

Hearing Rights

Under the provisions of ORS 537.170, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) 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 modifications to the Proposed Final Order may be addressed.

Final Order Incorporating Settlement Agreement

Application History

On March 2, 2001, City of Walla Walla, Washington, submitted an application to the Department for a water use permit for 20.0 cubic feet per second from Mill Creek, a tributary of Walla Walla River for Municipal Use within the service boundary of City of Walla Walla. On May 4, 2004 the Department issued a Proposed Final Order (PFO) recommending that the application be denied. The Proposed Final Order proposed denial because water was not available and the use was not consistent with the OAR 690-033 rules. The Department's Division 33 rules are used to determine whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

On June 16, 2004 City of Walla Walla filed a timely protest to the PFO. A Settlement Agreement was signed by all parties in May of 2008. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

The approved use will not impair or be detrimental to the public interest. The Applicant and the Department have agreed to permit conditions set forth in the Permit.

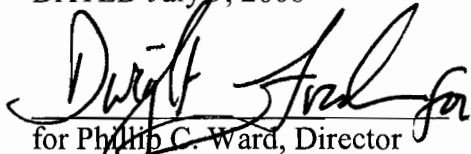
Order

The Department, in consultation with the Oregon Department of Fish and Wildlife, has determined that the attached permit, as conditioned, is consistent with OAR 690-033 rules. In addition, pursuant to OAR 690-410-0070(2)(a), although water is not available, the Department has determined that the use, as conditioned in the attached permit, is a high public value use and is conditioned to protect instream values.

Because water is not available, the Department finds that application S-84679, as modified in the attached Permit, does not meet the public interest presumption pursuant to ORS 537.153. However, based on the Department's determination pursuant to OAR 690-410-0070(2)(a) that

the use is a high public value use and is conditioned to protect instream value, the Department has determined that the attached permit will not impair or be detrimental to the public interest and is approved.

DATED July 9, 2008


for Phillip C. Ward, Director
Water Resources Department

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.

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JUN 30 2008

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application S-84679)
in the name of City of Walla Walla,) **SETTLEMENT**
Applicant/Protestant) **AGREEMENT**

The Oregon Water Resources Department ("Department"), the City of Walla Walla ("Applicant"), and WaterWatch of Oregon, referred to collectively as "the Parties" and each individually as a "Party", do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

- I. On March 2, 2001, City of Walla Walla, Washington, submitted an application to the Department for a water use permit for 20.0 cubic feet per second from Mill Creek, a tributary of Walla Walla River for Municipal Use within the service boundary of City of Walla Walla.
- II. On May 4, 2004 the Department issued a Proposed Final Order (PFO) recommending that the application be denied.
- III. On June 16, 2004 City of Walla Walla filed a timely protest to the PFO. WaterWatch of Oregon filed a request for standing on June 14, 2004.
- IV. The Department, the Applicant and WaterWatch agree that all issues raised in the protest to the PFO on Application S-84679 are resolved solely on the following terms.

Terms of Agreement

1. OWRD will issue a Final Order and a Permit that is identical to or, if not identical, consistent with all substantive terms in the draft Final Order and draft Permit that are attached to and incorporated into this Settlement Agreement.
2. In signing this Settlement Agreement, Applicant/Protestant withdraws its protest to the PFO for Application S-84679 with prejudice.
3. Regarding Application S-84679, Applicant and WaterWatch hereby expressly waive all right and opportunity to file protests or requests for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Order or Permit, and also expressly waive any right and opportunity to challenge this Settlement Agreement or the attached draft Final Order and draft Permit, which are part of this Settlement Agreement.
4. After Applicant and WaterWatch sign this Settlement Agreement, they will mail the signed original back to Oregon Water Resources Department, ATTN: Patricia McCarty, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

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WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Rights Division

Water Right Application
Number S-84679

Hearing Rights

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On June 16, 2004 City of Walla Walla filed a timely protest to the PFO. A Settlement Agreement was signed by all parties in May of 2008. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

The approved use will not impair or be detrimental to the public interest. The Applicant and the Department have agreed to permit conditions set forth in the Permit.

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WATER RESOURCES DEPT
SALEM, OREGON

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DATED _____, 2008

for Phillip C. Ward, Director
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WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

CITY OF WALLA WALLA
PO BOX 478
WALLA WALLA, WASHINGTON 99362

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

APPLICATION FILE NUMBER: S-84679

PRIORITY DATE: MARCH 2, 2001

SOURCE: MILL CREEK, TRIBUTARY TO THE WALLA WALLA RIVER

USE: MUNICIPAL WATER USE

MAXIMUM RATE: 20 CFS

PURPOSE: MUNICIPAL WATER USE

SEASON OF USE: NOVEMBER 1 THROUGH APRIL 15

POD: WITHIN THE NW1/4NE1/4, SECTION 22, TOWNSHIP 6
NORTH, RANGE 38 EAST.

Place of Use: Within the Service Area of the City of Walla Walla, Washington

Bypass Flow Condition:

Flows equal to those described below must be satisfied at the KoosKooskie gauge when water under this permit is diverted.

November	December	January	February	March	April 1-15
100 cfs	110 cfs	110 cfs	125 cfs	150 cfs	150 cfs

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WATER RESOURCES DEPT
SALEM, OREGON

If the City of Walla Walla does not cause Washington Permit No. 13121 to be cancelled prior to December 31, 2017, the OWRD will issue an order cancelling this permit after providing 90 days prior written notice.

As a condition of water use under this permit, the City of Walla Walla is prohibited, except as provided in the sentence that follows, from exercising 2.5 CFS of its 1866 Oregon water right (certificate number 13276) between August 1st and September 30th (or during a different period of not less than two months agreed to by OWRD, ODFW, WDFW and the City).

Notwithstanding the prohibition of the preceding sentence, if the City is not able to withdraw aquifer stored water, due to its unavailability or a breakdown of the ASR delivery system, then the City may exercise the aforementioned 2.5 CFS on a limited necessity basis, (in the context of implementing the emergency shortage provisions of a Washington State Department of Health approved water conservation plan applicable to the City's public water supply system), in order to satisfy its minimal municipal water use needs. Exercise of the aforementioned 2.5 cfs shall be restricted to any period when the ASR water is unavailable or the ASR system is inoperable. To comply with this condition, the City of Walla Walla shall protect the 2.5 CFS of certificate 13276 by obtaining a split-season instream lease for the two months as aforementioned in this paragraph of each year for the maximum allowed lease period(s). The City of Walla Walla shall renew the split-season instream lease for additional periods up to the maximum duration allowed. If the City of Walla Walla needs to exercise this 2.5 CFS, as described above, the City shall submit a request to terminate the lease in accordance with the conditions of the Final Order approving the split-season instream lease. In the event that the split-season instream lease is terminated, the City shall, within 30 days of termination, seek to renew the split-season instream lease for additional periods up to the maximum duration allowed. This condition can also be satisfied by the City choosing to file a permanent or time-limited instream transfer (for the duration of the use of this permit or certificate issued for this permit) for 2.5 CFS for the two months as aforementioned in this paragraph.. If, at some date in the future, the "split-season instream lease" program no longer exists, the City shall choose and implement another available program that provides the same, or greater, level of instream protection for the 2.5 CFS portion of its 1866 Oregon water right (certificate 13276).

For the purpose of this permit "Municipal Water Use" is defined as the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Said defined use shall not include use for hydroelectric power generation. Any use of water for hydroelectric power generation requires additional approval(s) by OWRD.

The City of Walla Walla shall submit to OWRD a copy of the most current water conservation plan applicable to the City's public water supply system that is approved by the Washington State Department of Health. Within 30 days of issuance of this permit the City shall forward a copy of the most current aforementioned plan to OWRD.

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WATER RESOURCES DEPT
SALEM, OREGON

Standard Conditions:

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.

The diversion of water authorized herein may be made only at times when sufficient water is available to satisfy all prior rights, including those pertaining to instream flows, as aforementioned herein.

Any underground storage of water diverted under this permit can only be stored by the City in compliance with the Washington Aquifer Storage and Recovery (ASR) Program, see RCW 90.03.370 and Chapter 173-157 WAC.

The permit holder shall commence and complete construction within 20 years of permit issuance. 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 full and complete application of water to the municipal use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE). The claim of beneficial use must include evidence of the city's termination of Permit No. 13121 including a written documentation confirmation of the termination by Washington State's Department of Ecology.

Issued _____, 2008

Dwight French, for
Phillip C. Ward, Director
Water Resources Department



June 3, 2008

Dwight French
Water Rights & Adjudications Division Administrator
Oregon Water Resources Department
725 Summer Street SE, Salem, Oregon 97310

Re: S-84679 Settlement Agreement

Dwight,

Enclosed is a settlement agreement in this matter executed by WaterWatch of Oregon. Please forward a copy of the final settlement documents after the City has signed the agreement. I am copying Hal Thomas on this transmittal because I do not have Charlie Roe's current address.

Thank you for your efforts in resolving this matter.

Best,

John DeVoe

Cc: Hal Thomas w/enclosure

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JUN 04 2008

**WATER RESOURCES DEPT,
SALEM, OREGON**

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in the name of City of Walla Walla,) **SETTLEMENT**
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JUN 04 2008

5. Within 30 days after OWRD receives the original Settlement Agreement signed by OWRD, Applicant and WaterWatch, the Department will issue a Final Order and Permit identical to or, if not identical, consistent with all substantive terms in the draft Final Order and draft Permit attached to this Settlement Agreement. The Final Order will incorporate this Settlement Agreement, and its attachments, by reference and as an attachment.

6. 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.

7. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord. Each Party to this Settlement Agreement also certifies that it has read the entire Settlement Agreement, including the attached draft Final Order and draft Permit, and understand and fully agree with the contents thereof.

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.

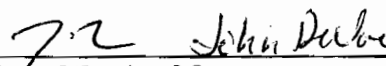


Dwight French, Administrator
Water Rights and Adjudications Division
for Phillip C. Ward, Director
Water Resources Department

May 21, 2008
Date

City of Walla Walla

Date



WaterWatch of Oregon Executive Director

6/3/08
Date

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WATER RESOURCES DEPT.
SALEM, OREGON

Hearing Rights

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The Department, in consultation with the Oregon Department of Fish and Wildlife, has determined that the attached permit, as conditioned, is consistent with OAR 690-033 rules. In addition, pursuant to OAR 690-410-0070(2)(a), although water is not available, the Department has determined that the use, as conditioned in the attached permit, is a high public value use and is conditioned to protect instream values.

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WATER RESOURCES DEPT.
SALEM, OREGON

Because water is not available, the Department finds that application S-84679, as modified in the attached Permit, does not meet the public interest presumption pursuant to ORS 537.153. However, based on the Department's determination pursuant to OAR 690-410-0070(2)(a) that the use is a high public value use and is conditioned to protect instream value, the Department has determined that the attached permit will not impair or be detrimental to the public interest and is approved.

DATED _____, 2008

for Phillip C. Ward, Director
Water Resources Department

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WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

CITY OF WALLA WALLA
PO BOX 478
WALLA WALLA, WASHINGTON 99362

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

APPLICATION FILE NUMBER: S-84679

PRIORITY DATE: MARCH 2, 2001

SOURCE: MILL CREEK, TRIBUTARY TO THE WALLA WALLA RIVER

USE: MUNICIPAL WATER USE

MAXIMUM RATE: 20 CFS

PURPOSE: MUNICIPAL WATER USE

SEASON OF USE: NOVEMBER 1 THROUGH APRIL 15

POD: WITHIN THE NW1/4NE1/4, SECTION 22, TOWNSHIP 6
NORTH, RANGE 38 EAST.

Place of Use: Within the Service Area of the City of Walla Walla, Washington

Bypass Flow Condition:

Flows equal to those described below must be satisfied at the KoosKooskie gauge when water under this permit is diverted.

November	December	January	February	March	April 1-15
100 cfs	110 cfs	110 cfs	125 cfs	150 cfs	150 cfs

APPLICATION S-84679

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PERMIT S-XXXXX

JUN 04 2008

WATER RESOURCES DEPT.
SALEM, OREGON

Peak Flow Condition:

The permittee shall not divert water when the flows at the KoosKooskie gauge are higher than 525.0 CFS.

Other Conditions:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at the point of diversion. 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 measurement to the Department annually or more frequently as may be required by the Director.
- 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.
- C. The permittee shall provide OWRD notice of any use authorized by Washington Permit No. 13121 five days prior to any use. The annual reports required under paragraph A above shall also indicate the amount of water diverted, if any, authorized by Washington Permit No. 13121.

If the existing gauge at KoosKooskie as now operated and maintained by the USGS ceases to be maintained then the permittee shall establish, operate and maintain a substitute gauge which provides for equivalent measurement ability, to the satisfaction of WRD.

Use of this permit is prohibited at any time the water right evidenced by Washington Permit No. 13121 is exercised. Furthermore, upon determination by the Washington State Department of Ecology, after consultation with the permittee (City of Walla Walla) and the Oregon Department of Water Resources, that the water storage and withdrawal works and facilities of an aquifer storage and recovery (ASR) program of the permittee (as approved by a permit issued by the Department of Ecology pursuant to RCW 90.03.370), are in an operable condition (i.e. the aforementioned works and facilities have been constructed completely and in an initial working condition that are capable of withdrawing sufficient water up to the amounts authorized by this permit for municipal use), the permittee shall terminate Permit No. 13121. The City's intention, based upon present projections, is to have said works in an operable condition by the end of December 2015. The permittee shall terminate Permit No. 13121 by the end of the year the ASR becomes operational by submitting to the Washington Department of Ecology a written relinquishment document, and providing a copy of said document to the Oregon Department of Water Resources.

If the City of Walla Walla does not cause Washington Permit No. 13121 to be cancelled prior to December 31, 2017, the OWRD will issue an order cancelling this permit after providing 90 days prior written notice.

As a condition of water use under this permit, the City of Walla Walla is prohibited, except as provided in the sentence that follows, from exercising 2.5 CFS of its 1866 Oregon water right (certificate number 13276) between August 1st and September 30th (or during a different period of not less than two months agreed to by OWRD, ODFW, WDFW and the City). Notwithstanding the prohibition of the preceding sentence, if the City is not able to withdraw aquifer stored water, due to its unavailability or a breakdown of the ASR delivery system, then the City may exercise the aforementioned 2.5 CFS on a limited necessity basis, (in the context of implementing the emergency shortage provisions of a Washington State Department of Health approved water conservation plan applicable to the City's public water supply system), in order to satisfy its minimal municipal water use needs. Exercise of the aforementioned 2.5 cfs shall be restricted to any period when the ASR water is unavailable or the ASR system is inoperable. To comply with this condition, the City of Walla Walla shall protect the 2.5 CFS of certificate 13276 by obtaining a split-season instream lease for the two months as aforementioned in this paragraph of each year for the maximum allowed lease period(s) . The City of Walla Walla shall renew the split-season instream lease for additional periods up to the maximum duration allowed. If the City of Walla Walla needs to exercise this 2.5 CFS, as described above, the City shall submit a request to terminate the lease in accordance with the conditions of the Final Order approving the split-season instream lease. In the event that the split-season instream lease is terminated, the City shall, within 30 days of termination, seek to renew the split-season instream lease for additional periods up to the maximum duration allowed. This condition can also be satisfied by the City choosing to file a permanent or time-limited instream transfer (for the duration of the use of this permit or certificate issued for this permit) for 2.5 CFS for the two months as aforementioned in this paragraph.. If, at some date in the future, the "split-season instream lease" program no longer exists, the City shall choose and implement another available program that provides the same, or greater, level of instream protection for the 2.5 CFS portion of its 1866 Oregon water right (certificate 13276).

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JUN 04 2008

WATER RESOURCES DEPT.
SALEM, OREGON

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The permit holder shall commence and complete construction within 20 years of permit issuance. 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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Phillip C. Ward, Director
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