

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-12607

Final Order
Extension of Time for Permit Number G-12092

Appeal Rights

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 137-004-0080 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.

Application History

The Department issued Permit G-12092 on June 20, 1995. The permit called for completion of construction by October 1, 1997 and complete application of water to beneficial use by October 1, 1998. On August 14, 2007, Doug Femrite dba Femrite Nursery submitted to the Department an Application for Extension of Time for Permit G-12092. In accordance with OAR 690-315-0050(2), on October 30, 2007, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2010 and the time to fully apply water to beneficial use to October 1, 2010. The protest period closed December 14, 2007, in accordance with OAR 690-315-0060(1). No protest was filed.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Diligence Progress Report to the Department by **October 1, 2008**. *A form is enclosed for your use.*

- (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;

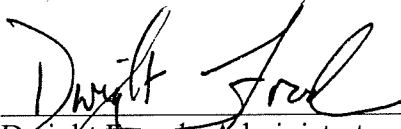
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0040(2).

Order

The extension of time for Application G-12607, Permit G-12092, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2010. The deadline for applying water to full beneficial use is extended to October 1, 2010.

DATED: December 20, 2007


Dwight French, Administrator of
Water Rights and Adjudications
for
Phillip C. Ward, Director

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- If you have any questions about statements contained in this document, please contact Kim French at (503) 986-0813.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
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Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Extension of Time Diligence Progress Reporting Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Doug Femrite dba Femrite Nursery

Application G-12607
 Permit G-12092

Report Due no later than October 1, 2008

Diligence Progress Report for 2008

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit G-12092

DATE WORK WAS DONE	WORK ACCOMPLISHED and FINANCIAL INVESTMENT SINCE OCTOBER 1, 1998 <i>List all work done after the last authorized date for complete application of water up to the date of this Diligence Progress Reporting Form</i>	FINANCIAL INVESTMENT

2. Compliance with terms and conditions of the permit and/or previous extension.

3. Total number of acres irrigated to date= _____ (if applicable)

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate used to date = _____ cfs (cubic feet per second), or

Maximum rate used to date = _____ gpm (gallons per minute), or

Acre Feet Stored = _____ AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). Do not provide daily, monthly or annual water use totals.

Signature _____ Date _____

For OWRD use only

Diligence Shown Yes No

Date Public Noticed: _____

Reviewed by: _____

Date: _____

Mailing List for Extension FO Copies

Note: Include a copy of the "Important Notice" document along with the original copy of the Final Order being sent to the permit holder.

FO Date: December 20, 2007

Copies Mailed

Application G-12607
Permit G-12092

By: MS
On: 12/20/07

Original mailed to permit holder

Doug Femrite
dba Femrite Nursery
13193 Arndt Rd. NE
Aurora, OR 97002

Copies sent to:

1. WRD - App. File G-12607/ Permit G-12092
2. WRD – Sarah Henderson, Permit Amendments – please include transfer file T-9241
3. Scott Ashcom, PO Box 4323, Portland, OR 97208
4. WRD - Support Staff, Salem...*Permit record update*

Fee paid as specified under ORS 536.050 to receive copy:

5. None

Receiving via e-mail (10 AM day of signature date)

6. WRD – Water Master District 16 – Mike McCord, Salem
Done by [Signature] Date 12/20/07

CASEWORKER: KRF

**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-12092, Water Right Application G-12607) PROPOSED FINAL ORDER
in the name of Doug Femrite dba Femrite Nursery)

Permit Information

Application File G-12607 Permit G-12092

Basin: 2 – Willamette/ Watermaster District 16

Date of Priority: July 12, 1991

Authorized Use of Water

Source of Water: Wells 1 and 2 in the Willamette River Basin

Purpose of Use: Nursery Operations on 47.0 Acres

Maximum Rate: 0.60 Cubic Feet per Second (cfs)

**This Extension of Time request is being processed in accordance with Oregon
Administrative Rule Chapter 690, Division 315**

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

This Proposed Final Order applies only to Permit G-12092, water right Application G-12607.
A copy of Permit G-12092 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant an extension of time for complete construction of the water system from October 1, 1997 to October 1, 2010, and
- grant an extension of time to apply water to full beneficial use from October 1, 1998 to October 1, 2010.
- make the extension subject to certain conditions set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute

AUTHORITY

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

ORS 537.630(1) provide in pertinent part that the Oregon Water Resources Department (Department) may, 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) 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) 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 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the

water use permit. Intervals between checkpoints will not exceed five year periods.

FINDINGS OF FACT

Background

1. Permit G-12092 was granted by the Department on June 20, 1995. The permit authorizes the use of up to 0.60 cfs of water from Wells 1 and 2, for nursery operations on 47.0 acres. The permit specified actual construction of the wells was to begin by June 20, 1996, construction of the water system was to be completed by October 1, 1997, and complete application of water was to be made on or before October 1, 1998.
2. The permit holder submitted an "Application for Extension of Time" to the Department on August 14, 2007 requesting the time to apply water to full beneficial use under the terms of Permit G-12092 be extended from October 1, 1998 to October 1, 2010. The Application for Extension of Time clearly suggests that construction is not complete. The Department, therefore, determined that the permit holder's intent was to also request the time in which to complete construction of the water system under Permit G-12092 be extended from October 1, 1997 to October 1, 2010. This is the first permit extension requested for Permit G-12092.
3. Notification of the Application for Extension of Time for Permit G-12092 was published in the Department's Public Notice dated September 25, 2007. No public comments were received regarding the extension application.

Review Criteria [OAR 690-315-0040]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴.

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

4. On August 14, 2007, the Department received a completed Application for Extension of Time and the fee required by ORS 536.050 from the permit holder.

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

5. Actual construction of the wells began prior to the deadline specified in the permit, being June 20, 1996.

¹ORS 537.230 applies to surface water permits only.

²ORS 537.248 applies to reservoir permits only.

³ORS 537.630 applies to ground water permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

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.

6. As of August 14, 2007, the remaining work to be completed consists of receiving approval of permit amendment T-10442, completing construction of the water system and applying water to full beneficial use.
7. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2010, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms of Permit G-12092 is both reasonable and necessary.

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

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

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

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

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

8. The following construction was completed within the time allowed in the permit or previous extension:
 - a. Construction of the wells and water system began prior to the time specified in the permit, being June 20, 1996.
 - b. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-12092.

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

9. The following beneficial use was made of the water during the permit or previous extension time limits:
 - a. Since the issuance of Permit G-12092 on June 20, 1995, a maximum rate of 0.60 cfs has been appropriated from the wells for nursery operations on 47.0 acres.

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

10. The water right permit holder's conformance with the permit or previous extension conditions.
 - a. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

Financial Investments [OAR 690-315-0040(3)(d)]

11. Financial investments made toward developing the beneficial water use.
- a. As of August 14, 2007, the permit holder has invested approximately \$10,000, which is 83 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$2,000 investment is needed for the completion of this project.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)]

12. As of August 14, 2007, the permit holder has invested approximately \$10,000 which is 83 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$2,000 investment is needed for the completion of this project.

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

13. The Department has found good faith of the appropriator under Permit G-12092.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

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:

14. The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].
- a. 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-12092; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of appropriation for Permit G-12092, located within the Willamette River Basin, are not located within a limited or critical ground water area. Willamette River is not located within or above any state or federal scenic waterway, however it is located within an area ranked "low" 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. Willamette River is listed by the Department of Environmental Quality as a water quality limited stream.

15. Economic investment in the project to date [OAR 690-315-0040(4)(d)].
 - a. As of August 14, 2007, the permit holder has invested approximately \$10,000.
16. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
 - a. None have been identified.
17. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
 - a. None have been identified.
18. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this condition.

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

19. Use and income from the permitted water development results in reasonable returns upon the investment made to date.

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

20. Delay in the development of this project was not caused by any other governmental requirements.

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

21. None have been identified.

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 537.630(1).
2. 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).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Completion of construction and full application of water to beneficial use can be

accomplished by October 1, 2010⁵, as required by OAR 690-315-0040(1)(c).

5. 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, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As required by OAR 690-315-0050(6) and as described in Finding 18 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), progress checkpoints in order to ensure future diligence is exercised in the development and perfection of Permit G-12092.

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-12092 from October 1, 1997 to October 1, 2010.

extend the time to apply water to beneficial use under Permit G-12092 from October 1, 1998 to October 1, 2010.

Subject to the following conditions:

CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Diligence Progress Report to the Department by **October 1, 2008**. *A form will be enclosed with your Final Order.*

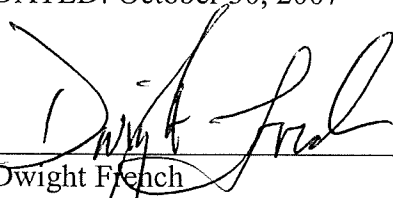
- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been

⁵Pursuant to ORS 537.630(4), 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.

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.

DATED: October 30, 2007


Dwight French
Administrator
Water Rights & Adjudications Division

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

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may protest and request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than **December 14, 2007** being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner'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;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.

3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a request for contested case hearing has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

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- If you have any questions about statements contained in this document, please contact Kim French at 503-986-0813.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Dwight French at 503-986-0819.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to : Water Rights and Adjudications Division
725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
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Mailing List for Extension PFO Copies

PFO Date: October 30, 2007

Copies Mailed

**Application G-12607
Permit G-12092**

By: AS
On: 10/30/07

Original mailed to Applicant:

Doug Femrite dba Femrite Nursery
13193 Arndt Rd. NE
Aurora, OR 97002

Copies sent to:

1. WRD - App. File G-12607/ Permit G-12092
2. WRD – Kelly Starnes, Salem (permit amendment)
3. Scott Ashcom, PO Box 4323, Portland, OR 97208

Fee paid as specified under ORS 536.050 to receive copy:

4. None

Receiving via e-mail (10 AM Tuesday of signature date)

5. PFO: WRD – Watermaster District 16 – Mike McCord, Salem
Done by _____ *Date* _____

CASEWORKER: KRF

Extension PFO Checklist for Other than Muni or Quasi-Municipal

Water Use Permits
(OAR 690-315-0010 through OAR 690-315-0060)

Application: G - 12607 Permit: G - 12092 Permit Amendment? No Yes T-_____

Permit Holder's Name: DUJG FEMRITE dba FEMRITE NURSERY

Permit Holder's Mailing Address: 1319.3 ARNDT RD NE, AURORA OR 97002

Phone Number: _____

POD Location: Township 35 Range 1W Section 34 ^{1/4}NWSE, SWSE

Drainage Basin: 2 County: MARION Watermaster District: 14 Region: NWR

Date Permit was issued: 6-30-95 Priority Date: 7-12-91 Date of PN: 9-25-07

Source: WELLS 1 AND 2 IN THE WILLAMETTE RIVER BASIN

Use: NURSERY OPERATIONS ON 47.0 ACRES

"Q": 0.60 CFS

Orig "A" Date: 6-30-96 Orig "B" Date: 10-1-97 Orig "C" Date: 10-1-98

Extension request received: 8-14-07 Last Authorized "B" Date: — Last Authorized "C" Date: —

Request Number (1, 2, 3...): 1 Proposed "B" Date: 10-1-2010 Proposed C Date: 10-1-2010

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
✓		<u>INSTALL METER</u>

Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]:

Yes No

- Work was accomplished within the time allowed in the permit or previous extension
- Water right permit holder conformed with the permit or previous extension conditions
- Beneficial use made of the water during the permit or previous extension time limits

- Permit holder has beneficially used .60 cfs/gpm/af of the total permitted quantity of water on 47 acres

- Financial investments were made toward developing the beneficial water use.

- Amount Invested to date: \$ 10,000 Estimated Remaining Cost: \$ 2,000

Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes No

Application G - 12607 Permit G - 12092 Township 3S Range 1W Section 34

Determination of the market and the present demand for water or power to be supplied:

Identify the closest surface water or localized water basin. WILLAMETTE RIVER
Ground Water Permits: Is the POA located...
Surface Water Permits: Is the POD located...

- Yes No
- above a state scenic waterway? Source: OWRD "Areas Above State Scenic Waterways" Map
 - within a stream segment designated as a federal wild and scenic river? Source: www.rivers.gov/wildriverslist.html
 - within a critical or limited Ground Water Area? Name of area _____
 - within a sensitive, threatened or endangered species area source: "/>

Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. Approval of Extension Request
No ... "Good Cause" cannot be found. Denial of Extension Request

Conditions to be included in Extension PFO (if applicable)? Yes No

(NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)

- 5-year Progress Report Checkpoints (Years: 2008)
- Other: _____

Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

- COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987**
"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."
- COBU Requirement - Surface Water - post July 9, 1987**
"Pursuant to ORS 537.230(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."
- COBU Requirement - Ground Water - post July 9, 1987**
"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."

NOTES:
CC: SCOTT ASHLON
PO BOX 4323
PORTLAND OR 97208

Extension "PFO" Dates
Mailing / Issuance Date: _____ Protest Deadline Date: _____
Reviewer's Name: _____ Date: _____

Division 315 - Other Than Muni or Quasi-Muni
Extension of Time Application - Completeness Checklist
OAR 690-315-0020

Place a check in the box if the item is satisfied

✓	The appropriate extension of time fee (as specified in ORS 536.050), [OAR 690-315-0020(3)] \$250 - applications received on or after October 1, 2003; \$350 - applications received on or after July 1, 2007
✓	The name and mailing address of the water right permit holder(s); [OAR 690-315-0020(3)(a)]
✓	The application number and the permit number for which an extension is requested; [OAR 690-315-0020(3)(b)]
✓	If the water right permit holder receives delivery of the subject water right permit from a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water; [OAR 690-315-0020(3)(c)]
✓	Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension: <ul style="list-style-type: none"> "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's 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, or surveying. [OAR 690-315-0020(3)(d)]
✓	Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to: [OAR 690-315-0020(3)(e)] <ul style="list-style-type: none"> The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied; The maximum rate of diversion, if any, made to date; and If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.
✓	A description of financial expenditures made toward completion of the water development; [OAR 690-315-0020(3)(f)]
✓	An estimate of the cost to complete the water development; [OAR 690-315-0020(3)(g)]
✓	A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project which have significantly delayed completion of construction or perfection of the right; [OAR 690-315-0020(3)(h)]
✓	The date by which the water development will be completed and water put to full beneficial use; [OAR 690-315-0020(3)(i)]
✓	A summary of the applicant's plan and schedule to complete construction and/or perfect the water right; [OAR 690-315-0020(3)(j)]
✓	Justification of why the requested time is needed to complete the project and/or apply the water to full beneficial use; [OAR 690-315-0020(3)(k)]
✓	A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs; [OAR 690-315-0020(3)(l)] <i>(NOTE: The permit holder is not asked to answer this specific question when filling out the Extension of Time Application. The Department decided this was a finding that should be determined by staff. In order to make this determination, review the Extension of Time Application and documentation in the file record. Generally, a denied extension of time may result in possible loss of investments made in the project, loss of future property value, and/or loss of future income.</i>
✓	Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; [OAR 690-315-0020(3)(m)]
✓	Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements; and [OAR 690-315-0020(3)(n)]
✓	Signature(s) of the water right permit holder(s).

Name of Reviewer: Kim FRENCH Date: 8/14/07

MEMORANDUM

Date: 9/19/2007
To: TO: File G-12607; Permit G-12092
From: Kim French, Permit Extensions
RE: Doug Femrite dba Femrite Nursery

On September 19, 2007, Dwight French, Administrator met with Scott Ashcom to discuss the Application for Extension of Time submitted by Doug Femrite.

Dwight determined that we would accept the application and approve the extension of time to complete the permit amendment needed for this permit.

KRF

Application # G-12607 Permit # G-12092

Public Notice Route Slip ... New Application Extension of Time
per Division 315 Rules... (Extensions received on July 1, 2001 or after)

◆ **WRIG...**

Money Received on: 8/14/07

◆ **Kim French...**

- Added to tracking spreadsheet

After fee is receipted and app is added to spreadsheet, route to...

◆ **Jonnine Skaug...**

- Publish on Public Notice (initial 30-day comment): Date of notice 9/23/07 *JS*
- Update WRIS Database
- In the "PNotice Date" field... Enter the date the Extension Application was published on the Public Notice.
- In the "Ext Filed" field... Enter the date the Extension Application was received.

STATE OF OREGON
WATER RESOURCES DEPARTMENT

725 Summer St. N.E. Ste. A
 SALEM, OR 97301-4172
 (503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **89165**

INVOICE # _____

RECEIVED FROM: Femrite Nursery Company

APPLICATION	
PERMIT	
TRANSFER	<u>10442</u>

BY: _____

CASH: CHECK:# 130776 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ _____

1083 TREASURY 4170 WRD MISC CASH ACCT

0407	COPIES	\$
	OTHER: (IDENTIFY) _____	\$
0243	I/S Lease _____	
0244	Muni Water Mgmt. Plan _____	
0245	Cons. Water _____	

4270 WRD OPERATING ACCT

MISCELLANEOUS		
0407	COPY & TAPE FEES	\$
0410	RESEARCH FEES	\$
0408	MISC REVENUE: (IDENTIFY) _____	\$
TC162	DEPOSIT LIAB. (IDENTIFY) _____	\$
0240	EXTENSION OF TIME	\$ <u>350</u>
WATER RIGHTS:		
0201	SURFACE WATER	\$
0203	GROUND WATER	\$
0205	TRANSFER	\$ <u>400</u>
WELL CONSTRUCTION		
0218	WELL DRILL CONSTRUCTOR	\$
	LANDOWNER'S PERMIT	\$
	OTHER (IDENTIFY) _____	\$

**RECEIVED
 OVER THE COUNTER**

PCA-46111

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	\$	CARD #	
0210	MONITORING WELLS	\$	CARD #	
	OTHER (IDENTIFY) _____			

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)	\$
0231	HYDRO LICENSE FEE (FW/WRD)	\$
	HYDRO APPLICATION	\$

TREASURY OTHER / RDX

FUND _____ TITLE _____
 OBJ. CODE _____ VENDOR # _____
 DESCRIPTION _____ \$ _____

RECEIPT: **89165** DATED: 8-14-07 BY: [Signature]

89162

RECEIPT

Distributor - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - For Staff Copy - Field

DATE: BY: FIVE

DESCRIPTION

OBJ. CODE

FUND

TREASURY

OTHER I/RDX

0201	HYDRO APPLICATION		
0201	HYDRO LICENSE FEE (FWRD)		
0202	POWER LICENSE FEE (FWRD)		

0210	MONITORING WELLS	CARD #	
0211	WELL CONST START FEE	CARD #	

0218	LANDOWNER'S PERMIT	EXAM FEE	
0218	WELL DRILL CONSTRUCTOR	EXAM FEE	
0218	WELL CONSTRUCTION	EXAM FEE	
0202	TRANSFER		
0203	GROUND WATER		
0203	SURFACE WATER		
0201	WATER RIGHTS		
0240	EXTENSION OF TIME		
10125	DEPOSIT LAB (IDENTIFY)		
0408	MISC REVENUE (IDENTIFY)		
0410	RESEARCH FEE		
0403	COPY & TAPE FEES		
0403	MISCELLANEOUS		

0243	IS Lease		
0244	Max Water Right Plan		
0245	Core Water		

1083	TREASURY	4170	WRD MISC CASH ACCT
OTHER (IDENTIFY)			
CHECK #	150310		
CASH			
BY:			

RECEIVED OVER THE COUNTER

STATE OF OREGON WATER RESOURCES DEPARTMENT

122 Summer St. W.E. Ste. A SALEM, OR 97301-4173 (503) 588-0900 (503) 588-0901 (fax)

INVOICE #

89162

APPLICATION	
PERMIT	
TRANSFER	10412

RECEIVED FROM: Five the Money Company



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A

Salem, OR 97301-1271

503-986-0900

FAX 503-986-0904

September 25, 2007

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Rights Section has received your application for an extension of time for **APPLICATION FILE # G-12607 (PERMIT # G-12092)**. Your application will be reviewed in the near future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

If you have questions concerning your extension of time application, please contact Kim French at (503) 986-0813. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's Internet home page at: "www.wrd.state.or.us".



Permit Extension \$350.00

Application for Extension of Time for a Water Right Permit

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

A separate extension application must be submitted for each permit as per OAR 690-315-0020(2).

This application and a summary of review criteria and procedures that are generally applicable to this application are available at http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

I, DOUG FEMRITE dba FEMRITE NURSERY
NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]
13193 ARNDT Rd. NE AURORA OR 97002
ADDRESS CITY STATE ZIP
503-678-1261
PHONE E-MAIL ADDRESS

the permit holder of: Application Number G - 12607
Permit Number G - 12092 [OAR 690-315-0020(3)(b)]

do hereby request that the time in which to:

[] complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on October 1, _____, be extended to October 1, _____,

and/or the time in which to:

[X] apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, 1998, be extended to October 1, 2010.

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- You may provide OWRD with any additional information or evidence that will aid us in making our decision. Please note that OWRD may require other information that is necessary to evaluate the application. OAR 315-0020(3)(n).
- After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights and Adjudications Division.
- Once an Application for Extension of Time is received by OWRD, it will be reviewed for completeness. OWRD will return any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- The water right permit. If needed, a copy of the water right permit can be downloaded from the Department's Website at <http://www.wrd.state.or.us> (find the link to the Water Rights Information System (WRIS). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- Documentation which demonstrates compliance with permit conditions (for example, well construction logs; static water level measurement reports; annual water use reports; ODFW fish screen certification;, a plan to monitor the effect of water use on ground water aquifers utilized under the permit; etc.).

Answer the Following Questions to Complete this Application for Extension of Time

- [OAR 690-315-0020(3)(d)]
1. Did the actual construction of the water system/well drilling begin within the time specified in the permit? [yes/no] YES



TIP: Not all permits specify a date by which construction was to begin.

Date construction began is: JUNE 30, 1996

Details of construction: CONSTRUCTION COMPLETED AND FINAL PROOF COMPLETED BY JAMES M. SCHUETTE. PERMITEE SENT LETTER WITHDRAWING FINAL PROOF SURVEY FOR PERMIT G-12092. (ATTACHED.)



2. Permits typically contain standard or special conditions that must be satisfied to lawfully develop and use permitted water. In the development of this water right, have you satisfied the conditions contained in your permit? [yes/no] YES

A) Describe how you have complied with each condition contained in the original permit [and, if applicable, each condition contained in any order approving a permit amendment and/or a final order approving a prior extension of time]. Include the date when the condition was satisfied.



TIP: The instruction sheet for the Application for Extension of Time provides an explanation of the typical conditions that must be addressed in this question.

CHART-A

Condition No.**	Date Satisfied	Describe How Permit Condition Has Been Satisfied
		SEE FINAL PROOF SURVEY ATTACHED.

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, permit amendment and prior extension).

B) If you have NOT complied with all applicable conditions, explain the reasons why and indicate with a date certain (in the near future) when compliance will occur.

CHART-B

Condition No.**	Date Will Comply	Explain Why Each Permit Condition Has NOT Been Satisfied

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, permit amendment and prior extension).

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3. Provide evidence of physical progress made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-C); and if applicable, within the time period of the most recent extension granted (CHART-D).

A) CHART-C (below) must be completed for all Application for Extension of Time requests. Use chronological order.

CHART-C

INSERT DATES	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
	COMPLETE . SEE PROOF SURVEY ATTACHED . SEE LETTER REQUESTING CANCELLATION .	

INSERT DATES	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED <i>and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER</i> <i>List work/actions done during the permitted time period.</i>	COST*
	The permit was signed - find date above signature on last page of permit.	
	The permit specified "Actual Construction Work" shall begin ("A-Date") - not all permits contain this date.	
10/1/____	The permit specified complete application of water to the use shall be made ("C-Date") - all permits contain this date.	

INSERT DATES	WORK ACCOMPLISHED AFTER "C-DATE" <i>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR EXTENSION OF TIME: List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.</i>	COST*

Total Cost to Date	\$ 10,000 ⁰⁰
--------------------	-------------------------

* If exact cost is not known, you must provide your best estimate.

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B) If this is not your 1st Application for Extension of Time request, fill out CHART-D below (in addition to CHART-C above). Use chronological order.

CHART-D

INSERT DATES	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
10/1/____	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
10/1/____	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

INSERT DATES	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED <i>List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.</i>	COST*

Total Cost to Date	
---------------------------	--

* If exact cost is not known, you must provide your best estimate.

[OAR 690-315-0020(3)(f)]

4. **Cost of project to date:** _____
(The total cost from CHART-C and CHART-D)

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[OAR 690-315-0020(3)(e)(B)]

- 5. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit and/or prior extensions of time, if any, made to date.



TIP: Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). Do not provide daily, monthly or annual water use totals.

Maximum rate = 60 cfs (cubic feet per second) or,

Maximum rate = _____ gpm (gallons per minute) or,

Acre Feet Stored = _____ AF

[OAR 690-315-0020(3)(e)(C)]

- 6. Provide the total number of acres irrigated to date under this permit.

Total acres irrigated to date: 47

[OAR 690-315-0020(3)(j)]

- 7. Provide a summary of your future plans and schedule to complete the construction of the water system, and/or apply water to full beneficial use under the terms and conditions of the permit.

CHART-E

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
	PERMIT AMENDMENT TO CHANGE PLACE OF USE	
Year:	Intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		

[OAR 690-315-0020(3)(g)]

- 8. Estimated remaining cost to complete the project: \$ 2,000⁰⁰
(The total cost from CHART-E)

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WRAD

9. List the reasons why the project was not constructed, and/or water was not beneficially used within permit time limits. Provide supporting information for the reason(s) that best fits your circumstances.

A) The project is of a size and scope that was originally planned to be phased in over a time frame longer than the one allowed in the permit.

B) The financial resources needed to develop the project precluded completion of the project within authorized time frames.

C) Good faith attempts to comply with permit conditions and/or acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

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SALEM, OREGON

D) Acts of God or other unforeseen events delayed full development of the water system and use of water within the authorized time frames.

[OAR 690-315-0020(3)(k)]

10. Justify the time requested to complete the project and/or apply the water to full beneficial use. Your justification should combine information from your answers from Questions 2, 3-A, 3-B, 7 and 9 of this Application for Extension of Time, and should also include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

11. Provide any other information you wish OWRD to consider while evaluating your Extension of Time Application.

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I am the permit holder, or have authorization from the permit holder, to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.


Signature

14 Aug. 2007
Date



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

August 23, 2007

Doug Femrite
13193 Arndt Road NE
Aurora, OR 97002

REFERENCE: File #G-12607 (Permit #G-12092)

Dear Mr. Femrite:

On August 14, 2007, the Department received your Application for Extension of Time for Permit #G-12092, along with a check in the amount of \$350.

Upon review of the extension request, it appears that full beneficial use of water was made within the time authorized under Permit #G-12092; therefore there is not good cause for an extension of time. Because full beneficial use of water has been made (as evidenced by the Claim of Beneficial Use that was received by the Department on September 16, 1999), if we were to process your Application for Extension of Time, we would have to deny your request pursuant to OAR 690-690-315-0010. Therefore, we suggest that you withdraw your Application for Extension of Time for Permit G-12092.

Upon receiving your written withdrawal, we will return your Application for Extension of Time for Permit #G-12092 and refund your fee of \$350.

After speaking to Gerry Clark, in our Certificates Section, it has been determined that you may submit a new pump test to re-establish your original Claim of Beneficial Use (COBU) and continue with Certificate issuance. If you have specific questions regarding your COBU, you may contact Gerry Clark at (503) 986-0811.

If you have any further questions concerning the extension of time, please feel free to contact me at (503) 986-0813.

Sincerely,

Kim R. French
Extensions Specialist
Water Rights Section

cc: **File #G-12607 (Permit #G-12092)**
Watermaster Dist #16
Gerry Clark, Certificate Section
Sarah Henderson, Transfer Section



