

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-84124

Proposed Final Order

Summary of Recommendation: The Department recommends that the application be denied.

Application History

On April 23, 1999, DAVID E. BASHORE submitted an application to the Department for the following water use:

- Amount of Water: 0.228 CUBIC FOOT PER SECOND (CFS)
- Use of Water: IRRIGATION OF 18.2 ACRES
- Source of Water: WASTE WATER FROM EAGLE POINT IRRIGATION DISTRICT, TRIBUTARY TO THE ROGUE RIVER
- Area of Proposed Use: JACKSON County within SECTION 9, TOWNSHIP 35 SOUTH, RANGE 1 WEST, W.M.

On 7/13/99, the Department mailed the applicant notice of its Initial Review, determining that "the use of 0.228 Cubic Foot per Second from Eagle Point Irrigation District Run Off (Waste Water) appropriated from Big Butte Creek, a tributary of Rogue River, for Irrigation of 18.2 acres is allowable from April 1 through October 31 of each year." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 8/13/99, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

Written comments were received after the 30 day comment period from the Watermaster.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance

- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- Additional Public Interest Standards for New Appropriations (OAR Chapter 690, Div. 33)
- any comments received

Findings of Fact

The Rogue Basin Program **does** allow the following uses: IRRIGATION OF 18.2 ACRES.

Senior water rights exist on WASTE WATER FROM EAGLE POINT IRRIGATION DISTRICT, TRIBUTARY TO THE ROGUE RIVER, and on downstream waters.

WASTE WATER FROM EAGLE POINT IRRIGATION DISTRICT, TRIBUTARY TO THE ROGUE RIVER, is above the Rogue River State Scenic Waterway.

The Findings of the Initial Review require modification. The findings of the Initial Review were based upon the assumption that Waste Water from the unnamed ditch did not flow into the Rogue River. However, according to information from Larry Menteer, District 13 Watermaster, and Hazel Brown, of Eagle Point Irrigation District, water from the ditch does flow into the Rogue River. Since waste water from the ditch does flow into the Rogue River, the proposed use is subject water availability including that of downstream waters.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumption portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water **is not** available for further appropriation (at an 80 percent exceedance probability) year round.

There is no evidence in the record of the presence of game fish at the described point of diversion.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team did not recommend that any additional conditions of use be imposed on this application.

Information obtained from the Department of Environmental Quality (DEQ) indicates that the source of water identified in the application is "Water Quality Limited." This designation indicates that water quality concerns exist. DEQ was provided with an opportunity to review this proposed use to determine if any additional conditions or restrictions are needed to protect the water quality. DEQ did not make any recommendations for additional conditions or restrictions to be imposed on the proposed use for this application.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application **is** allowed in the Rogue Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water **is not** available for the proposed use.

The proposed use **will not** injure other water rights.

The proposed use **complies** with other rules of the Water Resources Commission not otherwise described above.

The proposed use **is** compatible with applicable land use plans.

For these reasons, the required presumption **has not** been established.

The application therefore has been processed without the statutory presumption.

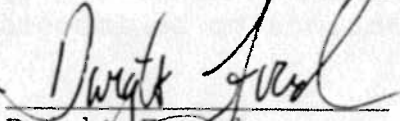
In this application, all criteria for establishing the presumption have not been satisfied, as noted above.

The Department therefore concludes that water **is not** available in the amount of water necessary for the proposed use; the proposed use **will not** result in injury to existing water rights; and the proposed use **will** impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

The Department recommends that the application be denied.

DATED February 22, 2000


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.
- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.
- Persons other than the applicant who support the proposed final order may request standing for the purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.
- Requests for standing shall meet the requirements described in OAR 690-310-160 and shall be accompanied by the \$50.00 standing fee established under ORS 536.050.

Your protest or request for standing must be received in the Water Resources Department no later than **April 7, 2000**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

This document was prepared by Laura Snedaker. 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 toll free within Oregon at 1-800-624-3199 extension 331. Outside of Oregon you can dial 1-503-378-8455.

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 Adam Sussman. His extension number is 262.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 499

Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97310
Fax: (503)378-2496 .