

Mike R.



Department of
PUBLIC WORKS

Dan Thorndike, Chair
Water Resources Commission
725 Summer St. NE, Suite A
Salem, OR 97301-1271

Phil Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

September 19, 2005

RE: City of Lincoln City's Request for Rulemaking to Establish Reservations of Unappropriated Water on Side Creek, Rock Creek, and Treat River.

1. Request for Reservations

Pursuant to the terms of the Supplemental Settlement Agreement dated September 8, 2005, entered into between:

- The City of Lincoln City (the City);
- Kernville – Gleneden Beach – Lincoln Beach Water District (the District);
- WaterWatch of Oregon;
- MidCoast Watershed Council;
- Salmon Drift Creek Watershed Council;
- Confederated Tribes of Siletz Indians of Oregon;
- Northwest Environmental Defense Center;
- Oregon Council of Trout Unlimited;
- Oregon Water Resources Department (OWRD);
- Oregon Department of Fish and Wildlife (ODFW);
- Paul Katen;
- Wayne Hoffman; and
- Diane Henkels,

and pursuant to the August 19, 2004 Settlement Agreement in the Matter of Extensions of Permit S-35106 (now superseded by Permit S-54187) and Permit S-29267 (now superseded by Permit S-54186) between the City, District, OWRD and ODFW and the August 27, 2004 Settlement Agreement between the City, OWRD and ODFW in the Matter of Water Right Application S-85339, the City of Lincoln City, a local government, hereby requests that the Water Resources Commission initiate and approve a rulemaking pursuant to Oregon Revised Statutes (ORS) 537.356 and 537.358 to modify

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RESERVATION REQUEST

Page 1 of 9

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**WATER RESOURCES DEPT
SALEM, OREGON**

the MidCoast Basin Plan, Oregon Administrative Rule (OAR) Chapter 690, Division 518 to add the following reservations:

Terms and Conditions of the Requested Reservations

- A reservation of 1,350 acre-feet of unappropriated water from an unnamed stream (locally referred to as "Side Creek"), tributary to Devil's Lake, for multipurpose storage for future economic development for future application exclusively by the City of Lincoln City.
- A reservation of the amount of unappropriated water in Rock Creek, tributary to Devil's Lake, shown in OWRD's water availability model (attached), at a 50% exceedence, on the date this reservation request is submitted, assuming that water right applications S-73406 and R-73408 are withdrawn immediately upon approval of the reservation, and in no event more than 1,250 acre-feet of unappropriated water from Rock Creek, tributary to Devils Lake, for multipurpose storage for future economic development.
- A reservation of 1,250 acre-feet of unappropriated water from Treat River, tributary to Salmon River, for multipurpose storage for future economic development.

Please find a letter, signed by representatives of each of the parties listed above, in support of the proposed rulemaking to establish the reservations as requested herein attached to this request as Attachment 1.

2. Purpose of the Reservation

The purpose of the Side Creek reservation is to provide the City of Lincoln City the exclusive ability to apply, at some time in the future, for water right(s) to appropriate reserved water from Side Creek for multi-purpose storage for economic development.

The purpose of the Rock Creek and Treat River reservations is to provide the City of Lincoln City and any other potential applicant the ability to apply, at some time in the future, for water right(s) to appropriate reserved water from Rock Creek and the Treat River for multi-purpose storage for economic development.

3. Water Availability

A. Side Creek

Based on information provided by OWRD, if the City's water storage application (R-73970) and secondary application (S-73971) are withdrawn immediately upon approval of the Side Creek reservation, and the water previously requested in applications R-73970

and S-73971 is added back into OWRD's water availability computer model, water is available at a 50% exceedance level in the amount of 3,800 acre-feet, which significantly exceeds the City's requested reservation of 1,350 acre-feet from this source.

B. Rock Creek

Based on information provided by OWRD, if the City's water storage application (R-73408) and secondary application (S-73406) are withdrawn immediately upon approval of the Rock Creek reservation, and the water previously requested in applications R-73408 and S-73406 is added back into OWRD's water availability computer model, water is available at a 50% exceedance level in the amount of 374 acre-feet, which is consistent with the City's request for a reservation of no more than 1,250 acre-feet from this source.

C. Treat River

Based on information provided by OWRD, if the City's water storage application (R-73407) and secondary application (S-73409) are withdrawn immediately upon approval of the Treat River reservation, and the water previously requested in applications R-73407 and S-73409 is added back into OWRD's water availability computer model, water is available at a 50% exceedance level in the amount of 89,100 acre-feet in the river system below the Treat River, which greatly exceeds the City's requested reservation of 1,250 acre-feet from this source. The City understands that OWRD does not have exact water availability data for the Treat River, but that OWRD's practice is to refer to the nearest downstream data point relative to the point of diversion applied for to determine water availability.

4. Sources of Water to Supply the Reservation

The sources of water to supply this request for reservations are:

1. An unnamed stream (locally referred to as "Side Creek"), tributary to Devil's Lake
2. Rock Creek, tributary to Devil's Lake
3. Treat River, tributary to Salmon River

5. Approximate Seasons of Use

The approximate season of use for water in the Side Creek reservation will be as specified in any future water right application submitted by the City to OWRD to appropriate water from the Side Creek reservation, to the extent consistent with any applicable storage season limitations in the MidCoast Basin Plan (currently OAR Chapter 690 Division 518) in effect at the time of the City's application to use water from the Side Creek reservation.

The approximate seasons of use for water in the Rock Creek and Treat River reservations will be as specified in any future water right application submitted by the City or any other applicant to OWRD to appropriate water from those reservations, to the extent consistent with any applicable storage season limitations in the MidCoast Basin Plan (currently OAR Chapter 690 Division 518) in effect at the time of any application to use water from those reservations.

6. Approximate Locations of Use

The proposed Side Creek reservation would be dedicated for future application exclusively by the City of Lincoln City, and if a future storage application were approved, the stored water would be put to beneficial use within the City's water service area.

The proposed Rock Creek and Treat River reservations would be dedicated for future application by any applicant. If a future storage application by the City were approved, the stored water would be put to beneficial use within the City's water service area.

It is also possible that stored water from any of these sources could be a component of a future regional water supply system and, if that is the case, the location of use would be beyond the City's water service area.

The City has not decided on exact locations for any possible future reservoir sites that would be used to store the water it seeks to reserve in Side Creek, Rock Creek, and the Treat River. However, the City has previously submitted applications to OWRD for reservoirs in the following locations (Note - these prior applications will be withdrawn by the City if the reservations are approved as requested):

Existing Side Creek Storage Application R-73970

Point of Diversion (POD): T 7 S, R 11 W, Sec. 23 NE NE

Place of Use (POU): T 7 S, R 11 W, Sec. 23 NE NE

Existing Rock Creek Storage Application R-73408

POD: T 7 S, R 11 W, Sec. 13 NE NW

POU: T 7 S, R 11 W, Sec. 0 (City limits)

Existing Treat River Storage Application R-73407

POD: T 6 S, R 10 W, Sec. 36 NE NE

POU: T 6 S, R 10 W, Sec. 0 (City limits)

If the reservations are approved as requested, the City may, in subsequent storage applications to OWRD, propose different locations for its reservoirs.

Regarding the Rock Creek and Treat River reservations, the City cannot predict where any other future applicant may seek to construct a reservoir or use that stored water.

7. Evidence that the Proposal is Compatible With the Overall Basin Program Goals and Policies

OAR Chapter 690, Division 518 establishes the classifications of the approved uses of water in this basin.

OAR 690-518-0010 states:

“The maximum economic development of this state, the attainment or the highest and best use of the waters of the Mid-Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial mining, recreation, wildlife and fish life uses with preference given to human consumption and livestock consumption over any other beneficial uses. . . .”

The proposed reservations would be for multipurpose storage for future economic development, as required by ORS 537.356. “Multipurpose storage” includes storage for all of the uses described authorized in OAR 690-518-0010. Other sections of the MidCoast Basin Plan further restrict the types of uses that are classified on certain streams. However, the MidCoast Basin Plan does not contain any further restrictions on Side Creek, Rock Creek, or Treat River. Thus, the City’s request is consistent with the use classifications contained in the MidCoast Basin Plan.

8. Identification of Affected Local Governments and Watershed Councils and Copies of Letters Notifying Each Local Government and Watershed Council of the Filing of a Reservation Request Accompanied by a Description of the Reservation Proposal

The City has identified the following local governments and watershed councils within the geographic area or basin affected by the request:

Local Governments:

Lincoln County
255 Olive Street W
Newport, OR 97365

City of Depoe Bay
PO Box 8
Depoe Bay, OR 97341

City of Lincoln City
PO Box 50
Lincoln City, OR 97367

City of Newport
810 Alder SW
Newport, OR 97365

City of Siletz
PO Box 318
Siletz, OR 97380

City of Toledo
PO Box 220
Toledo, OR 97391

City of Waldport

PO Box 1120
Waldport, OR 97394

PO Box 53
Otter Rock, OR 97369

City of Yachats
PO Box 345
Yachats, OR 97498
Beverly Beach Water District
11494 Beverly Drive NE
Newport, OR 97365

Panther Creek Water District
PO Box 171
Otis, OR 97368

Seal Rock Water District
PO Box 190
Seal Rock, OR 97376

Kernville-Gleneden Beach -
Lincoln Beach Water District
PO Box 96
Gleneden Beach, OR 97388

Southwest Lincoln Water District
7740 Highway 101
Waldport, OR 97394

Lower Siletz Water District
PO Box 1109
Lincoln City, OR 97367

Devils Lake Water Improvement
District
PO Box 974
Lincoln City, OR 97367

Miroco Water District
PO Box 822
Depoe Bay, OR 97341

Otter Rock Water District

Watershed Councils:

Salmon Drift Creek Watershed
Council
Katie McKenzie
PO BOX 131
Neotsu, OR 97364

Siletz Watershed Council
157 NW 15th Unit 1
Newport, OR 97365

Midcoast Watersheds Council
Wayne Hoffman
23 North Coast Highway
Newport, OR 97365

Yaquina Watershed Council
157 NW 15th Unit 1
Newport, OR 97365

Alsea Watershed Council
Linda Johnston
10518 E 5 Rivers Rd
Tidewater, OR 97390

Yachats Watershed Council
157 NW 15th Unit 1
Newport, OR 97365

In addition, the City has identified the following Indian Tribes that are in the area that may be affected by the proposed reservations:

Confederated Tribes of Siletz Indians of Oregon
Secretary of the Tribal Council
PO Box 549
Siletz, OR 97380

The Confederated Tribes of Grand Ronde
9615 Grand Ronde Road
Grand Ronde, OR 97347

9. Evidence That Sites for the Storage Facility Can Be Developed

The City has not determined the specific locations for which it may apply for water rights to construct reservoirs using reserved water in the Side Creek, Rock Creek, and Treat River areas. As such, the specific requirements for any future storage facility are unknown. The City is, however, able to raise the funds required to finance the development and construction of future storage facilities.

10. Intended Types of Use(s) of the Reserved Water

Consistent with ORS 537.356, the City requests that water be reserved for multipurpose storage for future economic development, including all use classifications not otherwise restricted by the MidCoast Basin Plan, OAR Chapter, 690 Division 518.

11. Expected Duration of the Reservation Prior to Application for Use of the Water

The City has not determined when it may apply for water proposed to be reserved in the Side Creek, Rock Creek, and Treat River reservations. OAR 690, Division 79 rules will not apply to this requested reservation because the request is not being made by a state agency, and ORS 537.356 and 537.358 do not restrict the duration of reservations. In the absence of applicable rules or statutes imposing a limitation on the duration of reservations, the City requests that the reservations be perpetual in nature.

12. Economic Benefits Provided

The City is anticipating continued economic growth in both the short and long terms. In order to sustain this economic growth the City must develop adequate, safe and reliable sources of water for its residents. The water reserved in these proposed reservations would provide economic benefits to the City by ensuring the capacity and flexibility to allow it to meet its water demand needs in the future.

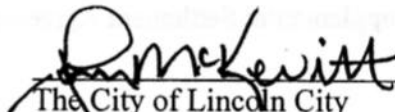
13. Water Source Alternatives

The proposed Side Creek, Rock Creek, and Treat River reservations represent three of the major long-term water sources the City may pursue. In addition to these proposed reservations, the City is also pursuing a water right application on Rocky Creek. The City is also pursuing water rights applications on Drift Creek to serve as an interim and

The City's request for reservation of water in Side Creek, Rock Creek, and the Treat River will not, in and of itself, adversely impact water resources. Any future storage application submitted by the City, or another entity for water in the Rock Creek and Treat River reservations, will be subject to a public interest review by OWRD. The City anticipates that, during this public interest review, any potential adverse impacts from the proposed storage will be identified and mitigated.

The City of Lincoln City looks forward to working with OWRD and the Water Resources Commission during the rulemaking process to establish these reservations. Please do not hesitate to contact me if you have any questions.

Very Truly Yours,


The City of Lincoln City
By: John McKeivitt
Water Superintendent