

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

Water Rights Application
Number G-16364

Superseding 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.

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On April 15, 2011, the protest was withdrawn.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 Joe Frazier and the Department as of April 15, 2011.

On April 22, 2011, the Department issued a Final Order Incorporating Settlement Agreement approving Application G-16364 and issued Permit G-16845.

On June 21, 2011, on its own motion, the Department issued a Summary Order reconsidering the Final Order issued April 22, 2011. The Department's reconsideration was for the purpose of facilitating a settlement agreement and was limited to the Final Order only and the issue of the application of certain provisions of the Umatilla Basin Program. The Department's reconsideration did not include or extend to the issuance of Permits G-16845.

A second Settlement Agreement was signed by Joe Frazier, Les Peterson, Seven Hills Properties, LLC, the City of Milton-Freewater, and the Department as of June 30, 2011. The terms of the Settlement Agreement are hereby incorporated into this Final Order.

This document supersedes the April 22, 2011 Final Order Incorporating Settlement Agreement.


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

Order

This document supersedes the April 22, 2011 Final Order Incorporating Settlement Agreement.

Application G-16364 is therefore approved pursuant to the June 30, 2011 Settlement Agreement, and Permit G-16845 remains in effect.

DATED June 30, 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.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)	
G-17395 in the name of Seven Hills)	
Properties, LLC, <i>Applicant</i>)	SETTLEMENT AGREEMENT
and)	REGARDING APPLICATIONS
Water Right Application G-16364 in the)	G-17395, G-16364, G-16359, AND
name of Joe Frazier, <i>Applicant</i>)	MILTON-FREEWATER WATER
and)	MANAGEMENT AND
Water Right Application G-16359 in the)	CONSERVATION PLAN
name of Les Peterson, <i>Applicant</i>)	
and)	
The City of Milton-Freewater, <i>Petitioner</i>)	

The Oregon Water Resources Department (the "Department"), Seven Hills Properties, LLC, ("Seven Hills"), Joe Frazier, Les Peterson, and the City of Milton-Freewater (the "City") (collectively the "Parties") do hereby stipulate and agree as follows:

A. Background for Applications G-17395, G-16364, G-16359

1. On April 22, 2011, the Department issued three Final Orders and three permits, Permit G-16843 in the name of Seven Hills Properties, LLC, Permit G-16845 in the name of Joe Frazier, and Permit G-16846 in the name of Les Peterson. On June 21, 2011, the Department issued a Summary Order reconsidering the three Final Orders. The Department's reconsideration was for the purpose of facilitating this Settlement Agreement and was limited to the Final Orders only and the issue of the application of certain provisions of the Umatilla Basin Program. The Department's reconsideration did not include or extend to the issuance of Permits G-16843, G-16845, and G-16846.
2. On December 20, 2010, the City of Milton-Freewater submitted a Water Management and Conservation Plan (WMCP) to update a previously approved WMCP.
3. The Department, the City, and applicants Seven Hills, Frazier and Peterson have agreed to resolve issues related to concerns about the issuance of the three Final Orders and the approval of the WMCP in this Settlement Agreement.

B. Terms of the Agreement

1. OWRD will issue new Final Orders for Permits G-16843, G-16845 and G-16846, in the form of Superseding Final Orders Incorporating Settlement Agreement by June 30, 2011, deleting the paragraph referencing OAR 690-507-0030(3)(a)(B) in the application history. OWRD will also issue the Final Order approving the City's Water Management and Conservation Plan by June 30, 2011 (simultaneously with the issuance of the other Final Orders.)
2. The Superseding Final Order Incorporating Settlement Agreement for Application G-17395 shall reflect the agreement of the Parties that Permit G-16843 does not authorize the withdrawal of any additional water beyond that authorized under Certificate 86441.

3. The Department is implementing a new standard operating procedure to remind entities that an update of a WMCP needs to be submitted. The notification will be sent approximately one year prior to the date for submittal of the WMCP update, as specified in the final order that previously approved the WMCP.
4. Each Party to this Settlement Agreement agrees that the interpretation of OAR 690-507-0030(3)(a)(B) is in dispute among the Parties, and that for purposes of compromise and settlement of the issues the Parties agree that the Superseding Final Orders Incorporating Settlement Agreement can be issued simultaneously with the Final Order approving Milton-Freewater's WMCP by June 30, 2011.
5. Each Party to this Settlement Agreement agrees that this Settlement Agreement sets no precedent regarding the interpretation of the above rule for any future application.
6. Until the WMCP is final, which includes a period of 60 days after the final order on the WMCP is issued, OWRD will provide notice to Milton-Freewater of any new ground water application that would be subject to OAR 690-507-0030(3)(a)(B), and will provide notice to applicants that the same rule may result in denial of the application upon completion of the approval of Milton-Freewater's updated WMCP.
7. OWRD has provided to each Party to this Settlement Agreement a written memorandum of OWRD's view of the criteria that will be used to determine enforcement of the decline conditions in Permits G-16843, G-16845, and G-16846, and the circumstances under which OWRD will regulate groundwater based on priority date and interference. Seven Hills, Frazier, Peterson, and the City do not, and have not been asked to, consent to, approve of, or waive any rights with respect to OWRD's views contained in the memorandum. In particular, OWRD has indicated in the memorandum that it interprets the decline conditions in the Permits as providing OWRD with authority to require the water user to reduce the rate of withdrawal or discontinue use as OWRD deems necessary, beyond the reduction in rate or volume of withdrawal the water user would otherwise undertake. Seven Hills, Frazier, and Peterson strongly disagree with and dispute the OWRD's interpretation of the decline conditions on this point. OWRD acknowledges this disagreement, and expressly agrees that neither this Settlement Agreement nor the memorandum in any way preclude Seven Hills, Frazier, or Peterson from challenging OWRD's interpretation in any and all administrative and judicial forums that Seven Hills, Frazier, and Peterson may deem necessary or appropriate. Similarly, OWRD reserves the option to update or modify the memorandum if necessary to accurately reflect OWRD policies, procedures, and requirements.
8. Each Party to this Settlement Agreement waives any and all rights to request reconsideration of, or petition for judicial review of, or appeal the following: the Final Order on Milton-Freewater's WMCP, this Settlement Agreement, the Superseding Final Orders Incorporating Settlement Agreement and the Permits for Applications G-17395, G-16364, and G-16359.

C. Consent

1. 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.
2. 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.
3. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Superseding Final Orders Incorporating Settlement Agreement, and understands and agrees with the contents thereof.
4. Each Party to this Settlement Agreement understands and agrees that this Agreement and all documents incorporating it by reference set forth the entire Agreement of the parties.
5. Each Party to this Settlement Agreement agrees that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. This Settlement Agreement may be signed in counterparts.

Seven Hills Properties, LLC

Date

Joe Frazier

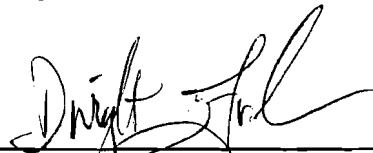
Date

Les Peterson

Date

City of Milton-Freewater

Date



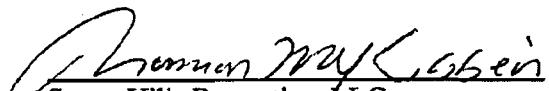
Dwight French, Water Right Services Administrator,
for Phillip C. Ward, Director
Oregon Water Resources Department

Date

6/30/2011

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Seven Hills Properties, LLC

6/25/2011
Date

Joe Frazier

Date

Les Peterson

Date

City of Milton-Freewater

Date

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

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Seven Hills Properties, LLC

Date



Joe Frazier

Date

6/27/11

Les Peterson

Date

City of Milton-Freewater

Date

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

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Seven Hills Properties, LLC

Date

Joe Frazier

Date



Les Peterson

6-25-2011
Date

City of Milton-Freewater

Date

Dwight French, Water Right Services Administrator,
for Phillip C. Ward, Director
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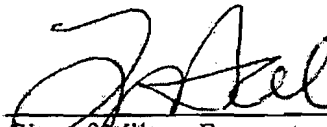
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Joe Frazier

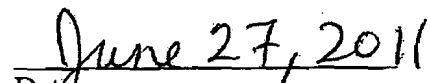
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Les Peterson

Date



City of Milton-Freewater



Date

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

Date

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

Water Rights Application
Number G-16364

**DRAFT
Superseding Final Order Incorporating Settlement Agreement**

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

Order

This document supersedes the April 22, 2011 Final Order Incorporating Settlement Agreement.

Application G-16364 is therefore approved pursuant to the June _____, 2011 Settlement Agreement, and Permit G-16845 remains in effect.

DATED June , 2011

for Phillip C. Ward, Director
Water Resources Department

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

In the Matter of the Proposed Water) FINAL ORDER APPROVING A
Management and Conservation Plan for the) WATER MANAGEMENT AND
City of Milton-Freewater, Umatilla County) CONSERVATION PLAN

Authority

OAR Chapter 690, Division 086, establishes the process and criteria for approving water management and conservation plans required under the conditions of permits, permit extensions and other orders of the Department.

Findings of Fact

1. The City of Milton-Freewater (City) submitted a draft Water Management and Conservation Plan (plan) to the Water Resources Department (Department) on November 30, 2010. The required statutory fee for review of the plan was received by the Department on December 20, 2010. The plan was required by the final order issued on March 24, 2005, approving the City's last plan.
2. The Department published notice of receipt of the plan on December 28, 2010, as required under OAR Chapter 690, Division 086. Timely comments were received from Stoel Rives, LLP on behalf of Joe Frazier and Les Peterson on January 27, 2011.
3. The Department provided comments on the plan to the City on March 4, 2011 and April 27, 2011. In response to the Department's comments, the City submitted revisions to the plan on April 18, 2011 and May 31, 2011.
4. Statements made in the revised plan indicate the City may request certification of water use Permits G-4924 (Well No. 1) and G-12582 (Well No. 9) for purposes of redundancy within their water distribution system. Upon review of these permits, the Department found that the last authorized date for the complete application of water to beneficial use under these permits is October 1, 1999.

Without the issuance of a final order approving an extension of time for these permits, the issuance of any water right certificate would be limited to the maximum instantaneous rate of diversion, consistent with the permit conditions, in which water was appropriated for beneficial use for not less than 4 hours within an 8 hour period between the dates that the permits were issued and October 1, 1999.

This is a final order in other than a 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 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.

5. The Department reviewed the revised plan, as well as the comment received, and finds that the plan is consistent with the relevant requirements under OAR Chapter 690, Division 086.


Conclusion of Law

The Water Management and Conservation Plan submitted by the City of Milton-Freewater is consistent with the criteria in OAR Chapter 690, Division 086.

Now, therefore, it is ORDERED:

1. The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until June 17, 2021, unless this approval is rescinded pursuant to OAR 690-086-0920.
2. The City of Milton-Freewater shall submit an updated plan meeting the requirements of OAR Chapter 690, Division 086 (effective November 1, 2002) within 10 years and no later than June 17, 2020.
3. The City of Milton-Freewater shall submit a progress report containing the information required under OAR 690-086-0120(4) by June 17, 2016.

Dated at Salem, Oregon this 30 day of June, 2011.



Dwight French, Water Right Services Administrator for
PHILLIP C. WARD, DIRECTOR

Mailing date: JUL 08 2011

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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