

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

Water Rights Application
Number S-70447

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 29, 1990, G. Fred Cox submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order (PFO) on December 5, 1995, allowing the diversion of water from Johnson Creek during the period December 1 through March 31.

On January 4, 1996, the application was assigned to Ronald Kasper.

On January 10, 1996, a timely protest was filed by the applicant.

Subsequent to the December 5, 1995 PFO, the Department determined that water was not available in sufficient quantities (at a 50% exceedance probability) to satisfy the proposed use.

On June 18, 1996, the Department issued a Superseding Proposed Final Order (Superseding PFO) recommending denial because water is not available at any time for the proposed use.

Subsequent to the Superseding PFO, the Department updated the water availability model based on gage measurement data.

An assessment of water availability has been completed incorporating new gage data. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this calculation is in the file. This calculation determined that water is available for further appropriation (at an 50 percent exceedance probability) not to exceed 3.25 CFS during May, 1.34 CFS during June, 1.80 CFS during July, and 0.67 CFS during October for the proposed use from Johnson Creek.

The application proposed the use of 0.15 CFS for cranberry irrigation, 1.271 CFS for temperature control, and 0.30 CFS for flood harvest, not to exceed a total of 1.721 CFS, from Johnson Creek at POD #3.

A Settlement Agreement was signed by all parties as of December 3, 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 attached permit, including the following standard conditions which modify the Proposed Final Order:

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 or measuring device; provided however, where any meter or measuring device 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 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 or exemption

through the Oregon Department of Fish and Wildlife. 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.

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.

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 downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The amount of water diverted for cranberry operations, together with amounts secured under any other rights existing for the same lands, shall not exceed a maximum of 3.0 acre feet per acre, and is further limited as follows: for temperature control, 0.15 cubic foot per second per acre; for flood harvesting or pest control, 0.05 cubic foot per second per acre; for irrigation of cranberries, one fortieth of one cubic foot per second and 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year. 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.

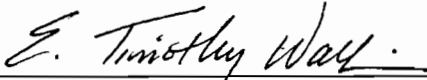
Conclusions of Law

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

Order

Application S-70447 is therefore approved pursuant as proposed by the Proposed Final Order further modified by the Settlement Agreement, and Permit S-54693 is issued as limited by the conditions proposed by the Proposed Final Order and Settlement Agreement.

DATED January 6 , 2011



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**

RECEIVED

In the Matter of Water Right Application)
S-70447 the name of Ronald Kasper)
)
 Applicant/)
 Protestant)

SETTLEMENT
AGREEMENT

DEC 06 2010
WATER RESOURCES DEPT
SALEM, OREGON

The Oregon Water Resources Department (OWRD) and Ronald Kasper (collectively "the parties") do hereby stipulate and agree in this "Settlement Agreement" (Agreement) as follows:

A. Background

1. On June 29, 1990, G. Fred Cox submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order (PFO) on December 5, 1995, allowing the diversion of water from Johnson Creek during the period December 1 through March 31.
2. On January 4, 1996, the application was assigned to Ronald Kasper.
3. On January 10, 1996, a timely protest was filed by the applicant.
4. Subsequent to the December 5, 1995 PFO, the Department determined that water was not available in sufficient quantities (at a 50% exceedance probability) to satisfy the proposed use.
5. On June 18, 1996, the Department issued a Superseding Proposed Final Order (Superseding PFO) recommending denial because water is not available at any time for the proposed use.
6. Subsequent to the Superseding PFO, the Department updated the water availability model based on gage measurement data.
7. An assessment of water availability has been completed incorporating new gage data. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this calculation is in the file. This calculation determined that water is available for further appropriation (at an 50 percent exceedance probability) not to exceed 3.25 CFS during May, 1.34 CFS during June, 1.80 CFS during July, and 0.67 CFS during October for the proposed use from Johnson Creek.


B. Consent

1. OWRD and Ronald Kasper agree that all issues related to Application S-70447 are resolved solely on the following terms.

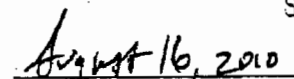
2. Ronald Kasper hereby acknowledges that he has read and understands the terms of this Agreement, and the terms of the Final Order Incorporating Settlement Agreement and Draft Permit for Application S-70447 which are hereby incorporated by reference.
3. Ronald Kasper understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
4. Ronald Kasper 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 S-70447.

C. Terms of the Agreement

1. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit Ronald Kasper 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-70447 issued by OWRD.
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



Date

RECEIVED

DEC 06 2010

WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department

Ronald Kasper
Ronald Kasper

12-3-10
Date

RECEIVED

DEC 06 2010

WATER RESOURCES DEPT
SALEM, OREGON