

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number G-15062

Final Order Incorporating Settlement Agreement
Extension of Time for Permit Number G-13867
Permit Holder: Vic Jansen

Permit Information

Application File G-15062 Permit G-13867

Basin: 7 – Umatilla / Watermaster District 21

Date of Priority: November 2, 1999

Authorized Use of Water

Source of Water: Ten Wells within the Willow Creek Basin

Purpose of Use: Agricultural Use

Maximum Rate: 2.0 Cubic Feet per Second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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.

Application History

Permit G-13867 was issued by the Department on December 15, 2000. Pursuant to ORS 537.630(1), complete application of water under Permit G-13867 was to be made on or before December 15, 2005. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 2015. On December 11, 2013, Vic Jansen submitted to the Department an Application for Extension of Time for Permit G-13867. In accordance with OAR 690-315-0050(2), on February 4, 2014, the Department issued a Proposed Final Order proposing to extend the time to fully apply water to beneficial use to October 1, 2024. The protest period closed March 21, 2014, in accordance with OAR 690-315-0060(1). The applicant filed a timely protest.

On September 5, 2014, the applicant, Vic Jansen, and the Department (OWRD) entered into a settlement agreement to resolve the applicant's protest. The Settlement Agreement is attached hereto.

Findings of Fact

Based on information provided by the applicant in the protest, the Department has agreed to change the deadline approved in the Proposed Final Order for applying water to full beneficial use within the terms and conditions of the permit from October 1, 2024 to October 1, 2030.

The Proposed Final Order dated February 4, 2014 is adopted and incorporated into this Final Order with the following modifications based on the additional information included in the protest (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Finding of Fact #8:

The well log for the drilled well (GILL 50322) demonstrated a yield of 4000 gallons per minute over a 48 hour period. ~~It seems reasonable that this well could supply the 2.0 cfs needed under this permit; the extension application does not make it clear why it is necessary to drill the nine additional wells for full beneficial use of water under this permit.~~ Water use under Permit G-13867 will be developed concurrently with use of 35.03 cfs of water for irrigation and temperature control on 2802.1 acres under Permit G-13868. The same tens wells are authorized under Permits G-13867 and G-13868. The project is complex and will require a significant expenditure of funds.

Finding of Fact #9:

The applicant has provided information that they currently do not have a market contract for milk ~~from a dairy operation~~, and were advised by the Northwest Dairy Association (NDA) that NDA's current production exceeds their processing capacity, such that no new base is being allocated. The applicant anticipates obtaining a new milk contract once additional infrastructure is in place at a processing facility, which is anticipated to occur by the year 2030.

Finding of Fact #10:

Based on the initial application submitted, [t]he Department has determined that the permit holder's request to have until October 1, 2040, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13867 was not supported. is an excessive amount of time. Given that the permit was issued in the year 2000, and to date no beneficial use of water has been made, and there has been no further actual construction since the first well was completed in 2009, the Department finds that is reasonable to restrict an extension to October 1, 2024. If time beyond October 1, 2024 is required to make full beneficial use of water under the terms and conditions of Permit G-13867, the permit holder is advised to apply for a new water right.
Based on additional information provided by the applicant in their protest, the Department finds that an extension until October 1, 2030, to accomplish the application

of water to beneficial use under the terms and conditions of Permit G-13867 is both reasonable and necessary.

Additional Finding of Fact #23:

In the Final Order for an Extension of Time issued August 18, 2006, the permit was conditioned with specific well construction conditions. On August 25, 2014, the Department determined per Groundwater Section review that a variance in the required casing and seal depth was approved by the Department for the construction of the drilled well (GILL 50022), and therefore the well construction conditions are met for the drilled well (GILL 50322).

Additional Finding of Fact #24:

In the Final Order for an Extension of Time issued August 18, 2006, the permit was conditioned with specific well construction conditions. On August 25, 2014, the Department determined per Groundwater Section review that Well Construction Condition 1.a as stated in the February 4, 2014 Proposed Final Order should be modified as follows to clearly articulate the intent of the groundwater condition:

~~a) — The wells shall be continuously cased and continuously sealed to a minimum depth of 800 feet below land surface. The final depth of the casing and seal will depend on the depth at which the top of the Grande Ronde Basalt is identified.~~

a) The wells shall be continuously cased and continuously sealed to a total depth of 1000 feet or to the top of the Grande Ronde Basalt Formation, whichever is shallower.

In this Final Order the “Condition” specified under Item 1 has been modified, as shown directly above, from the Proposed Final Order issued February 4, 2014.

Conclusion of Law #4:

The time requested, being to October 1, 2040, is excessive. Full application of water to beneficial use can be accomplished by October 1, 2024 2030¹, as required by OAR 690-315-0040(1)(c).

Conclusion of Law #5:

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and

¹Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to October 1, ~~2024~~ 2030 to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

Conclusion of Law #6:

As authorized in OAR 690-315-0050(5) and as described in Finding ~~15(b)~~ 17(b) above, the Department has established, as specified under Item 1 of the “Conditions” section of this Proposed Final Order for an Extension of Time, conditions to mitigate the effects of the subsequent development under Permit G-13867 on competing demands on the resource.

Conclusion of Law #7:

As authorized in OAR 690-315-0050(5) and as described in Finding ~~19~~ 21 above, the Department has established, as specified in the “Conditions” section of this PFO (Item 2), a “Last Extension Condition” in order to ensure future diligence is exercised in the development and perfection of Permit G-13867.

Conclusion of Law #8:

As required by OAR 690-315-0050(6) and as described in Finding ~~20~~ 22 above, the Department has established, as specified in the “Conditions” section of this PFO (Item 3), a progress checkpoint in order to ensure future diligence is exercised in the development and perfection of Permit G-13867.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, any comments received, and information within the file, the permit may be extended subject to the following conditions:

CONDITIONS

1. Well Construction Conditions

- a) The wells shall be continuously cased and continuously sealed to a total depth of 1000 feet or to the top of the Grande Ronde Basalt Formation, whichever is shallower.
- b) The wells shall be completed in such a manner to avoid commingling of basalt aquifers below the casing and seal.

c) The permit holder shall furnish to the Department a copy of a video log of each well constructed prior to installation of any permanent pumping equipment.

d) An approved water-level monitoring and reporting plan, dated December 11, 2001, is on file with the Department. The wells shall have an access port with a minimum diameter of $\frac{3}{4}$ inch. The access shall be adequate to determine the water level at any time. The permit holder may install a functioning airline with a pressure gauge in addition to the access port. The airline shall be calibrated and yield accurate data. The airline shall not enter the well through the access port. The airline shall be adequate to determine the water level at any time.

2. Last Extension Condition

This is to be the last extension of time granted for Permit G-13867. Any future extensions of time requests will be denied.

3. Checkpoint Condition

The permit holder must submit completed Progress Report Forms to the Department by **October 1, 2019, 2024, and 2029. *The forms are enclosed with this Final Order.***

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

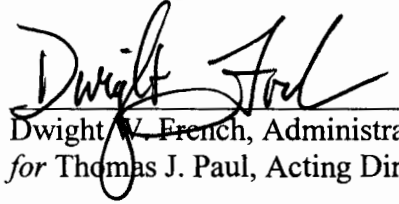
CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0040(2).

Order

The extension of time for Application G-15062, Permit G-13867, therefore, is approved subject to conditions contained herein. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2015 to October 1, 2030.

DATED: August 29, 2014



Dwight W. French, Administrator, Water Right Services Division,
for Thomas J. Paul, Acting Director

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- If you have any questions about statements contained in this document, please contact Ann Reece at (503) 986-0834.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
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Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Extension of Time Progress Report Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Vic Jansen

Application G-15062
 Permit G-13867

Report Due no later than October 1, 2019

DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

Progress Report Form for 2019

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit G-13867. FAILURE TO SUBMIT THIS REPORT WILL MOST LIKELY RESULT IN ANY FUTURE EXTENSION BEING DENIED.

	ADDITIONAL FINANCIAL INVESTMENTS	FINANCIAL POSITION
For the period of time between October 1, 2018 and October 1, 2019		

2. Compliance with terms and conditions of the permit and/or previous extension.

3. Total number of acres irrigated to date= _____ (if applicable)

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate used to date = _____ cfs (cubic feet per second), or

Maximum rate used to date = _____ gpm (gallons per minute), or

Acre Feet stored to date = _____ AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet). Do not provide daily, monthly or annual water volume totals.

INCOMPLETE REPORTS WILL BE RETURNED. AN ANSWER IS **REQUIRED** IN EACH ITEM. USE N/A FOR ITEM 3 IF THE USE IS NOT IRRIGATION.

Signature _____ Date _____

For OWRD use only

Diligence Shown Yes No Date Public Noticed: _____

Reviewed by: _____ Date: _____



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Extension of Time Progress Report Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Vic Jansen

Application G-15062
 Permit G-13867

Report Due no later than October 1, 2024

DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

Progress Report Form for 2024

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit G-13867. **FAILURE TO SUBMIT THIS REPORT WILL MOST LIKELY RESULT IN ANY FUTURE EXTENSION BEING DENIED.**

	LIST ALL WORK COMPLETED and FINANCIAL INVESTMENTS For the period of time between October 1, 2019 and October 1, 2024	FINANCIAL INVESTMENT

2. **Compliance with terms and conditions of the permit and/or previous extension.**

3. Total number of acres irrigated to date= _____ (if applicable)

4. **Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.**

Maximum rate used to date = _____ cfs (cubic feet per second), or

Maximum rate used to date = _____ gpm (gallons per minute), or

Acre Feet stored to date = _____ AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet). Do not provide daily, monthly or annual water volume totals.

INCOMPLETE REPORTS WILL BE RETURNED. AN ANSWER IS **REQUIRED** IN EACH ITEM. USE N/A FOR ITEM 3 IF THE USE IS NOT IRRIGATION.

Signature _____ Date _____

For OWRD use only

Diligence Shown Yes No Date Public Noticed: _____

Reviewed by: _____ Date: _____



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Extension of Time Progress Report Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Vic Jansen

Application G-15062
 Permit G-13867

Report Due no later than October 1, 2029

DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

Progress Report Form for 2029

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit G-13867. **FAILURE TO SUBMIT THIS REPORT WILL MOST LIKELY RESULT IN ANY FUTURE EXTENSION BEING DENIED.**

	PERCENTAGE OF PROJECT COMPLETED SUBJECT TO ANY OTHER EXTENSIONS	FINANCIAL INVESTMENT
Report on completion between October 1, 2024 and October 1, 2029		

2. Compliance with terms and conditions of the permit and/or previous extension.

3. Total number of acres irrigated to date= _____ (if applicable)

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate used to date = _____ cfs (cubic feet per second), or

Maximum rate used to date = _____ gpm (gallons per minute), or

Acre Feet stored to date = _____ AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet). Do not provide daily, monthly or annual water volume totals.

INCOMPLETE REPORTS WILL BE RETURNED. AN ANSWER IS REQUIRED IN EACH ITEM. USE N/A FOR ITEM 3 IF THE USE IS NOT IRRIGATION.

Signature _____ Date _____

For OWRD use only

Diligence Shown Yes No Date Public Noticed: _____

Reviewed by: _____ Date: _____

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

In the Matter of Application for an Extension of Time)
For Permit G-13867, Water Right Application G-15062)
in the name of Vic Jansen) **SETTLEMENT**
Applicant/) **AGREEMENT**
Protestant)

The Oregon Water Resources Department (OWRD) and Vic Jansen (collectively "the parties") do hereby stipulate and agree in this "Settlement Agreement" (Agreement) as follows:

A. Background

1. On December 11, 2013, the Oregon Water Resources Department received an Application for Extension of Time for Permit G-13867 from Vic Jansen.
2. On February 4, 2014, OWRD issued a Proposed Final Order (PFO) recommending the permit be extended to October 1, 2024 with conditions.
3. On March 20, 2014 Vic Jansen filed a timely protest.
4. OWRD and Vic Jansen agree that all issues related to Application for an Extension of Time for Permit G-13867 are resolved solely on the following terms, which constitutes an informal disposition of the contested case.

B. Consent

1. Vic Jansen hereby acknowledges that he has read and understands the terms of this Agreement, and the terms of the draft Final Order Incorporating Settlement Agreement for Application for an Extension of Time for Permit G-13867 which are hereby incorporated by reference.
2. Vic Jansen understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Vic Jansen understands and agrees that this Agreement and Final Order Incorporating Settlement Agreement for Application for an Extension of Time for Permit G-13867 issued pursuant to this Agreement constitutes the complete and final resolution of the protest and request for contested case hearing.
4. Effective upon the complete signing of this Agreement Vic Jansen waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order

RECEIVED BY OWRD

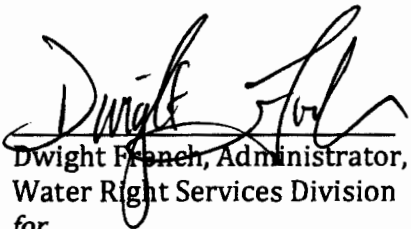
SEP 02 2014

SALEM, OR


Incorporating Settlement Agreement for Application for an Extension of Time for Permit G-13867 issued by OWRD.

C. Terms of the Agreement

1. Within 30 days of the complete signing of this Agreement by all parties, the OWRD shall issue a Final Order Incorporating Settlement Agreement for Application for an Extension of Time for Permit G-13867 consistent with this Agreement.
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 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 Division
for
Thomas J. Paul, Acting Director
Oregon Water Resources Department

9-5-14
Date


Vic Jansen

Aug 26 2014
Date

RECEIVED BY OWRD

SEP. 02 2014

SALEM, OR

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

In the Matter of Application for an Extension of Time)	
For Permit G-13867, Water Right Application G-15062)	
in the name of Vic Jansen)	SETTLEMENT
<i>Applicant/</i>)	AGREEMENT
<i>Protestant</i>)	

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2. Vic Jansen understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Vic Jansen understands and agrees that this Agreement and Final Order Incorporating Settlement Agreement for Application for an Extension of Time for Permit G-13867 issued pursuant to this Agreement constitutes the complete and final resolution of the protest and request for contested case hearing.
4. Effective upon the complete signing of this Agreement Vic Jansen waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order

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Dwight French, Administrator,
Water Right Services Division
for

Thomas J. Paul, Acting Director
Oregon Water Resources Department

9-5-2014
Date



Vic Jansen

Aug 26 2014
Date