

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 or by a Settlement Agreement. 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.

SUPERCEING FINAL ORDER INCORPORATING SETTLEMENT AGREEMENT

Application History


On April 22, 2005, a water right application was submitted on behalf of the City of Irrigon by either Keith White (Public Works Superintendent) or Donald Baxter (Mayor). The Oregon Water Resources Department (OWRD) designated this file as Application G-16445. On July 25, 2006, OWRD issued a Proposed Final Order (PFO) recommending to approve Application G-16445 with conditions. On September 8, 2006, OWRD received a protest to the PFO from the Applicant, through their attorneys. Settlement negotiations between the parties resulted in a Settlement Agreement. As of February 13, 2008, OWRD and Applicant entered into a Settlement Agreement resolving all issues raised in Applicant's protest to the PFO on Application G-16445. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

On February 14, 2008, the Department issued a Final Order and permit implementing the Settlement Agreement. The February 14, 2008, Final Order contained two typographical errors, referring to the wrong permit number. The permit did not contain the same errors and is not being modified by this Superceding Final Order.

As conditioned in Permit G-16297, the proposed use will not impair or adversely affect the public welfare, safety and health.

Order

Application G-16445 was approved on February 14, 2008 and Permit G-16297 was issued as provided in the Settlement Agreement.



Dwight French
Administrator of Water Rights
and Adjudications

for

Phillip C. Ward, Director
Oregon Water Resources Department

February 25, 2008
Date

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application G-16445)
in the name of the City of Irrigon,)
Applicant and Protestant)
_____)

**SETTLEMENT
AGREEMENT**

The Oregon Water Resources Department (“OWRD”) and the City of Irrigon (“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 April 22, 2005, a water right application was submitted on behalf of the City of Irrigon by either Keith White (Public Works Superintendent) or Donald Baxter (Mayor). The Oregon Water Resources Department (OWRD) designated this file as Application G-16445.
- II. On July 25, 2006, OWRD issued a Proposed Final Order (PFO) recommending approval of Application G-16445 with conditions.
- III. On September 8, 2006, OWRD received a protest to the PFO from the Applicant, through their attorneys.
- IV. On November 7, 2007, OWRD issued a superceding PFO recommending approval of Application G-16445 with conditions.
- V. On January 11, 2008, OWRD received a protest to the superceding PFO from the Applicant, through their attorneys.
- IV. OWRD and Applicant agree that all issues raised in Applicant’s protest to the PFO on Application G-16445 are resolved solely on the following terms.

Terms of Agreement

- 1. In signing this Settlement Agreement, Applicant withdraws its protest and any associated request for contested case hearing regarding the PFO for Application G-16445 with prejudice.
- 2. Regarding water right Application G-16445, Applicant hereby 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 Order or Permit, in addition to waiving any right and opportunity to challenge this Settlement Agreement, which includes the attached Draft Final Order and Draft Permit.

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3. After Applicants sign this Settlement Agreement, they will:
 - (a) immediately fax a signed copy to the attention of Dwight French at 503-986-0901; and
 - (b) promptly mail a \$250.00 check for payment of the permit recording fees (payable to the Oregon Water Resources Department) and the complete signed original Settlement Agreement (including all the attachments) back to Oregon Water Resources Department, ATTN: Dwight French, 725 Summer St. NE, Suite A, Salem, OR 97301-1266. This action is not required if the applicants have since January 11, 2008, mailed a check for said amount to the OWRD.
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. The Parties acknowledge and agree that if the Applicant were to forgo pumping from its existing certificated alluvial well (see certificates 81677 and 81678), that would qualify as acceptable "avoidance" as defined in the Permit resulting from water right application G-16445, to the extent of actual past use of water under the aforementioned certificates, and in no event more than 2.22 cubic feet per second of avoidance.
6. This Settlement Agreement does not preclude Applicant from advocating for or against legislation.
7. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes 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.
8. 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.
9. 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.
10. This Settlement Agreement may be signed in counterparts, each of which will be deemed

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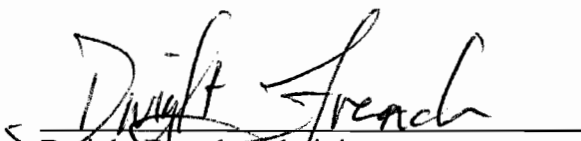
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2

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an original, and all of which together shall constitute one and the same Settlement Agreement.

**SIGNATURE PAGE FOR SETTLEMENT
ON WATER RIGHT APPLICATION G-16445**


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

2-5-08
Date


City of Irrigon, Applicant
By (print name) ARNOLD J. THEISEN

2/13/08
Date

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