

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)	FINAL ORDER GRANTING
S 84124 in the Name of David E. Bashore)	PERMIT
<i>Applicant and Protestant</i>)	

Appeal Rights

This is a final order other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Background

On April 23, 1999, David E. Bashore (Applicant) submitted an application to the Oregon Water Resources Department (Department) for 0.228 cubic foot per second (cfs) of wastewater from Eagle Point Irrigation District.

On July 13, 1999, the Department gave Applicant notice of its Initial Review, finding that the use of the water for irrigation of 18.2 acres is allowable from April 1 through October 31 of each year. This favorable Initial Review was based on the Department's assumption that the wastewater from Eagle Point Irrigation District's ditch did not reach a tributary of the Rogue River.

On August 13, 1999, the Department gave public notice of the application, but no written comments were received within 30 days of the Department's notice. On December 1, 1999, the watermaster, in response to a query from the Department about whether or not the water proposed for appropriation could reach Reese Creek, a tributary of the Rogue River, commented that wastewater from Eagle Point Irrigation could eventually reach Reese Creek, but not in measurable amounts.

On February 22, 2000, the Department issued a Proposed Final Order (PFO) finding that water was not available for the proposed use based on the watermaster's statement that water "could" eventually reach Reese Creek, a tributary of the Rogue River. Because no water is available for further appropriation in the Rogue River system, the Department found that no water is available for the proposed use, and recommended that the application be denied.

On March 28, 2000, Applicant timely submitted a protest to the Department stating that the proposed use would not impact the Rogue River and that the watermaster had no objection to the proposed use, nor did Eagle Point Irrigation District, or the Department of Fish and Wildlife.

On June 14, 2000, the Department sought clarification regarding whether or not wastewater from the Eagle Point Irrigation Ditch would affect Reese Creek, a tributary of the Rogue River.

Findings of Fact and Conclusions of Law

Pursuant to ORS 537.153, the Department shall 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, if water is available, if the proposed use will not injure other water rights, and if the proposed use complies with the rules of the Water Resources Commission.

Wastewater from the Eagle Point Irrigation District does not reach Reese Creek, a tributary of the Rogue River. Therefore, this water is not subject to the Department's water availability analysis, and wastewater is available for the proposed use.

The proposed use will not impair or be detrimental to the public interest.

Order

Upon payment of outstanding recording fees, Application S 84124 shall be approved as proposed on the draft permit.

DATED this 7th day of July, 2000

A handwritten signature in cursive script that reads "Dwight Arnold for". The signature is written in black ink and is positioned above a horizontal line.

Paul Cleary, Director
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF JACKSON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVID E BASHORE
800 HAMMEL RD
EAGLE POINT, OREGON 97524

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

APPLICATION FILE NUMBER: S-84124

SOURCE OF WATER: WASTE WATER FROM EAGLE POINT IRRIGATION DISTRICT, A
TRIBUTARY OF ROGUE RIVER

PURPOSE OR USE: IRRIGATION OF 18.2 ACRES

MAXIMUM RATE: 0.228 CUBIC FEET PER SECOND

WATER MAY BE APPROPRIATED DURING THE PERIOD: APRIL 1 THROUGH OCTOBER
31 OF EACH YEAR

DATE OF PRIORITY: APRIL 23, 1999

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 10, T35S, R2E,
W.M.; 1130 FEET SOUTH AND 700 FEET WEST OF THE NE CORNER OF SECTION
10, T35S, R2E, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW 1/4 NE 1/4 18.2 ACRES
SECTION 9
TOWNSHIP 35 SOUTH, RANGE 2 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure,

the watermaster shall request access upon reasonable notice.

- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The use may be restricted if the quality of the source stream or downstream water decrease to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.

This use may be regulated if analysis of data available 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 this right or as those quantities may be subsequently reduced.

The use of water shall be limited to the water available at the proposed point of diversion, and shall not carry with it the right to compel the continuance of the waste water.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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 allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from Final Order issuance. Complete application of water to the proposed use shall be made on or before October 1, 2004. 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.

DATED _____, 2000

____DRAFT_____

Martha O. Pagel, Director
Water Resources Department