

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

Water Rights Application
Number G-16364

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 10, 2005, Joe Frazier submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on May 31, 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On April 15, 2011, the protest was withdrawn.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.

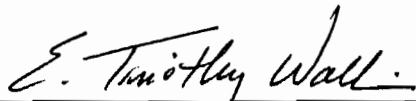
The proposed well for G-16364 is located in the basalt reservoir within a five-mile radius of the City of Milton-Freewater (City) municipal wells. Under OAR 690-507-0030(3)(a)(B), ground water use from the basalt reservoir within a five-mile radius around any municipal well of the City of Milton-Freewater 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-16364 is therefore approved with these modifications to the Proposed Final Order and pursuant to the Settlement Agreement, and Permit G-16845 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 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.

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

B. Consent

1. Joe Frazier 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.
2. Joe Frazier understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Joe Frazier 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.
4. Joe Frazier 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.


C. Terms of the Agreement

1. Upon signing this Settlement Agreement, Joe Frazier 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.

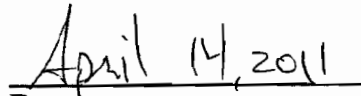
7. This Settlement Agreement may be signed in counterparts.

Joe Frazier

Date



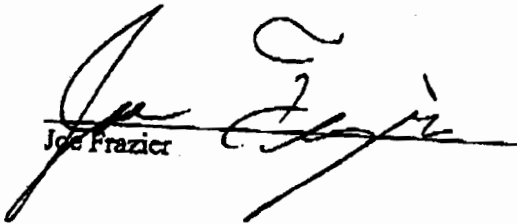
Dwight French, Water Right Services Administrator,
for Phillip C. Ward, Director
Oregon Water Resources Department



Date

RECEIVED
APR 18 2011
WATER
SA

7. This Settlement Agreement may be signed in counterparts.


Joe Frazier

April 15, 2011
Date


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

April 14, 2011
Date

Received by email 4-18-2011 Phil Carty

RECEIVED

APR 18 2011

WATER RESOURCES DEPT
SALMON, OREGON