

Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

Theresa Cliff DBA Bell A Land and Cattle Co., by the terms of the Settlement Agreement, waives the right to reconsideration and appeal of this final order and the settlement agreement.

ORS 536.075 allows any party affected by a final order in other than contested case to appeal the order in Marion County Circuit or the circuit court of the county in which all or part of the property affected by the order is situated. This is a final order in other than contested case and 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 Oregon Administrative Rule (OAR) 137-004-0080 you may also 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.

Additional Findings of Fact

1. The findings of fact in the Proposed Final Order are incorporated into this Final Order.
2. On November 10, 2015, the Department issued a Proposed Final Order recommending the application be approved and a draft permit be issued with conditions.
3. On December 24, 2015, a timely protest was filed by the applicant, which proposed removing the following conditions:

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. The permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the device in good working order...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...

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

4. A Settlement Agreement was signed by all parties as of September 8, 2016. The terms of the Settlement Agreement are incorporated into this Final Order and a copy of the Settlement Agreement is attached.
5. Theresa Cliff DBA Bell A Land and Cattle Co. and the Department have agreed to the permit conditions set forth in the draft permit.

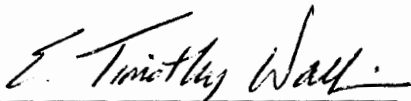
Conclusions of Law

1. The conclusions of law in the Proposed Final Order are incorporated into this Final Order.

Order

Application S-87600 is therefore approved as described in the Proposed Final Order and pursuant to the Settlement Agreement, and Permit S-55013 is issued as limited by the conditions set forth therein.

DATED OCTOBER 14 2016



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 Kim.R.French@wrdd.state.or.us or 503-986-0816.

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.

SEP 12 2016

SALEM, OR

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

In the Matter of Water Right Application)	SETTLEMENT AGREEMENT
S-87600, in the name of Theresa Cliff DBA)	
Bell A Land and Cattle Co.)	
)	
<i>Applicant/Protestant</i>)	

The Oregon Water Resources Department (“Department”) and Theresa Cliff DBA Bell A Land and Cattle Co. (collectively “the Parties”) do hereby stipulate and agree in this Settlement Agreement (“Agreement”) as follows:

A. Background

1. On May 6, 2010, Theresa Cliff DBA Bell A Land and Cattle Co. filed Application S-87600.
2. On November 10, 2015, the Department issued a Proposed Final Order recommending approval of Application S-87600 with a draft permit with conditions.
3. On December 24, 2015, Theresa Cliff DBA Bell A Land and Cattle Co. filed a timely protest.
4. The Parties agree that the protest is resolved solely on the terms set forth in this Agreement the attached draft Final Order Incorporating Settlement Agreement, and the attached draft Memo to File S-87600.


B. Consent

1. Each Party to this 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.
2. Each Party to this Agreement understands and agrees that this Agreement, the approved draft Final Order Incorporating Settlement Agreement and approved draft Memo to File S-87600 set forth the entire Agreement of the Parties.
3. Each Party to this Agreement understands and agrees that this Agreement, the Final Order Incorporating Settlement Agreement and signed Memo to File S-87600 issued pursuant to this Agreement constitute the complete and final resolution of the protest.

4. Effective upon the signing of this Agreement by the Parties, Theresa Cliff DBA Bell A Land and Cattle Co. waives any and all rights to petition for judicial review of this Agreement, and waives any and all rights to request reconsideration, petition for judicial review, or appeal the Final Order Incorporating Settlement Agreement issued by the Department.

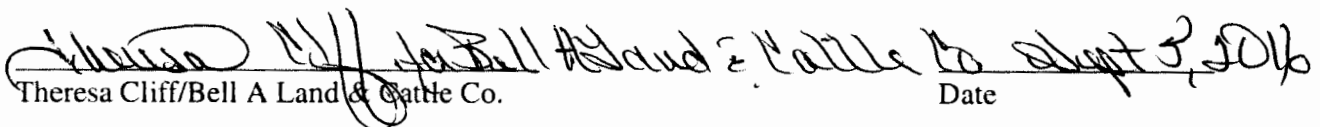
C. Terms of the Agreement

1. Once each Party has signed this Agreement, the Department will issue a Final Order Incorporating Settlement Agreement consistent with the attached draft Final Order Incorporating Settlement Agreement. The Department will also sign the Memo to File S-87600 and ensure it is placed in, and remains in, the S-87600 application file.
2. Each Party to this Agreement represents, warrants, and agrees that the person who executes 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.
3. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Agreement, and that it has signed this Agreement of its own free will and accord.
4. The Parties agree that nothing in this Agreement or the Final Order Incorporating Settlement Agreement establishes factual, legal, or policy precedent.
5. This Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Right Services Division
for Thomas M. Byler, Director
Oregon Water Resources Department

Aug. 22, 2016
Date



Theresa Cliff/Bell A Land & Cattle Co. Date Sept 3, 2016

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