

Oregon Water Resources Department
Water Rights Services Division

Water Rights Application
Number S-87269

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 September 19, 2008, Confederated Tribes of the Warm Springs Reservation of Oregon submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on September 8, 2009, recommending the application be approved with conditions.

On October 19, 2009, a timely protest was filed by the applicant.

A Settlement Agreement was signed by all parties as of June 15, 2012. The terms of the Settlement Agreement are 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. The Protestant and the Department have agreed to permit conditions set forth in the draft permit.

Order

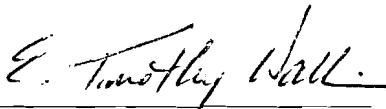
Application S-87269 is therefore approved with modifications to the Proposed Final Order.

Upon submittal of a copy of an easement or other written authorization to access lands not owned by the applicant, a permit shall be issued authorizing the proposed water use.

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

DATED September 20, 2012



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.

STATE OF OREGON

COUNTY OF HOOD RIVER

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
6040 DEE HWY
PARKDALE, OR 97041

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

APPLICATION FILE NUMBER: S-87269

SOURCE OF WATER: WEST FORK HOOD RIVER, A TRIBUTARY OF HOOD RIVER

PURPOSE OR USE: ANADROMOUS AND RESIDENT FISH REARING

MAXIMUM RATE: 5.0 CUBIC FEET PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: SEPTEMBER 19, 2008

POINT OF DIVERSION LOCATION: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 14, T1N, R9E, W.M.; 1840 FEET SOUTH AND 2105 FEET WEST FROM NE CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 14
TOWNSHIP 1 NORTH, RANGE 9 EAST, 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 diversion. The permittee shall maintain the meter or measuring device 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 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.

Use of water under this permit is contingent upon the facility not increasing the heat load to the stream. During May through the end of November, the permittee must continuously measure (by recording hourly data) the water temperature as near as possible to the intake and approximately 100 feet downstream of the outfall. Should the water temperature measured below the outfall exceed the intake water temperature by 0.2 degree centigrade, the permittee shall notify Oregon Department of Fish and Wildlife, and shall either: 1) discontinue diversion, or 2) cool return flows to prevent return flows from warming the receiving stream. The permittee shall maintain the thermistors in good working order, and allow state officials access for inspection of the thermistors and records of temperature measurements upon reasonable notice. An alternative to the temperature measurement requirement above is for the permittee to provide a volume of water as mitigation sufficient to offset the effects of the facility's potential temperature impact on the West Fork Hood River and Hood River. Permittee is responsible for providing OWRD with evidence that the mitigation water is sufficient to offset the effects of the facility's potential temperature impact to the satisfaction of ODFW.

Before any water is diverted during the period June 1 through October 31, the permittee shall either install a pump-back system capable of returning all diverted flow to the source stream within 50 feet of the diversion point or obtain a waiver from either ODFW or OWRD as described below. Proof of the installation of the pump-back system or a copy of the waiver must be provided to the Water Resources Department and the local Watermaster before water is diverted during the period June 1 through October 31.

Waiver Opportunities:

ODFW may waive the requirement to install and operate a pump-back system if it is determined by ODFW that the permittee's operation of the facility, in conjunction with any mitigation in the stream basin, provides a net benefit to fish. ODFW may allow a partial waiver to reduce the amount that must be returned to within 50 feet of the diversion point if it determines that the mitigation provides a net benefit for less than the total amount diverted under this water right. If

temporary mitigation is provided and approved, the temporary mitigation shall be maintained. If the temporary mitigation is not maintained the waiver will not remain in effect.

OWRD may waive the requirement to install and operate a pump-back system if the permittee causes an equal or greater amount of flow to be protected instream by way of a conserved water project or an instream transfer. The equal amount of flow will be determined by comparing the rate of water, measured in cubic feet per second, the permittee diverts during the June 1 - October 31 period, with the flow in cubic feet per second protected instream. The protected instream flow must be made at or above the point of diversion described in this water right. OWRD may allow a partial waiver to reduce the amount that has to be returned to within 50 feet of the diversion point if the protected instream flow is for less than the total amount diverted under this water right. If temporary mitigation is provided and approved, the temporary mitigation shall be maintained. If the temporary mitigation is not maintained the waiver will not remain in effect.

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 by the Oregon Fish and Wildlife Commission. 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.

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.

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.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

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

-- DRAFT --

for Phillip C. Ward, Director
Water Resources Department

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

In the Matter of Water Right Application)
S-87269 in the name of The Confederated)
Tribes of the Warm Springs Reservation) SETTLEMENT
of Oregon) AGREEMENT
)
 Applicant/ Protestant)

The Oregon Water Resources Department (“Department”) and the Confederated Tribes of the Warm Springs Reservation of Oregon (“Applicant”) and collectively (“the parties”) do hereby stipulate and agree in this Settlement Agreement (“Agreement”) as follows:

A. Background


1. On September 9, 2008, the Confederated Tribes of the Warm Springs Reservation of Oregon submitted an application for a permit to use surface water. The Department assigned the application number S-87269.
2. On September 8, 2009, the Department issued a Proposed Final Order.
3. On October 19, 2009, Applicant filed a protest.
4. The Department and Applicant agree that all issues related to Application S-87269 are resolved solely on the following terms.

B. Consent

1. Applicant hereby acknowledges that it 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 S-87269 which are hereby incorporated by reference.
2. Applicant understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Applicant 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 on the Proposed Final Order for S-87269.
4. Effective upon the issuance by the Department of the Final Order Incorporating Settlement Agreement and permit the Applicant waives any and all rights to petition for judicial review of this Agreement, to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement and permit for Application S-87269.

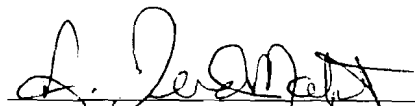
C. Terms of the Agreement

1. Within 60 days of the signing of this Agreement by all parties, the Department will issue a Final Order Incorporating Settlement Agreement and permit consistent with the attached draft permit provided all outstanding fees and required information has been submitted to the Department..
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. This Settlement Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Rights Services Division
for
Phillip C. Ward, Director, OWRD

June 15, 2012
Date



A. Reed Marbut, OSB-872924
Attorney for
The Confederated Tribes of the
Warm Springs Reservation of Oregon

June 15, 2012
Date

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

Water Rights Application
Number S-87269

Draft Final Order Incorporating Settlement Agreement

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DATED

--- DRAFT ---

for Phillip C. Ward, Director
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF HOOD RIVER

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Issued

DRAFT - THIS IS NOT A PERMIT

for Phillip C. Ward, Director
Water Resources Department