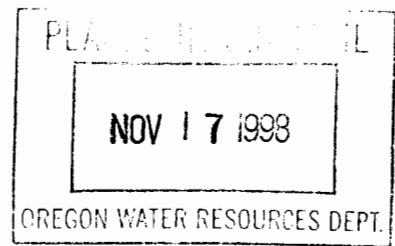


Oregon Water Resources Department
Water Rights Division



Water Rights Application
Number S-83451

Final Order

Application History

On June 16, 1997, Ronald G. Paulson submitted an application to the Department for a water use permit. The application requests 0.01 cubic feet per second (cfs) for domestic use including the irrigation of ½ acre non-commercial lawn and garden (domestic expanded). The proposed source of water is an unnamed stream, tributary to the Alsea River.

On September 23, 1998, the Department issued an Initial Review determining water is not available for the proposed use October 1 through October 31. (OAR 690-410-070 and OAR 690-400-010(11)). Following the Initial Review, the applicant submitted comments asserting the unnamed stream does not contribute flow to the Alsea River in October and therefore would have no impact on water availability.

On February 10, 1998, after consideration of the applicant's comments, the Department issued a Proposed Final Order (PFO). The Department determined water is available all year except for October 1 through October 31. Based on fishery concerns, the Department's PFO proposed to allow domestic expanded use November 1 through May 31 and human consumption use June 1 through October 31 however, no live flow was allowed during the month of October.

On March 9, 1998, the applicant submitted a protest and request for hearing. The protest was regarding the contribution of flow from the proposed source in October and the need for a fish screen. On October 27, 1998, the applicant withdrew the protest and request for hearing.

Findings of Fact and Conclusions of Law

Under ORS 537.153(2) and OAR 690-410-070 the Department evaluates the amount of water available for a proposed use. Water is available when the proposed source is not over-appropriated. A surface water source is over-appropriated when the quantity of surface water is not sufficient to meet the expected demands from all water rights at least 80 percent of the time (OAR 690-410-070 and OAR 690-400-010). When a stream is over-appropriated additional uses may be allowed where public interest in the use is high and uses are conditioned to protect instream values (OAR 690-410-070(2)(a)).

In this case, the Department determined water is not available October 1-31. Water is not available because of existing demands downstream (instream water rights) on the Alsea River.

Oregon Department of Fish and Wildlife (ODFW) and Water Resources staff made a site visit to the proposed place of use on September 4, 1998. Upon field inspection, ODFW staff indicated that the proposed use would not adversely impact fishery resources if conditioned appropriately. Specifically, staff determined the unnamed stream contributes little or no flow during the period June 1 through September 30, a period when prior instream water rights are met and water for new appropriations is available. It is not necessary to limit the use to human consumption during the June 1 through September 30 period. In addition, upon inspection ODFW staff also determined fish screens are not necessary for the proposed diversion.

For the period October 1-31 water is not available however, in most years the unnamed stream contributes no flow to the Alsea River in October. ODFW staff indicated that fishery resources would be protected if limited water use were allowed in October. Specifically, the use shall be limited in October to human consumption only and shall be further limited to a diversion of not to exceed 250 gallons per day. As conditioned on the attached permit, the Department finds the proposed use will protect instream values (OAR 690-410-070(2)(a)).

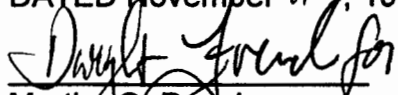
The applicant has demonstrated that the unnamed stream rarely contributes flow to the Alsea River in October and that alternative water sources for the month of October are unreasonable. Lack of water during the month of October would deny reasonable expectations for use of the property. Under ORS 536.310(12), when proposed uses of water are in mutually exclusive conflict or when supplies of water are insufficient for all who desire them, preference shall be given to human consumption over all other uses. Given this preference in the law, the lack of a reasonable alternate water source, and the lack of adverse impact to instream resources the Department finds use of water under Application S-83451 for human consumption when water is not available (October 1-31) is of high public value (OAR 690-410-070(2)(a)).

The proposed use is allowable, will not injure other water rights, and complies with rules of the Water Resources Commission. Although water is not available October 1-31 of each year the Department finds the proposed use is of high public value and is conditioned to protect instream values. As limited and conditioned on the attached permit, the proposed use will not impair or be detrimental to the public interest.

Order

Application S-83451 is approved as modified above and as conditioned and limited by the attached permit.

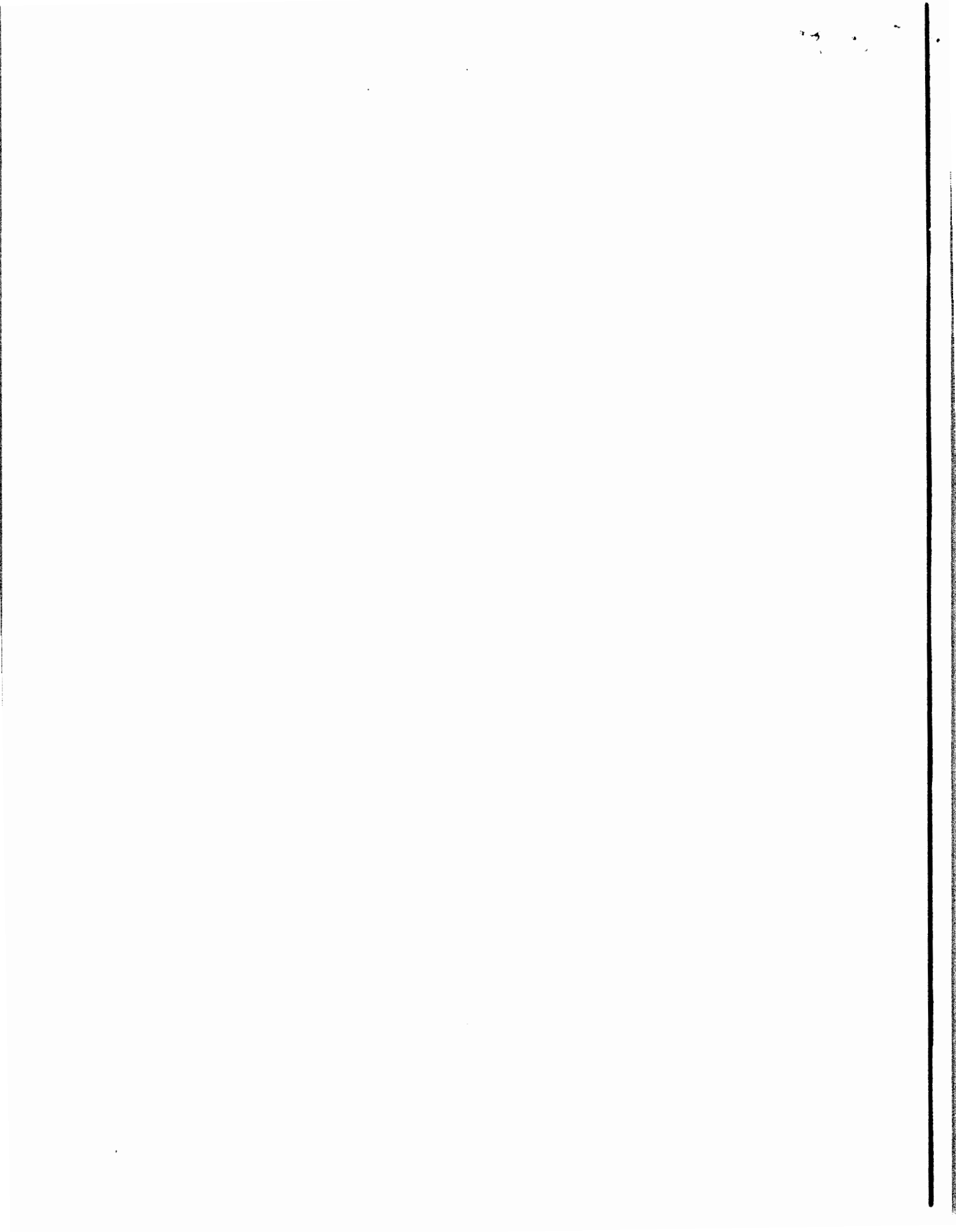
DATED November 16, 1998



Martha O. Pagel
Director

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.



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Mailing List for Protested Application Copies

Application APPNUM 5-83451

FO Date FODATE

Original mailed to:

Applicant:

Copies sent to:

- 1. WRD - File # APPNUM
- 2. WRD - Water Availability: Ken Stahr

Copies Mailed
By: <u>HW</u>
(SUPPORT STAFF)
on: <u>11/17/98</u>
(DATE)

PFO, Map, and Fact Sheet Copies sent to:

- 3. WRD - Watermaster # 16
- 4. WRD - Regional Manager (not Bob Main): Tom Paul
- 5. ODFW District Biologist:

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

- 6. _____
- 7. Tami Wagner ODFW ←
- 8. Newport
- 9. _____
- 10. _____
- 11. _____
- 12. _____
- 13. _____

Send
copy of
FO to

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

- 1. _____
- 2. _____
- 3. _____

CASEWORKER: A.S.

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