

Oregon Water Resources Department
Water Rights/Adjudications Division

Water Rights Application
Number S-87480

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.

Findings of Fact

On June 26, 2009, Ernie and Lu Ann Russell submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on April 6, 2010, recommending the application be denied because water is not available and the proposed use does not comply with OAR 690-033.

On May 17, 2010, a timely protest was filed by the applicant.

Upon further evaluation, the Department finds that there are no reasonable alternative sources of water for the proposed use, therefore the public interest in the proposed use outweighs water availability and OAR 690-033 concerns.

A Settlement Agreement was signed by all parties as of July 6, 2010. The terms of the Settlement Agreement have been incorporated

into this Final Order and a copy of the Settlement Agreement is included below. The Protestant and the Department have agreed to permit conditions set forth in the draft permit.

Conclusions of Law

The presumption of public interest under ORS 537.153(2) is not met, but is overcome because the proposed use would not impair or be detrimental to the public interest after considering the factors in ORS 537.170(8).

Order

Application S-87480 therefore is approved with the above modifications to the Proposed Final Order, and Permit S-54661 is issued as limited by the conditions set forth therein.

DATED July 16, 2010



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.

STATE OF OREGON

COUNTY OF CLACKAMAS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

ERNIE AND LU ANN RUSSELL
40200 SE CEDAR CREEK LN
SANDY, OR 97055

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

APPLICATION FILE NUMBER: S-87480

SOURCE OF WATER: CEDAR CREEK, A TRIBUTARY OF SANDY RIVER

PURPOSE OR USE: HUMAN CONSUMPTION (INDOOR USE ONLY: COOKING, DRINKING,
AND SANITATION) FOR ONE HOUSEHOLD

MAXIMUM RATE: 0.005 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 500
GALLONS PER DAY, AND 3,000 GALLONS PER MONTH

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: JUNE 26, 2009

POINT OF DIVERSION LOCATION: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 18, T2S, R5E, W.M.; 750
FEET SOUTH AND 465 FEET EAST FROM NW CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 18
TOWNSHIP 2 SOUTH, RANGE 5 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 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.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

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 635-415, 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.

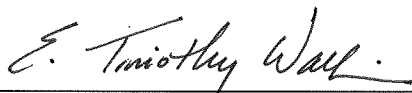
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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, except where those instream water rights allow for the use authorized herein.

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 July 16, 2010



for Phillip C. Ward, Director
Water Resources Department

Mailing List for FO incorp SA Copies

Application #S-87480

Original mailed to applicant with claim of beneficial use form:

ERNIE AND LU ANN RUSSELL
40200 SE CEDAR CREEK LN
SANDY OR 97055

Copies sent to:

1. WRD - File # S-87480
2. WRD - Ken Stahr

 wrd-data tech's

FO and Map Copies sent to (remember to reduce copy margins):

3. WRD - Watermaster District #: 20

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

4. Oregon State Parks
5. ODFW District Biologist: Danette Faucera
6. ODFW District Biologist: Todd Alsbury

CASEWORKER : Jeana Eastman

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

RECEIVED

JUL 07 2010

In the Matter of Water Right Application)
S-87480 in the name of Ernest and LuAnn)
Russell) SETTLEMENT
 Applicants/ Protestants) AGREEMENT
)

WATER RESOURCES DEPT
SALEM, OREGON

The Oregon Water Resources Department (OWRD) and Ernest and LuAnn Russell (Applicants/Protestants) and collectively ("the parties") do hereby stipulate and agree in this "Settlement Agreement" (Agreement) as follows:

A. Background

1. On June 26, 2009, the applicant submitted an application for a permit to use surface water.
2. On April 6, 2010, OWRD issued a Proposed Final Order.
3. On May 17, 2010, the applicant filed a protest.

B. Consent

1. OWRD and the Applicants agree that all issues related to Application S-87480 are resolved solely on the following terms.
2. The Applicants hereby acknowledge that they have read and understand the terms of this Agreement, and the terms of the draft Final Order Incorporating Settlement Agreement and draft permit for Application S-87480 which are hereby incorporated by reference.
3. The Applicants understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
4. The Applicants understand and agree that this Agreement and the Final Order Incorporating Settlement Agreement and permit issued pursuant to this Agreement constitute the complete and final resolution of the protest on the Proposed Final Order for S-87480.
5. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and permit the Applicant 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 and permit for Application S-87480.

C. Terms of the Agreement

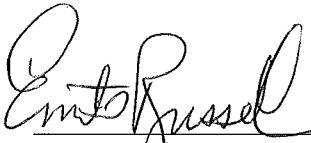
1. Within 60 days of the signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement and permit consistent with the attached draft permit.
2. Each party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of this Settlement Agreement.
3. 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.
4. 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.
5. The parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. This Settlement Agreement may be signed in counterparts.

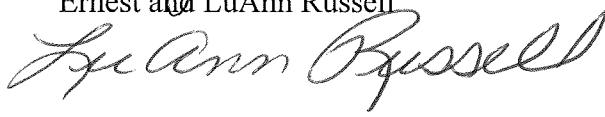


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

7/1/2010

Date



Ernest and LuAnn Russell


7/6/10

Date

RECEIVED

JUL 07 2010

WATER RESOURCES DEPT
SALEM, OREGON

**Oregon Water Resources Department
Water Rights/Adjudications Division**

RECEIVED

JUL 07 2010

WATER RIGHTS DIVISION
Water Rights Application
Number S-87480

DRAFT Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

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A Settlement Agreement was signed by all parties as of _____. The terms of the Settlement Agreement have been

incorporated into this Final Order and a copy of the Settlement Agreement is included below. The Protestant and the Department have agreed to permit conditions set forth in the draft permit.

Conclusions of Law

The presumption of public interest under ORS 537.153(2) is overcome, but the proposed use would not impair or be detrimental to the public interest after considering the factors in ORS 537.170(8).

Order

Application S-87480 therefore is approved with the above modifications to the Proposed Final Order, and Permit S-DRAFT is issued as limited by the conditions set forth therein.

DATED

- - DRAFT - -

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.

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STATE OF OREGON

COUNTY OF CLACKAMAS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

RECEIVED

JUL 07 2010

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SALEM, OREGON

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for Phillip C. Ward, Director
Water Resources Department

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WATER RESOURCES DEPARTMENT
SALEM, OREGON

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SALEM, OREGON

CASEWORKER : Jeana Eastman