

STATE OF OREGON

COUNTY OF LINCOLN

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO:

KERNVILLE, GLENEDEN BEACH  
LINCOLN BEACH WATER DISTRICT  
PO BOX 96  
GLENEDEN BEACH, OREGON 97388

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

APPLICATION FILE NUMBER: S-39298

SOURCE OF WATER: DRIFT CREEK

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 3.0 CUBIC FEET PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 10, 1963

POINT OF DIVERSION LOCATION: NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 12, T8S, R11W, W.M.; 131 FEET SOUTH AND 545 FEET WEST FROM NE CORNER, SECTION 12

The pipeline to be 1.0 miles in length, terminating in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Section 1, T8S, R11W, W.M., the proposed location being shown throughout on the accompanying map.

The right herein granted is limited to the amount of water which can be applied to beneficial use and shall not exceed 3.0 cubic feet per second measured at the point of diversion from the stream, or its equivalent in case of rotation with other water users, from Drift Creek.

PLACE OF USE IS LOCATED AS FOLLOWS:

WEST  $\frac{1}{2}$   
SECTION 2

ALL  
SECTION 3

ALL  
SECTION 4

ALL  
SECTION 9

NORTH ½  
NORTH ½ SW ¼  
SW ¼ SW ¼  
SECTION 10

NW ¼  
SECTION 11

W ½ NW ¼  
SECTION 15

ALL  
SECTION 16

NE ¼  
NW ¼  
SW ¼  
W ½ SE ¼  
NE ¼ SE ¼  
SECTION 21

W ½  
SECTION 28

ALL  
SECTION 29  
TOWNSHIP 8 SOUTH, RANGE 11 WEST, W.M.

The original Permit, S-29267, was approved on April 1, 1964, and was recorded in Book No. 81, of Permits on page 29267. Drainage Basin No. 18, page 20C. Permit S-54186 supersedes original Permit S-29267. Permit S-29267 is no longer valid and is of no force or effect.

This is to certify that I have examined the foregoing application and do hereby grant the same, SUBJECT TO EXISTING RIGHTS, and the following limitations and conditions:

Actual construction work shall begin on or before April 1, 1965 and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1967.

The following are additional terms and conditions which result from a Final Order on Extension of Permit S-54186 and related Settlement Agreement dated August 19, 2004 and Supplemental

Settlement Agreement dated September 8, 2005. The Order and agreements provide for use of a portion of the water authorized under this permit by the City of Lincoln City ("City") pursuant to an Intergovernmental Agreement entered into between the City of Lincoln City and the Kernville-Gleneden Beach-Lincoln Beach Water District ("District").

1. Appropriation of water by the permittee beyond 1.6 cfs under Permit S-54186 shall only be authorized upon issuance of a final order approving a new/revised Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The plan submitted by permittee shall be for the original Kernville-Gleneden Beach-Lincoln Beach Water District service area. The required Water Management and Conservation Plan shall be submitted to the Department within 150 days of the issuance of the Final Orders approving permit extensions for permits S-54186 and S-54187. Note that Permit S-54187 supersedes Permit S-35106.
2. There exists an 11 cfs daily average minimum by-pass flow in Drift Creek, measured by a mechanical/electronic stream gauge (with a staff gauge back-up) at a point approximately 240 feet downstream of the permittee's additional point of diversion, during the period of July 1 through October 15 of each year. No diversions from Drift Creek by any user may occur under this permit when daily average flows are at or below 11 cfs except for up to five days during the period of July 1 through October 15 of each year when the daily average flow downstream of the additional point of diversion could fall to 7 cfs with the permittee still able to withdraw water under this permit. No diversions under this permit from Drift Creek are allowed during this five-day period if the daily average flow downstream of the City's intake falls below 7 cfs. The provisions of this condition do not apply to the permittee's ability to withdraw up to 1.6 cfs from Drift Creek under this permit, but do apply to any additional use of water by the permittee above 1.6 cfs under this permit. Although the City's water use is subject to the restrictions described in this paragraph, the City is not required to release stored water into Drift Creek, or otherwise augment flows in Drift Creek, to artificially create an 11 cfs flow rate.
3. The following additional conditions apply generally to the use of water under Permit S-54186 by the City.
  - a) Appropriation of any water by Lincoln City under Permit S-54186 shall only be authorized upon issuance of a final order approving a new/revised Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 150 days of the issuance of the Final Order approving the permit extension for Permits S-54186.
  - b) The City shall implement a water conservation education program promoting the need for conservation of water to protect fish resources. The City shall provide water conservation information and educational brochures made available by the American Water Works Association, or similar organizations, or developed specifically by the City to the City's hotels and motels. The City will develop and supply signage for cooperating hotels and motels that encourage water

conservation and will develop and implement a program designed to publicize the water conservation efforts of those hotels and motels that cooperate with water conservation efforts.

- c) The City may flush its lines from the Drift Creek point of diversion for maintenance purposes for two hours every 30 days. The City will make a good faith effort to time this activity to coincide with the District's period of minimal withdrawals from Drift Creek.
- d) The City will commission an engineering study or studies ("Study") to be completed and accepted by the City by June 1, 2006. The Study shall provide recommendations regarding the best, cost-effective methods of increasing the efficiency of the City's water transmission and distribution system ("System Efficiency"). The Study shall include a determination of the existing System Efficiency which shall be the baseline for the efficiency increases referred to in this paragraph. The City will implement, within ten years after the completion of the Study, the recommendations in the Study with the goals of achieving an increase in System Efficiency of ten percent in the first five years following implementation of the recommendations in the Study and an additional five percent in the next five years. No permit violation will occur if, after a good faith effort by the City to implement the recommendations in the Study, the goals are not achieved. For the purposes of this condition, System Efficiency is defined as the sum of the total annual amount of water measured on the City's customers' meters and an estimate of the total annual amount of non-metered water used (for example, water used in fire fighting and fire system maintenance) divided by the total annual amount measured on the City's treatment plant production output meter multiplied by one hundred percent.
- e) The City will construct and put into operation an additional two million gallons of water storage by December 31, 2020. This two million gallons of storage is in addition to the two million gallons of storage the City agreed to construct in the August 19, 2004 Settlement Agreement between the City, the District, OWRD and ODFW regarding the District's application for extension of time on its Permits S-29267 and S-35106. Note that pursuant to the Supplemental Settlement Agreement, the District's Permits S-29267 and S-35106 have been superseded by Permits S-54186 and S-54187, respectively. If the City has not completed construction of the additional two million gallons of storage by December 31, 2020, because of reasons beyond the City's control, including, but not limited to, the failure of the City to achieve or realize the currently projected population growth, this condition may be temporarily waived by OWRD at the request of the City. OWRD will not unreasonably withhold approval of the City's request for temporary waiver. OWRD will provide notice and an opportunity for comment prior to deciding whether to grant the temporary waiver.
- f) The City will only withdraw water from Drift Creek under permit 54186 in the event that its current permitted source (Schooner Creek), including ground and

surface water, or other developed, available and permitted sources are insufficient to meet demand.

- g) The City shall measure Drift Creek at a point approximately 240 feet downstream of the proposed intake (*adjacent to the property located at 2118 S. Drift Creek Road*) before beginning use of water from Drift Creek and each day during its use of water from Drift Creek. Mechanical/electronic stream gauge readings of daily average flows in Drift Creek at or below 11 cfs or 7 cfs will be confirmed by physical inspection of the stream and by reading a staff gauge at approximately the same location as the mechanical/electronic stream gauge. The staff gauge will be installed under the supervision of OWRD. The City will regularly inspect and maintain the mechanical/electronic stream gauge and the staff gauge. Readings from the staff gauge will be converted to cfs, logged and will be used to confirm the mechanical/electrical stream gauge readings. If confirmation of daily average flows at or below 11 cfs or 7 cfs from the mechanical/electronic stream gauge is obtained through the use of the staff gauge, then diversions from the Drift Creek Intake will be discontinued as described in Condition 2 above. If the mechanical/electronic stream gauge readings are not confirmed, then the City will maintain diversions from Drift Creek and will, while it is diverting from Drift Creek, take staff gauge measurements three times daily, every eight hours, until the mechanical/electronic stream gauge readings and the staff gauge readings are consistent. These staff gauge readings will be used to meet the terms and conditions of its water rights until the mechanical/electronic stream gauge can be repaired or replaced.
- h) The Drift Creek intake structure must comply with ODFW's fish passage and screening criteria as provided at ORS 498.301 to 498.346; ORS 509.580 to 509.630; ORS 509.645 to 509.910 and OAR 635-412-0020 to 635-412-0030. ODFW will review the City's design of the Drift Creek intake structure and will work with the City to ensure compliance with fish screening and fish passage.
4. The following additional conditions apply specifically to the City's use of 1.5 cfs for Emergency Municipal Use under Permit S-54186 ("Emergency Use Right") as described in the intergovernmental agreement between the City and the District.
- a) For the purpose of this condition "Emergency" is defined as follows: a need by Lincoln City for the use of water from Drift Creek occasioned because of abnormal conditions such as drought, significant damage to its municipal water system, or catastrophic problem with its normal water supply caused by conditions such as storm, slide or flood.
- b) If the City experiences a temporary Emergency need for water, then the City may utilize, during the Emergency period, water from the District's Permit S-54186 (the "Emergency Use Right"), as provided under the IGA between the City and the District dated July 23, 2001.

- c) If minimum perennial streamflows on Drift Creek as provided at Table 1, OAR chapter 690 division 518 (below) are unmet for any reason during the City's usage of the Emergency Use Right, then the City shall implement a city-wide ban on lawn watering for the entire duration of the time it withdraws Drift Creek water. The City will also implement, to the greatest extent practicable, the "Municipal Water Curtailment Element" of its WMCP.


**Table 1 of OAR Chapter 690 Division 518 provides minimum perennial stream flows (cfs) as follows:**

Drift Creek – to be maintained from its confluence with Gordey Creek (NE ¼, Sec. 1, T 8 S, R 11 W) to the mouth of Drift Creek (Note: where two flow levels are shown, the first flow level is for the 1<sup>st</sup> through the 15<sup>th</sup> of each month and the second flow level is for the 16<sup>th</sup> through the last day of the month.

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep
30/80	100	100	100	100	100	100	100	100	25/22	22	22

Permit S-54186 is hereby approved subject to the limitations and conditions contained herein.

ISSUED Sept 16, 2005

  
Phillip C. Ward, Director