistent with the pending settlement agreement with WaterWatch of Oregon, Inc. The revised incremental development plan uses a 50 percent consumptive use coefficient to determine the mitigation obligation. Based on the requested annual volume of 3,223 AF, the resultant mitigation obligation is 1,611.5 AF.

On March [REDACTED], 2007, a Settlement Agreement was entered into between the City of Bend, WaterWatch of Oregon, Inc., and the Department. The Settlement Agreement is incorporated into this Final Order by reference and as an attachment.

Mitigation

The Department has determined that the proposed use will have the potential for substantial interference with the Deschutes River. The Department also finds that, without the required mitigation, there is a preponderance of evidence that the proposed use will measurably reduce surface water flows necessary for the Deschutes River Scenic Waterway (ORS 390.835(9)). Without appropriate mitigation, the Department would be required to deny the application. The proposed ground water use is located within the Deschutes Ground Water Study Area and, pursuant to the Settlement Agreement, is subject to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

As required by OAR 690-505-0615, the applicant must submit proposed 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.

Because the applicant is a municipal ground water permit applicant, the mitigation obligation may be satisfied by incrementally obtaining and providing mitigation to coincide with the incremental development of the permit, provided that mitigation is provided prior to each stage of development of the permit and in accordance with the standards in OAR 690-505-0610 (2) - (5).

The mitigation proposed by the applicant will occur within the General Zone of Impact. The incremental mitigation shall be provided, subject to the rate of permit development, as follows:

INCREMENT #	DATE OF PROPOSED IMPLEMENTATION	MAXIMUM VOLUME	MITIGATION AMOUNT	MITIGATION SOURCE
1	2006	409.0 AF	204.5 AF	Qualifying mitigation credits or a mitigation project
2	2011	717.0 AF	358.5 AF	Qualifying mitigation credits or a mitigation project
3	2016	673.0 AF	336.5 AF	Qualifying mitigation credits or a mitigation project
4	2021	673.0 AF	336.5 AF	Qualifying mitigation credits or a mitigation project
5	2026	751.0 AF	375.5 AF	Qualifying mitigation credits or a mitigation project

Pursuant to the Settlement Agreement, for the purposes of calculating the permittee’s mitigation obligation, a consumptive use coefficient of 50 percent will be applied, subject to other provisions of the Permit.

In 1995, the Department found that a rebuttable presumption had been established that the use will not impair or be detrimental to the public interest. However, since that finding was made a joint study of ground water resources by the Department and U.S. Geological Survey has established a hydraulic connection between ground water and surface water within the Deschutes Ground Water Study Area. Based on the conclusions on the study, the Department determined that groundwater appropriations within the Deschutes Ground Water Study Area have the potential for substantial interference with surface water rights as described in OAR 690, Division 9, and will measurably reduce scenic waterway flows as defined in ORS 390.835 unless mitigation is provided. Thus, continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe permit conditions as required by OAR 690-050-0620 necessary to ensure the preservation of the public welfare, safety and health. The mitigation conditions, along with other conditions in the attached draft permit shall be contained in the permit.

Mitigation Obligation: 1,611.5 acre-feet in the General Zone of Impact (anywhere in Deschutes Basin above the Madras gage, which is located below Lake Billy Chinook.)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

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 terms and conditions of a valid contract, or a 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 prior to use of water.

The permittee shall provide additional mitigation if the Department determines that the average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

The permittee shall provide timely written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit.

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).

Measurement, recording and reporting conditions

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each well. The totalizing flow meter(s) must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

Order

Application G-13098 therefore is approved with the above modifications to the Proposed Final Order, and as conditioned, will ensure the preservation of the public welfare, safety and health.

A permit consistent with the attached draft permit shall be issued only upon submission of documentary evidence demonstrating that 204.5 AF of mitigation water (credits or mitigation project), or an alternate amount of mitigation in conjunction with a modified incremental development plan, meeting the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact, have been obtained and satisfy the first stage of incremental development. Once the permit is issued, the permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

This final order shall expire 5 years after issuance unless the required first increment of mitigation is provided. OAR 690-505-0620(2).

DATED [REDACTED] 2007

DRAFT - DO NOT SIGN

Dwight French, Administrator
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds 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.

THIS IS NOT A PERMIT

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS **DRAFT** PERMIT IS HEREBY ISSUED TO:

THE CITY OF BEND
PO BOX 431
BEND, OR 97709

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

APPLICATION FILE NUMBER: G-13098

SOURCE OF WATER: THREE WELLS IN THE IN DESCHUTES RIVER BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE/VOLUME: 12.0 CUBIC FEET PER SECOND, LIMITED TO A MAXIMUM ANNUAL VOLUME OF 3223.0 ACRE FEET (AF), FURTHER LIMITED BY THE CORRESPONDING MITIGATION PROVIDED UNDER THE INCREMENTAL DEVELOPMENT PLAN

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: AUGUST 27, 1992

WELL LOCATIONS:

PILOT BUTTE WELL #3 NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 33, T17S, R12E, W.M.; 117 FEET NORTH & 290 FEET EAST FROM SW CORNER OF NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$, SECTION 33

PILOT BUTTE WELL #4 NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 33, T17S, R12E, W.M.; 177 FEET NORTH & 244 FEET EAST FROM SW CORNER OF NE $\frac{1}{4}$ 4 OF THE NE $\frac{1}{4}$, SECTION 33

PILOT BUTTE WELL #5 NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 33, T17S, R12E, W.M.; 250 FEET NORTH & 316 FEET EAST FROM SW CORNER OF NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$, SECTION 33

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE SERVICE BOUNDARY OF THE CITY OF BEND

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each well. The totalizing flow meter(s) must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

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 subsequently reduced. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows so long as mitigation is maintained.

GROUND WATER MITIGATION CONDITIONS

Mitigation Obligation: 1611.5 acre-feet of mitigation water in the General Zone of Impact (anywhere in the Deschutes River above the Madras gage, which is located below Lake Billy Chinook.)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

The first stage of incremental development was met with 1611.5 AF of mitigation being mitigation credits originating from mitigation project.

Pursuant to the provisions of a Settlement Agreement, for the purposes of calculating the permittee's mitigation obligation, a consumptive use coefficient of 50 percent will be applied,

subject to other provisions of this Permit.

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

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 terms and conditions of a valid contract, or a 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 prior to use of water.

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.

The permittee shall provide timely written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit.

The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

The permittee shall not increase the volume of water diverted, as described in the incremental development plan, prior to increasing the corresponding mitigation.

The permittee shall seek and receive Department approval prior to changing the incremental development plan and related incremental mitigation obligation for each stage of permit development.

The permittee shall report to the Department the progress of implementing the incremental development plan and related mitigation consistent with the timelines in the permittee's approved incremental development plan. The report shall be provided no later than April 1 of the reporting year. This notification is not necessary if the permittee has completed development and submitted a Claim of Beneficial Use to the Department.

The permittee shall submit a new or updated Water Management and Conservation Plan pursuant to OAR Chapter 690, Division 86 no later than January 1, 2010.

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).

STANDARD CONDITIONS

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 not be valid unless the Department authorizes the change in writing.

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.

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.

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.

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.

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.

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 practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The permit holder shall commence and complete the construction of any proposed works within 20 years from the date of permit issuance. The Department may order and allow an extension of time to complete construction or to perfect a water right beyond 20 years from the date of permit issuance.

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 (CWRE).

Issued [REDACTED], 2007

DRAFT, DO NOT SIGN

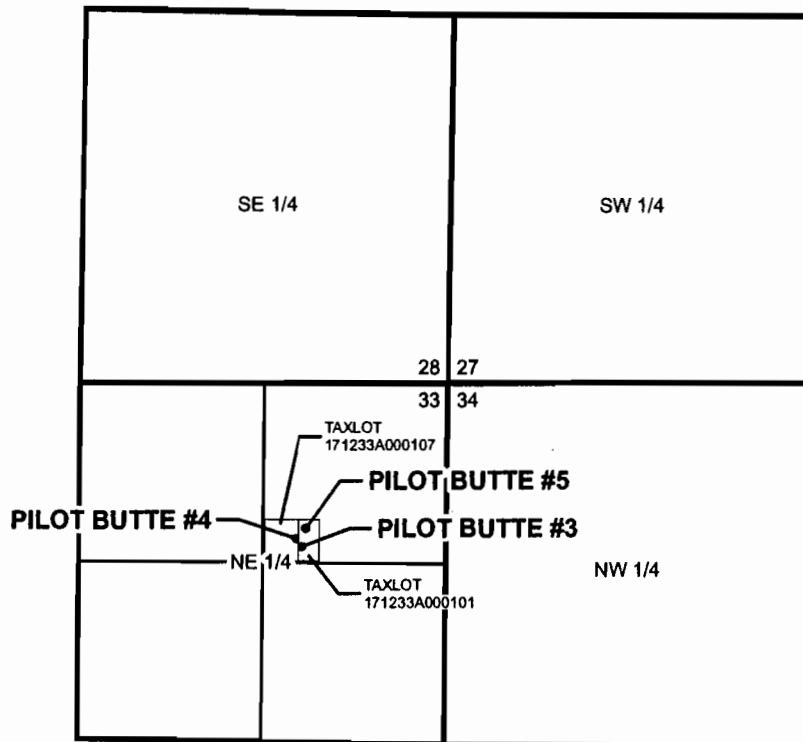
Dwight French, Administrator
Water Rights and Adjudications
for
Phillip C. Ward, Director
Oregon Water Resources Department

RECEIVED

DEC 01 2006

WATER RESOURCES DEPT
SALEM, OREGON

**PILOT BUTTE WELLS #3, #4, #5
NE 1/4 NE 1/4 SECTION 33,
TOWNSHIP 17S, RANGE 12E, W.M.**



PILOT BUTTE WELL #3 - 117' NORTH & 290' EAST OF SW CORNER OF
NE 1/4 NE 1/4 SECTION 33, TOWNSHIP 17S, RANGE 12E

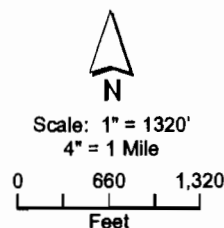
PILOT BUTTE WELL #4 - 177' NORTH & 244' EAST OF SW CORNER OF
NE 1/4 NE 1/4 SECTION 33, TOWNSHIP 17S, RANGE 12E

PILOT BUTTE WELL #5 - 250' NORTH & 316' EAST OF SW CORNER OF
NE 1/4 NE 1/4 SECTION 33, TOWNSHIP 17S, RANGE 12E

LEGEND

- Proposed Wells
- 1/4 1/4 Sections
- 1/4 Sections
- Tax Lots

NOTE: This map was prepared for the purpose of identifying the location of water rights only and is not intended to provide legal dimensions or locations of property ownership lines.




**City of Bend
Application G-13098
Proposed Well Locations
November 2006**



Mailing List for FO Copies

Application #**G-13098**

Mailing List Print Date: 

Original mailed to:

THE CITY OF BEND, PO BOX 431, BEND, OR 97709

Copies sent to:

1. WRD - File # G-13098
2. Water Availability: Ken Stahr
3. WRD - Laura Snedaker

Copies Mailed
Date:

FO and Map Copies sent to:

4. WRD - Watermaster # 11
5. DRC- Genevieve Hubert

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

Adam Sussman, CH2MHill, PO Box 428, Corvallis, OR 97339-0428

John Short, Deschutes Irrigation, LLC.

CASEWORKER : huffmaam