

### **Final Order Incorporating Settlement Agreement**

#### *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 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.

#### *Application History*

On February 21, 2003, A and R Spada Farms submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on August 4, 2009. On August 27, 2009, a timely protest was filed by Justin Gericke, with Jordan Schrader Ramis PC, Attorneys at Law, on behalf of the applicant.

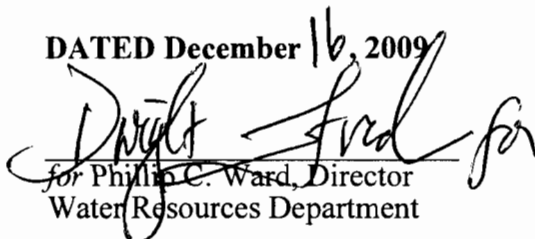
A settlement agreement was signed by all parties as of December 16, 2009. The terms of the Settlement Agreement have been incorporated into this Final Order.

The applicant has amended the application from 15.8 acres and 2.23 cubic foot per second to 2.3 acres and 0.06 cubic foot per second. As result of the amendments, the Department finds that the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications and conditions. The applicant and the Department have agreed to permit conditions set forth in the draft permit.

### **Order**

Application G-15930 is therefore approved with modifications to the Proposed Final Order. Upon meeting the "Terms of Agreement" as described in the attached Settlement Agreement, and upon payment of outstanding fees in the amount of \$400, a permit consistent with the attached draft permit shall be issued.

DATED December 16, 2009

  
for Phillip C. Ward, Director  
Water Resources Department

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 NE  
SAINT PAUL, OR 97137

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

APPLICATION FILE NUMBER: G-15930

SOURCE OF WATER: A WELL (MARI 53178) IN CASE CREEK BASIN

PURPOSE OR USE: NURSERY USE ON 2.3 ACRES

MAXIMUM RATE: 0.06 CUBIC FOOT PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: FEBRUARY 21, 2003

WELL LOCATION: NW ¼ NE ¼, SECTION 2, T5S, R2W, W.M.; 1260 FEET NORTH & 2610 FEET WEST FROM NE CORNER, L VANDALL DLC 64

The amount of water used for nursery use under this right, together with the amount secured under any other right existing for the same lands, 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE ¼ SE ¼ 1.7 ACRES IRRIGATION  
NW ¼ SE ¼ 0.6 ACRE IRRIGATION  
SECTION 35  
TOWNSHIP 4 SOUTH, RANGE 2 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee 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 permittee to report general water-use information, including the place and nature of use of water under the permit.

- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), 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.

The reference level of 21.20 feet below land surface shall be used, also established for Permit G-13792. The Director may require the user to obtain and report additional water levels after the reference level has been determined. 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 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 reported to the Department.

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

- A. Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years; or
- B. Annual water level measurements reveal a water level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water level measurements reveal a water level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee'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 Commission 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.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

### **STANDARD CONDITIONS**

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.

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 be subject to cancellation, unless the Department authorizes the change in writing.

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 well(s) 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.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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 to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

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.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee

may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

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for Phillip C. Ward, Director  
Water Resources Department

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON**

In the Matter of Water Right Application    )  
G-15930 in the name of A and R Spada       )  
Farms    )  
                    *Applicant/*                        )  
                    *Protestant*                        )

SETTLEMENT  
AGREEMENT

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

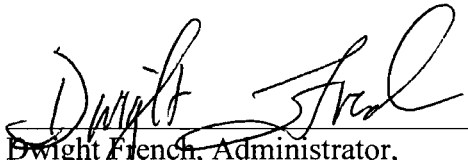
**A. Background**

1. On February 21, 2003, Spada Farms, submitted an application for a ground water permit for 2.23 cubic foot per second (cfs) for nursery use on 15.8 acres in Marion County.
2. On August 4, 2009, OWRD issued a Proposed Final Order (PFO) recommending that the application be denied because the proposed use of ground water will have the potential for substantial interference with an over-appropriated surface water source.
4. Applicant’s attorney, Justin Gericke, filed a protest on August 27, 2009.
5. OWRD and Applicant agree that all issues related to application G-15930 are resolved solely on the following terms.


**B. Terms of the Agreement**

1. By signing this Settlement Agreement, Applicant/Protestant withdraws the protest to the PFO for Application G-15930 with prejudice.
2. The Applicant waives all right and opportunity to request reconsideration or exception and to seek judicial review of this Settlement Agreement, the Final Order and Permit.
3. The Department shall issue a Final Order Incorporating Settlement Agreement and Permit consistent with the attached draft Permit upon payment of \$400 for permit recording fees.
4. The Department shall refund the protest fees received on August 27, 2009.
5. 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.

6. 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.
7. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement and draft Permit, and understands and agrees with the contents thereof.
8. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
9. This Settlement Agreement may be signed in counterparts.

  
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Dwight French, Administrator,  
Water Rights and Adjudications Division  
*for*  
Phillip C. Ward, Director  
Oregon Water Resources Department

Dec. 16, 2009  
Date

  
\_\_\_\_\_  
A and R Spada Farms

12/16/2009  
Date