

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

In the Matter of Permit Amendment)	FINAL ORDER
T-9950, Marion County)	APPROVING A CHANGE IN POINT OF
)	APPROPRIATION AND ADDITIONAL
)	POINTS OF APPROPRIATION

Authority

ORS 537.211 establishes the process in which a water right permit holder may submit a request to change the point of appropriation and/or place of use authorized under an existing water right permit.

Applicants

Brian Rissberger	Mary Spada Living Trust	Rogers Associates, Oregon
9750 Lace Leaf Lane	13635 NE Clackamas Street	P. O. Box 3789
Aurora, Oregon 97002	Portland, Oregon 97230	Bristol, Tennessee 37625

Findings of Fact

1. On June 13, 2005, Brian Rissberger, Mary Spada Living Trust, and Rogers Associates, Oregon, filed an application to change the point of appropriation of Well 4 and to add additional points of appropriation to Permit G-13570. The Department assigned the application number T-9950.
2. The permit to be amended is as follows:

Permit:	G-13570, in the names of Brian Rissberger, Mary Spada Living Trust, and Rogers Associates, Oregon;
Use:	Nursery Operations
Priority Date:	September 11, 1997
Season of use:	September 1 through June 30 for Wells 1, 2, and 3, and year-round for Well 4
Quantity:	4.12 cubic feet per second (cfs), being 1.11 cfs from Well 1, 1.34 cfs from Well 2, 0.33 cfs from Well 3, and 1.34 cfs from Well 4.

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 137-004-080 and OAR 690-01-005 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.

Rate/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime, during the year that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

Acres: 163.8 acres

Source: Four wells in the Ryan Creek Basin.

Date of Complete Application of Water: October 1, 2010

Authorized Points of Appropriation:

Township		Range		Meridian	Sec	¼ ¼		DLC	Location
4	S	1	W	W.M.	30	NE	NW	58	Well 1 – 1880 feet North and 1120 feet East from the SE Corner of DLC 71.
4	S	1	W	W.M.	19	NE	SW		Well 2 – 3360 feet North and 2040 feet East from the SE Corner of DLC 71.
4	S	1	W	W.M.	19	NW	SE		Well 3 – 3340 feet North and 2730 feet East from the SE Corner of DLC 71.
4	S	1	W	W.M.	19	SE	SW		Well 4 – 2720 feet North and 2250 feet East from the SE Corner of DLC 71.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Rogers Associates	Mary Spada Living Trust	Rissberger
4	S	1	W	W.M.	19	NE	SW	8.9	1.9	
4	S	1	W	W.M.	19	NW	SW		1.5	
4	S	1	W	W.M.	19	SW	SW		28.6	13.2
4	S	1	W	W.M.	19	SE	SW	0.5	32.7	
4	S	1	W	W.M.	19	NW	SE	17.3		
4	S	1	W	W.M.	19	SW	SE	3.4	1.0	
4	S	1	W	W.M.	30	NE	NW		13.4	
4	S	1	W	W.M.	30	NW	NW		19.4	6.4
4	S	1	W	W.M.	30	SW	NW		12.2	
4	S	1	W	W.M.	30	SE	NW		0.1	
4	S	2	W	W.M.	24	SE	SE		3.3	
Total Acres								30.1	114.1	19.6

3. Application T-9950 proposes to change the point of appropriation of Well 4 to:

Township		Range		Meridian	Sec	¼ ¼		DLC	Location
4	S	2	W	W.M.	24	SE	SE	81	Mary Spada Living Trust - Well 4 - 1230 feet North and 100 feet West from the SE Corner of Section 24.

4. Application T-9950 proposes additional points of appropriation located:

Township		Range		Meridian	Sec	¼ ¼		DLC	Location
4	S	2	W	W.M.	24	NW	SE	81	Mary Spada Living Trust - Well 5 - 800 feet South and 1190 feet East from the SW Corner of DLC 47.
4	S	1	W	W.M.	30	NW	NW	71	Rissberger - Well 6 - 20 feet South and 1180 feet East from the NW Corner of Section 30.
4	S	1	W	W.M.	19	NE	SE		Rogers Associates - Well 7 - 1860 feet North and 3580 feet East from the SW Corner of Section 19.

5. The diversion rate for each landowner can be further described as:

	Rogers Associates	Mary Spada Living Trust	Rissberger
Maximum diversion rate for Sept. 1 to June 30	0.76 cfs	2.87 cfs	0.49 cfs
Maximum diversion rate for July 1 to Aug 31	0.25 cfs	0.93 cfs	0.16 cfs

6. The applicants have also proposed to eliminate the individual rates assigned to each well.
7. On April 12, 2007, an e-mail was received from the applicant's agent withdrawing the request to eliminate individual rates.
8. Notice of the application for the permit amendment was published in the Department's weekly notice on July 5, 2005, and in the Statesman Journal on April 17 and 24, and May 1, 2006, pursuant to ORS 540.520(5). No comments were filed in response to the notices.
9. The permit is conditioned to have Well 4 continuously cased and sealed to a depth of 250 feet below land surface (bls) so as to minimize hydraulic connection to nearby streams.
10. The proposed Well 4 (MARI 60041) is cased and sealed to a depth of 199 feet below land surface (bls) with a total well depth of 262 feet bls. The well log indicates that there is continuous clay from the bottom of the seal (199 feet bls) to 206 feet bls. The Groundwater Section has found that it would be unlikely that extending the casing and seal to 250 feet bls for Well 4 will significantly change the static water level in the well or impacts to other wells in the area.
11. The proposed Well 5 (MARI 58231) is cased and sealed to a depth of 190 feet below land surface (bls) with a total well depth of 362 feet bls. The well log indicates that there is continuous clay from the bottom of the seal (190 feet bls) to 229 feet bls. The Groundwater Section has found that it would be unlikely that extending the casing and seal to 250 feet bls for Well 5 will significantly change the static water level in the well or impacts to other wells in the area.
12. The proposed Well 6 (MARI 59835) is cased and sealed to a depth of 196 feet below land surface (bls) with a total well depth of 381 feet bls. The well log indicates that there is continuous clay from the bottom of the seal (196 feet bls) to 200 feet bls. The Groundwater Section has found that it would be unlikely that extending the casing and seal to 250 feet bls for Well 6 will significantly change the static water level in the well or impacts to other wells in the area.
13. The change would not result in injury to other water rights.
14. The change does not enlarge the permit.
15. Except for the variation in casing and sealing depths for Wells 4, 5, and 6, as described in Findings 10 through 12, the proposed change does not alter other terms of the permit.

Conclusions of Law

The change in point of appropriation and additional points of appropriation proposed by Permit Amendment T-9950 are consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

The change and subsequent use of water shall be subject to the following conditions:

1. The quantity of water diverted at the new point of appropriation for Well 4 shall not exceed the rate and duty allowed for Well 4 under Permit G-13570.
2. The combined quantity of water allowed for the new additional points of appropriation (Wells 5, 6, and 7), together with that diverted at the authorized points of appropriation (Wells 1, 2, 3, and 4), during the time period Sept. 1 to June 30 of each year, shall not exceed the total rate (4.12 cfs) and duty allowed under Permit G-13570.
3. The combined quantity of water allowed for the new additional points of appropriation (Wells 5, 6, and 7), together with that diverted at the authorized point of appropriation (Well 4), during the time period July 1 to August 31 of each year, shall not exceed the rate (1.34 cfs) and duty allowed for Well 4 under Permit G-13570.
4. Prior to water use from the proposed points of appropriation, the permittee shall install meters or other suitable measuring devices as approved by the Director. The permittee shall maintain the meters or measuring devices in good working order, and shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded 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.

The permittee shall allow the watermaster access to the meters or measuring devices provided however, where the meters or measuring devices are located within a private structure, the watermaster shall request access upon reasonable notice.

5. Water shall be acquired from the same aquifer as the original points of appropriation.
6. If, during construction of proposed Well 7, it becomes apparent that the well can be constructed to minimize hydraulic connection with surface water and shallow wells in a manner other than specified in the permit, the permit holder can contact the Ground Water/Hydrology Section to request a modification of the permit condition.

The permittee shall submit, in writing, a rough well log and a proposed construction design for approval by the Department. The well construction conditions can only be modified if the request is received and reviewed prior to placement of any permanent casing or sealing material. If proposed well 7 is constructed first and then the request made, the modification shall not be granted.

7. All other terms and conditions of Permit G-13570 remain the same.

8. Permit G-13570, in the names of Brian Rissberger, Mary Spada Living Trust, and Rogers Associates, Oregon, is amended as described herein.

Dated at Salem, Oregon this 8th day of May, 2007.



Phillip C. Ward, *PW*
Director

Mailing Date: _____
MAY 14 2007