

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

Water Rights Application
Number G-17704

Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

This order incorporates an informal disposition and is not appealable, pursuant to ORS 183.417(3).

Findings of Fact

1. The findings of fact in the Proposed Final Order are incorporated into this Final Order.
2. The Department issued a Proposed Final Order on January 21, 2014. The protest period closed March 7, 2014, and a timely protest was filed by WaterWatch of Oregon.
3. Per the terms of the Settlement Agreement, the applicant voluntarily removed proposed Wells 2, 3 and 4 from the application, leaving Well 1 (HARN 1895) as the proposed point of appropriation. The application also reduced the acreage proposed for irrigation to 160.0 acres and the proposed rate of water to 2.67 cubic feet per second.
4. A Settlement Agreement was signed by all parties as of February 19, 2015. The terms of the Settlement Agreement are incorporated into this Final Order and a copy of the Settlement Agreement is included below.

Conclusions of Law

1. The conclusions of law in the Proposed Final Order are incorporated into this Final Order.
2. The proposed use would not impair or be detrimental to the public interest pursuant to ORS 537.621(2).

Order

Application G-17704 is therefore approved as described in the Proposed Final Order, with the changes to the points of appropriation, acreage and rate described above. Permit G-17359 is issued as limited by the conditions set forth therein.

DATED February 25, 2015

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

This document was prepared by Kim French. 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.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Application G-17704)
in the name of Mr. Richard L. Fly) **SETTLEMENT AGREEMENT**
Applicant)
and)
WaterWatch of Oregon, Inc.)
Protestant)

The Oregon Water Resources Department (OWRD); Mr. Richard L. Fly; and WaterWatch of Oregon, Inc. (WaterWatch), (collectively "the Parties") do hereby stipulate and agree in this Settlement Agreement including Attachment 1 (Agreement), as follows:

A. RECITALS

1. On July 24, 2013, Richard L. Fly submitted an application to OWRD requesting a groundwater permit authorizing 9.67 cubic feet per second (“cfs”) for irrigation of 580.0 acres with the source being four wells in the Malheur Lake Basin.
2. On January 21, 2014, OWRD issued a Proposed Final Order proposing to issue a permit consistent with the application.
3. On March 7, 2014, WaterWatch filed a timely protest of the Proposed Final Order.
4. The Parties have agreed this protest shall be settled on the following terms:

B. AGREEMENT

1. The "Effective Date" of this Agreement is the date on which all parties have executed this Settlement Agreement.
2. Within ten business days after the Effective Date, OWRD shall issue a Final Order Incorporating Settlement Agreement for Application G-17704 consistent with the draft Final Order Incorporating Settlement Agreement for Application G-17704 (including the Draft Permit) included in Attachment 1. The Final Order shall be issued with this Settlement Agreement attached.
3. OWRD, Richard L. Fly and WaterWatch agree that the application has been voluntarily reduced to request the use of one well "Well 1 (HARN 1895)" and irrigation of 160 acres in the SW 1/4 of Section 17, T23S, R32.5E, a rate of 2.67 CFS and a duty of 3 acre feet per acre.
4. WaterWatch agrees that the terms set forth in this Agreement, including the attached draft Final Order Incorporating Settlement Agreement for Application G-17704 (including the Draft Permit) included in Attachment 1, resolve the issues raised in its protest.

5. Mr. Richard L. Fly and WaterWatch of Oregon, Inc. understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
6. Each Party hereby waives its respective rights to file any exceptions, appeals or requests for reconsideration or for judicial review of the Final Order Incorporating Settlement Agreement if such Final Order substantially conforms to the draft Final Order Incorporating Settlement Agreement for Application G-17704 included in Attachment 1.
7. Notwithstanding any other term in this Agreement, any Party may petition OWRD to correct any scrivener's error in the Final Order Incorporating Settlement Agreement.
8. This Agreement is made upon the express understanding that it constitutes a negotiated resolution. No Party shall be deemed to have approved, admitted, accepted, or otherwise consented to any principle or legal interpretation underlying or supposed to underlie the contents of the Agreement. Nothing in this Agreement is intended or shall be construed as a precedent with regard to any other proceeding. This Agreement shall not be offered against any Party as argument, admission or precedent in any, arbitration, litigation or other administrative or legal proceeding that does not involve or relate to the Agreement, or the Final Order Incorporating Settlement Agreement.
9. Each Party hereby represents, warrants, and agrees that the person who executes this Agreement on the Party's behalf has the full right and authority to bind that Party to the terms of this Agreement.
10. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement and understands and agrees with the contents thereof.
11. Each Party hereby certifies that it has had a reasonable opportunity to review and request changes to this Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
12. This Agreement is binding upon each Party's agents, successors in interest and assigns.
13. This Agreement may be signed in counterparts.

Oregon Water Resources Department

By: Dwight French
Title: Dwight French, Water Right Services Administrator

2/17/15
Date

Mr. Richard Fly

By: _____
Title: _____

Date

5. Mr. Richard L. Fly and WaterWatch of Oregon, Inc. understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
6. Each Party hereby waives its respective rights to file any exceptions, appeals or requests for reconsideration or for judicial review of the Final Order Incorporating Settlement Agreement if such Final Order substantially conforms to the draft Final Order Incorporating Settlement Agreement for Application G-17704 included in Attachment 1.
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9. Each Party hereby represents, warrants, and agrees that the person who executes this Agreement on the Party's behalf has the full right and authority to bind that Party to the terms of this Agreement.
10. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement and understands and agrees with the contents thereof.
11. Each Party hereby certifies that it has had a reasonable opportunity to review and request changes to this Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
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13. This Agreement may be signed in counterparts.

Oregon Water Resources Department

By: Dwight French
Title: Dwight French, Water Right Services Administrator

2/17/15
Date

Mr. Richard Fly

By: J. C. [Signature] AGENT FOR RICHARD L. FLY
Title:

2/19/15
Date

WaterWatch of Oregon, Inc.

By: 72 John DeVoe
Title: Executive Director

2-19-15
Date