

STATE OF OREGON
WATER RESOURCES COMMISSION

In the Matter of Water Right Application	)	REVISED FINAL ORDER
S 70256 in the Name of the Coos	)	
Bay North Bend Water Board	)	
<i>Applicant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	

Appeal Rights

Judicial review of this order may be obtained by filing a petition for review within 60 days from the date of service of this order. The date of service of this order is the date on which the order is delivered or mailed. Judicial review, pursuant to the provisions of ORS 183.482, is to the Court of Appeals.

Application History

On March 23, 1990, the Coos Bay North Bend Water Board submitted application S 70256 to the Oregon Water Resources Department (OWRD).

In December 1997, the OWRD issued a Proposed Final Order which was subsequently protested by WaterWatch of Oregon (WaterWatch). The OWRD held a contested case hearing and the Administrative Law Judge issued a Proposed Order to which exceptions were filed. On January 17, 2001, the Oregon Water Resources Commission issued a Final Order on Contested Case.

WaterWatch subsequently sought review of the Water Resources Commission's Order in the Oregon Court of Appeals, and the Court of Appeals reversed and remanded the Commission's order.

The Oregon Supreme Court granted review of the Court of Appeals decision, and in 2005, based on the passage of House Bill 3038, the Supreme Court vacated the Court of Appeals decision and remanded the case to the Court of Appeals for further consideration in light of House Bill 3038.

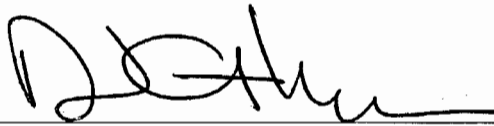
In April 2006, WaterWatch, the Coos Bay North Bend Water Board, the Water Resources Department, the Oregon Water Resources Commission and the Oregon Department of Fish and Wildlife entered into a settlement agreement that resolved the outstanding issues. On August 17, 2006, in light of the settlement agreement, the Court of Appeals vacated the Water Resources Commission's administrative order and dismissed the

matter from the court. Accordingly, the matter is again before the Water Resources Commission, and the Commission herein issues its Revised Final Order.

ORDER

Based on the attached Settlement Agreement which is incorporated herein, the proposed use as conditioned will not impair or be detrimental to the public interest. It is hereby ORDERED that Application S 70256 be approved and that a revised permit shall issue.

DATED this 1st day of September, 2006.

A handwritten signature in black ink, appearing to read 'Dan Thorndike', written over a horizontal line.

Dan Thorndike, Chair
Oregon Water Resources Commission

SETTLEMENT AGREEMENT

This Agreement is between and among WaterWatch of Oregon, Inc. ("WaterWatch"); the Coos Bay North Bend Water Board ("the Board"); the Oregon Water Resources Department ("OWRD"), the Oregon Water Resources Commission ("Commission") and the Oregon Department of Fish and Wildlife ("ODFW").

RECITALS

A. In 1990, the Board filed an application ("Application") with OWRD for a permit to appropriate water from Tenmile Creek in Coos County, Oregon. Various parties opposed the Application, including WaterWatch and ODFW.

B. In or about August and September 1999, the Board and ODFW entered into a settlement agreement ("1999 Settlement Agreement"). Under the 1999 Settlement Agreement, ODFW agreed not to oppose the Application, provided certain conditions were included in any permit issued upon the Application.

C. On January 17, 2001, after contested case hearings, the Commission issued a final order ("Final Order") granting a water appropriation permit ("Permit") to the Board.

D. WaterWatch appealed the Commission's Final Order granting the Permit to the Oregon Court of Appeals, Case No. A113693. The Court of Appeals reversed the Commission's decision. The Oregon Supreme Court granted review of the Court of Appeals decision, Case Nos. S51586 & S51587. Based on passage in 2005 of House Bill 3038, the Supreme Court vacated the Court of Appeals decision and remanded the case to the Court of Appeals for further consideration in light of House Bill 3038.

E. The parties to this Agreement wish to resolve the pending appeal, and to resolve all disputes related to issuance of the Permit and Final Order. Therefore, the parties agree as follows:

AGREEMENT

1. Within 15 days of execution of this Agreement, WaterWatch, the Commission, OWRD and the Board will stipulate in the Court of Appeals to an order remanding the Final Order to the Commission. After remand by the Court of Appeals, the Commission will issue a revised final order ("Revised Final Order") in the form of the attached Draft Revised Final Order; and OWRD will issue a revised permit ("Revised Permit") in the form of the attached Draft Permit.

2. The Revised Final Order and Revised Permit will modify the original Final Order and Permit as follows:

a. The conditions contained in the sixth paragraph on Page 2 of the Permit, relating to breaching of a sand berm at the mouth of Tenmile Creek, will be revised to read:

During the period of authorized use, water may be appropriated only at times when the mouth of Tenmile Creek is sufficiently open (sand berm breached), and channel depth is sufficient, to allow satisfactory fish passage to Tenmile Lake. The Oregon Department of Fish and Wildlife (ODF&W) must concur in both the determination that the mouth of Tenmile Creek is sufficiently open (sand berm breached) and the determination that channel depth is sufficient to allow fish passage before Coos Bay North Bend Water Board (CBNB) may appropriate water under the permit. When CBNB believes the mouth of Tenmile Creek is sufficiently open to allow satisfactory fish passage, CBNB will provide written communication to ODF&W with a dated photograph showing the conditions at the mouth of Tenmile Creek. The written communication and photograph may be

communicated electronically. In addition, CBNB will make its best efforts to ensure that an ODF&W representative has an opportunity to view in person the conditions at the mouth of Tenmile Creek. "Best efforts" is defined as cooperation and assistance by the CBNB, at staff level, to obtain ODF&W access to the mouth of Tenmile Creek through telephone calls, e-mail communication or other communication, but does not include any requirement that CBNB take any formal action in the form of written correspondence or legal action to obtain ODF&W access to the mouth of Tenmile Creek. When ODF&W does not have its own means of transportation reasonably available to gain access to the mouth of Tenmile Creek, 'best efforts' requires CBNB to provide an ODF&W representative with reasonable means of transportation to gain access to the mouth of Tenmile Creek.

b. In the seventh paragraph on Page 2 of the Permit, relating to bypass flow, "50.0 cubic feet per second" will be changed to "75.0 cubic feet per second."

c. The Revised Final Order will reasonably reflect this Agreement and changes to the Permit required by this Agreement.

3. Provided the Revised Final Order and Revised Permit are consistent with this Agreement, no party to this Agreement will oppose or challenge -- before the Commission, by petition for review, or otherwise -- the Revised Final Order and Revised Permit.

4. Within 30 days of issuance of the Revised Final Order and Revised Permit, the Board will pay \$20,000 to WaterWatch as attorney fees.

5. Provided that the parties to this Agreement comply with all of its terms and conditions, WaterWatch will not formally appeal or protest any approval of the Board's initial water conservation and management plan. However, WaterWatch reserves

the right to file comments with the OWRD regarding the plan during any applicable public comment period.

6. To the extent any term of this Agreement is inconsistent with the 1999 Settlement Agreement, the Board and ODFW hereby modify their 1999 Settlement Agreement to be consistent with this Agreement.

7. Except as stated above with respect to the 1999 Settlement Agreement, this Agreement constitutes the entire agreement of the parties with respect to the subject matter.

8. This Agreement may be amended or modified only by a written agreement signed by the parties.

9. This Agreement benefits and is binding upon the parties and their respective successors and assigns.

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10. Each person signing this Agreement warrants that he/she has authority to enter into this Agreement on behalf of, and to bind, the party for whom the person is signing.

WaterWatch of Oregon, Inc.

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John DeVoe
Executive Director

Date: 7/17/06

Oregon Water Resources Department

[Signature]
By: Phillip C. Ward
Its: Director

Date: May 15, 2006

Oregon Department Of Fish And Wildlife

[Signature]
By: Roy Elicker
Its: Interim Director
Date: May 22, 2006

Coos Bay North Bend Water Board

[Signature]
By: Rob K. Schab
Its: GENERAL MANAGER
Date: MAY 4, 2006

Oregon Water Resources Commission

[Signature]
By: Dan Thorndike
Its: Commission Chair
Date: 4/25/06