

STATE OF OREGON

COUNTY OF LINCOLN

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO:

CITY OF LINCOLN CITY
PO BOX 50
LINCOLN CITY, OREGON 97367

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-85339

SOURCE OF WATER: DRIFT CREEK, A TRIBUTARY OF SILETZ BAY

VOLUME OF USE: 6.5 CUBIC FEET PER SECOND

PURPOSE OR USE: SUPPLEMENTAL EMERGENCY MUNICIPAL USE. THIS PERMIT IS FOR EMERGENCY USE ONLY. THE PERMITTEE SHALL ONLY USE THIS WATER IF IT EXPERIENCES A TEMPORARY EMERGENCY NEED FOR WATER DUE TO A REDUCTION IN THE CITY'S NORMAL WATER SUPPLY 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.

PERIOD OF USE: DECEMBER 1 THROUGH APRIL 30 OF EACH YEAR

DATE OF PRIORITY: NOVEMBER 26, 2002

POINT OF DIVERSION LOCATION: SE 1/4 SW 1/4, SECTION 36, T17S, R11W, W.M.; 959 FEET NORTH AND 2376 FEET EAST FROM SW CORNER, SECTION 36

THE PLACE OF USE IS LOCATED WITHIN THE SERVICE BOUNDARIES OF THE CITY OF LINCOLN CITY.

STANDARD CONDITIONS

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. 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.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration of such riparian area.

The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screens and by-pass devices are to be in place, functional and approved by an ODFW representative prior to diversion of any water.

Within 150 days of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department.

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.

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.

Complete application of the water to the use shall be made on or before October 1, 2008. 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 the merit of the application. However, no extension of time

is required if the following conditions are met: (1) the City has requested certification and has submitted claims of beneficial use to OWRD on the City's primary water right permits on Schooner Creek (applications G-10741, S-22866, S-50011, and S-63608); (2) there has been no need for supplemental emergency municipal use under this Permit; and (3) and the permittee has constructed the diversion, delivery and distribution system and is ready to use water under this Permit.

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).

SPECIFIC CONDITIONS

1. Lincoln City will only use this water if it experiences a temporary emergency need for water due to a reduction in the City's normal water supply as described below:

PURPOSE OF USE: Emergency Municipal Use

This permit is for emergency use only. Permittee shall only use this water if it experiences a temporary emergency need for water due to a reduction in the City's normal water supply because of abnormal conditions such as drought, significant damage to its municipal system, or catastrophic problem with its normal water supply caused by conditions such as storm, slide or flood.

2. Lincoln City will only withdraw from Drift Creek under this permit in the event that its current permitted primary source (Schooner Creek), including ground and surface water, or other developed, available and permitted sources are insufficient to meet demand.

3. Lincoln 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.

4. Lincoln 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 Kernville-Gleneden Beach-Lincoln Beach Water District (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 Lincoln 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.

5. Lincoln City shall implement a water conservation education program promoting the need for conservation of water to protect fish resources. Lincoln City shall provide water conservation information and educational brochures made available by the American Water Works Association, or similar organizations, or developed specifically by Lincoln City to Lincoln City's hotels and motels. Lincoln 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.

6. If minimum perennial stream flows on Drift Creek as provided at Table 1, OAR Chapter 690 division 518 (below) are unmet for any reason during Lincoln City's usage of the water under this permit, then Lincoln City shall implement a city-wide ban on lawn watering for the entire duration of time it withdraws Drift Creek water under this permit. Lincoln 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 1st through the 15th of each month and the second flow level is for the 16th 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

7. Lincoln City shall measure Drift Creek at a point approximately 240 feet downstream of the proposed intake (adjacent to 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.

8. Lincoln City may flush its lines from the Drift Creek point of diversion for maintenance

purposes for two hours every 30 days. Lincoln City will make a good faith effort to time this activity to coincide with the Kernville-Gleneden Beach-Lincoln Beach Water District's period of minimal withdrawals from Drift Creek.

9. 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 Lincoln City's design of the Drift Creek intake structure and will work with Lincoln City to ensure compliance with fish screening and fish passage.

Issued Sept 16, 2005


Phillip C. Ward, Director

