

**Oregon Water Resources Department
Water Rights Division**

Water Right Application
Number S-84416

Appeal Rights

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

FINAL ORDER INCORPORATING SETTLEMENT AGREEMENT

This Final Order grants approval to application S-84416. A copy of the Permit for application S-84416 is attached. A copy of the Settlement Agreement between the Oregon Water Resources Department (“OWRD” or “Department”), the Kernville-Gleneden Beach-Lincoln Beach Water District (“District” or “Applicant”) and WaterWatch of Oregon (“WaterWatch”), dated October 6, 2005, is attached. This Settlement Agreement is related to a larger settlement memorialized in the Supplemental Settlement Agreement between the City of Lincoln City (the “City” or “Lincoln City”), the District, OWRD, Oregon Department of Fish and Wildlife (“ODFW”), WaterWatch and others, dated September 8, 2005.

Summary of Recommendation: The Department issues the attached Permit with conditions.

Application History

On April 21, 2000, Kernville-Gleneden Beach-Lincoln Beach Water District (hereinafter referred to as the District or Applicant) submitted an application to the Department for a water use permit.

On July 4, 2000, the Department mailed the Applicant notice of its Initial Review, determining that “the use of 2.0 CFS of water from an Unnamed Stream, tributary to Drift Creek, for Municipal Use is not allowable, and it appears unlikely that you will be issued a permit.” The Applicant was provided an opportunity in the Initial Review to submit additional information in order to pursue a permit for a limited period of use. The Applicant did not notify the Department to stop processing the application within 14 days of that date.

On September 5, 2000, 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.

Written comments were received from Paul Berg (Certified Water Rights Examiner for the Applicant), Tami Wagner (Oregon Department of Fish and Wildlife), John Blanchard (Department of Environmental Quality), and Bill Ferber (Department Watermaster) following the 30 day comment period.

On May 15, 2001, a Proposed Final Order ("PFO") was issued recommending approval of application S-84416 and issuance of a permit with conditions.

On June 27, 2001, WaterWatch filed a timely protest to the PFO.

On August 28, 2001, OWRD placed application S-84416 on administrative hold at the District's request to allow time for negotiations on related protests to the District's Application for an Extension of Time for Permits S-35106 and S-29267. Additional requests for administrative holds were subsequently granted.

On September 8, 2005, OWRD, the District, WaterWatch and others entered into a Supplemental Settlement Agreement to settle protests to the City of Lincoln City's Water Right Application S-85339 the District's Application for an Extension of Time for Permits S-35106 and S-29267, and other matters. The Supplemental Settlement Agreement includes, by reference, a Settlement Agreement entered into among the District, the City of Lincoln City, OWRD and the Oregon Department of Fish and Wildlife (ODFW) on August 27, 2004. For purposes of this Final Order and the related Permit, the previous Settlement Agreement and Supplemental Settlement Agreement are collectively referred to as "Previous Settlement Agreements."

On October 6, 2005, OWRD, the District and WaterWatch entered into a separate Settlement Agreement to settle WaterWatch's protest to the District's Water Right Application S-84416 ("Settlement Agreement").

The October 6, 2005 Settlement Agreement is attached hereto and incorporated by reference.

The proposed use would not impair or be detrimental to the public interest.

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ORDER

Application S-84416 is hereby approved as provided on the attached Permit 54237, subject also to the terms and conditions of the Settlement Agreement.



Dwight French
Administrator of Water Rights and Adjudications
for
Phillip C. Ward, Director
Oregon Water Resources Department

11/21/2005

Date

This document was prepared by Mike Reynolds. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271; Fax: 503-986-0901