

**Oregon Water Resources Department  
Water Rights Division**

Water Rights Application  
Number G-15742

**Proposed Final Order**

*Summary of Recommendation:* The Department recommends that the attached draft permit be issued with conditions.

*Application History*

On April 12, 2002, CRAIG PETRIE submitted an application to the Department for the following water use permit:

- Amount of Water: 0.056 CUBIC FOOT PER SECOND (CFS) IN A 7.0 ACRE FOOT Reservoir
- Use of Water: MAINTENANCE OF A RESERVOIR FOR FIRE PROTECTION
- Source of Water: A WELL IN DESCHUTES RIVER BASIN
- Area of Proposed Use: DESCHUTES County within SECTION 23, TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M.

On August 25, 2003, the Department mailed the applicant notice of its Initial Review, determining that the proposed well has the potential for substantial interference with the Deschutes River, therefore use of 0.056 cfs of water from a well in the Deschutes Basin for maintenance of reservoir for fire protection cannot be allowed. The applicant did not notify the Department to stop processing the application within 14 days of that date.

On August 26, 2003, 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.

The August 25, 2003, Initial review included a Notice of Mitigation Obligation for the proposed groundwater use pursuant to the Deschutes Ground Water Mitigation Rules. The applicant proposed to obtain mitigation credits to satisfy the mitigation obligation of the proposed ground water use.

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
- designations of any critical groundwater areas
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- any comments received

*Findings of Fact*

The Department has determined that the proposed ground water use is located within the Deschutes Ground Water Study Area (DGWSA) and is subject to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505. The Deschutes Ground Water Mitigation Rules identify that new ground water appropriations within the DGWSA will have the potential for substantial interference with surface water rights (OAR Chapter 690, Division 09) and will cause a measurable reduction in scenic waterway flows (ORS 390.835).

The Department has determined the proposed use will have the potential for substantial interference with the Deschutes River. The Department also finds 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)).

Senior water rights exist on a well in Deschutes Basin, or on downstream waters.

The Department has determined that the applicant must mitigate for the proposed ground water use pursuant to the Deschutes Groundwater Mitigation Rules (OAR 690-505). A permit may not be issued unless the mitigation obligation of the proposed ground water use, as identified by the Department, is satisfied. Water in an amount equal to the mitigation obligation must be legally protected instream before a permit may be issued.

The Department has determined the mitigation obligation for the proposed use of groundwater for maintenance of a reservoir for fire protection is 2.67 acre-feet. (OAR 690-505-0610(5)). The mitigation obligation represents the Department's determination of consumptive use of the proposed groundwater use. (OAR 690-505-0610(5)).

To satisfy the mitigation obligation, the applicant must also provide mitigation water in the zone of impact identified by the Department. The proposed use for this application is located within the General Zone of Impact (OAR 690-505-0610(5), defined as anywhere in the Deschutes Basin



above the Madras gage, located on the Deschutes River below Lake Billy Chinook.

The applicant has proposed to obtain 2.67 mitigation credits within the General Zone of Impact. Each mitigation credit is equivalent to 1.0 acre-feet of mitigation water.

Following submission of the applicant's mitigation proposal, the Department requested comments on the application and proposed mitigation from Oregon Department of Fish and Wildlife, Department of Environmental Quality, Division of State Lands, Department of Parks and Recreation, and Department of Agriculture pursuant to the Deschutes Ground Water Mitigation Rules. **No significant comments relating to the mitigation obligation were received.**

The Department finds that the mitigation proposed by the applicant will satisfy the mitigation required under OAR Chapter 690, Division 505; therefore, pursuant to OAR 690-505-0630, the proposed ground water appropriation is deemed to be a ground water appropriation that does not have the potential for substantial interference with surface water.

The Department finds that the Deschutes Basin Program allows the use of groundwater for storage and maintenance of a reservoir for fire protection.

An assessment of groundwater availability has been completed by the Department's Groundwater/Hydrology section. A copy of this assessment is in the file. The proposed use of groundwater will, if properly conditioned, avoid injury to existing groundwater rights and the groundwater resource.

The proposed well is not within a designated critical ground water area.

As required by the Deschutes Ground Water Mitigation Rules, any Final Order issued approving the proposed use, and any subsequent permit will include the following conditions (690-505-0620[1]):

Mitigation Obligation: 2.67 acre-feet in the General Zone of Impact

Mitigation Source: Obtain 2.67 Mitigation Credits, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact.

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, 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 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.

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.

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, or subsequent certificate(s).

The next step in the permit application process under OAR 690-310 is the Final Order. The applicant will have five years from the issuance of any Final Order approving the application to provide the proposed mitigation required under the Deschutes Ground Water Mitigation Rules (OAR 690-505-620[2]). For mitigation credits, documentary evidence that the qualifying credits have been obtained must be submitted to the Department. Any Final Order issued approving the proposed use will expire after five years if mitigation is not provided.

#### *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 Deschutes Basin Plan.

The mitigation proposed by the applicants will satisfy the mitigation required under OAR 690-505. Therefore, notwithstanding OAR 690-09:

groundwater is available for the proposed use;

the proposed use will not measurably reduce surface water flows necessary for the Deschutes River Scenic Waterway;

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

The applicant has provided mitigation pursuant to the Scenic Water Way Act. (ORS 390-835{9dA and 10])

The proposed use complies with the State Agency Agreement for land use.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest. . . or in a finding of the department that shows:
  - (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.




The Department therefore concludes that 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.

In order to obtain a permit for the proposed ground water use, the applicants must submit documentary evidence that the proposed mitigation credits have been obtained. Documentary evidence of mitigation credits must be submitted to the Department within five years of the issuance of a Final Order approving the proposed ground water use.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED April 20, 2004

  
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.

Requests for Standing

Under the provisions of 537.621(6), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$150.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **June 4, 2004**.

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 Anita Huffman. 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 at 503-986-0815*

*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 Renee Moulun. Her number is 503-986-0824*

*If you have other questions about the Department or any of its programs please contact our Water Rights Information Group 503-986-0801.*

*Address all other correspondence to:*

Water Rights Section, Oregon Water Resources Department, 725 SUMMER STREET NE, Suite A, SALEM, OR 97301-1271

Fax: 503-986-0901

huffmaam- WEEK 456



DRAFT

This is not a permit.  
STATE OF OREGON

DRAFT

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CRAIG PETRIE  
16865 GREENBRIAR ROAD  
LAKE OSWEGO, OREGON 97034

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

APPLICATION FILE NUMBER: G-15742

SOURCE OF WATER: A WELL IN DESCHUTES BASIN

PURPOSE OR USE: STORAGE AND MAINTENANCE OF A RESERVOIR FOR FIRE PROTECTION

MAXIMUM VOLUME AND RATE: 7.0 ACRE-FEET FOR STORAGE AND 0.056 CUBIC FOOT PER SECOND FOR Reservoir MAINTENANCE

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: APRIL 12, 2002

WELL LOCATION: NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 23, T17S, R11E, W.M.; 470 FEET SOUTH & 800 FEET WEST OF NORTH CORNER, SECTION 14

RESERVOIR LOCATION: NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 23, T17S, R11E, W.M.; 470 FEET SOUTH & 800 FEET WEST OF NORTH CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$   
SECTION 23  
TOWNSHIP 17 SOUTH, RANGE 11 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, 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 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.

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.

#### GROUND WATER MITIGATION CONDITIONS

Mitigation Obligation: 2.67 acre-feet in the General Zone of Impact

Mitigation Source: Obtain 2.67 Mitigation Credits, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact.

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 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.

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

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, a copy of which must be on file in the records of the Water Resources Department prior to use of water.

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 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.

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

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 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.

Complete application of the water to the use shall be made on or before October 1, 2008. 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.

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 \_\_\_\_\_, 2004

**DRAFT - THIS IS NOT A PERMIT**

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Paul R. Cleary, Director  
Water Resources Department

REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

CULTURAL RESOURCES PROTECTION LAWS: Permittees involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction or alteration of an archeological site or object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232.



SECTION 23 T.17S. R.11E. W.M.  
 DESCHUTES COUNTY

1" = 400'

*Deschutes River Basin*



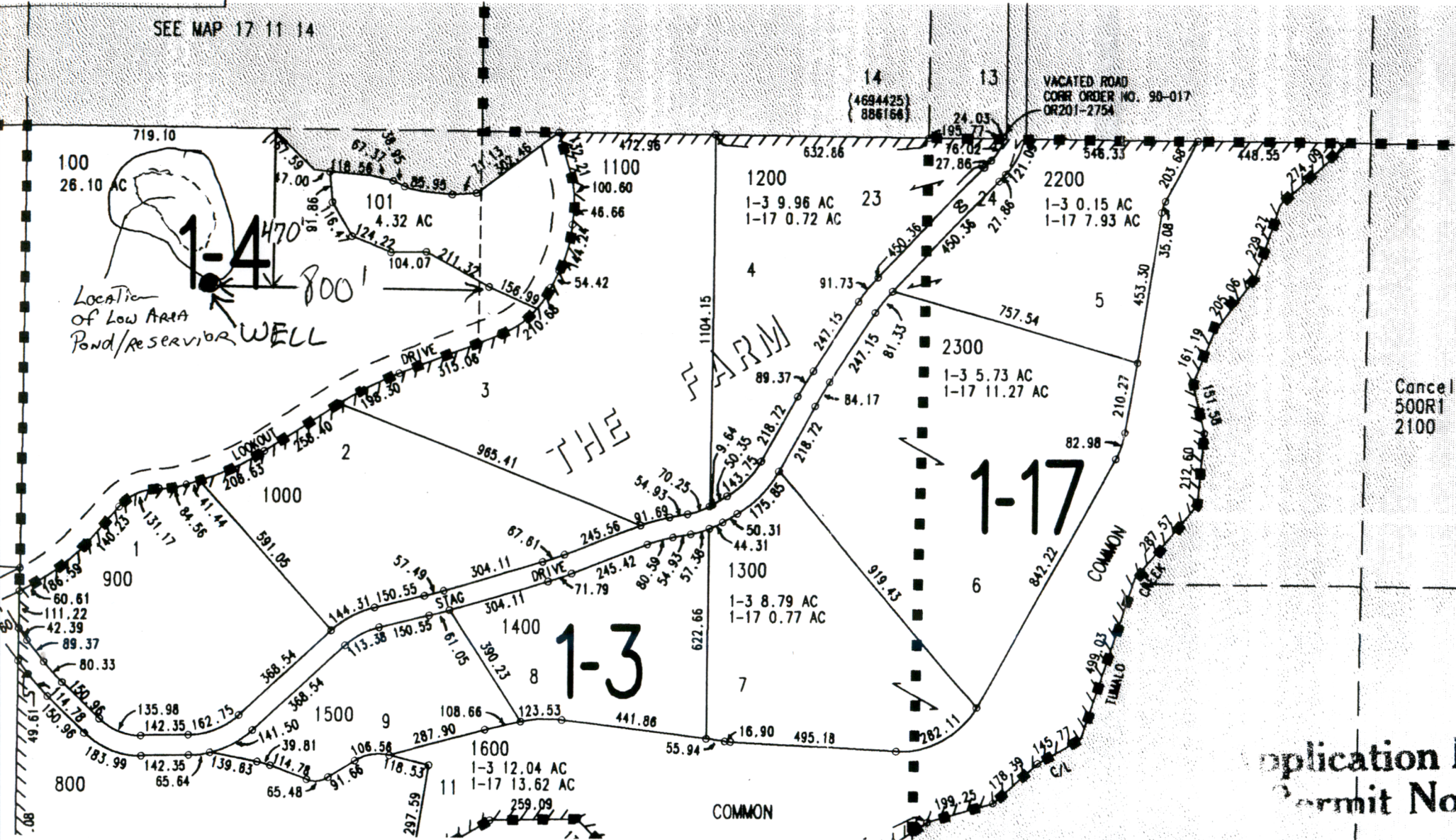
Subject Property:  
 TL 100  
 MAP 17 11 23  
 Deschutes County Oregon

17 11 23

APR 12 2002

WATER RESOURCES DEPT  
 SALEM, OR

SEE MAP 17 11 14



Cancelled No.s  
 500R1  
 2100

Application No. 15742  
 Permit No.