

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)	PROPOSED
for Permit G-12326, Water Right Application G-13890, in)	FINAL
the name of Leon Nursery)	ORDER

Permit Information

Application:	G-13890
Permit:	G-12326
Basin:	2C – Lower Willamette / Watermaster District 18
Date of Priority:	November 23, 1994
Source of Water:	eight wells in Tualtin River Basin
Purpose or Use:	agricultural use for nursery stock
Maximum Rate:	3.56 cubic feet per second (cfs)

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

In Summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 2006, to October 1, 2026.
- Grant an extension of time to apply water to full beneficial use from October 1, 2006, to October 1, 2026¹.
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

¹Pursuant to ORS 537.630(5), 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 a new or revised claim of beneficial use as deemed appropriate by the Department.

ACRONYM QUICK REFERENCE

Agent – Pacific Hydro-Geology
Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
cfs - cubic feet per second

WELLS

Well 1 – WASH 50588
Well 2 – WASH 53928
Well 3 – WASH 52271
Well 4 – WASH 6854
Well 5 – WASH 52238
Well 6 – WASH 50715
Well 7 – not constructed
Well 8 – not constructed

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works 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) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

FINDINGS OF FACT

1. On April 15, 1996, Permit G-12326 was issued by the Department. The permit authorizes the use of up to 3.56 cfs of water from eight wells in Tualtin River Basin for agricultural use for nursery stock on 26.5 acres. The permit specified actual construction of the well to begin by April 15, 1997, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.

2. On April 26, 2006, the Department approved Permit Amendment T-8864 (Special Order Volume 68, Page 320) authorizing a change in the points of appropriation under Permit G-12326 (modified by Permit Amendment T-8864) which is hereafter referred to simply as Permit G-12326.
3. One prior permit extension has been granted for Permit G-12326. The extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2006.
4. On June 7, 2022, the permit holder, Leon Nursery, submitted an "Application for Extension of Time" (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-12326 be extended from October 1, 2006, to October 1, 2030.
5. On March 15, 2022, notification of the Application for Permit G-12326 was published in the Department's Public Notice. No public comments were received regarding the Application.
6. On August 19, 2022, the Agent for the permit holder submitted additional information to supplement their Application. The additional information was to clarify information on the permit holder's determinations of condition compliance, clarify all wells authorized by the permit, the number of acres developed for nursery uses, work left to be accomplished, and availability of water under other rights located on the property.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

7. On June 7, 2022, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

8. Actual construction of a well began prior to the April 15, 1997 deadline specified in the permit.
9. According to the well log received by the Department on May 24, 1995, construction of WASH 6850 began May 17, 1995. The record calls into question if WASH 6850 is an authorized point of appropriation under this permit. However, the Application indicates that neither WASH 6850, or WASH 6854 will be pursued to continue use under a certificate.

10. According to the well log received by the Department on May 24, 1995, construction of WASH 6854 (Well 4) began May 22, 1995.
11. According to the well log received by the Department on May 7, 1996, construction of WASH 50588 (Well 1) began April 29, 1996.
12. According to the well log received by the Department on June 10, 1996, construction of WASH 50715 (Well 6) began May 29, 1996.
13. According to the well log received by the Department on June 10, 1996, construction of WASH 50714 began May 30, 1996.

Based on Finding of Fact (FOF) 10, 11, and 12, the Department has determined that the prosecution of the construction of the well began prior to April 15, 1997. A review of the original Application for a Permit to Use Groundwater submitted November 23, 1994, and the Application for a Permit Amendment T-8864 reveals that WASH 50714 is not an authorized point of appropriation.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

Amount of Construction [OAR 690-315-0040(3)(a)]

The amount of construction completed within the time allowed in the permit and previous extension.²

14. Construction of Well 1, Well 4, and Well 6 began prior to the April 15, 1997, deadline specified in the permit.
15. Work was accomplished during the original development time frame under Permit G-12326 is as follows:

² "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

- WASH 53928 (Well 2), WASH 52271 (Well 3), WASH 52238 (Well 5) were constructed;
- Well 2 was altered under WASH 54379;
- Well 5 was deepened under WASH 52502
- Well 3 was altered under WASH 54738
- established electrical power at the site; and
- installed a pump, meter, and mainline pipes.

16. Since October 1, 1999, a meter was installed in 2001.

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

The water right permit holder's conformance with the permit and previous extension conditions.

17. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that the permit holder has provided reports sufficient enough to establish water is developed from a confined aquifer; and (2) the record shows water has been developed from the targeted basalt aquifer of the Sherwood-Dammash-Wilsonville Groundwater Limited Area.

Based on FOF 17, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-12326:

- "Prior to use of groundwater from wells listed on this permit, (the) applicant must provide well reports that detail information which is sufficient to establish that a confined aquifer is developed. Groundwater production from any well listed on this permit may **not** be from the targeted basalt aquifer of the Sherwood-Dammash-Wilsonville Groundwater Limited Area."

Failure to comply with permit conditions constitutes illegal use of water. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

The amount of beneficial use made of the water during the permit time limits or previous extension conditions.

18. The Application identifies a maximum rate of 0.17 cfs of water has been appropriated being 36 gallons per minute from WASH 50714, and 40 gallons per minute from Well 6 for agricultural use on 18.5 acres. The Application identifies that no water has been appropriated from any other well under this permit.

19. According to the Department extension groundwater review, completed April 14, 2023, WASH 50714 produces water primarily from basalt water bearing zones between 340-380 feet below land surface (bls), and WASH 50715 (Well 6) produces water from dual alluvial aquifers between 280-300 feet bls and 320-340 feet bls; and the basalt water bearing zones between 380-410 feet bls.

The Department has determined that beneficial use of water has not yet been demonstrated under this permit because WASH 50714 is not an authorized point of appropriation under the permit, and produces water from an unauthorized basalt aquifer; and WASH 50715 (Well 6) produces water from more than one alluvial aquifer, and from an unauthorized basalt aquifer.

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]

20. The Application identifies an investment of \$153,250 has been made. The total investment was not itemized in the Application, but includes costs associated with wells, constructed, altered and/or abandoned, which are not authorized points of appropriation. The Application identifies work actions left to be accomplished as installing separate meters on each well, applying for a permit amendment to add additional points of appropriation, and the cost to seal of the basalt aquifer in Well 6 and WASH 50714. An additional \$82,000 investment is needed to complete this project.

Based on FOF 20, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);*

- (c) *The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- (d) *Economic investment in the project to date;*
- (e) *Other economic interests dependent on completion of the project; and*
- (f) *Other factors relevant to the determination of the market and present demands for water and power.*

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

21. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-12326. At the time of permit issuance, it was determined that water was only available from a single, confined alluvial aquifer, and the water was not available from the undelying basalt aquifer.

OAR 690-315-0040(4)(b)

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

22. The points of appropriation for Permit G-12326, located within the Tualitin River Basin, are located within Sherwood-Dammash-Wilsonville Groundwater Limited Area
23. Tualitin River is not located within or above any state or federal scenic waterway.
24. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

25. Tualitin River is located within an area ranked “high” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

26. An approximate total of \$153,250 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

27. The permit holder identifies manufacturers, suppliers and contractors who they do business with as other economic interests.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

28. At the time Permit G-12326 was issued, Willamette Basin Program rules were adopted classifying the basalt aquifer in the location of the permit for exempt uses only. The Department initially proposed to deny the application for a permit because the requested wells produced water from the basalt aquifer. The permit holder protested, and the protest was resolved with the addition of the condition requiring that the wells produce water only from a single confined alluvial aquifer, and specified water was not to be produced from the basalt aquifer. The market and present demand for water from the basalt aquifer in the Sherwood-Dammash-Wilsonville Groundwater Limited Area for exempt uses has been determined to be sufficient to establish a Groundwater Limited Area.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

29. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

30. The Application identifies that the Department's change in requirement regarding the need to install separate meters on each well as an additional government requirement.
31. The Application asserts the Department has had time to review the well logs previously to determine the bottom of the wells needed to be sealed off.
32. The Application further asserts that the underlying weather basalt had been considered the alluvium in the past.

The Department does not consider any of the above items as additional government requirement because; (1) the permit does not require installation of a meter at each well, only that a meter be installed, and (2) the requirements for the wells to produce water from a single confined alluvial aquifer, and the disallowance of water being produced from the basalt aquifer, are both conditions of the permit as originally issued.

Unforeseen Events [OAR 690-315-0040(2)(h)]

33. The Application identifies the new interpretation of the separate meter requirement for each well and the determination that weathered basalt in WASH 50714 and Well 6 needs to be sealed off as unforeseen circumstances.
34. There is no record that the Department has required the installation of separate meters on each well under this permit.

The Department has determined that the events identified above cannot be considered “unforeseen” because, (1) there is no additional requirement to install a separate meter on each well, and (2) the prohibition on water production from the basalt aquifer is a condition of the permit.

Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]

35. The Application identifies an undue hardship would result from a denial of the extension.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

36. The Application provides evidence, enough to qualify as the minimum necessary to demonstrate good faith of the appropriator under Permit G-12326.

Based on FOF 8, through 36, the Department has determined that the applicant has shown good faith.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

37. As of June 7, 2022, the Application identifies the remaining work to be completed consists of completing sealing the basalt water bearing zone off in LAKE 50714 and Well 6, apply for a permit amendment to add additional wells, construct additional wells, and install meters on each individual well.

Given the amount of development left to occur, the Department has determined that the permit holder’s request to have until October 1, 2030, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-12326 is not reasonable. Given that the development of the permit is limited by this extension of time order to what has been developed to date, and that water has been being appropriated from an unauthorized basalt aquifer, the Department has determined an extension of time to October 1, 2026, to complete the required alterations to the wells and apply water to beneficial use, is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to

the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause. The Department has determined that diligence is questionable, however has determined that the applicant has shown that good cause, sufficient to allow for a limited extension of time, exists for an extension of time to complete construction and apply water to beneficial use to the extent allowable by the conditions of this extension pursuant to OAR 690-315-0040(1)(d) and OAR 690-315-0050(5).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence. Based on Findings of Facts 18, the Department determined the need to place a "Permit Amendment Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary because of the use of an unauthorized point of appropriation occurred under this permit.
2. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence. The Department determined the need to place a "Last Extension Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 2 of the "Conditions" section of this PFO, was determined to be necessary due to limited work towards developing the permit has occurred in more than 20 years, and for non-compliance with permit conditions.
3. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to mitigate the effects of the subsequent development on competing demands on the resource. The Department determined the need to place a "Development Limitation" on this extension of time. This condition, specified under Item 3 of the "Conditions" section of this PFO, was determined to be necessary because the permit was issued more than 25 years ago, and no additional development has occurred in over 20 years.
4. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 17, 18, and 19 the Department determined the need to place a "No Water Use/Well Repair Condition" on this extension of time. This condition, specified under Item 4 of the "Conditions" section of this PFO, was determined to be necessary because water is being appropriated from an unauthorized basalt aquifer within the Sherwood-Dammash-Wilsonville Groundwater Limited Area.

CONCLUSIONS OF LAW

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).

2. The applicant has complied with the construction timeline requirements to begin actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 8, through 37, completion of construction and application of water to beneficial use can be accomplished by October 1, 2026, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project to the extent allowable, within the time period provided for the extension on the project, but the extension is conditioned to ensure future diligence and to mitigate the effects of the subsequent development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for a limited extension, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction of the water system under Permit G-12326 from October 1, 2006, to October 1, 2026.

Extend the time to apply water to beneficial use under Permit G-12326 from October 1, 2006, to October 1, 2026.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. **Permit Amendment Condition**
The Permit Holder shall submit an Application for Permit Amendment by no later than November 1, 2023, requesting the change in point of appropriation from Well 2 (WASH 53928) to WASH 50714. Failure to submit the required Application for Permit Amendment by November 1, 2023, shall result in the loss of the use of water from Well 2 and the inability to perfect the use of water developed from WASH 50714. No additional changes may be authorized by this Permit Amendment.
2. **Last Extension Condition**
This will be the last extension of time granted for Permit G-12326. Any future extensions of time request will be denied, unless the Department determines the need for an extension of time is due to a delay in the processing of the timely submitted

Application for Permit Amendment required above, or a delay in confirmation from the Department that the repairs to the wells, completed prior to October 1, 2026, are sufficient to meet the requirement of the condition. ORS 539.010(5); OAR 690-315-0040.

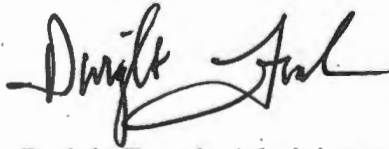
3. **Development Limitation**

Use of water under this permit is limited to the water appropriated from WASH 50714, if authorized for use by a Permit Amendment, and WASH 50715, **AFTER** repairs to the wells has been determined sufficient enough to meet the requirement in the permit, being no more than 0.17 cubic feet per second, being 0.08 cfs from WASH 50714, and 0.09 cfs from WASH 50715. Additionally, no more than 18.5 acres of agricultural use for nursery stock and other associated uses authorized by the permit, may be developed.

4. **No Water Use/Well Repair Condition**

Use of water under this permit shall be suspended, and no water may be appropriated from any well listed on this permit until the well is altered to meet the construction condition contained in the permit, AND the Department has determined, in writing, the alteration(s) is sufficient to meet the requirements in the permit.

DATED: June 20, 2023



Dwight French, Administrator,
Water Right Services Division

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

Protests

Pursuant to OAR 690-315-0060(1), the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. Protests must be received by the Water Resources Department no later than September 9, 2022 at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant's interest in the proposed final order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented

- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

