

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number S-87507

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 August 5, 2009, Roselawn Seed Inc submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on October 29, 2013, recommending the application be denied because water was not available for further appropriation from Bill Rose Reservoir as it had already been fully allocated under secondary permits. A timely protest was received by the applicant.

On November 27, 2012, the applicant submitted a voluntary partial cancellation request of Permit S-53839 for 14.7 acre feet of water from Bill Rose Reservoir on 64.0 acres. The partial cancellation freed up stored water from Bill Rose Reservoir, therefore the Department finds water is available for the use under Application S-87507.


A Settlement Agreement was signed by all parties as of February 6, 2014. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

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

Order

Application S-87507 therefore is approved pursuant to the Settlement Agreement, and Permit S-54854 is issued as limited by the conditions set forth therein.

DATED February 11, 2014



Dwight French, Administrator,
Water Rights Services Division
for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Jeana Eastman. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0859.

If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

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

In the Matter of Water Right Application)
S-87507 in the name of Roselawn Seed, Inc.)

*Applicant/
Protestant*

) SETTLEMENT
) AGREEMENT

The Oregon Water Resources Department (“OWRD”) and Roselawn Seed, Inc. (collectively “the parties”) do hereby stipulate and agree in this Settlement Agreement (“Agreement”) as follows:

A. Background

1. On August 5, 2009, the Oregon Water Resources Department received Application S-87507 from Roselawn Seed, Inc. for use of 160 AF of water to irrigate 64 acres from the Bill Rose Reservoir in Clackamas County.
2. On November 24, 2009, OWRD issued a Proposed Final Order (“PFO”) recommending that the application be denied.
3. On January 5, 2010 Roselawn Seed, Inc. filed a timely protest and request for contested case hearing.
4. OWRD and Roselawn Seed, Inc. agree that all issues related to Application S-87507 are resolved solely on the following terms.

B. Consent

1. Roselawn Seed, Inc. hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the Final Order Incorporating Settlement Agreement and Draft Permit for Application S-87507 which are hereby incorporated by reference.
2. Roselawn Seed, Inc. understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Roselawn Seed, Inc. understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitutes the complete and final resolution of the request for contested case hearing contained in the protest and, effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit, hereby freely and voluntarily withdraws the request for hearing.
4. Effective upon the issuance by OWRD of the Final Order Incorporating Settlement Agreement and Permit Roselawn Seed, Inc. waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration,


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petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Application S-87507 issued by OWRD.

C. Terms of the Agreement

1. Within 45 days of the signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
2. 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.
3. 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.
4. 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.
5. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. This Settlement Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Right Services Administrator
for
Phillip C. Ward, Director
Oregon Water Resources Department

2-6-14
Date



Roselawn Seed, Inc.

1/24/14
Date

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number S-87507

DRAFT Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

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SALEM, OR

A Settlement Agreement was signed by all parties as of _____. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

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

Order

Application S-87507 therefore is approved pursuant to the Settlement Agreement, and Permit S-XXXXX is issued as limited by the conditions set forth therein.

DATED

--- DRAFT ---

Dwight French, Administrator,
Water Rights Services Division
for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Jeana Eastman. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0859.

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Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

THIS IS NOT A PERMIT

DRAFT

STATE OF OREGON

COUNTY OF CLACKAMAS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROSELAWN SEED INC.
17236 BUTTEVILLE RD NE
WOODBURN, OR 97071-8426

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

APPLICATION FILE NUMBER: S-87507

SOURCE OF WATER: BILL ROSE RESERVOIR, CONSTRUCTED UNDER PERMITS R-13163, R-2144, AND R-5821, A TRIBUTARY OF ROCK CREEK

PURPOSE OR USE: IRRIGATION OF 64.0 ACRES

MAXIMUM VOLUME: 160.0 ACRE FEET EACH YEAR

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: AUGUST 5, 2009

POINT OF DIVERSION LOCATION: NW ¼ NE ¼, SECTION 20, T5S, R1E, W.M.; 1220 FEET SOUTH AND 2150 FEET WEST FROM NE CORNER, SECTION 20

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE ¼ NE ¼ 11.6 ACRES
NE ¼ SE ¼ 24.8 ACRES
SECTION 20

NW ¼ SW ¼ 27.6 ACRES
SECTION 21

TOWNSHIP 5 SOUTH, RANGE 1 EAST, 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

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Application S-87507 Water Resources Department

PERMIT S-XXXXX
SALEM, OR

diversion. The permittee shall maintain the meter in good working order.

- B. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes 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; provided however, where any meter 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.

Notwithstanding that Oregon Department of Fish and Wildlife has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

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.

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.

If the riparian area is disturbed in the process of developing a point of diversion, 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 the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

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 allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

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 ---

Dwight French, Administrator,
Water Rights Services Division
for Phillip C. Ward, Director
Water Resources Department

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