

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #G-12326, Water Right) PROPOSED FINAL ORDER
Application #G-13890)
(Loen Nursery Company))

Permit Information	
Application File #G-13890 / Permit #G-12326	
Basin: #2 - Willamette Basin / Watermaster District: #18	
Date of Priority: November 23, 1994	
Authorized Use of Water	
Source of Water:	Eight Wells within the Tualatin River Basin
Purpose or Use:	Agricultural Use for Nursery Stock on 26.5 acres
Maximum Rate:	3.56 cubic foot per second (cfs)

**This Extension of Time request is being processed in accordance
with Oregon Administrative Rule Chapter 690, Division 320.**

Please read this Proposed Final Order in its entirety.

This Proposed Final Order applies only to Permit #G-12326, water right Application #G-13890. A copy of Permit #G-12326 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1998, to October 1, 2006; and
- grant the extension for complete application of water from October 1, 1999, to October 1, 2006.

AUTHORITY

ORS 537.230 and ORS 537.630(1) provide in pertinent part that the Water Resources Department shall, for good cause shown, order an extension of time within which: irrigation or other works shall be completed; the well or other means of developing and securing ground water shall be completed; or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5).

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-320-0010(6) provides in pertinent part that the Water Resources Department may extend the time limits to complete construction or to apply the water to a beneficial use upon showing of good cause for the untimely completion.

FINDINGS OF FACT

Background

1. Permit #G-12326 was granted by the Water Resources Department on April 15, 1996. The permit authorizes the use of up to 3.56 cfs of water from eight wells, within the Tualatin River Basin, for agricultural use for nursery stock on 26.5 acres. It specified that construction of the water development project was to be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. The permit holder submitted an "Application for Extension of Time" to the Department on February 11, 2000, requesting the time in which to complete construction of the water system be extended from October 1, 1998, to October 1, 2000, and the time in which to accomplish beneficial use of water to the full extent under the terms of Permit # G-12326 be extended from October 1, 1999, to October 1, 2000. This is the first extension of time request for Permit #G-12326.
3. On July 16, 2001, the permit holder submitted an amended "Application for Extension of Time" to the Department revising the time requested for extension to October 1, 2002.
4. On June 4, 2004, the permit holder submitted a letter (by Don Knauer, Water Right Consultation and Water Right Surveys) revising the time requested for the extension to October 1, 2006.

Review Criteria *[OAR 690-320-0010(6)]*

As set forth under OAR 690-320-0010(6), the time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This good cause determination shall consider the applicable requirements of ORS 537.230, 537.248¹, 537.630 and 539.010(5).

¹ ORS 537.248 applies to reservoir permits only.

Other Governmental Requirements *[ORS 537.230(2)]*

5. Development of the project was delayed, in part, to the time involved with obtaining Washington County permits for grading the reservoir (recovery pond) associated with this project under Permit #R-12759.

Start of Construction *[ORS 537.630]*

6. Construction of the wells and water system began within the time specified in the permit, being April 15, 1997.

Financial Investment *[ORS 539.010(5)]*

7. As of July 16, 2001, the permit holder had invested a total of \$150,000 into the project, consisting of: the construction of seven wells, two of which were permanently abandoned; the installation of pumps; the installation of a flow meter; and the application of water to 26.5 acres of land for agricultural purposes. An additional \$50,000 investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator *[ORS 537.230(1), 537.630(1) and 539.010(5)]*

8. On or prior to October 1, 1999, the following had occurred: seven wells were constructed, two of which were permanently abandoned; the pumps were installed; the flow meter was installed; and water was applied to 26.5 acres of land for agricultural purposes.
9. Since the issuance of Permit #G-12326 on April 15, 1996, the permit holder has appropriated 200.0 gallons per minute (0.446 cfs) of water for beneficial purposes.
10. Delay of full beneficial use of water was due to the expenses associated with construction of the wells, the insufficient yield of water from the wells, and the abandonment of two wells due to high salt content in the water, creating a need for more time in which to relocate the wells under the permit amendment process. Additionally, the time involved with obtaining county approval for grading of the reservoir lengthened the period needed to complete development of the project.

The Market and Present Demands for Water *[ORS 539.010(5)]*

11. Currently, only five of the eight permitted wells are useable. Further time to develop Permit #G-12326 is necessary to construct the remaining wells in order to obtain a sufficient yield of water. In addition, because two of the wells were abandoned due to high salt content in the water, a permit amendment will be necessary in order to relocate those wells to a more suitable position. Transfer application T-8864 has been filed with the Department.
12. The permitted wells, authorized under Permit #G-12326, are located within the Sherwood-Dammasch-Wilsonville Ground Water Limited Area. At the time Permit #G-12326 was issued, however, the Department included certain conditions prohibiting the production of ground water from the targeted basalt aquifer of the Sherwood-Dammasch-Wilsonville Ground Water Limited Area.
13. Other alternative sources of water, such as surface water rights from the Tualatin River, are under increased scrutiny due to the listing of sensitive, threatened and endangered species on this waterway.
14. Given the permit holder's water supply situation, there is currently a demand and market for the water under Permit #G-12326.

Fair Return Upon Investment *[ORS 539.010(5)]*

15. Use and income from the water development project will result in reasonable returns against the investment made in the project to date.

Duration of Extension *[OAR 690-320-0010(7), ORS 539.010(5)]*

16. As described in findings #8, #9 and #10 above, the remaining work to be completed as of July 16, 2001, consists of complete construction of the water system and complete application of water to beneficial use.
17. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2006, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #G-12326 is both reasonable and necessary.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230 and ORS 537.630.
2. The applicant has submitted a complete extension application form and the fee required by ORS 536.050(1)(k).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause for an extension to complete construction and complete application of water to full beneficial use pursuant to ORS 537.230(2) and ORS 537.630(1).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2006.²

² Pursuant to ORS 537.630(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use.

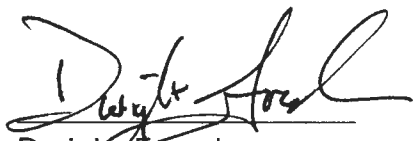
Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit #G-12326 from October 1, 1998, to October 1, 2006; and

Extend the time for complete application of water to beneficial use under Permit #G-12326 from October 1, 1999, to October 1, 2006.

DATED: June 15, 2004


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Comments

1. Under the provisions of OAR 690-320-0010(8), you have the right to protest this proposed final order.
2. Each person submitting a protest shall raise all reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the comment period.
3. The Water Resources Department must receive written protests or written comments no later than ***Friday, July 30, 2004***, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
4. Pursuant to OAR 690-320-0010(11), after the close of the comment and protest period, the Director will either issue a final order, or schedule a contested case hearing if the Director finds there are significant disputes related to the use of water.

If you have other questions about the Department, or any of its programs, please

contact our Water Rights Information Group at (503)986-0801. Address all other correspondence to:

**Water Rights Section
Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, OR 97301-1271
Fax #: (503)986-0901**

If you have any questions about any of the statements contained in this document, please contact Lisa J. Juul by telephone at (503)986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her telephone number is (503)986-0824.

If you have other questions about the Department or any of its programs, please contact our Water Rights Information Group at (503)986-0801.