## Oregon Water Resources Department Water Right Services Division

Water Rights Application Number G-15802

### Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

This order incorporates an informal disposition and is not appealable, pursuant to ORS 183.417(3).

### Findings of Fact

- 1. On July 23, 2002, Leon and Sandy Bingham submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on January 21, 2003, recommending the application be denied.
- 2. On March 4, 2003, the Applicant filed a timely protest.
- 3. On June 10, 2014, the application was assigned to Larry Myers.
- 4. A Settlement Agreement was signed by all parties as of August 2014. The terms of the Settlement Agreement are incorporated into this Final Order and a copy of the Settlement Agreement is included below.

Conclusions of Law

- 1. The Protestant and the Department have agreed to permit conditions set forth in the permit.
- 2. The proposed use would ensure the preservation of the public welfare, safety and health pursuant to ORS 537.621(2).

#### Order

Application G-15802 is therefore approved with these modifications to the Proposed Final Order and pursuant to the Settlement Agreement, and Permit G-17504 is issued as limited by the conditions set forth therein.

DATED OCTOBER 7 2015

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E. Timothy Wallin, Water Rights Program Manager for Thomas M. Byler, Director

This document was prepared by Kim French. If you have any questions about any of the statements contained in this document I can be reached at 503-986-0816.

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 OREGON WATER RESOURCES DEPARTMENT**

In the Matter of Water Right Application	)	<b>REVISED SETTLEMENT</b>
G-15802 in the Name of Larry Myers,	)	AGREEMENT
Applicant/Assignee/Owner	)	APPLICATION G-15802

The Oregon Water Resources Department (Department) and Gordon Sester, on behalf of Applicant Larry Myers (Applicant), do hereby stipulate and agree as follows:

## Stipulations

- 1. On July 23, 2002, Application G-15802 was filed with the Department for 448.0 gallons per minute (0.998 cubic foot per second) of water from a well in the North Fork Beaver Creek Basin for nursery use on 40.0 acres in Multnomah County.
- 2. On January 21, 2003, the Department issued its Proposed Final Order (PFO) for Application G-15802 proposing denial because the proposed use does not comply with OAR 690-200, and because the proposed use was determined to have the potential for substantial interference with an over-appropriated surface water source.
- 3. On March 4, 2003, the Applicant filed a timely protest.
- 4. On June 10, 2014, the application was assigned to Larry Myers.
- 5. On June 29, 2014, the Department received notice from Mr. Myers that Sester Farms is authorized to act as the agent for the application.
- 6. The parties to this agreement agree that the issues raised in the protest and subsequent correspondence between Gordon Sester of Sester Farms, agent for Larry Myers, and the Department can be resolved solely on the following terms.

### Agreement

- 1. A Final Order on G-15802 has not been issued. This Settlement Agreement supersedes a Settlement Agreement to resolve the protest signed by all parties as of August 2003.
- 2. The Applicant waives the opportunity to file exceptions to the Final Order Incorporating Settlement Agreement and any right to judicial review of this Agreement and Final Order.
- 3. In signing this Agreement, the Applicant withdraws with prejudice the protest to the PFO for Application G-15802.

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- 4. Each party to this 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 Agreement.
- 5. The Applicant shall provide documentary evidence to the Department that MULT 02540 well has been permanently abandoned, pursuant to the applicable standards.
- 6. Prior to drilling the well, the Applicant must submit a proposed well construction plan prepared by a licensed, bonded well driller to the Department. In addition, the Applicant must provide a map showing the proposed location of the replacement well relative to a recognized public land survey corner. The Department will either confirm the plan meets construction rules or will coordinate with the driller on an acceptable construction plan. The well shall not be drilled until written approval of the construction plan is provided to the Applicant.
- 7. Based on conditions encountered during the drilling process, the driller will need to coordinate with the Department's Well Construction and Compliance Section to determine the final construction of the well to ensure that it meets construction standards and the intent of the settlement agreement.
- 8. The Applicant shall provide either GPS coordinates of the original well, MULT 02540, and the replacement well, or a map showing the final location of the replacement well and MULT 02540 well to demonstrate that the replacement well was drilled within 100 feet of MULT 02540.
- 9. After the replacement well is completed and a well log is submitted to the Department, the Department will determine whether the well construction standards and the intent of the settlement agreement have been met. If they have been met, and all other conditions of this settlement have been satisfied, a permit for use of water from the replacement well will be issued.
- 10. The Applicant agrees the following conditions will be included in any permit issued for Application G-15802:

The well shall be cased and sealed at least 5 feet into the confining layer above the Troutdale Sandstone aquifer.

The well shall only produce groundwater from the Troutdale Sandstone ground water reservoir between approximately 280 feet and 450 feet below land surface.

11. Prior to permit issuance, the Applicant shall submit a **\$450.00** permit recording fee to the Department.

The parties agree to entry of the Final Order Incorporating Settlement Agreement 11. and issuance of a permit consistent with the attached draft permit.

Dwight French, Administrator Water Right Services Division Oregon Water Resources Department

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<u>\$.7.14</u> Date

Gordon Sester/Sester Farms, for Larry Myers, Applicant

<u>8/14/14</u> Date

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