

**Oregon Water Resources Department  
Water Rights Services Division**

Water Rights Application  
Number G-16359

**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 December 30, 2004, Les Peterson submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on June 7, 2005, proposing to deny the application because the use is not allowable under Oregon Administrative Rule (OAR) 690-507-0030(3)(a)(B).

A timely protest was filed by David Filippi, on behalf of the applicant.

On April 15, 2011, the protest was withdrawn.

A Settlement Agreement was signed by all parties as of April 15, 2011. 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 classification of proposed use.

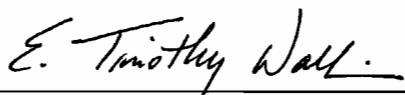
The proposed well for G-16359 is located in the basalt reservoir within a five-mile radius of the City of Milton-Freewater (City) municipal wells. Under OAR 690-507-0030(3)(a)(B), ground water use from the basalt reservoir within a five-mile radius around any municipal well of the City of Milton-Freewater could be limited to only municipal uses, group domestic uses, or statutorily exempt ground water uses if the City has an approved water management and conservation plan in effect. The City's water management and conservation plan was no longer in effect as of October 2, 2010; therefore OAR 690-507-0030(3)(a)(B) will not affect this application.

The proposed use of irrigation is allowable under OAR 690-507-0030(3)(a)(A).

#### Order

Application G-16359 is therefore approved with these modifications to the Proposed Final Order and pursuant to the Settlement Agreement, and Permit G-16846 is issued as limited by the conditions set forth therein.

**DATED** April 22, 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 OREGON WATER RESOURCES DEPARTMENT**

In the Matter of Water Right	)	
Application G-16359 in the Name of	)	SETTLEMENT
Les Peterson	)	AGREEMENT

The Oregon Water Resources Department (the "Department") and Les Peterson ("Applicant") do hereby stipulate and agree as follows:

**A. Background**

1. On December 30, 2004, Les Peterson submitted to the Department an application for a groundwater permit (Application G-16359). *S.A.P. PM 4-19-2011*
2. On February 18, 2005, the Department issued Initial Review Determinations (the "Initial Review") regarding Application G-16364. The Initial Review stated: "The use of 4.38 cubic feet per second from a well in Birch Creek Basin for irrigation use on 350 acres is allowable from March 1 through October 31 of each year." The Initial Review also explained that the Department's conclusions were subject to change if a Water Management and Conservation Plan ("WMCP") submitted by the City of Milton-Freewater (the "City") were approved before the Proposed Final Order ("PFO") protest deadline for the application passed.
3. The public comment period for Application G-16364 closed on March 22, 2005. No written comments were received during the 30-day period. *S.A.P. 4-19-2011*
4. On March 24, 2005, the Department approved the City's WMCP. The final order approving the WMCP stated: "The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until October 1, 2010, unless this approval is rescinded pursuant to OAR 690-086-0920."
5. On June 7, 2005, the Department issued a PFO that recommended denial of Application G-16359 on the basis that, following approval of the City's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well.
6. On July 22, 2005, Les Peterson submitted a timely protest and request for hearing ("Protest"). The City of Milton-Freewater submitted a timely request for standing.
7. On September 2, 2010, Les Peterson (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case hearing for their respective protests to the PFOs issued by the Department regarding their respective applications.
8. As of October 2, 2010, the City's WMCP was no longer in effect.

9. The Department and Les Peterson agree that the issues raised in the Protest can be resolved solely on the following terms.

**B. Consent**

1. Les Peterson hereby acknowledges that he has read and understands the terms of this Agreement, and the terms of the draft Final Order Incorporating Settlement Agreement and draft Permit for Application G-16364 which are hereby incorporated by reference as if set forth fully herein. *59 J.A.P.*
2. Les Peterson understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Les Peterson understands and agrees 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 to G-16364. *59 J.A.P.*
4. Les Peterson 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-16364 issued by OWRD. *59 J.A.P.*

**C. Terms of the Agreement**

1. Upon signing this Settlement Agreement, Les Peterson withdraws his Protest and his request for a consolidated contested case hearing.
2. OWRD will issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
3. 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.
4. 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.
5. 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.
6. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.

7. This Settlement Agreement may be signed in counterparts.

Les Peterson  
Les Peterson

April 15, 2011  
Date

Dwight French  
Dwight French, Water Right Services Administrator,  
for Phillip C. Ward, Director  
Oregon Water Resources Department

April 14, 2011  
Date