

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

Water Rights Application
Number S-87538

Draft 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 October 15, 2009, Whitewater Ranch LLC and McKenzie River Ranch LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on May 25, 2010, recommending the application be approved and a permit with conditions be issued.

On July 9, 2010, a timely protest was filed by Mr. Clark Balfour, attorney, on behalf of the Eugene Water & Electric Board.

A Settlement Agreement was signed by all parties as of _____. 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, the Applicant, and the Department have agreed to permit conditions set forth in the draft permit.

Order

Application S-87538 is therefore approved with these modifications to the Proposed Final Order. Upon meeting the "Terms of Agreement" as described in the attached Settlement Agreement, a permit shall be issued authorizing the proposed water use.

DATED July , 2013

E. Timothy Wallin, Water Rights Program Manager
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.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF LANE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WHITEWATER RANCH LLC
MCKENZIE RIVER RANCH LLC
43137 MCKENZIE HWY
LEABURG, OR 97489

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

APPLICATION FILE NUMBER: S-87538

SOURCE OF WATER: MCKENZIE RIVER, TRIBUTARY TO WILLAMETTE RIVER

PURPOSE OR USE: AGRICULTURAL USE

MAXIMUM RATE: 2.0 CUBIC FEET PER SECOND

PERIOD OF USE: YEAR-ROUND

DATE OF PRIORITY: OCTOBER 15, 2009

POINT OF DIVERSION LOCATION: SE ¼ NE ¼, SECTION 1, T17S, R1E, W.M.; 1400
FEET SOUTH AND 650 FEET WEST FROM NE CORNER, SECTION 1

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW ¼ NE ¼
SE ¼ NE ¼
SE ¼ SW ¼
NE ¼ SE ¼
NW ¼ SE ¼
SW ¼ SE ¼
SE ¼ SE ¼
SECTION 1

NW ¼ NE ¼
NE ¼ NW ¼
SECTION 12

TOWNSHIP 17 SOUTH, RANGE 1 EAST, W.M.

NE ¼ NW ¼
SW ¼ NW ¼
SE ¼ NW ¼
NE ¼ SW ¼
NW ¼ SW ¼
SECTION 6

TOWNSHIP 17 SOUTH, RANGE 2 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 a Pump-Rite U-1000 fish screen at the point of diversion. The Pump-Rite U-1000 screen meets the current Oregon Department of Fish and Wildlife (ODFW) criteria for the amount of water pumped and approach and sweeping velocities at the point of diversion. The Pump-Rite U-1000 fish screen shall be in place and functional prior to diversion of water under this Permit.

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.

Diversion of water under this permit is contingent on designated flows being met in the McKenzie River. The user is required to monitor streamflow at USGS gage 14163150, McKenzie River below Leaburg dam, near Leaburg, OR, and discontinue diversion when the flow is less than or equal to 1040.0 CFS. At the discretion of the Director, the location and nature of streamflow monitoring required is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flow listed above is unmet. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Diversion of water under this permit will not alter or impair the senior status and priority date of Eugene Water and Electric Board's Water Right Permit S-27441. Diversion of water under this permit is limited to periods when flows in the McKenzie River at USGS Gage 14164900 are sufficient to allow EWEB to withdraw water under Permit S-27441 without restriction.

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.

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 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 - THIS IS **NOT** A PERMIT

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-87538 in the name of Whitewater Ranch)	
LLC)	SETTLEMENT
<i>Applicant</i>)	AGREEMENT
and)	
Eugene Water and Electric Board)	
<i>Protestant</i>)	

The Oregon Water Resources Department (OWRD), Whitewater Ranch LLC, McKenzie River Ranch, LLC (Whitewater), and Eugene Water and Electric Board (EWEB) (collectively “the parties”) do hereby stipulate and agree in this Settlement Agreement (Agreement) as follows:

A. Background

1. On October 15, 2009, the Oregon Water Resources Department received Application S-87538 from Whitewater Ranch LLC, McKenzie River Ranch LLC for 2.0 CFS from the McKenzie River for agricultural use in Lane County.
2. On May 25, 2010, OWRD issued a Proposed Final Order (PFO) recommending a permit with conditions be issued.
3. On July 9, 2010 the Eugene Water and Electric Board filed a timely protest.
4. OWRD, applicant Whitewater and protestant EWEB agree that all issues related to Application S-87538 are resolved solely on the following terms.


B. Consent

1. Applicant Whitewater and Protestant EWEB acknowledge 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-87538 which are hereby incorporated by reference as if set forth fully herein.
2. Applicant Whitewater and Protestant EWEB understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Applicant Whitewater and Protestant EWEB understand and agree 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 EWEB protest.
4. Applicant Whitewater and Protestant EWEB waive any and all right to request a contested case hearing, to request reconsideration, petition for judicial review or appeal

the Final Order Incorporating Settlement Agreement for Application S-87538 issued by OWRD.

C. Terms of the Agreement

1. Within 30 days of the signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
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
Oregon Water Resources Department

8-1-13
Date

Whitewater Ranch LLC
McKenzie River Ranch LLC

Date

Eugene Water and Electric Board

Date

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

In the Matter of Water Right Application)	
S-87538 in the name of Whitewater Ranch)	
LLC)	SETTLEMENT
<i>Applicant</i>)	AGREEMENT
and)	
Eugene Water and Electric Board)	
<i>Protestant</i>)	

The Oregon Water Resources Department (OWRD), Whitewater Ranch LLC, McKenzie River Ranch, LLC (Whitewater), and Eugene Water and Electric Board (EWEB) (collectively “the parties”) do hereby stipulate and agree in this Settlement Agreement (Agreement) as follows:

A. Background

1. On October 15, 2009, the Oregon Water Resources Department received Application S-87538 from Whitewater Ranch LLC, McKenzie River Ranch LLC for 2.0 CFS from the McKenzie River for agricultural use in Lane County.
2. On May 25, 2010, OWRD issued a Proposed Final Order (PFO) recommending a permit with conditions be issued.
3. On July 9, 2010 the Eugene Water and Electric Board filed a timely protest.
4. OWRD, applicant Whitewater and protestant EWEB agree that all issues related to Application S-87538 are resolved solely on the following terms.

B. Consent

1. Applicant Whitewater and Protestant EWEB acknowledge 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-87538 which are hereby incorporated by reference as if set forth fully herein.
2. Applicant Whitewater and Protestant EWEB understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Applicant Whitewater and Protestant EWEB understand and agree 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 EWEB protest.
4. Applicant Whitewater and Protestant EWEB waive any and all right to request a contested case hearing, to request reconsideration, petition for judicial review or appeal


the Final Order Incorporating Settlement Agreement for Application S-87538 issued by OWRD.

C. Terms of the Agreement

1. Within 30 days of the signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
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
Oregon Water Resources Department

Date

Whitewater Ranch LLC
McKenzie River Ranch LLC

Eugene Water and Electric Board

Date

7/22/13
Date

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

In the Matter of Water Right Application)	
S-87538 in the name of Whitewater Ranch)	
LLC)	SETTLEMENT
<i>Applicant</i>)	AGREEMENT
and)	
Eugene Water and Electric Board)	
<i>Protestant</i>)	

The Oregon Water Resources Department (OWRD), Whitewater Ranch LLC, McKenzie River Ranch, LLC (Whitewater), and Eugene Water and Electric Board (EWEB) (collectively “the parties”) do hereby stipulate and agree in this Settlement Agreement (Agreement) as follows:

A. Background

1. On October 15, 2009, the Oregon Water Resources Department received Application S-87538 from Whitewater Ranch LLC, McKenzie River Ranch LLC for 2.0 CFS from the McKenzie River for agricultural use in Lane County.
2. On May 25, 2010, OWRD issued a Proposed Final Order (PFO) recommending a permit with conditions be issued.
3. On July 9, 2010 the Eugene Water and Electric Board filed a timely protest.
4. OWRD, applicant Whitewater and protestant EWEB agree that all issues related to Application S-87538 are resolved solely on the following terms.

B. Consent

1. Applicant Whitewater and Protestant EWEB acknowledge 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-87538 which are hereby incorporated by reference as if set forth fully herein.
2. Applicant Whitewater and Protestant EWEB understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Applicant Whitewater and Protestant EWEB understand and agree 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 EWEB protest.
4. Applicant Whitewater and Protestant EWEB waive any and all right to request a contested case hearing, to request reconsideration, petition for judicial review or appeal

RECEIVED

JUL 30 2013

Final Order Incorporating Settlement Agreement for Application S-87539 issued by OWRD.

C. Terms of the Agreement

1. Within 30 days of the signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
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
Oregon Water Resources Department

Date



Whitewater Ranch LLC,
McKenzie River Ranch LLC

7/24/13
Date

Eugene Water and Electric Board

Date

RECEIVED

JUL 30 2013

WATER RESOURCES DEPT
SALEM, OREGON