



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No. 2012-W-0022

Re: Application of the Delaware Department of Natural Resources and Environmental Control, Division of Parks and Recreation, To Reclassify a Water Supply Permit for a Test Irrigation Well to a Permanent Irrigation Well Near the City of Rehoboth Beach, Sussex County
Date of Issuance: June 14, 2012
Effective Date: June 14, 2012

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department or DNREC) under 7 *Del C. §6003*, the following findings, reasons and conclusions are entered as an Order of the Secretary following a public hearing.

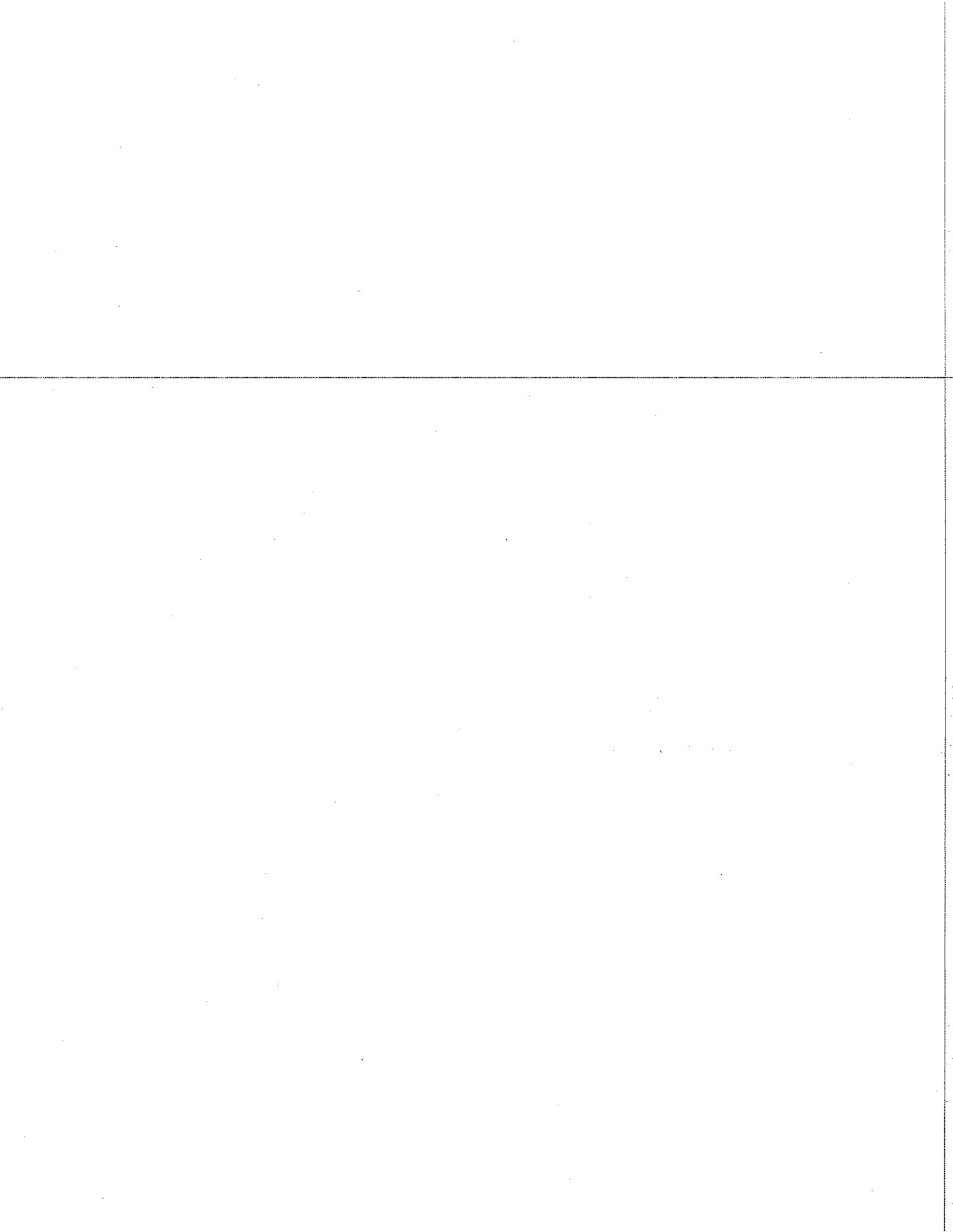
DISCUSSION OF FINDINGS AND REASONS

The attached Hearing Officer's Report (Report) reviews the record and recommends approval of a reclassification of a test irrigation well to a permanent irrigation well. I adopt the Report to the extent it is consistent with this Order.

I agree with the Report that the record supports granting the reclassification as consistent with the Regulations. The Department's experts agree that the reclassification is supported and that the permanent irrigation well should not harm nearby wells, including those operated by the City of Rehoboth (City), which opposed the reclassification in comments submitted by its engineers.

The application was submitted in the name of the landowner, which is the Department's Division of Parks and Recreation, but was prepared by the well driller for a farmer, Earl Warren,

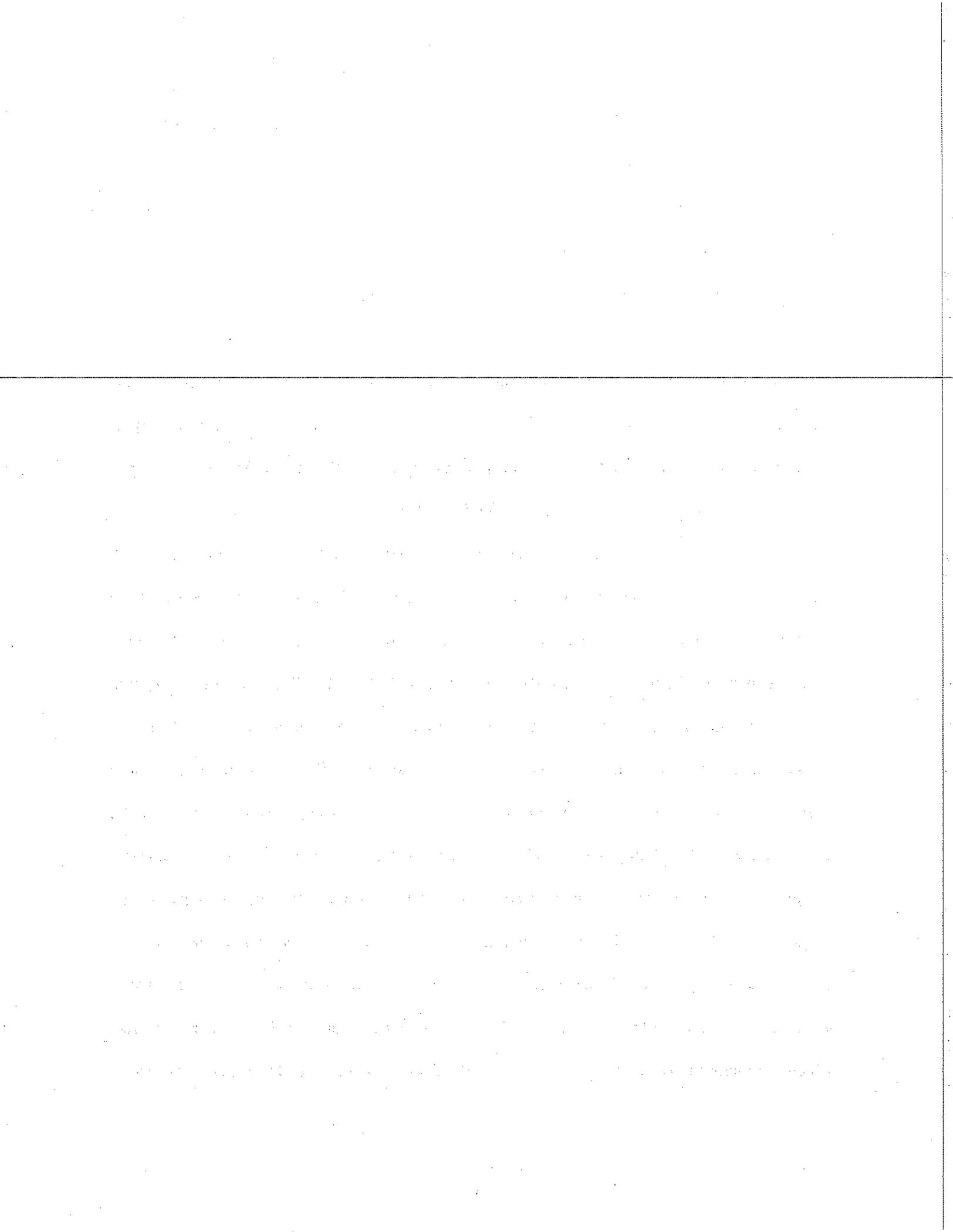
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who leases the land from the Department. Mr. Warren seeks to use an irrigation well for farming the property leased from the Department.

The City's engineers opposed the reclassification based upon claims that the well would harm the City's ability to provide potable water supply from the City's nearby wells, that the well was not properly constructed and that there were irregularities in the permit process. The Department's Division of Water, Well Supply Section, investigated the possible impact from a permanent well based upon the test well that was constructed. The Department's experts found that the proposed irrigation well would not unduly impact the City's wells located nearby or other nearby wells. The experts in WSS recommend approval of the reclassification based upon their field inspection and analysis as set forth in the memo attached to the Report.

The City points to a permitting irregularity as a justification to deny the application. The Department agrees that there was an irregularity, but finds that it does not justify denial of the permanent irrigation well classification. The irregularity was that the test well will be converted to the permanent irrigation well and no new well will be drilled. The Department does not find under the circumstances that this irregularity is material. If the test well results showed harm to the surrounding wells then this would support a denial and the possible loss of the investment in a 10" diameter well as opposed to the lower cost of a 4" diameter well that is normally constructed for test well purposes. The City's concerns with permit procedure is somewhat ironic in light of the City's recent Department notice of violation for not following the Department's Regulations. The City's claim of a permitting irregularity may have been based upon the well driller constructing a 10" diameter test well, which was consistent with the well driller's application. The Department's approval, however, was based upon a 4" diameter test well, which is to allow lower cost test wells than a 10" diameter well. The Department was able to



conduct well testing using the 10" diameter well so the different size did not matter in this case. Under the circumstances, the well driller may not have understood that the test well approval was for a 4" diameter well; however, this mistake does not warrant denial of the reclassification when the test results were satisfactory. The Department's experts have determined that the reclassification should be approved because the permanent irrigation well will not adversely impact other wells in the vicinity, which is the critical justification for the reclassification.

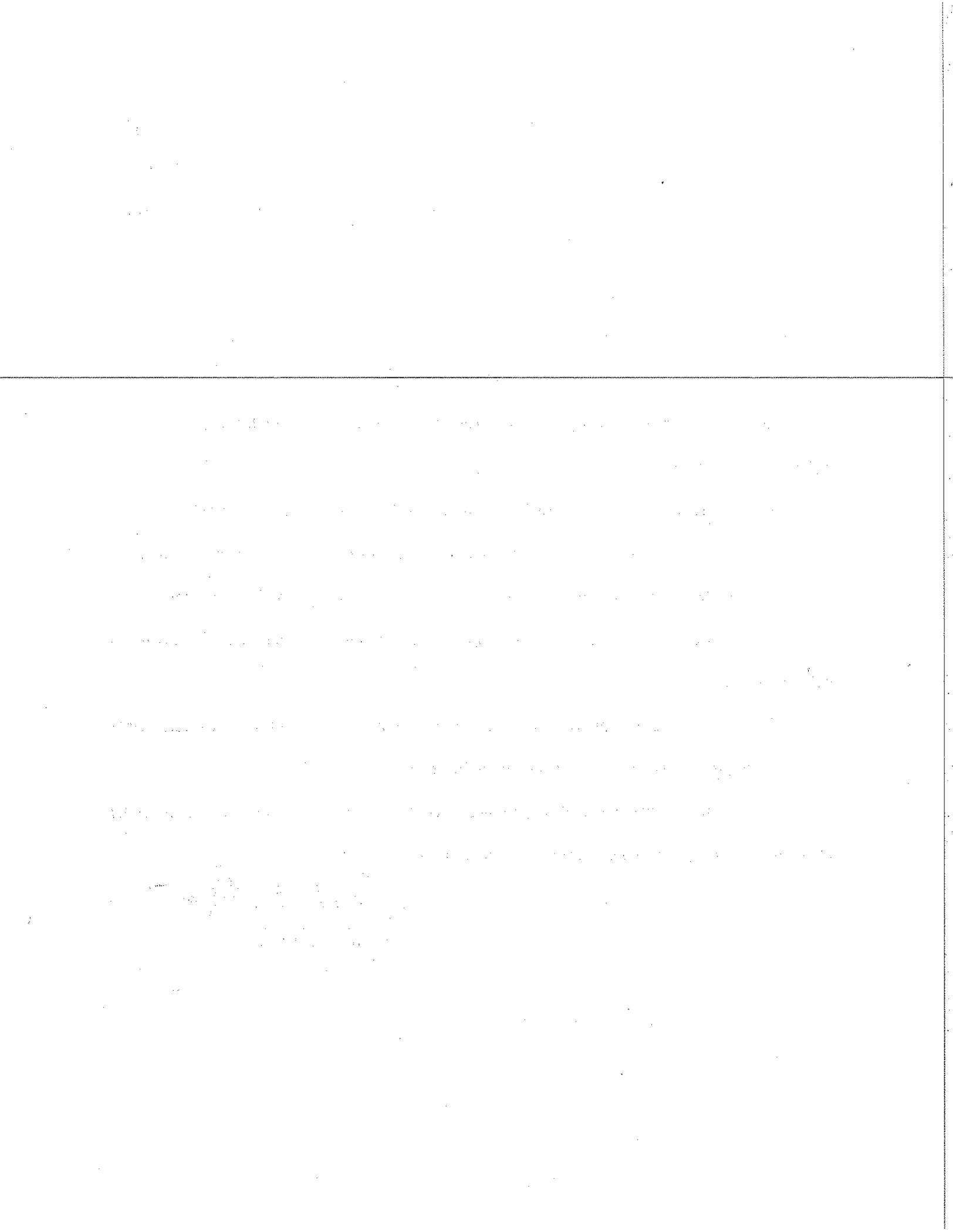
CONCLUSIONS

In sum, as more fully described in the Report, I adopt and direct the following as a final order of the Department:

1. The Department has jurisdiction to make a determination in this proceeding;
2. The Department provided adequate public notice of the public hearing and the application, and held the public hearing in a manner required by the law and its regulations;
3. The Department considered all timely and relevant public comments in making its determination;
4. The record supports the issuance of the permit, subject to such reasonable conditions to protect the environment and public health; and
5. The Department shall prepare and issue the permit, and publish this Order on the Department's web page, and provide such other notice as required.



Collin P. O'Mara
Secretary



HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Application of The Delaware Department of Natural Resources and
Environmental Control, Division of Parks and Recreation for a water supply
permit reclassification from test irrigation well to permanent irrigation well.

DATE: June 12, 2012

I. PROCEDURAL HISTORY

This Report considers an administrative record and makes recommendations to the Secretary of the Department of Natural Resources and Environmental Control (Department) concerning an application submitted to the Department's Division of Water, Well Supply Section (WSS) to reclassify a test irrigation well to a permanent irrigation well.

The Department published a consolidated public notice of the application and the public hearing. The Department held the public hearing before this hearing officer on March 8, 2012 in the Department's Dover office. The only member of the public who appeared was Earl Warren, who is the farmer who seeks to construct and use the irrigation well which is located on the Department's lands operated by the Division of Parks and Recreation. The City of Rehoboth Beach (City) submitted a letter that opposed the issuance of the permit.

This Report considers the record as reviewed below, and applies the applicable laws and regulations in support of my recommendation to the Secretary that WSS be directed to issue the permit.

II. SUMMARY OF THE RECORD

The public hearing transcript, this Report and documents cited herein shall constitute the record for this recommendation.

At the public hearing, WSS' representative, William Cocke, Program Manager I of WSS, provided for the record the following documents: the Department's¹ December 2010 application, the public notices of the hearing, and a letter from the City of Rehoboth's consulting engineers that opposed the application. DNREC Ex. 1-4.² In addition, WSS prepared the attached memo of a field inspection and testing conducted on the test well and the conclusions that recommend the reclassification. This Report also contains information gained from post-hearing discussions with the Department's WSS experts, Bill Cocke and Patty Murray.

III. FINDINGS AND DISCUSSION OF REASONS

This Report considers an application under the Department's *Regulations Governing the Construction and Use of Wells. 7 DE Admin. Code 7301* (Well Regulations). The reclassification application was submitted after the December 11, 2009 application for a test well, which the Department approved on March 22, 2010. This approval was to construct a 4" diameter well, but instead the well driller constructed a 10" diameter test well to a depth of 150' at a location on leased crop lands on 24.03 acre parcel northwest of Rehoboth Beach approximately .25 mile east of Route 1 and north of SR 271. The well was estimated to produce 500 gallons per minute. The current application was submitted to reclassify the existing well from a test irrigation well to a permanent irrigation well. The reclassification is to allow the well's use to irrigate crops on 48 leased acres on Holland Glade Circle, Rehoboth Beach.

I recommend a finding that the Applicant has adequately supported the application, which satisfies the Department's requirements under its Well Regulations. The Department's

¹ The Department's Regulations require application to be completed by the licensed well driller and in the name of the property owner. The Department granted permission for the construction of a well by the lessee, Earl Warren, subject to obtain permit authority.

² The Department does not have an obligation to develop the public hearing record and remains neutral on the merits of any pending permit application until after the public hearing, but the Department nevertheless develops a basic public hearing record for the public's benefit in making public comments.

experts in WSS recommend the reclassification from a test well to a permanent irrigation well pursuant to Section 3.2.1 of the Department's Regulations.

Davis, Bowen and Friedel, Inc., engineers for the City, submitted comments in opposition that allege that the use of the well has caused harm to the nearby City wells, which the City asserts represents the majority of the City's potable water supply.³ The City also claims that the well's use may harm other private wells. The City also raises concerns for the initial permitting, construction, and testing. The City's wells were included as part of the Department's investigation. The Department has investigated the impact on wells in the area and concluded that the proposed use of the well for agricultural irrigation does not pose any undue risk to other wells, including the City's. In addition, the Department's experts have investigated and found that in their opinion the well was installed properly insofar as its physical installation and testing. The 10" well has not been used once the Department became aware of it. The Department finds that this irregularity in drilling a 10" well for a test well is not sufficient to warrant a denial.

IV. RECOMMENDED CONCLUSIONS

I conclude that the record supports approval of issuing Applicant the permit to that will result in the reclassification of a test well to an irrigation well, subject to such reasonable permit condition recommended by the Department's experts. I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the public hearing in a manner required by the law and regulations;

³ The Department recently issued a notice of violation to the City for a well.

3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department shall issue Applicant the irrigation permit subject to the reasonable general and specific permit conditions recommended by WSS; and
6. The Department shall publish this Order on its web site and shall provide such other notice as required by the law and regulations.



Robert P. Haynes, Esquire
Senior Hearing Officer