

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-14908

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 January 14, 1999, City of Redmond (City) submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order (PFO) on June 19, 2007. On August 3, 2007, a timely protest was filed by WaterWatch of Oregon (WaterWatch).

A settlement agreement was signed by all parties as of July 30, 2009. The Settlement Agreement is incorporated into this Final Order and is attached hereto. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

As a result of the settlement agreement, the amount of mitigation to be provided by the City in connection with the proposed ground water use will be based on an estimate of 50% average annual consumptive use, rather than 40% as estimated for purposes of the PFO. Thus, the mitigation obligation for 25.0 cubic feet per second, further limited to an annual volume of 3492.0 acre feet (AF), will be 1746.0 AF of mitigation water in the General Zone of Impact.

In addition, the applicant agrees to the inclusion of the following permit conditions that were not originally included in the PFO:

The permittee shall provide a mitigation update report to the Department, with a copy to WaterWatch, every three years until the permit is fully developed. The report shall compare actual monthly water use to the estimates used for determining prior mitigation requirements and shall identify whether additional mitigation is required.

The permittee shall provide 90 days prior written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

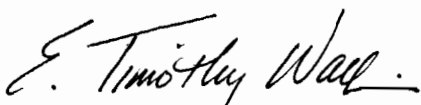
The PFO erroneously listed eleven wells. On November 2, 2006, the City amended the application proposing the use of six wells, being Well 6, Well 7, Well 8, Well 9, Well 10, and Well 11.

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

Order

Application G-14908 is therefore approved with modifications to the Proposed Final Order as set forth herein and in the attached Settlement Agreement. Upon providing the required mitigation and payment of outstanding fees in the amount of \$400.00 a permit consistent with the attached draft permit shall be issued.

DATED November 20, 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.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CITY OF REDMOND
PO BOX 726
REDMOND, OR 97756

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

APPLICATION FILE NUMBER: G-14908

SOURCE OF WATER: SIX WELLS IN THE DESCHUTES RIVER BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE/VOLUME: 25.0 CUBIC FEET PER SECOND, LIMITED TO A MAXIMUM ANNUAL VOLUME OF 3492.0 ACRE FEET

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: JANUARY 14, 1999

WELL LOCATIONS:

WELL #6: NWSE, SECTION 21, T15S, R13E, W.M.; 2035 FEET NORTH & 1662 FEET WEST FROM SE CORNER, SECTION 21

WELL #7: NWNE, SECTION 15, T15S, R13E, W.M.; 158 FEET SOUTH & 2826 FEET EAST FROM NW CORNER, SECTION 15

WELL #8: NENE, SECTION 20, T15S, R13E, W.M.; 190 FEET SOUTH & 127 FEET WEST FROM NE CORNER, SECTION 20

WELL #9: SWNW, SECTION 16, T15S, R13E, W.M.; 1457 FEET SOUTH & 580 FEET EAST FROM NW CORNER, SECTION 16

WELL #10: SENW, SECTION 9, T15S, R13E, W.M.; 1332 FEET SOUTH & 2020 FEET EAST FROM NW CORNER, SECTION 9

WELL #11: NESW, SECTION 9, T15S, R13E, W.M.; 2530 FEET NORTH & 2160 FEET EAST FROM SW CORNER, SECTION 9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE MUNICIPAL SERVICE BOUNDARY OF THE CITY OF REDMOND

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 appropriation. The permittee shall maintain the meter in good working order.
- B. The permittee shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- C. The permittee shall allow the watermaster access to the meter; provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows so long as mitigation is maintained.

Within five years of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this time line to complete the required Water Management and Conservation Plan. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

GROUND WATER MITIGATION CONDITIONS

Mitigation Obligation: 1746.0 acre-feet annually in the General Zone of Impact, located anywhere in the Deschutes River basin above the Madras gage, which is located below Lake Billy Chinook.

Mitigation Source: 1746.0 mitigation credits and/or mitigation credits from a mitigation project.

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s), will occur if the required mitigation is not maintained.

The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee the use of water under this right is subject to the terms and conditions of a valid contract, a copy of which must be on file in the records of the Water Resources Department prior to use of water.

The permittee shall provide a mitigation update report to the Department, with a copy to WaterWatch, every three years until the permit is fully developed. The report shall compare actual monthly water use to the estimates used for determining prior mitigation requirements and shall identify whether additional mitigation is required.

The permittee shall provide 90 days prior written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit.

Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, and proposing to cancel the ground water permit, or subsequent certificate(s).

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.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit

conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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.

Actual construction of the well(s) shall begin within one year from issuance of the final order approving the use. Complete application of the water to the use shall be made on or before October 1, 2029. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____

DRAFT - THIS IS NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application G-14908)
In the name of the City of Redmond,)
Applicant)
)
WaterWatch of Oregon, Inc.)
Protestant)
_____)

SETTLEMENT
AGREEMENT

RECEIVED

AUG 18 2009

WATER RESOURCES DEPT
SALEM, OREGON

The Oregon Water Resources Department ("OWRD"), the City of Redmond ("Applicant"), and WaterWatch of Oregon, Inc. ("Protestant"), referred to collectively as "the Parties" and each individually a "Party," do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

1. On January 13, 1999, the City of Redmond filed Application G-14908 with OWRD for use of ground water in the Deschutes Basin.
2. On June 19, 2007, OWRD issued a Proposed Final Order (PFO) recommending approval of the Application, subject to mitigation requirements for ground water use in the Deschutes Basin.
3. On August 3, 2007, WaterWatch of Oregon filed a timely protest against the PFO.
4. The Parties agree to settle the protest to the PFO on Application G-14908 on the following terms of agreement.

Terms of Agreement

1. In signing this Settlement Agreement, Protestant withdraws its protest and request for hearing related to the PFO for Application G-14908 with prejudice.
2. Regarding water right Application G-14908, Applicant and Protestant hereby expressly waive all right and opportunity to file protests or requests for contested case hearing, requests for reconsideration, exceptions, or to seek judicial review of the Final Order or Permit, and also expressly waive any right and opportunity to challenge this Settlement Agreement or the attached Draft Final Order and Draft Permit which are part of this Settlement Agreement.
3. As a result of this Agreement, the amount of mitigation to be provided by Applicant in connection with the proposed ground water use will be based on an estimate of 50% average annual consumptive use, rather than 40% as estimated for purposes of the PFO. In addition, the Applicant acknowledges that the condition in the Permit resulting from Application G-14908 that reads,

- i. "The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount."

may result in a requirement to (1) provide increased mitigation on a prospective basis for new development and (2) provide increased mitigation for continued use of water already developed under the permit in instances when the amount of mitigation provided at the time of permit issuance is less than a revised estimated average annual consumptive use made by the Department of the subject appropriation following issuance of the permit. The Parties also acknowledge that increased mitigation is likely to be required if the Applicant's primary use of water under this new water right were to occur during the peak summer months, when consumptive use typically increases to approximately 57% to 60% of the quantity diverted. The potential for increased mitigation is demonstrated in the examples below.

To assist with implementation of this Permit condition, the Applicant agrees to provide a mitigation update report to the Department, with a copy to WaterWatch, every three years until the permit is fully developed. The report shall compare actual monthly water use to the estimates used for determining prior mitigation requirements and shall identify whether additional mitigation is required.

4. Examples:

Mitigation Scenario Where Mitigation Provided Is Sufficient:

Using a consumptive use coefficient of 50%, such as that agreed to in this settlement agreement, the Department establishes a mitigation obligation of 100 acre-feet (af) for an appropriation of 200 af. Following issuance of the permit, if the Department determines from records of actual monthly use that the annual consumptive use is equal to or less than 50%, the mitigation obligation will not be increased. For example, if 120 af was appropriated in summer months (with a 60% consumptive use coefficient) and 80 af appropriated in non-summer months (with a 30% consumptive use coefficient), the annual consumptive use would be 96 af ($120\text{af} \times 60\% + 80\text{af} \times 30\% = 96$). Since 100 af of mitigation is being provided, no additional mitigation would be required.

Mitigation Scenario Where Mitigation Provided Is Not Sufficient:

Using a consumptive use coefficient of 50%, such as that agreed to in this settlement agreement, the Department establishes a mitigation obligation of 100 af for an appropriation of 200 af. Following issuance of the permit, if the Department determines from records of actual monthly use that the annual consumptive use is greater than 50%, the mitigation obligation will be increased. For example, if 170 af was appropriated in summer months and 30 af appropriated in non-summer months, the annual consumptive use would be 111 af ($170\text{af} \times 60\% +$

30af x 30% = 111). The mitigation of 100 af is not sufficient and the mitigation obligation would increase to 111 af.


5. The Applicant agrees that the following condition shall be in the Permit resulting from Application G-14908:
 - i. "The permittee shall provide timely written notice to the appropriate OWRD Watermaster in the event that the permittee intends to irrigate with reclaimed water that originates from water use under this permit."
6. After the Applicant and Protestant sign this Settlement Agreement, they will mail the entire signed original, including attachments, back to the Oregon Water Resources Department, ATTN: Patricia McCarty, 725 Summer St., NE, Salem, OR 97301-1266.
7. Within 30 days after OWRD receives the original Settlement Agreement signed by all Parties, OWRD will issue a Final Order that is consistent with the Draft Final Order attached to this Settlement Agreement. The Final Order will incorporate this Settlement Agreement by reference and as an attachment.
8. 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 this Party and bind that Party to the terms of this Settlement Agreement.
9. 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 their 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 Permits, and understands and fully agrees with the contents thereof.
10. 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.

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SALEM, OREGON

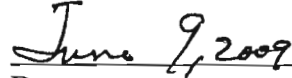
SIGNATURE PAGE FOR SETTLEMENT AGREEMENT ON
WATER RIGHT APPLICATION G-14908



Dwight French, Administrator,
Water Rights and Adjudications Division

For

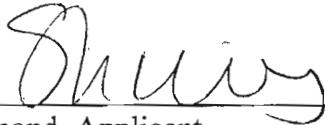
Phillip C. Ward, Director
Oregon Water Resources Department



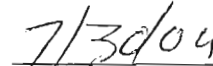
Date

WaterWatch of Oregon, Protestant

Date



City of Redmond, Applicant



Date

RECEIVED

June 11, 2009

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

| | | |
|--|---|-------------------|
| In the Matter of Water Right Application G-14908 |) | |
| In the name of the City of Redmond, |) | SETTLEMENT |
| <i>Applicant</i> |) | AGREEMENT |
| |) | |
| WaterWatch of Oregon, Inc. |) | |
| <i>Protestant</i> |) | |
| _____ |) | |

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SALEM, OREGON

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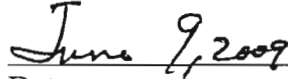
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SIGNATURE PAGE FOR SETTLEMENT AGREEMENT ON
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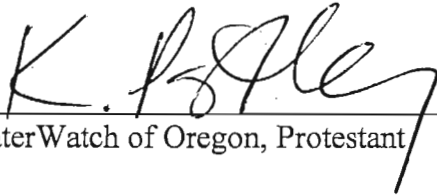


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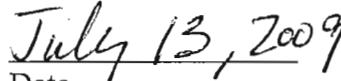


Date

Phillip C. Ward, Director
Oregon Water Resources Department



WaterWatch of Oregon, Protestant



Date

City of Redmond, Applicant

Date

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WATER RESOURCES DEPT
SALEM, OREGON

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