

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

In the Matter of Permit G-13570, Marion)	FINAL ORDER APPROVING
County)	ASSIGNMENT OF WATER RIGHT
)	PERMIT AND ISSUANCE OF
)	REPLACEMENT WATER RIGHT
)	PERMITS

Authority

Oregon Revised Statute (ORS) 537.225 establishes the process in which a water right permit holder may submit a request for full or partial assignment of a water right permit and issuance of replacement permits. Oregon Administrative Rule (OAR) chapter 690, Division 325 establishes the requirements and procedures to be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders.

Applicants

BRIAN RISSBERGER
9750 LACE LEAF LANE NE
AURORA, OR 97002

NW FARM CREDIT SERVICES, FLCA
650 HAWTHORNE AVE SE STE 210
SALEM, OR 97301

A & R SPADA FARMS, LLC
PO BOX 157
ST. PAUL, OR 97137

Findings of Fact

Background

1. On August 1, 2016, BRIAN RISSBERGER filed an application for partial assignment of Water Right Permit G-13570 and requested issuance of replacement permits. The Department assigned the application number T-12452.
2. On August 3, 2016, A & R Spada Farms, LLC and NW Farm Credit Services, FLCA, filed an application for partial assignment of Water Right Permit G-13570.
3. On August 10, 2016, A & R SPADA FARMS, LLC and NW FARM CREDIT SERVICES, FLCA were added as applicants to application T-12452.

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.

4. On February 24, 2005, the Department approved partial assignment of Permit G-13570 from George Rogers, Rogers Associates-Oregon to Mary Spada Living Trust.
5. On July 14, 2005, the Department approved an extension of time for complete application of water to October 1, 2010.
6. On February 2, 2007, the Department approved partial assignment of Permit G-13570 from Mary Spada Living Trust to A & R Spada Farms, LLC, and Northwest Farm Credit Services, FLCA.
7. On May 8, 2007, the Department approved Permit Amendment T-9950; the application changed the point of appropriation of Well 4 and added additional points of appropriation to Permit G-13570. The final order has a scrivener's error in the location of Well 7, the ¼ ¼ lists NESE, it should be NWSE.
8. On August 24, 2010, the Department approved partial assignment of Permit G-13570 from George Rogers, Rogers Associates Oregon to George C. Wilder and Lucette A. Wilder.
9. On October 23, 2015, the Department approved partial assignment of Permit G-13570 from George Rogers, Rogers Associates Oregon to Nursery Holdings, LLC.
10. As of October 23, 2015, the permit holders are: George Rogers, Rogers Associates Oregon; Brian Rissberger; A & R Spada Farms, LLC; Northwest Farm Credit Services, FLCA; George C. Wilder and Lucette A. Wilder; and Nursery Holdings, LLC.
11. On July 22, 2016, the Department approved an extension of time for complete application of water to October 1, 2026.
12. The Applicants identified the following landowners within the authorized place of use, who are not participating in the request for assignment:

Name and Address
George and Lucette Wilder 19806 Butteville Rd NE Hubbard, OR 97032
Rogers Associates Oregon George Rogers PO Box 3789 Bristol, TN 37625
Nursery Holdings LLC 21871 SW Chehalis Ct. Tualatin, OR 97062

13. The Permit to be modified and assigned is as follows:

Permit: G-13570 in the name of ROGERS ASSOCIATES OREGON, GEORGE ROGERS

Use: NURSERY USES on 163.8 ACRES

Priority Date: SEPTEMBER 11, 1997

Quantity: 4.12 CUBIC FEET PER SECOND (cfs), further limited to 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 and a cumulative total not to exceed 4.12 cfs from Wells 1, 2, 3, 4, 5, 6, and 7 during the time period September 1 to June 30 of each year, and a cumulative total not to exceed 1.34 cfs from Well 4, and Wells 5, 6, and 7 during the time period July 1 to August 31 of each year.

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 acre 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 any time of 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.

Period of Use: SEPTEMBER 1 THROUGH JUNE 30 FROM WELLS 1, 2, 3;
YEAR-ROUND FROM WELLS 4, 5, 6, AND 7

Source: SEVEN WELLS within RYAN CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	30	NE NW	WELL 1 - 1880 FEET NORTH AND 1120 FEET EAST FROM THE SE CORNER OF DLC 71
4 S	1 W	WM	19	NE SW	WELL 2 - 3360 FEET NORTH AND 2040 FEET EAST FROM THE SE CORNER OF DLC 71
4 S	1 W	WM	19	NW SE	WELL 3 - 3340 FEET NORTH AND 2730 FEET EAST FROM THE SE CORNER OF DLC 71
4 S	2 W	WM	24	SE SE	WELL 4 - 1230 FEET NORTH AND 100 FEET WEST FROM THE SE CORNER OF SECTION 24
4 S	2 W	WM	24	NW SE	WELL 5 - 800 FEET SOUTH AND 1190 FEET EAST FROM THE SW CORNER OF DLC 47
4 S	1 W	WM	30	NW NW	WELL 6 - 20 FEET SOUTH AND 1180 FEET EAST FROM THE NW CORNER OF SECTION 30
4 S	1 W	WM	19	NW SE	WELL 7 - 1860 FEET NORTH AND 3580 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	19	NE SW	10.8
4 S	1 W	WM	19	NW SW	1.5
4 S	1 W	WM	19	SW SW	41.8
4 S	1 W	WM	19	SE SW	33.2
4 S	1 W	WM	19	NW SE	17.3
4 S	1 W	WM	19	SW SE	4.4
4 S	1 W	WM	30	NE NW	13.4
4 S	1 W	WM	30	NW NW	25.8
4 S	1 W	WM	30	SW NW	12.2

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	30	SE NW	0.1
4 S	2 W	WM	24	SE SE	3.3
Total					163.8

14. The Applicants request Permit G-13570 be split and replacement permits be issued as follows:

Permit A:

Use: NURSERY USES on 19.6 ACRES

Priority Date: SEPTEMBER 11, 1997

Quantity: 0.49 CUBIC FEET PER SECOND (cfs), being 0.49 cfs during the time period September 1 to June 30 of each year, and 0.16 cfs during the time period July 1 to August 31 of each year.

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 acre 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 any time of 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.

Period of Use: YEAR-ROUND

Source: WELL 6 within RYAN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	30	NW NW	WELL 6 – 20 FEET SOUTH AND 1180 FEET EAST FROM THE NW CORNER OF SECTION 30

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	19	SW SW	13.2
4 S	1 W	WM	30	NW NW	6.4
Total					19.6

Permit B:

Use: NURSERY USES on 114.1 ACRES

Priority Date: SEPTEMBER 11, 1997

Quantity: 2.87 CUBIC FEET PER SECOND (cfs), being a cumulative total from Well 1 (limited to 1.11 cfs), Well 4 (limited to 1.34 cfs) and Well 5 during the time period September 1 to June 30 of each year; and a cumulative total not

to exceed 0.93 cfs from Wells 4 and 5 during the time period July 1 to August 31 of each year.

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 acre 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 any time of 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.

Period of Use: SEPTEMBER 1 THROUGH JUNE 30 FROM WELL 1;
YEAR-ROUND FROM WELLS 4 AND 5

Source: WELLS 1, 4, and 5 within RYAN CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	30	NE NW	WELL 1 - 1880 FEET NORTH AND 1120 FEET EAST FROM THE SE CORNER OF DLC 71
4 S	2 W	WM	24	SE SE	WELL 4 - 1230 FEET NORTH AND 100 FEET WEST FROM THE SE CORNER OF SECTION 24
4 S	2 W	WM	24	NW SE	WELL 5 - 800 FEET SOUTH AND 1190 FEET EAST FROM THE SW CORNER OF DLC 47

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	19	NE SW	1.9
4 S	1 W	WM	19	NW SW	1.5
4 S	1 W	WM	19	SW SW	28.6
4 S	1 W	WM	19	SE SW	32.7
4 S	1 W	WM	19	SW SE	1.0
4 S	1 W	WM	30	NE NW	13.4
4 S	1 W	WM	30	NW NW	19.4
4 S	1 W	WM	30	SW NW	12.2
4 S	1 W	WM	30	SE NW	0.1
4 S	2 W	WM	24	SE SE	3.3
Total					114.1

Permit C:

Use: NURSERY USES on 30.1 ACRES

Priority Date: SEPTEMBER 11, 1997

Quantity: 0.76 CUBIC FEET PER SECOND (cfs), being a cumulative total from Well 2, Well 3 (limited to 0.33 cfs), Well 7 during the time period September 1 to June 30 of each year, and a total not to exceed 0.25 cfs from Well 7 during the time period July 1 to August 31 of each year.

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 acre 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 any time of 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.

Period of Use: SEPTEMBER 1 THROUGH JUNE 30 FROM WELLS 2, and 3;
YEAR-ROUND FROM WELL 7

Source: WELLS 2, 3, and 7 within RYAN CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	19	NE SW	WELL 2 - 3360 FEET NORTH AND 2040 FEET EAST FROM THE SE CORNER OF DLC 71
4 S	1 W	WM	19	NW SE	WELL 3 - 3340 FEET NORTH AND 2730 FEET EAST FROM THE SE CORNER OF DLC 71
4 S	1 W	WM	19	NW SE	WELL 7 - 1860 FEET NORTH AND 3580 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

Well #	Twp	Rng	Mer	Sec	Q-Q	Acres
7	4 S	1 W	WM	19	NE SW	4.0
2	4 S	1 W	WM	19	NE SW	4.9
7	4 S	1 W	WM	19	SE SW	0.4
2	4 S	1 W	WM	19	SE SW	0.1
7	4 S	1 W	WM	19	NW SE	16.9
3	4 S	1 W	WM	19	NW SE	0.4
7	4 S	1 W	WM	19	SW SE	0.9
3	4 S	1 W	WM	19	SW SE	2.5
Total						30.1

15. Notice of the application for the assignment of the water right permit and request for issuance of replacement water right permits was published in the Department's weekly notice on September 27, 2016, pursuant to ORS 537.325(3)(e) and OAR 690-325-0080. No comments were filed in response to the notice. In addition, the Department provided copies of the draft Proposed Final Order, draft replacement permits, the application, map, and existing water right permit to each owner of land upon which the water right permit is appurtenant.
16. On December 5, 2016, the Department issued a Proposed Final Order, considering any comments received, and on December 9, 2016, sent a copy to the applicant and each owner of land upon which the water right permit is appurtenant. Notice of the Proposed Final Order

was published in the Department's weekly notice on November 29, 2016. No protests were filed in response to the notice.

Split a Permit Review Criteria

17. The Department has verified the mailing address of each owner of the authorized place of use identified on the map contained in the application as follows:

Name and Address	Acres	Proportionate Rate (cfs)	Twp	Rng	Sec	Q-Q	Tax Lot	Well #
George and Lucette Wilder 19806 Butteville Rd NE Hubbard, OR 97032	0.4	0.07	4 S	1 W	19	NW SE	601	3
	2.5					SW SE		
Rogers Associates Oregon George Rogers PO Box 3789 Bristol, TN 37625	4.0	0.56	4 S	1 W	19	NE SW	400, 501	7
	0.4					SE SW	500, 501	
	16.9	(9/1-6/30)				NW SE	400, 500, 501	
	0.9	0.25				SW SE	500	
Nursery Holdings LLC 21871 SW Chehalis Ct. Tualatin, OR 97062	4.9	0.13	4 S	1 W	19	NE SW	1600	2
	0.1					SE SW		

OAR 690-325-0070(1)(a).

18. The deeds supplied with the application, match the properties proposed for assignment.
OAR 690-325-0070(1)(b).
19. The applicants affirmed the most recent water use under the permit has been exercised within the relevant terms and conditions of the water right permit. OAR 690-325-0070(1)(c).
20. The assignment and issuance of replacement permits, as outlined in Finding of Fact #14 above, would not result in injury to other water right holders. OAR 690-325-0070(1)(d).
21. The assignment and issuance of replacement permits, as outlined in Finding of Fact #14 above, would not result in enlargement of the permit. OAR 690-325-0070(1)(d).
22. The assignment and issuance of replacement permits does not alter any other terms of Permit # G-13570.

Conclusions of Law

The assignment and issuance of replacement permits proposed by Application T-12452 are consistent with the requirements of ORS 537.225 and OAR Chapter 690, Division 325.

Now, therefore, it is ORDERED:

1. The assignment and issuance of replacement permits proposed by Application T-12452 are approved.
2. Permit G-13570, in the names of Brian Rissberger, A & R Spada Farms LLC and Northwest Farm Credit Services, FLCA, George and Lucette Wilder, Rogers Associates Oregon, George Rogers, and Nursery Holdings LLC, is cancelled. Permit G-17691, in the name of Brian Rissberger, and Permit G-17692 in the names of A & R Spada Farms, LLC and Northwest Farm Credit Services, FLCA, and Permit G-17693 in the names of George and Lucette Wilder, Rogers Associates Oregon; George Rogers and Nursery Holdings LLC, are issued to supersede Permit G-13570.
3. All other terms and conditions under Permit G-13570, as modified by the final order approving T-9950, are incorporated into Permits G-17691, G-17692 and G-17693.

Dated at Salem, Oregon this 31 day of January, 2017.



Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR

Mailing Date: FEB 01 2017