

Name — BART MCKEE; SPRINGFIELD UTILITY
By — BOARD
202 S 18TH ST
Address — SPRINGFIELD, OR 97477

Application No. 85336
Permit No. S 54378
Certificate No. _____

Stream Index, Page No. _____

Date filed _____

Priority _____

Action suspended until C27

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Date for completion _____

Extended to _____

Date for application of water 1-2-2027

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued _____

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

REMARKS
See G-15241, G-15243, G-15244, ~~G-15242~~
T-10402 v.73 p.594



SPRINGFIELD UTILITY BOARD

WATER SERVICE CENTER
202 SOUTH 18TH STREET
SPRINGFIELD, OREGON 97477

Mr. Cory C. Engel
Water Right Processing Technician
Water Resources Department
Commerce Building
158 12th Street, NE
Salem, OR 97301-4172

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **56823**

158 12TH ST. N.E.
SALEM, OR 97310-0210
378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Springfield Utility Board
BY: _____

APPLICATION	585336
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 24-201 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 3325.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY)

\$

(New) TC162 DEPOSIT LIAB. (IDENTIFY)

\$

WATER RIGHTS:

EXAM FEE

RECORD FEE

0201 SURFACE WATER

\$ 3,325.00

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

0206

\$

WELL CONSTRUCTION

EXAM FEE

LICENSE FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY)

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY)

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HYDRO APPLICATION

\$

RECEIPT # **56823**

DATED: 11/08/02 BY: Connie Vance

Distribution-White Copy-Customer, Yellow Copy-Fiscal, Blue Copy-File, Buff Copy-Fiscal

Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

Application History

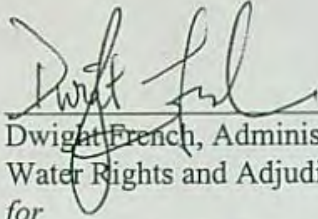
On November 8, 2002, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

A "Settlement Agreement" was entered into between the applicant and the Department on February 24, 2006. An "Amendment" to the Settlement Agreement was entered into between the applicant and the Department as of March 23, 2006. The Settlement Agreement and the Amendment are incorporated herein by reference.

Order

Application S-85336 therefore is approved consistently with the terms of the aforementioned Settlement Agreement and Amendment, and Permit S-54378 is issued.

DATED January 2, 2007

A handwritten signature in dark ink, appearing to read "Dwight French", is written over a horizontal line.

Dwight French, Administrator
Water Rights and Adjudications,
for

Phillip C. Ward, Director
Oregon Water Resources Department

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
Springfield Utility Board)
Applicants and Protestants)

SETTLEMENT
AGREEMENT

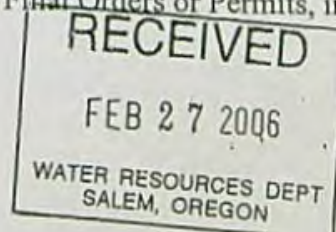
The Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

- I. On December 11, 2000, Applicant submitted Applications G-15241, G-15243, and G-15244. These applications proposed to use water from various wells in the vicinity of Cedar Creek for municipal use. On February 9, 2001, OWRD determined that the applications would have the potential for substantial interference with Cedar Creek which, if not mitigated, would result in denial of the applications. On November 8, 2002, Applicant submitted application S-85336. In addition to proposing to use water from the McKenzie River for municipal use, Applicant proposed in S-85336 to mitigate the impacts to Cedar Creek by the use of water from the wells, by diverting water from the McKenzie River into Cedar Creek.
- II. On November 8, 2005, OWRD issued Proposed Final Orders ("PFOs") for Applications G-15241, G-15243, G-15244, and S-85336, recommending approval of all four applications.
- III. On December 19, 2005, Applicant protested all four PFOs. All four protests were timely filed.
- IV. OWRD and Applicant agree that all issues raised in Applicant's protests against the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 are resolved solely on the following terms.

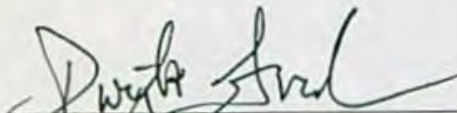
Terms of Agreement

1. In signing this Settlement Agreement, and contingent on OWRD performing in accordance with this Settlement Agreement, Applicant withdraws its protests to the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 with prejudice.
2. Regarding Applications G-15241, G-15243, G-15244, and S-85336, upon full performance under this Settlement Agreement, Applicant expressly waives all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Orders or Permits, in

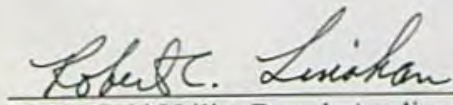


addition to waiving any right and opportunity to challenge this Settlement Agreement.

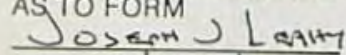
3. After Applicant signs this Settlement Agreement, it will mail the signed original back to Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE Suite A, Salem OR 97301-1266.
4. Within 30 days after OWRD receives the original Settlement Agreement signed by OWRD and Applicant, OWRD will issue Final Orders and Permits that are consistent with the Draft Final Orders and Draft Permits attached to this Settlement Agreement. The Final Orders will incorporate this Settlement Agreement by reference and as an attachment.
5. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed 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. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review and request changes to the Settlement Agreement, and that they have signed this Settlement Agreement of their own free will and accord. Each Party to this Settlement Agreement also certifies that it has read the entire Settlement Agreement, Draft Final Orders, and Draft Permits, and understands and fully agrees with the contents thereof.
7. This Settlement Agreement may be signed in counterparts.


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

2-14-06
Date


Robert C. Linsman
Springfield Utility Board, Applicant

2/24/06
Date

REVIEWED & APPROVED
AS TO FORM

DATE: 2/24/06
LEGAL COUNSEL
SPRINGFIELD UTILITY BOARD

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15241

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15241 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

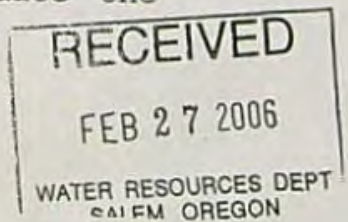
----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15241

SOURCE OF WATER: TWO WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 1.78 CUBIC FEET PER SECOND (CFS), BEING 0.89 CFS FROM EACH WELL

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

WELL #1: NW ¼ NE ¼, SECTION 34, T17S, R2W, W.M.; 43 FEET SOUTH & 280 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 34

WELL #2: SE ¼ SW ¼, SECTION 27, T17S, R2W, W.M.; 1002 FEET NORTH & 118 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 27

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.
 - (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.

- (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.78 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15243] or [approving G-15244].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the

Application G-15241 Water Resources Department

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PERMIT G-DRAFT

FEB 27 2006

WATER RESOURCES DEPT

schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

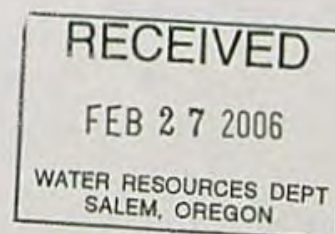
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 -----

Phillip C. Ward, Director
Water Resources Department



Application G-15241 Water Resources Department
Basin 02 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT G-DRAFT
District 2

Mailing List for FO Copies

Application #G-15241

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477

- Copies sent to: 1. WRD - File # G-15241
2. WRD - Ken Stahr
3. WRD - Data Center
4. WRD - John Falk (for reservoir applications only)

Copies Mailed
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2
6. WRD - Regional Manager: (Not to SCR)

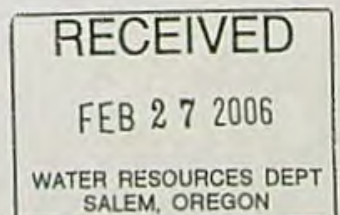
Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel



Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15243

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15243 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

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FEB 27 2006

WATER RESOURCES DEPT
SALEM OREGON

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This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Mike Reynolds at 503-986-0820.

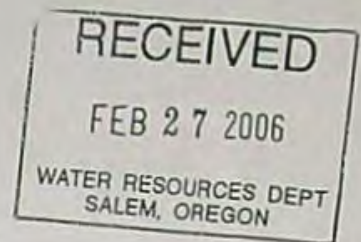
If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS



THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15243

SOURCE OF WATER: FOUR WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 4.91 CUBIC FEET PER SECOND (CFS), BEING 1.34 CFS FROM EACH OF THREE WELLS (5, 6, AND 10) AND 0.89 CFS FROM WELL 7

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

WELL #5: 154 FEET SOUTH & 239 FEET EAST
WELL #6: 241 FEET SOUTH & 240 FEET EAST
WELL #7: 333 FEET SOUTH & 707 FEET EAST
WELL #10: 518 FEET SOUTH & 21 FEET EAST

ALL FROM THE WEST 1/4 CORNER OF SECTION 26, WITHIN THE NW 1/4 SW 1/4, OF SECTION 26, T17S, R2W, W.M.

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.

- (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.
- (b) In addition to the measurement required in subsection (a). of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

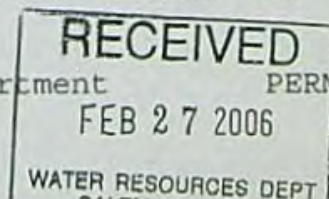
The use allowed herein may be made only at times when 1.28 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15241] or [approving G-15244].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

Application G-15243 Water Resources Department PERMIT G-DRAFT



If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

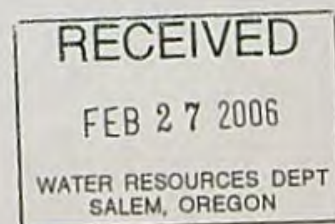
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department



Application G-15243 Water Resources Department
Basin 02 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT G-DRAFT
District 2

Mailing List for FO Copies

Application #G-15243

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477-5240

Copies sent to: 1. WRD - File # G-15243

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

Copies Mailed
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
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13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15244

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15244 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

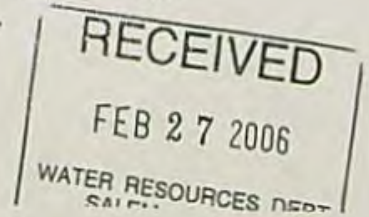
----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This document was prepared by Cory Engel. 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 503-986-0813.

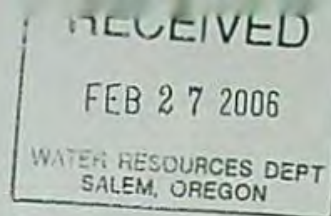
If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Mike Reynolds at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE



DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15244

SOURCE OF WATER: THREE WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 4.02 CUBIC FEET PER SECOND (CFS), BEING 1.34 CFS EACH FROM WELLS 8, 9, AND 11

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

- WELL #8: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 533 FEET SOUTH & 699 FEET EAST
- WELL #9: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 693 FEET SOUTH & 364 FEET EAST
- WELL #11: NE ¼ SE ¼ SECTION 27, T17S, R2W, W.M.; 206 FEET SOUTH & 169 FEET WEST

ALL FROM THE WEST 1/4 CORNER OF SECTION 26

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.

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FEB 27 2006

PAGE 3

WATER RESOURCES DEPT
SALEM, OREGON

- (a) Use of water from a new well ~~shall not begin~~ until an initial static water level in the well has been measured and submitted to the Department.
- (b) In addition to the measurement required in subsection (a). of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.04 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15241] or [approving G-15243].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

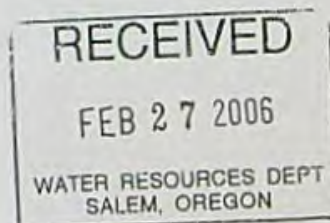
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department



Application G-15244 Water Resources Department
Basin 02 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT G-DRAFT
District 2

Mailing List for FO Copies

Application #G-15244

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477

Copies sent to: 1. WRD - File # G-15244

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies Mailed
By: _____ (SUPPORT STAFF)
On: _____ (DATE)

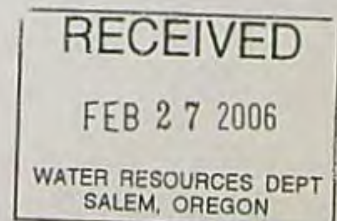
Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
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12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel



Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85336

DRAFT Final Order Incorporating Settlement Agreement

Application History

On November 8, 2002, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application S-85336 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit S-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

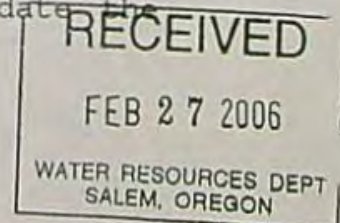
----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OR 97477

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

APPLICATION FILE NUMBER: S-85336

SOURCE OF WATER: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER

PURPOSE OR USE: MUNICIPAL USE, FISH LIFE USE, AND WILDLIFE USE

MAXIMUM RATE: 35.9 CUBIC FEET PER SECOND (CFS) FOR MUNICIPAL USE AND 4.1 CFS FOR FISH LIFE AND WILDLIFE USES

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 8, 2002

POINT OF DIVERSION LOCATIONS:

MUNICIPAL USE: NW $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 26, T17S, R2W, W.M.; 250 FEET SOUTH & 972 FEET EAST FROM THE WEST $\frac{1}{4}$ CORNER OF SECTION 26

FISH LIFE AND WILDLIFE USES: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 29, T17S, R1W, W.M.; 300 FEET NORTH & 2400 FEET EAST FROM THE SW CORNER OF SECTION 29

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MUNICIPAL USE: WITHIN THE SERVICE AREA OF CITY OF SPRINGFIELD

FISH LIFE AND WILDLIFE USES: WITHIN THE CHANNEL OF CEDAR CREEK

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 not construct, operate or maintain any dam or artificial obstruction to fish passage at the diversion into Cedar Creek without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the Cedar Creek flow monitoring program currently maintained by the U.S. Geological Survey (USGS) in conjunction with the U.S. Army Corps of Engineers and the Eugene Water and Electric Board (EWEB) is discontinued, the permittee shall ensure that a similar flow monitoring program is implemented on Cedar Creek. For the purpose of this condition, such a flow monitoring program must include, at minimum, installation of a calibrated staff gage.

While EWEB's license from Federal Energy Regulatory Energy Commission (FERC) requires EWEB to bypass 1,000 cfs of water past the Walterville Canal diversion, the permittee may divert water into Cedar Creek under this permit only when the flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,000 cfs plus the actual rate of appropriation into Cedar Creek under this permit. In the event that EWEB's license from FERC is modified, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to the FERC-required minimum bypass flow plus the actual rate of appropriation into Cedar Creek under this permit, or 1,400 cfs plus the actual rate of appropriation into Cedar Creek under this permit, whichever is greater. In the event that EWEB's license from FERC is rescinded, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,400 cfs plus the actual rate of appropriation under this permit.

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

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.

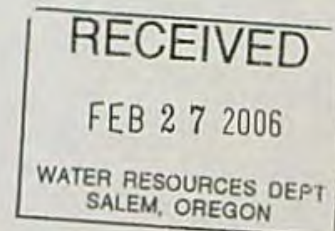
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department



Application S-85336 Water Resources Department
Basin 2 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT S-DRAFT
2

Mailing List for FO Copies

Application #S-85336

Original mailed to applicant with claim of beneficial use form:

BART MCKEE
SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD OR 97477

Copies sent to:

1. WRD - File # S-85336
2. WRD - Ken Stahr
3. WRD - Data Center
4. WRD - John Falk (for reservoir applications only)

Copies Mailed	
By: _____	(SUPPORT STAFF)
on: _____	(DATE)

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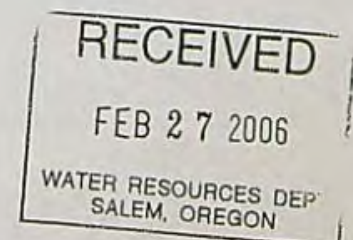
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"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

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2. _____
3. _____

CASEWORKER : Cory Engel



BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
Springfield Utility Board)
Applicants and Protestants)
_____)

AMENDMENT TO
SETTLEMENT AGREEMENT

On February 24, 2006, the Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," entered into a "Settlement Agreement" pertaining to Applicant's water right applications G-15241, G-15243, G-15244, and S-85336. This document is an "Amendment" to the Settlement Agreement.

1. The Parties agree that Stipulation IV of the Settlement Agreement is amended to read in its entirety as follows:

"OWRD and Applicant agree that all issues raised in Applicant's protests against the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 are resolved solely on the following terms, including any amendment(s) to this Settlement Agreement."

2. The Parties agree that Term #1 of the Settlement Agreement is amended to read in its entirety as follows:

"In signing this Settlement Agreement, and contingent on OWRD performing in accordance with this Settlement Agreement and any Amendment(s) thereto, Applicant withdraws its protests to the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 with prejudice."

3. The Parties agree that Term #2 of the Settlement Agreement is amended to read in its entirety as follows:

"Regarding Applications G-15241, G-15243, G-15244, and S-85336, upon full performance under this Settlement Agreement and any Amendment(s) thereto, Applicant expressly waives all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Orders or Permits, in addition to waiving any right and opportunity to challenge this Settlement Agreement."

4. The Parties agree that Term #4 of the Settlement Agreement is modified to state, in its entirety:

"Except as provided below, no later than January 26, 2007, OWRD will issue Final Orders and Permits that are consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement. Any Final Orders on water right applications G-15241, G-15243, G-15244, and S-85336 will incorporate the February 24, 2006 Settlement Agreement and any Amendment(s) thereto, by reference and as attachments.

On or before November 27, 2006, the Applicant may submit additional information or proposals to OWRD pertaining to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

If the Applicant timely submits such information or proposals, OWRD will make a determination, no later than December 27, 2006, as to whether any modification to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336 will be approved.

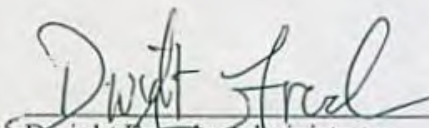
In the event that the Applicant submits information or proposals to OWRD as provided above, but OWRD determines that no modifications will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Parties agree that OWRD will issue, no later than January 26, 2007, final orders and permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement.

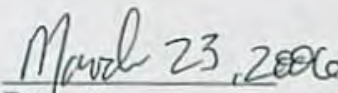
If OWRD determines that modification(s) will be made to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, OWRD will issue, no later than January 26, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement, except as modified by OWRD.

In addition to the Applicant's waivers contained in Term #2 of the February 24, 2006 Settlement Agreement including any amendment(s) to Term #2, the Applicant hereby expressly waives all right and opportunity to challenge any determination by OWRD as to whether modifications will or will not be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336. Applicant also hereby expressly waives all right and opportunity to challenge any modification(s) made by OWRD to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

However, if the Applicant disagrees with modification(s) that OWRD has determined will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Applicant may submit a letter to OWRD on or before January 10, 2007, requesting to retain the mitigation requirements set forth in the February 24, 2006 Settlement Agreement and the attached Draft Final Orders and Draft Permits. If the Applicant timely makes such a request, OWRD will issue, no later than February 8, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement."

5. The Parties to this Amendment agree that this Amendment does not allow, and cannot be construed to allow, any challenge whatsoever to the February 24, 2006 Settlement Agreement including the attached Draft Final Orders and Draft Permits, this Amendment, or Final Orders or Permits for water right applications G-15241, G-15243, G-15244, and S-85336.
6. Except as provided above, the Parties to this Amendment agree that the Settlement Agreement is unchanged and remains in full effect.
7. The Parties to this Amendment acknowledge that the time periods specified in item #4, above, may be extended for a reasonable duration by an additional amendment to the Settlement Agreement. However, neither Party is bound to propose or agree to any such additional amendment, and any additional amendment would require the written agreement of both Parties.
8. Each Party to this Amendment represents, warrants, and agrees that the person who executed this Amendment on its behalf has the full right and authority to enter into this Amendment on behalf of that Party and bind that Party to the terms of this Amendment.
9. Each Party to this Amendment certifies that they have had a reasonable opportunity to review and request changes to the Amendment, and that they have signed this Amendment of their own free will and accord. Each Party to this Amendment also certifies that it has read the entire Amendment, and understands and fully agrees with the contents thereof.
10. This Amendment may be signed in counterparts.


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301


Date

Springfield Utility Board, Applicant

Date

5. The Parties to this Amendment agree that this Amendment does not allow, and cannot be construed to allow, any challenge whatsoever to the February 24, 2006 Settlement Agreement including the attached Draft Final Orders and Draft Permits, this Amendment, or Final Orders or Permits for water right applications G-15241, G-15243, G-15244, and S-85336.
6. Except as provided above, the Parties to this Amendment agree that the Settlement Agreement is unchanged and remains in full effect.
7. The Parties to this Amendment acknowledge that the time periods specified in item #4, above, may be extended for a reasonable duration by an additional amendment to the Settlement Agreement. However, neither Party is bound to propose or agree to any such additional amendment, and any additional amendment would require the written agreement of both Parties.
8. Each Party to this Amendment represents, warrants, and agrees that the person who executed this Amendment on its behalf has the full right and authority to enter into this Amendment on behalf of that Party and bind that Party to the terms of this Amendment.
9. Each Party to this Amendment certifies that they have had a reasonable opportunity to review and request changes to the Amendment, and that they have signed this Amendment of their own free will and accord. Each Party to this Amendment also certifies that it has read the entire Amendment, and understands and fully agrees with the contents thereof.
10. This Amendment may be signed in counterparts.

Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Date


Springfield Utility Board, Applicant

3/22/06
Date

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MAR 23 2006

WATER RESOURCES DEPT
SALEM OREGON

STATE OF OREGON

COUNTY OF LANE

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO:

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OR 97477

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

APPLICATION FILE NUMBER: S-85336

SOURCE OF WATER: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER

PURPOSE OR USE: MUNICIPAL USE, FISH LIFE USE, AND WILDLIFE USE

MAXIMUM RATE: 35.9 CUBIC FEET PER SECOND (CFS) FOR MUNICIPAL USE AND 4.1 CFS FOR FISH LIFE AND WILDLIFE USES

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 8, 2002

POINT OF DIVERSION LOCATIONS:

MUNICIPAL USE: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 250 FEET SOUTH & 972 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 26

FISH LIFE AND WILDLIFE USES: SE ¼ SW ¼ SECTION 29, T17S, R1W, W.M.; 300 FEET NORTH & 2400 FEET EAST FROM THE SW CORNER OF SECTION 29

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MUNICIPAL USE: WITHIN THE SERVICE AREA OF CITY OF SPRINGFIELD

FISH LIFE AND WILDLIFE USES: WITHIN THE CHANNEL OF CEDAR CREEK

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 not construct, operate or maintain any dam or artificial obstruction to fish passage at the diversion into Cedar Creek without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the Cedar Creek flow monitoring program currently maintained by the U.S. Geological Survey (USGS) in conjunction with the U.S. Army Corps of Engineers and the Eugene Water and Electric Board (EWEB) is discontinued, the permittee shall ensure that a similar flow monitoring program is implemented on Cedar Creek. For the purpose of this condition, such a flow monitoring program must include, at minimum, installation of a calibrated staff gage.

While EWEB's license from Federal Energy Regulatory Energy Commission (FERC) requires EWEB to bypass 1,000 cfs of water past the Walterville Canal diversion, the permittee may divert water into Cedar Creek under this permit only when the flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,000 cfs plus the actual rate of appropriation into Cedar Creek under this permit. In the event that EWEB's license from FERC is modified, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to the FERC-required minimum bypass flow plus the actual rate of appropriation into Cedar Creek under this permit, or 1,400 cfs plus the actual rate of appropriation into Cedar Creek under this permit, whichever is greater. In the event that EWEB's license from FERC is rescinded, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,400 cfs plus the actual rate of appropriation under this permit.

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

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.

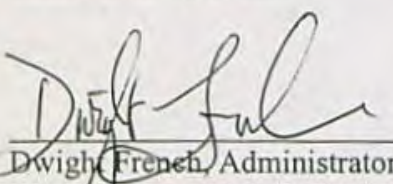
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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.

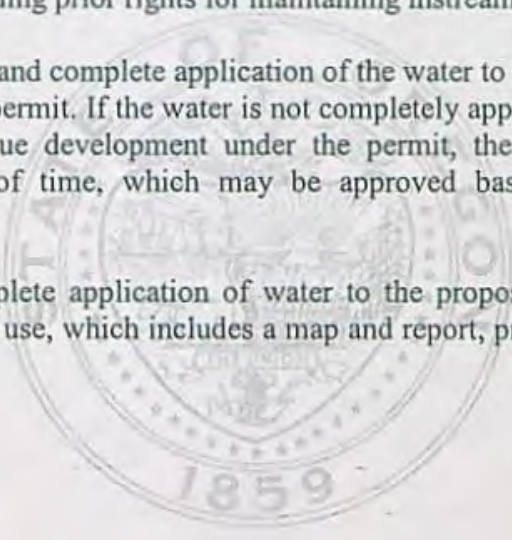
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 January 2, 2007



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



Mailing List for FO Copies
Application #S-85336

Original mailed to applicant with claim of beneficial use form:

BART MCKEE and CHUCK ARRERA
SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD OR 97477

Copies sent to:

WRD - File # S-85336 ✓
WRD - Ken Stahr ✓
WRD - Data Center ✓
WRD - John Falk (for reservoir applications only)

Copies Mailed By: <u>JS</u> (SUPPORT STAFF) on: <u>1-2-07</u> (DATE)

FO and Map Copies sent to (remember to reduce copy margins):

WRD - Watermaster District #: 2 ✓
WRD - Regional Manager: ~~(Not to SCR)~~ NO Region ✓

*mailed
1-3-07 JS*

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

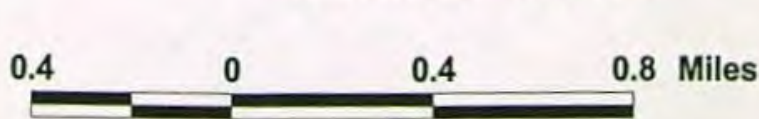
Greg D. Corbin, Stoel Rives LLP, 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204 ✓

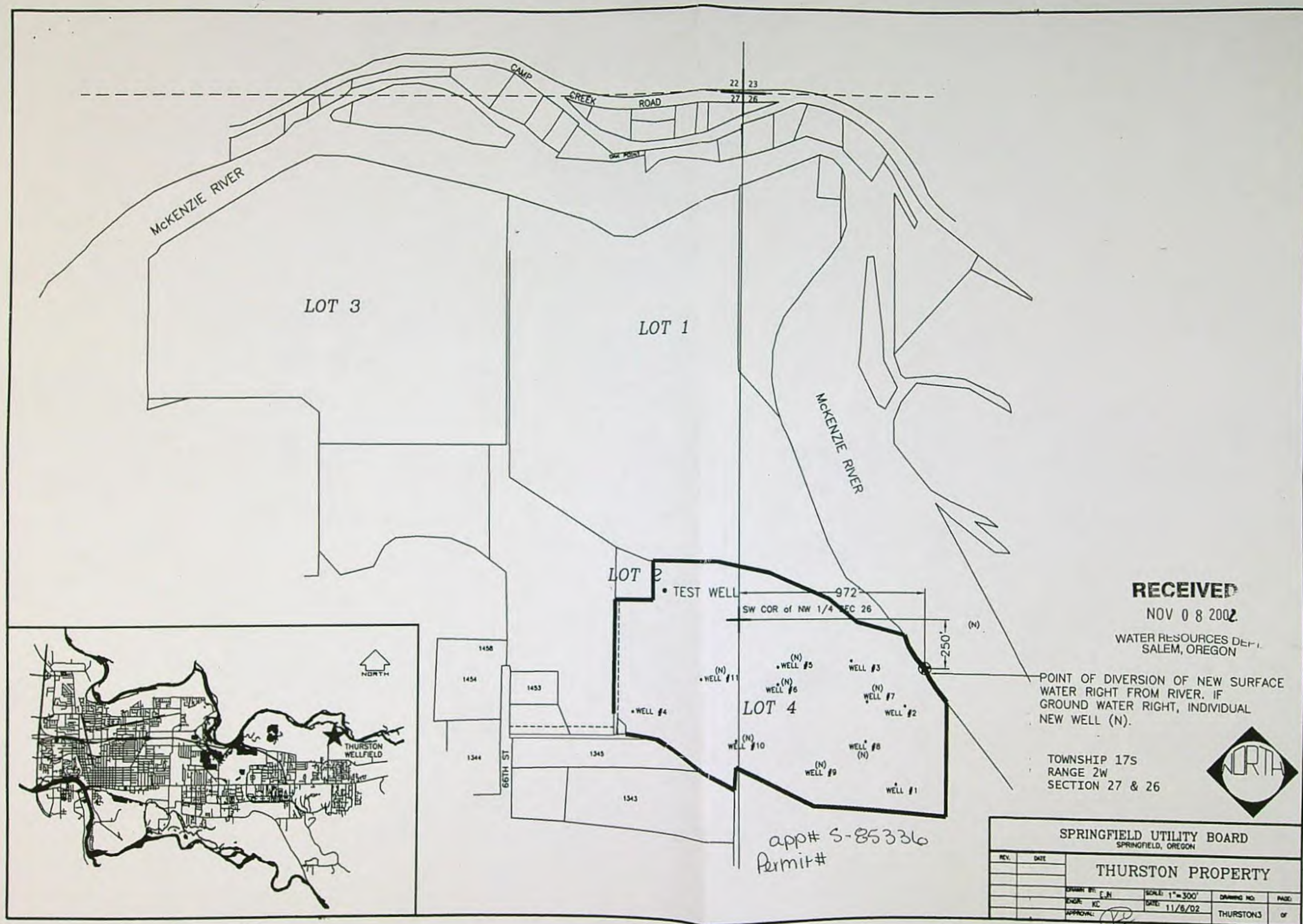
"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

Potential Area of Influence For Wells Under G-15243 & G-15244 & G-15241



1:12000 Scale





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NOV 08 2002

WATER RESOURCES DEPT.
SALEM, OREGON

POINT OF DIVERSION OF NEW SURFACE
WATER RIGHT FROM RIVER. IF
GROUND WATER RIGHT, INDIVIDUAL
NEW WELL (N).

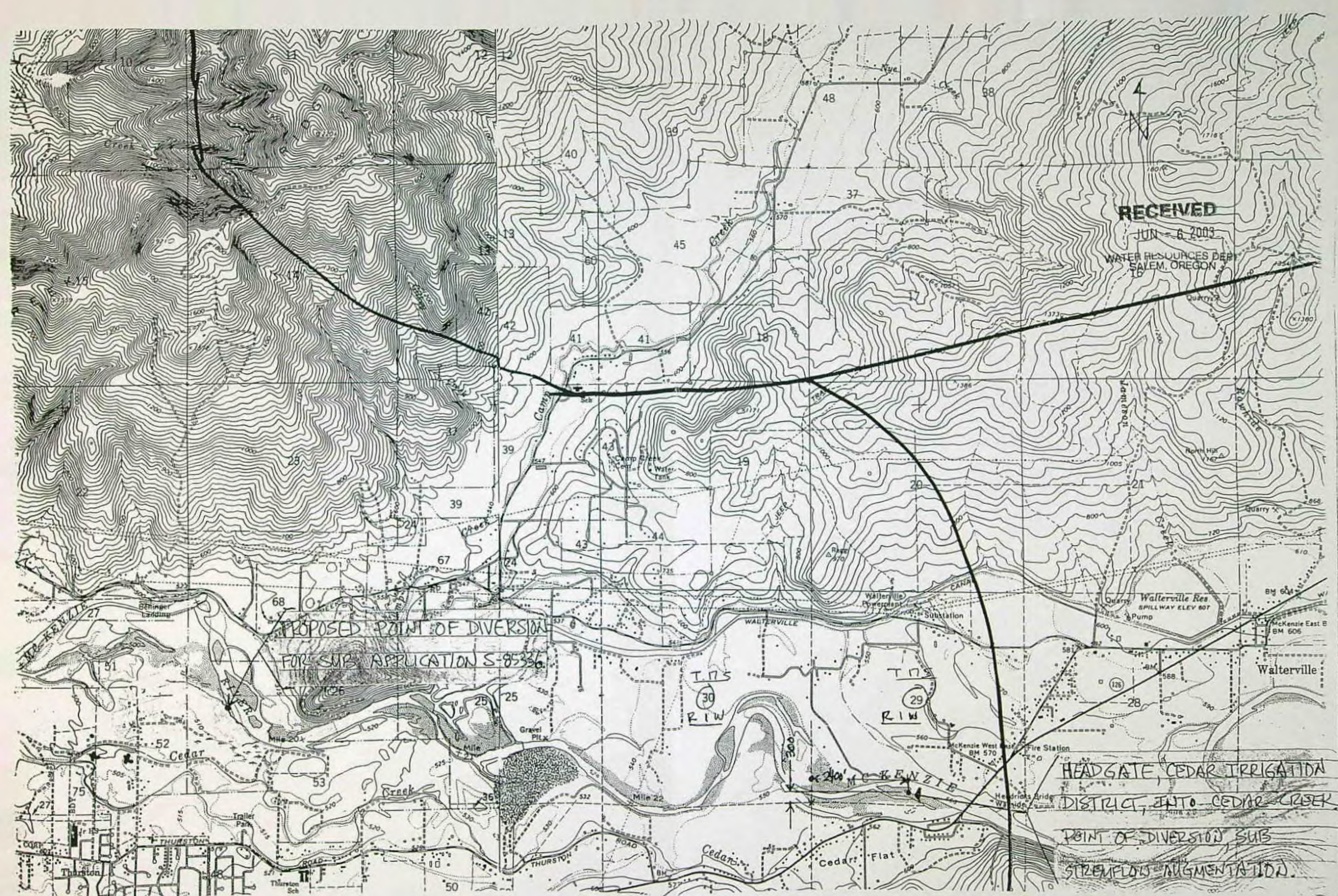
TOWNSHIP 17S
RANGE 2W
SECTION 27 & 26



SPRINGFIELD UTILITY BOARD
SPRINGFIELD, OREGON

THURSTON PROPERTY

REV.	DATE	THURSTON PROPERTY			
		DESIGN BY: E.M.	SCALE: 1" = 300'	DRAWING NO.	PAGE
		ENGINEER: KC	DATE: 11/6/02	THURSTON, J.	OF
		APPROVAL: 			



BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Permit Amendment) **FINAL ORDER**
T-10402, Lane County) **APPROVING AN ADDITIONAL POINT**
) **OF DIVERSION**

Authority

ORS 537.211 establishes the process in which a water right permit holder may submit a request to change the point of diversion and/or place of use authorized under an existing water right permit.

Applicant

Springfield Utility Board
202 South 18th Street
Springfield, Oregon 97477

Findings of Fact

- On June 6, 2007, Springfield Utility Board, filed an application for an additional point of diversion under Permit S-54378. The Department assigned the application number T-10402.
- The permit to be amended is as follows:

Permit: S-54378, in the name of Springfield Utility Board;
Use: Municipal, fish life, and wildlife uses
Priority Date: November 8, 2002
Quantity: 35.9 cubic feet per second (cfs) for municipal use and 4.1 cfs for fish life and wildlife uses
Source: McKenzie River, a tributary of the Willamette River.
Date of Complete Application of Water: January 2, 2027
Authorized Points of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Location
17	S	2	W	W.M.	26 NW SW Municipal Use – 250 feet South and 972 feet East from the W¼ Corner of Section 26
17	S	1	W	W.M.	29 SE SW Fish and Wildlife Uses – 300 feet North and 2400 feet East from the SW Corner of Section 29

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 137-004-080 and OAR 690-01-005 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.

Authorized Place of Use:

Municipal Use

Within the Service area of the City of Springfield

Fish Life and Wildlife Uses

Within the channel of Cedar Creek

3. Application T-10204 proposes an additional point of diversion for fish life and wildlife uses to be located:
A portable pump located on the bank of the McKenzie River between a point located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, T 17 S, R 1 W, W.M., said point being 300 feet North and 2400 feet East from the SW Corner of Section 29, and a point located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, T 17 S, R 2 W, W.M., said point being 250 feet South and 972 feet East from the W $\frac{1}{4}$ Corner of Section 26.
4. Notice of the application for the permit amendment was published in the Department's weekly notice on June 12, 2007, and in the Register Guard newspaper on October 14, 21, and 28, 2007, pursuant to ORS 540.520(5). No comments were filed in response to the notices.
5. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the additional point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
6. The change would not result in injury to other water rights.
7. The change does not enlarge the permit.
8. The change does not alter any other terms of the permit.

Conclusion of Law

The additional point of diversion proposed by Permit Amendment Application T-10204 is consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

The change and subsequent use of water shall be subject to the following conditions:

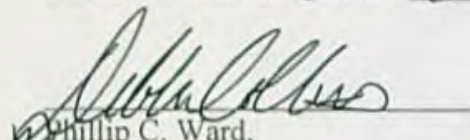
1. The combined quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.

2. Prior to water use from the proposed additional point of diversion, 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, and 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.

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.

3. Water shall be acquired from the same surface water source as the original point of diversion.
4. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
5. All other terms and conditions of Permit S-54378 remain the same.
6. Permit S-54378, in the name of Springfield Utility Board is amended as described herein.

Dated at Salem, Oregon this 6 day of November 2007.


Phillip C. Ward,
Director

Mailing Date: NOV 08 2007



SPRINGFIELD UTILITY BOARD

WATER SERVICE CENTER 202 South 18th Street Springfield, OR 97477-5240 Tel 541.726.2396 Fax 541.747.7348 www.subutil.com

November 22, 2006

Mr. Dwight French, Administrator
Water Rights and Adjudications Division
Oregon Water Resources Department
725 Summer Street, NE, Suite A
Salem, OR 97301

Re: Water Right Applications G-15241, G-15243, G-15244, and S-85336

Dear Dwight:

On February 24, 2006, the Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("SUB") entered into a Settlement Agreement concerning SUB's protests to the Final Proposed Orders ("PFOs") for water right applications G-15241, G-15243, G-15244, and S-85336 (the "Applications"). On March 23, 2006, OWRD and SUB entered into an Amendment to Settlement Agreement (the "Amendment") that, among other things, set out a timeline for obtaining and considering additional information about mitigation requirements in Cedar Creek that could be incorporated into the PFOs. Pursuant to the Amendment, SUB is required to provide any additional information to OWRD by November 27, 2006. This letter contains SUB's submission under the Amendment.

As you know, surface water permit application S-85336 allows SUB to divert water from the McKenzie River into Cedar Creek. A portion of the permitted flow (4.1 CFS) is for fish and wildlife use and is intended to mitigate for impacts on Cedar Creek that may be caused by approval of the other Applications. After OWRD and SUB entered into the Settlement Agreement, but before OWRD issued Final Orders and Permits pursuant to the Settlement Agreement, SUB learned of a significant change in the McKenzie River that impacts the ability to divert water into Cedar Creek.

Specifically, in early March 2006, Eric Gossler of the Cedar Creek Irrigation District notified me that the McKenzie River flows had reached the normal summer time rate of about 1100 CFS, but the level of the McKenzie River was approximately 5 feet below normal for that flow. This elevation change is thought to be caused by the river "head cutting" a deeper channel, allowing the river to carry the same volume of water in a narrower river channel. The result of this head cutting was to move the McKenzie River flow away from the side channel that feeds the head gate for diverting water into Cedar Creek. The head gate was isolated from the main channel by about 100 feet perpendicular to the main channel. SUB informed OWRD of this change in the river system shortly after being notified of it, which lead to OWRD and SUB entering into the Amendment to allow time to fully evaluate and consider the effect of the shift in the McKenzie River on the Applications and the mitigation portion of S-85336.

From about mid-March to mid-April the McKenzie River ran at sufficient elevation to allow water to be diverted into Cedar Creek. This, combined with the natural flow of the southern branch of Cedar Creek, maintained near normal flows in Cedar Creek during this period.

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NOV 24 2006

**WATER RESOURCES DEPT
SALEM, OREGON**

In late April of 2006, the McKenzie River level dropped to its regulated, summer level, which because of the head cutting isolated the Cedar Creek head gate, making diversion into Cedar Creek impossible using the current system. In response to a significant drop in Cedar Creek flow, someone (identity unknown to SUB) removed enough gravel from the McKenzie River side channel inlet to restore McKenzie River flows to the Cedar Creek head gate.

On May 10, 2006, SUB hosted a field tour of the McKenzie River, Cedar Creek, and Thurston Well field that was attended by OWRD staff and Eric Gossler. You will recall that during the tour, the McKenzie River level was high enough to allow a limited diversion of water into Cedar Creek. At the field tour, SUB and OWRD agreed that it would be useful for SUB to observe the effects of the changes to the McKenzie River on Cedar Creek over the summer months and report those results to OWRD. It was thought that this study period would help identify alternatives to using the 4.1 CFS of S-85336 as mitigation for the groundwater Applications.

Unfortunately, several times during the summer as the McKenzie River has dropped, unidentified persons further deepened the side channel to allow water to reach the Cedar Creek head gate. This action made it impossible for SUB to gather any useful data about the impact of the shift of the McKenzie River on Cedar Creek. Therefore, SUB is not able at this time to report anything useful to OWRD concerning this situation, and does not have a mitigation alternative to propose. Nevertheless, SUB does propose one minor change.

Each of the PFOs and Draft Permits for the groundwater Applications includes a restriction that the wells may be used only when SUB is able to divert a specified amount of water "from the McKenzie River into Cedar Creek" under S-85336. SUB requests that this requirement be modified to allow SUB to provide the required amount of mitigation from S-85336 *or under another permit or authorization for diversion into Cedar Creek at or above the uppermost extent of the zone of impact of the wells appropriating water under G-15241, G-15243, G-15244, as identified by OWRD's Groundwater Section.* As you know, this is part of the requirement for SUB's use of Limited License No. 892. The map produced by the Groundwater Section could be made a part of this requirement to make clear the location of the uppermost zone of impact. This modification would allow SUB continued flexibility to explore mitigation options in the knowledge that a viable alternative could be used to meet the mitigation requirements for G-15241, G-15243, G-15244. Without this knowledge, there may be less of an incentive for SUB to continue seeking creative mitigation options that will benefit Cedar Creek.

Thank you for OWRD's cooperation and efforts to assist SUB in finding a solution to these issues, and for OWRD's full consideration of this letter and SUB's request.

Sincerely,



Charles C. Arrera, PE
Director of Water Engineering and Operations

CCA:mkm

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NOV 24 2006

**WATER RESOURCES DEPT
SALEM, OREGON**



SPRINGFIELD UTILITY BOARD

PO Box 300, Springfield, OR 97477-0077

ADDRESS SERVICE REQUESTED

Mr. Dwight French, Administrator
Water Rights and Adjudications Division
Oregon Water Resources Department
725 Summer Street, NE, Suite A
Salem, OR 97301



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PHONE (541) 726-2396

Carlos G. Arrera
Springfield Utility Board
202 S. 18th Street
Springfield OR 97477

TO: (PLEASE PRINT)

PHONE ()

Mr. Wayne French, Administrator
Water Rights and Adjudications Div
Oregon Water Resource Dept.
725 Summer Street, 4th Suite A
Sales, OR 97301

ZIP + 4

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MikeR

From: Corbin, Greg [GDCORBIN@stoel.com]
 Sent: Wednesday, December 27, 2006 7:04 AM
 To: Mike Reynolds
 Cc: ARRERA Chuck
 Subject: RE: SUB
 Attachments: Corbin, Greg.11826DEFANGED-vcf

Mike,

Hope you had a nice holiday weekend. I have conferred with Chuck Arrera and SUB accepts the modifications to the language as set out below. Please go ahead and process the permits. Thanks for all of your hard work and cooperation in getting this done!

Greg

Greg D. Corbin
 Stoel Rives LLP
 900 SW Fifth Avenue, Suite 2600
 Portland, OR 97204
 (503) 294-9632 office
 (503) 220-2480 fax
 www.stoel.com

App	Permit
6-15241	6-16147
6-15243	6-16148
6-15244	6-16149
S-85336	8 -54378
	S

From: Mike Reynolds [mailto:Mike.J.REYNOLDS@wrdd.state.or.us]
 Sent: Monday, December 18, 2006 10:48 AM
 To: Corbin, Greg
 Subject: SUB

Good morning Greg,

Here is an excerpt from one of the DRAFT groundwater permits, showing some proposed language. Under the Amendment to the Settlement Agreement, SUB can elect to use this language (with appropriate customization for the specific cfs numbers for each permit) for the groundwater permits, or the draft permit language that was prepared as part of the original Settlement Agreement. I look forward to talking with you. The new proposed text is highlighted and in bold.

.....

"The use allowed herein may be made only at times when 1.78 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving application S-85336], **or under another permit or legal authorization held by the same permittee/appropriator (currently Springfield Utility Board) for diversion of water into Cedar Creek for fish and wildlife purposes or other non-consumptive instream purposes, at or above the uppermost extent of the zone of impact, as determined by the Department on the attached map, of the wells appropriating water under permits or certificates resulting from water right applications G-15241, G-15243, and G-15244.** This water may not be used to provide mitigation for permit [approving application G-15243] or

12/27/2006

permit [approving application G-15244].

Sincerely,

/s/ **Mike Reynolds**

Protest Program Coordinator

Oregon Water Resources Department

Phone: 503-986-0820

Fax: 503-986-0901

E-mail: mike.j.reynolds@wrdd.state.or.us

NOTE: Messages to and from this e-mail address may be available under Oregon law.

12/27/2006

WATER RESOURCES DEPARTMENT

MEMO

June 12, 2006

TO: Mike Reynolds, Water Rights Section

FROM: Marc Norton, Ground Water Section *MAN*

SUBJECT: Ground Water Application G-15241, G-15243 & G-15244

Springfield Utility Board agreed to divert 2.0 cfs to Cedar Creek to mitigate impacts of pumping from the three applications, G-15241, G-15243 & G-15244. There has been a shift in the McKenzie River and the stream is no longer near the diversion for Cedar Creek. Diverting the water is much more complicated now. SUB and the Department are looking at alternatives and options for mitigation.

I was asked to determine the area of influence of the wells listed for the following ground water applications; G-15241, G-15243 & G-15244. I discussed options with Karl Wozniak. I determined the distance from each well to the McKenzie River. Under perfect conditions the cone of depression would reach the recharge boundary, and stop. Because there probably is some clogging, the river is not straight through the area and other variables, a circle around each well was drawn using 1.5 times the measured distance. The other variables include changes in aquifer thickness, permeability, the many variations in pumping rates, times and number of wells in use. The circles or cones are shown are the attached maps.

This is a simple method for looking at the portions of Cedar Creek that might be impacted by pumping the well field. There are far too many variables to be much more accurate.

⑦ Although it is useful to know what steady state impacts might be, it is likely that pumping will be highly variable during the year within the well field. Because the creek is in close proximity to the well field, transient impacts are likely to be variable throughout the year even when the well field is fully developed and has reached steady state. Therefore, seasonal transient impacts will likely be higher in some months (or lower in others) than the average annual steady state impacts.

Karl Wozniak

④ Comparison of Figure 1 + Figure 2 suggests that the model sees Cedar Creek as a fairly efficient boundary since the cone of depression (at the effective limit of 0.25 ft) does not extend beyond the creek. If this is in fact the case, pumping is likely to have significant impacts on the creek within the up and downstream limits of the cone of depression as depicted on Figure 1. If the creek is in fact a less efficient boundary, impacts will be spread over a longer reach of the creek.

⑤ These modeled scenarios only evaluate the incremental impacts of the new wells. Impacts from wells on older permits will also impact streamflow in Cedar Creek.

⑥ It would be useful to know what the modeled impacts to Cedar Creek are (in cfs). The magnitude of those impacts compared to historic streamflow would allow a better evaluation of how reasonable the underlying model is.

6-8-2006

RE: Western GW Services memo of 6-6-2006 regarding aquifer drawdown analysis in the Thurston well field.

- ① Basic methodology is acceptable. Lic. Run model with & without Cedar Creek, run w/ & w/o wells 5, 6, 7 & and substrate differences.
- ② Difficult to thoroughly evaluate analysis without knowing how the McKenzie River and Cedar Creek were modeled. Streambed thickness & streambed conductance values for both streams?
- ③ The extent of the cone of depression at steady state is likely to be highly sensitive to these parameters. This implies that there is considerable uncertainty regarding the configuration and extent of the steady state cone of depression in both model runs.
- ④ Report uses a minimum modeled drawdown of 0.25 feet stating that this is a minimum practical drawdown that can be measured in the field. This is hardly the case. 0.05 or 0.1 ft might be reasonable.

6-8-2006

RE: Western GW Services memo of
6-6-2006 regarding aquifer
drawdown analysis in the Thurston
well field.

- ① Basic methodology is acceptable
Line. Run model with & without Cedar
Creek, run w/ & w/o wells 5, 6, 7 & and
subtract differences
- ② Difficult to thoroughly evaluate analysis
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uncertainty regarding the configuration
and extent of the steady state
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- ④ Report uses a minimum modeled drawdown
of 0.25 feet stating that this
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This is hardly the case. 0.05 or
0.1 ft might be reasonable.

④ A comparison of Figure 1 + Figure 2 suggests that the model sees Cedar Creek as a fairly efficient boundary since the cone of depression (at the effective limit of 0.25 ft) does not extend beyond the creek. If this is in fact the case, pumping is likely to have significant impacts on the creek within the up and downstream limits of the cone of depression as depicted on figure 1. If the creek is in fact a less efficient boundary, impacts will be spread over a longer reach of the creek.

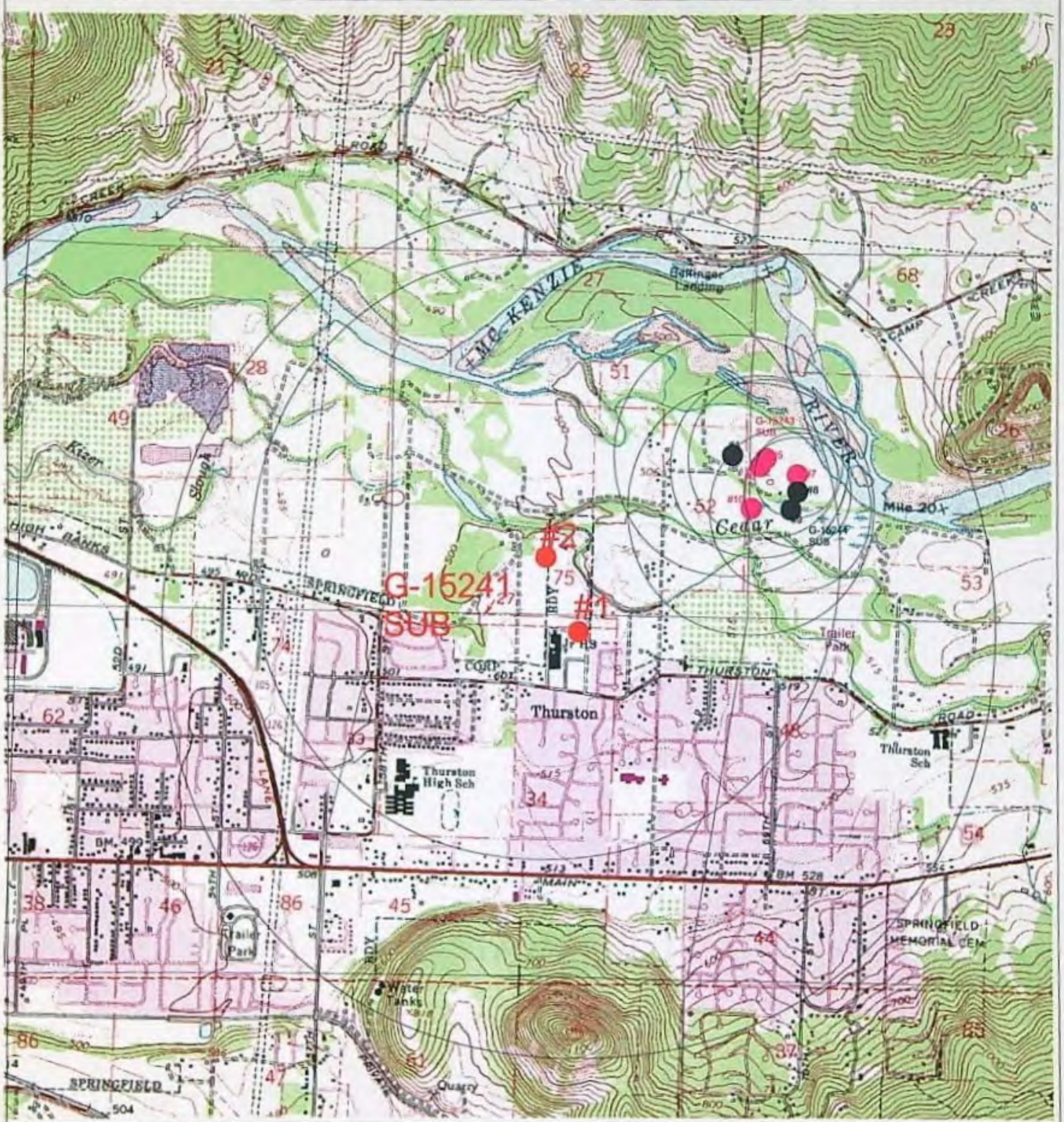
⑤ These modeled scenarios only evaluate the incremental impacts of the new wells. Impacts from wells on older permits will also impact streamflow in Cedar Creek.

⑥ It would be useful to know what the modeled impacts to Cedar Creek are (in cfs). The magnitude of these impacts compared to historic streamflow would allow a better evaluation of how reasonable the underlying model is.

⑦ Although it is useful to know what steady state impacts might be, it is likely that pumping will be highly variable during the year within the wellfield. Because the creek is in close proximity to the well field, transient impacts are likely to be variable throughout the year even when the well field is fully developed and has reached steady state. Therefore, seasonal transient impacts will likely be higher in some months (+ lower in others) than the average annual steady state impacts.

Karl Wozniak

Potential Area of Influence For Wells Under G-15243 & G-15244 & G-15241

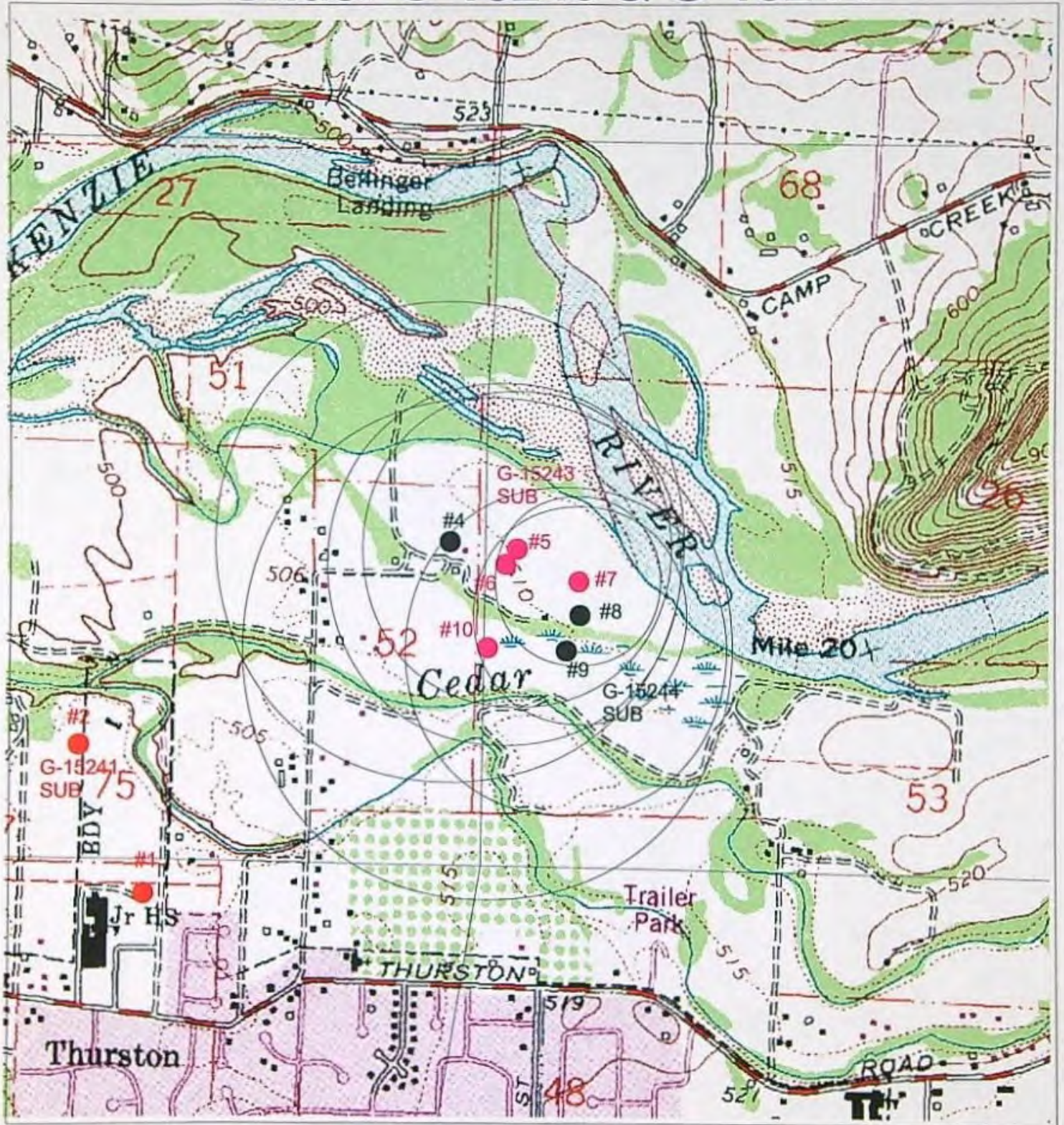


1:12000 Scale

0.4 0 0.4 0.8 Miles



Potential Area of Influence For Wells Under G-15243 & G-15244



1:12000 Scale

0.2 0 0.2 0.4 Miles



June 6, 2006

Mr. Chuck Arrera, PE
Springfield Utility Board
202 South 18th Street
Springfield, OR 97477

RE: AQUIFER DRAWDOWN ANALYSIS
 THURSON WELLFIELD NOS. 5, 6 AND 7

Dear Chuck:

This letter presents drawdown calculations for the Thurston Wellfield to evaluate the extent to which well nos. 5, 6 and 7 create a cone of depression below the channel of Cedar Creek. The work was completed using the same model as used to support the permit application for these wells (G-15243), and is documented further in the earlier report submitted to Oregon Water Resources Department¹.

Model Setup

Two versions of the model were run, with and without Cedar Creek represented by river cells. The original model setup includes Cedar Creek. A second model was saved and then the river cells of Cedar Creek were deleted. Otherwise, all other model parameters were left unchanged. Modeling was conducted in steady-state (continuous pumping, no changes to boundaries with time).

Well Pumping Rates

The pumping rate of well no. 2 was set to zero in order to represent the 2006 operation schedule. Existing well nos. 1, 3, and 4, and Platt well nos. 1 and 2 were set to the rates shown in Table 1. Well nos. 5, 6 and 7 were set to rates of 600, 600, and 400 gpm, respectively, as appears on the permit for these wells. Well no. 10, which is included in permit G-15243, was set to zero, as it is not yet constructed, and therefore will not operate during 2006.

¹ Western Groundwater Services, LLC (2002) Supplementary Technical Analysis for Permit Application Nos. G-15241, G-15243, and G-15244, report to Springfield Utility Board, October 8, 2002.

TABLE 1
MODEL PUMPING RATES FOR EXISTING WELLS

Well Name	Model Pumping Rate (gpm)
Thurston Wellfield #1	797
Thurston Wellfield #2	0
Thurston Wellfield #3	497
Thurston Wellfield #4	202
Platt #1	251
Platt #2	448
Total	2,195

Drawdown Analysis

In both cases, with and without Cedar Creek flow, the model was first run with only the older permit wells operating (nos. 1, 3, and 4, and Platt nos. 1 and 2). The water table elevation calculated by the model was saved from this run to be used as a basis for determining the incremental drawdown caused by well nos. 5, 6, and 7. The model was subsequently run with the addition of well nos. 5, 6 and 7, and the new drawdown caused only by these wells was evaluated (i.e., water table elevations with nos. 5, 6, and 7 operating were subtracted from water table elevations without nos. 5, 6, and 7 operating).

Figures 1 and 2 illustrate the extent to which the cone of depression related to well nos. 5, 6 and 7 underlies the channel of Cedar Creek. The drawdown value of 0.25 feet was taken as a practical minimum drawdown that could be measured in the field, and therefore delineates the extent of the cone of depression. A larger cone of depression is developed without Cedar Creek flow as shown on Figure 2.

Sincerely,

WESTERN GROUNDWATER SERVICES, LLC

Mark Cunnane, P.E., P.G.
Civil Engineer – Hydrogeologist

Attachments: Figures 1 and 2



Figure 2
Modeled Incremental Drawdown without Cedar Creek Flow

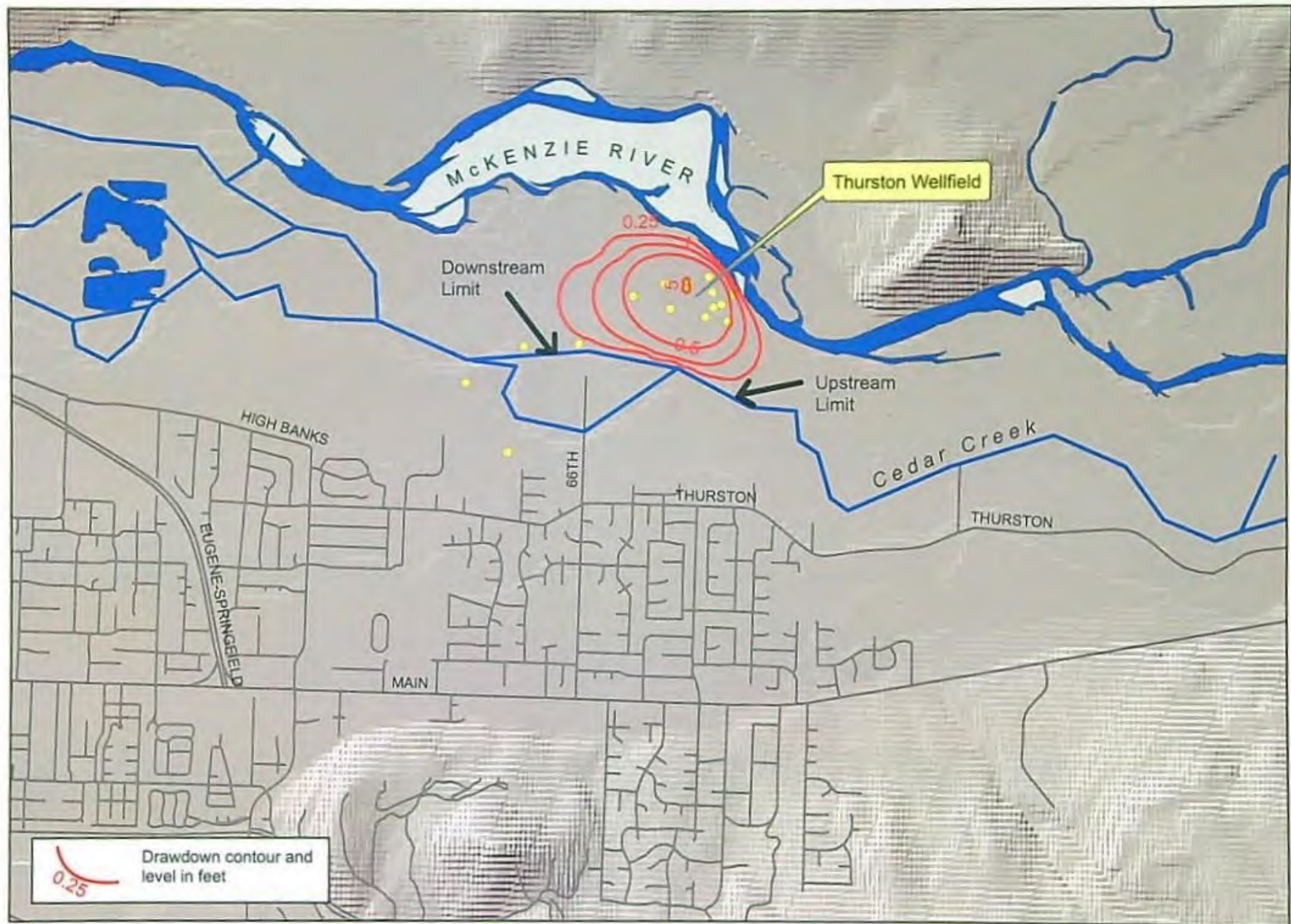


Figure 1
Modeled Incremental Drawdown with Cedar Creek Flow

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
Springfield Utility Board) **SETTLEMENT**
Applicants and Protestants) **AGREEMENT**
_____)

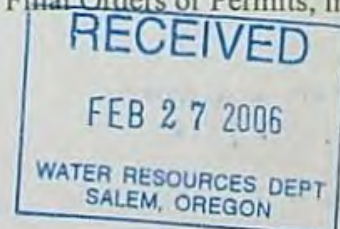
The Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

- I. On December 11, 2000, Applicant submitted Applications G-15241, G-15243, and G-15244. These applications proposed to use water from various wells in the vicinity of Cedar Creek for municipal use. On February 9, 2001, OWRD determined that the applications would have the potential for substantial interference with Cedar Creek which, if not mitigated, would result in denial of the applications. On November 8, 2002, Applicant submitted application S-85336. In addition to proposing to use water from the McKenzie River for municipal use, Applicant proposed in S-85336 to mitigate the impacts to Cedar Creek by the use of water from the wells, by diverting water from the McKenzie River into Cedar Creek.
- II. On November 8, 2005, OWRD issued Proposed Final Orders ("PFOs") for Applications G-15241, G-15243, G-15244, and S-85336, recommending approval of all four applications.
- III. On December 19, 2005, Applicant protested all four PFOs. All four protests were timely filed.
- IV. OWRD and Applicant agree that all issues raised in Applicant's protests against the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 are resolved solely on the following terms.

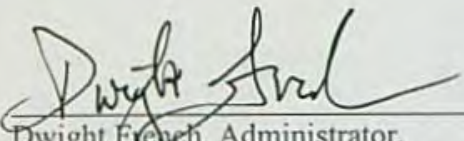
Terms of Agreement

1. In signing this Settlement Agreement, and contingent on OWRD performing in accordance with this Settlement Agreement, Applicant withdraws its protests to the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 with prejudice.
2. Regarding Applications G-15241, G-15243, G-15244, and S-85336, upon full performance under this Settlement Agreement, Applicant expressly waives all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Orders or Permits, in

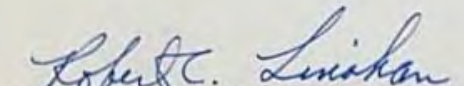


addition to waiving any right and opportunity to challenge this Settlement Agreement.

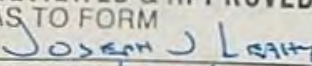
3. After Applicant signs this Settlement Agreement, it will mail the signed original back to Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE Suite A, Salem OR 97301-1266.
4. Within 30 days after OWRD receives the original Settlement Agreement signed by OWRD and Applicant, OWRD will issue Final Orders and Permits that are consistent with the Draft Final Orders and Draft Permits attached to this Settlement Agreement. The Final Orders will incorporate this Settlement Agreement by reference and as an attachment.
5. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed 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. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review and request changes to the Settlement Agreement, and that they have signed this Settlement Agreement of their own free will and accord. Each Party to this Settlement Agreement also certifies that it has read the entire Settlement Agreement, Draft Final Orders, and Draft Permits, and understands and fully agrees with the contents thereof.
7. This Settlement Agreement may be signed in counterparts.


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

2-14-06
Date


Springfield Utility Board, Applicant

2/24/06
Date

REVIEWED & APPROVED
AS TO FORM

DATE: 2/24/06
LEGAL COUNSEL
SPRINGFIELD UTILITY BOARD

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15241

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15241 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

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SALEM, OREGON

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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS



THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15241

SOURCE OF WATER: TWO WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 1.78 CUBIC FEET PER SECOND (CFS), BEING 0.89 CFS FROM EACH WELL

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

WELL #1: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 34, T17S, R2W, W.M.; 43 FEET SOUTH & 280 FEET EAST FROM THE NORTH $\frac{1}{4}$ CORNER OF SECTION 34

WELL #2: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 27, T17S, R2W, W.M.; 1002 FEET NORTH & 118 FEET WEST FROM THE SOUTH $\frac{1}{4}$ CORNER OF SECTION 27

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.
 - (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.

- (b) In addition to the measurement required in subsection (a). of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.78 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15243] or [approving G-15244].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the

Application G-15241 Water Resources Department

PERMIT G-DRAFT

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SALEM, OREGON

schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

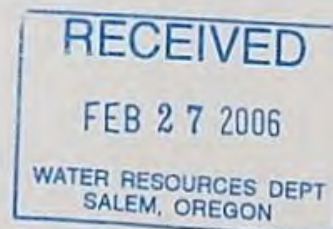
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 -----

Phillip C. Ward, Director
Water Resources Department



Application G-15241 Water Resources Department
Basin 02 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT G-DRAFT
District 2

Mailing List for FO Copies

Application #G-15241

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477

Copies sent to: 1. WRD - File # G-15241

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

Copies Mailed By: _____ (SUPPORT STAFF) On: _____ (DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel

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FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15243

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15243 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15243

SOURCE OF WATER: FOUR WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 4.91 CUBIC FEET PER SECOND (CFS), BEING 1.34 CFS FROM EACH OF THREE WELLS (5, 6, AND 10) AND 0.89 CFS FROM WELL 7

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

WELL #5: 154 FEET SOUTH & 239 FEET EAST
WELL #6: 241 FEET SOUTH & 240 FEET EAST
WELL #7: 333 FEET SOUTH & 707 FEET EAST
WELL #10: 518 FEET SOUTH & 21 FEET EAST

ALL FROM THE WEST 1/4 CORNER OF SECTION 26, WITHIN THE NW 1/4 SW 1/4, OF SECTION 26, T17S, R2W, W.M.

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.

- (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.
- (b) In addition to the measurement required in subsection (a). of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

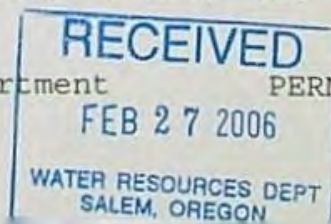
The use allowed herein may be made only at times when 1.28 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15241] or [approving G-15244].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

Application G-15243 Water Resources Department PERMIT G-DRAFT



If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

Application G-15243 Water Resources Department
Basin 02 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT G-DRAFT
District 2

Mailing List for FO Copies

Application #G-15243

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477-5240

Copies sent to: 1. WRD - File # G-15243

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
--

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel



Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15244

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15244 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

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If you have other questions about the Department or any of its programs please contact our Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE



DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15244

SOURCE OF WATER: THREE WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 4.02 CUBIC FEET PER SECOND (CFS), BEING 1.34 CFS EACH FROM
WELLS 8, 9, AND 11

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

- WELL #8: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 533 FEET SOUTH &
699 FEET EAST
- WELL #9: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 693 FEET SOUTH &
364 FEET EAST
- WELL #11: NE ¼ SE ¼ SECTION 27, T17S, R2W, W.M.; 206 FEET SOUTH &
169 FEET WEST

ALL FROM THE WEST 1/4 CORNER OF SECTION 26

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

- (a) Use of water from a new well ~~shall not~~ begin until an initial static water level in the well has been measured and submitted to the Department.
- (b) In addition to the measurement required in subsection (a). of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.04 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15241] or [approving G-15243].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

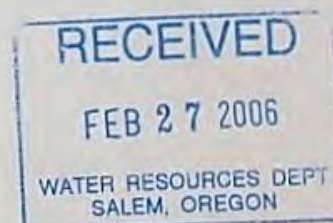
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department



Application G-15244 Water Resources Department
Basin 02 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT G-DRAFT
District 2

Mailing List for FO Copies

Application #G-15244

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477

Copies sent to: 1. WRD - File # G-15244

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies Mailed

By: _____
(SUPPORT STAFF)

On: _____
(DATE)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
8. _____
9. _____
10. _____
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13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85336

DRAFT Final Order Incorporating Settlement Agreement

Application History

On November 8, 2002, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application S-85336 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit S-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

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RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

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If you have other questions about the Department or any of its programs please contact our Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

RECEIVED

FEB 27 2006

WATER RESOURCES DEPT
SALEM, OREGON

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OR 97477

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

APPLICATION FILE NUMBER: S-85336

SOURCE OF WATER: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER

PURPOSE OR USE: MUNICIPAL USE, FISH LIFE USE, AND WILDLIFE USE

MAXIMUM RATE: 35.9 CUBIC FEET PER SECOND (CFS) FOR MUNICIPAL USE AND 4.1 CFS FOR FISH LIFE AND WILDLIFE USES

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 8, 2002

POINT OF DIVERSION LOCATIONS:

MUNICIPAL USE: NW $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 26, T17S, R2W, W.M.; 250 FEET SOUTH & 972 FEET EAST FROM THE WEST $\frac{1}{4}$ CORNER OF SECTION 26

FISH LIFE AND WILDLIFE USES: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 29, T17S, R1W, W.M.; 300 FEET NORTH & 2400 FEET EAST FROM THE SW CORNER OF SECTION 29

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MUNICIPAL USE: WITHIN THE SERVICE AREA OF CITY OF SPRINGFIELD

FISH LIFE AND WILDLIFE USES: WITHIN THE CHANNEL OF CEDAR CREEK

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 not construct, operate or maintain any dam or artificial obstruction to fish passage at the diversion into Cedar Creek without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the Cedar Creek flow monitoring program currently maintained by the U.S. Geological Survey (USGS) in conjunction with the U.S. Army Corps of Engineers and the Eugene Water and Electric Board (EWEB) is discontinued, the permittee shall ensure that a similar flow monitoring program is implemented on Cedar Creek. For the purpose of this condition, such a flow monitoring program must include, at minimum, installation of a calibrated staff gage.

While EWEB's license from Federal Energy Regulatory Energy Commission (FERC) requires EWEB to bypass 1,000 cfs of water past the Walterville Canal diversion, the permittee may divert water into Cedar Creek under this permit only when the flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,000 cfs plus the actual rate of appropriation into Cedar Creek under this permit. In the event that EWEB's license from FERC is modified, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to the FERC-required minimum bypass flow plus the actual rate of appropriation into Cedar Creek under this permit, or 1,400 cfs plus the actual rate of appropriation into Cedar Creek under this permit, whichever is greater. In the event that EWEB's license from FERC is rescinded, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,400 cfs plus the actual rate of appropriation under this permit.

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

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.

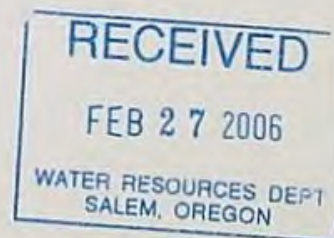
Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department



Application S-85336 Water Resources Department
Basin 2 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT S-DRAFT
2

Mailing List for FO Copies

Application #S-85336

Original mailed to applicant with claim of beneficial use form:

BART MCKEE
SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD OR 97477

Copies sent to:

1. WRD - File # S-85336
2. WRD - Ken Stahr
3. WRD - Data Center
4. WRD - John Falk (for reservoir applications only)

Copies Mailed

By: _____
(SUPPORT STAFF)
On: _____
(DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: 2
6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel



BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
Springfield Utility Board)
Applicants and Protestants)

AMENDMENT TO
SETTLEMENT AGREEMENT

On February 24, 2006, the Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," entered into a "Settlement Agreement" pertaining to Applicant's water right applications G-15241, G-15243, G-15244, and S-85336. This document is an "Amendment" to the Settlement Agreement.

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"In signing this S
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Original
Signed
versions of
Amendment

RECEIVED

MAR 23 2006

WATER RESOURCES DEPT
SALEM, OREGON

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WATER RESOURCES DEPT
SALEM, OREGON

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SALEM OREGON

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6. Except as provided above, the Parties to this Amendment agree that the Settlement Agreement is unchanged and remains in full effect.

7. The Parties to this Amendment acknowledge that the time periods specified in item #4, above, may be extended for a reasonable duration by an additional amendment to the Settlement Agreement. However, neither Party is bound to propose or agree to any such additional amendment, and any additional amendment would require the written agreement of both Parties.

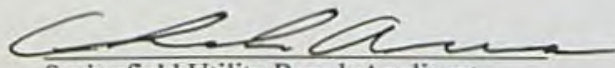
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9. Each Party to this Amendment certifies that they have had a reasonable opportunity to review and request changes to the Amendment, and that they have signed this Amendment of their own free will and accord. Each Party to this Amendment also certifies that it has read the entire Amendment, and understands and fully agrees with the contents thereof.

10. This Amendment may be signed in counterparts.

Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Date


Springfield Utility Board, Applicant

3/22/06
Date

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MAR 23 2006

**WATER RESOURCES DEPT
SALEM OREGON**

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

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G-15243, G-15244, and S-85336 in the name of)
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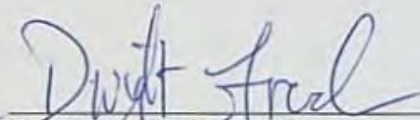
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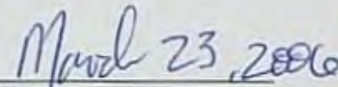
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Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301



Date

Springfield Utility Board, Applicant

Date

FedEx

USA Airbill

FedEx Tracking Number **821253500264**

1 From

Date **3-22-06**

Sender's Name **Chuck Arrera** Phone **541 726-2397**

Company **Springfield Utility Board Water Division**

Address **202 S. 18th Street**

City **Springfield,** State **OR** ZIP **97477**

2 Your Internal Billing Reference

3 To

Recipient's Name **Mike Reynolds** Phone **503 986-0820**

Company **Oregon Water Resources Department**

Address **725 Summer St. NE, Suite A**

We cannot deliver to PO boxes or PO ZIP codes

City **Salem** State **OR** ZIP **97301-1266**



From I.D. No. **0200**

Recipient's Copy

4a Express Package Service

☒ FedEx Priority Overnight Next business morning ☐ FedEx Standard Overnight Next business afternoon ☐ FedEx First Overnight Earliest next business morning delivery to select business destinations

☐ FedEx 2Day* Second business day ☐ FedEx Express Saver* Third business day

* FedEx Letter Rate not available Minimum charge: One pound rate

4b Express Freight Service

☐ FedEx 1Day Freight* Next business day ☐ FedEx 2Day Freight Second business day ☐ FedEx 3Day Freight Third business day

* Call for Confirmation

5 Packaging

☒ FedEx Letter* ☐ FedEx Pak* ☐ Other Pkg. Includes FedEx Box, FedEx Tube, and customer pkg.

6 Special Handling

☐ Saturday Delivery Available for FedEx Priority Overnight and FedEx 2Day to select ZIP codes ☐ Sunday Delivery Available for FedEx Priority Overnight to select ZIP codes ☐ HOLD Weekday at FedEx Location Free available with FedEx First Overnight ☐ HOLD Saturday at FedEx Location Available for FedEx Priority Overnight and FedEx 2Day to select locations

Does this shipment contain dangerous goods?

☒ No ☐ Yes As per attached Shipper's Declaration ☐ Yes Shipper's Declaration not required ☐ Dry Ice Dry Ice, 5, UN 1845 ☐ Cargo Aircraft Only

7 Payment Bill to:

☒ Sender Each fee in Section 1 will be billed ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

Total Packages **1** Total Weight **1.00** Total Declared Value* **\$ 00.00** Total Charges **\$ 00.00**

*Our liability is limited to \$100 unless you declare a higher value. See back for details.

8 Release Signature

Sign to authorize delivery without obtaining signature

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

Questions? Call 1-800-Go-FedEx (800-463-3339)

Visit our Web site at www.fedex.com

Rev. 04/04 FedEx Form 4130-01-0000-01 FedEx Form 4130-01-0000-01

360

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
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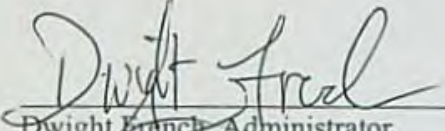
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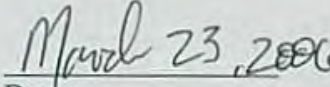
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for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301


Date

Springfield Utility Board, Applicant

Date

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In the Matter of Water Right Applications G-15241,))
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WATER RESOURCES DEPT
SALEM, OREGON

4. The Parties agree that Term #4 of the Settlement Agreement is modified to state, in its entirety:

"Except as provided below, no later than January 26, 2007, OWRD will issue Final Orders and Permits that are consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement. Any Final Orders on water right applications G-15241, G-15243, G-15244, and S-85336 will incorporate the February 24, 2006 Settlement Agreement and any Amendment(s) thereto, by reference and as attachments.

On or before November 27, 2006, the Applicant may submit additional information or proposals to OWRD pertaining to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

If the Applicant timely submits such information or proposals, OWRD will make a determination, no later than December 27, 2006, as to whether any modification to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336 will be approved.

In the event that the Applicant submits information or proposals to OWRD as provided above, but OWRD determines that no modifications will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Parties agree that OWRD will issue, no later than January 26, 2007, final orders and permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement.

If OWRD determines that modification(s) will be made to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, OWRD will issue, no later than January 26, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement, except as modified by OWRD.

In addition to the Applicant's waivers contained in Term #2 of the February 24, 2006 Settlement Agreement including any amendment(s) to Term #2, the Applicant hereby expressly waives all right and opportunity to challenge any determination by OWRD as to whether modifications will or will not be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336. Applicant also hereby expressly waives all right and opportunity to challenge any modification(s) made by OWRD to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

However, if the Applicant disagrees with modification(s) that OWRD has determined will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Applicant may submit a letter to OWRD on or before January 10, 2007, requesting to retain the mitigation requirements set forth in the February 24, 2006 Settlement Agreement and the attached Draft Final Orders and Draft Permits. If the Applicant timely makes such a request, OWRD will issue, no later than February 8, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement."

RECEIVED

MAR 23 2006

WATER RESOURCES DEPT
SALEM OREGON

5. The Parties to this Amendment agree that this Amendment does not allow, and cannot be construed to allow, any challenge whatsoever to the February 24, 2006 Settlement Agreement including the attached Draft Final Orders and Draft Permits, this Amendment, or Final Orders or Permits for water right applications G-15241, G-15243, G-15244, and S-85336.

6. Except as provided above, the Parties to this Amendment agree that the Settlement Agreement is unchanged and remains in full effect.

7. The Parties to this Amendment acknowledge that the time periods specified in item #4, above, may be extended for a reasonable duration by an additional amendment to the Settlement Agreement. However, neither Party is bound to propose or agree to any such additional amendment, and any additional amendment would require the written agreement of both Parties.

8. Each Party to this Amendment represents, warrants, and agrees that the person who executed this Amendment on its behalf has the full right and authority to enter into this Amendment on behalf of that Party and bind that Party to the terms of this Amendment.

9. Each Party to this Amendment certifies that they have had a reasonable opportunity to review and request changes to the Amendment, and that they have signed this Amendment of their own free will and accord. Each Party to this Amendment also certifies that it has read the entire Amendment, and understands and fully agrees with the contents thereof.

10. This Amendment may be signed in counterparts.

Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Date


Springfield Utility Board, Applicant

3/22/06
Date

RECEIVED

MAR 23 2006

WATER RESOURCES DEPT
SALEM OREGON

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
Springfield Utility Board) **SETTLEMENT**
Applicants and Protestants) **AGREEMENT**
_____)

The Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

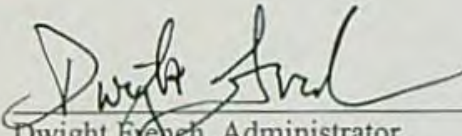
- I. On December 11, 2000, Applicant submitted Applications G-15241, G-15243, and G-15244. These applications proposed to use water from various wells in the vicinity of Cedar Creek for municipal use. On February 9, 2001, OWRD determined that the applications would have the potential for substantial interference with Cedar Creek which, if not mitigated, would result in denial of the applications. On November 8, 2002, Applicant submitted application S-85336. In addition to proposing to use water from the McKenzie River for municipal use, Applicant proposed in S-85336 to mitigate the impacts to Cedar Creek by the use of water from the wells, by diverting water from the McKenzie River into Cedar Creek.
- II. On November 8, 2005, OWRD issued Proposed Final Orders ("PFOs") for Applications G-15241, G-15243, G-15244, and S-85336, recommending approval of all four applications.
- III. On December 19, 2005, Applicant protested all four PFOs. All four protests were timely filed.
- IV. OWRD and Applicant agree that all issues raised in Applicant's protests against the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 are resolved solely on the following terms.

Terms of Agreement

1. In signing this Settlement Agreement, and contingent on OWRD performing in accordance with this Settlement Agreement, Applicant withdraws its protests to the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 with prejudice.
2. Regarding Applications G-15241, G-15243, G-15244, and S-85336, upon full performance under this Settlement Agreement, Applicant expressly waives all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Orders or Permits, in

addition to waiving any right and opportunity to challenge this Settlement Agreement.

3. After Applicant signs this Settlement Agreement, it will mail the signed original back to Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE Suite A, Salem OR 97301-1266.
4. Within 30 days after OWRD receives the original Settlement Agreement signed by OWRD and Applicant, OWRD will issue Final Orders and Permits that are consistent with the Draft Final Orders and Draft Permits attached to this Settlement Agreement. The Final Orders will incorporate this Settlement Agreement by reference and as an attachment.
5. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed 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. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review and request changes to the Settlement Agreement, and that they have signed this Settlement Agreement of their own free will and accord. Each Party to this Settlement Agreement also certifies that it has read the entire Settlement Agreement, Draft Final Orders, and Draft Permits, and understands and fully agrees with the contents thereof.
7. This Settlement Agreement may be signed in counterparts.


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

2-14-00
Date

Springfield Utility Board, Applicant

Date

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15241

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15241 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15241

SOURCE OF WATER: TWO WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 1.78 CUBIC FEET PER SECOND (CFS), BEING 0.89 CFS FROM EACH WELL

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

WELL #1: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 34, T17S, R2W, W.M.; 43 FEET SOUTH & 280 FEET EAST FROM THE NORTH $\frac{1}{4}$ CORNER OF SECTION 34

WELL #2: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 27, T17S, R2W, W.M.; 1002 FEET NORTH & 118 FEET WEST FROM THE SOUTH $\frac{1}{4}$ CORNER OF SECTION 27

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.
 - (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.

- (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.78 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15243] or [approving G-15244].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the

schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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 -----

Phillip C. Ward, Director
Water Resources Department

Mailing List for FO Copies

Application #G-15241

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477

Copies sent to: 1. WRD - File # G-15241

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

Copies Mailed
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15243

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15243 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15243

SOURCE OF WATER: FOUR WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 4.91 CUBIC FEET PER SECOND (CFS), BEING 1.34 CFS FROM EACH OF THREE WELLS (5, 6, AND 10) AND 0.89 CFS FROM WELL 7

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

WELL #5: 154 FEET SOUTH & 239 FEET EAST
WELL #6: 241 FEET SOUTH & 240 FEET EAST
WELL #7: 333 FEET SOUTH & 707 FEET EAST
WELL #10: 518 FEET SOUTH & 21 FEET EAST

ALL FROM THE WEST 1/4 CORNER OF SECTION 26, WITHIN THE NW 1/4 SW 1/4, OF SECTION 26, T17S, R2W, W.M.

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.

- (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.
- (b) In addition to the measurement required in subsection (a). of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.28 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15241] or [approving G-15244].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Mailing List for FO Copies

Application #G-15243

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477-5240

Copies sent to: 1. WRD - File # G-15243

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

7. _____
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12. _____
13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15244

DRAFT Final Order Incorporating Settlement Agreement

Application History

On DECEMBER 11, 2000, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application G-15244 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit G-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This document was prepared by Cory Engel. 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 503-986-0813.

If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its 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 Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OREGON 97477

541-726-2396

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

APPLICATION FILE NUMBER: G-15244

SOURCE OF WATER: THREE WELLS IN CEDAR CREEK BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 4.02 CUBIC FEET PER SECOND (CFS), BEING 1.34 CFS EACH FROM
WELLS 8, 9, AND 11

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 11, 2000

WELL LOCATIONS:

- WELL #8: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 533 FEET SOUTH &
699 FEET EAST
- WELL #9: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 693 FEET SOUTH &
364 FEET EAST
- WELL #11: NE ¼ SE ¼ SECTION 27, T17S, R2W, W.M.; 206 FEET SOUTH &
169 FEET WEST

ALL FROM THE WEST 1/4 CORNER OF SECTION 26

THE PLACE OF USE IS THE SERVICE AREA OF CITY OF SPRINGFIELD.

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 water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Willamette Basin basalt ground water condition:

- (1) Use of water from either well, as allowed herein, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the wells.

- (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department.
- (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each month between the 1st and 5th day of the month.
- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee / appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall submit a record of the measurements to the Department on a form available from the Department. The record of measurements shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements. The permittee/appropriator shall submit to the Department one year of monthly measurements (December through November) by December 1. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).

The use allowed herein may be made only at times when 1.04 cubic feet per second of water is diverted from the McKenzie River into Cedar Creek under permit [approving S-85336]. This water may not be used to provide mitigation for permit [approving G-15241] or [approving G-15243].

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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 shall be limited when it interferes with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Mailing List for FO Copies

Application #G-15244

Original mailed to applicant with claim of beneficial use form:

SPRINGFIELD UTILITY BOARD; MCKEE, BART
202 S 18TH ST
SPRINGFIELD OREGON 97477

Copies sent to: 1. WRD - File # G-15244

2. WRD - Ken Stahr

3. WRD - Data Center

4. WRD - John Falk (for reservoir applications only)

Copies Mailed

By: _____
(SUPPORT STAFF)

On: _____
(DATE)

FO and Map Copies sent to (remember to reduce copy margins):

5. WRD - Watermaster District #: District 2

6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

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8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____

2. _____

3. _____

CASEWORKER : Cory Engel

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85336

DRAFT Final Order Incorporating Settlement Agreement

Application History

On November 8, 2002, SPRINGFIELD UTILITY BOARD submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 8, 2005. The protest period closed December 23, 2005. A timely protest was filed by the applicant on December 19, 2005.

Through a Settlement Agreement between the applicant and the Department, the protest was withdrawn on _____. The terms of the Settlement Agreement are incorporated herein by reference.

DRAFT Order

Application S-85336 therefore is approved consistently with the terms of the aforementioned Settlement Agreement, and Permit S-DRAFT is issued as limited by the conditions set forth therein.

DATED February , 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

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If you have other questions about the Department or any of its programs please contact our Customer Service 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 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OR 97477

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

APPLICATION FILE NUMBER: S-85336

SOURCE OF WATER: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER

PURPOSE OR USE: MUNICIPAL USE, FISH LIFE USE, AND WILDLIFE USE

MAXIMUM RATE: 35.9 CUBIC FEET PER SECOND (CFS) FOR MUNICIPAL USE AND 4.1 CFS FOR FISH LIFE AND WILDLIFE USES

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 8, 2002

POINT OF DIVERSION LOCATIONS:

MUNICIPAL USE: NW $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 26, T17S, R2W, W.M.; 250 FEET SOUTH & 972 FEET EAST FROM THE WEST $\frac{1}{4}$ CORNER OF SECTION 26

FISH LIFE AND WILDLIFE USES: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 29, T17S, R1W, W.M.; 300 FEET NORTH & 2400 FEET EAST FROM THE SW CORNER OF SECTION 29

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MUNICIPAL USE: WITHIN THE SERVICE AREA OF CITY OF SPRINGFIELD

FISH LIFE AND WILDLIFE USES: WITHIN THE CHANNEL OF CEDAR CREEK

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 not construct, operate or maintain any dam or artificial obstruction to fish passage at the diversion into Cedar Creek without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the Cedar Creek flow monitoring program currently maintained by the U.S. Geological Survey (USGS) in conjunction with the U.S. Army Corps of Engineers and the Eugene Water and Electric Board (EWEB) is discontinued, the permittee shall ensure that a similar flow monitoring program is implemented on Cedar Creek. For the purpose of this condition, such a flow monitoring program must include, at minimum, installation of a calibrated staff gage.

While EWEB's license from Federal Energy Regulatory Energy Commission (FERC) requires EWEB to bypass 1,000 cfs of water past the Walterville Canal diversion, the permittee may divert water into Cedar Creek under this permit only when the flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,000 cfs plus the actual rate of appropriation into Cedar Creek under this permit. In the event that EWEB's license from FERC is modified, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to the FERC-required minimum bypass flow plus the actual rate of appropriation into Cedar Creek under this permit, or 1,400 cfs plus the actual rate of appropriation into Cedar Creek under this permit, whichever is greater. In the event that EWEB's license from FERC is rescinded, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,400 cfs plus the actual rate of appropriation under this permit.

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

STANDARD CONDITIONS

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.

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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 _____, 2006

----- DRAFT -----

Phillip C. Ward, Director
Water Resources Department

Mailing List for FO Copies

Application #S-85336

Original mailed to applicant with claim of beneficial use form:

BART MCKEE
SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD OR 97477

Copies sent to:

1. WRD - File # S-85336
2. WRD - Ken Stahr
3. WRD - Data Center
4. WRD - John Falk (for reservoir applications only)

Copies Mailed
By: _____ (SUPPORT STAFF)
On: _____ (DATE)

FO and Map Copies sent to (remember to reduce copy margins):

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6. WRD - Regional Manager: (Not to SCR)

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

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"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : Cory Engel

MikeR

From: Corbin, Greg [GDCORBIN@stoel.com]
Sent: Wednesday, March 08, 2006 7:42 PM
To: Mike Reynolds
Cc: ARRERA Chuck; Filippi, David
Subject: SUB Settlement Agreement/Permits

Attachments: SUB Exception Request.doc



SUB Exception
Request.doc (67 ...

Mike,

Per our conversation earlier today, I am sending this email to describe what SUB understands to be the effect of the recent McKenzie River shift on Cedar Creek, and how that shift affects the requirement in the various permits to divert water into Cedar Creek. You agreed to discuss this matter further with Dwight French at your meeting Thursday, March 9 and get back to me shortly thereafter.

To review the background, SUB recently discovered that the McKenzie River has shifted in its course in a way that diminishes, if not eliminates, the flow of water from the McKenzie into Cedar Creek. Apparently the McKenzie had been at or near flood levels during our negotiation on the Settlement Agreement, and when the waters began to recede it became evident that the river had shifted north within its existing course such that the river no longer appears to flow naturally into Cedar Creek (on the South shore of the McKenzie). The shift occurred around the Hendricks Bridge where Highway 126 crosses the river. If you take a look at the aerial photograph at the following link, you can find the area I am talking about:

<http://maps.google.com/?t=k&ll=44.057492,-122.869463&spn=0.044534,0.079823&t=k>
<<http://maps.google.com/?t=k&ll=44.057492,-122.869463&spn=0.044534,0.079823&t=k>>

Select the "Hybrid" tab in the upper right corner of the photograph to show roads. Hendricks Bridge is to the West (left) of the area where the map colors change. Just West of the bridge is a side channel of the McKenzie running between some small islands. The side channel has water in it in the photograph. This is where the shift occurred and as I understand it the side channel is now dry. Just down from the side channel, about 0.4 miles West from Hendricks Bridge, is the headgate at which water has been diverted into Cedar Creek. The headgate also is dry and it appears that the new McKenzie River channel will not reach the headgate. Thus no water can be diverted into Cedar Creek via gravity flow at the headgate.

If you follow Highway 126 West from Hendricks Bridge you will see where Thurston Road comes off 126 to the North. Cedar Creek runs along Thurston Road. If you follow Thurston Road to 66th Street, then follow 66th Street to the North, you pass the Wallace M. Ruff Jr. Memorial Park to the East. The well field is North of the park and East of the end of 66th Street, lying between the McKenzie River and Cedar Creek. The well field is approximately 3.7 miles from Hendricks Bridge and 3.3 miles from the headgate. It appears that by the time you reach the well field, and the zone of possible influence from SUB's wells on Cedar Creek, the creek would be completely dry, even without SUB using the wells.

I want to reiterate what we discussed on the telephone today. It is impossible to know at this early stage the fate of Cedar Creek. It appears that even with inputs other than the McKenzie River, Cedar Creek could be completely dry in the area around the well field and below, even without SUB using the wells. In other words, it is possible that Cedar Creek will essentially cease to exist along this stretch no matter what SUB does with its wells. Of course, it is possible that some flow may occur, or even that the river could shift again or run into Cedar Creek during high flow events. It simply is too early to know.

As we discussed, it is possible that the effect of the shift in the McKenzie River will be to cause a permanent drying of Cedar Creek in the area potentially affected by SUB's wells. In other words, the creek may have no flow in it, even when SUB pumps. This means that one outcome of the shift in the McKenzie River may be to remove the purpose for the mitigation requirement in the permits altogether, or at least at times when there is no flow in Cedar Creek. If the basis for the mitigation requirement is the potential impact to Cedar Creek flows, and there are no flows remaining in the creek, it follows that the mitigation serves no purpose. What is more, given the distance between the point of diversion (headgate) and the area of influence with the well field, it is possible that any water diverted by SUB (which would require a pump or other engineered solution) may never reach the point of influence.

We do not know whether that is the case yet, but the possibility warrants taking time to figure out what will happen, and adjusting SUB's permits accordingly. I have suggested adding an appropriate provision to the permits that would adjust the mitigation requirements to match the situation. I still think that is one possible solution.

Please keep in mind a couple other points. First, if the Department issues the permits as currently drafted, they will have little value to SUB. The limited licenses that SUB operated the wells under last year are set to expire upon issuing the permits. And the mitigation requirement in the permits make it virtually impossible that SUB could operate the wells this season under the permits. The only way for SUB to divert water from McKenzie River into Cedar Creek is to pump the water or engineer some other fix. No matter how SUB might accomplish a diversion into Cedar Creek, it will need to obtain additional permits to do so, including possibly a 404 permit with the Army Corps, which obviously would include NEPA and ESA compliance. As you know, the likelihood that SUB could permit such a diversion between now and its peak use season this year (when it most needs the wells) is probably zero.

Second, the inability to use those wells, especially during the peak season, would increase the risk of negative human health and safety impacts, and possible create a water emergency in Springfield. This concern was one of the reasons SUB invested the time and effort to obtain an exception from the basin plan to allow this use. You should review SUB's basin plan exception request for additional background on the need for these wells. A copy is attached. The need for these wells is real and critical to SUB's ability to deliver municipal water during peak use.

Third, the timing of SUB learning about the shift in the McKenzie River and signing the Settlement Agreement should not be held against SUB. As I understand our conversation, Dwight has indicated that he wants to issue the permits notwithstanding this change in circumstances. If the timing had been a bit different, SUB could have decided not to sign the Settlement Agreement and the Department would not be in a position to push issuing the permits. Pushing forward and issuing the permits without taking the changed circumstances into account essentially penalizes SUB for acting in good faith when it signed the Settlement Agreement. A more reasonable approach would be to put the permits on

hold until we can agree on how best to modify the language in the permits, or reach some other solution.

Please discuss this matter with Dwight as you agreed. SUB asks that the Department put the Settlement and issuing the permits on hold until we can craft a reasonable solution to this unforeseen change in circumstances. I still believe we can find a relatively simple solution that will not require SUB and the Department to expend significant energy dealing with this situation.

Please call me after your meeting with Dwight. I will be out of the office, but feel free to call me on my cell phone at (503) 349-3578. If I am not available when you call I will return your call by the end of the day.

Thanks,

Greg

February 7, 2005

GREG D. CORBIN
Direct (503) 294-9632
gdcorbin@stoel.com

Mr. Dwight French
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Updated Request for Exception from the Willamette Basin Program for Springfield Utility Board's Groundwater Permit Applications G-15241, G-15243, and G-15244; Request to Amend Surface Water Permit Application S-85336

Dear Mr. French:

This office represents the Springfield Utility Board ("SUB") in connection with the above-referenced water right permit applications. This letter represents SUB's request that, pursuant to ORS 536.295, the Oregon Water Resources Commission (the "Commission") allow the Oregon Water Resources Department ("OWRD" or the "Department") to consider SUB's groundwater permit applications G-15241, G-15243, and G-15244 (collectively the "Groundwater Applications") notwithstanding the Willamette Basin Program (the "WBP") classification for Cedar Creek, a tributary of the McKenzie River. As you know, the Department has made a preliminary determination that the Groundwater Applications have the potential for substantial interference with Cedar Creek. The Groundwater Applications are for year-round municipal use. Under the WBP, Cedar Creek is classified for municipal use only for nine months of the year.

SUB also is hereby requesting to amend its surface water right permit application S-85336 (the "Surface Application") as described in Section II below. The Surface Application is integral to approval of the Groundwater Applications and SUB's master water development plan (the "Master Plan"), a copy of which is on file with the Department, because a portion of the Surface Application provides water to mitigate potential interference with Cedar Creek caused by water withdrawals under the Groundwater Applications. We intend to follow up with you regarding this correspondence, but would anticipate that the Commission may consider this matter at its next regularly scheduled Commission meeting.

I. Background

A. SUB's Operations and Water Development Plans

SUB is a customer-owned electric and water utility serving the greater Springfield, Oregon community. Collectively SUB and the Rainbow Water District ("RWD") serve approximately 55,000 customers from groundwater wells and surface water sources. SUB owns the vast majority of wells supplying the SUB/RWD territory. Even with an active water conservation and demand management program currently in place, SUB must develop additional water supplies to continue meeting the needs of the Springfield area into the future. According to its Water Conservation Plan (the "WCP"), a copy of which is on file with the Department, SUB's system is currently inadequate to provide future projected water needs with an adequate reserve capacity. WCP tbl 4-3. The current water supply deficit relative to need will increase over time unless SUB is able to develop additional water supply capacity. WCP fig 4-2.

To meet current and future demands, the Master Plan anticipates adding new wells to the SUB/RWD system out to 2017. The wells associated with the Groundwater Applications are integral to the Master Plan. Without developing these additional sources, SUB must find alternate, and largely more expensive and less reliable, sources of water to continue meeting customer demands.

B. SUB's Groundwater Applications

Consistent with the Master Plan and WCP, SUB filed the Groundwater Applications on November 8, 2000. Application G-15241 is for year-round appropriation of 1.78 cubic feet per second ("cfs") of municipal use water from two wells (0.89 cfs from each) located in the Cedar Creek basin. Application G-15243 is for year-round appropriation of 4.91 cfs of municipal use water from four wells (1.34 cfs from three wells and 0.89 cfs from the fourth well) located within the McKenzie River basin. Application G-15244 is for year-round appropriation of 4.02 cfs of municipal use water from three wells (1.34 cfs from each well) located within the McKenzie River basin.¹

¹ SUB filed a fourth groundwater permit application on November 8, 2000 that was designated G-15242. That application is on administrative hold pending a final decision on the Groundwater Applications. SUB is not requesting an exception from the WBP for G-15242 at this time but reserves the right to do so.

C. The Department's Reviews of SUB's Applications and SUB's Response

The Department issued initial reviews of the Groundwater Applications on February 9, 2001. It found that the amount of municipal use groundwater to be appropriated from each well is available year-round and allowed under the WBP. OAR 690-502-0160(2). For two of the Groundwater Applications (G-15243 and G-15244), the Department determined that the proposed groundwater use has the potential to interfere substantially with the McKenzie River and, therefore, that those applications must also be consistent with the WBP limits applicable to the McKenzie River. Water from the McKenzie River for municipal use is available year-round. Accordingly, the Department gave applications G-15243 and G-15244 favorable reviews.

The Department reached a different conclusion in its initial review for application G-15241. It found that the proposed use has the potential to interfere substantially with Cedar Creek and, therefore, that application G-15241 must also be consistent with the WBP surface water limits applicable to Cedar Creek. OAR 690-009-0040(2). Cedar Creek is classified for municipal use only from October 1 through June 30. OAR 690-502-0080(1)(d). Application G-15241 for year-round use thus is inconsistent with the WBP classification for Cedar Creek during the three-month period from July 1 to September 30. Accordingly, the Department indicated that it likely would not issue a permit for application G-15241.

On May 21, 2001, SUB provided additional information to the Department to address the issue of potential interference with Cedar Creek (G-15241). SUB explained that Cedar Creek, which begins and ends on the McKenzie River, is essentially a side channel of the McKenzie River composed entirely of McKenzie River water. As noted, McKenzie River water is classified for municipal use and available year-round. However, recognizing that the issue of connectivity between the wells proposed in the Groundwater Applications and the nearby surface water bodies is complex, SUB requested that the Department place the Groundwater Applications on administrative hold while it had an independent consultant study the relationship between the wells and surface water sources. The Department granted the administrative holds.² During the administrative hold period, SUB and its consultant, Mark Cunnane of Western Groundwater Services, worked with the Department's hydrogeologist Marc Norton to resolve whether the proposed wells would substantially interfere with surface water sources. Mr. Cunnane's report, supplemented in October 2002, determined that the use proposed in the Groundwater Applications

² SUB has requested and received administrative holds for all of its water right permit applications, including G-15241, G-15242, G-15243, G-15244, and S-85336. They are currently on hold until April 30, 2005.

had the potential to affect 7.7 cfs of stream flow in the McKenzie River and 2.995 cfs in Cedar Creek.

Following completion of Mr. Cunnane's report, SUB and its representatives met with Mr. Norton in Salem to discuss options for addressing the potential for interference with Cedar Creek that could result from water withdrawals proposed under the Groundwater Applications. As a means of fully addressing any potential interference, Mr. Norton expressed support for the option of SUB submitting a new application for a surface water right from the McKenzie River, and then having SUB divert water under such a surface water right from the McKenzie River and into Cedar Creek. Although such an approach would take time and add cost to the groundwater diversions, Mr. Norton agreed that such an approach would fully compensate for any interference effect that the Groundwater Applications might have on Cedar Creek, and it would avoid further debate over the existence or extent of the potential for interference.

Based on Mr. Cunnane's report and the additional discussions with the Department described above, on November 6, 2002 SUB filed the Surface Application for year-round diversion of 37.0 cfs of water from the McKenzie River for municipal use, and 3.0 cfs from the McKenzie River for stream flow augmentation in Cedar Creek, for a total of 40.0 cfs from the McKenzie River. The 3.0 cfs of stream flow augmentation was meant to mitigate for stream flow depletion in Cedar Creek associated with the Groundwater Applications.

On May 16, 2003, the Department issued its initial review of the Surface Application. The Department determined that 40.0 cfs of water from the McKenzie River is available year-round but that stream flow augmentation in Cedar Creek is not an allowed use under the WBP. It also determined that the proposed 3.0 cfs of stream flow augmentation in Cedar Creek is not a "municipal use" because Cedar Creek is not a "water service system of an incorporated municipality." OAR 690-502-0010(15).³

³ "Municipal Use" is defined as "the delivery and use of water through the water service system of an incorporated municipality or a nonprofit corporation and includes quasi-municipal uses as defined in OAR 690-011." *Id.* SUB believes the Department's determination that the 3.0 cfs of flow augmentation in the Surface Application is not a "municipal use" is an overly narrow reading of the Commission's definition. However, because SUB is amending the Surface Application as proposed by the Department from 3.0 cfs of stream flow augmentation to 4.1 cfs of instream use for fish life and wildlife (*see* Section II below), SUB is not at this time challenging or seeking a reconsideration of that determination. SUB reserves the right to challenge the Department's determination if the Commission does not grant SUB's request for an exception to

Finally, in October 2003 the Department conducted a final review of the Groundwater Applications. It found that the proposed wells appropriate water from unconfined sands and gravel within one-quarter mile of a surface water source (Cedar Creek and McKenzie River). Under OAR 690-009-0040, the Department assumes that wells of such type are hydraulically connected to the surface water source. The Department found that the proposed uses in the Groundwater Applications would affect a total of 4.1 cfs of Cedar Creek's flow.

D. The Department's Proposals for Approving SUB's Permit Applications

On July 9, 2004, the Department wrote to inform SUB that it was prepared to issue Proposed Final Orders (the "PFOs") for the Groundwater Applications and Surface Application. The Department indicated that the PFOs would find that the Groundwater Applications and stream flow augmentation portion of the Surface Application should not be issued.⁴ The Department's letter discussed options that SUB might pursue to allow approval of the Groundwater Applications and Surface Application.

The Department proposed for the Surface Application that SUB either (1) amend the application from 3.0 cfs instream use for flow augmentation to 4.1 cfs instream use "to some other in-stream use or combination of uses, which are allowed by the basin program (*e.g.*, fish life, wildlife)," or (2) petition the Commission "to allow the Department to consider the application notwithstanding the basin program, pursuant to ORS 536.295." As is explained in Section II below, SUB is electing to amend the Surface Application as proposed by the Department.

The Department proposed for the Groundwater Applications that SUB either (1) accept the period of use for Cedar Creek allowed under the WBP, which is three months less than the year-round use applied for, or (2) seek an exception from the Commission to allow the Department to

the WBP and the Department does not approve the Groundwater Applications and the Surface Application, as amended herein.

⁴ The Department's letter states: "As you may recall, on May 16, 2003 the Department issued Initial Reviews (IRs) of these applications indicating it was unlikely that a permit would be issued." As is described above, that statement is only partially correct. The Department's letter dated May 16, 2003 indicated only that application G-15241 had received a negative IR. The Department first indicated that all of SUB's applications would receive negative recommendations in its letter dated July 9, 2004.

Mr. Dwight French
February 7, 2005
Page 6

consider the application notwithstanding the WBP. As is explained in Section III below, SUB is electing to seek an exception from the WBP for the Groundwater Applications.

II. Amendment of the Surface Application

To the extent necessary to obtain approval of the Groundwater Applications, SUB hereby requests to amend the Surface Application as proposed by the Department, that is, surface water permit application S-85336 should be amended from 37.0 cfs of municipal use and 3.0 cfs for streamflow augmentation to 35.9 cfs for municipal use and 4.1 cfs instream use for fish life and wildlife in Cedar Creek. The 4.1 cfs instream use portion of the Surface Application will fully mitigate any potential impacts on Cedar Creek from the wells proposed in SUB's Groundwater Applications. As the Department indicated in its July 9, 2004 letter, with this amendment to the Surface Application the Department can propose issuance of the permit. This approach to mitigation is consistent with the approach proposed in discussions between Mr. Norton, SUB, and SUB's representatives described above.

III. Exception from the Willamette Basin Program for Permit Applications G-15241, G-15243, and G-15244

As noted above, SUB has invested in a Master Plan to direct development that will allow it to continue meeting customer needs and accommodate projected population and economic growth in the greater Springfield area. The Groundwater Applications and Surface Application are integral to the current phase of the Master Plan. Moreover, the Surface Application, which fully mitigates any impacts to Cedar Creek that may occur as a result of approving the Groundwater Applications, also will provide a net benefit to Cedar Creek by placing up to 4.1 cfs of instream water for fish and wildlife use in that system. Failure to approve the Groundwater Applications would cause an extreme hardship for SUB and its customers and would obviate SUB's need to place water instream in Cedar Creek.

SUB qualifies for an exception to the WBP because the exception is necessary to avoid extreme hardship. ORS 536.295(1)(e). Although "extreme hardship" is not defined by the statute or the Department's rules, or explained in any Oregon case law, the Department and Commission have considered the term to include a situation in which "the failure to allow the use would cause financial or other burdens to a water user that could not be easily overcome." See Exhibit F, *OWRD, Memorandum to Water Resources Commission, Request for an Exception to the Willamette Basin Program Due to Extreme Hardship (ORS 536.295(1)(e)) by Pleasant Valley*

Golf Club (May 15, 1995). Thus the burden does not require a showing of complete economic unfeasibility or impossibility.

The “other burdens” that may be considered under the extreme hardship analysis include burdens placed on those who depend on the water use but are not themselves the applicant for a basin program exception. This aspect of the analysis is illustrated by the staff report provided to the Commission in connection with the Greenberry Irrigation District’s (“GID”) request for an exception to the WBP. See OWRD, *Memorandum to Water Resources Commission, Request for an Exception to the Willamette Basin Program Due to Extreme Hardship [ORS 536.295(1)(e)] by Greenberry Irrigation District* (February 14, 2003). GID requested an exception from the WBP for irrigation use, a non-classified use in that region of the Willamette River, that would act as a “bridge” water right while GID arranged to use stored water, a classified use, under contract with the U.S. Bureau of Reclamation. Failure to grant the exception would have financially impacted GID because without a stable water supply it could not obtain financing to construct the irrigation system necessary to supply its patrons. Equally important, however, was that the farmers who rely on GID water, and the people those farms employ, could all suffer financial hardship if GID did not receive an exception from the WBP. According to the staff report, “failure to allow the exception to the basin program would cause extreme hardship due to loss of the economic viability of farms within GID and the potential loss of jobs.” *Id.* at 4. Thus the Department and the Commission have recognized that the extreme hardship analysis reaches to those affected by the failure to grant an exception even if they are not the applicant for the basin program exception.

To the analysis in these prior Commission decisions SUB adds another element of the test for extreme hardship: the level of hardship that must be shown ought to be related to the level of resource impact that the proposed use might cause. In a situation such as the present one, in which the threat to the Willamette River Basin’s values is negligible because SUB is able to fully mitigate for potential impacts to Cedar Creek, the level of hardship required should be correspondingly reduced.

In the present case, the level of financial hardship that would be caused by denial of the Groundwater Applications would be “extreme,” because failure to approve them would result in SUB losing its investment of time and money in the well fields, and that failure is certain to require more time and an even greater financial expenditure to replace the lost capacity.⁵ As

⁵ SUB notes that its investment to date in the wells that are the subject of the Groundwater Applications easily exceeds \$1 million. If SUB cannot put those wells to use, it will have to develop additional wells or seek water from other sources to meet its customers’ needs. Thus

noted above, the Master Plan calls for developing additional water supply to keep pace with growth in SUB's service area. SUB has no choice but to find new water supplies. Moreover, the hardship created by any delay serves to increase the likelihood that SUB will not be able to meet customer demand and will have to pass along to its rate payers the costs of additional water supply development.

Similar to the GID situation discussed above, denial of the Groundwater Applications also would create an additional type of extreme hardship, namely, an inability to provide a safe, adequate water supply to the residences and businesses that rely on SUB for water. As noted above, the proposed use is not classified for the three-month period from July 1 through September 30. This three-month period is critically important to SUB as a water utility responsible for supplying municipal water to residential and business customers because the period often corresponds with SUB's peak annual demand. An inability to meet that demand would lead to water shortages in the Springfield area and place the local population at risk of not having an adequate water supply.⁶ Water shortages would affect SUB's ability to supply clean, safe water to residential and business customers, causing an extreme hardship over which those customers would have little or no control. Water shortages also would cause extreme hardship by degrading water reserves for fire protection. Such shortages could result in loss of property or life. Thus the use during the three-month period not classified under the WBP is necessary to ensure public health, welfare, and safety for Oregonians in the greater Springfield area, and SUB's inability to supply water for those purposes would cause an extreme hardship for SUB and the local population.⁷

SUB will have lost its current investment and still need to invest an equal or greater amount to replace the lost groundwater use.

⁶ The legislature has found as part of the state's water supply policy that "the availability of an adequate water supply is essential to the continued health and safety of all Oregonians." ORS 536.241(1). The legislature's concern over the link between water supply and public health is evident elsewhere in ORS chapter 536. *See, e.g.*, ORS 536.238(1)(d) ("The potential for a future shortage of water poses serious risks to public health, safety and welfare and therefore is a matter of statewide concern."). To the extent that municipal use also includes domestic use or other forms of human consumption, that use also is given priority treatment by the legislature. ORS 536.310(12) (in resolving conflict between uses "preference shall be given to human consumption purposes over all other uses").

⁷ After discussion with Department staff, SUB has decided to base this request for exception on ORS 536.295(1)(e). SUB reserves the right to raise other bases for its request for exception, pursuant to ORS 536.295(1), in the event the Commission were to determine that the exception is not warranted under ORS 536.295(1)(e).

IV. Consistency with the Willamette Basin Program's General Policies

The Groundwater Applications also satisfy the exception statute's requirement that the proposed use be consistent with the general policies of the WBP. ORS 536.295(4). The proposed use is not inconsistent with any of the WBP's policies, and it is specifically consistent with at least two of those policies.

A. Groundwater Management

One of the Commission's policies for the Willamette Basin is to "[m]inimize impairment of surface water uses resulting from hydraulic connection between groundwater and surface water." OAR 690-502-0020(2)(d). SUB has repeatedly made every effort to work with the Department to avoid impairing surface water uses. For example, SUB's response to the Department's initial reviews of the Groundwater Applications was to commission a study of the potential hydraulic connection between the proposed groundwater wells and nearby surface water sources. The report that resulted from that study identified a potential for interaction between the aquifer from which the wells appropriate water and Cedar Creek. To alleviate and fully mitigate that potential interaction, SUB filed the Surface Application, which included 3.0 cfs of instream use in Cedar Creek, and as amended will include 4.1 cfs of instream use. Approval of the Surface Application will ensure that approval of the Groundwater Applications will not impair surface water uses from Cedar Creek.

B. Municipal and Domestic Water Systems

Another of the Commission's policies for the Willamette Basin is to "[s]upport coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin." OAR 690-502-0020(3). SUB's activities, including the Groundwater Applications, are consistent with this policy. SUB has extensively invested in coordinated water service planning as evidenced by the Master Plan and WCP. Through the Master Plan, SUB has coordinated efficient water system planning and cost-effective water supply development with RWD. Through the WCP, SUB has identified water conservation opportunities within its service territory and has actively pursued implementing those opportunities. Together the Master Plan and WCP represent SUB's substantial investment in water service planning "to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin." *Id.*

Mr. Dwight French
February 7, 2005
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V. Conclusion

In conclusion, SUB requests that, pursuant to ORS 536.295, the Commission allow the Department to consider SUB's year-round Groundwater Applications notwithstanding the WBP classification that Cedar Creek water is available for only nine months of the year. SUB also hereby requests that its Surface Application be amended as described above. Approval of SUB's amended Surface Application will fully mitigate any potential interference between the Groundwater Applications and Cedar Creek.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Greg D. Corbin

cc: Mr. Chuck Arrera, Springfield Utility Board
Mr. David E. Filippi, Stoel Rives LLP



STOEL
RIVES
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ATTORNEYS AT LAW

900 S.W. Fifth Avenue, Suite 2600
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MR CORY ENGEL
OREGON WATER RESOURCES DEPARTMENT
725 SUMMER STREET NE SUITE A
SALEM OR 97301-1271



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

December 16, 2005

GREG D. CORBIN
Direct (503) 294-9632
gdcorbin@stoel.com

VIA U.S. FIRST-CLASS MAIL

Mr. Mike Reynolds
Mr. Cory Engel
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

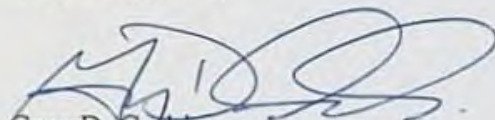
**Re: In the Matter of the Proposed Final Orders for Water Right Applications S-85336,
G-15241, G-15243, and G-15244**

Dear Mr. Reynolds and Mr. Engel:

This firm represents the Springfield Utility Board with respect to the above-referenced matters. Please find enclosed for filing the Springfield Utility Board's Protest and Request for Contested Case Hearing on the four Proposed Final Orders for Water Right Applications referenced above. Because the Springfield Utility Board is the applicant, no protest fee is required or enclosed.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Greg D. Corbin

Enclosures
cc: Mr. Chuck Arrera (w/encls.)

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**WATER RESOURCES DEPT
SALEM, OREGON**

**BEFORE THE WATER RESOURCES COMMISSION
OF THE
STATE OF OREGON**

In the Matter of the Proposed Final Order
Proposing to Grant Water Right Application
No. S-85336

**PROTEST AND REQUEST FOR
HEARING OF SPRINGFIELD UTILITY
BOARD**

Springfield Utility Board ("SUB") hereby protests and otherwise appeals the Proposed Final Order (the "PFO") and draft permit issued by the Oregon Water Resources Department (the "Department") on November 8, 2005, proposing to approve with conditions Water Right Application No. S-85336 submitted by SUB on November 8, 2002 (the "Application"). By way of this protest, SUB also hereby requests a hearing on this matter.

1. Protestant's Name, Address, and Telephone Number. Orders, notices, and other correspondence concerning this matter should be sent to:

Mr. Chuck Arrera
Springfield Utility Board
202 S 18th Street
Springfield, Oregon 97477
(541) 726-2396

with copies to:

Greg D. Corbin
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204
(503) 294-9632

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SALEM, OREGON**

2. Springfield Utility Board's Interests. SUB is the named applicant for the Application and a municipal water supplier to the city of Springfield, Oregon. The Application seeks to use 40.0 cubic feet per second ("cfs") from the McKenzie River for municipal use and streamflow augmentation.

On May 16, 2003, the Department issued its Initial Review of the Application, determining that "the use of 37.0 cubic feet per second from McKenzie River for municipal use may be allowed year-round. However, 3.0 cubic feet per second for streamflow augmentation in Cedar Creek is not allowable. At this stage of processing, it appears unlikely that a permit approving this application would include streamflow augmentation." (PFO at 1.) On May 20, 2003, the Department gave public notice of the Application. On December 10, 2004, SUB amended the amount and use of water to 35.9 cfs for municipal use and 4.1 cfs for fish life and wildlife uses. The Eugene Water and Electric Board and Cedar Creek Irrigation District submitted written comments in support of the Application.

The Department found that the Willamette Basin Program allows municipal use and streamflow augmentation in Cedar Creek. The Department further determined that the amount of water requested (40 cfs) is an acceptable amount and that the proposed use is allowed under the applicable basin plan, or a preference for this use is granted under the provisions of ORS 536.310(12). (PFO at 3-4.) The Department therefore concluded that water is available in the amount necessary for the proposed use, the proposed use will not result in injury to existing water rights, and the proposed use will not impair or be detrimental to the public interest, as provided in ORS 537.170. Thereafter the Department issued the PFO and Draft Permit.

The Draft Permit includes the following condition, which is the subject of this protest:

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2010. 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.

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(Draft Permit at 3.) As discussed in more detail in Section 4 below, the foregoing condition is inconsistent with the Oregon legislature's 2005 amendments to ORS 537.230 and 537.630

and SUB's representations concerning its intent to develop the water right within the time allowed by amended ORS 537.230 and 537.630.

3. **Standing.** Pursuant to ORS 537.621(7), an applicant for a water right permit may protest a proposed final order approving or denying a water rights application. ORS 537.621(7).

4. **The Completion-of-Construction Provision and Deadline in the Draft Permit Is Improper.** The Draft Permit included with the PFO approves the Application subject to a five-year completion-of-construction deadline, as set forth above in Section 2. (Draft Permit at 3.) However, in 2005 the Oregon legislature passed House Bill 3038, amending ORS 537.230 and 537.670 to establish a 20-year deadline to commence and complete construction or perfect a municipal water right. Subsection 2 of ORS 537.230 was amended to provide, in part:

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause * * *; [and]

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan[.]

Or Laws 2005, ch 410, § 1.

In addition, ORS 537.630 was amended to provide, in part:

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which the permit

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for municipal use is issued under ORS 537.625. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder of the permit for municipal use shows good cause * * *; [and]

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan[.]

Or Laws 2005, ch 410, § 2.

HB 3038 and the amendments to ORS 537.230 and 537.630 took effect on June 29, 2005, and apply to water right permits issued after that date. Or Laws 2005, ch 410, § 5. The Department understood as much when it asked SUB to provide additional documentation for the Application file concerning the time in which SUB intended to complete construction of the works. SUB responded to that request on October 12, 2005, stating that SUB intended to complete construction within 20 years from the date the final permit is issued, consistent with amended ORS 537.230(2) and 537.630(2). (A copy of the response letter is attached as Exhibit A.) Consequently, the condition on page 3 of the Draft Permit concerning completion of construction is both inconsistent with SUB's intent and the understanding between SUB and the Department, and is, by virtue of the amendments to ORS 537.230(2) and 537.630(2) by HB 3038, invalid as a matter of law.

5. Relief Requested. SUB respectfully requests the following language be substituted for the completion-of-construction condition on page 3 of the Draft Permit:

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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To the extent the Department will substitute the foregoing for the completion of construction provision in the Draft Permit, and makes no other changes to the PFO or Draft Permit, SUB will withdraw this protest. If the Commission does not grant the relief sought, SUB hereby requests a contested case hearing pursuant to ORS 183.413 and OAR chapter 690, divisions 1 and 2.

6. **Protest Fee.** No protest fee is required because the protestant in this instance is the applicant. OAR 690-310-0160(1)(f).

DATED: December 15, 2005.

STOEL RIVES LLP

Greg D. orbin, OSB No. 00033
Of Attorneys for Springfield Utility Board

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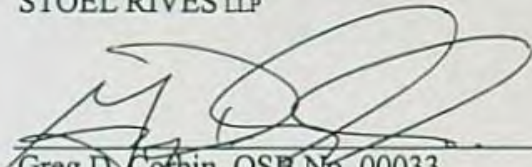
**WATER RESOURCES DEPT
SALEM, OREGON**

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DATED: December 16, 2005.

STOEL RIVES LLP



Greg D. Corbin, OSB No. 00033
Of Attorneys for Springfield Utility Board

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SALEM, OREGON**



SPRINGFIELD UTILITY BOARD

202 South 18th Street Springfield, OR 97477-5240 Tel: 541.726.2396 Fax: 541.747.7348 www.subutl.com

October 12, 2005

Mr. Cory Engel
Water Right Application Caseworker
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-0900

RE: Application Files S-85336, G-15241, G-15242, G-15243, G-15244

Dear Mr. Engel:

The Springfield Utility Board intends to complete construction of proposed works for the above referenced surface and groundwater applications. All construction will be completed within 20 years from the date of permit issue.

In the first quarter of 2006, SUB will be constructing the first phase of transmission mains sized to accommodate the new water source designated in these applications. Due to timing of ODOT paving projects on Highway 126, it is necessary that we install these mains in anticipation of receiving water rights.

Please call me at (541) 726-2396 if you have any questions.

Sincerely,

Charles C. Arrera PE
Director of Water Engineering and Operations

CA:mkm

cc: Greg Corbin, Stoel Rives

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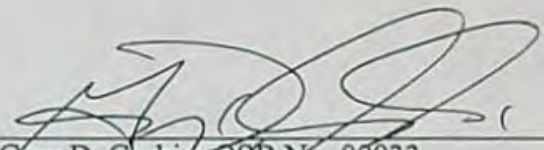
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SALEM, OREGON

EXHIBIT A

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 16, 2005 I filed the original of **PROTEST AND REQUEST FOR HEARING OF SPRINGFIELD UTILITY BOARD** with Michael J. Reynolds and Cory Engel, Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301-1271 by first class mail.

DATED: December 16, 2005.



Greg D. Corbin, OSB No. 00033
Of Attorneys for SPRINGFIELD UTILITY
BOARD

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WATER RESOURCES DEPT
SALEM, OREGON



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December 16, 2005

GREG D. CORBIN
Direct (503) 294-9632
gdcorbin@stoel.com

VIA U.S. FIRST-CLASS MAIL

Mr. Mike Reynolds
Mr. Cory Engel
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

**Re: In the Matter of the Proposed Final Orders for Water Right Applications S-85336,
G-15241, G-15243, and G-15244**

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**WATER RESOURCES DEPT
SALEM, OREGON**

**BEFORE THE WATER RESOURCES COMMISSION
OF THE
STATE OF OREGON**

In the Matter of the Proposed Final Order
Proposing to Grant Water Right Application
No. S-85336

PROTEST AND REQUEST FOR
HEARING OF SPRINGFIELD UTILITY
BOARD

Springfield Utility Board ("SUB") hereby protests and otherwise appeals the Proposed Final Order (the "PFO") and draft permit issued by the Oregon Water Resources Department (the "Department") on November 8, 2005, proposing to approve with conditions Water Right Application No. S-85336 submitted by SUB on November 8, 2002 (the "Application"). By way of this protest, SUB also hereby requests a hearing on this matter.

1. Protestant's Name, Address, and Telephone Number. Orders, notices, and other correspondence concerning this matter should be sent to:

Mr. Chuck Arrera
Springfield Utility Board
202 S 18th Street
Springfield, Oregon 97477
(541) 726-2396

with copies to:

Greg D. Corbin
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204
(503) 294-9632

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SALEM, OREGON

2. Springfield Utility Board's Interests. SUB is the named applicant for the Application and a municipal water supplier to the city of Springfield, Oregon. The Application seeks to use 40.0 cubic feet per second ("cfs") from the McKenzie River for municipal use and streamflow augmentation.

On May 16, 2003, the Department issued its Initial Review of the Application, determining that "the use of 37.0 cubic feet per second from McKenzie River for municipal use may be allowed year-round. However, 3.0 cubic feet per second for streamflow augmentation in Cedar Creek is not allowable. At this stage of processing, it appears unlikely that a permit approving this application would include streamflow augmentation." (PFO at 1.) On May 20, 2003, the Department gave public notice of the Application. On December 10, 2004, SUB amended the amount and use of water to 35.9 cfs for municipal use and 4.1 cfs for fish life and wildlife uses. The Eugene Water and Electric Board and Cedar Creek Irrigation District submitted written comments in support of the Application.

The Department found that the Willamette Basin Program allows municipal use and streamflow augmentation in Cedar Creek. The Department further determined that the amount of water requested (40 cfs) is an acceptable amount and that the proposed use is allowed under the applicable basin plan, or a preference for this use is granted under the provisions of ORS 536.310(12). (PFO at 3-4.) The Department therefore concluded that water is available in the amount necessary for the proposed use, the proposed use will not result in injury to existing water rights, and the proposed use will not impair or be detrimental to the public interest, as provided in ORS 537.170. Thereafter the Department issued the PFO and Draft Permit.

The Draft Permit includes the following condition, which is the subject of this protest:

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2010. 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.

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(Draft Permit at 3.) As discussed in more detail in Section 4 below, the foregoing condition is inconsistent with the Oregon legislature's 2005 amendments to ORS 537.230 and 537.630

and SUB's representations concerning its intent to develop the water right within the time allowed by amended ORS 537.230 and 537.630.

3. **Standing.** Pursuant to ORS 537.621(7), an applicant for a water right permit may protest a proposed final order approving or denying a water rights application. ORS 537.621(7).

4. **The Completion-of-Construction Provision and Deadline in the Draft Permit Is Improper.** The Draft Permit included with the PFO approves the Application subject to a five-year completion-of-construction deadline, as set forth above in Section 2. (Draft Permit at 3.) However, in 2005 the Oregon legislature passed House Bill 3038, amending ORS 537.230 and 537.670 to establish a 20-year deadline to commence and complete construction or perfect a municipal water right. Subsection 2 of ORS 537.230 was amended to provide, in part:

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause * * *; [and]

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan[.]

Or Laws 2005, ch 410, § 1.

In addition, ORS 537.630 was amended to provide, in part:

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which the permit

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for municipal use is issued under ORS 537.625. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder of the permit for municipal use shows good cause * * *; [and]

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan[.]

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HB 3038 and the amendments to ORS 537.230 and 537.630 took effect on June 29, 2005, and apply to water right permits issued after that date. Or Laws 2005, ch 410, § 5. The Department understood as much when it asked SUB to provide additional documentation for the Application file concerning the time in which SUB intended to complete construction of the works. SUB responded to that request on October 12, 2005, stating that SUB intended to complete construction within 20 years from the date the final permit is issued, consistent with amended ORS 537.230(2) and 537.630(2). (A copy of the response letter is attached as Exhibit A.) Consequently, the condition on page 3 of the Draft Permit concerning completion of construction is both inconsistent with SUB's intent and the understanding between SUB and the Department, and is, by virtue of the amendments to ORS 537.230(2) and 537.630(2) by HB 3038, invalid as a matter of law.

5. Relief Requested. SUB respectfully requests the following language be substituted for the completion-of-construction condition on page 3 of the Draft Permit:

Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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To the extent the Department will substitute the foregoing for the completion of construction provision in the Draft Permit, and makes no other changes to the PFO or Draft Permit, SUB will withdraw this protest. If the Commission does not grant the relief sought, SUB hereby requests a contested case hearing pursuant to ORS 183.413 and OAR chapter 690, divisions 1 and 2.

6. **Protest Fee.** No protest fee is required because the protestant in this instance is the applicant. OAR 690-310-0160(1)(f).

DATED: December 15, 2005.

STOEL RIVES LLP

Greg D. orbin, OSB No. 00033
Of Attorneys for Springfield Utility Board

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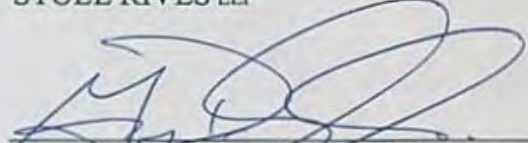
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SALEM, OREGON**



SPRINGFIELD UTILITY BOARD

WATER RESOURCES DEPT 202 South 18th Street Springfield, OR 97477-5240 Tel 541.726.2396 Fax 541.747.7348 www.subutl.com

October 12, 2005

Mr. Cory Engel
Water Right Application Caseworker
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-0900

RE: Application Files S-85336, G-15241, G-15242, G-15243, G-15244

Dear Mr. Engel:

The Springfield Utility Board intends to complete construction of proposed works for the above referenced surface and groundwater applications. All construction will be completed within 20 years from the date of permit issue.

In the first quarter of 2006, SUB will be constructing the first phase of transmission mains sized to accommodate the new water source designated in these applications. Due to timing of ODOT paving projects on Highway 126, it is necessary that we install these mains in anticipation of receiving water rights.

Please call me at (541) 726-2396 if you have any questions.

Sincerely,

Charles C. Arrera PE
Director of Water Engineering and Operations

CA:mkm

cc: Greg Corbin, Stoel Rives

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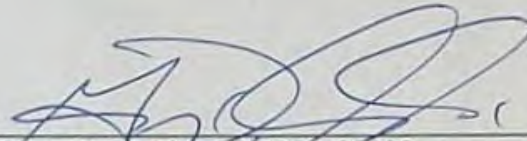
WATER RESOURCES DEPT
SALEM, OREGON

EXHIBIT A

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 16, 2005 I filed the original of **PROTEST AND REQUEST FOR HEARING OF SPRINGFIELD UTILITY BOARD** with Michael J. Reynolds and Cory Engel, Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301-1271 by first class mail.

DATED: December 16, 2005.



Greg D. Corbin, OSB No. 00033
Of Attorneys for SPRINGFIELD UTILITY
BOARD

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SALEM, OREGON

**BEFORE THE WATER RESOURCES COMMISSION
OF THE
STATE OF OREGON**

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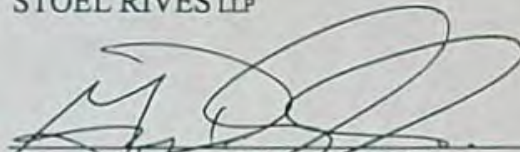
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DATED: December 16, 2005.

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Greg D. Corbin, OSB No. 00033
Of Attorneys for Springfield Utility Board

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SALEM, OREGON



SPRINGFIELD UTILITY BOARD

202 South 18th Street Springfield, OR 97477-5240 Tel: 541.726.2396 Fax: 541.747.7348 www.sub.or.gov

October 12, 2005

Mr. Cory Engel
Water Right Application Caseworker
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-0900

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Sincerely,

Charles C. Arrera PE
Director of Water Engineering and Operations

CA:mkm

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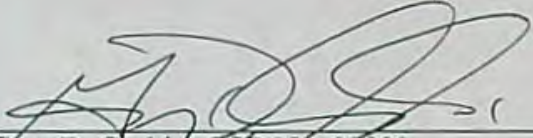
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Greg D. Corbin, OSB No. 00033
Of Attorneys for SPRINGFIELD UTILITY
BOARD

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**WATER RESOURCES DEPT
SALEM, OREGON**

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications G-15241,)
G-15243, G-15244, and S-85336 in the name of)
Springfield Utility Board)
Applicants and Protestants)
_____)

AMENDMENT TO
SETTLEMENT AGREEMENT

On February 24, 2006, the Oregon Water Resources Department ("OWRD") and Springfield Utility Board ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," entered into a "Settlement Agreement" pertaining to Applicant's water right applications G-15241, G-15243, G-15244, and S-85336. This document is an "Amendment" to the Settlement Agreement.

1. The Parties agree that Stipulation IV of the Settlement Agreement is amended to read in its entirety as follows:

"OWRD and Applicant agree that all issues raised in Applicant's protests against the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 are resolved solely on the following terms, including any amendment(s) to this Settlement Agreement."

2. The Parties agree that Term #1 of the Settlement Agreement is amended to read in its entirety as follows:

"In signing this Settlement Agreement, and contingent on OWRD performing in accordance with this Settlement Agreement and any Amendment(s) thereto, Applicant withdraws its protests to the PFOs for Applications G-15241, G-15243, G-15244, and S-85336 with prejudice."

3. The Parties agree that Term #2 of the Settlement Agreement is amended to read in its entirety as follows:

"Regarding Applications G-15241, G-15243, G-15244, and S-85336, upon full performance under this Settlement Agreement and any Amendment(s) thereto, Applicant expressly waives all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Orders or Permits, in addition to waiving any right and opportunity to challenge this Settlement Agreement."

4. The Parties agree that Term #4 of the Settlement Agreement is modified to state, in its entirety:

"Except as provided below, no later than January 26, 2007, OWRD will issue Final Orders and Permits that are consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement. Any Final Orders on water right applications G-15241, G-15243, G-15244, and S-85336 will incorporate the February 24, 2006 Settlement Agreement and any Amendment(s) thereto, by reference and as attachments.

On or before November 27, 2006, the Applicant may submit additional information or proposals to OWRD pertaining to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

If the Applicant timely submits such information or proposals, OWRD will make a determination, no later than December 27, 2006, as to whether any modification to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336 will be approved.

In the event that the Applicant submits information or proposals to OWRD as provided above, but OWRD determines that no modifications will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Parties agree that OWRD will issue, no later than January 26, 2007, final orders and permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement.

If OWRD determines that modification(s) will be made to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, OWRD will issue, no later than January 26, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement, except as modified by OWRD.

In addition to the Applicant's waivers contained in Term #2 of the February 24, 2006 Settlement Agreement including any amendment(s) to Term #2, the Applicant hereby expressly waives all right and opportunity to challenge any determination by OWRD as to whether modifications will or will not be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336. Applicant also hereby expressly waives all right and opportunity to challenge any modification(s) made by OWRD to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

However, if the Applicant disagrees with modification(s) that OWRD has determined will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Applicant may submit a letter to OWRD on or before January 10, 2007, requesting to retain the mitigation requirements set forth in the February 24, 2006 Settlement Agreement and the attached Draft Final Orders and Draft Permits. If the Applicant timely makes such a request, OWRD will issue, no later than February 8, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement."

5. The Parties to this Amendment agree that this Amendment does not allow, and cannot be construed to allow, any challenge whatsoever to the February 24, 2006 Settlement Agreement including the attached Draft Final Orders and Draft Permits, this Amendment, or Final Orders or Permits for water right applications G-15241, G-15243, G-15244, and S-85336.

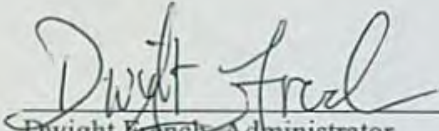
6. Except as provided above, the Parties to this Amendment agree that the Settlement Agreement is unchanged and remains in full effect.

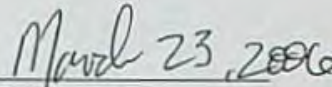
7. The Parties to this Amendment acknowledge that the time periods specified in item #4, above, may be extended for a reasonable duration by an additional amendment to the Settlement Agreement. However, neither Party is bound to propose or agree to any such additional amendment, and any additional amendment would require the written agreement of both Parties.

8. Each Party to this Amendment represents, warrants, and agrees that the person who executed this Amendment on its behalf has the full right and authority to enter into this Amendment on behalf of that Party and bind that Party to the terms of this Amendment.

9. Each Party to this Amendment certifies that they have had a reasonable opportunity to review and request changes to the Amendment, and that they have signed this Amendment of their own free will and accord. Each Party to this Amendment also certifies that it has read the entire Amendment, and understands and fully agrees with the contents thereof.

10. This Amendment may be signed in counterparts.


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301


Date

Springfield Utility Board, Applicant

Date

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On or before November 27, 2006, the Applicant may submit additional information or proposals to OWRD pertaining to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

If the Applicant timely submits such information or proposals, OWRD will make a determination, no later than December 27, 2006, as to whether any modification to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336 will be approved.

In the event that the Applicant submits information or proposals to OWRD as provided above, but OWRD determines that no modifications will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Parties agree that OWRD will issue, no later than January 26, 2007, final orders and permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement.

If OWRD determines that modification(s) will be made to mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, OWRD will issue, no later than January 26, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement, except as modified by OWRD.

In addition to the Applicant's waivers contained in Term #2 of the February 24, 2006 Settlement Agreement including any amendment(s) to Term #2, the Applicant hereby expressly waives all right and opportunity to challenge any determination by OWRD as to whether modifications will or will not be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336. Applicant also hereby expressly waives all right and opportunity to challenge any modification(s) made by OWRD to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336.

However, if the Applicant disagrees with modification(s) that OWRD has determined will be made to the mitigation requirements associated with water right applications G-15241, G-15243, G-15244, and S-85336, the Applicant may submit a letter to OWRD on or before January 10, 2007, requesting to retain the mitigation requirements set forth in the February 24, 2006 Settlement Agreement and the attached Draft Final Orders and Draft Permits. If the Applicant timely makes such a request, OWRD will issue, no later than February 8, 2007, Final Orders and Permits consistent with the Draft Final Orders and Draft Permits attached to the February 24, 2006 Settlement Agreement."

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MAR 23 2006

WATER RESOURCES DEPT
SALEM OREGON

5. The Parties to this Amendment agree that this Amendment does not allow, and cannot be construed to allow, any challenge whatsoever to the February 24, 2006 Settlement Agreement including the attached Draft Final Orders and Draft Permits, this Amendment, or Final Orders or Permits for water right applications G-15241, G-15243, G-15244, and S-85336.

6. Except as provided above, the Parties to this Amendment agree that the Settlement Agreement is unchanged and remains in full effect.

7. The Parties to this Amendment acknowledge that the time periods specified in item #4, above, may be extended for a reasonable duration by an additional amendment to the Settlement Agreement. However, neither Party is bound to propose or agree to any such additional amendment, and any additional amendment would require the written agreement of both Parties.

8. Each Party to this Amendment represents, warrants, and agrees that the person who executed this Amendment on its behalf has the full right and authority to enter into this Amendment on behalf of that Party and bind that Party to the terms of this Amendment.

9. Each Party to this Amendment certifies that they have had a reasonable opportunity to review and request changes to the Amendment, and that they have signed this Amendment of their own free will and accord. Each Party to this Amendment also certifies that it has read the entire Amendment, and understands and fully agrees with the contents thereof.

10. This Amendment may be signed in counterparts.

Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Date


Springfield Utility Board, Applicant

3/22/06
Date

RECEIVED

MAR 23 2006

WATER RESOURCES DEPT
SALEM OREGON

Subject: RE: SUB completion of construction language
Date: Tue, 13 Dec 2005 09:35:22 -0800
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: SUB completion of construction language
Thread-Index: AcX/oEsz6we7Ze3QmC7VxCJczEwOAAAVJpgAAKQfSAAAEEmTIA==
From: "Corbin, Greg" <GDCORBIN@stoel.com>
To: "Dwight French" <Dwight.W.FRENCH@wrđ.state.or.us>
Cc: "Cory Engel" <Cory.C.ENGEL@wrđ.state.or.us>
X-OriginalArrivalTime: 13 Dec 2005 17:35:21.0654 (UTC) FILETIME=[97B59D60:01C6000B]
X-MIME-Autoconverted: from quoted-printable to 8bit by kettle.wrđ.state.or.us id jBDHEYn24736
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrđ.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Understood. I will prepare appropriate protests. Thanks to both of you for focusing on this issue at this early stage.

Greg

-----Original Message-----

From: Dwight French [mailto:Dwight.W.FRENCH@wrđ.state.or.us]
Sent: Tuesday, December 13, 2005 9:28 AM
To: Corbin, Greg
Cc: 'Cory Engel'
Subject: RE: SUB completion of construction language

Greg and Cory,

I think this is on the right track. However, I don't think it is prudent to commit to a language change at this point since we're in the middle of the protest period and we may receive protests from third parties.

After the close of the protest period, we'll look at the information in front of us and decide what to do next.

Dwight

-----Original Message-----

From: Corbin, Greg [mailto:GDCORBIN@stoel.com]
Sent: Tuesday, December 13, 2005 8:15 AM
To: Cory Engel
Cc: Dwight.W.FRENCH@wrđ.state.or.us
Subject: RE: SUB completion of construction language

Cory & Dwight,

Yes, Cory has captured my comments. I expect to talk with Chuck Arrera at SUB this afternoon to discuss this further. Assuming no additional issues come up, I believe this language would work for SUB and could be used to

From: "Dwight French" <Dwight.W.FRENCH@wrđ.state.or.us>
To: "Corbin, Greg" <GDCORBIN@stoel.com>
Cc: "Cory Engel" <Cory.C.ENGEL@wrđ.state.or.us>
Subject: RE: SUB completion of construction language
Date: Tue, 13 Dec 2005 09:28:16 -0800
X-Mailer: Microsoft Office Outlook, Build 11.0.6353
Thread-Index: AcX/oEsz6we7Ze3QmC7VxCJczEwOAAAVJpgAAKQfSA=
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrđ.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Greg and Cory,
I think this is on the right track. However, I don't think it is prudent to commit to a language change at this point since we're in the middle of the protest period and we may receive protests from third parties.

After the close of the protest period, we'll look at the information in front of us and decide what to do next.
Dwight

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From: Corbin, Greg [mailto:GDCORBIN@stoel.com]
Sent: Tuesday, December 13, 2005 8:15 AM
To: Cory Engel
Cc: Dwight.W.FRENCH@wrđ.state.or.us
Subject: RE: SUB completion of construction language

Cory & Dwight,

Yes, Cory has captured my comments. I expect to talk with Chuck Arrera at SUB this afternoon to discuss this further. Assuming no additional issues come up, I believe this language would work for SUB and could be used to streamline the protests as Cory and I have discussed. Please advise if the Department is comfortable with this language.

Greg

-----Original Message-----

From: Cory Engel [mailto:Cory.C.ENGEL@wrđ.state.or.us]
Sent: Tuesday, December 13, 2005 8:02 AM
To: Corbin, Greg
Cc: Dwight.W.FRENCH@wrđ.state.or.us
Subject: RE: SUB completion of construction language

Greg,

If I understand you correctly, you would agree to this language:

Subject: RE: SUB completion of construction language
Date: Tue, 13 Dec 2005 08:14:38 -0800
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: SUB completion of construction language
Thread-Index: AcX/oEsz6we7Ze3QmC7VxCJczEwOAAAVJpg
From: "Corbin, Greg" <GDCORBIN@stoel.com>
To: "Cory Engel" <Cory.C.ENGEL@wrdd.state.or.us>
Cc: <Dwight.W.FRENCH@wrdd.state.or.us>
X-OriginalArrivalTime: 13 Dec 2005 16:14:39.0283 (UTC) FILETIME=[516E7030:01C60000]
X-MIME-Autoconverted: from quoted-printable to 8bit by kettle.wrdd.state.or.us id jBDFrwC12765
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrdd.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Cory & Dwight,

Yes, Cory has captured my comments. I expect to talk with Chuck Arrera at SUB this afternoon to discuss this further. Assuming no additional issues come up, I believe this language would work for SUB and could be used to streamline the protests as Cory and I have discussed. Please advise if the Department is comfortable with this language.

Greg

-----Original Message-----

From: Cory Engel [mailto:Cory.C.ENGEL@wrdd.state.or.us]
Sent: Tuesday, December 13, 2005 8:02 AM
To: Corbin, Greg
Cc: Dwight.W.FRENCH@wrdd.state.or.us
Subject: RE: SUB completion of construction language

Greg,

If I understand you correctly, you would agree to this language:

"Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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."

This is identical to the standard language in the PFOs, except that the phrase "on or before October 1, 2010" has been replaced with "within 20 years of the date of this permit". Again, if I understand correctly, you would also agree to simply changing the year from 2010 to 2025.

To: "Corbin, Greg" <GDCORBIN@stoel.com>
From: Cory Engel <Cory.C.ENGEL@wrд.state.or.us>
Subject: RE: SUB completion of construction language
Cc: Dwight French
Bcc: f\Specific applications\SUB
Attached:

Greg,

If I understand you correctly, you would agree to this language:

"Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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."

This is identical to the standard language in the PFOs, except that the phrase "on or before October 1, 2010" has been replaced with "within 20 years of the date of this permit". Again, if I understand correctly, you would also agree to simply changing the year from 2010 to 2025.

By copy of this reply, I'm referring your proposal to Dwight for his consideration.

Cory Engel
Water Right Application Caseworker
Oregon Water Resources Department
725 Summer St NE Ste A
Salem OR 97301-1266
Phone: 503-986-0813
Fax: 503-986-0901
<http://www.wrд.state.or.us/>

At 04:17 PM 12/12/2005, you wrote:
Cory,

I don't think this is beyond reaching an agreement prior to filing a protest. Note that the second sentence of your proposed new paragraph still states that if the water is not completely applied the permittee can seek an extension. Reading my first sentence together with your second sentence it is clear that complete application of the water is required. My sentence simply separates the activities of completing construction and application of water. If the department is uncomfortable with that separation, SUB would agree to an almost identical repeat of the first sentence in the draft permit:

"Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit."

Subject: RE: SUB completion of construction language
Date: Mon, 12 Dec 2005 16:17:02 -0800
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: SUB completion of construction language
Thread-Index: AcXdr7i2F8dVISORfmLEuXK1y8huAAAmfCg
From: "Corbin, Greg" <GDCORBIN@stoel.com>
To: "Cory Engel" <Cory.C.ENGEL@wrđ.state.or.us>
X-OriginalArrivalTime: 13 Dec 2005 00:17:02.0664 (UTC) FILETIME=[8A9E2480:01C5FF7A]
X-MIME-Autoconverted: from quoted-printable to 8bit by kettle.wrđ.state.or.us id jBCNuIS14259
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrđ.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Cory,

I don't think this is beyond reaching an agreement prior to filing a protest. Note that the second sentence of your proposed new paragraph still states that if the water is not completely applied the permittee can seek an extension. Reading my first sentence together with your second sentence it is clear that complete application of the water is required. My sentence simply separates the activities of completing construction and application of water. If the department is uncomfortable with that separation, SUB would agree to an almost identical repeat of the first sentence in the draft permit:

"Completion of construction and complete application of the water to the use shall be made within 20 years of the date of this permit."

If you prefer to put in the exact date instead of using the phrase "within 20 years of the date of this permit", that also is acceptable.

Please advise if this works for the department.

Greg

-----Original Message-----

From: Cory Engel [mailto:Cory.C.ENGEL@wrđ.state.or.us]
Sent: Monday, December 12, 2005 3:50 PM
To: Corbin, Greg
Subject: RE: SUB completion of construction language

Greg,

I have discussed your proposal with Dwight. The language you provided omits the requirement to completely apply the water to beneficial use by a certain date, an important element of both the language in our PFOs as well as the revised proposed language I provided to you.

To: "Corbin, Greg" <GDCORBIN@stoel.com>
From: Cory Engel <Cory.C.ENGEL@wrд.state.or.us>
Subject: RE: SUB completion of construction language
Cc:
Bcc: f\Specific applications\SUB
Attached:

Greg,

I have discussed your proposal with Dwight. The language you provided omits the requirement to completely apply the water to beneficial use by a certain date, an important element of both the language in our PFOs as well as the revised proposed language I provided to you.

It is unlikely that we will compromise on that point; perhaps it would be best to express your concerns with the PFO language in a protest.

Mr. Cory C. Engel
Water Right Application Caseworker
Oregon Water Resources Department
725 Summer St NE Ste A
Salem OR 97301-1266
Phone: 503-986-0813
Fax: 503-986-0901
<http://www.wrд.state.or.us/>

At 05:01 PM 12/6/2005, you wrote:
Cory,

As we discussed on the telephone earlier today, SUB would prefer that the first sentence of the substituted language more closely track the original, except for the change from 5 to 20 years consistent with HB 3038. SUB suggests the following:

"The permittee shall commence and complete construction and apply the water to the use allowed herein within 20 years of the date of this permit."

Please let me know if this change is acceptable to the Department so I can prepare SUB's protests accordingly.

Greg

Greg D. Corbin
Stoel Rives LLP
900 SW Fifth Avenue
Portland, OR 97204
503.294.9632 office
503.220.2480 fax
www.stoel.com

-----Original Message-----

From: "Dwight French" <Dwight.W.FRENCH@wrdd.state.or.us>
To: "Cory Engel" <Cory.C.ENGEL@wrdd.state.or.us>
Subject: RE: RE: SUB completion of construction language
Date: Fri, 9 Dec 2005 10:43:49 -0800
X-Security: MIME headers sanitized on kettle.wrdd.state.or.us
See <http://www.impsec.org/email-tools/sanitizer-intro.html>
for details. \$Revision: 1.139 \$Date: 2003-09-07 10:14:23-07
X-Mailer: Microsoft Office Outlook, Build 11.0.6353
Thread-Index: AcX7S2qhBg8Pdi4KT4qT1itdLD0dggBpM7/Q
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrdd.state.or.us
X-Spam-Status: No, hits=-4.7 required=5.0 tests=BAYES_00,HTML_FONTCOLOR_BLUE,
HTML_MESSAGE autolearn=no version=2.63
X-Spam-Level:

Because we (Corbin has explained to us) think WW will file a protest I'm less inclined to work on language that will work for SUB at this time. Also, it doesn't look like it will be easy to come to an agreement.

I agree with you.
Dwight

From: Cory Engel [mailto:Cory.C.ENGEL@wrdd.state.or.us]
Sent: Wednesday, December 07, 2005 8:50 AM
To: Dwight.W.FRENCH@wrdd.state.or.us
Subject: Fwd: RE: SUB completion of construction language

Dwight,

SUB doesn't like the language we proposed. As you can see below, Greg Corbin (Stoel Rives) has proposed that we issue the permit with language a little closer to the standard language. However, there is a substantial difference between his proposed language and both the standard and our newly proposed language: his language does not require *complete* application of the water to the use by any certain date. I told him over the phone that such language was a departure not just from our newly proposed language, but from the standard language proposed in the PFO as well, and that it probably wouldn't fly. Prior to our telephone conversation yesterday, he wasn't aware that this has always been a standard permit condition. Based on our conversation, I'm sure he intentionally omitted the "complete application to beneficial use" requirement from his language.

DISCUSSION: Upon first glance, the newly amended ORS 537.230 (<http://www.leg.state.or.us/05orlaws/sess0400.dir/0410ses.pdf>) doesn't seem to require beneficial use of water within a certain time line. (Both the municipal and non-municipal portions in subsections (1) and (2) speak specifically only of the beginning and completion of construction.) However, I think subsection (4) makes it clear that the intent of 537.230 is to require full beneficial use within the same "completion of construction" time lines as subsections (1) and (2); it says "...upon completion of beneficial use as required under this section, the permittee shall hire a water right examiner..." Implicit in this language is that the requirement to complete

To: Dwight French
From: Cory Engel <Cory.C.ENGEL@wrdd.state.or.us>
Subject: Fwd: RE: SUB completion of construction language
Cc:
Bcc: f\In
Attached:

Dwight,

SUB doesn't like the language we proposed. As you can see below, Greg Corbin (Stoel Rives) has proposed that we issue the permit with language a little closer to the standard language. However, there is a substantial difference between his proposed language and both the standard and our newly proposed language: his language does not require *complete* application of the water to the use by any certain date. I told him over the phone that such language was a departure not just from our newly proposed language, but from the standard language proposed in the PFO as well, and that it probably wouldn't fly. Prior to our telephone conversation yesterday, he wasn't aware that this has always been a standard permit condition. Based on our conversation, I'm sure he intentionally omitted the "complete application to beneficial use" requirement from his language.

DISCUSSION: Upon first glance, the newly amended ORS 537.230 (<http://www.leg.state.or.us/05orlaws/sess0400.dir/0410ses.pdf>) doesn't seem to require beneficial use of water within a certain time line. (Both the municipal and non-municipal portions in subsections (1) and (2) speak specifically only of the beginning and completion of construction.) However, I think subsection (4) makes it clear that the intent of 537.230 is to require full beneficial use within the same "completion of construction" time lines as subsections (1) and (2); it says "...upon completion of beneficial use as required under this section, the permittee shall hire a water right examiner..." Implicit in this language is that the requirement to complete construction is also a requirement to use the water; the statute seems to presume that the two events are concurrent. So I believe the completion of beneficial use is a requirement of ORS 537.230, and the time required for beneficial use is the period for completion of construction set forth in subsections (1) and (2).

The same is true for ground water as described in ORS 537.630. (SUB's pending applications are for both surface and ground water.)

Based on this, unless SUB decides to drop the issue, it seems unlikely that we're going to be able to come to an agreement about the language in time for them to properly craft a protest. He has already decided to file a regular protest--as opposed to the conditional one we had discussed--because it's starting to look like WaterWatch is going to protest as well. Perhaps it would be best to just tell Corbin to go ahead and file the protest and we can hash it out later. Do you agree?

Cory

X-Security: MIME headers sanitized on kettle.wrd.state.or.us
See <http://www.impsec.org/email-tools/sanitizer-intro.html>
for details. \$Revision: 1.139 \$Date: 2003-09-07 10:14:23-07
Subject: RE: SUB completion of construction language
Date: Tue, 6 Dec 2005 17:01:38 -0800
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
Thread-Topic: SUB completion of construction language
Thread-Index: AcX51GGpDpvAGSrdSpuQKCzXUcBRQA4dp5w
From: "Corbin, Greg" <GDCORBIN@stoel.com>
To: "Cory Engel" <Cory.C.ENGEL@wrd.state.or.us>
X-OriginalArrivalTime: 07 Dec 2005 01:01:38.0329 (UTC) FILETIME=[C6F5B890:01C5FAC9]
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrd.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Cory,

As we discussed on the telephone earlier today, SUB would prefer that the first sentence of the substituted language more closely track the original, except for the change from 5 to 20 years consistent with HB 3038. SUB suggests the following:

"The permittee shall commence and complete construction and apply the water to the use allowed herein within 20 years of the date of this permit."

Please let me know if this change is acceptable to the Department so I can prepare SUB's protests accordingly.

Greg

Greg D. Corbin
Stoel Rives LLP
900 SW Fifth Avenue
Portland, OR 97204
503.294.9632 office
503.220.2480 fax
www.stoel.com

-----Original Message-----

From: Cory Engel [<mailto:Cory.C.ENGEL@wrd.state.or.us>]
Sent: Monday, December 05, 2005 11:46 AM
To: Corbin, Greg
Cc: Dwight.W.FRENCH@wrd.state.or.us; Mike.J.REYNOLDS@wrd.state.or.us
Subject: SUB completion of construction language

Greg,

As promised, here's the language we want to put in the final permits

Subject: RE: SUB completion of construction language
Date: Mon, 5 Dec 2005 11:58:08 -0800
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: SUB completion of construction language
Thread-Index: AcX51GGpDpwAGSrdSpuQKCzXUcBRQAAPH7w
From: "Corbin, Greg" <GDCORBIN@stoel.com>
To: "Cory Engel" <Cory.C.ENGEL@wrld.state.or.us>
Cc: <Dwight.W.FRENCH@wrld.state.or.us>, <Mike.J.REYNOLDS@wrld.state.or.us>
X-OriginalArrivalTime: 05 Dec 2005 19:58:08.0740 (UTC) FILETIME=[36C93240:01C5F9D6]
X-MIME-Autoconverted: from quoted-printable to 8bit by kettle.wrld.state.or.us id jB5Jd4s17469
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrld.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Cory,

Thanks for getting this out. I will review with SUB and get back to you, hopefully this week.

Greg

-----Original Message-----

From: Cory Engel [mailto:Cory.C.ENGEL@wrld.state.or.us]
Sent: Monday, December 05, 2005 11:46 AM
To: Corbin, Greg
Cc: Dwight.W.FRENCH@wrld.state.or.us; Mike.J.REYNOLDS@wrld.state.or.us
Subject: SUB completion of construction language

Greg,

As promised, here's the language we want to put in the final permits for S-85336, G-15241, G-15243, and G-15244. The following paragraph would replace the second from the last paragraph in the draft permits--the paragraph beginning "Completion of construction..."

The permittee shall commence and complete the construction of any proposed works and execute the full beneficial use of water allowed herein within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

(The second sentence of this paragraph is standard wording which remains unchanged.)

To: gdcorbin@stoel.com
From: Cory Engel <Cory.C.ENGEL@wrd.state.or.us>
Subject: SUB completion of construction language
Cc: Dwight French, Mike Reynolds
Bcc: f\Specific applications\SUB
Attached:

Greg,

As promised, here's the language we want to put in the final permits for S-85336, G-15241, G-15243, and G-15244. The following paragraph would replace the second from the last paragraph in the draft permits--the paragraph beginning "Completion of construction..."

The permittee shall commence and complete the construction of any proposed works and execute the full beneficial use of water allowed herein within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

(The second sentence of this paragraph is standard wording which remains unchanged.)

As I understand it, if you are in agreement with this approach, you will send a letter which we will not consider a protest, conditioned upon our use of said language in the final permits for these applications.

If you have any questions, please let me know.

Mr. Cory C. Engel
Water Right Application Caseworker
Oregon Water Resources Department
725 Summer St NE Ste A
Salem OR 97301-1271
Phone: 503-986-0813
Fax: 503-986-0901
<http://www.wrd.state.or.us/>

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OR 97477

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

APPLICATION FILE NUMBER: S-85336

SOURCE OF WATER: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER

PURPOSE OR USE: MUNICIPAL USE, FISH LIFE USE, AND WILDLIFE USE

MAXIMUM RATE: 35.9 CUBIC FEET PER SECOND (CFS) FOR MUNICIPAL USE AND 4.1 CFS FOR FISH LIFE AND WILDLIFE USES

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 8, 2002

POINT OF DIVERSION LOCATIONS:

MUNICIPAL USE: NW $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 26, T17S, R2W, W.M.; 250 FEET SOUTH & 972 FEET EAST FROM THE WEST $\frac{1}{4}$ CORNER OF SECTION 26

FISH LIFE AND WILDLIFE USES: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 29, T17S, R1W, W.M.; 300 FEET NORTH & 2400 FEET EAST FROM THE SW CORNER OF SECTION 29

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MUNICIPAL USE: WITHIN THE SERVICE AREA OF CITY OF SPRINGFIELD

FISH LIFE AND WILDLIFE USES: WITHIN THE CHANNEL OF CEDAR CREEK

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 not construct, operate or maintain any dam or artificial obstruction to fish passage at the diversion into Cedar Creek without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the Cedar Creek flow monitoring program currently maintained by the U.S. Geological Survey (USGS) in conjunction with the U.S. Army Corps of Engineers and the Eugene Water and Electric Board (EWEB) is discontinued, the permittee shall ensure that a similar flow monitoring program is implemented on Cedar Creek. For the purpose of this condition, such a flow monitoring program must include, at minimum, installation of a calibrated staff gage.

While EWEB's license from Federal Energy Regulatory Energy Commission (FERC) requires EWEB to bypass 1,000 cfs of water past the Walterville Canal diversion, the permittee may divert water into Cedar Creek under this permit only when the flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,000 cfs plus the actual rate of appropriation into Cedar Creek under this permit. In the event that EWEB's license from FERC is modified, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to the FERC-required minimum bypass flow plus the actual rate of appropriation into Cedar Creek under this permit, or 1,400 cfs plus the actual rate of appropriation into Cedar Creek under this permit, whichever is greater. In the event that EWEB's license from FERC is rescinded, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,400 cfs plus the actual rate of appropriation under this permit.

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

Dwight - for your approval.

PAGE 3

SUB

Coy

STANDARD CONDITIONS

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.

This is good!
The permittee shall commence and complete the construction of any proposed works and execute the full beneficial use of water allowed herein within 20 years of the date of this permit. If the water is not completely applied within 20 years, 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.

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
Water Resources Department

Application S-85336 Water Resources Department
Basin 2 Volume 2 MCKENZIE R MISC
engelcc WEEK 537

PERMIT DRAFT
2

To: "Dwight French" <Dwight.W.FRENCH@wrld.state.or.us>
From: Cory Engel <Cory.C.ENGEL@wrld.state.or.us>
Subject: RE: SUB
Cc:
Bcc: f\In
Attached:

I have placed a draft permit containing the new language in one of your IN boxes.

If I get your approval today, we can probably avert a protest.

Cory

At 01:19 PM 11/29/2005, you wrote:

Because of the way they answered, your quoted language at the bottom of your email should be adequate. (I've pasted it below.) Please use it in this instance.

We need to say something about how an extension will be needed if additional time is needed.

Please send me one of the pfo documents to look at so I can see all of the related language together.

Dwight

"The permittee shall commence and complete the construction of any proposed works and execute the full beneficial use of water allowed herein within 20 years of the date of this permit."

-----Original Message-----

From: Cory Engel [<mailto:Cory.C.ENGEL@wrld.state.or.us>]
Sent: Monday, November 28, 2005 8:45 AM
To: Dwight French
Subject: RE: SUB

Dwight,

I sent SUB a letter (which you endorsed) in advance of the ones that Kerry sent. Consistent with the law, the letter said "House Bill 3038...[provided] the applicant of a permit for a municipal water use a maximum of 20 years to commence and complete construction of proposed works. In order to comply with HB3038, please submit a statement providing the number of years (not to exceed 20 years) you need to complete construction from the date of permit issuance." In their reply, they said completion of construction will occur within 20 years. Obviously beginning of construction will be less than that.

Therefore, they have provided A and B dates that meet the statutory

From: "Dwight French" <Dwight.W.FRENCH@wrđ.state.or.us>
To: "Cory Engel" <Cory.C.ENGEL@wrđ.state.or.us>
Subject: RE: SUB
Date: Tue, 29 Nov 2005 13:19:45 -0800
X-Mailer: Microsoft Office Outlook, Build 11.0.6353
Thread-Index: AcXDOIGVjwrCHnSpytmN61loAqQA8a3Pw
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrđ.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

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Therefore, they have provided A and B dates that meet the statutory requirement. (B<=20, and A<B.) Their reply supersedes the dates in their application that I quoted to you. The law doesn't say anything about a C date, but my understanding is that we will be requiring municipal permittees to make beneficial use within 20 years as well.

To: "Dwight French" <Dwight.W.FRENCH@wrd.state.or.us>
From: Cory Engel <Cory.C.ENGEL@wrd.state.or.us>
Subject: RE: SUB
Cc:
Bcc: f\Specific applications\SUB
Attached:

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Frankly, I don't see why we need to list A, B, and C dates at all. To comply with the law, permits need only say "The permittee shall commence and complete the construction of any proposed works within 20 years of the date of this permit." And if we want, we can include water use in that equation, like this: "The permittee shall commence and complete the construction of any proposed works and execute the full beneficial use of water allowed herein within 20 years of the date of this permit."

My day is free if you want to chat about it.

Cory

At 04:45 PM 11/23/2005, you wrote:

OK

They need to give us new information - if they haven't already.

Did they receive a letter from us on this subject (Kerry prepared for you?)

?

See me if necessary and we'll talk it over.

Dwight

-----Original Message-----

From: Cory Engel [mailto:Cory.C.ENGEL@wrd.state.or.us]

Sent: Wednesday, November 23, 2005 3:40 PM

To: Dwight French

Subject: RE: SUB

At 01:52 PM 11/23/2005, you wrote:

>1. What does their application materials say about "beginning

From: "Dwight French" <Dwight.W.FRENCH@wrđ.state.or.us>
To: "Cory Engel" <Cory.C.ENGEL@wrđ.state.or.us>
Subject: RE: SUB
Date: Wed, 23 Nov 2005 16:45:02 -0800
X-Mailer: Microsoft Office Outlook, Build 11.0.6353
Thread-Index: AcXwhMC+IWaBtUvoQKWx6SBfDCMNogAC2VWA
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrđ.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

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Did they receive a letter from us on this subject (Kerry prepared for you?)
?
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Dwight

-----Original Message-----

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Sent: Wednesday, November 23, 2005 3:40 PM
To: Dwight French
Subject: RE: SUB

At 01:52 PM 11/23/2005, you wrote:

>1. What does their application materials say about "beginning
construction"?

G-15241: 2000
G-15243: 12/00
G-15244: 2001
S-85536: 2003

>2.completing construction?

G-15241: 2006
G-15243: 12/01
G-15244: 2005
S-85536: 2010

Cory Engel
Water Right Application Caseworker
503-986-0813

From: "Dwight French" <Dwight.W.FRENCH@wrđ.state.or.us>
To: "Cory Engel" <Cory.C.ENGEL@wrđ.state.or.us>
Subject: RE: SUB
Date: Wed, 23 Nov 2005 13:52:50 -0800
X-Mailer: Microsoft Office Outlook, Build 11.0.6353
Thread-Index: AcXwBJRnoBRG+LxQEywXd+BMLFfQAt8h+w
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrđ.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

We can do it. We need to develop the new language anyway - might as well do it now. I'll put something together and run it past a couple people and see if we can get it done next week.

1. What does their application materials say about "beginning construction"?
2.completing construction?

We will need these two items to give to Corbin.

Dwight

-----Original Message-----

From: Cory Engel [mailto:Cory.C.ENGEL@wrđ.state.or.us]
Sent: Tuesday, November 22, 2005 4:12 PM
To: Dwight.W.FRENCH@wrđ.state.or.us
Subject: SUB

Dwight,

Regarding the previously discussed SUB date issue, Greg Corbin said he would like, if possible, to see the revised language for the SUB PFOs before filing a protest. If he doesn't have a problem with the language, he would like to craft a protest that is worded something like "unless WRD replaces the current development schedule paragraph with this paragraph [quoted], we protest the PFO". That way, we can simply fix the problem without going through all that a protest would entail. If he can't get access to the language in time (around December 16, he thought) then we'll have to engage in a more time-consuming communication with them to resolve the problem.

Do you think it is feasible to have the language settled within that time frame? Corbin is going to call me early next week to find out whether that is likely. If it is not likely, then he's going to go ahead and file a protest without waiting. I'd prefer to resolve the matter without a formal protest, if possible.

Cory Engel
Water Right Application Caseworker
503-986-0813

To: Dwight French
From: Cory Engel <Cory.C.ENGEL@wrд.state.or.us>
Subject: SUB
Cc:
Bcc: f\In
Attached:

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Cory Engel
Water Right Application Caseworker
503-986-0813

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85336

Prior to the issuance of a permit, the Department must receive permit recording fees in the amount of \$250.00. Please include your application number on your check made out to the Oregon Water Resources Department. If this fee is not paid prior to **December 23, 2005**, issuance of a permit may be delayed.

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On November 8, 2002, SPRINGFIELD UTILITY BOARD submitted an application to the Department for the following water use permit:

- Amount and Use of Water: 40.0 CUBIC FEET PER SECOND (CFS), BEING 37.0 CFS FOR MUNICIPAL USE AND 3.0 CFS FOR STREAMFLOW AUGMENTATION
- Source of Water: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER
- Area of Proposed Use: Streamflow augmentation: within the channel of Cedar Creek; Municipal: within the service area of City of Springfield

On May 16, 2003, the Department mailed the applicant notice of its Initial Review, determining that "The use of 37.0 CUBIC FEET PER SECOND from MCKENZIE RIVER for MUNICIPAL USE may be allowed year-round. However, 3.0 CUBIC FEET PER SECOND FOR STREAMFLOW AUGMENTATION IN CEDAR CREEK is not allowable. At this stage of processing, it appears unlikely that a permit approving this application would include streamflow augmentation." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On May 20, 2003, 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.

On December 10, 2004, the applicant amended the amount and use of water to 35.9 CFS for municipal use and 4.1 CFS for fish life and wildlife uses.

Written comments in support of the application have been received from the applicant, Cedar Creek Irrigation District, and Eugene Water and Electric Board.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

Findings of Fact

The Willamette Basin Program allows MUNICIPAL USE AND STREAMFLOW AUGMENTATION IN CEDAR CREEK.

Senior water rights exist on MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER, or on downstream waters.

MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER is not within or above a State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumption portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation (at an 80 percent exceedance probability) during the full season requested.

The Department finds that the amount of water requested, 40.0 CFS, is an acceptable amount.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended

that additional limitations or conditions of use be imposed on this application as follows:

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage at the diversion into Cedar Creek without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the Cedar Creek flow monitoring program currently maintained by the U.S. Geological Survey (USGS) in conjunction with the U.S. Army Corps of Engineers and the Eugene Water and Electric Board (EWEB) is discontinued, the permittee shall ensure that a similar flow monitoring program is implemented on Cedar Creek. For the purpose of this condition, such a flow monitoring program must include, at minimum, installation of a calibrated staff gage.

While EWEB's license from Federal Energy Regulatory Energy Commission (FERC) requires EWEB to bypass 1,000 cfs of water past the Walterville Canal diversion, the permittee may divert water into Cedar Creek under this permit only when the flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,000 cfs plus the actual rate of appropriation into Cedar Creek under this permit. In the event that EWEB's license from FERC is modified, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to the FERC-required minimum bypass flow plus the actual rate of appropriation into Cedar Creek under this permit, or 1,400 cfs plus the actual rate of appropriation into Cedar Creek under this permit, whichever is greater. In the event that EWEB's license from FERC is rescinded, the permittee may divert water under this permit only when flow in the McKenzie River, as measured at USGS gage 14163900, is greater than or equal to 1,400 cfs plus the actual rate of appropriation under this permit.

The use may be restricted if the quality of the McKenzie River, Cedar Creek, or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards as a result of the use.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established

pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Willamette Basin Plan, or a preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

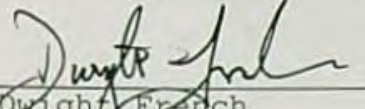
The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

When issuing permits, ORS 537.211(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public interest. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED November 8, 2005


Dwight French
Administrator

Water Rights & Adjudication Division

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the protest fee of \$250 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.
- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.

Requests for Standing

Under the provisions of 537.153(5), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$200.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **December 23, 2005**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

This document was prepared by Cory Engel. 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 503-986-0813.

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 Customer Service 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.

engelcc-WEEK 537

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPRINGFIELD UTILITY BOARD
202 S 18TH ST
SPRINGFIELD, OR 97477

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

APPLICATION FILE NUMBER: S-85336

SOURCE OF WATER: MCKENZIE RIVER, A TRIBUTARY OF WILLAMETTE RIVER

PURPOSE OR USE: MUNICIPAL USE, FISH LIFE USE, AND WILDLIFE USE

MAXIMUM RATE: 35.9 CUBIC FEET PER SECOND (CFS) FOR MUNICIPAL USE AND 4.1 CFS FOR FISH LIFE AND WILDLIFE USES

PERIOD OF USE:—YEAR ROUND

DATE OF PRIORITY: NOVEMBER 8, 2002

POINT OF DIVERSION LOCATIONS:

MUNICIPAL USE: NW ¼ SW ¼ SECTION 26, T17S, R2W, W.M.; 250 FEET SOUTH & 972 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 26

FISH LIFE AND WILDLIFE USES: SE ¼ SW ¼ SECTION 29, T17S, R1W, W.M.; 300 FEET NORTH & 2400 FEET EAST FROM THE SW CORNER OF SECTION 29

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MUNICIPAL USE: WITHIN THE SERVICE AREA OF CITY OF SPRINGFIELD

FISH LIFE AND WILDLIFE USES: WITHIN THE CHANNEL OF CEDAR CREEK

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.

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STANDARD CONDITIONS

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.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2010. 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.

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
Water Resources Department

MCKENZIE RIVER

LOT 3

LOT 1

MCKENZIE RIVER

LOT 2

• TEST WELL

972
SW COR of NW 1/4 SEC 26

(N)

250'

LOT 4

• WELL #4

• WELL #5 (N)

• WELL #3 (N)

• WELL #6 (N)

• WELL #7 (N)

• WELL #2 (N)

• WELL #10 (N)

• WELL #8 (N)

• WELL #9 (N)

• WELL #1 (N)

RECEIVED

NOV 08 2002

WATER RESOURCES DEPT
SALEM, OREGON

POINT OF DIVERSION OF NEW SURFACE
WATER RIGHT FROM RIVER. IF
GROUND WATER RIGHT, INDIVIDUAL
NEW WELL (N).

TOWNSHIP 17S
RANGE 2W
SECTION 27 & 26



app# S-85336
Permit#

SPRINGFIELD UTILITY BOARD SPRINGFIELD, OREGON			
THURSTON PROPERTY			
REV.	DATE	SCALE: 1"=300'	DRAWING NO.
		DATE: 11/6/02	PAGE:
APPROVAL:		THURSTON3	OF

RECEIVED

JUN - 6 2003

WATER RESOURCES DEPT
SALEM, OREGON

PROPOSED POINT OF DIVERSION
FOR SUB APPLICATION S-85336

HEADGATE, CEDAR IRRIGATION
DISTRICT, INTO CEDAR CREEK

POINT OF DIVERSION, SUB
STREAMFLOW AUGMENTATION

