

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications R-85999)
and S-86000 in the name of Dan and Nina Micke,) **SETTLEMENT**
Applicants) **AGREEMENT**
and)
Lakeview Water Users, Inc.,)
Protestant)

The Oregon Water Resources Department ("Department"), Dan and Nina Micke ("Applicants") and Lakeview Water Users, Inc. ("Protestant"), 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 May 7, 2004, Dan and Nina Micke submitted two applications to the Department for water use permits to store 75.0 acre-feet from an unnamed stream and runoff, tributaries to Fish Creek, with a filling season of October 1 to May 1 (R-85999), and for primary irrigation on 1.05 acres (Section 18, NWNW) and supplemental irrigation use on 104.15 acres (S-86000).
- II. On December 28, 2004 the Department issued Proposed Final Orders (PFO) recommending that both permits be issued with conditions.
- III. On February 7, 2005 Lakeview Water Users, Inc. filed a timely protest to both PFOs.
- IV. The Settlement Agreement and the resulting final orders for Applications R-85999 and S-86000 will be recorded in the Department's records of Special Orders.
- V. The Department, the Applicants and the Protestant agree that all issues raised in the protests to the PFOs on Applications R-85999 and S-86000 are resolved solely on the following terms.

Terms of Agreement

- 1. In signing this Settlement Agreement, Protestant withdraws its protests to the PFOs for Applications R-85999 and S-86000 with prejudice.
- 2. The OWRD will take a water level measurement of the Micke reservoir and Drew's Reservoir on or about October 1st of each year.
- 3. Regarding water right Applications R-85999 and S-86000, Protestant and 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 Orders or Permits, in addition to waiving any right and opportunity to challenge this Settlement Agreement. The parties are each responsible for their own attorney's fees and costs.

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MAY 27 2008

WATER RESOURCES DEPT.
SALEM, OREGON

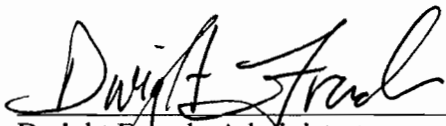
4. After Protestant and Applicants sign this Settlement Agreement, they will mail the signed original back to Oregon Water Resources Department, ATTN: Patricia McCarty, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

5. Within 30 days after OWRD receives the original Settlement Agreement signed by OWRD, Protestant and Applicants OWRD will issue a Final Order and draft 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. Upon submittal and approval of dam plans and specifications, the Department will issue Permits for Applications R-85999 and S-86000.

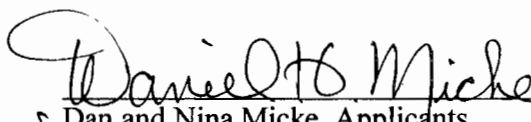
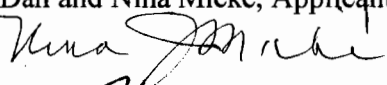
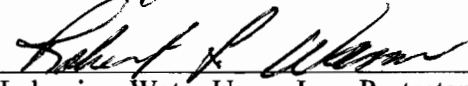
6. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.

7. Each Party to this Settlement Agreement certifies that 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.

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

6-2-2008
Date


Dan and Nina Micke, Applicants


Lakeview Water Users, Inc., Protestant

4-25-2008
Date

5-14-2008
Date

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Appeal Rights

ORS 536.075(2) allows for appeal rights for orders in contested cases. This is a final order in a contested case. This order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.482. Pursuant to ORS 536.075 and OAR 137-003-0080 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.

Final Order Incorporating Settlement Agreement

Application History

On MAY 7, 2004, DAN AND NINA MICKE submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on December 28, 2004. On February 7, 2005, a timely protest was filed by Lakeview Water Users Inc. A settlement agreement was signed by all parties as of June 2, 2008. The Settlement Agreement is incorporated into this final order and is attached hereto.

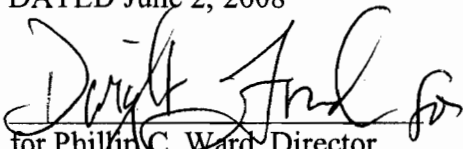
The approved use will not impair or be detrimental to the public interest. The Applicant, the Protestants and the Department have agreed to permit conditions set forth in the draft permit.

Order

Application R-85999 is approved with modifications as provided in the attached draft permit. Upon submittal and approval of dam plans and specifications, a permit substantially consistent with the attached draft permit will issue. The Oregon Water Resources Department may further condition the permit for Application R-85999 to require any conditions it finds necessary to assure dam safety and safe operation of the reservoir.

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

DATED June 2, 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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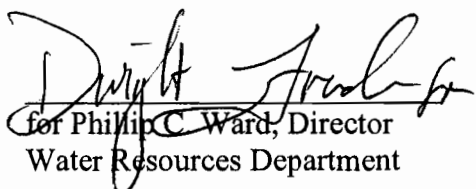
The approved use will not impair or be detrimental to the public interest. The Applicant, the Protestants and the Department have agreed to permit conditions set forth in the draft permit.

Order

Application S-86000 is approved with modifications to the Proposed Final Order. Upon submittal and approval of dam plans and specifications for associated file, Application R-85999, a permit substantially consistent with the attached draft permit shall be issued, authorizing the water use approved by this order.

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

DATED June 2, 2008


for Phillip C. Ward, Director
Water Resources Department

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