

Oregon Water Resources Department
Water Right Services Division

Water Right Application G-16512 in the name)
of MICHAEL A. BECKER) FINAL ORDER INCORPORATING
) SETTLEMENT AGREEMENT

Summary: Order approving Application G-16512, as amended, and issuing Permit G-18466.

Authority

The application was processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410 and the Grande Ronde Basin Program (OAR690-508). These statutes and rules can be viewed on the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages.default.aspx>.

The Department's main page is <https://www.oregon.gov/OWRD>.

This Final Order is issued pursuant to ORS 537.625 and OAR 690-310-0200.

FINDINGS OF FACT

1. On February 6, 2007, the Oregon Water Resources Department (OWRD or the Department) issued a Proposed Final Order (original PFO), which proposed to deny the application for groundwater use filed by Michael Becker (Applicant). On February 20, 2007, Applicant filed a protest to the PFO (Protest).
2. On August 15, 2014, OWRD referred this matter to the Office of Administrative Hearings (OAH) for further proceedings.
3. On or about September 9, 2014, OWRD issued a First Amended Notice of Proposed Final Order (Notice or Amended PFO).

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 536.075 and 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 OAR 137-004-0080 you may 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.

HEARING 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. Only the applicant or protestant may appeal this order. (ORS 537.170(7)(b)).

4. A hearing in this matter was held on June 29 and 30, 2015, in Salem, Oregon. A second hearing to supplement the incomplete record from the first hearing was convened on July 30 and 31, 2015, in Salem, Oregon.
5. On September 8, 2015, the OAH issued a proposed order recommending reversal of the Department's decision in its First Amended Proposed Final Order to deny Applicant's proposed groundwater use. No exceptions were filed by Applicant to the ALJ's proposed order.
6. On October 9, 2015, the Department issued an Amended Proposed Order proposing to deny the application because it had determined that the proposed use does not comply with a Commission rule that protects scenic waterway surface flows to maintain their free-flowing character in quantities necessary for recreation, fish and wildlife, and thus would not ensure the preservation of the public welfare, safety and health. Timely exceptions were filed by Applicant to the Amended Proposed Order.
7. Thereafter, the parties agreed to delay issuance of the Director's final order, and thereafter both parties discussed progress reports on proposed mitigation for resolution of disputed issues.
8. In September 2017, the Department was informed of an agreement between Applicant and another applicant for groundwater use, R.D. Mac for Application G-18577. The latter application was also determined to affect a scenic waterway, and R.D. Mac proposed an in-stream transfer – Transfer T-13129 of Certificate 90393 –for mitigation required for Application G-18577 primarily, as well as for Applicant's proposed use, if any water was available for mitigation after meeting mitigation needs of Application G-18577.
9. On June 24, 2020, Certificate 90393 was transferred instream under Transfer T-13129 to provide 336 acre-feet of water annually as mitigation, with 104 acre-feet annually to be provided for mitigation for Application G-18577 and the remaining 232 acre-feet annually to be provided for mitigation for Application G-16512.
10. On June 17, 2020, a Settlement Agreement was signed by both parties. The Settlement Agreement includes a modification to applicant's proposed use in Application G-16512 so as to limit water use to a maximum annual total volume of 519.4 acre-feet at the applied-for rate of 3.467 cfs for supplemental irrigation in July, August, and September. This Settlement Agreement is attached hereto and incorporated in its entirety by this reference.

CONCLUSIONS OF LAW

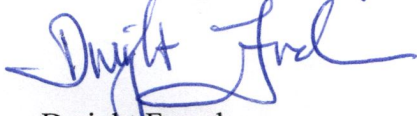
1. The proposed use, as amended and conditioned, along with mitigation provided, will insure the preservation of the public welfare, safety and health.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

ORDER

Application G-16512 is therefore approved with modifications, and Permit G-18466 is issued as limited by the conditions set forth therein.

DATED June 25, 2020



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

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- If you have any questions about statements contained in this document, please contact Kim French at Kim.R.French@oregon.gov or 503-986-0816.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
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SETTLEMENT AGREEMENT

Michael Becker, G-16512

The Oregon Water Resources Department (OWRD or “the Department”) and Michael Becker (Becker), referred to collectively as the “Parties” and each individually as “Party,” wish to resolve their dispute in a manner that avoids further litigation on this matter. Therefore, in consideration of the promises and mutual covenants contained herein the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby stipulate and agree as follows:

Background

1. On February 6, 2007, the Department issued a Proposed Final Order that proposed to deny the application for groundwater use filed by Becker. On February 20, 2007, Becker filed a protest to that Proposed Final Order.
2. On August 15, 2014, OWRD referred the disputed matter to the Office of Administrative Hearings (OAH) for further proceedings.
3. On or about September 9, 2014, OWRD issued a First Amended Notice of Proposed Final Order (Notice or Amended PFO).
4. A hearing in this matter was held on June 29 and 30, 2015, in Salem, Oregon. A second hearing to supplement the incomplete record from the first hearing was convened on July 30 and 31, 2015, in Salem, Oregon.
5. On September 8, 2015, the OAH issued a proposed order recommending reversal of the Department’s decision in its First Amended PFO to deny Becker’s proposed groundwater use. No exceptions were filed by Becker to the ALJ’s proposed order.
6. On October 9, 2015, the Department issued an Amended Proposed Order proposing to deny the application because it had determined that the proposed use does not comply with a Commission rule that protects scenic waterway surface flows to maintain their free-flowing character in quantities necessary for recreation, fish and wildlife, and thus would not ensure the preservation of the public welfare, safety and health. Timely exceptions were filed by Becker to the Amended Proposed Order.
7. Thereafter, the parties agreed to delay issuance of the Director’s final order, and thereafter both parties discussed progress reports on proposed mitigation for resolution of disputed issues.
8. In September 2017, the Department was informed of an agreement between Becker and another applicant for groundwater use, R.D. Mac for Application G-18577. The latter

application was also determined to affect a scenic waterway, and R.D. Mac proposed an in-stream transfer – Transfer T-13129 of Certificate 90393 –for mitigation required for Application G-18577 primarily, as well as for Becker’s proposed use, if any water was available for mitigation after meeting mitigation needs of Application G-18577.

9. On or about June 19, 2020, Certificate 90393 was transferred instream under Transfer T-13129 to provide 336 acre-feet annually as mitigation, with 104 acre-feet annually to be provided for mitigation for Application G-18577 and the remaining 232 acre-feet annually to be provided for mitigation for Application G-16512.

Terms

10. Becker agrees to modify his proposed use in Application G-16512 so as to limit water use to a maximum annual total volume of 519.4 acre-feet at the applied-for rate of 3.467 cfs for supplemental irrigation from July 1 to September 30.
11. Becker understands and agrees that the Final Order and this Settlement Agreement attached thereto is not appealable and constitutes the complete and final resolution of the issues in the above-captioned matter.
12. Upon issuance of the Final Order incorporating Settlement Agreement, which shall be consistent with this Settlement Agreement and Final Order attached hereto, Becker waives any and all rights to request reconsideration, petition for judicial review, or appeal of the Final Order.
13. The Department will issue a Final Order Incorporating Settlement Agreement consistent with the attached draft Final Order within a reasonable time following receipt of a signed Settlement Agreement.
14. The Parties understand and agree that this Settlement Agreement and all documents incorporated by reference set forth the entire agreement of the Parties.
15. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
16. This Settlement Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Settlement Agreement so executed constitutes an original.
17. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Settlement Agreement has the full right and authority to enter into this

Settlement Agreement on behalf of that Party and to bind that Party to the terms of this Settlement Agreement.

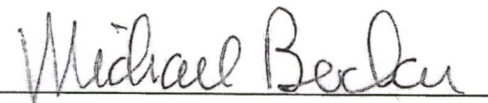
18. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS SETTLEMENT AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the dates set forth below.



DATED June 15, 2020

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



DATED 6/17/2020

Michael Becker
Applicant for G-16512