

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16693

**Final Order Incorporating Settlement Agreement**

*Hearing and Appeal Rights*

Under the provisions of 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 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*

On June 29, 2006, Sunset View Ranch, LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on June 24, 2008, recommending the application be denied because ground water will not likely be available within the capacity of the resource and without injury to prior rights, and because the proposed use of ground water will have the potential for substantial interference with an over-appropriated surface water source.

On August 7, 2008, a timely protest was filed by Martha Pagel, with Schwabe, Williamson & Wyatt, Attorneys at Law, on behalf of the applicant.

On September 3, 2008, Mike McCord, Watermaster District #16, and Marc Norton, a hydrogeologist with the Ground Water Section, conducted a site visit of the neighboring domestic use. Based on the site visit, the Department determined that the source of nearby domestic use is a well, not a "spring" as was noted in the December 18, 2006 and August 14, 2008 Public Interest Reviews.

On May 11, 2009, the applicant submitted the results of a pump test of Well 1 (POLK 52285), which was conducted by H.G. Schlicker & Associates, Inc. in March 2009.

On June 24, 2009, the Department completed a third review of the proposed appropriation of 0.089 CFS from Well 1 (POLK 52285) for irrigation of 49.0 acres from April 1 through October 31 of each year and determined that the proposed ground water use will not have the potential for substantial interference with surface water.

A Settlement Agreement was signed by all parties as of August 25, 2009. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

The proposed use would not impair or be detrimental to the public interest. The Applicant and the Department have agreed to permit conditions set forth in the permit.

#### Order

Application G-16693 therefore is approved as proposed by the Proposed Final Order and modified further by the Settlement Agreement, and Permit G-16590 is issued as limited by the conditions proposed by the Proposed Final Order and Settlement Agreement.

DATED October 9, 2009



for Phillip C. Ward, Director  
Water Resources Department

*This document was prepared by Kerry Kavanagh. 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 503-986-0816.*

*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.*

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

In the Matter of Water Right Application     )  
G-16693 in the name of Sunset View         )  
Ranch, LLC   )     SETTLEMENT  
                  *Applicant/*                         )     AGREEMENT  
                  *Protestant*                        )

The Oregon Water Resources Department (OWRD) and Sunset View Ranch, LLC (Applicant) do hereby stipulate and agree in this "Settlement Agreement" as follows:

**A. Background**

1. On June 29, 2006, Sunset View Ranch, LLC, submitted an application for a ground water permit for 0.17 cubic foot per second (cfs) for irrigation of ~~29.0~~ <sup>49.0 RAB/DWR</sup> acres in Polk County.
2. On June 15, 2007, the applicant amended the application by reducing the rate from 0.17 cfs to 0.089 cfs.
3. On June 24, 2008, OWRD issued a Proposed Final Order (PFO) recommending that the application be denied because ground water will not likely be available within the capacity of the resource and without injury to prior rights and because the proposed use of ground water will have the potential for substantial interference with an over-appropriated surface water source.
4. Applicant filed a protest on August 7, 2008.
5. OWRD and Applicant agree that all issues related to application G-16693 are resolved solely on the following terms.

**B. Terms of the Agreement**


1. By signing this Settlement Agreement, Applicant/Protestant withdraws the protest to the PFO for Application G-16693 with prejudice.
2. The Applicant waives all right and opportunity to request reconsideration or exception and to seek judicial review of this Settlement Agreement, the Final Order and Permit.
3. The Department shall issue a Final Order Incorporating Settlement Agreement and Permit consistent with the attached draft Permit upon payment of \$400 for permit recording fees.
4. 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

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this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.

5. 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.
6. 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.
7. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
8. This Settlement Agreement may be signed in counterparts.

  
Dwight French, Administrator,  
Water Rights and Adjudications Division

for  
Phillip C. Ward, Director  
Oregon Water Resources Department

Aug 5, 2009  
Date

  
Sunset View Ranch LLC.

8-25-09  
Date

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WATER RESOURCES DEPT  
SALEM, OREGON