

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-87005

**Final Order Incorporating Settlement Agreement**

*Hearing and Appeal Rights*

Under the provisions of Oregon Revised Statute (ORS) 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) 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.

ORS 536.075 allows for additional appeal rights for other than contested case. 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 Oregon Administrative Rule (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.

*Findings of Fact*

On October 3, 2007, Neal Family Trust submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on December 9, 2008 recommending the application be denied because water is not available, and the proposed use is not consistent with OAR 690-033.

The applicant's attorney, Martha Pagel, filed a timely protest on June 16, 2008, and proposed to transfer instream 0.01 cubic foot per second of water (equivalent to 0.8 acre of irrigation) from Certificate 7693 as mitigation for the use authorized by the attached draft permit for Application S-87005.

The Department finds that transferring instream 0.01 cubic foot per second of water from Certificate 7693 will provide satisfactory mitigation for Application S-87005 from April 1 through September 30.

Taking into account the period of mitigation (April 1 through September 30) and the classifications in the John Day Basin Program [OAR 690-506-0040(9)], the allowed use, rate, and duty are as follows:

human consumption (indoor use only) from January 1 through March 31, and October 1 through December 31 at 0.005 cubic foot per second (further limited to 500 gallons per day); and

domestic use including irrigation of up to ½ acre of lawn or non-commercial garden from April 1 through September 30 at 0.01 cubic foot per second [further limited to 5.0 acre feet per acre (af/ac) from April 1 through June 14, 0.30 af/ac from June 15 through June 30, 0.90 af/ac in July, 0.70 af/ac in August, and 0.30 af/ac in September].

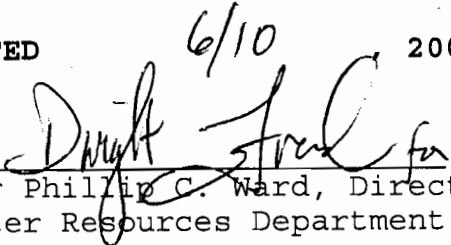
A Settlement Agreement was signed by all parties as of June 2, 2009. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

The proposed use would not impair or be detrimental to the public interest.

#### Order

Application S-87005 is therefore approved with modifications to the Proposed Final Order. Upon meeting the "Terms of Agreement" as described in the attached Settlement Agreement, which includes the issuance of a Final Order approving the instream transfer of 0.01 cubic foot per second of water from Certificate 7693, a permit consistent with the attached draft permit shall be issued.

DATED <sup>6/10</sup> 2009

  
for Phillip C. Ward, Director  
Water Resources Department

*This document was prepared by Jeana Eastman. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0859.*

*If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.*

*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.*

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF GRANT

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

NEAL FAMILY TRUST  
10035 FAIRVIEW RD  
TILLAMOOK, OR 97141

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

APPLICATION FILE NUMBER: S-87005

SOURCE OF WATER: A SPRING, TRIBUTARY TO LONG CREEK

PURPOSE OR USE: HUMAN CONSUMPTION FOR ONE HOUSEHOLD FROM JANUARY 1 THROUGH MARCH 31, AND OCTOBER 1 THROUGH DECEMBER 31; AND

DOMESTIC USE FOR ONE HOUSEHOLD INCLUDING IRRIGATION UP TO 1/2 ACRE OF LAWN OR NON-COMMERCIAL GARDEN FROM APRIL 1 THROUGH SEPTEMBER 30

MAXIMUM RATE/DUTY: 0.005 CUBIC FOOT PER SECOND (CFS) FURTHER LIMITED TO 500 GALLONS PER DAY FROM JANUARY 1 THROUGH MARCH 31, AND OCTOBER 1 THROUGH DECEMBER 31 FOR HUMAN CONSUMPTION; AND

0.01 CFS FROM APRIL 1 THROUGH SEPTEMBER 30 FOR DOMESTIC USE FOR ONE HOUSEHOLD INCLUDING IRRIGATION UP TO 1/2 ACRE OF LAWN OR NON-COMMERCIAL GARDEN

| DUTY FOR IRRIGATION UP TO 1/2 ACRE OF LAWN OR NON-COMMERCIAL GARDEN |                                   |
|---|-----------------------------------|
| PERIOD  | MAXIMUM DUTY (ACRE FEET PER ACRE) |
| APRIL 1 THROUGH JUNE 14   | 5.00                              |
| JUNE 15 THROUGH JUNE 30   | 0.30                              |
| JULY 1 - JULY 31  | 0.90                              |
| AUGUST 1 - AUGUST 31  | 0.70                              |
| SEPTEMBER 1 - SEPTEMBER 30  | 0.30                              |

PERIOD OF USE: HUMAN CONSUMPTION FOR ONE HOUSEHOLD FROM JANUARY 1 THROUGH MARCH 31, AND OCTOBER 1 THROUGH DECEMBER 31; AND

DOMESTIC USE FOR ONE HOUSEHOLD INCLUDING IRRIGATION UP TO ½ ACRE OF LAWN OR NON-COMMERCIAL GARDEN FROM APRIL 1 THROUGH SEPTEMBER 30

DATE OF PRIORITY: OCTOBER 3, 2007

POINT OF DIVERSION LOCATION: SW ¼ NE ¼, SECTION 21, T10S, R31E, W.M.; 500 FEET NORTH AND 1950 FEET WEST FROM E1/4 CORNER, SECTION 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW ¼ NE ¼  
SECTION 21  
TOWNSHIP 10 SOUTH, RANGE 31 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the meter(s) in good working order.
- B. The permittee shall allow the watermaster access to the meter(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

Notwithstanding that Oregon Department of Fish and Wildlife has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and

downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

#### 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.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, Section 030 adopted November 13, 1991 shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued \_\_\_\_\_, 2009

**DRAFT - THIS IS NOT A PERMIT**

\_\_\_\_\_  
for Phillip C. Ward, Director  
Water Resources Department

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

|  |                   |
|--|-------------------|
| In the Matter of Water Right Application S-87005 ) |                   |
| in the name of Neal Family Trust )                 | <b>SETTLEMENT</b> |
| <i>Applicant and Protestant</i> )                  | <b>AGREEMENT</b>  |
| _____ )  |                   |

The Oregon Water Resources Department (OWRD) and Neal Family Trust (collectively “the parties”) do hereby stipulate and agree in this “Settlement Agreement” (Agreement) as follows:

**A. Background**

1. On October 3, 2007, the Oregon Water Resources Department received Application S-87005 from the Neal Family Trust for 0.01 cubic feet per second for domestic use expanded for one household from a spring, tributary to Long Creek in Grant County.
2. On May 20, 2008, OWRD issued a Proposed Final Order (PFO) for S-87005, proposing to deny the Application.
3. On June 16, 2008 OWRD received a protest from the Neal Family Trust on the PFO.
4. OWRD and the Neal Family Trust agree that all issues related to Application S-87005 are resolved solely on the following terms.

**B. Consent**

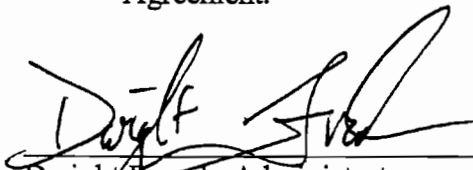
1. The Neal Family Trust hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the Final Order Incorporating Settlement Agreement and Draft Permit for Application S-87005 which are hereby incorporated by reference.
2. The Neal Family Trust understands and 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 protest on the PFO for Application S-87005.
3. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit the Neal Family Trust 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 S-87005 issued by OWRD.

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



**C. Terms of the Agreement**

1. The representative for the Neal Family Trust will sign this Settlement Agreement and mail the signed original back to Oregon Water Resources Department, ATTN: Patricia McCarty, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.
2. The Neal Family Trust will transfer 0.01 cfs of Certificate 7693 to an in-stream water right as mitigation for use authorized by the attached draft Final Order and draft Permit.
3. Within 30 days of OWRD's acceptance of the instream transfer application OWRD will issue a Final Order approving a permit for Application S-87005, consistent with the draft Final Order that is attached to, and part of, this Settlement Agreement for Application S-87005. The Final Order will incorporate this Settlement Agreement by reference and as an attachment.
4. Within 30 days of OWRD's acceptance of the instream transfer application the Neal Family Trust will pay the \$ 300.00 permit recording fee.
5. The Final Order approving the transfer instream of 0.01 cfs of Certificate 7693 and the Permit for Application S-87005 will be issued and become effective on the same date.
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, Draft Final Order, and Draft Permit, and does understand and fully agree with the contents thereof.
8. As mentioned above, permit recording fees in the amount of \$300.00 must be paid prior to issuance of a permit. If the Final Order and/or Permit issuance are delayed due to the failure of the Applicant to pay any required fees, this will not constitute breach of the Settlement Agreement by OWRD.
9. 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

S-17-09  
\_\_\_\_\_  
Date

for  
Phillip C. Ward, Director  
Oregon Water Resources Department

Melissa J. Neal, Trustee  
for Neal Family Trust

6-2-09  
Date