

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-83542

Proposed Final Order

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

Application History

On August 29, 1997, CARY BOGS submitted an application to the Department for the following water use permit:

- Amount of Water: 56.6 ACRE-FEET (AF), BEING 9.0 AF FROM RESERVOIR 1, 20.0 AF FROM RESERVOIR 2 AND 27.6 AF FROM RESERVOIR 3
- Use of Water: CRANBERRY USE AND SUPPLEMENTAL CRANBERRY USE
- Source of Water: THREE RESERVOIRS, TO BE CONSTRUCTED UNDER APPLICATION R-83543, TRIBUTARIES OF CONNER CREEK
- Area of Proposed Use: COOS County within SECTION 7, TOWNSHIP 30 SOUTH, RANGE 14 WEST, W.M.
- Water Delivery System: Water will be diverted from the reservoirs using electric centrifugal pumps; the amount of water diverted will be monitored using staff gages; water will be diverted through 8 to 1.5 inch pipe, approximately 500 feet in length; and water will be applied by high pressure sprinklers.

On 12/9/97, the Department mailed the applicant notice of its Initial Review, determining that "the use of 56.6 AF, being 9.0 AF from Res. 1, 20.0 AF from Res. 2, and 27.6 AF from Res. 3, from three reservoirs, to be constructed under Application R-83543, tributaries of Connor Creek, for Cranberry Use and Supplemental Cranberry Use is allowable year-round." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 12/23/97, 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.

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
- any comments received

Findings of Fact

The South Coast Basin Program allows the following uses: CRANBERRY OPERATIONS ON 10.6 ACRES.

Senior water rights exist on THREE RESERVOIRS, TRIBUTARIES OF CONNER CREEK, or on downstream waters.

THREE RESERVOIRS, TRIBUTARIES OF CONNER CREEK, are not within or above a State Scenic Waterway.

Stored water only may be appropriated from the three Unnamed Reservoirs Year-Round for Cranberry Operations.

The Department finds that no more than 1.59 Cubic Feet per Second would be necessary for the proposed use. The amount of water requested, 56.6 AF, BEING 9.0 AF FROM RES. 1, 20.0 AF FROM RES. 2 AND 27.6 AF FROM RES. 3, is allowable.

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 recommended that additional limitations or conditions of use be imposed on this application as follows:

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

The proposed use is within the New River Basin and the application is being processed consistent with the New River Alternative Dispute Resolution Agreement on file with the Department. Based upon the New

River Alternative Dispute Resolution agreement the permit shall include the following additional conditions:

The permittee shall keep a complete record of the amount of water used each month. The permittee shall submit a report which includes the recorded water use measurements to the Department at its request. The permittee may be required to report 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 place and nature of use of water under the permit.

Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River alternative Dispute Resolution Team Agreement on file with the Department.

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 South Coast Basin Plan.

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

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

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

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) 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 will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

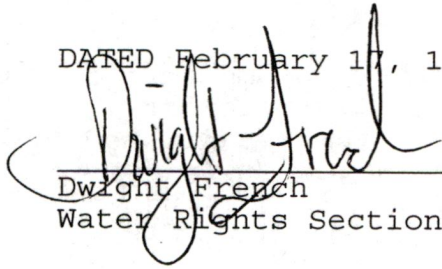
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

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 will not impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

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

DATED February 17, 1998


Dwight French
Water Rights Section Manager

Protest Rights

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.

Your protest must be received in the Water Resources Department no later than **April 3, 1998**.

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.

LKS-WEEK 134

DRAFT

This is not a permit!!!

DRAFT

STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CARY BOGS

ROUTE 1 BOX 1507

BANDON, OREGON 97411

PHONE: (541) 347-2381

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

APPLICATION FILE NUMBER: S-83542

SOURCE OF WATER: RESERVOIR 1, RESERVOIR 2, AND RESERVOIR 3, TO BE CONSTRUCTED UNDER APPLICATION R-83543, TRIBUTARIES OF CONNER CREEK

PURPOSE OR USE: CRANBERRY OPERATIONS ON 10.6 ACRES

MAXIMUM RATE/VOLUME ALLOWED: 56.6 ACRE-FEET (AF) PER YEAR, BEING 9.0 AF FROM RESERVOIR 1, 20.0 AF FROM RESERVOIR 2, AND 27.6 AF FROM RESERVOIR 3

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: AUGUST 29, 1997

POINT OF DIVERSION LOCATION: SW 1/4 NW 1/4, SECTION 7, T30S, R14W, W.M.; RES. 1 POD - 455 FEET NORTH & 60 FEET EAST, RES. 2 POD - 540 FEET NORTH & 360 FEET EAST, AND RES. 3 POD - 390 FEET NORTH & 700 FEET EAST ALL FROM W1/4 CORNER, SECTION 7

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW 1/4 NW 1/4 10.6 ACRES
SECTION 7
TOWNSHIP 30 SOUTH, RANGE 14 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. The permittee shall keep a complete record of the amount of water used each month. The permittee shall submit a report which includes the recorded water use measurements to the Department at its request. The permittee may be required to report 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 place and nature of use of water under the permit.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River alternative Dispute Resolution Team Agreement on file with the Department.

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 permit issuance. Complete application of the water to the use shall be made on or before October 1, 2002. 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 _____, 199_ .

DRAFT - THIS IS **NOT** A PERMIT

Water Resources Department
Director

Application S-83542 Water Resources Department
Basin 17 Volume 3 CROFT L & MISC
LKS WEEK 134 MGMT.CODE

PERMIT DRAFT
District 19

Mailing List for FO Copies

Application #S-83542

FO Date May 19, 1998

Original mailed to:

Applicant: Cary Bogs, Route 1 Box 1507, Bandon, Oregon 97411

Copies sent to:

1. WRD - File # R-83542 ✓
- 2.

PFO, Map, and Fact Sheet Copies sent to:

3. WRD - Watermaster # District: 19 ✓
4. WRD - Regional Manager: SWR ✓
5. ODFW District Biologist: Coos-Coquille District ✓
6. Dept of Agriculture - Ves Garner ✓
7. DEQ Headquarters - Russell Harding ✓
8. DEQ Headquarters - Tom Rosetta ✓

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

9. M. John Youngquist, 827 SE Mosier, Roseburg, Oregon 97470

10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : LKS

FO CHECKLIST

FILE # 5-83542

REVIEW DATE: 5/19/98

PFO WEEK # 134

PFO TO FO CONVERSION

INITIALS: LKS

In preparing to create the FO, you should check the following:

1. Y / N Were comments or protests received? If so, from whom and when?
2. On the PFO CC list, verify names and addresses of ALL commentors (regardless of comment date), affected landowners, and those who paid the \$10 fee.
3. Y / N / NA Have affected landowners been notified?
4. Y / N Is the file lacking a signed oath of accuracy for the application?
5. Y / N / NA Has ODFW asked for self certification of screening condition? If so, write "ODFW CERT" in the permit blank on the front of the file.
6. Y / N Is water use prohibited for one or more months of the normal use period?
7. Y / N If # 6 = "Y", is short season letter on file? Note: If short season letter is lacking, see Item #10 below. Give applicant 60 days to submit required information.
8. Verify payment of recording fees (circle the appropriate option)
(1) Issue FO w/permit if fees are paid -- Prepare refund request for excess fees, including standing fees if no protest is filed and no modifications are being made to the PFO
(2) Issue FO w/o permit if fees are lacking

250
100
47
397 - Paid
175 - unneeded
9. Y / N Is further processing possible? If not state reason: _____
10. Notify applicant of additional information or fees required prior to permit issuance. (SEND CERTIFIED LETTER & use standard wording from M:\...\FO\TOOLS if possible)
11. Assign permit numbers to files with oath, fees, and no protests or other issues
12. Y / N Do the PFO conclusions requires modification? Why? A Date Correction
(If YES, circle FOMOD and one other type below)

FO Type: (circle types)	DENIAL	<u>FO w/o PERMIT</u>	FO & PERMIT	<u>FOMOD</u>
COMMENTS:				MGMT CODES: <u>3BW</u> <u>3DW</u>

Once created, modify FO as needed to:

Initials LKS

13. Respond to significant comments, issues, or disputes related to the proposed use of water (see notes, if any, listed above)
14. Include or exclude permit conditions and management codes
15. Correct PFO errors (such as POD or POU location (verify from map), Permit format)

Once FO document is completed:

16. Save WordPerfect document in M:\GROUPS\WR\FO\WEEK 139 & delete duplicates
17. Print final draft of document and submit to team leader for review
18. Y / N Team leader review completed