

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16769

Proposed Final Order

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

Application History

On December 26, 2006, Vandever Ranch Association submitted an application to the Department for the following water use permit:

- Amount of Water: 24.6 acre feet (AF) and 0.25 cubic foot per second (CFS)
- Use of Water: storage for multiple purpose and pond maintenance
- Source of Water: a well (DESC 951) in Little Deschutes River Basin
- Area of Proposed Use: Deschutes County within Section 17, Township 20 South, Range 11 East, W.M.

On August 31, 2007, the Department mailed the applicant notice of its Initial Review, determining that the proposed well has the potential for substantial interference with the Little Deschutes River, therefore the storage of 24.6 AF for multiple purpose and the use of 0.25 CFS of ground water for pond maintenance from a well (DESC 951) in the Little Deschutes River Basin cannot be allowed. The Initial Review included the Notice of Mitigation Obligation for the proposed ground water use pursuant to the Deschutes Ground Water Mitigation Rules. The applicant did not notify the Department to stop processing the application within 14 days of that date.

On September 4, 2007, 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.

On September 21, 2007, the Department received a response to the Notice of Mitigation Obligation which indicated the applicant intends 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 Deschutes Basin Program allows the storage of ground water for multiple purpose and allows the use of ground water for pond maintenance.

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 use is not within a designated critical ground water area.

Senior water rights exist on a well (DESC 951) in Little Deschutes River Basin, or on downstream waters.

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 Department has determined that the proposed use will have the potential for substantial interference with the Little Deschutes River (OAR 690-09). 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).

Pursuant to ORS 390.835(9), the proposed use shall be denied unless the applicant provides mitigation under the Deschutes Groundwater Mitigation Rules (OAR Chapter 690, Division 505).

The mitigation obligation for the proposed use is 11.2 acre-feet, which represents the Department's determination of the consumptive portion of the proposed ground water 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 impacts surface water flows in the Little Deschutes Zone of Impact, located anywhere in the Little Deschutes River Basin above the mouth.

The applicant has proposed to obtain 11.2 mitigation credits within the Little Deschutes Zone of Impact. Each mitigation credit is equivalent to 1.0 acre-foot 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, Department 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.

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: 11.2 acre-feet annually in the Little Deschutes Zone of Impact, located anywhere in the Little Deschutes River Basin above the mouth of the Little Deschutes River.

Mitigation Source: 11.2 temporary Mitigation Credits from a chartered Mitigation Bank, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the Little Deschutes Zone of Impact.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. 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 Little Deschutes 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.

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 maintenance and terms and conditions of a valid contract or 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.

If required, 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, and proposing to cancel 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 537.621, 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 applicant will satisfy the mitigation required under OAR 690-505. Therefore, notwithstanding OAR 690-09:

ground water 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 shall provide mitigation pursuant to the Scenic Water Way Act, ORS 390.835(9)(d)(A) and (10).

The proposed use will not injure other water rights.

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.

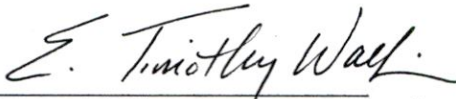
The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

In order to obtain a permit for the proposed ground water use, the applicant 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 January 15, 2008



for Phillip C. Ward, Director
Water Resources Department

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

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this proposed final order. Protests must be received in the Water Resources Department no later than **February 29, 2008**. Protests 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 protest fee of \$350 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 ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a proposed final order can request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.

Requests for standing must be received in the Water Resources Department no later than **February 29, 2008**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the proposed final order as issued;
- A detailed statement of how the requester would be harmed if the proposed final order is modified; and
- A standing fee of \$100.00. If a hearing is scheduled, an additional fee of \$250.00 must be submitted along with a request for intervention.

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 either:

- 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 Jeana Eastman. 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 503-986-0859.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty 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.
STATE OF OREGON

DRAFT

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

VANDEVERT RANCH ASSOCIATION
PO BOX 1617
BEND OR 97709

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

APPLICATION FILE NUMBER: G-16769

SOURCE OF WATER: A WELL (DESC 951) IN LITTLE DESCHUTES RIVER BASIN

PURPOSE OR USE: STORAGE FOR MULTIPLE PURPOSE, AND POND MAINTENANCE

QUANTITY: 24.6 ACRE FEET FOR STORAGE, AND 0.25 CUBIC FOOT PER SECOND FOR POND MAINTENANCE

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 26, 2006

WELL LOCATION: NW ¼ SW ¼, SECTION 17, T20S, R11E, W.M.; 160 FEET SOUTH & 822 FEET EAST FROM W1/4 CORNER, SECTION 17

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW ¼ SW ¼
SW ¼ SW ¼
SECTION 17

TOWNSHIP 20 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 totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. 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. 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: 11.2 acre-feet annually in the Little Deschutes Zone of Impact, located anywhere in the Little Deschutes River Basin above the mouth of the Little Deschutes River.

Mitigation Source: 11.2 temporary Mitigation Credits from a chartered Mitigation Bank, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the Little Deschutes Zone of Impact.

Mitigation water must be legally protected instream for instream use within the Little Deschutes 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.

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 maintenance and terms and conditions of a valid contract or 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.

If required, 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, 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.

Complete application of the water to the use shall be made on or before October 1, 2012. 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.

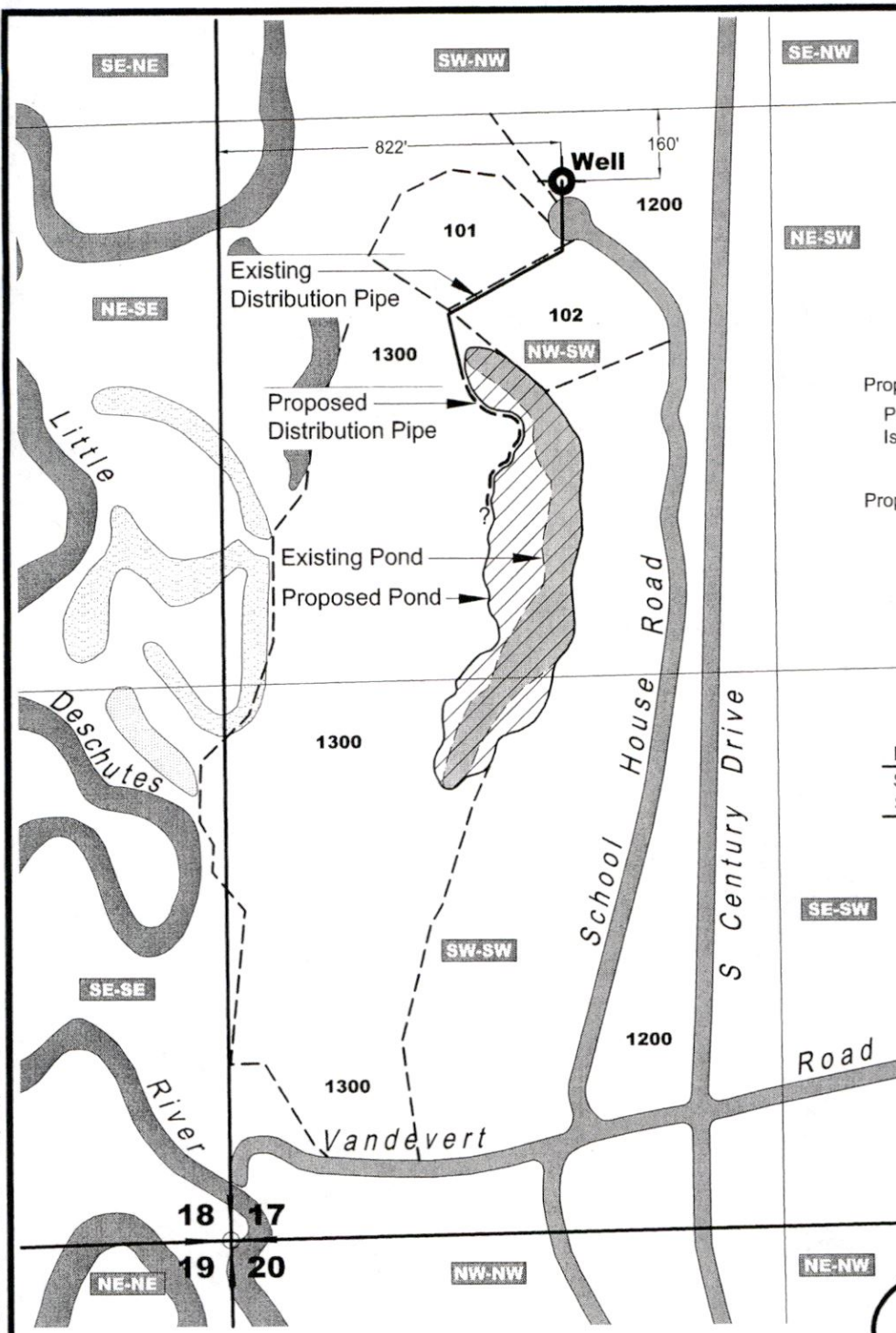
Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____, 2008

DRAFT - THIS IS NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

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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.

Proposed Pond Surface area

Pond	184,086 SQ.FT.	4.23 Ac
Island	1,730 SQ.FT.	0.04 Ac
	182,356 SQ.FT.	4.19 Ac

Proposed Pond Volume
24.6 Acre-Feet

LEGEND

Place of Proposed Water Use

Location	Pond Surface Area
Section 17 NW-SW	3.18 Ac
Section 17 SW-SW	1.01 Ac
	4.19 Ac



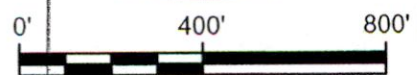
Certified Water Rights Examiner
419 WRE
David J. Newton
DAVID J. NEWTON
JAN. 16, 1996
STATE OF OREGON

WATER RIGHT MAP
Located in Township 20S, Range 11E, W.M.
Sections 17
Deschutes County, Oregon

RECEIVED

DEC 26 2006

WATER RESOURCES DEPT
SALEM, OREGON



SCALE: 1" = 400'

NEWTON
CONSULTANTS INC.
Earth, Water and Rock Specialists
Ptc 541 504-9960 Fax 541 504-9961

Water Rights Map
Rainbow Reservoir - Vandeventer Ranch
Deschutes County, Oregon

DESIGNED BY: D. Newton	DRAWN BY: S. Schenck	DATE: Nov 2006	PROJECT NO. 1043-101	FIGURE 2
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app no G-16769