

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application S-85432)
in the name of Duane Brown and Bill Zerbach,)
Applicants and Protestants)
_____)

SETTLEMENT
AGREEMENT

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FEB 10 2006
WATER RESOURCES DEPT
SALEM, OREGON

The Oregon Water Resources Department ("OWRD") and Duane Brown and Bill Zerbach ("Applicants"), referred to collectively as "the Parties" and each individually a "Party," do hereby stipulate and agree in this "Settlement Agreement" as follows:

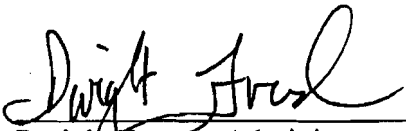
Stipulations

- I. On January 22, 2003, Duane Brown and Bill Zerbach submitted an application to OWRD for a water use permit. OWRD issued a Proposed Final Order (PFO) on June 3, 2003. Duane Brown filed a protest on June 9, 2003. Based on information in the application file, OWRD can approve the application with conditions.
- II. OWRD and Applicants agree that all issues raised in Duane Brown's protest to the PFO on Application S-85432 are resolved solely on the following terms.

Terms of Agreement


- 1. In signing this Settlement Agreement, Applicants withdraw their protest and request for contested case hearing regarding the PFO for Application S-85432 with prejudice.
- 2. Regarding water right Application S-85432, Applicants hereby expressly waive 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 Order or Permit, in addition to waiving any right and opportunity challenge to this Settlement Agreement.
- 3. After Applicants sign this Settlement Agreement, they 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, along with the required \$250.00 permit recording fee, OWRD will issue a Final Order and Permit that are consistent with the Draft Final Order and Draft Permit attached to this Settlement Agreement. The Final Order 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 Agreement on its behalf has the full right and authority to enter into this 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 they have read the entire Settlement Agreement, draft final order, and draft permit, and understand and fully agree with the contents thereof.
7. As mentioned above, permit recording fees in the amount of \$250.00 must be paid prior to issuance of a permit. If final order and/or permit issuance are delayed due to failure of the Applicants to pay any required fees, this will not constitute breach of the Settlement Agreement by OWRD.
8. 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

2-3-2006
Date



Duane Brown, Applicant

2-8-06
Date



Bill Zerbach, Applicant

2-8-06
Date

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85432

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Final Order Incorporating Settlement Agreement

FEB 10 2006

WATER RESOURCES DEPT
SALEM, OREGON

Application History

On January 22, 2003, Duane Brown and Bill Zerbach submitted an application to OWRD for a water use permit. OWRD issued a Proposed Final Order (PFO) on June 3, 2003. Duane Brown filed a protest on June 9, 2003. A Settlement Agreement was signed by both parties on [REDACTED]. The Settlement Agreement is incorporated into this final order and is attached hereto.

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

Order

Application S-85432 therefore is approved as provided in the attached Settlement Agreement and permit. Permit Number [REDACTED] is issued with conditions.

DRAFT - THIS IS NOT A PERMIT

Dwight French, Administrator,
Water Rights and Adjudications Division

Date

for

Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

DRAFT This is not a permit. DRAFT

STATE OF OREGON

COUNTY OF DOUGLAS

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WATER RESOURCES DEPT
SALEM, OREGON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS **DRAFT** PERMIT IS HEREBY ISSUED TO

DUANE BROWN AND BILL ZERBACH
6261 GARDEN VALLEY RD
ROSEBURG, OREGON 97470

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

APPLICATION FILE NUMBER: S-85432

SOURCE OF WATER: NORTH UMPQUA RIVER, A TRIBUTARY OF UMPQUA RIVER

PURPOSE OR USE: DOMESTIC USE EXPANDED FOR ONE HOUSEHOLD

MAXIMUM RATE: 0.01 CUBIC FOOT PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: January 22, 2003

POINT OF DIVERSION LOCATION: SE 1/4 SW 1/4, SECTION 9, T26S, R3W, W.M.; 1090 FEET NORTH AND 75 FEET WEST FROM S1/4 CORNER, SECTION 9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE ¼ SW ¼
SECTION 9
TOWNSHIP 26 SOUTH, RANGE 3 WEST, W.M.

Measurement, recording and reporting conditions:

The Director may require the water user to install a meter or other suitable measuring device as approved by the Director. If the Director notifies the water user to install a meter or other measuring device, the water user shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the watermaster access to the meter or measuring

device. The Director may provide an opportunity for the water user to submit alternative measuring procedures for review and approval.

The Director may require the water user to keep and maintain a record of the amount (volume) of water used and may require the water user to report water use on a periodic schedule as established by the Director. In addition, the Director may require the water user to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the water user to submit alternative reporting procedures for review and approval.

If the riparian area is disturbed in the process of developing a point of diversion, the water user shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, Section 030 adopted November 13, 1991 shall be followed.

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

The water user shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The water user may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

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.

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 water user wishes to continue development under the permit, the water user 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 water user shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

DRAFT - THIS IS NOT A PERMIT

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

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FEB 10 2006

**WATER RESOURCES DEPT
SALEM, OREGON**

Mailing List for Settlement Agreement Copies

Application #S-85432

Mailing List Print Date: [REDACTED]

Original mailed to:

Applicant: DUANE BROWN AND BILL ZERBACH
6261 GARDEN VALLEY RD
ROSEBURG, OREGON 97470

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

For FO w/Draft Permit - Copies to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

- 1)
- 2)

CASEWORKER : Gaineyjw