

**Final Order Incorporating Settlement Agreement
Extension of Time for Permit Number G-9414**

Application History

The Oregon Water Resources Department (OWRD) issued permit number G-9414 on September 10, 1981. The permit called for completion of construction by October 1, 1982 and complete application of water to beneficial use by October 1, 1983.

On November 2, 1983, Skyridge Development Inc. submitted an application to OWRD for a first extension of time for permit number G-9414. On January 30, 1984, OWRD approved an extension of time for complete construction and use of water under the permit until October 1, 1985.

On November 1, 1993, Charles Wiper, III, President of Wiper Development Company, Inc., submitted an application to OWRD for a second extension of time for permit number G-9414, requesting that the time to complete beneficial use of water be extended until October 1, 1995.

On July 1, 2004, Tim Wiper, President of Skyridge Homeowner's Association modified the pending extension application (originally filed with OWRD on November 1, 1993) for a second extension of time for permit G-9414, requesting that the time to complete application of water to beneficial use and to complete beneficial use of water be extended until October 1, 2009.

On November 8, 2005, OWRD issued a Proposed Final Order (PFO) proposing to deny the extension of time to complete construction of the water development project and the time to fully apply water to beneficial use. The protest period closed on December 23, 2005. A protest was filed by Robert Magathan, President of the Skyridge Homeowners Association.

OWRD's continuing review, including consideration of information supplied in the protest and re-evaluation of information contained in the PFO, indicates that some progress has been made to complete the construction of the water development project and to complete beneficial use of water.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 537.248, 537.630, 539.010(5), and OAR Chapter 690 Division 320, although diligence is questionable.

As of May 12, 2006, a Settlement Agreement was signed by all Parties. The Settlement Agreement is incorporated into and attached to this Final Order.

Order

The extension of time for Application Number G-10364, Permit Number G-9414 is hereby approved. The deadline for completing construction and beneficial use of water is extended to October 1, 2009. However, pursuant to OAR 690-320-0010(9)(b), since diligence is questionable, **future requests for extension of time will not be granted.**

The extension of time is subject to the following conditions:

Conditions

1. Pursuant to OAR 690-320-0010(10), the OWRD hereby establishes the following checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit:

October 1, 2006
October 1, 2007
October 1, 2008
October 1, 2009

At each checkpoint identified above, the permit holder shall submit and the OWRD will review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension.

Each report must be received by the OWRD not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. Each report shall include:

- a) The amount of construction completed;
- b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
- d) Financial investments made toward developing the beneficial water use.

Failure to submit a progress report by the due dates above may jeopardize continued development under the permit. Other reports may be considered but are not a substitute for the progress reports, and anything submitted must clearly show that diligence towards

perfecting the water right permit is being attempted.

If, after reviewing a progress report, the OWRD determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the OWRD shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings for the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250.

OWRD will provide notice of receipt of progress reports in its weekly notice and shall allow a 30-day comment period for each report. The OWRD will provide notice of its determination to anyone who submitted comments on the extension application.

2. 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 OWRD approves or implements an alternative administrative action to mitigate the interference. The OWRD encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
3. To monitor the effect of water use from the well authorized under this permit, OWRD requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to OWRD within 30 days of measurement. Measurements must be made according to the following schedule:

After Use of Water has Begun:

Seven Consecutive Annual Measurements

The user shall submit seven consecutive annual reports of static water level measurements, beginning in year 2007. If the permittee has not completed all seven consecutive annual static water level measurement reports by the time the permittee submits a claim of beneficial use to OWRD and requests that a certificate be issued based on Permit G-9414, OWRD will not regard that as a failure to make proof. In that situation, OWRD will add a condition to any certificate which may be issued, requiring that the consecutive annual reports of static water level measurements must be continued until such time as the seven consecutive measurements have been completed.

The first of the seven annual measurements will establish the reference level against which future annual measurements will be compared. Based

on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time. All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to OWRD on forms provided by OWRD. OWRD requires the individual performing the measurement to:

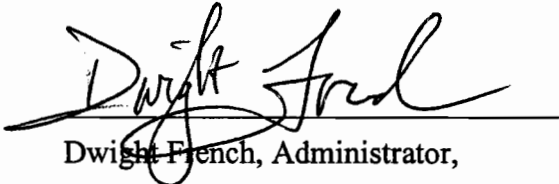
- A. Identify each well with its associated measurement;
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface;
- C. Specify the method used to obtain each well measurement; and
- D. Certify the accuracy of all measurements and calculations submitted to OWRD.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years; or
- B. Annual water level measurements reveal a water level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water level measurements reveal a water level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non- or restricted use shall continue until the water level rises above the decline level which triggered the action or until OWRD determines, based on the permittee's and/or OWRD'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. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for

review and approval by OWRD.



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 97301-1266

May 19, 2006
Date

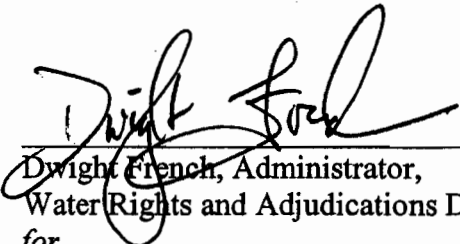
If you have any questions about statements contained in this document, please contact Mike Reynolds at 503-986-0820.

If you have other questions about the OWRD or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

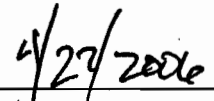
Terms of Agreement

1. In signing this Settlement Agreement, Protestant withdraws the protest and any request for a contested case hearing on the PFO on extension of time for permit G-9414, application G-10364, with prejudice.
2. Regarding extension of time for permit G-9414, application G-10364, the Applicant and Protestant 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 to challenge this Settlement Agreement.
3. Immediately after Applicant and Protestant sign this Settlement Agreement, they will mail the signed original(s) 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 original Settlement Agreement(s) signed by all Parties, OWRD will issue a Final Order that is consistent with the Draft Final Order attached to and incorporated in 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 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.
6. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review 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. The Parties agree that this Settlement Agreement is binding on their respective successors and assigns.
8. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together shall constitute one and the same Settlement Agreement.

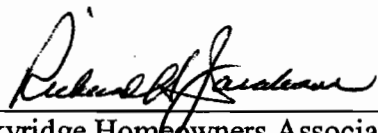
**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT
ON EXTENSION OF TIME FOR
PERMIT G-9414, APPLICATION G-10364**




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 97301-1266



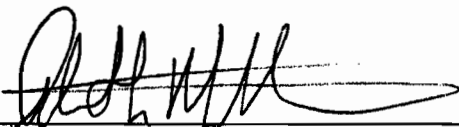
Date



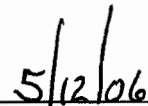
Skyridge Homeowners Association, Applicant
*PRESIDENT
SKYRIDGE HOMEOWNERS ASSOC.*



Date



Robert Magathan, (former) President of the
Skyridge Homeowners Association, Protestant



Date

**DRAFT Final Order Incorporating Settlement Agreement
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MAY 15 2006

WATER RESOURCES DEPT
SALEM, OREGON

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[REDACTED]

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 97301-1266

Date

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