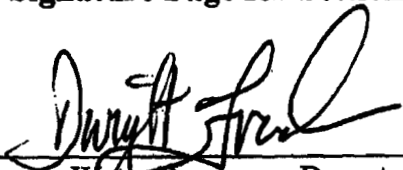


CONDITIONS

1. In signing this Settlement Agreement, WaterWatch agrees that its protest to application S-84416 is resolved.
2. This Settlement Agreement is in addition to and incorporates by reference the terms and conditions agreed to in the Previous Settlement Agreements regarding the City of Lincoln City's Water Right Application S-85339 and the District's Application for an Extension of Time for Permits S-35106 and S-29267. The Parties agree to abide by the terms of the Previous Settlement Agreements.
3. OWRD agrees to issue a Final Order incorporating the terms and conditions of this Settlement Agreement, and to issue a Water Right Permit to the District upon the terms and conditions expressed in the attached Draft Permit.
4. The Parties to this Settlement Agreement expressly waive the opportunity to file exceptions, or requests for reconsideration to the Final Order incorporating this Settlement Agreement and any right to judicial review of this Settlement Agreement and the Final Order approving application S-84416 so long as the final order and resultant permit are consistent with the attached draft final order and draft permit.
5. Each Party to this Settlement Agreement represents, warrants and agrees that the person who executes this Settlement Agreement on its behalf has the full right and authority to enter into this Settlement Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
6. The Parties agree that all legal rights not expressly waived by any Party to this Settlement Agreement are preserved, including any rights regarding enforcement of this Settlement Agreement due to failure to perform by another Party.
7. WaterWatch agrees that this Settlement Agreement is a final settlement of all issues raised in its protest.
8. This Settlement Agreement may be signed in counterparts.

Signature Page for Settlement Agreement on Water Right Application S-84416



Oregon Water Resources Department

Date: 9/27/05

Kernville-Gleneden Beach-Lincoln Beach

Water District

Date: _____

WaterWatch of Oregon

Date: _____

Signature Page for Settlement Agreement on Water Right Application S-84416

Oregon Water Resources Department

Date: _____

William R. Love

Kernville-Glendon Beach-Lincoln Beach
Water District

Date: 10-6-05

Water Watch of Oregon

Date: _____

**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.

DRAFT FINAL ORDER INCORPORATING SETTLEMENT AGREEMENT

This Final Order grants approval to application S-84416. A copy of the Draft 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 [REDACTED], 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 recommends that the attached Draft Permit be issued 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 [REDACTED], 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 [REDACTED] Settlement Agreement is attached hereto and incorporated by reference.

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

ORDER

Upon payment of outstanding permit recording fees, Application S-84416 shall be approved as proposed by the Proposed Final Order and as provided on the attached draft permit, subject also to the terms and conditions of the Settlement Agreement.

Permit recording fees are required in the amount of \$250.00. Said fees are due and payable no later than

60 days from the date of this Final Order. Failure to pay the required permit recording fees within 60 days from the date of this Final Order may result in the proposed rejection of Application S-84416.

If you need to request additional time to submit the required fees, the written request should be received in the Salem office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED [REDACTED] 2005

Dwight French
Administrator, Water Rights and Adjudications

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 questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds 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

DRAFT

This is not a permit!!!
STATE OF OREGON

DRAFT

COUNTY OF LINCOLN

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KERNVILLE-GLENEDEN BEACH-LINCOLN BEACH WATER DISTRICT
6596 GLENEDEN BEACH LOOP
GLENEDEN BEACH, OREGON 97388

PHONE: (541) 764-2475

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

APPLICATION FILE NUMBER: S-84416

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF DRIFT CREEK

PURPOSE OR USE: SUPPLEMENTAL MUNICIPAL USE

MAXIMUM RATE ALLOWED: 2.0 CUBIC FEET PER SECOND AS FURTHER LIMITED BELOW

PERIOD OF USE: OCTOBER 15 THROUGH MAY 15

DATE OF PRIORITY: APRIL 21, 2000

POINT OF DIVERSION LOCATION: NW 1/4 NE 1/4, SECTION 12, T8S, R11W, W.M.; 210 FEET SOUTH & 1380 FEET WEST FROM NE CORNER, SECTION 12

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE SERVICE DISTRICT BOUNDARY OF
KERNVILLE-GLENEDEN BEACH-LINCOLN BEACH WATER DISTRICT

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.

The permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86 within 150 days from issuance of the final order approving this permit.

The use of water under this permit may be made only when the permittee cannot divert water under Permits S 54186 and S 54187 (superseding permits S 29267 and S 35106, respectively), during high flow events which result in turbidity levels on Drift Creek that are unacceptable for adequate filtering or due to equipment failure. Water diverted under this permit shall be limited to the amount of water by which use of water under Permits 29267 or 35706 for the service district boundary of Kernville-Gleneden Beach-Lincoln Beach Water District is reduced due to unacceptable turbidity levels or equipment failures at the permittee's Drift Creek point of diversion and further limited to a maximum diversion of 2.0 cfs.

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 screen is to be in place and functional prior to diversion of any water.

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

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Prior to diversion of water under this permit the permittee shall contact the Army Corps of Engineers and Division of State Lands to determine if the diversion of water from the unnamed tributary to Drift Creek will require a Clean Water Act 404 permit or Division of State Lands fill and removal permit, and acquire any necessary permit. The permittee shall submit for the Departments file either a copy of the required permit or evidence that such permit is not required.

Any instream work shall be accomplished during a work window specified by the Oregon Department of Fish and Wildlife and increases in turbidity and/or sediment shall be kept to a minimum (no more than a 10 percent cumulative increase in natural stream turbidity as measured relative to a control point immediately upstream of the project).

During diversion of water under this permit a bypass flow of 1.0 CFS shall be maintained in the unnamed tributary to Drift Creek.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Complete application of the water to the use shall be made on or before October 1, 2009. 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).

Issued _____, 2005

DRAFT - THIS IS NOT A PERMIT

Phillip C. Ward, Director
Oregon Water Resources Department