

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

Water Rights Application  
Number G-16308

**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.

*FINDING OF FACT*

On September 8, 2004, Kurtis Loen submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order recommending denial on April 19, 2005, because water is not available during the entire season requested.

On April 21, 2005, the applicant requested a shorter season.

On May 3, 2005, the Department issued a Superseding Proposed Final Order.

On June 2, 2005, a timely protest was filed by the applicant.

On October 26, 2006, the applicant submitted a mitigation proposal to partially cancel Certificate 40458 from May 1 through October 31 and amend Application G-16308 to 0.26 CFS from May 1 to October 31.

The Department has evaluated the mitigation proposal and finds the proposed mitigation sufficient.

A Settlement Agreement was signed by all parties as of July 1, 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 proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the following condition:

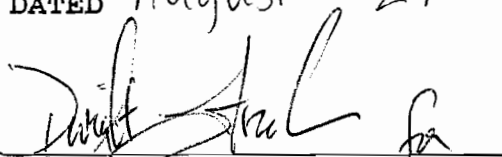
- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The Protestant and the Department have agreed to permit conditions set forth in the draft permit.

#### Order

Application G-16308 is therefore approved with modifications to the Proposed Final Order. Upon meeting the "Terms of Agreement" as described in the attached Settlement Agreement, and submitting a notarized affidavit authorizing partial cancellation of Certificate 40458, a permit consistent with the attached draft permit shall be issued.

DATED August 27, 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 previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.*

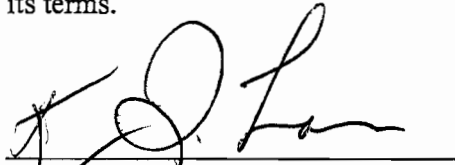
*If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.*

*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.*



1. Kurtis Thatcher Loen hereby acknowledges that he has read and understands the terms of this Agreement, and the terms of the Final Order Incorporating Settlement Agreement and Draft Permit for Application G-16308 which are hereby incorporated by reference.
2. Kurtis Thatcher Loen understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Kurtis Thatcher Loen 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 to the Proposed Final Order on Application G-16308.
4. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit Kurtis Thatcher Loen 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 G-16308 issued by OWRD.

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

  
Kurtis Thatcher Loen

7/1/2010  
Date


**C. Terms of the Agreement**

1. Prior to issuance of a permit consistent with the attached draft permit, Kurtis Thatcher Loen will voluntarily cancel a portion of Certificate 40458 to eliminate use of the surface water source authorized by that certificate from May 1 through October 31. OWRD shall issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a 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.


**RECEIVED**

JUL 29 2010

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

5-27-10  
Date

  
\_\_\_\_\_  
Kurtis Thatcher Loen

7-1-10  
Date

RECEIVED  
JUL 29 2010  
WATER RESOURCES DEPT  
SALEM, OREGON

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16308

**Draft Final Order Incorporating Settlement Agreement**

*Hearing and Appeal Rights*

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The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the following condition:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order, 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
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#### **Order**

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**DATED** \_\_\_\_\_, 2009

*DRAFT*

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



*This document was prepared by Joel Plahn. 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 503-986-0815.*

*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 MARION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KURTIS LOEN  
19205 SW CIPOLE RD  
SHERWOOD, OR 97140

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

APPLICATION FILE NUMBER: G-16308

SOURCE OF WATER: WELL 2 (MARI 59361) IN EAST CHAMPOEG CREEK BASIN

PURPOSE OR USE: NURSERY USE ON 81.4 ACRES

MAXIMUM RATE: 0.26 CUBIC FOOT PER SECOND

PERIOD OF USE: MAY 1 THROUGH OCTOBER 31

DATE OF PRIORITY: SEPTEMBER 8, 2004

WELL LOCATION: NE ¼ NW ¼ DLC: 54 SECTION 34, T4S, R2W, W.M.; 1290 FEET SOUTH & 680 FEET WEST FROM N1/4 CORNER, SECTION 34

The amount of water used for nursery use is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to one fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE ¼ SW ¼ 21.6 ACRES  
SW ¼ SE ¼ 13.1 ACRES  
SECTION 27

NW ¼ NE ¼ 9.6 ACRES  
DLC: 54, NE ¼ NW ¼ 35.9 ACRES  
DLC: 54, NW ¼ NW ¼ 1.0 ACRE

DLC: 54, SE ¼ NW ¼ 0.2 ACRE  
SECTION 34  
TOWNSHIP 4 SOUTH, RANGE 2 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order, 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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.

The well(s) shall produce groundwater only from the alluvial groundwater reservoir.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

**Before Use of Water Takes Place**

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

**After Use of Water has Begun**Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require the user to obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years; or
- B. Annual water level measurements reveal a water level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water level measurements reveal a water level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one

well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

### **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 well(s) 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.

If the riparian area is disturbed in the process of developing a point of appropriation, 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 downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The

Director may require water-level or pump-test data 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.

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