

**Oregon Water Resources Department
Water Right Services Division**

Water Rights Application
Number S-52410

**Final Order Incorporating Settlement Agreement
Extension of Time for Permit Number S-37836
Permit Holder: Oceanside Water District**

Permit Information

Application File S-52410/ Permit S-37836

Basin 1 – North Coast Basin / Watermaster District 1

Date of Priority: September 6, 1974

Authorized Use of Water

Source of Water:	Short Creek, a Tributary of the Pacific Ocean
Purpose or Use:	Quasi-Municipal
Maximum Rate:	2.0 Cubic Feet per Second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

Appeal Rights

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.

Application History

The Department issued Permit S-37836 on June 12, 1975. The permit called for completion of construction by October 1, 1977, and complete application of water to beneficial use by October 1, 1978. On July 23, 2003, Oceanside Water District submitted an application to the Department for an extension of time for Permit S-37836. In accordance with OAR 690-315-0050(2), on August 14, 2007, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2050, and the time to fully apply water to beneficial use to October 1, 2050. The protest period closed September 28, 2007, in accordance with OAR 690-315-0060(1). A timely protest was filed by WaterWatch of Oregon, Inc. A settlement agreement resolving the protest was signed by Oceanside Water District, WaterWatch of Oregon, Inc. and the Department on June 2, 2014 (“Settlement Agreement”). The terms of the Settlement Agreement include conditions on the extension of time not set forth in the Proposed Final Order, or in Permit S-37836 or final orders approving previous extensions of time, including a water measurement, recording and reporting condition, an additional fish screening condition, and a

“future use” condition. The Settlement Agreement is hereby incorporated into this order as if set forth fully herein. The Settlement Agreement is attached to this order.

Except as expressly stated herein, the Department adopts and incorporates by reference the findings of fact and conclusions of law in the Proposed Final Order dated August 14, 2007.

Finding of Fact #12 is replaced with the following to correct the amount diverted under each permit:

12. In addition to the 2.0 cfs of water allowed under Permit S-37836 from Short Creek, Oceanside Water District holds the following permits:
- Permit S-47560 to use 1.0 cfs of water from Short Creek;
 - Permit S-43812 to use 1.0 cfs of water from Coleman Creek;

Oceanside Water District’s water use permits total 4.0 cfs of live flow (surface) water. Oceanside Water District has not yet made beneficial use of 3.44 cfs of water, being 1.44 cfs from Permit S-37836, 1.0 cfs from Permit S-47560 and 1.0 cfs from Permit S-43812.

Oceanside Water District states that it has acquired Certificate 9591 to use 0.5 cfs of water from Coleman Creek and a reservoir constructed under Permit R-643 and Certificate 9605 to store 3 acre feet of water from Coleman Creek. The District will submit ownership updates no later than its submittal of the Water Management and Conservation Plan.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to Development Limitations. The permit is also subject to a fish screening and passage condition, which was added as a condition of approval of a previous extension of time (See Final Order, Extension of Time for Permit Number 37836, dated May 18, 1999). Additional conditions are added by Settlement Agreement: (1) a Measurement, Recording and Reporting Condition, (2) a Fish Screening and Passage Condition, and (3) a Future Use Condition. The permit may be extended subject to the following conditions:

CONDITIONS

1. **Development Limitations** (from Proposed Final Order)

Diversion of any water beyond 0.56 cfs under Permit S-37836 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. The required WMCP shall be submitted to the Department within 3 years of an approved extension application. Use of water under Permit S-37836 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, Division 86 on file with the Department.

The deadline established in this PFO for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date

as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

2. **Measurement, Recording and Reporting Condition**

- A. The permittee shall maintain 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 diverted 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.

3. **Fish Screening and Passage Condition** (From Final Order, dated May 18, 1999)

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and/or fishways are to be in place, functional, and approved by ODFW prior to October 1, 2000. *WRD has determined that this condition has been met. The District shall maintain the fish screening until the following condition is complied with.*

The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place and functional, and approved by ODFW letter submitted to WRD prior to diversion of any water beyond .56 cfs.

If one or more new or additional points of diversion are added through permit amendment, or transfer under any certificate issued for this permit, the permittee or certificate holder shall either install fish by-pass devices and a fishway or secure a fish passage waiver from ODFW.

4. **Future Use Condition**

Use of water under Permit S-37836 shall be limited to quasi-municipal purposes, as

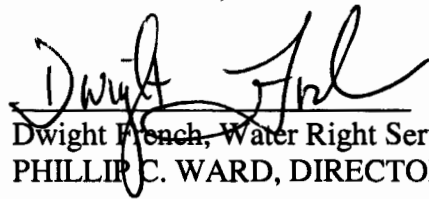
authorized. Any change of use that may be authorized following issuance of a certificate shall be limited to municipal purposes.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0080(3).

Order

The extension of time for Application S-52410, Permit S-37836, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2002 to October 1, 2050. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2002 to October 1, 2050.

DATED: June 9, 2014



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

If you have any questions about statements contained in this document, please contact Ann L. Reece at (503) 986-0834.

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

In the Matter of Applications for Extension)	
Of Time for Permits S-47560 and S-37836)	
for Oceanside Water District)	SETTLEMENT
<i>Applicant</i>)	AGREEMENT
)	
WaterWatch of Oregon, Inc.)	
<i>Protestant</i>)	
)	

The Oregon Water Resources Department (“Department”), Oceanside Water District (“District”) and WaterWatch of Oregon, Inc. (“WaterWatch”) do hereby stipulate and agree in this Settlement Agreement as follows:

Background


1. On April 23, 2003, the District submitted an application for an extension of time for Permit S-47560; and on July 23, 2003, the District submitted an application for an extension of time for Permit S-37836.
2. The Department issued Proposed Final Orders recommending approval of the extensions of time for each permit on August 14, 2007.
3. WaterWatch of Oregon, Inc. filed a timely protest to each Proposed Final Order.

Terms of the Agreement

1. This Agreement resolves all issues raised in WaterWatch’s protests of the proposed extensions for Permits S-37836 and S-47560. WaterWatch and Oceanside agree that WaterWatch will not challenge the District’s legal authority to deliver water for quasi-municipal use under the terms and conditions of the two permits subject to this Settlement Agreement as extended.
2. Upon full execution of this Settlement Agreement, the Department will issue the Final Orders Incorporating Settlement Agreement for Permits S-47560 and S-37836 consistent with the attached draft Final Orders.
3. The approval of the extension for Permit S-37836 is subject to the following additional conditions: (1) a Measurement, Recording and Reporting Condition (2) an additional current Fish Screening Condition for diversion of water beyond .56 cfs, and (3) a Future Use Condition. Permit S-37836 is already subject to a fish screening and passage condition that remains in effect. The approval of the extension for Permit S-47560 is subject to the following additional conditions: (1) a Measurement, Recording and Reporting Condition, (2) a Fish Screening Condition, and (3) a Future Use Condition.
4. The Oregon Department of Fish and Wildlife (“ODFW”) has confirmed in writing that it will not require fish by-pass devices, a fishway, or a fish passage waiver for the existing point of diversion from Short Creek, because the diversion is located immediately above an impassable waterfall that empties onto the beach. Based on ODFW’s confirmation, the Final Order Incorporating Settlement Agreement for Permit S-47560 includes a condition that does

not require by-pass devices, a fishway, or a fish passage waiver for the existing point of diversion, but will require the same for any new or additional points of diversion.

5. Applicant and Protestant waive all right and opportunity to request reconsideration and to seek judicial review of this Settlement Agreement and the Final Orders Incorporating Settlement Agreement for Permits S-47560 and S-37836.
6. 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.
7. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement and draft Final Orders, and that it has signed this Settlement Agreement of its own free will and accord.
8. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Orders and understands and agrees with the contents thereof.
9. This Settlement Agreement may be signed in counterparts.



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

5-28-2014
Date

Oceanside Water District
By: Robert Garrigues, Chair

Date

WaterWatch of Oregon, Inc.

Date

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

In the Matter of Applications for Extension)
Of Time for Permits S-47560 and S-37836)
for Oceanside Water District)
Applicant)
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WaterWatch of Oregon, Inc.)
Protestant)

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3. WaterWatch of Oregon, Inc. filed a timely protest to each Proposed Final Order.

Terms of the Agreement

1. This Agreement resolves all issues raised in WaterWatch’s protests of the proposed extensions for Permits S-37836 and S-47560. WaterWatch and Oceanside agree that WaterWatch will not challenge the District’s legal authority to deliver water for quasi-municipal use under the terms and conditions of the two permits subject to this Settlement Agreement as extended.
2. Upon full execution of this Settlement Agreement, the Department will issue the Final Orders Incorporating Settlement Agreement for Permits S-47560 and S-37836 consistent with the attached draft Final Orders.
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not require by-pass devices, a fishway, or a fish passage waiver for the existing point of diversion, but will require the same for any new or additional points of diversion.

5. Applicant and Protestant waive all right and opportunity to request reconsideration and to seek judicial review of this Settlement Agreement and the Final Orders Incorporating Settlement Agreement for Permits S-47560 and S-37836.
6. 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.
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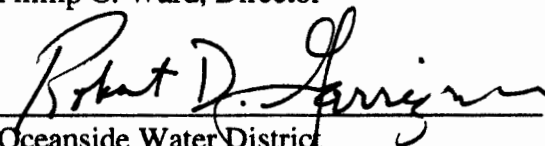
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SALEM, OR



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

5-28-2014
Date



Oceanside Water District
By: Robert Garrigues, Chair


5-30-2014
Date

WaterWatch of Oregon, Inc.

Date

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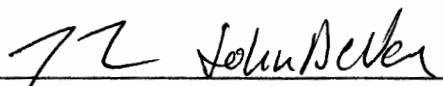


Dwight French, Administrator,
Water Right Services Division
for
Phillip C. Ward, Director

5-28-2014
Date

Oceanside Water District
By: Robert Garrigues, Chair

Date



WaterWatch of Oregon, Inc.

6/2/14
Date