

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16769

Final Order

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 modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Application History

On December 26, 2006, Vandever Ranch Association submitted an application to the Department for a water use permit. On January 15, 2008, the Department issued a Proposed Final Order concluding that, with the mitigation proposed by the applicant, water is available for the proposed use and that the proposed use would ensure the preservation of the public welfare, safety and health. The protest period closed February 29, 2008, and no protest was received.

As required by OAR 690-505-0615, the applicant must submit proposed mitigation that meets the requirements of OAR 690-505-0610(2)-(5). Pursuant to OAR 690-505-0620, a permit shall not be issued until the applicant provides documentary evidence that mitigation water, in an amount satisfying the mitigation obligation, is legally protected instream.

The applicant submitted a mitigation proposal to provide 11.2 acre-feet of mitigation water within the Little Deschutes Zone of Impact. The applicant is proposing to obtain credits or suitable mitigation that meets the requirements of OAR 690-505-0610(2)-(5) within the Little Deschutes Zone of Impact. One mitigation credit is equivalent to one acre-foot of mitigation water.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the measurement, recording and reporting conditions, and to include the surface area of the pond, being 4.19 acres.

The Proposed Final Order described the measurement, recording and reporting conditions as:

- 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.

The measurement, recording and reporting conditions, as modified in the attached draft permit, are:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the meter(s) in good working order. The permittee 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

Order

A permit consistent with the attached draft permit shall be issued only upon submission of documentary evidence that 11.2 mitigation credits, or suitable mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the Little Deschutes Zone of Impact have been obtained.

In addition, payment of outstanding permit recording fees in the amount of \$300.00, are required. Said fees are due and payable prior to the issuance of a permit, even if all mitigation obligations have been satisfied.

This Final Order is issued approving application G-16769 contingent upon the required mitigation being provided prior to permit issuance. This final order shall expire 5 years after issuance unless the required mitigation is provided OAR 690-505-0620(2).

DATED April 14, 2008

E. Timothy Wall

for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Jeana Eastman. If you have any questions about any of the statements contained in this document I am the 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 if you have previously filed a protest and want to know the status, please contact Mike Reynolds 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 97301-1271; Fax: 503-986-0901.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF CROOK

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 OF A POND WITH A SURFACE AREA OF 4.19 ACRES

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 at each point of appropriation. The permittee shall maintain the meter(s) in good working order. The permittee 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(s); provided however, where any meter 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 as required herein 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

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.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

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 well(s) 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.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, Section 030 adopted November 13, 1991 shall be followed.

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

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and

filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

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.

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.

This permit does not allow unauthorized inundation of property not under the ownership of the permit holder.

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 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