

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15930

Superseding 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 Superseding Final Order.

The applicant has amended the application from 15.8 acres and 2.23 cubic feet per second (CFS) to 2.3 acres and 0.06 CFS, respectively, and clarified the well location. As a result of the amendments, the Department finds that the proposed use will not impair or adversely affect the public welfare, safety and health and approves of the application with appropriate modifications and conditions. The applicant and the Department have agreed to permit conditions set forth in the permit.

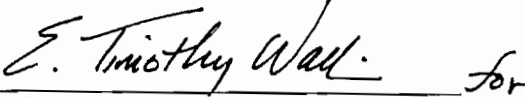
On December 24, 2009, the Department issued Permit G-16636. Permit G-16636 requires modification to correct the well coordinates described on the November 17, 2009 revised application map.

Order

Application G-15930 is approved as proposed by the Settlement Agreement, as further modified above, and Permit G-16644 is issued as limited by the conditions contained herein.

G-16644 is issued to supersede Permit G-16636. Permit G-16636 is of no further force or effect.

DATED January 21, 2010


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)	SETTLEMENT
<i>Applicant/</i>)	AGREEMENT
<i>Protestant</i>)	

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:

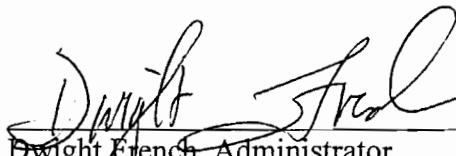
A. Background

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.



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