

**RESOLUTION NO. 1655**

**A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING A SETTLEMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE, PROTESTANT, AND THE STATE OF OREGON, IN WATER RESOURCES DEPARTMENT CONTESTED CASE NO. PC 97-11, A PROPOSED CANCELLATION OF WATER RIGHTS HELD BY THE STATE FOR USES ON PROPERTY KNOWN AS DAMMASCH STATE HOSPITAL.**

WHEREAS, in October 1996, the State of Oregon selected the Dammasch property in Wilsonville for the site of a women's prison and intake center; and

WHEREAS, the City Council in Resolution No. 1356 opposed the site selection; and

WHEREAS, the City used all available legal resources to oppose the site selection, including an effort to cancel water rights; and

WHEREAS, the City had experienced reduced groundwater supply and did not have water supply to serve the proposed prison; and

WHEREAS, on June 2, 1997, the City of Wilsonville filed affidavits with the Oregon Water Resources Department (the "Department") to initiate the cancellation of water certificates 20371, 22737, 34014, 34125, and 44681; and

WHEREAS, on July 16, 1997, the City of Wilsonville filed an additional affidavit with the Department to initiate the cancellation of water use certificate 50581; and

WHEREAS, on June 4, 1997, Andrew Bryant filed an affidavit with the Department to initiate the cancellation of water certificate 20371, 22737, 34014, 34125, 44681, and on or about July 16, 1997, filed a similar affidavit alleging forfeiture of rights under 50581. The affidavits are in all material matters similar to the affidavits filed by the City; and

WHEREAS, the Department issued a Notice of Proposed Cancellation (Case No. PC 97-11), which proposed the cancellation of certificates 20371, 22737, 34014, and 44681 and the partial cancellation of certificate 34125; and

WHEREAS, the state responded to the proposed cancellations on September 9, 1997, placing into dispute the cancellation of water rights initiated by the City; and

WHEREAS, on September 15, 1997, the Department declined to rule on the proposed cancellations and scheduled a contested case hearing (the "Contested Case"); and

WHEREAS, the parties requested a stay of proceedings pending completion of the state process of selecting a site for a corrections facility in Wilsonville; and

WHEREAS, the City proposed to the Legislative Emergency Board a new site located at Day Road; and

WHEREAS, SB 686 (Or Laws Ch 982, 1999) voided the previous selection of the Dammasch State Hospital property as a corrections site and became effective on August 20, 1999; and

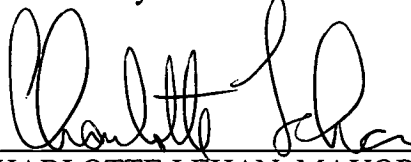
WHEREAS, on August 28, 1999, the Governor approved a site for the corrections facility at Day Road; and

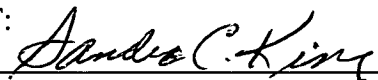
WHEREAS, the parties desire to settle and compromise the Contested Case dispute;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

The Settlement and Compromise Agreement as stated in Exhibit A, attached hereto and incorporated herein, is approved.

ADOPTED by the Wilsonville City Council at a regular Council meeting thereof this 19th day of June, 2000, and filed with the Wilsonville City Recorder this same date.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, MAYOR

ATTEST:   
\_\_\_\_\_  
Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

- Mayor Lehan            Yes
- Councilor Helser      Yes
- Councilor Barton      Excused
- Councilor Kirk        Yes
- Councilor Holt        Yes

**SETTLEMENT AND COMPROMISE AGREEMENT**

**Effective Date:** \_\_\_\_\_, 2000

Exhibit "A"  
Resolution No. 1655

**Parties:**

- A. The City of Wilsonville (the "City")
- B. The Oregon Department of Administrative Services, acting on behalf of the State of Oregon
- C. Andrew Bryant

**Recitals:**

A. On June 2, 1997, the City of Wilsonville filed affidavits with the Oregon Water Resources Department (the "Department") to initiate the cancellation of water certificates 20371, 22737, 34014, 34125, and 44681. The affidavits alleged that rights to use water for purposes of domestic use, irrigation and supplemental irrigation as described in all five certificates had been forfeited on the basis of nonuse. With regard to the rights to water for domestic use, State Hospital use, and fire protection (as set forth in certificates 34014 and 34125), the affidavits alleged that these rights had been partially forfeited on the basis of nonuse.

B. On July 16, 1997, the City of Wilsonville filed an additional affidavit with the Department to initiate the cancellation of water use certificate 50581. The affidavit alleged that rights to use water for supplemental irrigation as described in the certificate had been forfeited on the basis of nonuse.

C. On June 4, 1997, Andrew Bryant filed an affidavit with the Department to initiate the cancellation of water certificate 20371, 22737, 34014, 34125, 44681, and on or about July 16, 1997 filed a similar affidavit alleging forfeiture of rights under 50581. The affidavits are in all material matters similar to the affidavits filed by the City.

D. The Department issued a Notice of Proposed Cancellation (Case No. PC 97-11), which proposed the cancellation of certificates 20371, 22737, 34014, and 44681 and the partial cancellation of certificate 34125.

E. David Ellis, attorney for the State, responded to the proposed cancellations on September 9, 1997, and therein also responded to the proposed cancellation of certificate 50581, placing into dispute the cancellation of water rights initiated by the City.

F. On September 15, 1997, the Department declined to rule on the proposed cancellations and scheduled a contested case hearing (the "Contested Case").

G. The Parties requested a stay of proceedings pending completion of the state process of selecting a site for a corrections facility in Wilsonville, since the site selection had the potential to affect this Contested Case.

H. SB 686 (Or Laws Ch 982, 1999), which voided the previous selection of the Dammasch State Hospital property as a corrections site, became effective on August 20, 1999.

I. On August 28, 1999, the Governor approved a site for the corrections facility at Day Road.

J. The parties desire to settle and compromise the Contested Case dispute and therefore agree to the terms and conditions set out below.

**Terms and Conditions:**

1. The above stated recitals are incorporated herein.
2. The State agrees to immediately abandon any and all claim to the use of water under certificates 20371 and 22737 by certifying that the water rights under these certificates have been abandoned by the State and that the State desires cancellation thereof. The State agrees to submit an affidavit substantially in the form attached as Exhibit A requesting cancellation as provided for in ORS 540.621 (1997) and OAR 690-17-100 (1997).
3. The State agrees to immediately abandon any and all claim to the use of water under certificate 44681 by certifying that the water rights under this certificate has been abandoned by the State and that the State desires cancellation thereof. The State agrees to submit an affidavit substantially in the form attached as Exhibit A requesting cancellation as provided for in ORS 540.621 (1997) and OAR 690-17-100 (1997).
4. The State agrees to immediately abandon any and all claim to the use of water under certificate 50581 by certifying that the water rights under this certificate has been abandoned by the State and that the State desires cancellation thereof. The State agrees to submit an affidavit substantially in the form attached as Exhibit A requesting cancellation as provided for in ORS 540.621 (1997) and OAR 690-17-100 (1997).
5. The City and Andrew Bryant stipulate that the use of water under certificates 34014 and 34125 may continue for landscaping, as included in irrigation use, and the State stipulates that no irrigation for crops has occurred for more than five years. The City and Andrew Bryant agree that neither, separately or jointly, will protest or otherwise object to the State's continued use of water under certificates 34014 and 34125 for the purposes specified in such certificates.

6. The parties hereby mutually release, acquit and forever discharge each other and all officers, directors, employees, partners and agents of the other from all claims, demands, liabilities, actions or causes of action and suits or causes of suit arising out of the Contested Case dispute to cancel or partially cancel the water rights under certificates 20371, 22737, 34014, 34125, 44681, and 50581. The parties agree to file this Agreement with the Department and to request dismissal of the Contested Case on the terms and conditions of this Agreement.

By \_\_\_\_\_ Dated: \_\_\_\_\_, 2000  
City of Wilsonville

By \_\_\_\_\_ Dated: \_\_\_\_\_, 2000  
Andrew Bryant

By \_\_\_\_\_ Dated: \_\_\_\_\_, 2000  
State of Oregon Division of  
State Lands

By \_\_\_\_\_ Dated: \_\_\_\_\_, 2000  
State of Oregon

APPROVED AS TO FORM

By \_\_\_\_\_ Date \_\_\_\_\_, 2000  
Andrew Bryant

By \_\_\_\_\_ Dated: \_\_\_\_\_, 2000  
Joan S. Kelsey  
Assistant City Attorney  
for City of Wilsonville

By \_\_\_\_\_ Dated: \_\_\_\_\_, 2000  
David George Ellis  
Special Assistant Attorney General