

STATE OF OREGON

COUNTY OF CLACKAMAS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

WICHITA NURSERY INC
9413 S HEINZ ROAD
CANBY, OR 97013

BERRY PRO LLC
P.O. BOX 379
WOODBURN, OR 97071

This superseding permit is issued to describe an amendment for a change in point of appropriation proposed under Permit Amendment Application T-11658 and approved by Special Order Vol. 92, Page 233, entered April 21, 2014, and to describe an extension of time for complete application of water approved October 12, 2010 and an assignment to a new permittee approved SEPTEMBER 3, 2013. This permit supersedes Permit G-15924.

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-15966

SOURCE OF WATER: WELL 3 IN CREAMERY CREEK BASIN AND WELL 5 IN WHEELER CREEK BASIN

PURPOSE OR USE: NURSERY USES ON 152.1 ACRES

MAXIMUM RATE: 4.9 CUBIC FEET PER SECOND, BEING LIMITED TO:

WELL #	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER
WELL 3	4.31 CFS	2.04 CFS	1.39 CFS	1.34 CFS	1.88 CFS
WELL 5	2.24 CFS	1.09 CFS	0.71 CFS	0.673 CFS	0.916 CFS
TOTAL ALLOWED	4.9 CFS	3.13 CFS	2.10 CFS	2.013 CFS	2.796 CFS

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: MARCH 27, 2003

WELL LOCATIONS:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 E	WM	27	SW NE		WELL 3 - 260 FEET SOUTH AND 1540 FEET EAST FROM SE CORNER, DLC 41, SECTION 27
4 S	1 E	WM	34	SW NW	43	WELL 5 - 50 FEET NORTH AND 980 FEET WEST FROM THE SE CORNER OF DLC 43.

The amount of water used for nursery use is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to one fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NURSERY USES							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	1 E	WM	27	SW NE			26.00
4 S	1 E	WM	27	SE NW	2		26.00
4 S	1 E	WM	27	NE SW	3		13.70
4 S	1 E	WM	27	NE SW		43	6.10
4 S	1 E	WM	27	NW SW		43	6.70
4 S	1 E	WM	27	SW SW		43	5.10
4 S	1 E	WM	27	SE SW		43	8.30
4 S	1 E	WM	27	NW SE			3.10
4 S	1 E	WM	34	NE NW		43	9.30
4 S	1 E	WM	34	NW NW		43	13.20
4 S	1 E	WM	34	SW NW		43	8.70
4 S	1 E	WM	34	SE NW	2		25.90

Permit Amendment T-11658 Conditions

The quantity of water diverted at the proposed new Well 5 shall not exceed the quantity of water lawfully available at the original point of appropriation of Well 5.

Water shall be acquired from the same aquifer as the original point of appropriation.

Extension of Time Conditions

Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2014**.

- 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.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes PlaceInitial and Annual Measurements

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun**Seven Consecutive Annual Measurements**

Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- (A) Identify each well with its associated measurement; and
- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if annual water level measurements reveal any of the following events:

- (A) An average water level decline of three or more feet per year for five consecutive years; or
- (B) A water level decline of 15 or more feet in fewer than five consecutive years; or
- (C) A water level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non or restricted use shall continue until the annual water level rises above the decline level which triggered the action or until the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

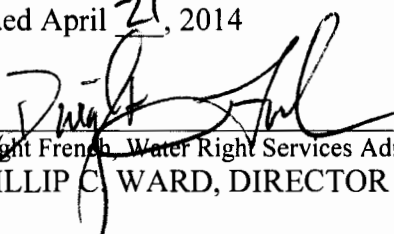
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Complete application of the water to the use shall be made on or before October 1, 2017. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued April 21, 2014


 Dwight French, Water Right Services Administrator, for
 PHILLIP C. WARD, DIRECTOR

ASSIGNMENT OF PERMIT: Pursuant to ORS 537.220, this permit may be assigned to a party other than the permittee named hereon, if the land the permit is associated with changes ownership, or if the permittee is an organization whose name changes as a result of sale or merger. Request for Assignment forms are available from the Oregon Water Resources Department web site at <http://www.wrd.state.or.us/>, or may be requested from the Department at 503-986-0801 or Water Right Application Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271.

MAILING ADDRESS CHANGES: If the mailing address of the permittee named hereon changes, it is important that the Oregon Water Resources Department be informed of the change. Address changes must be submitted in writing with the permittee's signature to Water Right Application Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271.

REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

CULTURAL RESOURCES PROTECTION LAWS: Water users involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction or alteration of an archeological site or object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232.