



MARTHA O. PAGEL

Admitted in Oregon and Washington

Direct Line: Salem 503-540-4260; Portland 503-796-2872

E-Mail: mpagel@schwabe.com

April 30, 2009

VIA E-MAIL

Mr. Ruben Ochoa
Rule Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Comments on Proposed Rules: OAR Chapter 690, Division 512 -- Reservation of
Water for Home Creek and Tributaries
Our File No.: 073928/137595

Dear Mr. Ochoa:

I am writing on behalf of our client, Roaring Springs Ranch Inc., to provide the following comments with respect to the proposed reservation of water in the Home Creek basin:

Background

The proposed reservation of water stems from a Settlement Agreement entered into by Roaring Springs Ranch, the Oregon Water Resources Department (OWRD), Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department, and other parties in November, 2005. Additional details regarding the Settlement Agreement are contained in the Staff Report presented to the Oregon Water Resources Commission in connection with a request to initiate formal rulemaking on February 25, 2009.

In general, Roaring Springs Ranch supports the proposed reservation of water. The plan for a reservation was specifically negotiated in the Settlement Agreement, and the proposed rules generally reflect the terms and conditions of the Settlement. However, the proposed rules contain one new section -- OAR 690-512-0110(3) -- that was not addressed in the Settlement Agreement and that is not consistent with the provisions of similar reservations of water in other Basin Program examples. Therefore, we request the new wording be deleted from the final rules.

Discussion

The proposed new rule in OAR 690-512-0110(3) provides:

(3) Water availability for applications shall be calculated based on the percentage of the drainage area above the point of appropriation not to exceed the amount proportional to the total and any quantity of previously issued permits subtracted from the remaining reserved water if these applications are above the proposed point of diversion.

This section would apportion water for future proposed storage projects in relation to the location of the project within the drainage basin. This is new wording that does not appear in the Settlement Agreement. Instead, the Settlement Agreement specifically states that water availability for purposes of the reservation process shall be determined as described in a Memorandum from Tom Paul, Deputy Director of OWRD, to Director Phil Ward, dated June 6, 2005. The Memorandum is attached to and made part of the Settlement Agreement. Nothing in the Memorandum addresses the proposed apportionment concept. Therefore, we believe the proposed new wording should be deleted.

Deleting the section of concern will not otherwise limit the department's ability to evaluate water availability and capacity of the resource in connection with a new water right application for use of the reserved water. Sections 690-512-0100(5) and (6) of the proposed rules confirm that water is available for purposes of establishing the reservation and describe the process for further analysis at the time of application under the reservation. These provisions sufficiently address the issue of water availability with wording that is similar to other reservation rules previously adopted by the Water Resources Commission and that is not inconsistent with the terms of the Settlement Agreement. Based on the Settlement Agreement, we would expect that any such evaluation for Home Creek would be made under the methodology described in the 2005 Memorandum.

Deleting the proposed rule section in 690-512-0110(3) would also be consistent with OWRD practice in other reservation rules. We note that all other provisions of the proposed reservation rules for Home Creek are consistent with models established in OWRD rules for the Grande Ronde Basin (OAR 690-508-0100 through 690-508-0120) and for the Powder Basin (OAR 690-509-0100 through 690-509-0160.) These other reservation rules do not contain any similar discussion regarding a proportional distribution of the reservation water.

Conclusion

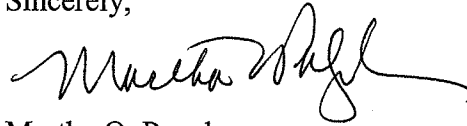
Roaring Springs Ranch generally supports the proposed rulemaking because it is consistent with commitments made in a Settlement Agreement with OWRD and other parties. However, the proposed rule in OAR 690-512-0110(3) contains new wording relating to water availability that was not addressed in the Settlement Agreement and related Memorandum relating to the determination of water availability. The new provision is also inconsistent with

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the wording of reservation rules in other basin programs and is not necessary given other provisions of the rules relating to water availability.

For these reasons, the proposed new water availability wording should be deleted from the final rules.

Sincerely,



Martha O. Pagel

MOP:kdo

cc: Bill Fujii, OWRD
Stacy Davies, Roaring Springs Ranch

