

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. On June 4, 2013, Barlow Oaks LLC submitted an application for appropriation of 1.11 cubic feet per second (CFS) from Well 1 (CLAC 56198/L43477) and Well 2 (CLAC 2555/CLAC 2556) in Rock Creek Basin for year-round nursery use on 44.2 acres.
3. On October 21, 2014, the Department issued a Proposed Final Order recommending the application be denied because the appropriation of 1.11 CFS from Well 1 (CLAC 56198/L43477) and Well 2 (CLAC 2555/CLAC 2556) in Rock Creek Basin had the potential for substantial interference with Rock Creek, therefore, surface water availability must be considered. Surface water was not available for the proposed use.
4. On November 4, 2014, a timely protest was filed by the applicant which proposed reducing the rate to 0.35 CFS to avoid the potential for substantial interference with Rock Creek.
5. On February 17, 2015, the Department received evidence demonstrating compliance with well construction standards for Well 2 (CLAC 2555/CLAC 2556) as required in the Proposed Final Order.
6. A Settlement Agreement was signed by all parties as of May 1, 2015. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is enclosed.
7. The applicant and the Department have agreed to the permit conditions set forth in the draft permit.

Conclusions of Law

1. The conclusions of law in the Proposed Final Order are incorporated into this Final Order and modified as set forth below.

The conclusion of law stating that water is not available is stricken, based on Finding of Fact #4, above.

The conclusions of law stating that the required presumption has not been established and that the proposed use would not ensure the preservation of the public welfare, safety and health are substituted in their entirety with the following:

2. The proposed use would ensure the preservation of the public welfare, safety and health pursuant to ORS 537.621(2).

Order

Application G-17680 is therefore approved as described in the Proposed Final Order and pursuant to the Settlement Agreement, and Permit G-17412 is issued as limited by the conditions set forth therein.

DATED May 8, 2015



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

This document was prepared by Barbara Park. 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 Barbara.J.Park@wrd.state.or.us or 503-986-0859.

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 WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Right Application)	SETTLEMENT
G-17680 in the name of Barlow Oaks LLC)	AGREEMENT
)	
<i>Applicant/ Protestant</i>)	

The Oregon Water Resources Department (OWRD) and Barlow Oaks LLC (together “the parties”) do hereby stipulate and agree in this “Settlement Agreement” (Agreement) as follows:

A. Background

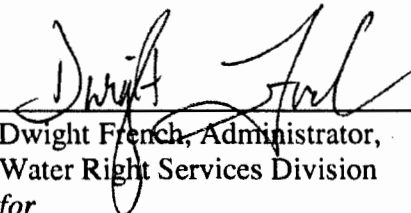
1. On June 4, 2013 the OWRD received an application from Barlow Oaks LLC; it was assigned the number G-17680.
2. On October 21, 2014 OWRD issued a Proposed Final Order recommending the application be denied.
3. On November 4, 2014 Barlow Oaks LLC filed a timely protest.
4. OWRD and Barlow Oaks LLC agree that all issues related to the protest on G-17680 are resolved solely on the following terms, which constitutes an informal disposition of the contested case.

B. Consent

1. Barlow Oaks LLC hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the draft Final Order Incorporating Settlement Agreement for Application G-17680 which is hereby incorporated by reference.
2. Barlow Oaks LLC understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Barlow Oaks LLC understands and agrees that this Agreement and Final Order Incorporating Settlement Agreement for Application G-17680 issued pursuant to this Agreement constitutes the complete and final resolution of the protest.
4. Effective upon the complete signing of this Agreement Barlow Oaks LLC waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Application G-17680 issued by OWRD in accordance with the draft Final Order attached to and incorporated into the Agreement.

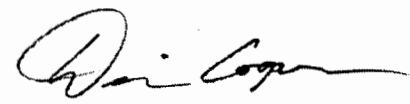
C. Terms of the Agreement

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 Final Order Incorporating Settlement Agreement and understands and agrees with the contents thereof.
4. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
5. This Settlement Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Right Services Division
for
Thomas M. Byler, Director
Oregon Water Resources Department

3-26-15
Date



Barlow Oaks LLC

5-1-15
Date