

Appeal Rights

This is a final order 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 537.625(2) only the applicant or a protestant may appeal the provisions of the final order.

Final Order Incorporating Settlement Agreement

Application History

On June 28, 2005, City of Gearhart submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on July 31, 2007. The protest period closed September 14, 2007, and a timely protest was received from City of Warrenton. In addition, timely requests for standing were received from Oregon Department of Fish and Wildlife, and Deanna Mancill. On June 18, 2008, City of Warrenton withdrew its protest and the Department issued a final order modifying the proposed final order. On June 30, 2008 City of Gearhart filed a timely request for a contested case hearing on the final order. On July 22, 2008 the City of Gearhart filed a timely request for reconsideration of the final order. The Department approved the request for reconsideration on September 19, 2008. A Settlement Agreement was signed by OWRD and City of Gearhart on November 3, 2008. The Settlement Agreement constitutes a complete and final informal disposition of the Request for Contested Case Hearing on Final Order Modifying Proposed Final Order for Application G 16489 (City of Gearhart) dated June 30, 2008, and a complete and final resolution of the City of Gearhart's request for reconsideration, dated July 22, 2008. The Settlement Agreement is incorporated into this Final Order and attached hereto.

The Department finds that the Final Order and draft permit dated June 18, 2008, should be modified as to Section 8. (ORS 537.625)

Specifically, the Final Order issued June 18, 2008 described Section 8 of the City of Gearhart Monitoring and Action Plan as follows:

Section 8 of the City of Gearhart Monitoring and Action Plan, as modified in the attached draft permit, is:

SECTION 8 – Objective: Provide alternate source for Gearhart's municipal water in the event of saltwater intrusion or other persistent degradation of the drinking water aquifer.

Gearhart will have a physical connection and will enter into a memorandum of understanding (MOU) with an alternate municipal water supplier for backup emergency

water supply sufficient to insure that adequate and safe water is available year round for water customers of Gearhart in the event that the wellfield use is restricted due to saltwater intrusion into the freshwater aquifer, or other water quality or quantity problems. Assurance of this physical connection and a copy of the executed MOU shall be provided to OWRD prior to permit issuance.

Pursuant to the City of Gearhart's request for hearing, the Department requested and the City of Gearhart provided an alternate water supply plan for backup water supply sufficient to insure that provision is made for an adequate and safe supply of water which is available year round for water customers of the City of Gearhart in the event that the use of the wellfield is curtailed for any reason. The City of Gearhart's plan has been reviewed and found sufficient for the purpose of finding that the proposed use as described in Application G-16489 will ensure the preservation of the public welfare, safety and health. ORS 537.625; ORS 537.525.

Accordingly, the Department concludes that the preservation of the public welfare, safety and health will be ensured if the City of Gearhart has and maintains a physical connection to an alternate municipal water supplier for backup water supply sufficient to insure that provision is made for an adequate and safe supply of water which is available year round for water customers of the City of Gearhart in the event that the permitted use is restricted due to saltwater intrusion into the freshwater aquifer, or other water quality or quantity problems. In addition, the City of Gearhart must have at all times an alternate water supply plan for backup water supply sufficient to insure that provision is made for an adequate and safe supply of water which is available year round for water customers of the City of Gearhart in the event that the use of water under its permit is curtailed for any reason.

As such, the permit condition entitled Section 8 of the City of Gearhart Monitoring and Action Plan, is modified to read:

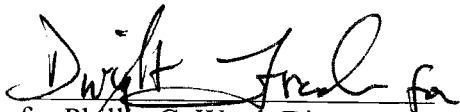
SECTION 8 – Objective: Provide alternate source for Gearhart's municipal water in the event of saltwater intrusion or other persistent degradation of the drinking water aquifer.

Gearhart will maintain a physical connection to an alternate municipal water supplier and an alternate water supply plan for backup water supply sufficient to insure that provision is made for an adequate and safe supply of water which is available year round for water customers of Gearhart in the event that the permitted use is restricted due to saltwater intrusion into the freshwater aquifer, or other water quality or quantity problems. Any future Water Management and Conservation Plans submittal must include the most recent copy of the alternate water supply plan adopted by Gearhart.

Order

The Settlement Agreement between the Oregon Water Resources Department and the City of Gearhart, dated November 3, 2008, is incorporated herein, and Application G-16489 is approved with conditions as provided in the draft permit incorporated by reference herein and attached hereto.

DATED November 3, 2008


for Phillip C. Ward, Director
Water Resources Department

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

| | | |
|--|---|------------|
| In the Matter of Water Right Application |) | |
| G-16489 in the name of City of Gearhart |) | |
| |) | SETTLEMENT |
| <i>Applicant/</i> |) | AGREEMENT |
| <i>Protestant</i> |) | |

The Oregon Water Resources Department (OWRD) and City of Gearhart (collectively "the parties") do hereby stipulate and agree in this "Settlement Agreement" (Agreement) as follows:

A. Background

1. On June 28, 2005, the Oregon Water Resources Department received Application G-16489 from the City of Gearhart for 2.18 CFS for municipal purposes from up to 14 wells in the Neacoxie Creek Basin in Clatsop County.
2. On July 31, 2007, OWRD issued a Proposed Final Order (PFO) recommending a permit with conditions be issued.
3. On September 13, 2007 the City of Warrenton filed a timely protest. On August 24, 2007 Deanna Mancill filed for standing. On August 27, 2007 Oregon Department of Fish and Wildlife filed for standing. On June 5, 2008 OWRD referred the case to the Office of Administrative Hearings.
4. On June 18, 2008 the City of Warrenton withdrew its protest, OWRD withdrew the referral from the Office of Administrative Hearings, and OWRD issued a final order modifying the proposed final order.
5. On June 30, 2008 the City of Gearhart filed a timely request for a contested case hearing on the modification of the proposed final order. On July 22, 2008 the City of Gearhart filed a timely request for reconsideration.
6. On July 29, 2008 OWRD referred the case to the Office of Administrative Hearings. On September 18, 2008 OWRD issued an order approving the request for reconsideration.
7. OWRD and the City of Gearhart agree that all issues related to Application G-16489 are resolved solely on the following terms, which constitutes an informal disposition of the contested case.

B. Consent

1. The City of Gearhart hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the Final Order Incorporating Settlement Agreement and Draft Permit for Application G-16489 which are hereby incorporated by reference.

2. The City of Gearhart understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. The City of Gearhart understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitutes the complete and final resolution of the Request for Contested Case Hearing on Final Order Modifying Proposed Final Order for Application G-16489 (City of Gearhart) dated June 30, 2008, and, effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit, hereby freely and voluntarily withdraws the City of Gearhart's request for hearing, dated June 30, 2008.
4. The City of Gearhart understands and agrees that, effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit, this Agreement and the Final Order Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitutes the complete and final resolution of the Request for Reconsideration of Final Order Modifying Proposed Final Order for Application G-16489 (City of Gearhart) dated July 21, 2008.
5. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit: the City of Gearhart waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Application G-16489 issued by OWRD.
6. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit, the City of Gearhart waives any and all rights to petition for judicial review of the Final Order issued on September 19, 2008.

We have read and understand all of the above consent agreements and fully agree to all of its terms.

Kent A. Smith
City of Gearhart

Nov 3, 2008
Date

Mayor
Title

C. Terms of the Agreement

1. Within 2 days of the signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit. The OWRD shall then withdraw the contested case for Application G-16489 from the Office of Administrative Hearings.
2. 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.
3. 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.
4. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement and draft Permit, and understands and agrees with the contents thereof.
5. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. This Settlement Agreement may be signed in counterparts.

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

Nov. 3, 2008
 Date

Kent A. Smith
 City of Gearhart

Nov 3, 2008
 Date

Mayor
 Title