

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-2463

**Final Order Incorporating Settlement Agreement
Extension of Time for Permit Number G-2410**

Appeal Rights

This is a final order in 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 536.075 and OAR 137-004-0080 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Application History

Permit G-2410 was issued by the Department on July 18, 1963. The permit called for completion of construction by October 1, 1964, and complete application of water to beneficial use by October 1, 1965. On November 5, 1993, the City of Pendleton submitted an application to the Department for an extension of time for Permit G-2410. In accordance with OAR 690-315-0050(2), on May 2, 2006, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2082, and the time to fully apply water to beneficial use to October 1, 2082. The protest period closed June 16, 2006, in accordance with OAR 690-315-0060(1). On June 16, 2006, WaterWatch of Oregon, Inc. filed a timely protest. Pursuant to a Settlement Agreement completed as of April 28, 2009, this Final Order extends the time to complete construction to October 1, 2076, and the time to fully apply water to beneficial use to October 1, 2076.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. **Municipal Use Extension Condition**

The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted wells.

The plan shall be submitted to the Department within one year of the date of the Extension Order is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted wells or an adequate substitute such as water levels in nearby wells.

2. **Development Limitations**

Diversion of water beyond 2.56 cfs under Permit G-2410 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension becomes final.

The deadline established in this order for submittal of a Water Management and Conservation Plan shall not relieve a permittee of any existing or future requirements for submittal of a Plan at an earlier date as established through other orders of the Department. A Plan submitted to meet the requirements of this order may also meet the Plan submittal requirements of other Department orders.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0080(3).

Order

A Settlement Agreement was executed by the applicant, protestant and the Department as of April 28, 2009. The terms of the Settlement Agreement are incorporated into this Final Order. A copy of the Settlement Agreement is attached to and made a part hereof as if set forth in full. The extension of time for Application G-2463, Permit G-2410, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2076. The deadline for applying water to full beneficial use is extended to October 1, 2076.

DATED: June 25, 2009.



Dwight French, Administrator of
Water Rights and Adjudications
for
Phillip C. Ward, Director

If you have any questions about statements contained in this document, please contact Scott Kudlemyer at (503) 986-0813.

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

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3. The parties understand and agree that this Agreement and the Final Order Incorporating Settlement Agreement issued pursuant to this Agreement constitute the complete and final resolution of the Protest to the Proposed Final Order on the Application for Extension of Time for Permit No. G-2410 dated May 2, 2006.
4. Effective upon the issuance by OWRD of a Final Order Incorporating Settlement Agreement in the form attached hereto, the parties waive any and all rights to petition for judicial review of this Agreement, waive any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Permit No. G-2410 issued by OWRD.

C. Terms of the Agreement

1. When the Umatilla River flows are less than 250 cfs measured at the Umatilla River at Pendleton gage, (PDTO, Gage # 14021000), or an equivalent gage approved by the OWRD, the City will forego use of its surface water rights with priority dates of 1910 and junior and allow this water to remain instream.
2. In order to ensure the instream benefits provided in paragraph 1, above, the City agrees to the inclusion of a condition in the confirming certificates for the rights collectively known as the 1929 Springs Transfers (T-8761) which includes S-472 (former Cert. No. 3927), S-1197 (former Cert. No. 7993), S-9006 (former Cert. No. 8051) and S-9007 (former Cert. No. 8052). The condition shall read as follows: "When the Umatilla River flows are less than 250 cfs measured at the Umatilla River at Pendleton gage, (PDTO, Gage # 14021000), or an equivalent gage approved by the OWRD, the City will forego use of its surface water rights with priority dates of 1910 and junior and allow this water to remain instream."

Further, the City agrees that rights under the 1929 Springs Transfers originally set at 11.7 cfs be reduced to 3.8 cfs, and that rights under T-8704, originally set at 8.0 cfs be reduced to 7.2 cfs.

3. In addition, the City agrees to the inclusion of the same condition stated in paragraph 2 above in the certificate to be issued for S-458 (T-8704, priority date 1910), and in any permit or certificate issued for use of water reserved under ORS 538.450.
4. The City further agrees, as a condition of extension of time for Permit No. G-3225, to a reduction of use of Well #7 (Mission) from 6.7 cfs to 2.0 cfs, for an overall reduction of 4.7 cfs. The City will authorize the partial cancellation of 4.7 cfs from Well 7 by letter and/or by any additional submittal or filing that may be required by OWRD for such partial cancellation. OWRD will issue a special order cancelling that portion of Permit G-3225.

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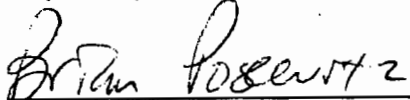
D. Miscellaneous

- a. The City shall retain sole discretion and control in the operation of its water system in accordance with its water rights permits, subsequent certificates and this Settlement Agreement.
- b. This Settlement Agreement is subject to WRD approval of permit conditions described herein.
- c. This Settlement Agreement may be signed in counterparts, which shall have the same effect as though all signatures appeared on the same page.

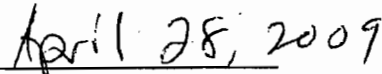
We have read and understand all of the above consent agreements and fully agree to all of the terms.

Phillip W. Houk,
Mayor, City of Pendleton

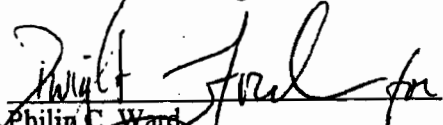
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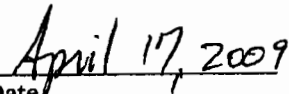
Brian J. Posewitz, attorney for
WaterWatch of Oregon, Inc.



Date



Philip C. Ward
Director, Oregon Water Resources Department



Date

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

RECEIVED

In the Matter of Application for Extension of Time)
for Permit No. G-2410 in the name of City of)
Pendleton)
Applicant)
and)
WaterWatch of Oregon, Inc.)
Protestant)

SETTLEMENT
AGREEMENT

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The City of Pendleton, WaterWatch of Oregon, Inc. and the Oregon Water Resources Department (collectively "the parties") do hereby stipulate and agree in this "Settlement Agreement" (Agreement) as follows:

A. Recitals

1. The City of Pendleton ("City") is the proponent of Application for Extension of Time for Permit No. G-2410 which is pending before the Oregon Water Resources Department (WRD). The City seeks water rights in its proprietary capacity as a water utility and nothing in this Settlement Agreement is intended by the City as a limitation on the City's governmental authority.
2. The City submitted an amended extension of time application on March 21, 2005.
3. On May 2, 2006 the OWRD issued a Proposed Final Order extending the time to complete construction of the water system and complete application of water to beneficial use under Permit No. G-2410 from October 1, 1993 to October 1, 2082.
4. WaterWatch of Oregon, Inc. ("WaterWatch") filed a timely protest to the Proposed Final Order.
5. The City and WaterWatch (collectively the "parties") wish to amicably resolve their differences through this Settlement Agreement.

B. Consent

1. The parties hereby acknowledge that they have read and understand the terms of this Agreement.
2. The parties understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.

3. The parties understand and agree that this Agreement and the Final Order Incorporating Settlement Agreement issued pursuant to this Agreement constitute the complete and final resolution of the Protest to the Proposed Final Order on the Application for Extension of Time for Permit No. G-2410 dated May 2, 2006.
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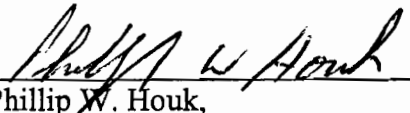
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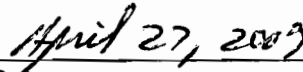
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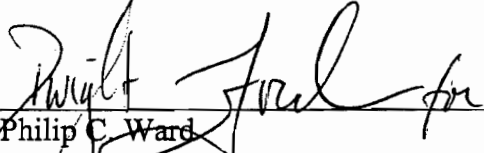
Phillip W. Houk,
Mayor, City of Pendleton



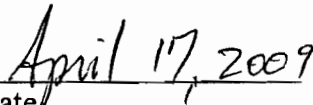
Date

Brian J. Posewitz, attorney for
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Date



Philip C. Ward,
Director, Oregon Water Resources Department



Date

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