

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15826

Hearing and Appeal 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 above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than contested case. This order is subject to judicial review under 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 ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Final Order Incorporating Settlement Agreement

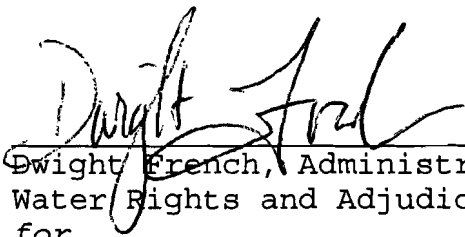
Application History

On August 23, 2002, ANGELO SPADA submitted an application to the Department for a water use permit on behalf of A and R SPADA FARMS. The Department issued a Proposed Final Order on August 26, 2003. The applicant filed a protest on October 10, 2003. A settlement agreement was signed by both parties as of March 17, 2006. The settlement agreement is incorporated into this final order and is attached hereto.

The proposed use would not impair or be detrimental to the public interest.

Order

Application G-15826 is hereby approved with the above modifications to the Proposed Final Order and as provided on the attached permit G-16044.



Dwight French, Administrator,
Water Rights and Adjudications Division
for

Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1266

3-23-06
Date

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)
G-15826 in the name of A AND R SPADA FARMS,) **SETTLEMENT**
Applicant(s) and Protestant(s)) **AGREEMENT**
_____)

The Oregon Water Resources Department ("OWRD") and A and R Spada Farms ("Applicant"), referred to collectively as "the Parties" do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

- I. On August 23, 2002, Applicant submitted an application to OWRD for up to 3.397 cubic feet per second (cfs) for nursery use and maintenance of a pond from three wells in Ryan Creek Basin, Willamette Basin, in Marion County.
- II. On August 26, 2003, OWRD issued a Proposed Final Order ("PFO") recommending denial of the Application because the proposed use of groundwater will not likely be available in the amounts requested without injury to prior ground water rights and will not likely be available within the capacity of the ground water resource.
- III. On October 10, 2003, Steven L. Shropshire, attorney of record for Applicant timely filed a protest to the PFO for the Application G-15826, requesting reconsideration for the proposed use.
- IV. OWRD's continuing evaluation reveals that a Final Order and Permit should be issued consistent with the draft Final Order and draft Permit which are attached and incorporated into this Settlement Agreement.
- VI. OWRD and Applicant agree that all issues raised in Applicant's protest are resolved solely on the following terms.

Terms of Agreement

- 1. In signing this Settlement Agreement, Applicant withdraws the protest to the PFO for water right application G-15826 with prejudice.
- 2. The Applicant waives all right and opportunity to file protests, requests for contested case hearings, requests for reconsideration, exceptions, judicial review, and any other procedures for requesting review of the Final Order for water right application G-15826 or this Settlement Agreement.

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SALEM, OREGON**

3. Within 30 days after both Parties have signed this Settlement Agreement, and upon payment of any applicable fees, OWRD will issue a Final Order and Permit consistent with the draft Final Order and draft Permit attached to this Settlement Agreement. The Final Order and Permit will incorporate this Settlement Agreement by reference and as an attachment.
4. 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.
5. Each Party to this Settlement Agreement certifies that they have read the entire Settlement Agreement, draft Final Order, and draft Permit, and understand and agree with the contents thereof.

A & R Spada Farms by Angelo Spada
A & R Spada Farms

3/17/06
Date

Dwight French
Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1266

2-17-06
Date

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15826

DRAFT

Hearing and Appeal 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 above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than contested case. This order is subject to judicial review under 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 ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Final Order

Application History

On August 23, 2002, ANGELO SPADA submitted an application to the Department for a water use permit on behalf of A and R SPADA FARMS. The Department issued a Proposed Final Order on August 26, 2003. The applicant filed a protest on October 10, 2003. A settlement agreement was signed by both parties on _____, 2005. The settlement agreement is incorporated into this final order and is attached hereto.

The proposed use would not impair or be detrimental to the public interest.

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Order

Upon payment of outstanding permit recording fees, Application G-15826 shall be approved with the above modifications to the Proposed Final Order and as provided on the attached draft permit.

Permit recording fees are required in the amount of **\$200.00**. Said fees are due and payable no later than 60 days from the date of this Final Order. Failure to pay the required permit recording fees within 60 days from the date of this Final Order may result in the proposed rejection of Application G-15826.

If you need to request additional time to submit the required fees, the written request should be received in the Salem office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED _____, 2006

--- DRAFT -----

Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1266

Date

This document was prepared by Jerry Gainey. If you have any questions about any of the statements contained in this document I am likely the best person to answer your questions. You can reach me at 503-986-0812.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF MARION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

A AND R SPADA FARMS
7251 SAINT PAUL HWY
ST PAUL, OR 97137

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-15856

SOURCE OF WATER: WELL 1, WELL 2 AND WELL 3 IN RYAN CREEK BASIN

PURPOSE OR USE: NURSERY USE ON 115.3 ACRES AND MAINTENANCE OF A POND

MAXIMUM RATE: 3.397 CFS, BEING 0.356 FROM WELL 1, 1.704 FROM WELL 2 AND 1.337 CFS FROM WELL 3.

ANNUAL DUTY ALLOWANCE: NOT TO EXCEED 345.9 ACRE-FEET COMBINED WITH PERMIT G-2897, PERMIT G-8015, PERMIT G-13550, AND PERMIT 36670 MEASURED ANNUALLY BEGINNING MARCH 1 OF EACH YEAR.

PERIOD OF USE: NOVEMBER 1 THROUGH THE END OF FEBRUARY

DATE OF PRIORITY: AUGUST 23, 2002

WELL LOCATIONS:

WELL 1: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 19, T4S, R1W, W.M.; 1100 FEET SOUTH & 2070 FEET WEST FROM NW CORNER WILLIAM WHITNEY DLC 48, SECTION 19
WELL 2: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 19, T4S, R1W, W.M.; 1170 FEET SOUTH & 1170 FEET WEST FROM NW CORNER WILLIAM WHITNEY DLC 48, SECTION 19
WELL 3: NE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 19, T4S, R1W, W.M.; 185 FEET NORTH & 1660 FEET WEST FROM E1/4 CORNER, SECTION 19

The amount of water used for nursery use is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to one fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

Application G-15826 Water Resources Department

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PERMIT DRAFT
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THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ (DLC 48) 1.4 ACRES
 SW $\frac{1}{4}$ SE $\frac{1}{4}$ (DLC 48) 0.3 ACRE

SECTION 18

NE $\frac{1}{4}$ NE $\frac{1}{4}$ (DLC 48) 10.8 ACRES
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ (DLC 48) POND MAINTENANCE
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ (DLC 48) 31.0 ACRES
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ (DLC 48) POND MAINTENANCE
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ (DLC 48) 28.8 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ (DLC 48) 0.3 ACRE
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ (DLC 48) 19.9 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ (DLC 48) 19.2 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ (DLC 48) 3.6 ACRES
 TOWNSHIP 4 SOUTH, RANGE 1 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the water user shall install a meter or other suitable measuring device as approved by the Director. The water user shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the permit.
- B. The water user shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

WELL CONDITION

Limited Water Level Decline/Interference Condition

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of **March**. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes PlaceInitial and Annual Measurements

The Department requires the water user to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has BegunSeven Consecutive Annual Measurements

Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board, or water user/appropriators and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- (A) Identify each well with its associated measurement; and
- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if annual water level measurements reveal any of the following events:

- (A) An average water level decline of 3 or more feet per year for five consecutive years; or
- (B) A water level decline of 15 or more feet in fewer than five consecutive years; or
- (C) A water level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non or restricted use shall continue until the annual water level rises above the decline level which triggered the action or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in **RECEIVED** rules, to

occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Complete application of the water to the use shall be made on or before October 1, 2010. If the water is not completely applied before this date, and the water user wishes to continue development under the permit, the water user must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the water user shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____, 2006

DRAFT - THIS IS NOT A PERMIT

Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1266

Date

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SALEM, OREGON**

Mailing List for Settlement Agreement Copies

Application

#G-15826

Mailing List Print Date: _____

Original mailed to: A AND R SPADA FARMS, ATTN: ANGELO SPADA, 7251 SAINT PAUL HWY, ST PAUL, OR 97137

Applicant:

Copies sent to:

1. WRD - File # G-15826

Copy to:

Steve Shropshire, Jordan Schrader Attorneys at Law, PO Box 230669, Portland OR 97281

Copies Mailed

By: _____
(SUPPORT STAFF)



on: _____
(DATE)

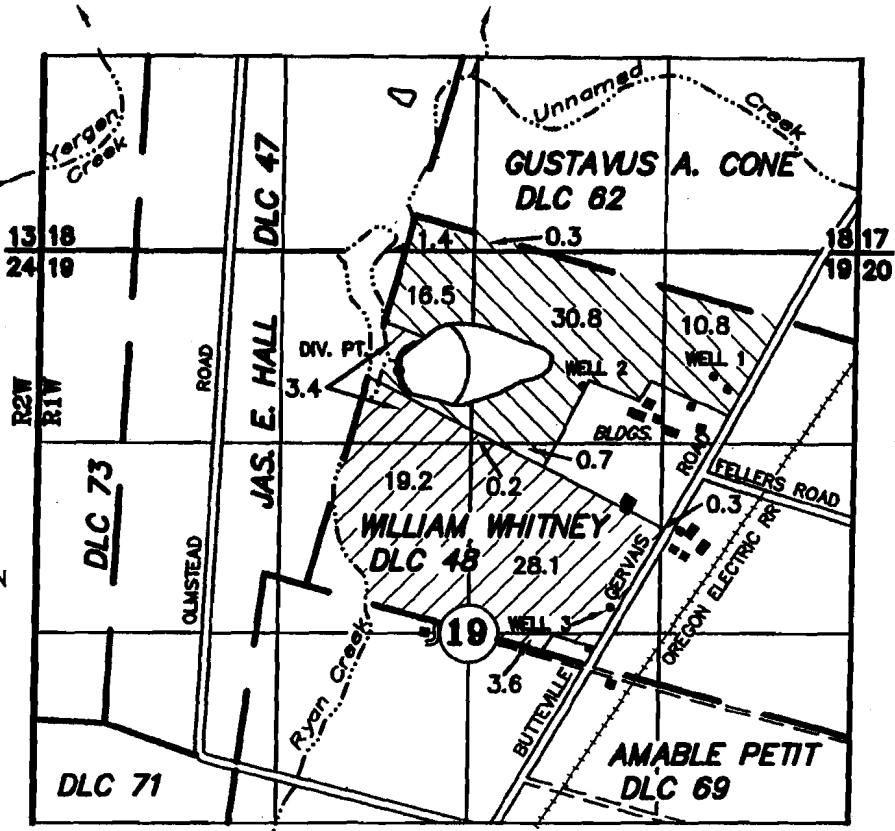
CASEWORKER : Gaineyjw

T4S, R1W, WM
MARION COUNTY

TAX LOT:
4 1W 19A 01100
4 1W 19A 00800

LEGEND

-  NURSERY OPERATION W/O IRRIGATION
-  NURSERY OPERATION



DIV. PT: 1070' S AND 95' W OF THE NW COR OF WILLIAM WHITNEY DLC 48
 WELL 1: 1100' S AND 2070' E OF THE NW COR OF WILLIAM WHITNEY DLC 48
 WELL 2: 1170' S AND 1170' E OF THE NW COR OF WILLIAM WHITNEY DLC 48
 WELL 3: 185' N AND 1660' W OF THE E 1/4 COR OF SECTION 19

APPLICATION TO APPROPRIATE SURFACE WATER

UNDER

app #
Permit # 6-15826

G-3153	G-2897
G-8804	G-8015
G-14819	G-13550
48976	36670

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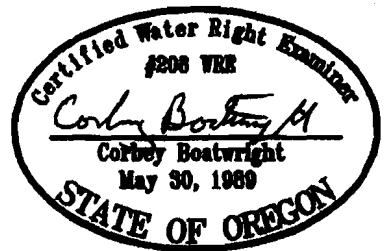
Application No. _____ Permit No. _____

MAR 20 2006

WATER RESOURCES DEPT
SALEM, OREGON

A & R SPADA FARMS

AUGUST 20, 2002
SCALE: 1" = 1320'



NOTE: This map is for the purpose of identifying the location of water rights and has no intent to dimension or locate property ownership lines.