

Name R-85899

By BRUCE FLEMING

Address 1129 SW 20TH

 PORTLAND OR 97205

Action suspended until 012

Date of approval _____

Extended to _____

Date for application of water 10-1-08

Extended to 10-1-2010, 10/1/2012

Form "C" filed _____

Date Certificate issued _____

Application No. R 85899 ACT
Permit No. ~~R 13921~~ superceded
Certificate No. by R 13974

Stream Index, Page No. _____

FEES PAID		
Date	Amount	Receipt No.
12-12-03	312.00	64779
7/22/08	350. ⁰⁰	93410
4.6.11	500 ⁰⁰	102598
7-17-12	500. ⁰⁰	106277
7-17-12	125 ⁰⁰	106278
	Cert. Fee	

FEES REFUNDED		
Date	Amount	Check No.
4/7/04	152 ⁰⁰	8272482

ASSIGNMENTS				
Date	To Whom	Address	Volume	Page

REMARKS

1020 AM HOT. BYE =

IMPORTANT MESSAGE

FOR 240N x 2004
DATE APR 12 TIME 1010 AM P.M.
M RHODA TY-BYE
OF "WIE"
PHONE (503)-359-9594
AREA CODE NUMBER EXTENSION
☐ FAX
☐ MOBILE NWRC DEVELOP
AREA CODE NUMBER TIME TO CALL

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CAME TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<input type="checkbox"/>
RETURNED YOUR CALL	<input type="checkbox"/>	WILL FAX TO YOU	<input type="checkbox"/>

MESSAGE QUESTNS
RECENT R 85899
PERMIT R 13921

SIGNED 357-0436 1010

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number R-85899

Final Order

Extension of Time for Permit Number R-13974
Permit Holder: Bruce Fleming

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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

Permit R-13974 was issued by the Department on March 29, 2004. The permit called for the reservoir to be filled and complete application of the stored water to the use be made by October 1, 2008. Two permit extensions for Permit R-13974 have been granted by the Department. The most recent extension called for the reservoir to be filled and complete application of the stored water to the use be made by October 1, 2012. On July 17, 2012, Bruce Fleming submitted to the Department an Application for Extension of Time for Permit R-13974. In accordance with OAR 690-315-0050(2), on September 25, 2012, the Department issued a Proposed Final Order proposing to extend the time for the reservoir to be filled and complete application of the stored water to beneficial use. The protest period closed November 16, 2012, in accordance with OAR 690-315-0060(1). No protest was filed.

The Department adopts and incorporates by reference the Proposed Final Order dated September 25, 2012.

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 no additional conditions.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.248 and OAR 690-315-0040(2).

Order

The extension of time for Application R-85899, Permit R-13974, therefore, is approved. The deadline for the reservoir to be filled and complete application of the stored water to the use within the terms and conditions of the permit is extended from October 1, 2012 to October 1, 2017.

DATED: January 29, 2013



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

-
- If you have any questions about statements contained in this document, please contact Joan Smith at (503) 986-0898
 - 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
-



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 Progress Reporting Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Bruce Fleming

Application R-85899
Permit R-13974

Report Due no later than October 1, 2017

DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

Progress Report Form for 2017

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 R-13974

INSERT DATES	LIST ALL WORK ACCOMPLISHED and FINANCIAL INVESTMENTS For the period of time between October 1, 2012 and October 1, 2017	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 to date = _____ 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). Do not provide daily, monthly or annual water volume totals.

Signature _____ Date _____

For OWRD use only

Diligence Shown ☐ Yes ☐ No

Date Public Noticed: _____

Reviewed by: _____

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: January 29, 2013

Copies Mailed

Application R-85899

Permit R-13974

By: CH
On: 2/1/13

Original mailed to permit holder

Bruce Fleming
1129 SW 20th
Portland, Oregon 97205

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman
3. WRD - NWR Regional Manager, Bill Ferber
NOTE: Bill Ferber-NWR gets email (see below)
4. WRD - Keith Mills, Dam Safety (*for standard reservoir permits only*)

Fee paid as specified under ORS 536.050 to receive copy:

5. None

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

(DONE BY EXTENSION SPECIALIST)

6. None
7. NWR Manager - Bill Ferber (send denial FO's only - does not want to see approvals)

CASEWORKER: JMS

Application # R-85899

Permit # R-13974

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: 7-17-2012

♦ **Extension Specialist ...**



Added to tracking spreadsheet

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

♦ **Codi Holmes...**



Publish on Public Notice (initial 30-day comment): Date of notice 7/24/12



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.

☐ Yes or ☐ No: Return file to ~~Extension Specialist~~ after PN

Joan Smith / Craig Kohanek



Oregon

John A. Kitzhaber, MD, 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

July 24, 2012

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Right Services Division has received your application for an extension of time for **APPLICATION FILE #: R-85899 (Permit R-13974)**. Your application will be reviewed in the 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 are interested in having your application reviewed sooner, you may pay to have your file processed immediately, using the Reimbursement Authority program, which is described at: http://www.wrd.state.or.us/OWRD/mgmt_reimbursement_authority.shtml

You may continue the use of water under your water right until the Water Resources Department formally takes action on your extension application. If your permit includes conditions, water use reporting, water level measurement reporting, etc., you are required to comply with the conditions.

Any additional development that occurs after the expired completion date, identified on the permit or an extension order, can only be claimed upon an approved extension application.

If you have questions concerning your extension of time application, please contact Jerry Gainey (503) 986-0812. 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 website at: www.wrd.state.or.us.

Extension PFO Checklist for
Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: R- 85899 Permit: R- 13974 Permit Amendment? No ☒ Yes ☐ T- ☐ pending ☐ approved

Permit Holder's Name: Bruce Fleming

Permit Holder's Mailing Address: 1129 SW 20th Portland OR 97205 email rbruce11@juno.com

Phone Number: 503-223-9513

POD Location: Township 6 N Range 5 W Section 9 $\frac{1}{4}$ SE SW

Drainage Basin: 1 County: Clatsop Watermaster District: 1 Watermaster: Greg Beaman

Date Permit was issued: 3/29/2004

Priority Date: 12/12/2003

Date of PN: _____

Source: Unnamed stream, a tributary of Nehalem River

Use: Multiple Purpose

"Q": 11.0 Acre Feet Per Year

Orig "A" Date: _____

Orig "B" Date: 10/1/

Orig "C" Date: 10/1/2008

Extension
request rec'd: 7/17/2012

Last Authorized
"B" Date: 10/1/

Last Authorized
"C" Date: 10/1/2012

Request Number (1, 2, 3...): 3

Proposed
"B" Date: 10/1/

Proposed
C Date: 10/1/2017

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Install meter or other suitable measuring device
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Installation of an outlet pipe
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction of reservoir
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

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

☒ ☐ Financial investments were made toward developing the beneficial water use.

• Amount Invested to date: \$429,155 Estimated Remaining Cost: \$40,000

☐ ☒ Beneficial use made of the water during the permit or previous extension time limits

• Permit holder has beneficially used 0 ☐ cfs ☐ gpm ☒ af of the total permitted quantity of water on na acres

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

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

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

- Yes No
- ☐ ☒ above a state scenic waterway? Name _____ 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 sensitive, threatened or endangered species area Source: ["/gisdata/dev/projects/salmon/div33map.aml"](#)
- ☐ ☒ within a critical or limited Ground Water Area? Name of area _____
- ☐ ☐ within a Withdrawn Area? Name of area _____
- ☒ ☐ in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____
- ☒ ☐ within an area ranking ☐ low / ☒ moderate / ☐ high / ☐ highest for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

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: 2017)

☐ 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: _____ Date: _____

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **106277**

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

INVOICE # _____

RECEIVED FROM: Mist - Birkenfeld

APPLICATION R85899

BY: _____

PERMIT _____
TRANSFER _____

CASH: ☐ CHECK: # 19924 OTHER: (IDENTIFY) ☐ _____

TOTAL REC'D \$ 500.00

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 \$ 500.00

WATER RIGHTS:

	EXAM FEE		RECORD FEE
0201 SURFACE WATER	\$ _____	0202	\$ _____
0203 GROUND WATER	\$ _____	0204	\$ _____
0205 TRANSFER	\$ _____		

WELL CONSTRUCTION

	EXAM FEE		LICENSE FEE
0218 WELL DRILL CONSTRUCTOR	\$ _____	0219	\$ _____
LANDOWNER'S PERMIT		0220	\$ _____

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

		CARD #
0211 WELL CONST START FEE	\$ _____	
0210 MONITORING WELLS	\$ _____	

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: **106277**

DATED: 7-17-12 BY: X Bell



David Crawford
FIRE CHIEF

AGENT
MIST-BIRKENFELD
RFPD

12525 Highway 202
Mist, OR 97016

phone 503-755-2710
fax 503-755-2556
cell 503-791-4628
e-mail crawford_df@yahoo.com



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301
(503) 986-0900
www.wrd.state.or.us

Application for
Extension of Time
for a Water Right Permit
(Non-Municipal / Non-Quasi-municipal Water Use)

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, Bruce Fleming

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

1129 SW 20th

ADDRESS

Portland

CITY

OR

STATE

97205

ZIP

503-223-9513

PHONE

rbruce11@juno.com

E-MAIL ADDRESS

the permit holder of:

Application Number R-85899

Permit Number R-13974

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

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JUL 17 2012

**WATER RESOURCES DEPT
SALEM, OREGON**

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, 2012, be
extended to October 1, 2015, 2017 *etc*

N/A (Check this box if the permit does not specify a date by when construction must be completed.)

and/or the time in which to:

☒ apply water to full beneficial use under the terms and conditions of the permit, which time now
expires on October 1, 2012, be extended to October 1, 2015, 2017 *etc*

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WATER RESOURCES DEPT
SALEM, OREGON

Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$500.
- Signature page (last page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION

along with the

\$500 STATUTORY FEE TO:

**Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301**



GENERAL TIPS:

- Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The correct form is *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, available at the following link:
<http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml#other>
- Request the reasonable amount of time necessary to fully complete the water construction project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet (Instructions for Filling Out Extension of Time Application for Permits) provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at:
<http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.

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WATER RESOURCES DIVISION
SALEM, OREGON

- 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



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

Date construction began is: April, 2008

Details of construction: A barn remained at the periphery of the wetland construction area. It was removed in the fall of 2009 (unsure of exact date) after the First extension was obtained. That area is now clear and ready for construction to begin. The land was surveyed and an engineered plan was prepared for the reservoir and the wetland creation prior to the end of the original permit. Permits are in place, a contract for construction is in place and in-stream work is expected to be completed on or prior to August 31, 2012. Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.

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

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

2-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
1	10/01/2008	Begin actual construction prior to the end of the permit period. As noted above, Planning, engineered plan preparation, land clearing and tree removal were accomplished before the 10/01/2012 deadline.

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

2-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
2	10/1/2012	(Installation of metering device) Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.
3	10/1/2012	(Installation of outlet pipe) Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.

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WATER RESOURCES DEPT
SALEM, OREGON

4	10/1/2012	(Flow by-pass) <u>Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.</u>
5	10/1/2012	(C-Date) <u>Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.</u>
6	10/01/2012	Reservoir filled and complete application of water
		Note: A numbered list of conditions is included

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

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

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).

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

CHART-C

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
06/11/2004	Date the permit was signed - find date above signature on last page of permit.	
01/01/2008	Planning and engineering for original project (NRCS) (estimated)	31,000
01/01/2006	Obtained water right permit (Fleming) and fencing/grant (Mellhof)	1000
09/01/2008	Remove fencing, trees, brush and vegetation in preparation for excavation	3000
12/01/2009	Completed update of planning engineering (NRCS) (Estimate, Varnes)	31,100
10/01/2010	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief) Actual Cost	18,600
10/01/2010	E.S.A. Adolphson, Consulting, Permit preparation, coordination. Actual	14851

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JUL 17 2012

WATER RESOURCES DEPT
SALEM, OREGON

	Cost	
10/01/2010	Permits, fees, other associated costs (Mist-Birkenfeld RFPD, actual cost)	11970
07/01/2010	Remove old barn and other smaller outbuilding from site according to plan	3500
07/15/2010	Clear brush from culvert entry and exit, expose and inspect culvert under Hwy 202 (Mist-Birkenfeld Fire, ODOT)	1250
10/01/2010	Form agreements with ODOT, NW Natural, and Enerfin to assist with construction. ODOT to provide trenching for the pumping system, NW Natural and Enerfin to provide funds to complete the project. (Mist-Birkenfeld Fire staff)	3500
10/01/2010	Recruit engineer from WRG to provide the engineering plan and oversight for construction of the pumping system (M-B RFPD staff)	10000
	Date the permit specified "Actual Construction Work" shall begin ("A-Date") -not all permits contain this date.	

CHART-C (continued)

DATE	WORK ACCOMPLISHED AFTER "C-DATE"	COST*
	<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>	
Total Cost for Chart-C		129671

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

3-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

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD	COST*
	<i>List all work done during the last authorized extension period.</i>	
10/1/2010	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
3/26/2011	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief) Actual Cost	1368

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JUL 17 2012

03/26/2011	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief)	737
03/26/2011	Permits, fees, other associated costs (Mist-Birkenfeld RFPD, actual cost)	500
04/11/2011	Requested Authority for reimbursement	125
05/10/2011	Paid fees for reimbursement	600
05/27/2011	Fees to ESA for COE permit	433
12/01/2011	Fees to ESA for COE permit, final	314
04/09/2012	Permit extension fees, DSL	670
05/29/2012	Deliver approved and signed COE Permit, waited for signatures	8
06/15/2012	Deliver DEQ 1200c app, consult with Dennis Juries, permit fees	1586
07/15/2012	Fire district staff time 04/01/11-07/16/2012 (calculated)	20143
07/15/2012	NRCS staff time 04/01/2011-07/16/2012 (estimated)	15,000
	Total Work completed to date: 07/15/2012	41484
	Work anticipated to be completed by 10/01/12:	
By 08/31/2012	In-water construction work for reservoir, wetland mitigation, and inclusive conditions	228,000
By 08/31/2012	In water construction of pumping system	30,000
	Total work anticipated to be completed by 10/01/2012	258000
10/1/2012	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

CHART-D (Continued)

DATE	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 for Chart D:		299484

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

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

4. **Cost of project to date: \$429,155**
(The total combined cost from CHART-C and CHART-D)

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

5. Provide evidence of 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 used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

5-A) For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX):



TIP: Report the rate in the same units of measurement as specified in the permit.

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

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

Acre-feet stored to date = 0 AF

5-B) For Ground Water Permit Extensions (e.g. G-XXXX):



TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

CHART-E

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED					If yes, provide the Permit, Certificate, or Transfer No.
			Well Log Number e.g. MORR 50473	Well Tag Number e.g. # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See 5-C below)	Maximum instantaneous rate used from this well -- under this permit only (CFS or GPM)	Is this well authorized or utilized under additional water rights?	
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
Total instantaneous rate from all wells utilized under this permit								

- 5-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a permit amendment application been/be filed? Yes ☐ No ☐

If a Permit Amendment Application has been filed: Transfer No. T-_____

Well #_____: Actual location: _____

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[OAR 690-315-0020(3)(e)(C)]
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Well #____: Actual location: _____

6. Provide the total number of acres irrigated to date under this permit (if applicable).

Total acres irrigated to date: _____

Ground Water Permits: Please specify which wells are being utilized for this irrigation.

Well #____ Acres____ Well #____ Acres____

Well #____ Acres____ Well #____ Acres____

[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-F

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
By 11/30/12	Complete planting, fencing and prove accomplishment all conditions	20,000
By 11/30/2012	Out of stream completion of pumping system	20,000
By 10/10/14 and beyond	In concert with Mist-Birkenfeld EFPD, maintain the reservoir and the pumping system, support the wetland created as mitigation, maintain access required for Water Master.	Annual maintenance costs as needed
Year: 10/01/2012 ²⁰¹⁷	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		40,000

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

8. Estimated remaining cost to complete the project: 40,000
(The total cost from CHART-F)

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

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, B, C or D).*

9-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.

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While the original plan made no provision for phasing in over time, the time required to obtain permits to meet the conditions imposed, which may not always align with other permit conditions, was not adequately considered. Clearly, the scope and size of the project and the process for getting to the construction phase required more time than originally estimated.

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

Project became feasible only when Northwest Natural Gas and Enerfin Inc. committed to assist with cost of the project. Commitment was confirmed in March of 2010. Application for required additional permits was completed immediately following. Reservoir construction was ready to proceed immediately at that point and could have been completed prior to the expiration permit number R-13974. The funding was re-committed in May of 2012, and NW Natural is currently providing the necessary funds.

9-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.

The permit submitted to the Army Corps of Engineers took much longer to be approved than anticipated. The DSL portion was approved, but we hit a snag with the DEQ portion of the approval. DEQ required a change to the bypass condition in R-13974. They were concerned that bypassing water through the reservoir might adversely affect the temperature of water in other streams. After considerable negotiation and discussion, addition of a direct bypass to the project solved the issue for DEQ. The Corps permit was received in mid May of 2011.

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

The reason the Corps permit was delayed is the timing and urgency of the federal stimulus package. When we began it was expected that the work load of the permitting agencies would be relatively light. When the mass of stimulus funded projects began to arrive the agencies were quickly overloaded.

[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-B, 7, 8, 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.

We believe the project can be completed in calendar year 2013 if all goes as planned. However, if the in-water work is delayed or interrupted (requiring waiting another year for completion) or other unforeseen conditions force further delay we are confident the project can

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still be completed by 10/01/2015. We have the funding secured to complete the project and expect to complete construction this year. However, we may not be able to complete the out of water portions prior to 10/1/2012. Condition 1 was completed in prior years. Condition 2 (install metering device) will be completed by 10/1/2012. Condition 3 (Install outlet pipe) will be completed by 10/01/2012. Condition 4 (install flow by-pass), will be completed by 10/01/2012. and Condition 5 (passage of all live flow outside storage season) , will be accomplished by 10/01/2012. However, Condition 6 (reservoir filled and water use established) is not possible to complete by 10/01/2012 because there is inadequate water flow to fill the reservoir until mid-November. It is unlikely the stream will pass any water at all by 10/01/2012.

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

Critical Need to Coordinate Conditions of Approval Between Agencies:

There is a condition included in water right permit R-13974 reading: Water may be appropriated for storage during the period: December 1 through March 31, and July 1 through July 31 of each year (We believe that is to protect fish migration). DEQ has set as a condition for approval of their permit that no water may bypass the reservoir during the Months of August, September and October (spill over the dam since the reservoir is built in the stream-bed). They cite the possibility of the warmer water from the reservoir finding its way from the spillway to the Nehalem River with the potential to warm the stream, again to protect the fish in the river. Both worthy considerations, but ultimately at odds.

DEQ suggested that since the un-named stream-bed is dry from early June to through October, and that any unseasonal rain that might occur could produce minor flows would be caught by the reservoir thus protecting the Nehalem River from any influence by minor amounts of warm water, the elimination of the requirement for bypassing is prudent.

The stream bed has been dry (dust dry) by early June every year since the project was identified. It typically remains dry until late September or early October. Two of the eight years locally heavy mid-September rains have occurred. The stream-bed was wet during the rain, but the parched ground soaked up the water almost immediately. During October there is the chance of minor flow occurring. The reservoir will be at about half full status by then according to engineer's estimates. Any flow would be prevented from reaching the river and thus the chance of warming the water is eliminated.

Because the requirement for no water from the pond to reach the river (DEQ) during the warm periods of the year conflicts with the requirement to bypass water from the un-named stream during these same portions of the year, and because both requirements are based upon federal law there appeared to be an impass. However, an acceptable alternative was identified early in 2012 that met both requirements. The alternative involved creating a bypass at the reservoir inlet and routed back to the stream bed below the reservoir. The by-pass has been implemented into the plans and the impass eliminated. All parties are in agreement that the project may go forward without further delay.

We are certain the in water construction will occur as planned. It is possible that the finish work to achieve the permitted water use will occur on or before October 1, 2012. However,

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there is the possibility of delays and scheduling conflicts in getting the fencing and portions of the finish work completed by that date.

As demonstrated above, there were several months of delay created by the requirement compatibility issues, creating a delayed start of construction. We are therefore requesting an extension so as to be assured of adequate time to complete the project as specified within the required time.

B. Information from the Fire District: Dave Crawford(Fire Chief)

The fire district was approached in 2004 about participating in the Fleming Pond project. The idea of having a consistent, easily and safely accessed emergency water supply was great in terms of building permanent emergency water resource infra-structure within the fire district. However, at that time the cost of completing it was beyond our financial ability. We approached several entities for assistance but were ultimately unsuccessful in finding the resources necessary. Therein lies the reason for delay in moving forward with the project.

OPERATIONAL NEED:

Since that time our situation has changed.

The district has been working to get the two major industries involved with production and storage of natural gas here to define their emergency plans for a well-head fire or pipeline fire and the fire district's role in that risk since early in 2000. Late in 2008, after the pipeline explosions and fires of recent history, both NW Natural (Storage) and Enerfin (development and commercial production) addressed the risk. NW Natural contracted with a company called *Wild Well Control* to control and extinguish a gas related fire at a well-head. At an orientation meeting Wild Well Control representatives described the process, time-lines and the role of the local fire district. That role requires delivery of a minimum of one million (up to one and one-half million) gallons of water to any of up to 30 operational natural gas production or storage well-heads in the case of a fire, all within a time period of about 50 hours. That is a daunting task for a fire district with only two paid personnel and about 40 volunteers.

As Fire Chief, I put together a plan to do just that. It requires a task-force of water tenders with operators and support, a place to store the water on site, and a reliable water supply that is adequate to the need located in the vicinity. All of that can be produced. However, to make that time-line the water sources must be accessed quickly and safely, and it must be available year round. Earthquakes don't care about the season or the weather conditions, and land-slides usually happen during the wettest weather. Availability of an impounded source that makes emergency water supplies available on the fire district's Main Station facilities in quantities adequate for Natural Gas emergencies is the perfect and proper answer.

Essential Facilities:

First, NW Natural's Storage Operations center, Miller Station and the Mist Storage gas fields are clearly classified as essential facilities due to their importance to the energy needs of the Northwest Oregon region and, by extension, the nation. Essential facilities are high priority risks.

Long Term Risk:

One operating well-head is a high value/low risk scenario. Risk management principles remind us that this combination is very dangerous. However, there are more than one hundred well-heads in the fire district. Many are depleted and abandoned. Enerfin continues to develop and produce new gas wells in the area, but production is on the decline. However, NW Natural

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began converting the underground reservoirs that contained the Natural Gas to storage vessels. There are several in operation already with more on the planning table. That is a good thing, as Natural gas storage tends to even out the cost fluctuations and provide a more stable energy resource. The difference between the injection and withdrawal wells associated with production and production wells is that injection and storage wells are designed for the much higher flows needed when refilling and accessing the stored gas for re-use. That means they are also capable of producing much higher gas flows and much higher energy release in the event of a breach of the wellhead below the emergency shut-off valve (ESD) or failure of the valve. The companies who operate here have a great safety record and are very careful to use the best materials and methods during construction. However, on occasion, even the best materials fail, as attested by the presence of companies like Wild Well Control. There are currently more than thirty gas wells in operation today for in production or gas storage applications. There is more than sixteen BILLION cubic feet of natural gas storage under the hills surrounding the community of Mist. Additionally, more than one hundred miles of Natural Gas pipelines reside within our fire district, including a 12", a 16", and a 24" designed to transport the gas into and out of the fire district.

Access to a Reliable Water Source:

During high water events, which happen several times per season, stream flow rates are high and steam banks are slippery and dangerous to access. Additionally, it is nearly impossible to pre-plan drafting sites under these conditions. The Fleming Pond and its attendant pumping system address all of these concerns. Additionally, it will supply the needed emergency water to fight structural fires that occur within the fire district on commercial, industrial and residential properties. The water supply will also answer the needs for emergency water for the occasional wild-fires that occur in the area requiring as much as one million gallons of water.

Responsible Industrial Neighbors:

NW Natural recognized the value of a static, reliable water supply available any time of year, to protect their personnel, their utility infrastructure, and an energy supply that is of major importance to the entire region. They have stepped forward and offered to assist financially with the project. That help made the project financially possible.

CURRENT SITUATION

Bruce Fleming, RC&D personnel and I have worked together and the project has been ready for construction since early in 2010 when the permit application was submitted to the Army Corps of Engineers (COE). The permit was delayed then due to the massive influx of stimulus funds and the infrastructure projects that lined up as a result. When the COE permit was finally available a conflict in requirements between permitting agencies was discovered (as described above), which delayed the COE permit for another year. Over time a compromise was reached with the aid of agency and community leaders and with the guidance of Oregon's Regional Solutions Team. The issue being resolved, the COE permit was issued in mid May, pushing the project back another year, and raising the possibility of not completing the project in its entirety before the WRD permit expires.

We believe Bruce Fleming, the Mist-Birkenfeld Fire Protection District, RC&D, and all those who have made this project possible have demonstrated their commitment to seeing it through to a successful conclusion. The project will ultimately provide increased fire protection for all of those who live and work here. It will also protect the Natural Gas production and storage facilities and assets, all or which are essential to the economy and well being of all of NW Oregon and to the Nation as a whole.

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

7-15-12
Date

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Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Northwest Region Office
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
(503) 229-5263
FAX (503) 229-6957
TTY (800) 736-2900

July 6, 2012

David Crawford
12525 Highway 202
Clatskanie, OR 97016-7219

Re: Construction Storm Water Control Permit
EPA Number: ORR10D246
File Number: 122204
Site: Fleming Pond
County: Columbia

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Dear Mr. Crawford:

The Oregon Department of Environmental Quality (DEQ) has received your application and fees and is approving coverage under the National Pollutant Discharge Elimination System (NPDES) 1200-C Construction Stormwater Discharge Permit. Please be aware that you will be assessed an annual fee for each additional year of construction activity as long as this permit is in effect.

This statewide Permit term is five years, beginning December 1, 2010 and expiring November 30, 2015, regardless of when you apply for coverage within the 5 year period.

Important Permit Provisions

Please review your 1200-C Permit copy carefully. For all projects the permit:

- prohibits visible or measurable quantities of sediments from leaving the construction site and entering directly into surface waters, or to conveyance systems that discharge to surface waters, and prohibits violations of the state's in-stream water quality standards. If this occurs, permit registrants are required to take corrective action to stop the discharge to surface water and submit a report outlining the corrective actions taken.
- requires permit registrants to implement a Sediment and Erosion Control Plan that meets new best management practices.
- requires daily inspections of erosion control measures when runoff is occurring.
- requires permit registrants to record all inspections and to keep all records up-to-date and on site.
- requires all erosion control measures remain in place through the duration of construction project.

For construction projects involving 5 acres or more:

- Permit applications and Erosion and Sediment Control Plans will be subject to a 14-day public review period.

For construction projects that discharge to 303(d) listed water bodies for turbidity (water clarity), or sedimentation, or to water bodies covered under state Total Maximum Daily Load pollution limits:

- Permit registrants must implement additional best management practices on the site to treat, control, or prevent sediment discharges to "impaired" water bodies.

Additional listed water body and affected river mile information is available at DEQ's website at:
www.deq.state.or.us/WQ/assessment/assessment.htm

Legal Owner Responsibilities



Date	Check#	To	For	Amount	
3/31/2011	13801	OR Water Resources		500	- permit
4/11/2011	13818	Dept State Lands		653-	permit
4/18/2011	13830	OR Water Resources		125	water height extension request
5/10/2011	13863	OR Water Resources		600	extension application
5/27/2011	13871	ESA		433	steining line
12/1/2011	14103	ESA		313.5	"
4/9/2012	14287	Dept State Lands		670	- permit extension
5/29/2012		permit delivery	parking	8	
6/15/2012	14366	DEQ		1586	storm water permit

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DEPARTMENT OF THE ARMY PERMIT

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WATER RESOURCES DEPT
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Permittee: Mist-Birkenfield Rural Fire Department

Permit No: NWP-2010-144

Issuing Office: U.S. Army Corps of Engineers

NOTE: The term "you" and its derivatives as used in this permit means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The project involves construction of an emergency fire suppression pond. This pond would be created by damming up an intermittent tributary of the Nehalem River.

Construction would involve both excavation and damming for creation of the pond. To create the pond, dam, and both principal and emergency spillways, a total of 10,603 cubic yards (equaling 0.90 acre) of silt, clay and organics would be removed, from both wetlands and uplands. Excavated material would be stockpiled on-site for use in construction of the dam and spillways and excess would be placed in adjacent pasture (not to exceed 12-inches in depth).

The created pond would total 1.87 acre in size and would hold 11.1 acre-feet of water. A total of 1,113 cubic yards of clay would be placed within the excavated area to create a 12-inch liner. Creation of the dam and core trench would involve placing 1,420 cubic yards of clay and geotextile fabric. The total height of the dam would be 7.4 feet. The spillways would be lined with 12" minus aggregate to prevent erosion. Construction of the dam and spillways would result in a total of 2,583 cubic yards of fill placed within 0.90 acre of wetlands adjacent to the proposed impoundment.

Purpose: To provide a firefighting water supply source to serve the Mist-Birkenfield Rural Fire Protection District (Mist-Birkenfield RFPD).

Project Location: The project is located 1000 feet west of the Mist-Birkenfield Fire Station at 12525 Highway 202, Columbia County, Oregon (Section 9, Township 6 North, Range 5 West).

Drawings: (10 of drawings/maps) (Enclosure 1)

General Conditions:

1. The time limit for completing the work authorized ends on May 18, 2017. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General

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Condition No. 4 below. Should you wish to cease to maintain the authorized activity of the project, you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

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3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Enclosure 2).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. You shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to cenwp.notify@usace.army.mil or mailed to the following address:

U.S. Army Corps of Engineers
CENWP-OD-GC
Permit Compliance, Columbia County
P.O. Box 2946
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

2. You shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure <X>).
3. The Oregon Department of Environmental Quality issued a Water Quality Certification (WQC) for the proposed project. All terms and conditions of this WQC are now terms and conditions of the permit authorization.
4. To compensate for the impacts to waters of the U.S., the permittee will create 1.2 acres of emergent wetland on-site to replace 0.8 acre of wetlands impacted during dam construction. Mitigation work will commence either prior to or concurrent with construction activities. Further details and specific requirements of the mitigation plan can be seen in the plan entitled, Fleming Pong Project, Compensatory Mitigation Plan, dated February 2010. This mitigation plan is now a term and conditions of the permit authorization.

5. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 4 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.
6. Permittee shall immediately notify the Corps at the address in Special Condition (a) above if at any time during the course of the work authorized, human remains or cultural resources are located within the permit area. We also draw your attention to Regional Condition 3.
7. During construction, the Permittee shall ensure best management practices are used to minimize impacts. All temporary sediment curtains, silt fences, etc. employed during construction shall be removed upon project completion or area stabilized.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this Authorization:

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition No. 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below as permittee indicates that you accept and agree to comply with the terms and conditions of this permit.

William C DeJager
(PERMITTEE SIGNATURE)

29 May 12
(DATE)

William C DeJager
(PRINTED NAME)

President
(TITLE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE COMMANDER, JOHN W. EISENHAUER, P.E. COLONEL, CORPS OF ENGINEERS,
DISTRICT COMMANDER:

[Signature]
(DISTRICT COMMANDER)

5/30/12
(DATE)

Kevin P. Moynahan
Chief, Regulatory Branch

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Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

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MIST-BIRKENFELD RFPD

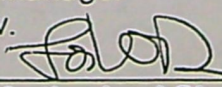
Permit No.:	44509-RF Renewal
Permit Type:	Removal/Fill
Waterway:	Wetland/Nehalem River trib
County:	Columbia
Expiration Date:	July 13, 2013

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-986-5200.

Lori Warner-Dickason, Northern Region Manager
Wetlands & Waterways Conservation Div.
Oregon Department of State Lands


Authorized Signature

July 3, 2012
Date Issued

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JUL 17 2012

WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON

COUNTY OF CLATSOP

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BRUCE FLEMING
1129 SW 20TH
PORTLAND, OR 97205

(503) 223-9513

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

APPLICATION FILE NUMBER: R-85899

SOURCE OF WATER: UNNAMED STREAM, A TRIBUTARY OF NEHALEM RIVER

STORAGE FACILITY: FLEMING POND

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

MAXIMUM STORAGE VOLUME: 11.1 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1
THROUGH MARCH 31 AND JULY 1 THROUGH JULY 31 OF EACH YEAR

DATE OF PRIORITY: DECEMBER 12, 2003

DAM LOCATION: SE 1/4 SW 1/4 SECTION 9, T6N, R5W, W.M.; 396 FEET NORTH
& 1320 FEET EAST FROM SW CORNER, SECTION 9

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE 1/4 SW 1/4
SECTION 9

TOWNSHIP 6 NORTH, RANGE 5 WEST, W.M.

Measurement, recording and reporting conditions:

- ① A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- ② B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

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JUL 17 2012

WATER RESOURCES DEPT
SALEM, OREGON

PAGE 2

- ③ C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
- ④ The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.
- ⑤ The permittee shall pass all live flow outside the storage season described above.

This permit does not provide for the appropriation of water for any out of reservoir uses, the maintenance of the water level or maintaining a suitable fresh water condition. If any water is used for out of reservoir uses, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

STANDARD CONDITIONS

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

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

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

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

This permit does not authorize the permit holder to pursue this right in such a way as to interfere with or affect adjacent property not under the ownership of the permit holder.

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JUL 17 2012

WATER RESOURCES DEPT
SALEM, OREGON

PAGE 3

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

- ⑥ The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2008.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.

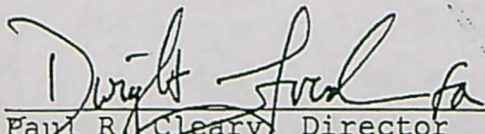
The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir stores 9.2 or more acre-feet of water.

If no secondary permit exists and the reservoir stores less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:

- (a) the dimensions of the reservoir;
- (b) the maximum capacity of the reservoir in acre-feet; and
- (c) a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

This permit is issued to correctly identify the reservoir location. Permit R-13921, issued March 29, 2004, is superceded by this instrument and is of no further force or effect.

Issued June 11, 2004


Paul R. Cleary, Director
Water Resources Department

REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the

RECEIVED

JUL 17 2012

WATER RESOURCES DEPT
SALEM, OREGON

PAGE 4

purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

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

AFTER ODOT Brush Clearing

RECEIVED
APR 06 2011
WATER RESOURCES DEPT
SALEM, OREGON



Remains of Test Holes

RECEIVED

APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON

Shed Demolished

RECEIVED

APR 06 2011

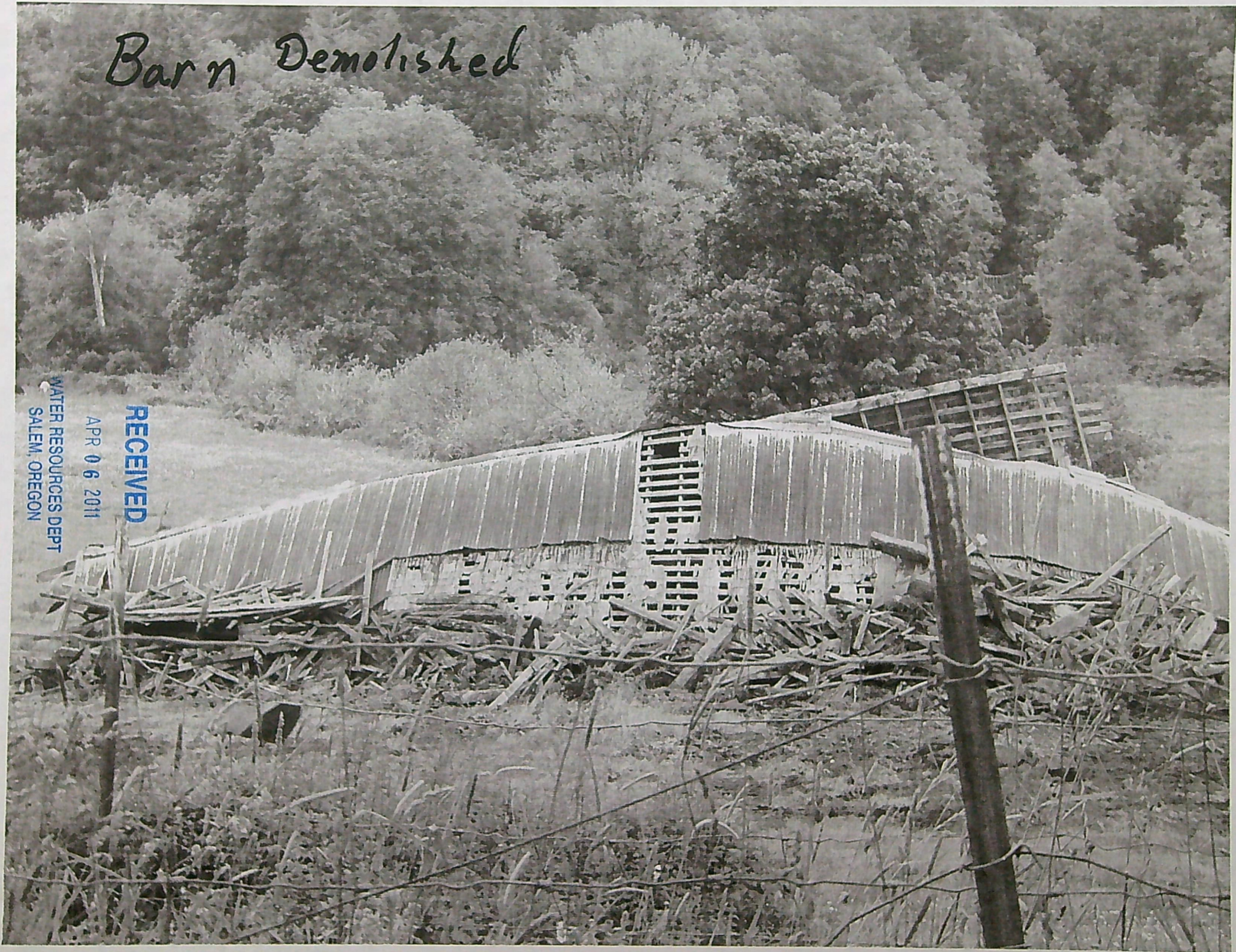
WASPA RESOURCES DEPT
SALISBURY, ONTARIO

Barn Demolished

RECEIVED

APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON



After Demolition



RECEIVED

APR 06 2011

WATER RESOURCES DEPT
CLATSOP, OREGON

Wine left for Recycling Efforts

RECEIVED

APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON





*Fencing Removed
2003 + 2004*

RECEIVED

APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number R-85899

Final Order
Extension of Time for Permit Number R-13974
Permit Holder: Bruce Fleming

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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

Permit R-13974 was issued by the Department on March 29, 2004. The permit called for complete application of water to beneficial use by October 1, 2008. On April 6, 2011, Bruce Fleming submitted to the Department an Application for Extension of Time for Permit R-13974. In accordance with OAR 690-315-0050(2), on June 14, 2011, the Department issued a Proposed Final Order proposing to extend the time to apply water to full beneficial use to October 1, 2012. The protest period closed July 29, 2011, in accordance with OAR 690-315-0060(1). No protest was filed.

The Department adopts and incorporates by reference the Proposed Final Order dated June 14, 2011.

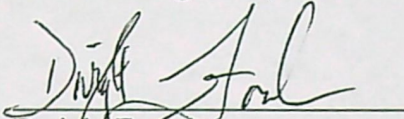
At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to no additional conditions.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

Order

The extension of time for Application R-85899, Permit R-13974, therefore, is approved.. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2010 to October 1, 2012.

DATED: August 12, 2011



Dwight French

Water Rights Services Division Administrator, *for*
PHILLIP C. WARD, DIRECTOR

-
- If you have any questions about statements contained in this document, please contact Jerry Gainey at (503) 986-0812.
 - 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
-

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: August 12, 2011

Copies Mailed

Application R-85899

Permit R-13974

By: Connie Vance

On: 8/11/2011

Original mailed to permit holder

Bruce Fleming

1129 SW 20th

Portland, OR 97205 ✓

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974 ✓
2. WRD - Watermaster District 1, Greg Beaman ✓

Fee paid as specified under ORS 536.050 to receive copy:

3. None

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

4. None

CASEWORKER: jwg

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number R-85899

Final Order
Extension of Time for Permit Number R-13974
Permit Holder: Bruce Fleming

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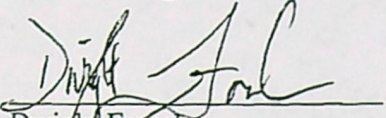
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-

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # 102598

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

INVOICE # _____

RECEIVED FROM: Mist - Birkenfeld

BY: _____

APPLICATION R 85899

PERMIT

TRANSFER

CASH: ☐

CHECK: # 13801

OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 50000

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES

OTHER: (IDENTIFY)

RECEIVED
OVER THE COUNTER

\$

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

46111

\$

\$

\$

\$

\$

\$ 50000

WATER RIGHTS:

0201 SURFACE WATER

0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

OTHER (IDENTIFY)

EXAM FEE

\$

\$

\$

EXAM FEE

\$

0202

0204

RECORD FEE

\$

\$

LICENSE FEE

\$

\$

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE

0210 MONITORING WELLS

OTHER (IDENTIFY)

\$

\$

CARD #

CARD #

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: 102598

DATED: 4-6-11

BY: LAJ

Application # R-85899

Permit # R-13974

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: 4-6-11

♦ **Extension Specialist ...**

☒ 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 4/12/11 JJS

☐ 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.

Yes or No:

Return file to Extension Specialist after PN

Extension PFO Checklist for
Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: R- 85899 Permit: R- 13974 Permit Amendment? No ☒ Yes ☐ T- ☐ pending ☐ approved

Permit Holder's Name: Bruce Fleming

Permit Holder's Mailing Address: 1129 SW 20th Portland OR 97205 email rbruce11@juno.com

Phone Number: 503-223-9513

POD Location: Township 6 N Range 5 W Section 9 $\frac{1}{4}$ SE SW

Drainage Basin: 1 County: Clatsop Watermaster District: 1 Watermaster: Greg Beaman

Date Permit was issued: 3/29/2004

Priority Date: 12/12/2003

Date of PN: 4/12/2011

Source: Unnamed stream, a tributary of Nehalem River

Use: Multiple Purpose

"Q": 11.0 Acre Feet Per Year

Orig "A" Date:

Orig "B" Date: 10/1/

Orig "C" Date: 10/1/2008

Extension
request rec'd: 4/6/2011

Last Authorized
"B" Date: 10/1/

Last Authorized
"C" Date: 10/1/2010

Request Number (1, 2, 3...): 2

Proposed
"B" Date: 10/1/

Proposed
C Date: 10/1/2012

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Install of a meter or other suitable measuring device
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Installation of an outlet pipe
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction of reservoir
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

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

☒ ☐ Financial investments were made toward developing the beneficial water use.

• Amount Invested to date: \$133,376 Estimated Remaining Cost: \$200,000

☐ ☒ Beneficial use made of the water during the permit or previous extension time limits

• Permit holder has beneficially used 0 ☐ cfs ☐ gpm ☒ af of the total permitted quantity of water on na acres

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

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

Identify the closest surface water or localized water basin. Nehalem River

Ground Water Permits: Is the POA located...

Surface Water Permits: Is the POD located...

Yes No

- ☐ ☒ above a state scenic waterway? Name _____ 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 sensitive, threatened or endangered species area Source: "/>gisdata/dev/projects/salmon/div33map.aml"
- ☐ ☒ within a critical or limited Ground Water Area? Name of area _____
- ☐ ☐ within a Withdrawn Area? Name of area _____
- ☒ ☐ in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____
- ☒ ☐ within an area ranking ☐ low / ☒ moderate / ☐ high / ☐ highest for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

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 ☐ *7/28 5/23/11*

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

7/28 5/23/11 ☒ 5-year Progress Report Checkpoints (Years: 2011)

☐ 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: _____ Date: _____



Oregon

John A. Kitzhaber, MD, 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

April 12, 2011

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#: R-85899 (PERMIT#:R-13974)**. 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 Jerry Gainey at (503) 986-0812. 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".

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit R-13974, Water Right Application R-85899)
in the name of Bruce Fleming.) PROPOSED FINAL ORDER

Permit Information

Application File R-85899 Permit R-13974

Basin: 1 – North Coast / Watermaster District 1

Date of Priority: 12/12/2003

Authorized Use of Water

Source of Water: Unnamed stream, tributary of Nehalem River
Purpose of Use: Multiple-Purpose
Maximum Rate: 11.1 Acre Feet (AF)

**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.

This Proposed Final Order applies only to Permit R-13974, water right Application R-85899.
A copy of Permit R-13974 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2010 to October 1, 2012.

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
AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) 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 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.

FINDINGS OF FACT

Background

1. Permit R-13974 was granted by the Department on March 29, 2004. The permit authorizes the storage of up to 11.1 AF of water in Fleming Pond from an unnamed stream, tributary of Nehalem River, for multiple purpose use. The permit specified construction and complete application of water was to be made on or before October 1, 2008.
2. One prior permit extension has been granted for Permit R-13974. The most recent extension resulted in the completion dates for construction and full application of water being extended to October 1, 2010.
3. The permit holder submitted an "Application for Extension of Time" to the Department on 4/6/2011 requesting the time to complete construction and the time to apply water to full beneficial use under the terms of Permit R-13974 be extended from October 1, 2010 to October 1, 2012.
4. Notification of the Application for Extension of Time for Permit R-13974 was published in the Department's Public Notice dated April 12, 2011. 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 and/or 539.010(5)³.

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

5. On April 6, 2011, the Department received a completed Application for Extension of Time 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)]

6. Senate Bill 300 (1999 legislation) eliminated the requirement that holders of new surface water and ground water permits start construction on water projects within one year after the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999.

¹ORS 537.230 applies to surface water permits only.

²ORS 537.248 applies to reservoir permits only.

³ORS 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.

7. As of April 6, 2011, the remaining work to be completed consists of completing construction of the water system and applying water to full beneficial use.
8. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2012, to fill the reservoir and complete application of water to beneficial use under the terms and conditions of Permit R-13974 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)]

9. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the water system did not begin prior to October 1, 2008.
 - b. Work was completed (specified in the Application for an Extension of Time) during the original development time frame under Permit R-13974.
 - c. Since October 1, 2008, the permit holder has been obtaining other government agency required permits to construct a reservoir under R-13974.
 - d. During the most recent extension period, being from October 1, 2008, to October 1, 2010, the following was accomplished:
 - Obtain additional government agency permits;
 - Clear brush from culvert entry; and
 - Recruit engineer for plan oversight for construction.

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

10. The following beneficial use was made of the water during the permit or previous extension time limits:

- a. Since the issuance of Permit R-13974 on March 29, 2004, the permit holder has not stored water nor diverted from the unnamed stream, tributary of Nehalem River for storage
- b. Delay of full beneficial use of water under Permit R-13974 was due, in part, to the permit holder failing to obtain other government permits to construct the reservoir.

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

- 11. 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, including mitigation requirements, and did not identify any concerns.

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

- 12. Financial investments made toward developing the beneficial water use.
 - a. As of April 6, 2011, the permit holder has invested approximately \$13,3376, which is approximately 40 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$200,000 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)]

- 13. As of 4/6/2011, the permit holder has invested approximately \$133,376 which is approximately 40 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$200,000 investment is needed for the completion of this project.

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

- 14. The Department has found good faith of the appropriator under Permit R-13974.

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:

- 15. 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 R-13974; 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 point of diversion is located on unnamed stream, tributary of Nehalem River, and is not located within a Withdrawn Area. Unnamed stream, tributary of Nehalem River is not located within or above any state or federal scenic waterway, however it is located within an area ranked "moderate" 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. Unnamed stream, tributary of Nehalem River is listed by the Department of Environmental Quality as a water quality limited stream.
16. Economic investment in the project to date [OAR 690-315-0040(4)(d)].
 - a. As of April 6, 2011, the permit holder has invested approximately \$133,376.
17. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
 - a. None have been identified.
18. 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.

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. Unforeseen events extended the length of time needed to fully develop and perfect Permit R-13974, in that the permit holders were faced with obtaining financing and additional governmental agency permits to complete development of the project in a timely manner.

CONCLUSIONS OF LAW

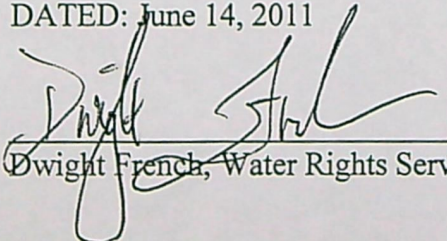
1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Full application of water to beneficial use can be accomplished by October 1, 2012⁴, 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).

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 fill the reservoir and complete application of water to beneficial use under Permit R-13974 from October 1, 2010 to October 1, 2012.

DATED: June 14, 2011


Dwight French, Water Rights Services Administrator

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

⁴Pursuant 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 a new or revised claim of beneficial use as deemed appropriate by the Department.

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 submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than July 29, 2011, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest 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 proposed 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 applicant or non-applicant protest fee required under ORS 536.050.
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 protest 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.

- If you have any questions about statements contained in this document, please contact Jerry Gainey at 503-986-0812.
 - 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 Patricia McCarty at 503-986-0820.
 - 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 Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
- Fax: 503-986-0901

Mailing List for Extension PFO Copies

PFO Date: June 14, 2011

Copies Mailed

Application R-85899
Permit R-13974

By: JS
On: 6/14/11

Original mailed to Applicant:

Bruce Fleming
1129 SW 20th
Portland, OR 97205

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman
3. Agents or CWRE's representing the Permit Holder

Fee paid as specified under ORS 536.050 to receive copy:

4. None

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

5. None

CASEWORKER: jwg

Picture of Streambed April 22, 2010

RECEIVED

APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON

Culvert Access Before ODOT Brush Clearing

RECEIVED

APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON



After ODOT Brush Clearing



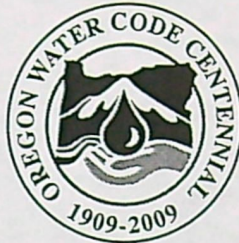
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APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON

**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 R-13974, Water Right Application R-85899)
in the name of Bruce Fleming.) **PROPOSED FINAL ORDER**

Permit Information

Application File R-85899 Permit R-13974

Basin: 1 – North Coast / Watermaster District 1

Date of Priority: December 12, 2003

Authorized Use of Water

Source of Water: Unnamed stream, tributary of Nehalem River
Purpose of Use: Stored Water, Multiple Purpose
Maximum Rate: 11.1 Acre Feet per year (AF)

**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.

This Proposed Final Order applies only to Permit R-13974, water right Application R-85899.
A copy of Permit R-13974 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2008 to October 1, 2010.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order
USDA – United States Dept. of Agriculture
NRCS – Natural Resource Conservation Service
EQIP – Environmental Quality Incentive Plan
DSL -- Department of State Lands
USACE – United States Army Corp of Engineers

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) 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 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.

FINDINGS OF FACT

Background

1. Permit R-13974 was granted by the Department on April 11, 2004. The permit authorizes the storage of up to 11.1 AF per year of water in Fleming Pond from an unnamed stream, tributary of Nehalem River, for multiple purposes. The permit specified complete application of water was to be made on or before October 1, 2008.
2. The permit holder submitted an "Application for Extension of Time" to the Department on July 22, 2008 requesting the time to apply water to full beneficial use under the terms of Permit R-13974 be extended from October 1, 2008 to October 1, 2010. This is the first permit extension requested for Permit R-13974.
3. Notification of the Application for Extension of Time for Permit R-13974 was published in the Department's Public Notice dated July 29, 2008. 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 and/or 539.010(5)³.

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

4. On July 22, 2008, the Department received a completed Application for Extension of Time 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)]

5. Senate Bill 300 (1999 legislation) eliminates the requirement that holders of new surface water and ground water permits start construction on water projects within one year after the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999.

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 July 22, 2008, the remaining work to be completed consists of obtaining an approved DSL Fill and Removal permit, mitigation plan, and functional assessment,

¹ORS 537.230 applies to surface water permits only.

²ORS 537.248 applies to reservoir permits only.

³ORS 539.010(5) applies to surface water and ground water permits.

receiving EQIP funding from the USDA and NRCS, constructing the dam and Fleming Pond, installing a water meter and pipeline, completing engineering and construction inspections, replanting riparian area around construction zone, 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 accomplish the application of water to beneficial use under the terms and conditions of Permit R-13974 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. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the water system was unable to begin prior to October 1, 2008 due to the length of time needed to obtain various permits.
 - b. During the original development time frame under Permit R-13974, being June 11, 2004 to October 1, 2008, the permit holder completed the USDA, NRCS and DSL wetlands mitigation maps, completed the USDA and NRCS final design reports, engineering plans, drawings and specifications for dam and mitigation area, revised and submitted the DSL Fill and Removal permit application, received DSL approval of wetlands delineation, provided additional documentation to DSL and USACE, hired a consultant to complete DSL required documents, entered into discussions with Mist-Birkenfeld Fire District about sharing costs of consulting fees and use of Fleming Pond upon completion as an emergency water supply during the fire season.

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 R-13974 on April 11, 2004, the permit holder has not yet diverted any water from the unnamed stream, tributary of Nehalem River for storage in Fleming Pond.

- a. b. Delay of full beneficial use of water under Permit R-13974 was due, in part, to the permit holder being unable to obtain the necessary permits to start construction of the project in a timely manner.

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 July 22, 2008, the permit holder has invested approximately \$24,300. which is approximately 16 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$123,400. 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 July 22, 2008, the permit holder has invested approximately \$24,300. which is approximately 16 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$123,400. 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 R-13974.

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 R-13974;

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 point of diversion is located on an unnamed stream, tributary of Nehalem River. The unnamed stream, is not located within or above any state or federal scenic waterway, is located within an area ranked "moderate" 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. The Nehalem 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 July 22, 2008, the permit holder has invested approximately \$24,300.
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. The Mist-Birkenfeld Fire District currently uses the Nehalem River as emergency water supply for their 110 square mile service area. Construction of Fleming Pond will provide the Mist-Birkenfeld Fire District with a dependable emergency water supply during the fire season when low or no-flow conditions exist in the Nehalem River.

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

18. 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)]

19. Delay in the development of this project was caused in part by the length of time taken to obtain approval from other governmental agencies, who each have they're own set of unique requirements.

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

20. None have been identified.

CONCLUSIONS OF LAW

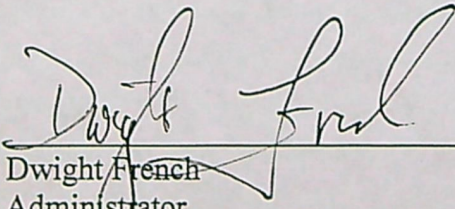
1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Full application of water to beneficial use can be accomplished by October 1, 2010⁴, 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).

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 apply water to beneficial use under Permit R-13974 from October 1, 2008, to October 1, 2010.

DATED: May 19, 2009


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.*

⁴Pursuant 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.

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 submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than July 3, 2009, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest 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 proposed 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 protest 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.

-
- If you have any questions about statements contained in this document, please contact Scott Kudlemyer 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 Patricia McCarty at 503-986-0820.
 - 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
-

Mailing List for Extension PFO Copies

PFO Date: May 19, 2009

Copies Mailed

Application R-85899
Permit R-13974

By: MS
On: 5/19/09

Original mailed to Applicant:

Bruce Fleming
7527 La View Drive
Portland, OR 97219

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman

Fee paid as specified under ORS 536.050 to receive copy:

3. None

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

4. None

CASEWORKER: SBK

815
Oregon
ADJ & WR

Water Resources Department
725 Summer St NE Ste A
Salem, OR 97301-1266

PRESORTED
FIRST CLASS



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MAILED FROM ZIP CODE 97309

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P-85899

BRUCE FLEMING
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PORTLAND OR 97205

RECEIVED

APR 19 2011

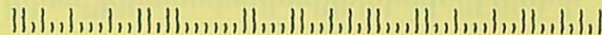
WATER RESOURCES DEPT
SALEM, OREGON

NIXIE 970 DE 1 00 04/19/11

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 97301126673 *0999-02952-14-41

C-SBT5B 97205
97301@1266





Oregon

John A. Kitzhaber, MD, 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

April 12, 2011

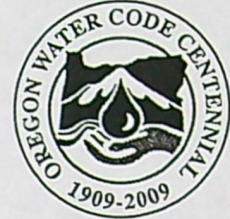
REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Rights Section has received your application for an extension of time for **APPLICATION FILE#: R-85899 (PERMIT#:R-13974)**. 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 Jerry Gainey at (503) 986-0812. 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".

Oregon Water Resources Department
Water Rights Division



Water Rights Application
Number R-85899

Final Order
Extension of Time for Permit Number R-13974

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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

Permit R-13974 was issued by the Department on April 11, 2004. The permit called for complete application of water to beneficial use by October 1, 2008. On July 22, 2008 Bruce Fleming submitted to the Department an Application for Extension of Time for Permit R-13974. In accordance with OAR 690-315-0050(2), on May 19, 2009, the Department issued a Proposed Final Order proposing to extend the time to fully apply water to beneficial use to October 1, 2010. The protest period closed July 3, 2009, in accordance with OAR 690-315-0060(1). No protest was filed.

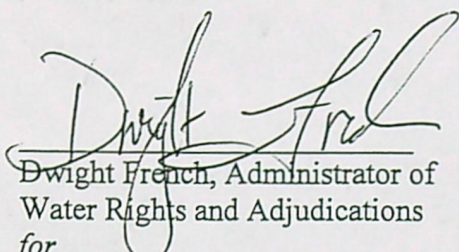
At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to no additional conditions.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

Order

The extension of time for Application R-85899, Permit R-13974, therefore, is approved. The deadline for applying water to full beneficial use is extended to October 1, 2010.

DATED: July 7, 2009


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

-
- If you have any questions about statements contained in this document, please contact Scott Kudlemyer 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
-

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: July 7, 2009

Copies Mailed

Application R-85899

Permit R-13974

By: MS
On: 7/8/09

Original mailed to permit holder

Bruce Fleming
7527 La View Drive
Portland, OR 97219

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman
3. WRD - George Robison, Dam Safety
4. WRD - Support Staff, Salem

Fee paid as specified under ORS 536.050 to receive copy:

5. None

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

6. None

MIST-BIRKENFELD RFPD

13801

Oregon Water Resources Department
GFE · General Fund Expense:GFE CO ·

3/31/2011

500.00

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Checking

Fleming Pond permit

500.00



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301
(503) 986-0900
www.wrd.state.or.us

Application for Extension of Time for a Water Right Permit (Non-Municipal / Non-Quasi-municipal Water Use)

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>.*

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OVER THE COUNTER**

I, Bruce Fleming

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

1129 SW 20th
ADDRESS

Portland
CITY

OR
STATE

97205
ZIP

503-223-9513
PHONE

rbruce11@juno.com
E-MAIL ADDRESS

the permit holder of:

Application Number R-85899

Permit Number R-13974

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

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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, 2010, be
extended to October 1, 2012,

☐ N/A (Check this box if the permit does not specify a date by when construction must be completed.)

and/or the time in which to:

☒ apply water to full beneficial use under the terms and conditions of the permit, which time now
expires on October 1, 2010, be extended to October 1, 2012.

Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$500.
- Signature page (last page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION

along with the

\$500 STATUTORY FEE TO:

**Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301**

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GENERAL TIPS:

- Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The correct form is *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, available at the following link:
<http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml#other>
- Request the reasonable amount of time necessary to fully complete the water construction project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet (Instructions for Filling Out Extension of Time Application for Permits) provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at:
<http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.

- 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



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

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Date construction began is: April, 2008

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Details of construction: Brush and vegetation clearing on south slope where wetland is to be created. Area is now clear of such materials and ready to be excavated. Two trees that were within that area have been removed in preparation. The land was surveyed and engineered details of construction were completed 01/03/05 for the reservoir and the wetland creation prior to the end of the original permit. Post-extension: After the Fire district joined with Mr. Fleming to complete the project additional engineering and wetland delineation work was completed. A barn remained at the periphery of the wetland construction area. It was removed in the spring of 2010 after the first extension was obtained. An additional out-building was removed at the same time in 2010. That area is now clear and ready for construction to begin. Fences were removed



CHART-A

[illegible]

2-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
1	10/1/2012	(Installation of metering device) Obtaining Financing and Awaiting approval of additional permits
2	10/1/2012	(Water Master Access) Obtaining Financing and Awaiting approval of additional permits
3	10/1/2012	(Recording and reporting of water use) Obtaining Financing and Awaiting approval of additional permits
4	10/1/2012	(Installation of outlet pipe) Obtaining Financing and Awaiting approval of additional permits
5	10/1/2012	(Flow by-pass) Obtaining Financing and Awaiting approval of additional permits
6	10/1/2012	(Complete by C-Date) Obtaining Financing and Awaiting approval of

RECEIVED APR 06 2011 WATER RESOURCES DEPT SALEM, OREGON	additional permits. Additionally, DEQ is requiring a modification of bypass condition as a condition of their approval (they are asking for a "no by-pass" condition during summer months due to potential water temperature concerns). Since there is no flow in the stream between early June and late October, and since the published months of bypass for this area are August, September and October, deleting this condition seems ultimately appropriate.
---	---

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

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

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).**

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

CHART-C

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
Pre permit	Please see Project <i>Timelines to Date</i> for a detailed list. The list was prepared by Rhodda Portis in late 2006 prior to Fire District participation.	
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
06/11/2004	Date the permit was signed - find date above signature on last page of permit.	350
03/01/2005	Planning and engineering for original project (NRCS) (estimated)	31,000
Pre-01/01/06	Obtained water right permit (Fleming) and fencing/grant (Mellhof)	650
N/A	Date the permit specified "Actual Construction Work" shall begin ("A-Date") -not all permits contain this date.	
09/01/2008	Remove fencing, brush and vegetation in preparation for excavation (est.)	3000
07/29/2004	Dig test holes for soil samples, engineer collected samples and began soils evaluation. Native clay determined appropriate for reservoir lining. (est)	1000
06/24/2004	Revised wetlands area identified.(Christi Fisher)NRCS Engineer)(est)	Included above
10/1/2008	Date the permit specified complete application of water to the use shall be made ("C-Date") - all permits contain this date.	36,000

CHART-C (continued)

DATE	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 for Chart-C		

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

3-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

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
10/1/2008	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
12/01/2009	Completed update of planning engineering (NRCS) (Estimate, Varnes)	31,100
10/01/2010	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief) Actual Cost	18,600
10/01/2010	E.S.A. Adolphson, Consulting, Permit preparation, coordination. Actual Cost	14,851
10/01/2010	Permits, fees, other associated costs (Mist-Birkenfeld RFPD, actual cost)	11,970
07/01/2010	Remove old barn and other smaller outbuilding from site according to plan	3,500
07/15/2010	Clear brush from culvert entry and exit, expose and inspect culvert under Hwy 202 (Mist-Birkenfeld Fire, ODOT)	1,250
10/01/2010	Form agreements with ODOT, NW Natural, and Enerfin to assist with construction. ODOT to provide trenching for the pumping system, NW Natural and Enerfin to provide funds to complete the project. (Mist-Birkenfeld Fire staff)	3,500
10/01/2010	Recruit engineer from WRG to provide the engineering plan and oversight for construction of the pumping system (WRG Estimate)	10,000
10/1/2010	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

CHART-D (Continued)

DATE	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*
3/26/2011	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief) Actual Cost	1368
03/26/2011	E.S.A. Adolphson, Consulting, Permit preparation, coordination. Actual	737

	Cost	
03/26/2011	Permits, fees, other associated costs (Mist-Birkenfeld RFPD, actual cost)	500
Total Cost of Chart-D		97,376

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

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

4. **Cost of project to date:** 133,376
(The total combined cost from CHART-C and CHART-D)

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

5. **Provide evidence of 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 used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

- 5-A) **For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX):**



TIP: Report the rate in the same units of measurement as specified in the permit.

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

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

Acre-feet stored to date = _____ AF

- 5-B) **For Ground Water Permit Extensions (e.g. G-XXXX):**



TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

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CHART-E

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED				
			Well Log Number e.g. MORR 50473	Well Tag Number e.g. # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See 5-C below)	Maximum instantaneous rate used from this well -- under this permit only (CFS or GPM)	Is this well authorized or utilized under additional water rights? If yes, provide the Permit, Certificate, or Transfer No.

		Yes <input type="checkbox"/>			Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	-
		No <input type="checkbox"/>			No <input type="checkbox"/>		No <input type="checkbox"/>	-
		Yes <input type="checkbox"/>			Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	-
		No <input type="checkbox"/>			No <input type="checkbox"/>		No <input type="checkbox"/>	-
		Yes <input type="checkbox"/>			Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	-
		No <input type="checkbox"/>			No <input type="checkbox"/>		No <input type="checkbox"/>	-
		Yes <input type="checkbox"/>			Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	-
		No <input type="checkbox"/>			No <input type="checkbox"/>		No <input type="checkbox"/>	-
Total instantaneous rate from all wells utilized under this permit								

5-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a permit amendment application been/be filed? Yes ☐ No ☐

If a Permit Amendment Application has been filed: Transfer No. T-_____

Well #____: Actual location: _____

Well #____: Actual location: _____

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

6. Provide the total number of acres irrigated to date under this permit (if applicable).

Total acres irrigated to date: _____

Ground Water Permits: Please specify which wells are being utilized for this irrigation.

Well #____ Acres_____

Well #____ Acres_____

Well #____ Acres_____

Well #____ Acres_____

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

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-F

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
07/01-08/31/2011	In-water construction work for reservoir, wetland mitigation, and inclusive conditions	150,000
07/01-08/31/2011	In water construction of pumping system	30,000
10/01/11-10/10/12	Complete planting, fencing and prove accomplishment all conditions	20,000
10/10/12 and beyond	In concert with Mist-Birkenfeld EFPD, maintain the reservoir and the pumping system, support the wetland created as mitigation, maintain access required for WaterMaster.	Annual Costs
	Note: The above are estimates.	

Year: 10/01/2012	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		200,000

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

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

8. **Estimated remaining cost to complete the project:** 200,000
(The total cost from CHART-F)

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, B, C or D).**

- 9-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.**

While the original plan made no provision for phasing in over time, the time required to obtain permits to meet the conditions imposed, which may not always align with other permit conditions, was not adequately considered. Clearly, the scope and size of the project and the process for getting to the construction phase required more time than was originally estimated.

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

The project became feasible only when Northwest Natural Gas and Enerfin Inc. committed to assist with cost. Commitment was confirmed in March of 2010. Application for required additional permits was completed immediately following. Reservoir construction was ready to proceed immediately at that point and could have been completed prior to the expiration permit number R-13974.

- 9-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.**

The permit submitted to the Army Corps of Engineers is taking much longer to be approved than anticipated. The DSL portion was approved, but we have hit a snag with the DEQ portion of the approval. DEQ is requiring a change to the bypass condition in R-13974. They are concerned that bypassing water through the reservoir may adversely affect the temperature of water in other streams. Since the stream ceases to flow in early June and does not begin to flow again until late October and since the published by-pass months for that location are August, September and October, the DEQ request makes ultimate sense. We therefore request that the by-pass condition be amended in the permit with this extension's

approval to match the requirements of DEQ. The DEQ permit can then be approved and construction can proceed in July as needed.

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

The reason the Corps permit was delayed is the timing and urgency of the federal stimulus package. When we began it was expected that the work load of the permitting agencies would be relatively light. However, when the mass of stimulus funded projects began to arrive the permitting agencies were quickly overloaded.

[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-B, 7, 8, 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.

We believe the project can be completed in calendar year 2011 if all goes as planned. However, if the in-water work is delayed or interrupted (requiring waiting another year for completion) we are confident the project can still be completed by 10/01/2012.

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

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Critical Need to Coordinate Conditions of Approval Between Agencies:

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There is a condition included in water right permit R-13974 reading: Water may be appropriated for storage during the period: December 1 through March 31, and July 1 through July 31 of each year (We believe that is to protect fish migration). DEQ has set as a condition for approval of their permit that no water may bypass the reservoir during the Months of August, September and October (spill over the dam since the reservoir is built in the stream-bed). They cite the possibility of the warmer water from the reservoir finding its way from the spillway to the Nehalem River with the potential to warm the stream, again to protect the fish in the river.

DEQ suggests that since the un-named stream-bed is dry from early June to through October, and since any unseasonal rain that might occur which could produce minor flows would be caught by the reservoir thus protecting the Nehalem River from any influence by minor amounts of warm water, the elimination of the requirement for bypassing is prudent. We agree. Additionally, the published standards for our area require collection restrictions be considered only during the months of August, September and October.

The stream bed has been dry (dust dry) by early June every year since the project was identified. It remains dry until late September. Two of the eight years locally heavy mid-September rains have occurred. The stream-bed was wet during the rain, but the parched ground soaked up the water almost immediately. During October there is the chance of minor

flow occurring. The reservoir will be at about half full status by then according to engineer's estimates. Any flow would be prevented from reaching the river and thus the chance of warming the water is eliminated.

We respectfully ask that the conditions in the permit be aligned with this DEQ requirement so that construction can proceed on schedule, July 1, 2011.

B. Information from the Fire District: Fire Chief Dave Crawford

The fire district was approached in 2004 about participating in this project. The idea was great in terms of building permanent emergency water resource infra-structure within the fire district. However, at that time the cost of completing it was beyond our financial ability. We approached several entities for assistance but were ultimately unsuccessful in finding the resources necessary. Therein lies the reason for delay in our moving forward with the project.

OPERATIONAL NEED:

Since that time our situation has changed.

The district had been working to get the two major industries involved with production and storage of natural gas in and around our fire district to define their emergency plans for a well-head fire or pipeline fire since early in 2000. Late in 2008, after the pipeline explosions and pipeline fires of recent history, both NW Natural (Storage) and Enerfin (development and commercial production) addressed the risk. They contracted with a company called *Wild Well Control* to control and extinguish a gas related fire at a well-head. At an orientation meeting Wild Well Control representatives described the process, time-lines and the role of the local fire district. That role requires delivery of a minimum of one million gallons of water to any of up to 30 operational natural gas production or storage well-heads in the case of a fire, all within a time period of about 50 hours. That is a daunting task for a fire district with only two paid personnel and about 40 volunteers.

As Fire Chief, I put together a plan to accomplish that task. It requires a task-force of water tenders* with operators and support, a place to store the water on site, and a reliable water supply that is adequate to the need located in the vicinity. However, to make that time-line the water sources must be accessed quickly and safely, and it must be available year round. Earthquakes don't care about the season or the weather conditions, and land-slides usually happen during the wettest weather. Availability of an impounded source that makes emergency water supplies available on the fire district's Main Station facilities in quantities adequate for Natural Gas emergencies is the perfect and proper answer.

*(Note: the water supply taskforce for this application includes fifteen 3000 gallon water tenders (tankers), one supply pumper, 48 apparatus operators, three site supervisors and a Task Force Supervisor. The operation requires maintenance support, fuel support and liasing with ODOT, Columbia County Roads, and local timberland owners)

Essential Facilities:

First, NW Natural's Storage Operations center, Miller Station and the Mist Storage gas fields are clearly classified as essential facilities due to their critical importance for supplying the energy needs of the Northwest Oregon region. Essential facilities are high priority risks.

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SALEM OREGONLong Term Risk:

One operating well-head is a high value/low risk scenario. Risk management principles remind us that this combination is very dangerous. However, there are more than one hundred well-heads in the fire district. Many are depleted and abandoned. Enerfin continues to develop and produce new gas wells in the area, but production is on the decline. However, NW Natural began converting the under-ground reservoirs that originally contained the Natural Gas to storage vessels. There are several in operation already with more on the planning table. That is a good thing, as Natural gas storage tends to even out the cost fluctuations and provide a more stable energy resource. The difference between the injection and withdrawal wells associated with production and production wells is that injection and storage wells are designed for the much higher flows needed when refilling and accessing the stored gas for re-use. That means they are also capable of producing much higher gas flows and much higher energy release in the event of a breach of the wellhead below the emergency shut-off valve (ESD) or failure of the valve. The companies who operate here have a great safety record and are very careful to use the best materials and methods during construction. However, on occasion, even the best materials fail, as attested by the presence of companies like Wild Well Control. There are currently more than thirty gas wells in operation today for in production or gas storage applications. There is more than twenty BILLION cubic feet of natural gas storage under the hills surrounding the community of Mist. Additionally, more than one hundred miles of Natural Gas pipelines reside within our fire district, including 12", 16", and 24" pipelines designed to transport the gas into and out of the fire district.

Access to a Reliable Water Source:

During high water events, which happen several times per season, stream flow rates are high and stream banks are slippery and dangerous to access. Additionally, it is nearly impossible to pre-plan drafting sites under these conditions. The Fleming Pond and its attendant pumping system addresses all of these safety concerns. Additionally, it will supply the needed emergency water to fight structural fires that occur within the fire district on commercial, industrial and residential properties. The water supply will also answer the needs for emergency water for the occasional wild-fires that occur in the area requiring as much as one million gallons of water.

Responsible Industrial Neighbors:

NW Natural and Enerfin both recognize the value of a static, reliable water supply available any time of year, to protect their personnel, their utility infrastructure, and an energy supply that is of major importance to the entire region. They have stepped forward and offered to assist financially or physically with the project. That made the project financially possible.

CURRENT SITUATION

Bruce Fleming, RC&D personnel and I have worked together and the project has been ready for construction since early in 2010 when the permit application was submitted to the Army Corps of Engineers. When we began planning the agencies involved in this permit were under a light work-load. Informal contact indicated a relatively quick processing time. However, by the time the application was filed the priority projects produced by the federal stimulus funding had clogged the desks of the reviewers. The permit is now at DEQ. DEQ is conditioning their approval on removal of the bypass requirement set forth on the original water right permit (R-13974). They cite potential water release that would adversely affect the temperature of the Nehalem River, as noted above. For the reasons above noted, We agree that this is the correct

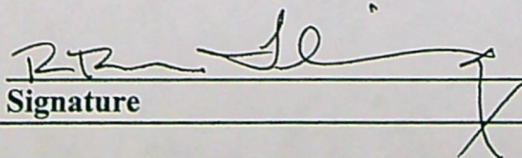
answer. We request that the water right permit conditions be changed to delete the bypass condition, thus aligning with the DEQ requirements.

The Fire District has been ready to begin actual construction for more than a year. We have coordinated the following actual construction activities: removal of two buildings from the site as required in the plan; reengineering of the project to include new wetland mitigation requirements and pumping system updates; a Cultural Survey to assure no culturally sensitive sites are disturbed; two reviews by Oregon Fish and Wildlife; and submission of the final permit through the Army Corps of Engineers, DSL and DEQ. Additionally, we have located and committed the financial resources to complete the project, have partnerships set up with ODOT for some trenching needed along the right of way and with WRG to provide the engineering and plans for the pumping system. The district has spent countless hours answering technical questions and reviewing plans with different agencies and interests. The expenditure of more than \$54,000 has occurred in these activities as well as the organization of more than \$31,000 in professional service costs that are provided through RC&D and engineering and planning services valued at \$10,000 minimum From WRG.

Bruce Fleming planned the project, organized the documentation and original engineering through RC&D, acquired the original water rights permit and the first extension of that right, and obtained a grant to plant the wetland area with approved plants and trees as well as protect the site with fencing (the grant is lost about one year from now).

We believe Bruce Fleming, the Mist-Birkenfeld Fire Protection District, RC&D, and all those who have made this project possible have demonstrated their commitment to seeing it through to a successful conclusion. The project will ultimately provide increased fire protection for all of those who live and work here. It will also protect the Natural Gas production and storage facilities and assets in and surrounding the fire district, all of which are essential to the economy and well being of all of NW Oregon.

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

4-5-11
Date

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WATER RESOURCES DEPT
SALEM, OREGON
WRAD

STATE OF OREGON

COUNTY OF CLATSOP

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BRUCE FLEMING
1129 SW 20TH
PORTLAND, OR 97205

(503) 223-9513

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

APPLICATION FILE NUMBER: R-85899

SOURCE OF WATER: UNNAMED STREAM, A TRIBUTARY OF NEHALEM RIVER

STORAGE FACILITY: FLEMING POND

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

MAXIMUM STORAGE VOLUME: 11.1 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1
THROUGH MARCH 31 AND JULY 1 THROUGH JULY 31 OF EACH YEAR

DATE OF PRIORITY: DECEMBER 12, 2003

DAM LOCATION: SE 1/4 SW 1/4 SECTION 9, T6N, R5W, W.M.; 396 FEET NORTH
& 1320 FEET EAST FROM SW CORNER, SECTION 9

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE 1/4 SW 1/4
SECTION 9
TOWNSHIP 6 NORTH, RANGE 5 WEST, W.M.

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Measurement, recording and reporting conditions:

WATER RESOURCES DEPT
SALEM, OREGON

- ① A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- ② B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

③ C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

④ The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

⑤ The permittee shall pass all live flow outside the storage season described above.

This permit does not provide for the appropriation of water for any out of reservoir uses, the maintenance of the water level or maintaining a suitable fresh water condition. If any water is used for out of reservoir uses, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

STANDARD CONDITIONS

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

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

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

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

This permit does not authorize the permit holder to pursue this right in such a way as to interfere with or affect adjacent property not under the ownership of the permit holder.

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The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

- ⑥ The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2008.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.


The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir stores 9.2 or more acre-feet of water.

If no secondary permit exists and the reservoir stores less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:

- (a) the dimensions of the reservoir;
- (b) the maximum capacity of the reservoir in acre-feet; and
- (c) a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

This permit is issued to correctly identify the reservoir location. Permit R-13921, issued March 29, 2004, is superceded by this instrument and is of no further force or effect.

Issued June 11, 2004


Paul R. Cleary, Director
Water Resources Department

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REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the

purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

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

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**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 R-13974, Water Right Application R-85899)
in the name of Bruce Fleming.) **PROPOSED FINAL ORDER**

Permit Information

Application File R-85899 Permit R-13974

Basin: 1 – North Coast / Watermaster District 1

Date of Priority: December 12, 2003

Authorized Use of Water

Source of Water: Unnamed stream, tributary of Nehalem River
Purpose of Use: Stored Water, Multiple Purpose
Maximum Rate: 11.1 Acre Feet per year (AF)

**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.

This Proposed Final Order applies only to Permit R-13974, water right Application R-85899.
A copy of Permit R-13974 is enclosed as Attachment 1.

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**WATER RESOURCES DEPT
SALEM, OREGON**

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2008 to October 1, 2010.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

USDA – United States Dept. of Agriculture

NRCS – Natural Resource Conservation Service

EQIP – Environmental Quality Incentive Plan

DSL -- Department of State Lands

USACE – United States Army Corp of Engineers

Units of Measure

cfs – cubic feet per second

gpm – gallons per minute

AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) 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 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.

FINDINGS OF FACT

Background

1. Permit R-13974 was granted by the Department on April 11, 2004. The permit authorizes the storage of up to 11.1 AF per year of water in Fleming Pond from an unnamed stream, tributary of Nehalem River, for multiple purposes. The permit specified complete application of water was to be made on or before October 1, 2008.
2. The permit holder submitted an "Application for Extension of Time" to the Department on July 22, 2008 requesting the time to apply water to full beneficial use under the terms of Permit R-13974 be extended from October 1, 2008 to October 1, 2010. This is the first permit extension requested for Permit R-13974.
3. Notification of the Application for Extension of Time for Permit R-13974 was published in the Department's Public Notice dated July 29, 2008. 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 and/or 539.010(5)³.

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

4. On July 22, 2008, the Department received a completed Application for Extension of Time 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)]

5. Senate Bill 300 (1999 legislation) eliminates the requirement that holders of new surface water and ground water permits start construction on water projects within one year after the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999.

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 July 22, 2008, the remaining work to be completed consists of obtaining an approved DSL Fill and Removal permit, mitigation plan, and functional assessment,

¹ORS 537.230 applies to surface water permits only.

²ORS 537.248 applies to reservoir permits only.

³ORS 539.010(5) applies to surface water and ground water permits.

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receiving EQIP funding from the USDA and NRCS, constructing the dam and Fleming Pond, installing a water meter and pipeline, completing engineering and construction inspections, replanting riparian area around construction zone, 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 accomplish the application of water to beneficial use under the terms and conditions of Permit R-13974 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. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the water system was unable to begin prior to October 1, 2008 due to the length of time needed to obtain various permits.
 - b. During the original development time frame under Permit R-13974, being June 11, 2004 to October 1, 2008, the permit holder completed the USDA, NRCS and DSL wetlands mitigation maps, completed the USDA and NRCS final design reports, engineering plans, drawings and specifications for dam and mitigation area, revised and submitted the DSL Fill and Removal permit application, received DSL approval of wetlands delineation, provided additional documentation to DSL and USACE, hired a consultant to complete DSL required documents, entered into discussions with Mist-Birkenfeld Fire District about sharing costs of consulting fees and use of Fleming Pond upon completion as an emergency water supply during the fire season.

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 R-13974 on April 11, 2004, the permit holder has not yet diverted any water from the unnamed stream, tributary of Nehalem River for storage in Fleming Pond.

- a. b. Delay of full beneficial use of water under Permit R-13974 was due, in part, to the permit holder being unable to obtain the necessary permits to start construction of the project in a timely manner.

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 July 22, 2008, the permit holder has invested approximately \$24,300. which is approximately 16 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$123,400. 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 July 22, 2008, the permit holder has invested approximately \$24,300. which is approximately 16 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$123,400. 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 R-13974.

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 R-13974;

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 point of diversion is located on an unnamed stream, tributary of Nehalem River. The unnamed stream, is not located within or above any state or federal scenic waterway, is located within an area ranked "moderate" 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. The Nehalem 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 July 22, 2008, the permit holder has invested approximately \$24,300.
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. The Mist-Birkenfeld Fire District currently uses the Nehalem River as emergency water supply for their 110 square mile service area. Construction of Fleming Pond will provide the Mist-Birkenfeld Fire District with a dependable emergency water supply during the fire season when low or no-flow conditions exist in the Nehalem River.

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

18. 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)]

19. Delay in the development of this project was caused in part by the length of time taken to obtain approval from other governmental agencies, who each have they're own set of unique requirements.

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

20. None have been identified.

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**WATER RESOURCES DEPT
SALEM, OREGON**

CONCLUSIONS OF LAW

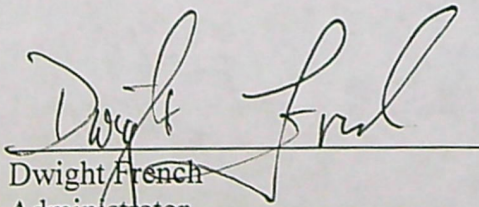
1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Full application of water to beneficial use can be accomplished by October 1, 2010⁴, 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).

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 apply water to beneficial use under Permit R-13974 from
October 1, 2008, to October 1, 2010.

DATED: May 19, 2009


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.*

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WATER RESOURCES DEPT
SALEM, OREGON

⁴Pursuant 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.

Proposed Final Order Hearing Rights

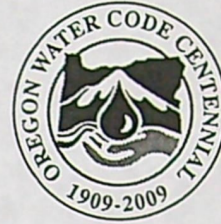
1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than July 3, 2009, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest 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 proposed 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 protest 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.

-
- If you have any questions about statements contained in this document, please contact Scott Kudlemyer 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 Patricia McCarty at 503-986-0820.
 - 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
Salem, OR 97301-1266
-
- Fax: 503-986-0901

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*Final order
first extension*

Oregon Water Resources Department
Water Rights Division



Water Rights Application
Number R-85899

Final Order
Extension of Time for Permit Number R-13974

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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

Permit R-13974 was issued by the Department on April 11, 2004. The permit called for complete application of water to beneficial use by October 1, 2008. On July 22, 2008 Bruce Fleming submitted to the Department an Application for Extension of Time for Permit R-13974. In accordance with OAR 690-315-0050(2), on May 19, 2009, the Department issued a Proposed Final Order proposing to extend the time to fully apply water to beneficial use to October 1, 2010. The protest period closed July 3, 2009, 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 no additional conditions.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

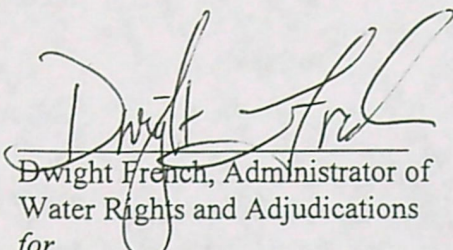
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Order

The extension of time for Application R-85899, Permit R-13974, therefore, is approved. The deadline for applying water to full beneficial use is extended to October 1, 2010.

DATED: July 7, 2009


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

-
- If you have any questions about statements contained in this document, please contact Scott Kudlemyer 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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WATER RESOURCES DEPT
SALEM, OREGON

*Initial proposal -
Rhoda Portis*

**Mist-Birkenfeld Emergency Water
Fleming Pond Project**

Project purpose(s):

The purpose of the project is to create a body of water to serve as the primary water source for the Mist-Birkenfeld Rural Fire District - both pumping and helicopter dipping, increase fish & wildlife habitat, and create a water body for migratory birds and waterfowl.

Project need:

The Fire District needs a dependable year-around emergency water supply for their 110 square mile fire district service area. The current water source is the Nehalem River. Access, adequate water and drawdown from the Nehalem River for emergency situations are a concern. The Nehalem River is difficult to access with the fire trucks and pumping out of the Nehalem River will impact in-stream flows and fisheries. The mill pond across the highway from the fire department is available on a limited basis. The fire department does not have full access to the mill pond and are shut off during the part of the year when the fire hazards are the highest. Construction of this pond will provide more dependable water storage/supply during the time of year when the fire hazard is the highest and flows are non-existent.

Project description:

Location: SE ¼ ; SW ¼ ; Section 9; T6N; R5W, north side of highway 202, between Mist and Birkenfeld and approximately 1200 feet west of the Mist-Birkenfeld fire station. The proposed project will be the construction of an embankment across a small, intermittent non-fish bearing tributary to the Nehalem River. The height of the structure will be 7.4 feet and store approximately 11.1 acre feet of water. The resulting pond, mitigated wetlands and associated riparian plantings will provide approximately 2.5 surface acres of open water and approximately 1.62 acres of created and enhanced wetlands, waterfowl, and wildlife habitat.

Project progress to date:

Landowner, Bruce Fleming has obtained a permit from Oregon Water Resources Department to store and use 11.1 acre feet/year.

Mr. Fleming has obtained a fish passage waiver on the intermittent tributary from the Oregon Department of Fish & Wildlife.

The USDA, Natural Resources Conservation Service has completed a wetland delineation report, preliminary design report, and construction drawings, specifications and maps.

The landowner has completed several draft fill and removal joint permit applications and mitigation plans.

Assistance needed:

The project partners need assistance with completing the permits and mitigation plan, project plans, and locating funding sources for installation of the project. If you have questions please call Rhoda Portis-Coordinator, NW Oregon RC&D Council 503-359-9594 or Bruce Fleming, landowner at 503-223-9513.

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SALEM, OREGON

*WREC
777 1276*

Project Timelines to Date:

1/03 USDA, Natural Resources Conservation Service (NRCS) Engineer completes preliminary design report, engineering plans and drawings for the proposed pond/dam.

4/4/03 Kirk Jarvie-Resource Coordinator/DSL, Chris Knutsen-ODFW, and Christie Fisher-NRCS Engineer visit proposed pond site to discuss permits.

6/23/03 Joint fill & removal permit completed with assistance from RC&D and submitted to Department of State Lands.

6/26/03 Kirk Jarvie-Resource Coordinator/DSL reviews application and requests additional information before processing permit. The Corp of Engineers submits a similar request.

8/14/03 Joint fill & removal permit resubmitted to Department of State Lands.

8/19/03 Kirk Jarvie-Resource Coordinator/DLS reviews application and requests a wetlands delineation report, a compensatory wetland mitigation plan and other additional information.

8/25/03 The Fish Passage Waiver application is approved by Oregon Dept of Fish & Wildlife.

9/24/03 USDA, NRCS completes an Environmental Quality Incentive Plan (EQIP) with landowner, Bruce Fleming, which includes cost share \$\$ for the pond project.

10/31/03 Pam Frohne, Soil Scientist/NRCS completes a wetland conservation determination for the project site.

11/10/03 Bruce Fleming, landowner, requests temporary withdrawal of the permit (hold in abeyance) from the Corp of Engineers until additional information can be provided.

11/17/03 Revised joint fill and removal permit application resubmitted to Department of State Lands.

12/12/2003 Oregon Water Resources Department grants landowner, Bruce Fleming, a permit to store and use 11.1 acre feet annually.

12/22/03 Kirk Jarvie-Resource Coordinator/DSL reviews application, determines it to be incomplete and sends a completeness checklist.

1/26/04 Dennis Griffin, SHPO Archaeologist determines that the project area may possess archaeological sites and advises caution during ground disturbing activities. Corp of Engineers notice states that no impact to cultural resources is anticipated.

1/26/04 Steve Morrow-Resource Coordinator/DSL conducts field visit with Bruce Fleming, Don Mehlhoff/NRCS, and Rhoda Portis-RC&D to discuss the wetlands mitigation plan.

3/04 USDA, NRCS Biologist & RC&D complete the functional assessment and wetlands mitigation plan following an example provided by Steve Morrow.

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WATER RESOURCES DEPT
SALEM, OREGON

3/9/04 Bruce Fleming, landowner, requests temporary withdrawal of the permit (hold in abeyance) from the Corp of Engineers until additional information can be provided.

3/9/04 Janet Morlan-DSL requests additional information and forms before approving the wetlands delineation report.

4/7/04 Bruce Fleming-landowner, Dan Cary-Resource Coordinator/DSL, Pam Frohne-Soil Scientist/NRCS, Don Mehlhoff-District Conservationist/NRCS, and Rhoda Portis/RC&D visit project site to redo the wetlands delineation with the details and scale as requested by DSL. Dan Cary flags the wetlands boundaries.

4/19/04 Christie Fisher, USDA-NRCS Engineer, uses GPS to map the flagged wetland boundaries produces a wetlands boundary map using AUTOCAD. Wetland area is determined to be 0.98 acres.

6/24/04 Christie Fisher, USDA-NRCS Engineer, prepares revised wetlands delineation map with changes per request by Dan Cary.

7/30/04 Bruce Fleming-Landowner, Dan Cary-DSL, Don Mehlhoff-NRCS, Rhoda Portis-RC&D meet at project site to draft a mitigation plan.

8/04 Christie Fisher, USDA, NRCS Engineer prepares cross sections showing excavation within wetlands and recalculates the cubic yards to be removed.

9/24/04 Bruce Fleming-landowner, Christie Fisher-NRCS Engineer, Don Mehlhoff-NRCS, Rhoda Portis-RC&D, visit site to determine the mitigation area and discuss the mitigation plan.

3/05 USDA, NRCS completes design report, engineering plans, drawings and specifications for the dam and the mitigation area.

3/30/05 Revised joint fill & removal permit application and wetlands mitigation plan resubmitted to DSL.

4/11/05 Melinda Wood-DSL Resource Coordinator reviews application, determines the application to be incomplete and sends another completeness and mitigation plan checklist.

4/28/05 Janet Morlan-DSL Wetlands Program Manager rejects the wetlands determination & delineation report.

5/3/05 Contact with Dan Cary, who has left employment with DSL, and ask him to help us with the wetlands delineation documents for DSL.

7/22/05 Dan Cary, working on contract with DSL, completes documentation for the wetlands delineation.

10/7/05 Theresa Kunch-NRCS Soil Scientist, completes ten additional soils investigations to complete the wetlands delineation documentation file.

11/05 Revised wetlands delineation map is completed and forwarded to DSL.

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SALEM, OREGON

2/15/06 Wetlands delineation and map approved by DSL.

4/25/06 Revised joint fill and removal permit application resubmitted to DSL and Corp of Engineers.

5/23/06 Joy Freibaum-DSL Resource Coordinator determines the application to be incomplete and sends another completeness and mitigation checklist.

6/2/06 Bruce Fleming, landowner, requests temporary withdrawal of the permit (hold in abeyance) from the Corp of Engineers until additional information can be provided.

6/6/06 Contact with Kim Travis-Oregon Solutions Team asking if this project would be eligible for their assistance.

6/16/06 Project summary sent to Kim Travis for OST review.

7/06 OST reviews request. The Oregon Solutions Team may be interested if the project partners could contribute some cash to pay for the OST facilitator.

Project Partners:

Bruce Fleming – Landowner of property where the emergency water pond will be located. Phone: 503-223-9513 Cell 503-467-1055 email: rbruce11@juno.com

David Crawford – Fire Chief, Mist-Birkenfeld Fire District. Phone: 503-755-2710

Chris Knutsen, Thomas Stahl - Oregon Department of Fish & Wildlife.
Phone: 503-842-2741

Mike Simek, Malcolm Hiatt – Oregon Department of Forestry. Phone: 503-397-2636

Randy Bergman – Chair, Columbia Soil & Water Conservation District.
Phone: 503-728-2883

Don Mehlhoff – District Conservationist, USDA, Natural Resources Conservation Service for Columbia County. Phone: 503-397-4555 Ext. 105

Rhoda Portis – Coordinator, Northwest Oregon Resource Conservation & Development Council.
Phone: 503-359-9594

Maggie Payton – Coordinator, Upper Nehalem Watershed Council.
Phone: 503-429-2401

Karla Ellis – Project Manager, Regulatory Branch, US Army Corp of Engineers.
Phone: 503-808-4377

Joy Freibaum – Western Region Resource Coordinator, Oregon Department of State Lands. Phone: 503-378-3805 Ext. 268

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Original wetlands delineation completed 10/31/03
certified by Pam Fume, approved Dan Carey 4/07/04
page 5 of this doc

COMPENSATORY WETLAND MITIGATION PLAN

Bruce Fleming Pond Project

To compensate for unavoidable impacts to the 0.94 acres of farmed wetland pasture, a combination of on-site wetland creation and enhancement mitigation is proposed. The wetland *creation* mitigation area is adjacent to the project and the wetland *enhancement* mitigation is directly downstream of the project area.

On-Site Wetland Mitigation

The *enhancement* of existing wetlands is proposed to an area downstream of the project. The approximately 0.42 acre area to be enhanced has been heavily grazed and is dry during the summer months resulting in degraded functional conditions. The hydrology of the area will be improved by the slow release of water from the pond which will extend the growing season of wetland plants and the wetlands area will be enhanced with riparian plantings and a livestock exclusion fence will be constructed.

The *creation* of wetlands will be a 1.2 acre palustrine emergent wetland created adjacent to the permanent pool of the pond. The hydrology of the area will be enhanced with the storage of water during the summer months and the slow release of water during the spring and fall. The hydric soils within the farmed wetland pasture along with fringe soils & vegetation will be excavated, stockpiled, and spread around the pond. Riparian plantings of native grasses, shrubs, and trees will be planted in the buffer area around the pond and constructed wetlands. The pond, shallow water area and enhanced wetland area will be fenced to exclude livestock.

At the compensatory ratios established by DSL, the 0.42 acres of enhancement to the farmed wetland pasture at a ratio of 2:1 will provide 0.21 acres of agriculture mitigation credit.

In addition to the enhancement, the existing 0.94 acres of farmed wetlands pasture will be expanded to create 2.2 acres of open water and 1.2 acres of constructed wetlands upstream of the dam. At the compensatory ratios established by DSL, 1.2 acres of created wetland at a ratio of 1.5:1 will provide 0.80 acres of mitigation credit. The mitigation ratios and credits are summarized in Table 1 below. Sheets 1, 2, 3, 4, and 5 (attached) show the waste and wetland enhancement & creation areas, site plan, grading plan, cross sections through the mitigation area and the wetland mitigation planting areas, respectively.

Table 1. Compensatory Mitigation Summary

<u>Action</u>	<u>Acreage</u>	<u>Mitigation Ratio</u>	<u>Mitigation Credit</u>
1. Wetland Impact	0.94 acre	-----	0.94 acre impact
2. On Site Wetland Enhancement	0.42 acre	2:1	0.21 acre credit
3. On Site Wetland Creation	1.20 acre	1.5:1	0.80 acre credit
			Total 1.01 acre credit

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SALEM, OREGON

PRELIMINARY DESIGN REPORT

01/03/03

for
Fleming Pond Project
Berkenfeld, OR

Summary: This project is authorized for technical assistance by NRCS through the conservation operations program. Design technical assistance by NRCS was initiated by a request from NW Oregon RC&D and the Columbia SWCD. A funding source has not yet been identified, although an EQIP contract for partial funding is a possibility.

- References:**
1. OR NRCS Practice Standards 378: Pond, 432: Dry Hydrant
 2. NRCS National Engineering Manual Ch 11- Ponds and Reservoirs, Ch 6- Structures, Ch 16- Streambank and Shoreline Protection
 3. USDA SCS Oregon Engineering Handbook Hydrology Guide & TR-55, Sept 1987.
 4. USGS Surface Water Data for Oregon. Magnitude and Frequency of Floods in Washington, USGS 97-4277.
 5. Campbell, Alan J. and Sidle, Roy C., "Prediction of Peak Flows on Small Watersheds in Oregon for Use in Culvert Design", American Water Resources Association, Water Resources Bulletin, February 1984.
 6. Western Regional Climate Center, Evaporation Table for the Western United States - Astoria Experiment Station 1948-1973.
 7. Oregon Climate Service, Monthly Means and Extremes - Astoria WSO AP 1971-2000.
 8. USDA SCS TR-19, "Determination of Storage Requirements to Meet Supply-Demand Relationships", 1967.
 9. Adams Electric Coop, "Installing Dry Hydrants - A How to for Municipalities and Fire Companies", 1997.

Job Class: I Effective height = 7.4 ft
Storage: option #1= 4.6 ac-ft option #2=11.1 ac-ft
Storage x effective height: option #1=34.0 ac-ft² #2=82.1 ac-ft²
Drainage area = 0.35 sqmi
Hazard class = a

Location: The project is located in the SW1/4 of Section 9, Township 6 North, Range 5 West from the Willamette Meridian. It is on the north side of highway 202, between Mist and Berkenfeld.

Purpose: The purpose of the pond is to serve as a stockwater source and a water reservoir for the adjacent Mist/Berkenfeld fire station. The landowner would like the pond to be designed to benefit appropriate wildlife species, with native vegetation planted around it.

Proposed Work: Construct an embankment across a small, non-fish bearing tributary to the Nehalem River. The stream channel on this property has historically been grazed by cattle, and is flat (channel slope= .005 ft/ft), with gentle side slopes, and lacking any woody vegetation. To increase capacity of the impoundment, the channel width will be excavated to a width of 130 ft, with steeped side slopes at 3H:1V. Two alternatives were developed - #1 would leave the pond bottom at the existing channel elevation, #2 would excavate an additional 3 ft down for increased capacity. Both alternatives will generate more material than necessary for the embankment -

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WATER RESOURCES DEPT
SALEM, OREGON

01/3/05

DESIGN REPORT
for
Fleming Pond Project
Berkenfeld, OR

Summary: This project is authorized for technical assistance by NRCS through the conservation operations program. Design technical assistance by NRCS was initiated by a request from NW Oregon RC&D and the Columbia SWCD. The project is being funded, in part, through a 2003 EQIP contract with the landowner. Additional funds are to be secured through RC&D and the local fire district.

- References:**
1. OR NRCS Practice Standards 378: Pond, 516: Pipeline.
 2. NRCS National Engineering Manual Ch 11- Ponds and Reservoirs, Ch 6- Structures
 3. USDA SCS Oregon Engineering Handbook Hydrology Guide & TR-55, Sept 1987.
 4. USGS Surface Water Data for Oregon. Magnitude and Frequency of Floods in Washington, USGS 97-4277.
 5. Campbell, Alan J. and Sidle, Roy C., "Prediction of Peak Flows on Small Watersheds in Oregon for Use in Culvert Design", American Water Resources Association, Water Resources Bulletin, February 1984.
 6. Western Regional Climate Center, Evaporation Table for the Western United States - Astoria Experiment Station 1948-1973.
 7. Oregon Climate Service, Monthly Means and Extremes - Astoria WSO AP 1971-2000.
 8. MT USDA-SCS, Montana Stockwater Pipeline Manual, 1992.
 9. IOWA NRCS, Rock Chute Design Program, 1998.

Job Class: I (378) Effective height = 7.4 ft
Storage = 11.1 ac-ft
Storage x effective height = 82.1 ac-ft²
Drainage area = 0.35 sqmi
Hazard class = a
III (516) Diameter = 3 inches
Pressure = 45 psi

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**WATER RESOURCES DEPT
SALEM, OREGON**

Location: The project is located in the SW1/4 of Section 9, Township 6 North, Range 5 West from the Willamette Meridian. It is on the north side of highway 202, between Mist and Berkenfeld.

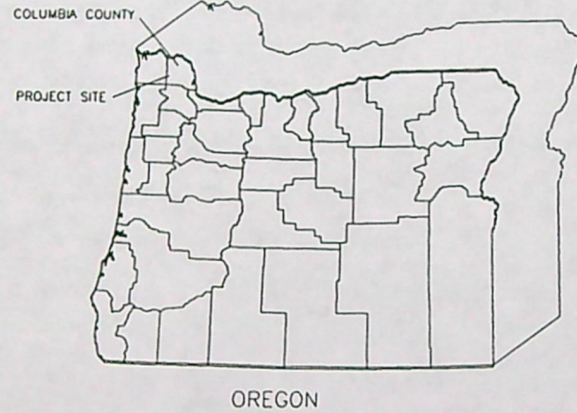
Purpose: The purpose of the pond is to serve as a seasonal stockwater source and a water reservoir for the adjacent Mist/Berkenfeld fire station. The landowner would like the pond to be designed to benefit appropriate wildlife species, with native vegetation planted around it.

Proposed Work: Construct an embankment across a small, non-fish bearing tributary to the Nehalem River. The stream channel on this property has historically been grazed by cattle, and is flat (channel slope= .005 ft/ft), with gentle side slopes, and lacking woody vegetation. To increase capacity of the impoundment, the channel width will be excavated to a width of 150 ft, with steeped side slopes at 3H:1V. Two alternatives were initially developed: one would leave the pond bottom at the existing channel elevation, the second would excavate an additional 3 ft

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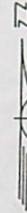
WATER RESOURCES DEPT
SALEM, OREGON



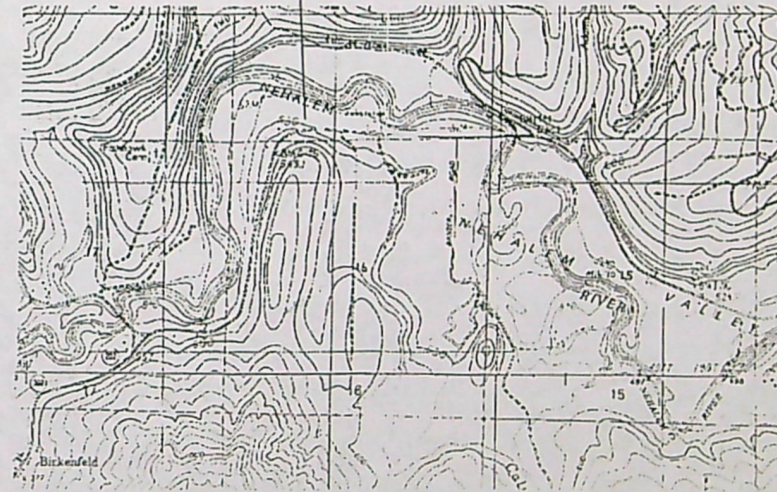
INDEX OF DRAWINGS

SHT. NO. TITLE

1. LOCATION MAPS
2. EMBANKMENT & EMERGENCY SPILLWAY DETAILS
3. PRINCIPAL SPILLWAY DETAILS
4. SITE PLAN
5. POND PROFILE
6. POND CROSS SECTIONS
7. DRY HYDRANT DETAIL



PROJECT LOCATION



GENERAL NOTES

1. NRCS makes no representations as to the existence or non-existence of utilities. It is the responsibility of land owners or operators to comply with the provisions of ORS 757.541 to 757.571. Land owners or operators and contractors will be liable for any damage resulting from disruption of service caused by construction activities.
2. No design changes will be allowed to be made, unless a written request is submitted to the Engineer of Record with all supporting documentation necessary for a complete evaluation of proposed changes and favorable approval is granted.

Practice Code 378 Job Class 1

Design	Drawn	Check	Date
C. Fisher			11/02
Modified	Approved	Title	

Pond Construction Project
Bruce Fleming
Columbia County, Oregon



Oregon Standard Number
AWM-313XXX

SHEET NO. 1 OF 7

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

ADDRESS: 2514 Sykes Road
St Helens, OR 97051

PHONE: (503) 397-4555

FAX: (503) 366-0864

CONSTRUCTION DRAWINGS AND SPECIFICATIONS

PROJECT: Fleming Pond Development PRACTICE CODE: 378, 516, 432

LOCATION: SW1/4 Sec 9, T6N R5W JOB CLASS: I (378), III (516)

LANDOWNER: Bruce Fleming

ADDRESS: 1129 SW 20th Portland, OR 97205

PREPARED BY: Christi Fisher, P.E. NRCS North Coast Basin Engineer

DATE: 2/28/05

DESIGN APPROVED BY: CHRISTI FISHER

DATE: 2/28/05

USDA-NRCS-OR

(Misc-A)

June 1999

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Rock Chute Design Data

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 (Version 4.0 - 07/10/00, Based on Design of Rock Chutes by Robinson, Rice, Kadavy, ASAE, 1998)

 Project: FLEMING
 Designer: CF
 Date: 1/3/03

 County: COLUMBIA
 Checked by: _____
 Date: _____

 WATER RESOURCES DEPT
 SALEM, OREGON

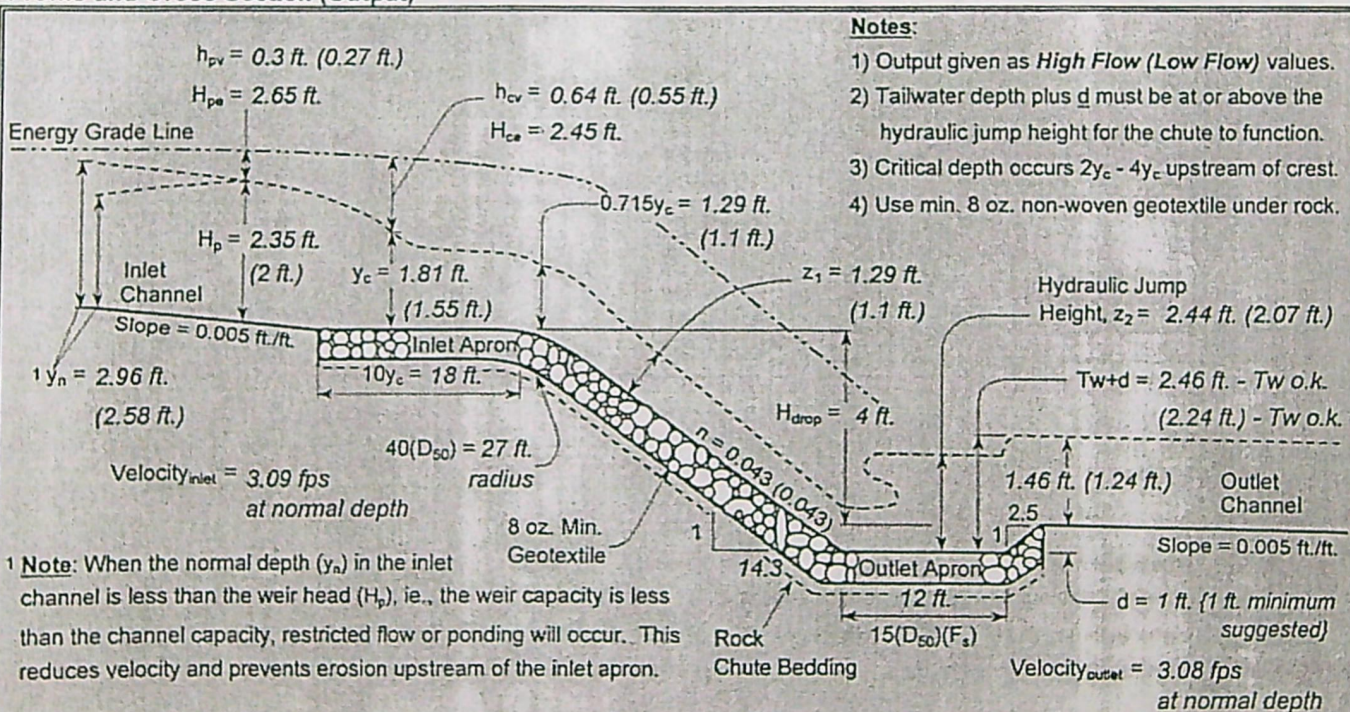
Input Channel Geometry

Inlet Channel	Chute	Outlet Channel
Bw = 5.0 ft.	Bw = 5.0 ft.	Bw = 20.0 ft.
Side slopes = 2.0 (m:1)	Factor of safety = 1.20 (F_s)	Side slopes = 2.0 (m:1)
n-value = 0.050	Side slopes = 2.0 (m:1) → 2.0:1 max.	n-value = 0.040
Bed slope = 0.0050 ft./ft.	Bed slope (14.3:1) = 0.070 ft./ft. → 2.5:1 max.	Bed slope = 0.0050 ft./ft.
Freeboard = 2.5 ft.	Outlet apron depth, d = 1.0 ft.	Base flow = 3.0 cfs

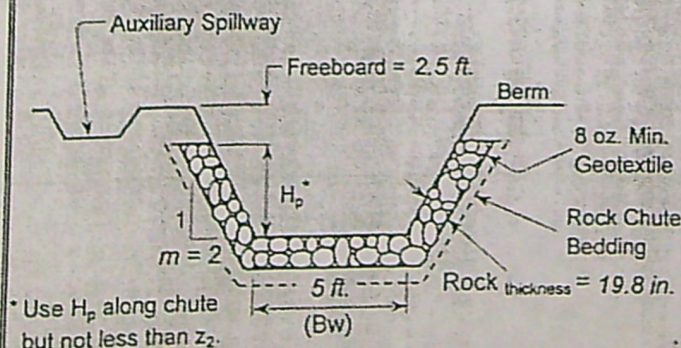
Design Storm Data (Table 2, NHCP, NRCS Grade Stabilization Structure No. 410)

Drainage area = 224.0 acres	Rainfall = ○ 0-3 in. ○ 3-5 in. ● 5+ in.	Note: The total required capacity is routed through the chute (principal spillway) or in combination with an auxiliary spillway.
Apron elev. — Inlet = 95.0 ft. — Outlet = 90.0 ft. — (H_{drop} = 4 ft.)		Input tailwater (T_w):
Chute capacity = Q5-year	Minimum capacity (based on a 5-year, 24-hour storm with a 5+ inch rainfall)	
Total capacity = Q10-year		
Q_{high} = 100.0 cfs	High flow storm through chute	T_w (ft.) = Program
Q_{low} = 75.0 cfs	Low flow storm through chute	T_w (ft.) = Program

Profile and Cross Section (Output)



Profile Along Centerline of Chute



q_t = 13.82 cfs/ft.	Equivalent unit discharge
F_s = 1.20	Factor of safety (multiplier)
z_1 = 1.29 ft.	Normal depth in chute
n-value = 0.043	Manning's roughness coefficient
$D_{50}(F_s)$ = 9.9 in. (71 lbs. - 50% round / 50% angular)	
$2(D_{50})(F_s)$ = 19.8 in.	Rock chute thickness
$T_w + d$ = 2.46 ft.	Tailwater above outlet apron
z_2 = 2.44 ft.	Hydraulic jump height
*** The outlet will function adequately	

High Flow Storm Information

Details of First Extension

FLEMING POND – MIST/BIRKENFELD EMERGENCY WATER SUPPLY

There is a process for requesting an extension of the current water right for the pond from the Oregon Water Resources Department (\$250.00 fee).

Excavation of the pond, core trench, emergency spillway, and adjacent constructed wetland area, will result in a total of **54,087 cubic yards** of excavated material.

The mitigated wetlands area will be **1.2 acres**

Pond will provide approximately **2.5** surface acres of open water.

When full, the pond volume = **548,856** cubic feet.

Note: 1 cubic foot = 7.48 gallons

1 ac-ft = 43,560 cubic feet = 325,872 gallons

Cost Estimate for proposed pond (includes 1.2 acre constructed wetlands area):

Date of estimate: March, 2005

Dam materials \$5,550

Pipeline materials \$4,600

Construction \$75,700

Pipeline Installation \$3,390

Planting/Fencing (includes materials & installation) \$20,160

TOTAL COST: \$109,400

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SALEM, OREGON

Official
approval of
Fleming Pond
Project

MIST-BIRKENFELD RURAL FIRE PROTECTION DISTRICT
12525 Hwy 202, Mist, OR 97016
(503) 755-2710 or FAX (503) 755-2556

Fleming Pond

Board Meeting Minutes
December 16, 2008

Present:

Stephen Butsko, Bill DeJager, Donna Adams, Patricia Wright, Troy Horton

Others:

Chief Crawford, Assistant Chief Mary Lou Busch, Allen Tuck, Louise Green

The regular Board meeting was called to order at 19:00 by Chair DeJager

Chair DeJager asked for any additions to the agenda.

A. Hearing of Individuals

B. Approval of Minutes

Motion by Butsko second by Adams to approve the November 18, 2008 Board Meeting minutes. Motion carried unanimously.

C. Treasurer's Report

Motion by Wright second Butsko to approve the November financial report. Motion carried unanimously.

Motion by Wright second by Horton to approve the expenditures paid in November. Motion carried unanimously.

D. Chief's Report

Chief's report was presented in written form.

Volunteers will be offered the job of hose testing. Chief commented on the great job Greg Mustgrave did on the Peterson Station.

Motion by Wright second by Horton to pay any applicable taxes for the volunteers on their wages for this year. Wright, Horton, Adams, yes vote, Butsko abstained. Motion carried.

* After a lengthy discussion Motion by Wright second by Butsko to pursue the permit process for the Fleming Pond Project. Motion carried unanimously.

Chief Crawford commented that the Vernonia Fire Chief Paul Epler resigned as of 12/15/08.

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DeJager closed the regular meeting at 19:55 and opened the Executive Session pursuant to ORS 192.660 to discuss personal matters.

Regular Board Meeting reopened at 20:05.

WATER RESOURCES DEPT
SALEM, OREGON

March 2010
stimulus
Funding
push us back
attempted to
split project
w/In water work
next summer

CNDV

Records have been redacted or withheld pursuant to the exemption for unauthorized property access or security measures specified in ORS 192.345(22) and (23).

Louise Green was selected by secret ballot to fill the remaining term as Board member held by Troy Horton who officially resigned 12/16/08.

Chair DeJager presented Troy with a watch and thanked him for his dedication and service to the fire district.

E. Unfinished Business

[REDACTED] The committee is also recruiting to have three incident management teams available in our county. They have received 8 applications so far.

F. Policies

G. Correspondence

None

H. New Business

There is a great need for the department to have a pickup for multiple purpose use. Consensus of the Board for the Chief to look into a fuel efficient pickup for department use.

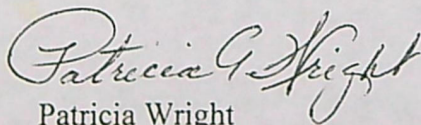
I. Board Member Comments

All members wished everyone a Merry Christmas.

J. Good of the Order

Meeting Adjourned: 19:45

Respectfully Submitted,



Patricia Wright
Secretary

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WATER RESOURCES DEPT
SALEM, OREGON

COPY

First Joint
Permit App

August 19, 2008

Mr. Bruce Fleming
1129 SW 20th Avenue
Portland, Oregon 97205

Subject: Proposal to Provide Professional Natural Resource Services

Dear Bruce:

I am pleased to have the opportunity to submit the following proposal to provide professional natural resource services relating to permitting the construction of a fire pond for the Mist-Birkenfeld Fire District. The fire district has submitted permit materials previously and has been unsuccessful in receiving permits. Using my previous experience with the project and my 15 years of experience as a permitting specialist including experience as a resource coordinator with the Oregon Department of State Lands (DSL), I will assist you and the district in obtaining permits from the U.S. Army Corps of Engineers (Corps) and DSL. Based on my review of the previously submitted documents and agency responses, I will determine the missing elements and prepare a complete permit package to be submitted to the agencies.

SCOPE OF WORK

Joint Permit Application Package

A Joint Permit Application (JPA) application will be completed for the project, to provide the Corps (Section 404 Permit), DSL (Removal-Fill Permit), Oregon State Department of Environmental Quality (ODEQ) (Section 401 Water Quality Certification for Corps Section 404 Permit), and Oregon Coastal Management Program with information needed to review the site design for compliance with their permit requirements. Following is a list of authorizations that require a JPA and the supplemental information required for each approval.

Review Previous Documents and Visit Site

I will review previously submitted permit application documents and visit the proposed project site to reacquaint myself with the project.

Joint Permit Application

I will prepare and submit the JPA for a Section 404 Individual Fill Permit with the Corps for authorization to fill within waters of the United States and for a Removal-Fill Permit with DSL for authorization to fill within waters of the State. The exact fees associated with obtaining a Removal-Fill Permit will depend, on the final amount of fill requested.

The application will include necessary application forms and associated graphics.

DSL Removal-Fill Permit

Removal and fill activities greater than fifty cubic yards in freshwater systems and any impacts to estuarine waters "waters of the State" are regulated by DSL and may be permitted, provided conditions

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SALEM, OREGON

DEQ - Needs a permit 1200C 51510.00
Need someone with credentials

specified in state regulations are met. In order to ensure that the project complies with the state regulations, a JPA is necessary.

✱ Mitigation Plan

I will prepare the mitigation plan in accordance with DSL's estuarine mitigation rules, Corps mitigation standards, and USFWS and NMFS recommendations. The mitigation plan will be based upon the quantity of proposed fill, the functional assessment of the impact and mitigation sites, and the type of wetland community impacted by the filling activity under the proposed project. The mitigation plan will be based upon the wetland impacts identified in the final project design.

The mitigation plan will include a description of the need for the permitted action; an ecological assessment of the proposed mitigation area; conceptual planting and landscaping plans for the mitigation area; a description of performance standards; and, a monitoring plan to gauge the success of the mitigation.

Agency Coordination

Throughout the project, I will coordinate with the Client, DSL, and the Corps. Coordination will include telephone calls and written correspondence. I may also coordinate with staff from USFWS, NMFS, ODEQ, and Oregon Coastal Zone Program.

Assumptions

Additional Cost

- Project design and drawings, storm water management, erosion control plan, and hazardous waste management plan will be prepared and provided by the client.

Excluded tasks and costs

- Permit fees are not included in the cost of this task
- Application for a DEQ 1200C construction stormwater permit not included in the cost of this task.

Deliverables

- JPA permit package including JPA, mitigation plan, and associated documents

COST ESTIMATE

Professional fees including expenses shall be billed as a flat fee of \$3,500. This scope of work will be attached to a contract provided by the client. Work will begin once the contract is agreed upon and signed. Completion of the permit package will be 45 days from notice to proceed, providing that the client provides all the project design details and drawings as requested in previous agency application reviews.

This proposal is valid for 30 days.

I look forward to your favorable consideration and to working with you. If you have questions, please call me at 503.397.2399. I want to be of service.

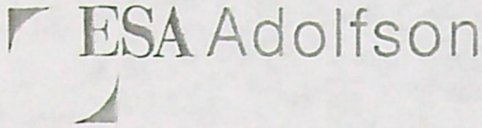
Sincerely,

Dan Cary

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WATER RESOURCES DEPT
SALEM, OREGON



Current SPA

522 SW Fifth Avenue
Suite 820
Portland, OR 97204
503.226.8018 phone
503.226.8017 fax

www.adolfson.com

May 15, 2009

Chief Dave Crawford
Mist-Birkenfeld Rural Fire Protection District
12525 Highway 202
Mist, Oregon 97016

Subject: Scope and cost for the Fleming Pond project.

Dear Mr. Crawford:

It was a pleasure to meet with you and discuss the Fleming Pond project proposed by the Mist Birkenfeld Rural Fire Protection District (MBRFPD). Since we met I have also met with Dan Cary from Oregon Department of State Lands (DSL), who has agreed to be the permit coordinator for the project because he is knowledgeable about it. I discussed with Dan the features of the project; past permitting efforts, and how best to bring this project to a successful conclusion. Two pertinent items came to light during our discussion.

1. Because the project file has been closed at DSL, we must prepare and submit a new application under current rules. This will necessitate a new wetland functional assessment conducted according to current standards, to replace the functional assessment that was previously submitted.
2. The corridor for the proposed water supply pipeline is not included in the wetland delineation that was approved by DSL. Dan pointed out that we will need to look at that corridor to ensure there are no wetlands in it.

To prepare complete and successful permit application materials for submittal to DSL and the U.S. Army Corps of Engineers (Corps), ESA Adolfson proposes the following scope of work.

Task 1. Project initiation and management

ESA Adolfson will review available documents provided by the MBRFPD and DSL to determine which components of the existing work can be used to facilitate successful permitting. This review will also provide information regarding required information that is not present in the existing documents. ESA Adolfson will initiate contact with the Natural Resources Conservation Service (NRCS) to discuss the permitting effort, existing drawings and information, and identify any immediate needs for the permitting. ESA Adolfson will review project designs with NRCS to identify any possible design aspects that will affect permitting.

ESA Adolfson will initiate project files and accounting. Project management including budget management and QA/QC processes will be implemented throughout the project to ensure that high quality, correct deliverables are prepared to successfully acquire permits for the project. Invoices and progress reports will be prepared monthly for the duration of the project.

Deliverables:

- Informal communications (e-mails, memos and telephone calls) between ESA Adolfson, NRCS and MBRFPD.
- List of information that will be needed to complete the permitting process.

Task estimate: \$2,847.00.

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WATER RESOURCES DEPT
SALEM, OREGON

Dave Crawford
May 15, 2009
Page 2

Task 2. Field review

ESA Adolfson will conduct a detailed review of the site and permit requirements to inform preparation of the permit. This review may include interviewing staff from NRCS and MBRFPD. ESA Adolfson will investigate conditions in the proposed pipeline corridor to determine if wetland conditions are present in the corridor. If indicated by conditions, ESA Adolfson will document sample plots to make wetland determinations, or confirm upland conditions. If necessary, ESA Adolfson will work with MBRFPD during this site visit to identify a pipeline corridor that does not include wetlands. The pipeline corridor will be marked in the field. ESA Adolfson will acquire GPS data to prepare a map of the pipeline corridor.

ESA Adolfson will conduct a hydrogeomorphic (HGM) wetland functional assessment of the existing wetlands, according to standards accepted by DSL. This data will be used to prepare a wetland functional assessment report for inclusion in the permit application material.

Deliverables:

- Memorandum describing conditions in the proposed pipeline corridor; map, wetland data sheets and photographs may be included.
- Wetland functional assessment report.

Task estimate: \$3,564.00.

Assumptions

1. Wetlands are not present in the pipeline corridor; or an alternate corridor without wetlands can be readily identified. This task does not include a wetland delineation, or a wetland delineation report.

Task 3. Prepare Joint Permit Application package

ESA Adolfson will prepare a complete permit application package for submittal to DSL and the Corps. This will necessitate significant coordination between ESA Adolfson and NRCS staff to obtain detailed permit information for certain aspects of the project, such as specific areas of wetland impact and mitigation, cut and fills quantities, types of material, etc. Some of this information is present in existing documents and will be used to the fullest extent possible. Data gaps will be filled by consultation with NRCS.

Preparation of the permit application package will include, but is not limited to, the Joint Permit Application form and a complete Wetland Mitigation Plan. The mitigation plan must include the following:

- a complete project description;
- existing and proposed conditions;
- mitigation goals and objectives;
- detailed planting plans;
- construction schedule;
- monitoring schedule and protocols;

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WATER RESOURCES DEPT
SALEM, OREGON

May 18, 2010

Chief Dave Crawford
Mist-Birkenfeld Rural Fire Protection District
12525 Highway 202
Mist, Oregon 97016

Subject: Request for budget modification, Fleming Pond project.

Dear Mr. Crawford:

In May 2009, ESA Adolfson started work for the Mist Birkenfeld Rural Fire Protection District (MBRFPD) to prepare and submit wetland permit applications to facilitate construction of the Fleming Pond. Major tasks that we have completed include the following:

- Obtained concurrence from DSL for the complete wetland delineation;
- Worked with NRCS to develop project drawings and specifications that would result in a positive review by DSL and the US Army Corps of Engineers (Corps);
- Completed and submitted a complete wetland permit application packet to the Corps and DSL.

In the interest of the project we also completed several tasks that were not anticipated in our original scope and estimate:

- Increased the wetland delineation study area to include the pipeline, emergency spillway, and wetland between the upper end of the pond and the highway;
- Conduct a site visit with Oregon Department of State Lands (DSL);
- Completed an Oregon Rapid Wetland Assessment Protocol (ORWAP) wetland assessment as required by DSL (DSL rules changed on January 1, 2010, necessitating this work. The rule change made the previous HGM wetland functional assessment obsolete.)
- Met with James Holm, the Corps project coordinator.

Subsequent to submittal of the permit application, the Corps requested a meeting to discuss the project to clarify how the project had changed from previous applications that were deemed incomplete. Sarah Hartung and I met with James Holm of the Corps to discuss the project. At the conclusion of the meeting, Mr. Holm requested the following:

- Documentation of the additional wetland delineation work that we conducted to consist of text to support the most current wetland delineation map that was approved by DSL.
- An updated fish passage waiver, or confirmation that the existing waiver is still in effect, from Oregon Department of Fish and Wildlife (ODFW).
- Documentation of why the proposed pond will hold 4 million gallons of water, when the estimated need for an emergency is 2 million gallons.

On May 18, we received a request from Dave Stewart from ODFW to attend a site visit with him. This request is a result of DSL's circulation of the permit application to various state agencies, including ODFW.

The requests by the Corps and ODFW were not anticipated in our original cost estimate for the project. While we have made every attempt to complete the project on budget, and have completed several tasks that were not

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WATER RESOURCES DEPT
SALEM, OREGON

Dave Crawford
May 18, 2010
Page 2

included in the original scope, at this time our cost has reached the limit of our original estimate. Therefore I respectfully request your consideration of additional budget to complete the tasks described above.

Estimate

Our estimate to complete the tasks requested by the Corps and ODFW is itemized as follows.

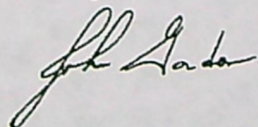
COE request for updated ODFW fish passage waiver	\$ 529.00
ODFW requests field visit	\$ 582.00
COE wetland delineation update memo	\$ 798.00
COE request to justify pond size and wetland impacts	\$ 194.00
Subtotal labor	\$ 2,103.00
Mileage, 1 round-trip, 120 miles @ \$0.55/mile	\$ 66.00
Total	\$ 2,169.00

Our work on tasks not included in the original estimate has led to labor costs that exceed our original budget by \$400.00. I also request your consideration to authorizing this additional amount, which would bring the total request in this letter to \$2,569.00.

Our original estimate for the project was \$13,325.00. The amount requested to complete work requested by the Corps and ODFW would bring the total contract amount to \$15,893.00. Authorization of the additional \$400.00 would put the total at \$16,293.00.

Thank you for consideration of this request.

Sincerely,



John Gordon
Program Manager, Biological Resources

Approved for CLIENT

By: William C DeJager

Name: William C DeJager

Title: Board President

Date: May 18, 2010

Accepted for ESA ADOLFSON

By: _____

Name: Tom McGuire

Title: Portland Office Director

Date: _____

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WATER RESOURCES DEPT
SALEM, OREGON

Item	Amount	Units	Amount	Units	Amount	Units	Cost per hour	Cost Total		Notes
Draft person										
CAD drafting	6	days	8	hours	48	hours	\$ 75.00	\$ 3,600.00		
Engineer										
Travel	6	each	2	hours	12	hours				
Survey	1	each	20	hours	20	hours				includes travel
Meetings	4	each	6	hours	24	hours				
Design	1	each	40	hours	40	hours				
					144	hours	\$ 135.00	\$ 19,440.00		
								** \$ 23,040.00	Total	

**This accounts for time starting 06/2009. It does not include time from initial engineering involvement in 2002

Coordinator

Meetings Field Work	6	each	6	hours	36	hours				includes travel
Email/phone calls	69	each	1	hours	69	hours				
Research / Processing	25	each	1	hours	25	hours				
					130	hours	\$ 62.00	\$ 8,060.00		
								*** \$ 31,100.00	Total NRCS	

Coordinator time is from 1/09. *** Total NRCS time does not include time of District Conservationist or Cultural Resources Specialist

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WATER RESOURCES DEPT
SALEM, OREGON

9:48 AM
03/23/11
Cash Basis

Mist-Birkenfeld Rural Fire Protection District
Transaction Detail By Account
July 2008 through June 2009

Type	Date	Num	Name	Memo	Class	Clr	Split	Original Amount	Paid Amount
GFE · General Fund Expense									
GFE CO · Gen Fund Exp, Capital Outlay									
3B · New Construction, Capital									
3B1 · Capital Improvements									
Check	9/16/2008	12646	Fishhawk Logging	Peterson	General ...		Checking	1,783.50	1,783.50
Check	5/19/2009	12993	ESA Adolfson	Fleming Pond	General ...		Checking	2,000.00	2,000.00
Total 3B1 · Capital Improvements									3,783.50
Total 3B · New Construction, Capital									3,783.50
Total GFE CO · Gen Fund Exp, Capital Outlay									3,783.50
Total GFE · General Fund Expense									3,783.50
TOTAL									3,783.50

initial pgt

*Fleming Pond
2000⁰⁰*

9:49 AM
03/23/11
Cash Basis

Mist-Birkenfeld Rural Fire Protection District
Transaction Detail By Account
July 1, 2010 through March 23, 2011

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WATER RESOURCES DEPT
SALEM OREGON

Type	Date	Num	Name	Memo	Class	Clr	Split	Original Amount	Paid Amount
GFE · General Fund Expense									
GFE CO · Gen Fund Exp, Capital Outlay									
3B · New Construction, Capital									
3B1 · Capital Improvements									
Check	7/21/2010	13500	Department of Stat...	Payment in Li...	General ...		Checking	8,300.00	8,300.00
Check	8/17/2010	13524	ESA Adolfson	Fleming Pond	General ...		Checking	690.75	690.75
Check	9/1/2010	13533	Department of Envir...	Water Qualit...	General ...		Checking	2,800.00	2,800.00
Check	11/11/2010	13631	Dave Crawford	parking Flemi...	General ...		Checking	63.68	63.68
Total 3B1 · Capital Improvements									11,854.43
Total 3B · New Construction, Capital									11,854.43
Total GFE CO · Gen Fund Exp, Capital Outlay									11,854.43
Total GFE · General Fund Expense									11,854.43
TOTAL									11,854.43

DSL Payment
DEA Payment

FP
11,854.43

9:48 AM

03/23/11

Cash Basis

Mist-Birkenfeld Rural Fire Protection District
Transaction Detail By Account
 July 2009 through June 2010

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WATER RESOURCES DEPT
SALEM, OREGON

Type	Date	Num	Name	Memo	Class	Clr	Split	Original Amount	Paid Amount
GFE · General Fund Expense									
GFE CO · Gen Fund Exp, Capital Outlay									
3B · New Construction, Capital									
3B1 · Capital Improvements									
Check	7/21/2009	13069	Brent Dass	security syste...	General ...		Checking	6.56	6.56
Check	9/9/2009	13124	Chase Card Services	sign for parki...	General ...		Checking	98.89	98.89
Check	9/9/2009	13137	ESA Adolfson	Fleming Pond	General ...		Checking	3,167.93	3,167.93
Check	10/6/2009	13177	ESA Adolfson	Fleming	General ...		Checking	1,137.50	1,137.50
Check	11/3/2009	13209	ESA Adolfson	Fleming Pond	General ...		Checking	727.63	727.63
Check	12/29/2009	13271	ESA Adolfson	Fleming pond	General ...		Checking	4,003.00	4,003.00
Check	2/8/2010	13313	ESA Adolfson	Fleming Pond	General ...		Checking	615.88	615.88
Check	3/2/2010	13351	Chase Card Services	security project	General ...		Checking	26.52	26.52
Check	3/16/2010	13366	Department of Stat...	Fleming Pond	General ...		Checking	773.00	773.00
Check	3/16/2010	13367	Columbia County L...	Fleming Pond	General ...		Checking	33.00	33.00
Check	4/20/2010	13397	ESA Adolfson	permit applic...	General ...		Checking	627.15	627.15
Check	6/2/2010	13451	ESA Adolfson	Fleming Pond	General ...		Checking	722.48	722.48
Check	6/28/2010	13472	ESA Adolfson	Fleming Pond	General ...		Checking	1,158.13	1,158.13
Total 3B1 · Capital Improvements									13,097.67
Total 3B · New Construction, Capital									13,097.67
Total GFE CO · Gen Fund Exp, Capital Outlay									13,097.67
Total GFE · General Fund Expense									13,097.67
TOTAL									13,097.67

DSL Permit
CC Land Develop

Fleming Pond
 12,965.70
 12,965.70 09-10
 + 2,000.00 08-09
 11,965.70 10-11
 26,820.13



Oregon

Theodore R. Kulongoski, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregonstatelands.us.

July 13, 2010

MIST-BIRKENFELD RFPD
ATTN DAVID CRAWFORD
12525 HWY 202
MIST OR 97016

State Land Board

Theodore R. Kulongoski
Governor

Kate Brown
Secretary of State

Re: Wetland Delineation Report for Mist-Birkenfeld RFPD fire pond, Bruce Fleming's property, Columbia County; T6N, R5W, Sec. 9C, D, Tax Lot 500; Update to WD #05-0211 associated with App 44509-RF, related to App. # 30763-RP. Ted Wheeler
State Treasurer

Dear Chief Crawford:

The Department of State Lands has reviewed the additional wetland areas delineated by ESA-Adolfson for the site referenced above. [Please note that the study area includes only a portion of the tax lot described above (Figure 5, Tax Lot Map)]. Based upon our review, we concur with their delineation and conclusions. Based upon the information submitted to the Department, a site visit on May 15, 2009 and additional information submitted upon request, we concur with the wetland and waterway boundaries as mapped in Existing Plan View of the permit application.

Please replace all copies of the previously concurred wetland map with this final Department-approved map. Within the expanded study area shown on Figure 5, Tax Lot Map, one wetland (totaling approximately 1.52 acres) including one ill-defined waterway, an un-named tributary of the Nehalem River were identified. The wetland and waterway are subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in the wetland or below the ordinary high water line (OHWL) of a waterway (or the 2 year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. Federal or local permit requirements may apply as well. The Army Corps of Engineers will review the report and make a determination of jurisdiction for purposes of the Clean Water Act.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter, unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity, or complete

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WATER RESOURCES DEPT
SALEM, OREGON



July 13, 2010

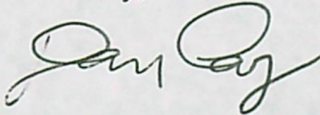
MIST-BIRKENFELD RFPD

Page 2 of 2

permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

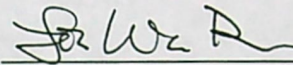
Thank you for having the site evaluated. Please phone me at 503-986-5302 if you have any questions.

Sincerely,



Dan Cary, PWS, CWD
Resource Coordinator
Northern Region
Wetlands and Waterways Division

Approved by



Lori Warner-Dickason
Northern Region Manager
Wetlands and Waterways Division

Enclosures

CC: Sarah Hartung, ESA Adolfson
James McMillan, Corps of Engineers Portland office
Bruce Fleming

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WATER RESOURCES DEPT
SALEM, OREGON

FLEMING POND PROJECT

Compensatory Wetland Mitigation Plan

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WATER RESOURCES DEPT
SALEM, OREGON

Prepared for:

Mist-Birkenfeld RFPD
12525 Highway 202
Mist, Oregon 97016


Prepared by:

ESA Adolfson
522 SW Fifth Avenue, Ste. 820
Portland, Oregon 97204

February 2010



ESA Adolfson



about 1200'

Distance water would
have to travel to actually
Reach Nehalem River
in summer.

June → mid to late Oct.

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APR 06 2011

WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON

COUNTY OF CLATSOP

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BRUCE FLEMING
1129 SW 20TH
PORTLAND, OR 97205

(503)223-9513

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

APPLICATION FILE NUMBER: R-85899

SOURCE OF WATER: UNNAMED STREAM, A TRIBUTARY OF NEHALEM RIVER

STORAGE FACILITY: FLEMING POND

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

MAXIMUM STORAGE VOLUME: 11.1 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1
THROUGH MARCH 31 AND JULY 1 THROUGH JULY 31 OF EACH YEAR

DATE OF PRIORITY: DECEMBER 12, 2003

DAM LOCATION: SE 1/4 SW 1/4 SECTION 9, T6N, R5W, W.M.; 396 FEET NORTH
& 1320 FEET EAST FROM SW CORNER, SECTION 9

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE 1/4 SW 1/4
SECTION 9
TOWNSHIP 6 NORTH, RANGE 5 WEST, W.M.

Measurement, recording and reporting conditions:

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

- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The permittee shall pass all live flow outside the storage season described above.

This permit does not provide for the appropriation of water for any out of reservoir uses, the maintenance of the water level or maintaining a suitable fresh water condition. If any water is used for out of reservoir uses, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

STANDARD CONDITIONS

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

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

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

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

This permit does not authorize the permit holder to pursue this right in such a way as to interfere with or affect adjacent property not under the ownership of the permit holder.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2008.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.

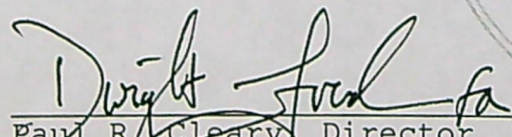
The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir stores 9.2 or more acre-feet of water.

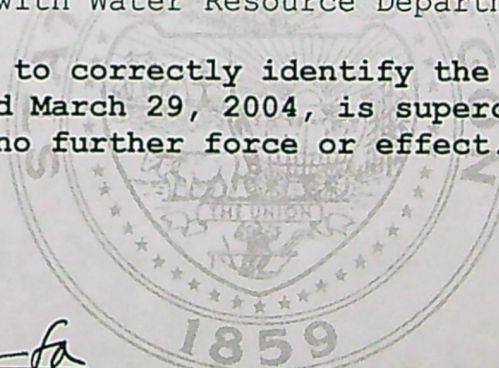
If no secondary permit exists and the reservoir stores less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:

- (a) the dimensions of the reservoir;
- (b) the maximum capacity of the reservoir in acre-feet; and
- (c) a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

This permit is issued to correctly identify the reservoir location. Permit R-13921, issued March 29, 2004, is superceded by this instrument and is of no further force or effect.

Issued June 11, 2004


Paul R. Cleary, Director
Water Resources Department



REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the

purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

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

Application # R-85899 Permit # R-13974

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

♦ **WRIG...**

Money Receipted on: 7-22-08

♦ **Extension Specialist ...**

☒ 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 7/29/08 ms

☒ 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.

Extension PFO Checklist for
Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: R- 85899 Permit: R- 13974 Permit Amendment? No ☒ Yes ☐ T- ☐ pending ☐ approved

Permit Holder's Name: Bruce Fleming

Permit Holder's Mailing Address: 7527 SW LaView Drive, Portland, OR 97219 email rbruce@juno.com

Phone Number: 503-223-9513 (h) 503-467-1055 (cell)

rbruce11@juno.com

POD Location: Township 6N Range 5W Section 9 $\frac{1}{4}$ SESW

Drainage Basin: 1 County: Columbia Watermaster District: 1 Watermaster: Greg Beaman

Date Permit was issued: 4/11/2004

Priority Date: 12/12/2003

Date of PN: 7/29/2008

Source: Unnamed Stream, a Tributary of the Nehalem River

Use: Storage of Water in Fleming Pond for Multiple Purpose

"Q": 11.1 AF/year

Orig "A" Date: _____

Orig "B" Date: 10/1/

Orig "C" Date: 10/1/2008

Extension
request rec'd: 7/22/2008

Last Authorized
"B" Date: 10/1/

Last Authorized
"C" Date: 10/1/2008

Request Number (1, 2, 3...): 1st

Proposed
"B" Date: 10/1/

Proposed
C Date: 10/1/2010

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input type="checkbox"/>	<input type="checkbox"/>	install meter prior to water use - OK no water stored yet
<input type="checkbox"/>	<input type="checkbox"/>	install outlet pipe - OK no water stored yet
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

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
☒ ☐ Financial investments were made toward developing the beneficial water use.

• Amount Invested to date: \$24,300 Estimated Remaining Cost: \$123,400

- ☐ ☒ Beneficial use made of the water during the permit or previous extension time limits

• Permit holder has beneficially used 0 ☐ cfs ☐ gpm ☒ af of the total permitted quantity of water on _____ acres

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

Application: R- 85899 Permit: R- 13974 Township _____ Range _____ Section _____

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

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

Yes No
☐ ☒ above a state scenic waterway? Name _____ 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 sensitive, threatened or endangered species area Source: "/gisdata/dev/projects/salmon/div33map.aml"
☐ ☒ within a critical or limited Ground Water Area? Name of area _____
☒ ☐ in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____
☒ ☐ within an area ranking ☐ low / ☒ moderate / ☐ high for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

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: _____)

☐ 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: _____ Date: _____

**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 # **93410**

INVOICE # _____

RECEIVED FROM: R BRULE FLEMING

BY: _____

APPLICATION	R-85899
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 6734 OTHER: (IDENTIFY) ☐ _____

TOTAL REC'D \$ 350.00

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 \$ 350.00

WATER RIGHTS:

EXAM FEE		RECORD FEE
0201 SURFACE WATER	\$ _____	0202 \$ _____
0203 GROUND WATER	\$ _____	0204 \$ _____
0205 TRANSFER	\$ _____	

WELL CONSTRUCTION

EXAM FEE		LICENSE FEE
0218 WELL DRILL CONSTRUCTOR	\$ _____	0219 \$ _____
LANDOWNER'S PERMIT		0220 \$ _____

_____ OTHER (IDENTIFY) _____

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: **93410**

DATED: 7/22/08 BY: [Signature]



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

July 29, 2008

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 # R-85899 (PERMIT # R-13974)**. 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 Ann Reece at (503) 986-0827. 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".



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301
(503) 986-0900
www.wrd.state.or.us

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, Bruce Fleming
NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]
7527 SW LaView Drive Portland OR 97219
ADDRESS CITY STATE ZIP
503 - 223 - 9513 (H) 503-467-1055 (Cell) rbruce11@juno.com
PHONE E-MAIL ADDRESS

the permit holder of: Application Number R - 85899

Permit Number R - 13974
[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, 2008, be extended to October 1, 2010.

and/or the time in which to:

- ☐ apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, 2008, be extended to October 1, 2010.

Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$350.
- Signature page (last page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

**MAIL COMPLETED APPLICATION
along with the
\$350 STATUTORY FEE TO:**

**Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301**



GENERAL TIPS:

- Request the reasonable amount of time necessary to fully complete the water construction project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet (Instructions for Filling Out Extension of Time Application for Permits) provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at: <http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.
- 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] N/A



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

Date construction began is: Not yet begun

Details of construction: _____

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

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] NO

- 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

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JUL 21 2008

JUL 22 2008

WATER RESOURCES DEPT
SALEM, OREGON

**** 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
1	2010	Construction has not begun to allow for an installation of the water meter
2	2010	There is no meter installed for the water master to access;
3	2010	The Director has not been able to assign record keeping as no water has been able to be used to date.

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

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

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

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
1/2003	USDA, Natural Resources Conservation Service (NRCS) completes preliminary design report	\$4800.00
08/14/2003	Joint fill & removal permit application submitted to Oregon Department of State Lands (DSL)	\$2500.00
08/25/2003	Oregon Department of Fish & Wildlife granted Fish Passage Exemption	\$1400.00
9/24/2003	USDA, NRCS completes an Environmental Quality Incentive Plan (EQIP) with Bruce Fleming, which includes funding for construction of the pond	\$3200.00
9/24/2003	USDA, NRCS completes wetland conservation determination	\$2200.00
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
12/12/2003	Oregon Water Resources Department grants water right permit	
6/24/2004	USDA, NRCS and Oregon DSL complete wetlands delineation map	\$2200.00
03/2005	USDA, NRCS completes final design report, engineer plans, drawings, and specifications for dam and mitigation area	\$4800.00
3/30/2005	Revised fill & removal permit application submitted to Oregon DSL	\$1600.00
2/15/2006	Wetlands delineation approved by Oregon DSL	
4/25/2006	Revised fill & removal permit application and mitigation plan submitted to Oregon DSL per their request	\$1600.00

5/23/2006	Oregon Department of State Lands requests additional documentation for the fill and removal permit, mitigation plan and functional assessment. A consultant must be hired to complete all of the requirements by DSL.	
3/2007	Mist-Birkenfeld Fire District indicates their continued interest in the project and a cost estimate is obtained for a consultant to complete the permits, the mitigation plan and functional assessment.	
5/2008	The Fire District continues to indicate interest in construction of the pond and agrees to contribute funding for hiring a consultant to complete the joint fill and removal permit, the mitigation plan, and the functional assessment.	
7/2008	USDA, NRCS continues to hold EQIP funds for pond construction	
10/1/2008	The permit specified complete application of water to the use shall be made ("C-Date") - all permits contain this date.	

DATE	WORK ACCOMPLISHED AFTER "C-DATE"	COST*
	<i>COMPLETE 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>	
	Construction has not begun pending approval of joint fill and removal permit and mitigation plan by the Department of State Lands and the Army Corp of Engineers	
Total Cost for Chart-C		\$24,300.00

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

- 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

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD	COST*
	<i>List all work done during the last authorized extension period.</i>	
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.	

DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED	COST*
	<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>	
Total Cost of Chart-D		

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

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

4. Cost of project to date: \$24,300.00
(The total combined cost of CHART-C and CHART-D)

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

5. Provide the maximum rate, or duty, of water diverted for beneficial use under this permit, 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 volume totals.

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

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

Acre-feet stored to date = 0 AF

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

6. Provide the total number of acres irrigated to date under this permit (if applicable).

Total acres irrigated to date: 0

[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)
2008	Complete and obtain an approved joint fill & removal permit, mitigation plan, and functional assessment.	\$4,000.00
2009	Build Dam	\$81,250.00
2009	Install Pipeline	\$7,990.00
2009	Engineering and Construction Inspection	\$10,000.00
2009 - 2010	Plant around construction area, complete mitigation plan	\$20,160.00
Year: 2010	Intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		\$123,400

8. Estimated remaining cost to complete the project: \$123,400
(The total cost from CHART-E)

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

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, B, C or D).

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.

A Fish Passage Exemption was applied for and granted from the Oregon Department of Fish and Wildlife Service – 8/25/2003. A wetlands delineation was completed and approved by the Oregon Department of State Lands – 2/6/2006. The joint fill and removal application(s) submitted to the Department of State Lands and US Army Corps of Engineers was returned four times during 2003-2006 asking for additional information, including a revised wetlands delineation report, a compensatory wetlands mitigation plan, a functional assessment and other documents as the permitting and documentation requirements changed over time.

Funds have been approved and will be provided by the Mist-Birkenfeld Fire District to hire a consultant to complete all fill and removal permit applications, mitigation plans and the functional assessment.

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

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JUL 22 2008

RECEIVED

JUL 21 2008

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.

The project construction shouldn't take very long to complete as soon as the joint fill and removal permit application, wetlands mitigation plan and functional assessment are completed by the consultant, routed through the public review process, and approved by Oregon WRD and the USACE. As seen in question number 7, the costs for project completion are relatively expensive and putting together the funding package for project installation will take time. Cost share funds from the USDA, NRCS Environmental Quality Incentive Program have been obligated for project construction. Additional funds are expected to become available by the end of this year and early next year. The project will be completed by 2010.

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

The Mist-Birkenfeld Fire District needs a dependable year-around emergency water supply for their 110 square mile fire district service area. The current water source is the Nehalem River. Access, adequate water during the summer and drawdown from the Nehalem River for emergency situations are a concern. The Nehalem River is difficult to access with the fire trucks and pumping out of the river will impact in-stream flows and fisheries. Construction of this pond will provide a more dependable water storage/supply during the time of year when the fire hazard is the highest and flows in the Nehalem River are low or non-existent.

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.

RB [Signature]
Signature

7-20-08
Date

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E.
SALEM, OR 97301-4172
378-8455 / 378-8130 (FAX)

RECEIPT # **64779**

INVOICE # _____

RECEIVED FROM: K Bruce Fleming
BY: _____

APPLICATION	<u>R85899</u>
PERMIT	
TRANSFER	

CASH: ☐ CHECK:# ☒ 09986 OTHER: (IDENTIFY) ☐ _____

TOTAL REC'D \$ 312.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407	COPIES		\$
_____	OTHER: (IDENTIFY)	_____	\$
_____	OTHER: (IDENTIFY)	_____	\$

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407	COPY & TAPE FEES		\$
0410	RESEARCH FEES		\$
0408	MISC REVENUE: (IDENTIFY)	_____	\$
TC162	DEPOSIT LIAB. (IDENTIFY)	_____	\$
0240	EXTENSION OF TIME		\$

WATER RIGHTS:

0201	SURFACE WATER	EXAM FEE	0202	RECORD FEE
0203	GROUND WATER	\$ <u>312.00</u>	0204	\$
0205	TRANSFER	\$		

WELL CONSTRUCTION

0218	WELL DRILL CONSTRUCTOR	EXAM FEE	0219	LICENSE FEE
	LANDOWNER'S PERMIT	\$	0220	\$

OTHER (IDENTIFY) _____

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: **64779**

DATED: 12/12/03 BY: Leona Allin



State of Oregon
Water Resources Department
 158 12th Street NE, Salem, OR 97310
 (503)378-8455 • (800)624-3199
 www.wrd.state.or.us

Application for a Permit to Store Water

Alternate Review Process (ORS 537.409)

You may use this form for any reservoir storing less than 9.2 acre-feet
 or with a dam less than 10 feet high.

Use a separate form for each reservoir.

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a."

1. APPLICANT INFORMATION

Landowner: BRUCE FLEMING
First Last

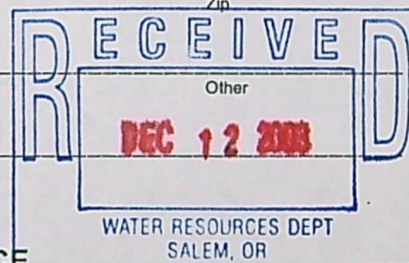
Authorizing Agent: SELF
First Last

Mailing address: 1129 SW 20th
PORTLAND OR 97205
City State Zip

Phone: 503 223-9513
Home Work

*Fax: _____ *E-Mail address: _____

*Optional information



2. LOCATION AND SOURCE

A. Reservoir name: FLEMING POND

B. Source

Provide the name of the water body or other source from which water will be diverted, and the name of the stream or lake it flows into. Indicate if the source is run-off, seepage, or an unnamed spring or stream.

Source: UNNAMED SEASONAL
STREAM Tributary to: NEHALEM RIVER

C. Reservoir Location

township	range	section	quarter/quarter	tax lot no.
<u>6N</u>	<u>5W</u>	<u>9</u>	<u>3 1/2</u>	<u>500</u>

D. Dam

Maximum height of the dam: 7.4 FT. feet.

For Department Use

App. No. R-85899

Permit No. _____

Date _____

Storage—Alternate Review Process/ 1

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JUN 23 2003

WATER RESOURCES DEPT.
 SALEM, OREGON

3. WATER USE

How do you plan to use the stored water?

- Irrigation
- Stockwater
- Aquatic Life
- Nursery Operations
- Cranberry
- Temperature Control
- Forest and Range Management
- Industrial
- Commercial
- Fire Protection
- Mining
- Power Development
- Domestic
- Human Consumption
- Domestic Expanded
- Municipal
- Stormwater
- Quasi-municipal
- Group Domestic
- Recreation
- Wildlife
- Pollution Abatement
- Wetland Enhancement
- Multipurpose

What is an acre foot?

One acre-foot is the volume of water that would cover one acre of land to the depth of one foot.

To find out how much water your pond stores, multiply the surface area (in feet) by the average depth. This will give you a rough estimate of cubic feet. One acre-foot equals 43,560 cubic feet. To be eligible for the alternate process your reservoir must store less than 400,752 cubic feet (43,560 X 9.2).

Application fee

Your application fee is based on the number of acre-feet of your proposed reservoir.

\$10 per acre-foot.

Example:

6.5 acre-feet X \$10=\$65 total.

WRD on the web:
www.wrd.state.or.us

A. Quantity: Amount of water to be stored in the reservoir at maximum capacity: 11.1 AC. FT.

B. Use: Indicate the proposed use(s) of the stored water (see list to the left)

MULTI PURPOSE

Note: If you intend to use this stored water outside of the reservoir you must also file an application to use surface water.

C. Water Rights: What water rights, if any, have been issued for this reservoir? (Indicate permit or certificate number.)

N/A

4. ENVIRONMENTAL IMPACT

A. Channel: Is the reservoir in stream or off channel? ☒ Yes ☐ No

B. Wetland: Is the project in a wetland? ☐ Yes ☐ No ☒ Don't Know

C. Existing: Is this an existing reservoir? ☐ Yes ☒ No

If yes, how long has it been in place? _____ years

D. Fish Habitat: Is there fish habitat upstream of the proposed structure? ☐ Yes ☒ No ☐ Don't Know

If yes, how much? _____ miles

E. Partnerships: Have you been working with other agencies?

☒ Yes ☐ No

Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in the project.

NRCS - DON MEHLHOFF 503) 397-4555

DSL - KIRK JARVEY 503) 378-3805 x 320

CHRIS KNUTSON - ODFW 503) 842-2741

WATER RESOURCES - GREG BEAMAN 503) 842-2413

5. SIGNATURE

I swear that all statements made and information provided in this application are true and correct to the best of my knowledge.

R. B. [Signature]
Landowner

6-18-03
Date

Before you submit your application be sure you have:

- Answered each question completely.
- Included a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- Included a check payable to Oregon Water Resources Department for the appropriate amount.

RECEIVED

JUN 23 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Storage—Alternate Review Process/ 2



Oregon Water Resources Department Land Use Information Form

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. DO NOT fill out this form if water is to be diverted, conveyed, or used only on federal lands.

To Be Completed By Applicant

The following section includes information about proposed water use. This section must be completed by the individual or group that is filing an application for a water right with the Water Resources Department.

A. Applicant

Name: BRUCE FLEMING

Address: 1129 SW 20th

City: Portland State: OR Zip: 97205 Day Phone: (503) 223-9513

B. Land and Location

Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot I.D.	Plan Designation (e.g. Rural Residential/RR-5)	Water to be: (check all that apply)		
500	Farm	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used
		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used

List counties and cities where water is proposed to be diverted, conveyed, or used. Columbia and Glatop Counties, City of Mist & Birkenfeld.

C. Description of Water Use

Indicate what the water will be used for. Include the beneficial use (found in the instruction booklet for your water right application) and use the space below to describe the key characteristics of the project.

Beneficial Use(s): Fighting fires in the area and livestock water

Briefly describe: Mist Rural Fire Protection District Department is located on adjoining property with access to pond for fire suppression.

D. Source

Indicate the source for the proposed water use:

☒ Reservoir/Pond ☐ Ground Water ☐ Surface Water

E. Quantity

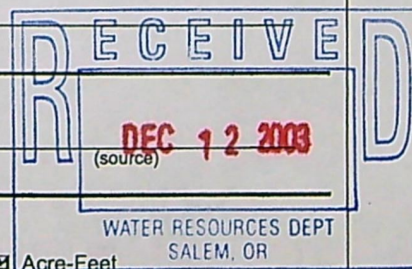
Indicate the estimated quantity of water the use will require:

.09

☐ CFS

☐ GPM

☒ Acre-Feet



Receipt for Request for Land Use Information

State of Oregon
Water Resources Department
Commerce Bldg.
158 12th St. NE
Salem, OR 97310-0210
(503)378-8455

RECEIVED

JUN 23 2003

WATER RESOURCES DEPT.
SALEM, OREGON

app no R-85899

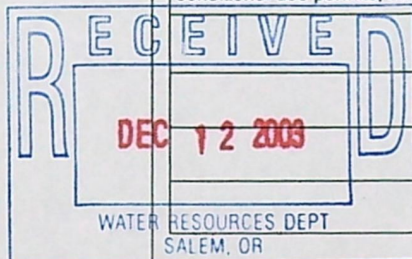
For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed or feel free to copy.

A. Allowed Use

Check the appropriate box below and provide requested information.

- ☒ Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 98A.3
CC20. Go to section B "Approval" below
- ☐ Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below.



Type of Land Use Approval Needed (e.g. plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Check the item that applies: Land Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued

Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus accompanying findings is sufficient.)

B. Approval

Please provide printed name and written signature.

Name: Glen C. Higgins Date: 6/21/03
Title: Chief Planner Phone: (503) 397-1501
Signature: [Signature]

C. Additional Comments

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Requires Division of State Lands Permit [Signature]

Note: If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD will presume the land use associated with the proposed water right is compatible with local comprehensive plans. (See attached letter.)

Receipt for Request for Land Use Information

Name of water right applicant: _____

This receipt must be signed by a local government representative and returned to the applicant at the time they present this form. This receipt must be included in the application for a water right permit if the local government cannot provide the requested land use information while the applicant waits.

City or County: _____

Staff contact: _____ Phone: _____

Signature: _____ Date: _____

RECEIVED

JUN 23 2003

WATER RESOURCES DEPT.
SALEM, OREGON

app no R. 85899

To: Anita Huffman
From: Jonnine Fuss <Jonnine.L.FUSS@wrд.state.or.us>
Subject: Fwd: pou loc error
Cc: Tara Mcloud <Tara.M.MCLOUD@wrд.state.or.us>

Hi Anita,
can you let Tara know how you would like to take care of this? Please cc me when you respond.

thank you,
Jonnine

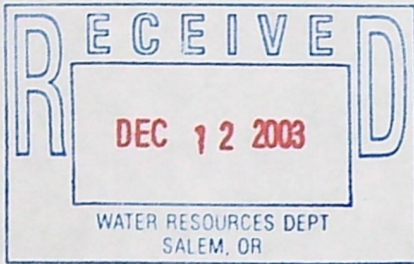
X-Sender: mcloudtm@mailhub.wrд.state.or.us
X-Mailer: QUALCOMM Windows Eudora Version 6.0.3.0
Date: Mon, 12 Apr 2004 15:13:58 -0700
To: Jonnine.L.FUSS@wrд.state.or.us
From: Tara Mcloud <Tara.M.MCLOUD@wrд.state.or.us>
Subject: pou loc error
Cc: Susan.M.DOUTHIT@wrд.state.or.us

While processing Permit: R 13921 App: R 85889 an error was noted on the POU loc. The permit says T 5N R 6W, but the map indicates POU is 6N 5W.
Tara

← this should be
R-85899?

Jonnine Fuss
Water Right/Adjudication Division
Oregon Water Resources Dept
725 Summer Street NE Suite A
Salem, OR 97301
phone: 503-986-0807
fax: 503-986-0901

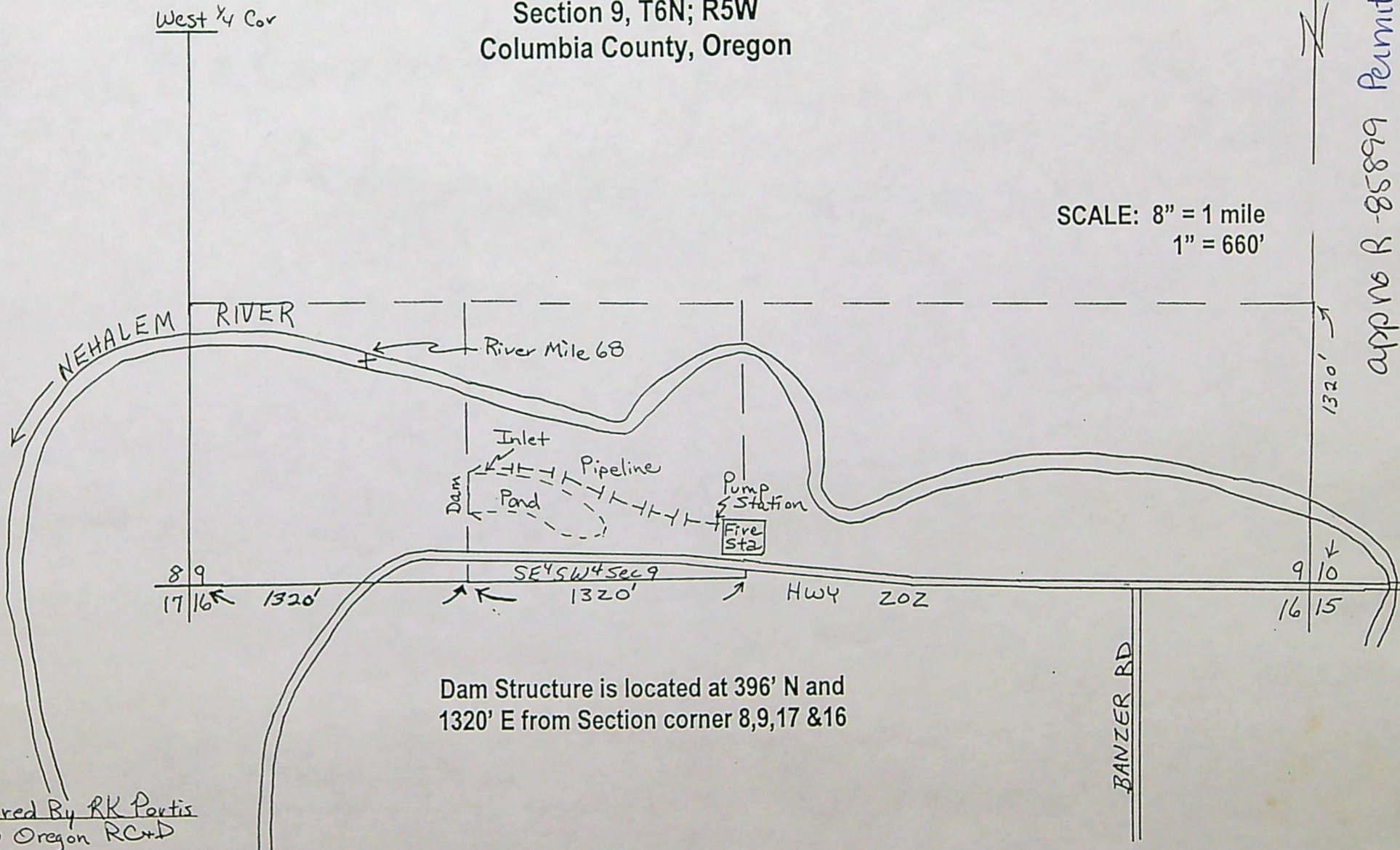
Superseding permit HR13974



APPLICATION MAP - POND CONSTRUCTION PROJECT
IN THE NAME OF BRUCE FLEMING

Section 9, T6N; R5W
Columbia County, Oregon

SCALE: 8" = 1 mile
1" = 660'



Prepared By RK Portis
@ NW Oregon RC&D

approve R-85899 Permit no R-13921



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

August 5, 2004

R. Bruce Fleming
1129 SW 20th Ave.
Portland, OR 97205

REFERENCE FILE: R-85899

Dear Mr. Fleming:

I'm writing in response to your letter dated July 30, 2004 regarding the incorrect legal description listed on the permit numbered R-13921, issued to the above referenced application file.

The permit R-13921 indeed listed the incorrect legal description, and noted Clatsop County on the top of the first page. On June 11, 2004, the Department issued a superceding permit, numbered R-13974 noting the corrected legal description, that being within the SE 1/4 SW 1/4 Section 9, Township 6 North, Range 5 West, W.M. The superceding permit was mailed June 15, 2004.

After receiving your letter, I double checked the superceding permit and noted that the legal is now corrected, but the county notation at the top of the permit is incorrect, as it still notes Clatsop County. This scrivener's error will not cause a second superceding permit to be issued, rather the Department will make note of the county. The legal description will direct any survey and Department record.

By copy of this letter to the file, it will be noted that at time of proof, should a certificate be issued, the correct county shall be recorded on all documents. I'm also copying this letter to the Watermaster for that portion of Columbia County so that the records of that office may be so noted.

Please don't hesitate to contact me if you have any questions. My number is 503-986-0815.

Sincerely,

Anita M. Huffman
Senior Water Rights Caseworker

cc: **FILE**
Watermaster, District 1



Date: July 30, 2004

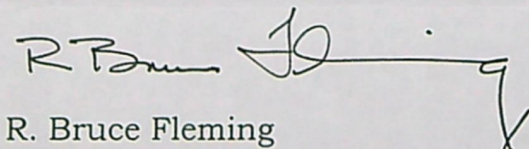
To: Anita Huffman – Water Resources Section
Oregon Water Resources Department
725 Summer St., NE Suite "A"
Salem, OR 97301-1271

RE: Permit No. R-13921
Application No. R-85899

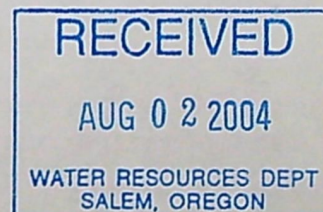
I have identified an error on my permit to construct a reservoir and store public waters. The permit lists the location of the project as SE ¼ SW ¼; Section 9; T5N; R6W in Clatsop County, Oregon. The correct location of the project is SE ¼ SW ¼; Section 9; **T6N; R5W** in **Columbia County**, Oregon.

I am requesting that the Water Resources Department issue a corrected permit with the correct location and legal description of the project.

Thank you,



R. Bruce Fleming
1129 SW 20th Ave.,
Portland, OR 97205



STATE OF OREGON
WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: GINA BEAMAN, FISCAL
CC: FILE R-85899
FROM: Anita Huffmn
SUBJECT: REQUEST FOR REFUND CHECK

PLEASE REFUND \$ 152.00 TO R. Bruce Fleming FILE #R-85899,
RECEIPT # 64779. THESE FUNDS ARE REFUNDED DUE TO :

_____ APPLICATION REJECTED
_____ APPLICATION WITHDRAWN
_____XXXX_____ EXCESS FEES COLLECTED FOR APPLICATION
_____ FILE CLOSED
_____ PROTEST FILING FEE
_____ OTHER: _____

PLEASE INCLUDE THE FOLLOWING MAILING ADDRESS ON THE CHECK:

BRUCE R. FLEMING, 1129 SW 20TH, PORTLAND, OR 97205

OK *Dwight Ford*

0203

MAR 31 2004



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

July 23, 2004

BRUCE FLEMING
1129 SW 20TH
PORTLAND, OR 97205

REFERENCE FILE: R-85899

Dear Mr. Fleming:

Enclosed you will find a check in the amount of \$152.00, issued as a refund of excess application fees collected for the above referenced application.

The Department issued you a permit to store water under this application, and the fees required for filing totaled only \$160.00; however you submitted \$312.00 as payment.

Please call me at 503-986-0815 if you have any questions regarding this file or the refund.

Sincerely,

Anita M. Huffman
Senior Water Rights Caseworker

cc: FILE

Mailing List for Superceding FO Copies

Application #R-85899

Print Date : June 4, 2004

Original mailed to Applicant:

✓ BRUCE FLEMING, 1129 SW 20TH, PORTLAND, OR 97205

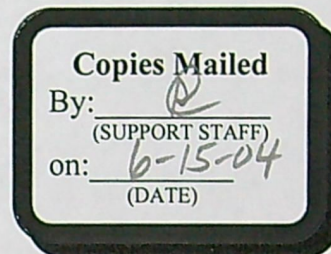
NOTE TO SUPPORT: Please include a Claim of Beneficial Use form with the permit to the applicant.

Copies sent to:

✓ 1. WRD - File # R-85899

FO, Map, and Fact Sheet Copies sent to:

2. WRD - Watermaster; 1
3. WRD - Data Center



Copies sent to Other Interested Persons (*CWRE, Agent, Commenter, etc.*)

4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____
3. _____

CASEWORKER : AMH

Oregon Water Resources Department

Water Rights Application
Number R-85899

Final Order

Appeal Rights

This is a final order in other than contested case. Pursuant to ORS 537.409(9), ORS 183.484, OAR 137-004-080 and OAR 690-01-005, you may either petition the Director for reconsideration of this order or petition for judicial review of this order. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Application History

On DECEMBER 12, 2003, BRUCE FLEMING submitted an application to the Department for a water use permit. Pursuant to ORS 537.409, the Department provided public notice of the application in the Department's weekly public notice. A 60 day comment period followed.

The Department **has not** received adverse comments related to the possible issuance of the attached permit.

The Department **has** received comments from Oregon Department of Fish and Wildlife related to the possible issuance of the attached permit. No substantial issues were raised in those comments.

Water is available for the proposed use as described in the attached permit.


The use, as described on the attached permit, will not injure any existing water rights and does not pose potential detrimental impacts to existing fishery resources.

Therefore, the proposed use would not impair or be detrimental to the public interest.

Order

Application R-85899 therefore is approved pursuant to ORS 537.409, and Permit Number R-13921 is issued as limited by the conditions contained therein.

DATED March 29, 2004


Paul R. Cleary
Director

This document was prepared by Anita Huffman. If you have any questions about any of the statements contained in this document I am the most likely the best person to answer your questions. You can reach me at 503-986-0815.

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 at 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. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF CLATSOP

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BRUCE FLEMING
1129 SW 20TH
PORTLAND, OR 97205

(503)223-9513

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

APPLICATION FILE NUMBER: R-85899

SOURCE OF WATER: UNNAMED STREAM, A TRIBUTARY OF NEHALEM RIVER

STORAGE FACILITY: FLEMING POND

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

MAXIMUM STORAGE VOLUME: 11.1 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1
THROUGH MARCH 31 AND JULY 1 THROUGH JULY 31 OF EACH YEAR

DATE OF PRIORITY: DECEMBER 12, 2003

DAM LOCATION: SE 1/4 SW 1/4 SECTION 9, T6N, R5W, W.M.; 396 FEET NORTH &
1320 FEET EAST FROM SW CORNER, SECTION 9

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE 1/4 SW 1/4
SECTION 9
TOWNSHIP 5 NORTH, RANGE 6 WEST, W.M.

Measurement, recording and reporting conditions:

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

- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The permittee shall pass all live flow outside the storage season described above.

This permit does not provide for the appropriation of water for any out of reservoir uses, the maintenance of the water level or maintaining a suitable fresh water condition. If any water is used for out of reservoir uses, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

STANDARD CONDITIONS

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

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

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

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

This permit does not authorize the permit holder to pursue this right in such a way as to interfere with or affect adjacent property not under the ownership of the permit holder.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2008.


Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.

The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir stores 9.2 or more acre-feet of water.

If no secondary permit exists and the reservoir stores less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:

- (a) the dimensions of the reservoir;
- (b) the maximum capacity of the reservoir in acre-feet; and
- (c) a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

Issued March 29, 2004


 Paul R. Cleary, Director
 Water Resources Department

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

purchaser at closing, if the permit, transfer approval order or certificate is available.

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

State of Oregon
Water Resources Department

Greg Beaman
Watermaster, Dist. 1
4000 Blimp Boulevard
Tillamook, OR 97141

Phone: (503) 842-2413 ext. 119
Fax: (503) 842-3680
Greg.Beaman@wrdd.state.or.us


FAX Memo

Date: 4/13/2004

Number of Pages: 2

Fax No.: 1-503-986-0901

To: Anita Huffman

From: Greg Beaman 

Subject: Application R-85899

Anita:

Attached is a copy of my review for application R-85899.

Greg

WATERMASTER ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

The review of alternate reservoirs is limited to these criteria only.

Date: 1/15/04 30 day Deadline Date: 2/16/04

R-85899

BRUCE FLEMING
1129 SW 20TH
PORTLAND OR 97205

1) Does the proposed reservoir have the potential to injure existing water rights?

☒ NO ☐ YES

Explain: IT WATER IS ONLY APPROPRIATED DURING
THOSE TIMES WHEN WATER AVAILABILITY
INDICATES IT CAN BE APPROPRIATED
OTHERWISE FLOODS SHOULD BE BYPASS
THE TOWN IS ON CHANNEL

2) Can conditions be applied to mitigate the potential injury to existing water rights?

NO / YES

If YES, which conditions are recommended:

N/A

3) Did you meet with staff from another agency to discuss this application?

NO ☒ YES

Who: CHRIS KURBOY Agency: ODFW

Date: 4-12-04

Who: _____ Agency: _____

Date: _____

Watermaster Name: WELLS BEAVER Date: 4-12-04

WRD Contact: Caseworker: Anita Huffman, Water Rights Division

503-986-0185 / Fax: 503-986-0901 / e-mail: Anita.M.HUFFMAN@wrds.state.or.us

ORS 537.409 ALTERNATE RESERVOIR WORKSHEET

FILE # R- 85889
 WM DIST 1
 REGION NW
 Public Notice Date _____
 WID # 1-71927

Land Use complete? Y / N

Appropriate Fees (\$10 per af w/ max of \$100) Y / N

Secondary app necessary? Secondary file number S 150

Is stream **withdrawn**? Y / N

SWW _____ In (may not be allowed) _____ Out or Above

Mail forms to appropriate Interagency Review Team members.

ODFW Contact: Buckman

DEQ Contact: Schaefer

Watermaster: Beaman

If in Umatilla: Confederated Tribes of the Umatilla Indian Reservation, PO Box 638, Pendleton, Oregon 97801

Measurement

Water available:

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

Allowed season JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

conditions Small (≤ 9.2 af) | Medium (> 9.2 , but < 100 af) | Large (≥ 100 af)

Assign permit number. R- 13921

Save in S:\GROUPS\WR\FO\WEEK _____

Remarks: Heming Pond SE SW SEC 9

396' N 1320' E

ODFW wants riparian
planting - no

from SW cor
Sec 9

MET

Completed by AA Date 3/15/04

Analysis for Application: R85899

Location: 5N-6W-9-SESW

Uses: MP P

Basins

BASIN_NUM	BASIN_NAME
1	North Coast

Records Found: 1

WaterMaster Districts

WATERDIST	REGION	ACRES	SQ_MILES	WMASTER	ADDRESS	CITY	ZIP	PHONE	EXT	FAX
1	NW	2223211	3473	Greg Beaman	c/o Port of Tillamook Bay, 4000 Blimp Blvd	Tillamook	97141	503-842-2413	119	503-842-2722

Records Found: 1

WAB

BASIN	WID	LINK1	LINK2
1	71927	Water Availability: 50% 80%	Flood Frequency Analysis

Records Found: 1

County

COUNTY	FIPS
Clatsop	41007

Records Found: 1

Groundwater Restricted Records Found: 0

Divison 33 Area

DIV33
In a Div33 area

Records Found: 1

Rule 4D

RULE4D
In a Rule4D Area

Records Found: 1

303D Streams Records Found: 0

303D Lakes Records Found: 0



Water Availability for WID 71927

jump to:

- [home](#)
- [commission](#)
- [water law](#)
- [water rights](#)
- [surface water](#)
- [ground water](#)
- [maps](#)
- [programs](#)
- [publications](#)
- [links](#)
- [staff](#)
- [file pickup](#)
- [intranet](#)

- [about](#)
- [search](#)
- [oregon online](#)
- [comments](#)

WATER AVAILABILITY TABLE

Water Availability as of 12/24/2003 for

BUSTER CR > NEHALEM R - AT MOUTH

Watershed ID #: 71927 Basin: NORTH COAST Exceedance Level: 50
Time: 13:53 Date: 12/24/2003

Select an Item Number for More Details

Item #	Watershed ID #	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	36	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
2	30120203	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
3	38	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
4	39	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
5	71927	YES	YES	YES	NO	NO	NO	YES	NO	NO	NO	NO	YES	YES

STREAM NAMES

Water Availability as of 12/24/2003 for

BUSTER CR > NEHALEM R - AT MOUTH

Watershed ID #: 71927 Basin: NORTH COAST Exceedance Level: 50
Time: 13:53 Date: 12/24/2003

Item Watershed ID Stream Name

1	36	NEHALEM R > NEHALEM BAY - AT MOUTH
2	30120203	NEHALEM R > NEHALEM BAY - AB COOK CR AT GAGE 14301000
3	38	NEHALEM R > NEHALEM BAY - AB SALMONBERRY R
4	39	NEHALEM R > NEHALEM BAY - AB HUMBUG CR
5	71927	BUSTER CR > NEHALEM R - AT MOUTH

LIMITING WATERSHEDS

Water Availability as of 12/24/2003 for

BUSTER CR > NEHALEM R - AT MOUTH

Watershed ID #: 71927 Basin: NORTH COAST Exceedance Level: 50
Time: 13:53 Date: 12/24/2003

Mnth	Limiting Watershed	Stream Name	Water Avail?	Net Water Available
1	71927	BUSTER CR > NEHALEM R - AT MOUTH	YES	52.8
2	71927	BUSTER CR > NEHALEM R - AT MOUTH	YES	42.5

Buckman

ODFW ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

The review of alternate reservoirs is limited to these criteria only.

Date: 1/15/04 30 day Deadline Date: 2/16/04

R-85899

BRUCE FLEMING
1129 SW 20TH
PORTLAND OR 97205

1) Does the proposed reservoir have the potential to injure existing water rights?
Explain: _____

NO / YES / DON'T KNOW

2) Would the proposed reservoir pose a significant detrimental impact to an existing fishery resource? NO / YES
Explain: (For example, list STE species or other existing fishery resources that would be negatively impacted.)

Pond will increase stream surface area subject to solar input.
Increase in downstream stream temperature may occur. Fish
(coastal cutthroat, jwl coho, etc.) may be present downstream.

Please check either of the boxes below if appropriate:

☐ Any diversion into storage during the period _____ through _____
poses a significant detrimental impact to existing fishery resources.

☐ This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam.
ODFW has determined that additional diversions of water in this area poses a significant detrimental impact to existing
fishery resources during the period April 15 through September 30.

3) Can conditions be applied to mitigate the detrimental impact to an existing fishery resource? NO / YES
If YES, which conditions are recommended: (select from the Menu of Conditions listed on back)

Riparian trees should be planted around pond perimeter.

4) Did you meet with staff from another agency to discuss this application?

NO / YES

Who: _____ Agency: _____ Date: _____
Who: _____ Agency: _____ Date: _____

ODFW Representative: Name: Chris Knutson Date: 2/5/04

WRD Contact: Caseworker: **Anita Huffman**, Water Rights Division
503-986-0815 / Fax: 503-986-0901: Anita.M.HUFFMAN@wrdd.state.or.us

C:\My Documents\odfwformaltres.wpd

RECEIVED

FEB 11 2004

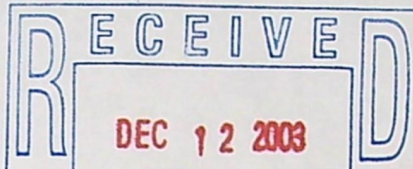
WATER RESOURCES DEPT
SALEM OREGON

Revised 2/27/03

MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND AG
(Developed 6/27/97 - revised 2/26/02)

- fish** The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water.
- odfw** The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screens and by-pass devices are to be in place, functional and approved by an ODFW representative prior to diversion of any water.
- B54b** The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.
- b54c** The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish. The applicant is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, Portland, Oregon, before beginning construction of any in-channel obstruction.
- b54m** The permittee may be required in the future to install, maintain, and operate fish screening devices to prevent fish from entering the proposed diversion.
- b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.
- b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.
- b51a** The period of use has been limited to _____ through _____.
- b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.
- b58** Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit.
- io id yet** (futile call) The use of water allowed herein may be made only at times when waters from the (SPRING OR WHATEVER) would not otherwise flow into a tributary of the (WHATEVER) River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.
- la** This use of water shall be limited when it reduces the flow of water in (NAME OF STREAM).(name of stream).
- ispc** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area.
- The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
- The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.
- io id yet** The stream and its adjacent riparian area shall be fenced to exclude livestock.
- ilv** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.

LEGAL DESCRIPTION



PARCEL 1: All that portion of Government Lot 5 (sometimes referred to as Northwest quarter of Southwest quarter) of Section 9, Township 6 North, Range 5 West, Willamette Meridian, Columbia County, Oregon, that lies South of a line drawn parallel with and 660 feet South from the North line of said Lot 5. Excepting therefrom that portion in deed to Longview Fibre Company by deed recorded July 18, 1957 in Book 133, page 301, Deed Records of Columbia County, Oregon.

PARCEL 2: Lot 2 of Section 13, Township 6 North, Range 5 West, Willamette Meridian, Columbia County, Oregon; Lots 1, 2, 3, 8 and 9 of Section 9, Township 6 North, Range 5 West, Willamette Meridian, Columbia County, Oregon; all that portion of Lot 4 and North half of Southeast quarter of Section 9, Township 6 North, Range 5 West, Willamette Meridian, that lies South of line drawn 880 feet South and parallel with the East and West centerline through said Section 9. EXCEPTING THEREFROM tract of land for Nehalem Highway. ALSO EXCEPTING THEREFROM that portion deeded to Longview Fibre Company by deed recorded July 18, 1957 in Book 133, page 301, Deed Records of Columbia County, Oregon. ALSO EXCEPTING THEREFROM that certain real property conveyed by deed to West Oregon Electric Cooperative, Inc., an Oregon corporation in deed recorded May 17, 1978 in Book 217, page 876, Deed Records of Columbia County, Oregon. ALSO EXCEPTING THEREFROM that portion conveyed to Mist-Birkenfeld Rural Fire Protection District by deed recorded May 20, 1998 as Fee Number 98-05911, Records of Columbia County, Oregon.

PARCEL 3: Lot 2 in Section 8 and Lots 6 and 7 in Section 9, all in Township 6 North, Range 5 West, Willamette Meridian, Columbia County, Oregon. EXCEPTING THEREFROM the above described premises the following parcels of land:

(a) A strip of land 60 feet wide for road purposes as described and conveyed in deed from Erick Erickson to County of Columbia by deed recorded September 17, 1915 in Book 22, page 286, Deed Records of Columbia County, Oregon.

(b) A strip of land 60 feet wide for Nehalem Highway right of way as described and conveyed in deed from Norman Berg et al to Columbia County by deed recorded September 19, 1932 in Book 54, page 576, Deed Records of Columbia County, Oregon.

(c) A strip of land 80 feet wide as described and conveyed in deed from Erick Erickson to the Westport Lumber Company, recorded December 3, 1928 in Book 46, page 567, Deed Records of Columbia County, Oregon.

(d) Land in Lot 7, Section 9, as described and conveyed in deed from Norman L. Berg et al to State of Oregon, recorded May 1, 1942 in Book 70, page 151, Deed Records and deed recorded May 12, 1941 in Book 68, page 234, Deed Records of Columbia County, Oregon.

(e) Any portion of Lot 6 in Section 9 included within the boundaries of deed to Longview Fibre Company recorded July 18, 1957 in Book 133, page 301, Deed Records of Columbia County, Oregon.

Tax Account No. 04-04-2-6509-000-00400
04-04-2-6509-000-00500

appno R-85899

AFTER RECORDING RETURN TO:

R. Bruce Fleming
14211 SE Pair Oaks Ln
Milwaukie, OR 97267

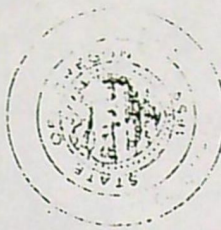
Until a change is requested all tax statements shall be sent to the following address:

same as above

Escrow No: 3400-20353-RB
Order No: 34-20353RB

I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

02958 '99 MAR -2 AM 1:48



ELIZABETH HUSER, County Clerk

By: G. J. J. J. Deputy

Receipt 16084 # of Pages 3

FEES \$ 45.00

WARRANTY DEED - STATUTORY FORM
(INDIVIDUAL or CORPORATION)

LISA GRIMSBO, Successor Trustee of the Howard H. Grimsbo Trust dated August 22, 1991 as an estate in fee simple

Grantor, conveys and warrants to R. BRUCE FLEMING

Grantee, the following described real property free of encumbrances except as specifically set forth herein:

See attached Legal Description

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and to determine any limits on lawsuits against farming or forest practices as defined in ORS 30.930.

ENCUMBRANCES:

see attached exhibit A

The true consideration for this conveyance is \$199,000.00 which is paid by an accommodator as part of a §1031 deferred exchange.

Dated 2/25/99, if a corporate grantor, it has caused its name to be signed by order of its board of directors.

Lisa Grimsbo
Lisa Grimsbo

Successor Trustee
Successor Trustee

STATE OF OREGON, County of Benton) ss.
This instrument was acknowledged before me on February 25th, 1999
by Lisa Grimsbo
This instrument was acknowledged before me on _____, 19____
by _____ as _____
of _____

Stephanie N. Buddleston
Notary Public for Oregon
My commission expires: 03/06/01

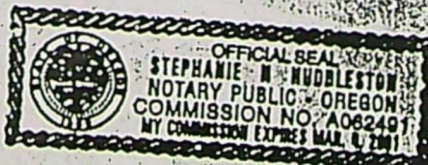


EXHIBIT "A"

1. The assessment roll and the tax roll disc. such that the premises herein described were specially assessed as Forest Land; if the land becomes disqualified for the special assessment under the state, an additional tax may be levied for the previous years in which the land was subject to the special land use assessment.

2. The rights of the public in and to that portion of the premises herein described lying within the limits of roads, streets and highways.

3. The following matters are excluded from the coverage of the policy based on the proximity of the property to NEHALEM RIVER.

- 1) Rights of the public and governmental bodies (including claims of ownership) to that portion of the premises lying below the high water mark of the NEHALEM RIVER as it now exists or has existed.
- 2) Any adverse claim based on the assertion that:
 - a) Some portion of said land has been created by artificial means or has accreted to such portion so created.
 - b) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the NEHALEM RIVER or has been formed by accretion to such portion.
 - c) Any adverse claim based upon the assertion that the NEHALEM RIVER has changed in location.

4. An easement created by instrument, including the terms and provisions thereof,

Dated: May 12, 1916
Recorded: May 20, 1916
Book/Page: 23/226
In favor of: Nehalem Investment Company
For: Railroad right of way

5. Limited access provisions contained in deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: May 6, 1941
Book/Page: 68/217

6. An easement created by instrument, including the terms and provisions thereof,

Dated: December 17, 1945
Recorded: August 9, 1989
Fee Number: 89-4302
In favor of: West Oregon Electric Cooperative, Inc.
For: electric transmission line

7. Easement and maintenance agreement, including the terms and provisions thereof,

Between: Howard H. Grimsbo Trust and Mist-Birkenfeld Rural Fire Protection District
Recorded: May 20, 1998
Fee Number: 98-05910

Said easement also recorded October 1, 1998 as Fee Number 98-12407, Records of Columbia County, Oregon.

STATE OF OREGON REMITTANCE ADVICE

TO SIGN UP FOR DIRECT DEPOSIT PAYMENT SERVICE AND RECEIVE CONVENIENT,
ELECTRONIC PAYMENTS, LOG-ON TO <http://scd.das.state.or.us/scd.htm> ON THE
INTERNET, AND CLICK ON EFT/ACH VENDOR PAYMENTS

WARRANT NO. [REDACTED]

WATER RESOURCES DEPARTMENT

(503) 986-0926 EXT.

INVOICE NO.	INVOICE DATE	INVOICE DESCRIPTION	AGY	DOCUMENT	AMOUNT
		64779 - R85899 REVENUE REFUND	690	VP019852	152.00
Records have been redacted or withheld pursuant to the exemption for financial transfer records specified in ORS 192.345(27).					
VENDOR NAME: BRUCE R FLEMING			ISSUE DATE: 04/05/04		WARRANT AMOUNT 152.00

STATE OF OREGON

Dept of Administrative Services
To the State Treasurer, Salem, OR 97301-3896
WATER RESOURCES DEPARTMENT
(503) 986-0926 EXT.

96-10
1232
CHECK DATE
04/05/04



BANK WARRANT NO.
11 [REDACTED]

PAY THIS AMOUNT
\$152.00

DOCUMENT NO.
VP019852

*****ONE HUNDRED FIFTY TWO AND 00/100 DOLLARS
PAY TO THE ORDER OF:

BRUCE R FLEMING
1129 SW 20TH
PORTLAND

OR 97205

VOID AFTER 2 YEARS FROM DATE OF ISSUE

John J. Fozard
AUTHORIZED SIGNATURE

THE FACE OF THIS CHECK HAS A COLORED BACKGROUND. * EXPLANATION OF ADDITIONAL SECURITY FEATURES INDICATED ON REVERSE SIDE

STATE OF OREGON
WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: GINA BEAMAN, FISCAL
CC: FILE R-85899
FROM: Anita Huffmn
SUBJECT: REQUEST FOR REFUND CHECK

PLEASE REFUND \$ 152.00 TO R. Bruce Fleming FILE #R-85899,
RECEIPT # 64779. THESE FUNDS ARE REFUNDED DUE TO :

_____ APPLICATION REJECTED
_____ APPLICATION WITHDRAWN
____ XXXX _____ EXCESS FEES COLLECTED FOR APPLICATION
_____ FILE CLOSED
_____ PROTEST FILING FEE
_____ OTHER: _____

PLEASE INCLUDE THE FOLLOWING MAILING ADDRESS ON THE CHECK:

BRUCE R. FLEMING, 1129 SW 20TH, PORTLAND, OR 97205

OK *Dwight Ford*

0203

MAR 31 2004

R11 965 11
Bruce Fleming
R-85899

FO 11/9



STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIPT # 106663

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # _____

RECEIVED FROM: MIST-BIRKENFELDBY: Rural Fire Protection DistAPPLICATION: R-13974PERMIT: R-85899

TRANSFER: _____

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

☒ 14485TOTAL REC'D \$ 1200.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES

PCA 47126R11 965 11

\$

0408 OTHER:

(IDENTIFY)

Reimbursement Authority\$ 1200.00

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

\$

WATER RIGHTS:

0201 SURFACE WATER

EXAM FEE

\$

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

EXAM FEE

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY) _____

RECORD FEE

\$

\$

LICENSE FEE

\$

\$

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: 106663

DATED: 8-27-12 BY: L Bell

**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 # **106663**

INVOICE # _____

RECEIVED FROM: MIST-BIRKENFELD
BY: Rural Fire Protection Dist

APPLICATION	<u>R-13977</u>
PERMIT	<u>85899</u>
TRANSFER	

CASH: ☐ CHECK:# ☒ 14485 OTHER: (IDENTIFY) ☐ _____

TOTAL REC'D \$ 1200.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES PCA 47126 R11 965 11 \$ _____
0408 OTHER: (IDENTIFY) Reimbursement Authority \$ 1200.00
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	\$ _____

WATER RIGHTS:

0201	SURFACE WATER	EXAM FEE \$ _____	0202	RECORD FEE \$ _____
0203	GROUND WATER	EXAM FEE \$ _____	0204	RECORD FEE \$ _____
0205	TRANSFER	EXAM FEE \$ _____		

WELL CONSTRUCTION

0218	WELL DRILL CONSTRUCTOR	EXAM FEE \$ _____	0219	LICENSE FEE \$ _____
	LANDOWNER'S PERMIT		0220	LICENSE FEE \$ _____

OTHER (IDENTIFY) _____

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	\$ _____

**RECEIVED
OVER THE COUNTER**

TREASURY OTHER / RDX

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

RECEIPT: **106663**

DATED: 8-27-12 BY: L Bell

**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 # **106278**

INVOICE # _____

RECEIVED FROM: Mist Birkonfeld

BY: _____

APPLICATION	R-85899
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 14425 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 125.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES

OTHER: _____

(IDENTIFY) _____

\$ _____
\$ 125.00

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

WATER RIGHTS:

0201 SURFACE WATER

0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

OTHER (IDENTIFY) _____

EXAM FEE

\$ _____

\$ _____

\$ _____

EXAM FEE

\$ _____

0202

0204

0219

0220

RECORD FEE

\$ _____

\$ _____

LICENSE FEE

\$ _____

\$ _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE

0210 MONITORING WELLS

OTHER (IDENTIFY) _____

\$ _____

\$ _____

CARD # _____

CARD # _____

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 _____

**RECEIVED
OVER THE COUNTER**

\$ _____

RECEIPT: **106278**

DATED: 7-17-13 BY: 2R

MIST-BIRKENFELD RFPD

Oregon Water Resources Department
GFE · General Fund Expense:GFE CO ·

8/27/2012

14485

1,200.00

RECEIVED
OVER THE COUNTER

RECEIVED

AUG 29 2012

WATER RESOURCES DEPT
SALEM, OREGON

Checking

Reimbursement authority agreement

1,200.00

Oregon

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301-1266

WR

ADDRESS SERVICE REQUESTED

BRU
1129
POR

Assigned to
Spracher
AUG 09 2012

HLB-TSB 97205

97301@1266

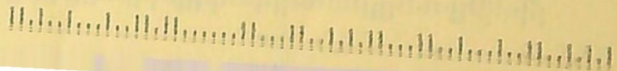
UNITED STATES POSTAGE
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SEP 26 2012
MAILED FROM ZIP CODE 97301

RECEIVED

CT 01 2012

RESOURCES DEPT
EM, OREGON

00 09/30/12
SENDER
AS ADDRESSED
FORWARD
*0989-07515-26-41
UNABLE TO
BC: 97301126673



Oregon

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301-1266

WR

ADDRESS SERVICE REQUESTED

PRESORTED
FIRST CLASS



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0006555120 SEP 26 2012
MAILED FROM ZIP CODE 97301
\$ 00.35⁰

RECEIVED

OCT 01 2012

WATER RESOURCES DEPT
SALEM, OREGON

BRUCE FLEMING
1129 SW 20TH
PORTLAND OR 97205

NIXIE 970 FE 1 00 09/30/12
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 97301126673 *0989-07515-26-41

HLB-TSB 97205

97301@1766



**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit R-13974, Water Right Application R-85899)PROPOSED FINAL ORDER
in the name of Bruce Fleming)

Permit Information

Application File R-85899 Permit R-13974

Basin: 1 – Clatsop / Watermaster District 1

Date of Priority: December 12, 2003

Authorized Use of Water

Source of Water: Unnamed stream, a tributary of Nehalem River

Purpose of Use: Multiple Purpose

Maximum Storage Volume: 11.1 Acre-Feet (AF) Each Year

**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.

This Proposed Final Order applies only to Permit R-13974, water right Application R-85899.
A copy of Permit R-13974 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2012 to October 1, 2017.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
PFO – Proposed Final Order
DEQ – Oregon Department of Environmental Quality

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
AF – acre-feet

AUTHORITY

Generally, see ORS 537.248 and OAR Chapter 690 Division 315.

ORS 537.248(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause and reasonable diligence shown, extend the date for beginning and completing construction and for completing perfection of the use for a reservoir permit for a new storage project held by a county, municipality or district. The extension shall not exceed 10 years, but the applicant may request additional extensions.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time pursuant to ORS 537. 248 may be approved to begin and complete construction and/or apply water to full beneficial use.

FINDINGS OF FACT

Background

1. Permit R-13974 was granted by the Department on March 29, 2004. The permit authorizes storage up to 11.1 AF of water in Fleming Pond. The source of the stored water is Unnamed stream, a tributary of Nehalem River. The purpose or use of the stored water is multiple purpose. The permit specified that the reservoir shall be filled and complete application of the stored water was to be made on or before October 1, 2008.

2. Two prior permit extensions have been granted for Permit R-13974. The most recent extension request resulted in the completion dates for completing construction and full application of water being extended to October 1, 2012.
3. The permit holder submitted an "Application for Extension of Time" to the Department on July 17, 2012, requesting the time to complete construction of the reservoir and the time to apply water to full beneficial use under the terms and conditions of Permit R-13974 be extended from October 1, 2012 to October 1, 2017.
4. Notification of the Application for Extension of Time for Permit R-13974 was published in the Department's Public Notice dated July 24, 2012. 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 537.248.¹

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

5. On July 17, 2012, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

Duration and Justification of Extension

Under ORS 537.248(2) an extension allowed under this subsection may not exceed 10 years, but the applicant may request additional extensions. Under OAR 690-315-0030 the applicant is required to justify why the requested time is needed to begin construction and fully apply water to beneficial use.

6. According to the permit holder, the remaining work to be accomplished under Permit R-13974 consists of completing construction of the water system and applying water to full beneficial use.
7. As of July 17, 2012, the permit holder has stored 0 AF of the water authorized under Permit R-13974 for multiple purpose use.
8. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2017, to complete construction of the reservoir, to fill the reservoir, and to accomplish the application of water to beneficial use under the terms of Permit R-13974 is both reasonable and necessary.
9. An extension to complete construction of the reservoir and to accomplish the application of water to beneficial use under the terms of Permit R-13974 may not exceed 10 years.

¹ORS 537.248 applies to reservoir permits issued to a county, municipality or district for new storage projects.

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 Work Accomplished [OAR 690-315-0040(3)(a)]

10. Work was accomplished within the time allowed in the permit or previous extension as follows:

- a. Construction of the water system was unable to begin prior to October 1, 2008, due to the length of time needed to obtain various permits.
- b. Work was completed (specified in the most recent Application for an Extension of Time) during the original development time frame and the first extension period under Permit R-13974.
- c. During the most recent extension period, being October 1, 2010 to October 1, 2012, the permit holder has:
 - Obtained additional government agency permits, including a U.S. Army Corps of Engineers permit, an Oregon Department of Environmental Quality Construction Storm Water Control Permit, and an Oregon Department of State Lands Removal/Fill Permit;
 - Worked with the Mist-Birkenfeld Rural Fire Protection District, Northwest Natural Gas, and Enerfin Inc. to obtain funding to pay for project construction;
 - Worked with both DEQ and the Department to reach consensus regarding conflicting agency requirements pertaining to construction of the proposed reservoir;
 - Planned to conduct in-water construction work for the proposed reservoir, required wetland mitigation, and pumping system during late summer and fall of 2012; and
 - Applied with the Department for an extension to Permit R-13974.

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

11. The following beneficial use was made of the water during the permit or previous extension time limits:

- a. Since the issuance of Permit R-13974 on March 29, 2004, the permit holder has not stored water nor diverted water from the Unnamed stream, a tributary of Nehalem River for storage.
- b. Delay of full beneficial use of water under Permit R-13974 was due, in part, to the permit holder failing to obtain other government permits to construct the reservoir and sufficient funding to pay for the construction of the reservoir.

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

- 12. 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)]

- 13. Financial investments made toward developing the beneficial water use.
 - a. According to the permit holder, by August 31, 2012, they have invested approximately \$429,155, which is approximately 91 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$40,000 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)]

- 14. According to the permit holder, as of August 31, 2012, they have invested approximately \$429,155, which is 91 percent of the total projected cost for complete development of this project. The permit holder anticipates a \$40,000 investment is needed for the completion of this project.

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

- 15. The Department has found good faith of the appropriator under Permit R-13974.

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:

- 16. 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 R-13974; 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 source of water for the reservoir, an unnamed stream, a tributary of Nehalem River, is not located within a Withdrawn Area. The unnamed stream, a tributary of Nehalem River, is not located within or above any state or federal scenic waterway, however it is located within an area ranked "Moderate" 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. The unnamed stream, a tributary of Nehalem River, is listed by the Department of Environmental Quality as a water quality limited stream.

17. Economic investment in the project to date [OAR 690-315-0040(4)(d)].

- a. As of August 31, 2012, the permit holder has invested approximately \$429,155.

18. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].

- a. Northwest Natural Gas, Enerfin, and the Mist-Birkenfeld Rural Fire Protection District have been identified as contributing economically to the project, and relying on completion of the project for emergency firefighting purposes.

19. 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.

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

20. 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)]

21. Delay in the development of this project was caused in part by the length of time taken to obtain approval and/or permits from other governmental agencies, who each have their own set of unique governmental requirements.

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

22. Unforeseen events extended the length of time needed to fully develop and perfect Permit R-13974, in that the permit holder was faced with obtaining financing and additional governmental agency permits to complete development of the project in a timely manner.

CONCLUSIONS OF LAW

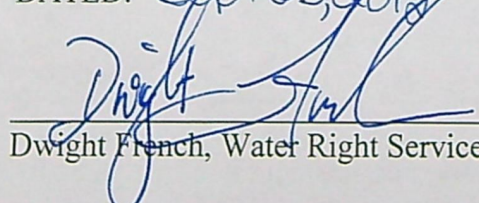
1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The 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).

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 construct and fill the reservoir and to apply water to beneficial use under Permit R-13974 from October 1, 2012 to October 1, 2017.

DATED: *Sept 25, 2012*


Dwight French, Water Right Services Administrator

*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 submit a written protest to the proposed final order. The written protest must be received by the

2

- If you have any questions about statements contained in this document, please contact Joan Smith at 503-986-0898.
 - 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 Patricia McCarty at 503-986-0820.
 - 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 Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
- Fax: 503-986-0901

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit R-13974, Water Right Application R-85899)PROPOSED FINAL ORDER
in the name of Bruce Fleming)

Permit Information

Application File R-85899 Permit R-13974

Basin: 1 – Clatsop / Watermaster District 1

Date of Priority: December 12, 2003

Authorized Use of Water

Source of Water: Unnamed stream, a tributary of Nehalem River

Purpose of Use: Multiple Purpose

Maximum Storage Volume: 11.1 Acre-Feet (AF) Each Year

**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.

This Proposed Final Order applies only to Permit R-13974, water right Application R-85899.
A copy of Permit R-13974 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2012 to October 1, 2017.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
PFO – Proposed Final Order
DEQ – Oregon Department of Environmental Quality

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
AF – acre-feet

AUTHORITY

Generally, see ORS 537.248 and OAR Chapter 690 Division 315.

ORS 537.248(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause and reasonable diligence shown, extend the date for beginning and completing construction and for completing perfection of the use for a reservoir permit for a new storage project held by a county, municipality or district. The extension shall not exceed 10 years, but the applicant may request additional extensions.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time pursuant to ORS 537. 248 may be approved to begin and complete construction and/or apply water to full beneficial use.

FINDINGS OF FACT

Background

1. Permit R-13974 was granted by the Department on March 29, 2004. The permit authorizes storage up to 11.1 AF of water in Fleming Pond. The source of the stored water is Unnamed stream, a tributary of Nehalem River. The purpose or use of the stored water is multiple purpose. The permit specified that the reservoir shall be filled and complete application of the stored water was to be made on or before October 1, 2008.

2. Two prior permit extensions have been granted for Permit R-13974. The most recent extension request resulted in the completion dates for completing construction and full application of water being extended to October 1, 2012.
3. The permit holder submitted an "Application for Extension of Time" to the Department on July 17, 2012, requesting the time to complete construction of the reservoir and the time to apply water to full beneficial use under the terms and conditions of Permit R-13974 be extended from October 1, 2012 to October 1, 2017.
4. Notification of the Application for Extension of Time for Permit R-13974 was published in the Department's Public Notice dated July 24, 2012. 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 537.248.¹

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

5. On July 17, 2012, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

Duration and Justification of Extension

Under ORS 537.248(2) an extension allowed under this subsection may not exceed 10 years, but the applicant may request additional extensions. Under OAR 690-315-0030 the applicant is required to justify why the requested time is needed to begin construction and fully apply water to beneficial use.

6. According to the permit holder, the remaining work to be accomplished under Permit R-13974 consists of completing construction of the water system and applying water to full beneficial use.
7. As of July 17, 2012, the permit holder has stored 0 AF of the water authorized under Permit R-13974 for multiple purpose use.
8. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2017, to complete construction of the reservoir, to fill the reservoir, and to accomplish the application of water to beneficial use under the terms of Permit R-13974 is both reasonable and necessary.
9. An extension to complete construction of the reservoir and to accomplish the application of water to beneficial use under the terms of Permit R-13974 may not exceed 10 years.

¹ORS 537.248 applies to reservoir permits issued to a county, municipality or district for new storage projects.

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 Work Accomplished [OAR 690-315-0040(3)(a)]

10. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the water system was unable to begin prior to October 1, 2008, due to the length of time needed to obtain various permits.
 - b. Work was completed (specified in the most recent Application for an Extension of Time) during the original development time frame and the first extension period under Permit R-13974.
 - c. During the most recent extension period, being October 1, 2010 to October 1, 2012, the permit holder has:
 - Obtained additional government agency permits, including a U.S. Army Corps of Engineers permit, an Oregon Department of Environmental Quality Construction Storm Water Control Permit, and an Oregon Department of State Lands Removal/Fill Permit;
 - Worked with the Mist-Birkenfeld Rural Fire Protection District, Northwest Natural Gas, and Enerfin Inc. to obtain funding to pay for project construction;
 - Worked with both DEQ and the Department to reach consensus regarding conflicting agency requirements pertaining to construction of the proposed reservoir;
 - Planned to conduct in-water construction work for the proposed reservoir, required wetland mitigation, and pumping system during late summer and fall of 2012; and
 - Applied with the Department for an extension to Permit R-13974.

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

11. The following beneficial use was made of the water during the permit or previous extension time limits:

- a. Since the issuance of Permit R-13974 on March 29, 2004, the permit holder has not stored water nor diverted water from the Unnamed stream, a tributary of Nehalem River for storage.
- b. Delay of full beneficial use of water under Permit R-13974 was due, in part, to the permit holder failing to obtain other government permits to construct the reservoir and sufficient funding to pay for the construction of the reservoir.

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

12. 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)]

13. Financial investments made toward developing the beneficial water use.
 - a. According to the permit holder, by August 31, 2012, they have invested approximately \$429,155, which is approximately 91 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$40,000 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)]

14. According to the permit holder, as of August 31, 2012, they have invested approximately \$429,155, which is 91 percent of the total projected cost for complete development of this project. The permit holder anticipates a \$40,000 investment is needed for the completion of this project.

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

15. The Department has found good faith of the appropriator under Permit R-13974.

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:

16. 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 R-13974; 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 source of water for the reservoir, an unnamed stream, a tributary of Nehalem River, is not located within a Withdrawn Area. The unnamed stream, a tributary of Nehalem River, is not located within or above any state or federal scenic waterway, however it is located within an area ranked "Moderate" 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. The unnamed stream, a tributary of Nehalem River, is listed by the Department of Environmental Quality as a water quality limited stream.

17. Economic investment in the project to date [OAR 690-315-0040(4)(d)].

- a. As of August 31, 2012, the permit holder has invested approximately \$429,155.

18. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].

- a. Northwest Natural Gas, Enerfin, and the Mist-Birkenfeld Rural Fire Protection District have been identified as contributing economically to the project, and relying on completion of the project for emergency firefighting purposes.

19. 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.

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

20. 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)]

21. Delay in the development of this project was caused in part by the length of time taken to obtain approval and/or permits from other governmental agencies, who each have their own set of unique governmental requirements.

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

22. Unforeseen events extended the length of time needed to fully develop and perfect Permit R-13974, in that the permit holder was faced with obtaining financing and additional governmental agency permits to complete development of the project in a timely manner.

CONCLUSIONS OF LAW

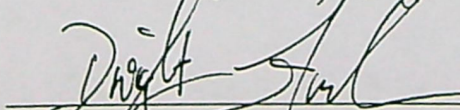
1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The 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).

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 construct and fill the reservoir and to apply water to beneficial use under Permit R-13974 from October 1, 2012 to October 1, 2017.

DATED: Sept 25, 2012


Dwight French, Water Right Services Administrator

*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 submit a written protest to the proposed final order. The written protest must be received by the

2. A written protest 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 proposed 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 applicant or non-applicant protest fee required under ORS 536.050.
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 protest 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.

- If you have any questions about statements contained in this document, please contact Joan Smith at 503-986-0898.
 - 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 Patricia McCarty at 503-986-0820.
 - 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 Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
- Fax: 503-986-0901

Joan Smith

From: Terry Sprecher <terry.sprecher@bendbroadband.com>
Sent: Wednesday, September 05, 2012 3:10 PM
To: Joan Smith
Subject: Fleming, Permit Extension Request, Permit R-13974; contractor deliverables
Attachments: R-13974-Extension of Time Draft.9.5.12.doc; R13974.Contractor.Cover.Sheet.pdf; R13974.Edited.Checklist.pdf; R13974.MarkedUp.Applic.pdf; R13974.Permit.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Hi Joan,

Attached please find:

- Word draft of the PFO/FO.
- PDF of the Final Deliverables Cover sheet
- PDF of the edited review checklist
- PDF of the marked up application
- PDF of the copy of the permit that was part of the permit application.

My scanner seems to make red ink look a bit smeary – if these PDFs are too smudged for file copies, I can mail you the originals.

Let me know if you need any additional work done on this project – there is still a bit of time left from my original estimate.

Thank you.

Terry Sprecher, RG, CWRE
Sprecher Group
2445 NE Division Street, Suite 300
Bend, Oregon 97701
DBE/WBE/ESB #5687

Phone: 541/306-3709
Cell: 541/419-0883
terry.sprecher@bendbroadband.com

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number R-85899

Final Order

Extension of Time for Permit Number R-13974
Permit Holder: Bruce Fleming

Insert Permit Information

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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

Permit R-13974 was issued by the Department on March 29, 2004. The permit called for the reservoir to be filled and complete application of the stored water to the use be made by October 1, 2008. Two permit extensions for Permit R-13974 have been granted by the Department. The most recent extension called for the reservoir to be filled and complete application of the stored water to the use be made by October 1, 2012. On July 17, 2012, Bruce Fleming submitted to the Department an Application for Extension of Time for Permit R-13974. In accordance with OAR 690-315-0050(2), on XX, the Department issued a Proposed Final Order proposing to extend the time for the reservoir to be filled and complete application of the stored water to the use to XX. The protest period closed XX, in accordance with OAR 690-315-0060(1). No protest was filed.

The Department adopts and incorporates by reference the Proposed Final Order dated XX.

Mailing List for Extension PFO Copies

PFO Date:

Copies Mailed

Application R-85899

By: _____

Permit R-13974

On: _____

Original mailed to Applicant:

Bruce Fleming
1129 SW 20th
Portland, Oregon 97205

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman

Fee paid as specified under ORS 536.050 to receive copy:

3. None

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

4. None

CASEWORKER: JMS

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 no additional conditions.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.248 and OAR 690-315-0040(2).

Order

The extension of time for Application R-85899, Permit R-13974, therefore, is approved. The deadline for the reservoir to be filled and complete application of the stored water to the use within the terms and conditions of the permit is extended from October 1, 2012 to October 1, 2017.

DATED: *****, 2012

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

-
- If you have any questions about statements contained in this document, please contact XX at (503) 986-XXXX.
 - 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
-

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: *********, 2012

Copies Mailed

Application R-85899
Permit R-13974

By: _____
On: _____

Original mailed to permit holder

Bruce Fleming
1129 SW 20th
Portland, Oregon 97205

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman
3. WRD – NWR Regional Manager, Bill Ferber
NOTE: Bill Ferber-NWR gets email (see below)
4. WRD –Keith Mills, Dam Safety *(for standard reservoir permits only)*

Fee paid as specified under ORS 536.050 to receive copy:

5. None

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

(DONE BY EXTENSION SPECIALIST)

6. None
7. NWR Manager – Bill Ferber(send denial FO's only -does not want to see approvals)

CASEWORKER: ALR



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 Progress Reporting Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Bruce Fleming

Application R-85899

Permit R-13974

Report Due no later than October 1, **<year this report is due>**

DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

Progress Report Form for **<year this report is due>**

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 R-13974

INSERT DATES	LIST ALL WORK ACCOMPLISHED and FINANCIAL INVESTMENTS	FINANCIAL INVESTMENT
	For the period of time between October 1, <year this report is due> and October 1, <year this report is due>	

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 to date = _____ 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). Do not provide daily, monthly or annual water volume totals.

Signature _____ Date _____

For OWRD use only

Diligence Shown ☐ Yes ☐ No

Date Public Noticed: _____

Reviewed by: _____

Date: _____

For OWRD use only

Diligence Shown ☐ Yes ☐ No

Date Public Noticed: _____

Reviewed by: _____

Date: _____

**Reimbursement Authority
Final Deliverables Cover Sheet
For
Extension of Time**

Application # R-85899 Permit # R-13974 RA # R11 965 11 Applicant: Bruce Fleming

The following items have been submitted electronically*:

- ☒ PFO/FO *9/5/12 by email*
☐ ~~Cover Letter~~

**NOTE:* documents should be submitted in MS Word format preferably, or "rich text" format.

The following items are enclosed:

- ☒ Review checklist *PDF, by email on 9/5/12*
☒ Marked copy of application *PDF, by email on 9/5/12*
☐ Document what was considered in reaching the findings and determination in the PFO/FO. *- see notes on checklist & marked application*
☒ Copies of each Permit

☒ Signature of Contractor: *[Signature]* Date: *9/5/12*

For WRD use only:

WRD approval by: _____ Date: _____

Extension PFO Checklist for Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: R- 85899 Permit: R- 13974 Permit Amendment? No ☒ Yes ☐ T- ☐ pending ☐ approved

Permit Holder's Name: Bruce Fleming

Permit Holder's Mailing Address: 1129 SW 20th, Portland OR 97205 email rbruce11@juno.com

Phone Number: 503-223-9513

POD Location: Township 6 N Range 5 W Section 9 $\frac{1}{4}$ SE SW

Drainage Basin: 1 County: Clatsop Watermaster District: 1 Watermaster: Greg Beaman

Date Permit was issued: 3/29/2004

Priority Date: 12/12/2003

Date of PN: July 24, 2012

Source: Unnamed stream, a tributary of Nehalem River

Use: Multiple Purpose

"Q": 11.0 Acre Feet Per Year

Orig "A" Date: N/A

Orig "B" Date: 10/1/2008

Orig "C" Date: 10/1/2008

Extension
request rec'd: 7/17/2012

Last Authorized
"B" Date: 10/1/2012

Last Authorized
"C" Date: 10/1/2012

Request Number (1, 2, 3...): 3

Proposed
"B" Date: 10/1/2017

Proposed
C Date: 10/1/2017

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Install meter or other suitable measuring device <i>before water use begins - since use has</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Installation of an outlet pipe <i>not begun, condition is satisfied</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction of reservoir <i>since storage has not begun, condition has been met</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Line flow bypass outlet of the permitted storage reservoir (since storage has not</i>
<input type="checkbox"/>	<input type="checkbox"/>	<i>begun, condition has been met)</i>

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 *9/2/12 - July completed all conditions except construction & applied for timely extension*

☒ ☐ Financial investments were made toward developing the beneficial water use.

• Amount Invested to date: \$429,155 Estimated Remaining Cost: \$40,000 - Total = \$469,155; 91% of total project invested through 10/1/12

☐ ☒ Beneficial use made of the water during the permit or previous extension time limits

• Permit holder has beneficially used 0 ☐ cfs ☐ gpm ☒ af of the total permitted quantity of water on na acres

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

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

Identify the closest surface water or localized water basin. Nehalem River

Ground Water Permits: Is the POA located...

Surface Water Permits: Is the POD located...

Yes No

- ☒ ☐ above a state scenic waterway? Name _____ 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 sensitive, threatened or endangered species area Source: "/>gisdata/dev/projects/salmon/div33map.html"
- ☐ ☒ within a critical or limited Ground Water Area? Name of area _____
- ☐ ☒ within a Withdrawn Area? Name of area _____
- ☒ ☐ in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____
- ☒ ☐ within an area ranking ☐ low / ☒ moderate / ☐ high / ☐ highest for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

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 ☒ July 9/5/12

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

NO
July 9/5/12 ☒ 5-year Progress Report Checkpoints (Years: 2017) → 5 yr checkpoint would coincide with requested proposed "C" date

☐ 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder 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(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Remorsement Authority

Terry Sprecher (TAS) made the water in red ink - 9/5/2012

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: _____ Date: _____

Extension PFO Checklist for Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

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Phone Number: 503-223-9513

POD Location: Township 6 N Range 5 W Section 9 $\frac{1}{4}$ SE SW

Drainage Basin: 1 County: Clatsop Watermaster District: 1 Watermaster: Greg Beaman

Date Permit was issued: 3/29/2004

Priority Date: 12/12/2003

Date of PN: July 29, 2012

Source: Unnamed stream, a tributary of Nehalem River

Use: Multiple Purpose

"Q": 11.0 Acre Feet Per Year

Orig "A" Date: N/A

Orig "B" Date: 10/1/2008

Orig "C" Date: 10/1/2008

Extension request rec'd: 7/17/2012

Last Authorized "B" Date: 10/1/2012

Last Authorized "C" Date: 10/1/2012

Request Number (1, 2, 3...): 3

Proposed "B" Date: 10/1/2017

Proposed C Date: 10/1/2017

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Install meter or other suitable measuring device <i>before water use begins - since we have</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Installation of an outlet pipe <i>not begun, condition is satisfied</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction of reservoir <i>since storage has not begun, condition has been met</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Line flow by pass outside of permitted storage season <i>since storage has not begun, condition has been met</i>
<input type="checkbox"/>	<input type="checkbox"/>	

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 *9/5/12 - July*

☒ ☐ Financial investments were made toward developing the beneficial water use.

• Amount Invested to date: \$429,155 Estimated Remaining Cost: \$40,000 - Total = \$469,155; *91% of total project*

☐ ☒ Beneficial use made of the water during the permit or previous extension time limits

• Permit holder has beneficially used 0 cfs ☐ gpm ☒ af of the total permitted quantity of water on na acres *except construction & applied for final extension*

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

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

Identify the closest surface water or localized water basin. Nehalem River

Ground Water Permits: Is the POA located...

Surface Water Permits: Is the POD located...

Yes No

- ☒ ☐ above a state scenic waterway? Name _____ 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 sensitive, threatened or endangered species area Source: "/>gisdata/dev/projects/salmon/div33map.aml"
- ☐ ☒ within a critical or limited Ground Water Area? Name of area _____
- ☒ ☐ within a Withdrawn Area? Name of area _____
- ☒ ☐ in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____
- ☒ ☐ within an area ranking ☐ low / ☒ moderate / ☐ high / ☐ highest for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

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 ☒ July 9/5/12

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

NO
July 9/5/12 ☒ 5-year Progress Report Checkpoints (Years: 2017) → [5 yr checkpoint would coincide with requested proposed "C" date]
☐ 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

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☒ COBU Requirement - Surface Water - post July 9, 1987

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☐ COBU Requirement - Ground Water - post July 9, 1987

"Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Reimbursement Authority

Terry Sprecher (TA's) made the water in red ink - 9/5/2012

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: _____ Date: _____



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301
(503) 986-0900
www.wrd.state.or.us

Application for
Extension of Time
for a Water Right Permit
(Non-Municipal / Non-Quasi-municipal Water Use)

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, Bruce Fleming

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

1129 SW 20th
ADDRESS

Portland
CITY

OR
STATE

97205
ZIP

503-223-9513
PHONE

rbruce11@juno.com
E-MAIL ADDRESS

the permit holder of: Application Number R-85899

Permit Number R-13974
[OAR 690-315-0020(3)(b)]

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JUL 17 2012
WATER RESOURCES DEPT
SALEM, OREGON

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, 2012, be
extended to October 1, 2015, 2017 DFC

N/A (Check this box if the permit does not specify a date by when construction must be completed.)

and/or the time in which to:

☒ apply water to full beneficial use under the terms and conditions of the permit, which time now
expires on October 1, 2012, be extended to October 1, 2017, 2017 DFC

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WATER RESOURCES DEPT
SALEM, OREGON

Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$500.
- Signature page (last page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION

along with the

\$500 STATUTORY FEE TO:

Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301



GENERAL TIPS:

- Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The correct form is *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, available at the following link:
<http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml#other>
- Request the reasonable amount of time necessary to fully complete the water construction project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet (Instructions for Filling Out Extension of Time Application for Permits) provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at:
<http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.

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WATER WILL AID US IN
FINDING THE SOURCES NECESSARY
TO EVALUATE THE APPLICATION. OAR 315-0020(3)(n).
Salem, Oregon

- 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



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

*THIS note:
permit did
not specify
an "A" date*

Date construction began is: April, 2008

Details of construction: A barn remained at the periphery of the wetland construction area. It was removed in the fall of 2009 (unsure of exact date) after the First extension was obtained. That area is now clear and ready for construction to begin. The land was surveyed and an engineered plan was prepared for the reservoir and the wetland creation prior to the end of the original permit. Permits are in place, a contract for construction is in place and in-stream work is expected to be completed on or prior to August 31, 2012. Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.

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[OAR 690-204-0020(3)(e)(A)]

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

- 2-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
1	10/01/2008	Begin actual construction prior to the end of the permit period. As noted above, Planning, engineered plan preparation, land clearing and tree removal were accomplished before the 10/01/2012 deadline.
		Note: this is not a permit condition. Permit did not specify an "A" date.

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

- 2-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
2 (#1 is attached permit)	10/1/2012	(Installation of metering device) Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012. Note: meter installation is required before water use begins, & use has not begun
3 (#4 is attached permit)	10/1/2012	(Installation of outlet pipe) Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012.

Note: since storage has not begun, this condition has been met, as long as outlet pipe is constructed before future storage begins

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WATER RESOURCES DEPT
SALEM, OREGON

4	10/1/2012	(Flow by-pass) Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012. <i>Note: Since storage has not begun, this condition has been met, as long as the by-pass is constructed before future storage begins.</i>
5	10/1/2012	(C-Date) Delays in construction were due to incompatible requirements between OWRD permit R-13974 and the Army Corps of Engineers permit NWP-2010-144 (DEQ certification portion). A solution was found and the Corps permit was finally issued May 21, 2012. <i>Note: Permit Holder has applied for, & been granted, timely extensions.</i>
6	10/01/2012	Reservoir filled and complete application of water — <i>To 9/15/12</i>
Note: A numbered list of conditions is included		

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

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

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).

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

CHART-C

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued - eg. well drilled.</i>	COST*
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
06/11/2004	Date the permit was signed - find date above signature on last page of permit.	
01/01/2008	Planning and engineering for original project (NRCS) (estimated)	31,000
01/01/2006	Obtained water right permit (Fleming) and fencing/grant (Mellhof)	1000
09/01/2008	Remove fencing, trees, brush and vegetation in preparation for excavation	3000
12/01/2009	Completed update of planning engineering (NRCS) (Estimate, Varnes)	31,100
10/01/2010	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief) Actual Cost	18,600
10/01/2010	E.S.A. Adolphson, Consulting, Permit preparation, coordination. Actual	14851

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WATER RESOURCES DEPT
SALEM, OREGON

	Cost	
10/01/2010	Permits, fees, other associated costs (Mist-Birkenfeld RFPD, actual cost)	11970
07/01/2010	Remove old barn and other smaller outbuilding from site according to plan	3500
07/15/2010	Clear brush from culvert entry and exit, expose and inspect culvert under Hwy 202 (Mist-Birkenfeld Fire, ODOT)	1250
10/01/2010	Form agreements with ODOT, NW Natural, and Enerfin to assist with construction. ODOT to provide trenching for the pumping system, NW Natural and Enerfin to provide funds to complete the project. (Mist-Birkenfeld Fire staff)	3500
10/01/2010	Recruit engineer from WRG to provide the engineering plan and oversight for construction of the pumping system (M-B RFPD staff)	10000
	Date the permit specified "Actual Construction Work" shall begin ("A-Date") -not all permits contain this date.	

CHART-C (continued)

DATE	WORK ACCOMPLISHED AFTER "C-DATE" <i>COMPLETE 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 for Chart-C		129671

7/14 9/5/12

129,771

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

3-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

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period</i>	COST*
10/1/2010	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
3/26/2011	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief) Actual Cost	1368

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03/26/2011	Fire District staff time (Mist-Birkenfeld RFPD Fire Chief)	737
03/26/2011	Permits, fees, other associated costs (Mist-Birkenfeld RFPD, SALEM OREGON)	500
04/11/2011	Requested Authority for reimbursement	125
05/10/2011	Paid fees for reimbursement	600
05/27/2011	Fees to ESA for COE permit	433
12/01/2011	Fees to ESA for COE permit, final	314
04/09/2012	Permit extension fees, DSL	670
05/29/2012	Deliver approved and signed COE Permit, waited for signatures	8
06/15/2012	Deliver DEQ 1200c app, consult with Dennis Juries, permit fees	1586
07/15/2012	Fire district staff time 04/01/11-07/16/2012 (calculated)	20143
07/15/2012	NRCS staff time 04/01/2011-07/16/2012 (estimated)	15,000
	Total Work completed to date: 07/15/2012 (since 12/1/2010)	41484
	Work anticipated to be completed by 10/01/12:	
By 08/31/2012	In-water construction work for reservoir, wetland mitigation, and inclusive conditions	228,000
By 08/31/2012	In water construction of pumping system	30,000
	Total work anticipated to be completed by 10/01/2012 (from 7/15/12)	258,000
10/1/2012	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

CHART-D (Continued)

DATE	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 for Chart D:		299484

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

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

4. Cost of project to date: \$429,155 ✓
(The total combined cost from CHART-C and CHART-D)

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10AR 690-315-0020(3)(e)(B)

5. Provide evidence of 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 used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

5-A) For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX):



TIP: Report the rate in the same units of measurement as specified in the permit.

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

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

Acre-feet stored to date = 0 AF

5-B) For Ground Water Permit Extensions (e.g. G-XXXX):



TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

CHART-E

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED					
			Well Log Number c.g. MORR 50473	Well Tag Number c.g. # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See S-C below)	Maximum instantaneous rate used from this well - under this permit only (CFS or GPM)	Is this well authorized or utilized under additional water rights?	If yes, provide the Permit, Certificate, or Transfer No.
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
Total instantaneous rate from all wells utilized under this permit								

- 5-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a permit amendment application been/be filed? Yes ☐ No ☐

If a Permit Amendment Application has been filed: Transfer No. T-_____

Well #_____: Actual location: _____

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[OAR 690-315-0020(3)(e)(C)]
WATER RESOURCES DEPT
SALEM, OREGON

Well # ____ : Actual location: ____

6. Provide the total number of acres irrigated to date under this permit (if applicable).

Total acres irrigated to date: ____

Ground Water Permits: Please specify which wells are being utilized for this irrigation.

Well # ____ Acres ____ Well # ____ Acres ____

Well # ____ Acres ____ Well # ____ Acres ____

[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-F

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
By 11/30/12	Complete planting, fencing and prove accomplishment all conditions	20,000
By 11/30/2012	Out of stream completion of pumping system	20,000
By 10/10/14 and beyond	In concert with Mist-Birkenfeld EFPD, maintain the reservoir and the pumping system, support the wetland created as mitigation, maintain access required for Water Master.	Annual maintenance costs as needed
Year: 10/01/2012 ²⁰¹⁷ 2012	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		40,000

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

8. Estimated remaining cost to complete the project: 40,000
(The total cost from CHART-F)

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

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, B, C or D).

9-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.

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While the original plan made no provision for phasing in over time, ^{WATER RESOURCES DEPT} ~~the time required~~ to obtain permits to meet the conditions imposed, which may not always align with other permit conditions, was not adequately considered. Clearly, the scope and size of the project and the process for getting to the construction phase required more time than originally estimated. ✓

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

Project became feasible only when Northwest Natural Gas and Enerfin Inc. committed to assist with cost of the project. Commitment was confirmed in March of 2010. Application for required additional permits was completed immediately following. Reservoir construction was ready to proceed immediately at that point and could have been completed prior to the expiration permit number R-13974. The funding was re-committed in May of 2012, and NW Natural is currently providing the necessary funds. ✓

- 9-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.

The permit submitted to the Army Corps of Engineers took much longer to be approved than anticipated. The DSL portion was approved, but we hit a snag with the DEQ portion of the approval. DEQ required a change to the bypass condition in R-13974. They were concerned that bypassing water through the reservoir might adversely affect the temperature of water in other streams. After considerable negotiation and discussion, addition of a direct bypass to the project solved the issue for DEQ. The Corps permit was received in mid May of 2011. ✓

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

The reason the Corps permit was delayed is the timing and urgency of the federal stimulus package. When we began it was expected that the work load of the permitting agencies would be relatively light. When the mass of stimulus funded projects began to arrive the agencies were quickly overloaded. ✓

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-B, 7, 8, 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. [OAR 690-315-0020(3)(k)]

We believe the project can be completed in calendar year 2013 if all goes as planned. However, if the in-water work is delayed or interrupted (requiring waiting another year for completion) or other unforeseen conditions force further delay we are confident the project can

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WATER RESOURCES PROJECT
SALEM COUNTY
still be completed by 10/01/2015. We have the funding secured to complete the project and expect to complete construction this year. However, we may not be able to complete the out of water portions prior to 10/1/2012. Condition 1 was completed in prior years. Condition 2 (install metering device) will be completed by 10/1/2012. Condition 3 (Install outlet pipe) will be completed by 10/01/2012. Condition 4 (install flow by-pass), will be completed by 10/1/2012, and Condition 5 (passage of all live flow outside storage season), will be accomplished by 10/01/2012. However, Condition 6 (reservoir filled and water use established) is not possible to complete by 10/01/2012 because there is inadequate water flow to fill the reservoir until mid-November. It is unlikely the stream will pass any water at all by 10/01/2012.

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

Critical Need to Coordinate Conditions of Approval Between Agencies:

There is a condition included in water right permit R-13974 reading: Water may be appropriated for storage during the period: December 1 through March 31, and July 1 through July 31 of each year (We believe that is to protect fish migration). DEQ has set as a condition for approval of their permit that no water may bypass the reservoir during the Months of August, September and October (spill over the dam since the reservoir is built in the stream-bed). They cite the possibility of the warmer water from the reservoir finding its way from the spillway to the Nehalem River worth the potential to warn the stream, again to protect the fish in the river. Both worthy considerations, but ultimately at odds.

DEQ suggested that since the un-named stream-bed is dry from early June to through October, and that any unseasonal rain that might occur could produce minor flows would be caught by the reservoir thus protecting the Nehalem River from any influence by minor amounts of warm water, the elimination of the requirement for bypassing is prudent.

The stream bed has been dry (dust dry) by early June every year since the project was identified. It typically remains dry until late September or early October. Two of the eight years locally heavy mid-September rains have occurred. The stream-bed was wet during the rain, but the parched ground soaked up the water almost immediately. During October there is the chance of minor flow occurring. The reservoir will be at about half full status by then according to engineer's estimates. Any flow would be prevented from reaching the river and thus the chance of warming the water is eliminated.

Because the requirement for no water from the pond to reach the river (DEQ) during the warm periods of the year conflicts with the requirement to bypass water from the un-named stream during these same portions of the year, and because both requirements are based upon federal law there appeared to be an impass. However, an acceptable alternative was identified early in 2012 that met both requirements. The alternative involved creating a bypass at the reservoir inlet and routed back to the stream bed below the reservoir. The by-pass has been implemented into the plans and the impass eliminated. All parties are in agreement that the project may go forward without further delay.

We are certain the in water construction will occur as planned. It is possible that the finish work to achieve the permitted water use will occur on or before October 1, 2012. However,

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SALEM, OREGON

there is the possibility of delays and scheduling conflicts in getting the fencing and portions of the finish work completed by that date.

As demonstrated above, there were several months of delay created by the requirement compatibility issues, creating a delayed start of construction. We are therefore requesting an extension so as to be assured of adequate time to complete the project as specified within the required time.

B. Information from the Fire District: Dave Crawford(Fire Chief)

The fire district was approached in 2004 about participating in the Fleming Pond project. The idea of having a consistent, easily and safely accessed emergency water supply was great in terms of building permanent emergency water resource infra-structure within the fire district. However, at that time the cost of completing it was beyond our financial ability. We approached several entities for assistance but were ultimately unsuccessful in finding the resources necessary. Therein lies the reason for delay in moving forward with the project.

OPERATIONAL NEED:

Since that time our situation has changed.

The district has been working to get the two major industries involved with production and storage of natural gas here to define their emergency plans for a well-head fire or pipeline fire and the fire district's role in that risk since early in 2000. Late in 2008, after the pipeline explosions and fires of recent history, both NW Natural (Storage) and Enerfin (development and commercial production) addressed the risk. NW Natural contracted with a company called Wild Well Control to control and extinguish a gas related fire at a well-head. At an orientation meeting Wild Well Control representatives described the process, time-lines and the role of the local fire district. That role requires delivery of a minimum of one million (up to one and one-half million) gallons of water to any of up to 30 operational natural gas production or storage well-heads in the case of a fire, all within a time period of about 50 hours. That is a daunting task for a fire district with only two paid personnel and about 40 volunteers.

As Fire Chief, I put together a plan to do just that. It requires a task-force of water tenders with operators and support, a place to store the water on site, and a reliable water supply that is adequate to the need located in the vicinity. All of that can be produced. However, to make that time-line the water sources must be accessed quickly and safely, and it must be available year round. Earthquakes don't care about the season or the weather conditions, and land-slides usually happen during the wettest weather. Availability of an impounded source that makes emergency water supplies available on the fire district's Main Station facilities in quantities adequate for Natural Gas emergencies is the perfect and proper answer.

Essential Facilities:

First, NW Natural's Storage Operations center, Miller Station and the Mist Storage gas fields are clearly classified as essential facilities due to their importance to the energy needs of the Northwest Oregon region and, by extension, the nation. Essential facilities are high priority risks.

Long Term Risk:

One operating well-head is a high value/low risk scenario. Risk management principles remind us that this combination is very dangerous. However, there are more than one hundred well-heads in the fire district. Many are depleted and abandoned. Enerfin continues to develop and produce new gas wells in the area, but production is on the decline. However, NW Natural

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began converting the underground reservoirs that contained the Natural Gas to storage vessels. There are several in operation already with more on the planning table. That is a good thing, as Natural gas storage tends to even out the cost fluctuations and provide a more stable energy resource. The difference between the injection and withdrawal wells associated with production and production wells is that injection and storage wells are designed for the much higher flows needed when refilling and accessing the stored gas for re-use. That means they are also capable of producing much higher gas flows and much higher energy release in the event of a breach of the wellhead below the emergency shut-off valve (ESD) or failure of the valve. The companies who operate here have a great safety record and are very careful to use the best materials and methods during construction. However, on occasion, even the best materials fail, as attested by the presence of companies like Wild Well Control. *There are currently more than thirty gas wells in operation today for in production or gas storage applications. There is more than sixteen BILLION cubic feet of natural gas storage under the hills surrounding the community of Mist. Additionally, more than one hundred miles of Natural Gas pipelines reside within our fire district, including a 12", a 16", and a 24" designed to transport the gas into and out of the fire district.*

Access to a Reliable Water Source:

During high water events, which happen several times per season, stream flow rates are high and stream banks are slippery and dangerous to access. Additionally, it is nearly impossible to pre-plan drafting sites under these conditions. The Fleming Pond and its attendant pumping system address all of these concerns. Additionally, it will supply the needed emergency water to fight structural fires that occur within the fire district on commercial, industrial and residential properties. The water supply will also answer the needs for emergency water for the occasional wild-fires that occur in the area requiring as much as one million gallons of water.

Responsible Industrial Neighbors:

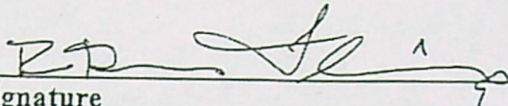
→ NW Natural recognized the value of a static, reliable water supply available any time of year, to protect their personnel, their utility infrastructure, and an energy supply that is of major importance to the entire region. They have stepped forward and offered to assist financially with the project. That help made the project financially possible.

CURRENT SITUATION

→ Bruce Fleming, RC&D personnel and I have worked together and the project has been ready for construction since early in 2010 when the permit application was submitted to the Army Corps of Engineers (COE). The permit was delayed then due to the massive influx of stimulus funds and the infrastructure projects that lined up as a result. When the COE permit was finally available a conflict in requirements between permitting agencies was discovered (as described above), which delayed the COE permit for another year. Over time a compromise was reached with the aid of agency and community leaders and with the guidance of Oregon's Regional Solutions Team. The issue being resolved, the COE permit was issued in mid May, pushing the project back another year, and raising the possibility of not completing the project in its entirety before the WRD permit expires.

We believe Bruce Fleming, the Mist-Birkenfeld Fire Protection District, RC&D, and all those who have made this project possible have demonstrated their commitment to seeing it through to a successful conclusion. The project will ultimately provide increased fire protection for all of those who live and work here. It will also protect the Natural Gas production and storage facilities and assets, all or which are essential to the economy and well being of all of NW Oregon and to the Nation as a whole.

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

7-15-12
Date

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SALEM, OREGON



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Northwest Region Office
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
(503) 229-5263
FAX (503) 229-6957
TTY (800) 736-2900

July 6, 2012

David Crawford
12525 Highway 202
Clatskanie, OR 97016-7219

Re: Construction Storm Water Control Permit
EPA Number: ORR10D246
File Number: 122204
Site: Fleming Pond
County: Columbia

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Dear Mr. Crawford:

The Oregon Department of Environmental Quality (DEQ) has received your application and fees and is approving coverage under the National Pollutant Discharge Elimination System (NPDES) 1200-C Construction Stormwater Discharge Permit. Please be aware that you will be assessed an annual fee for each additional year of construction activity as long as this permit is in effect.

This statewide Permit term is five years, beginning December 1, 2010 and expiring November 30, 2015, regardless of when you apply for coverage within the 5 year period.

Important Permit Provisions

Please review your 1200-C Permit copy carefully. For all projects the permit:

- prohibits visible or measurable quantities of sediments from leaving the construction site and entering directly into surface waters, or to conveyance systems that discharge to surface waters, and prohibits violations of the state's in-stream water quality standards. If this occurs, permit registrants are required to take corrective action to stop the discharge to surface water and submit a report outlining the corrective actions taken.
- requires permit registrants to implement a Sediment and Erosion Control Plan that meets new best management practices.
- requires daily inspections of erosion control measures when runoff is occurring.
- requires permit registrants to record all inspections and to keep all records up-to-date and on site.
- requires all erosion control measures remain in place through the duration of construction project.

For construction projects involving 5 acres or more:

- Permit applications and Erosion and Sediment Control Plans will be subject to a 14-day public review period.

For construction projects that discharge to 303(d) listed water bodies for turbidity (water clarity), or sedimentation, or to water bodies covered under state Total Maximum Daily Load pollution limits:

- Permit registrants must implement additional best management practices on the site to treat, control, or prevent sediment discharges to "impaired" water bodies.

Additional listed water body and affected river mile information is available at DEQ's website at:
www.deq.state.or.us/WQ/assessment/assessment.htm

Legal Owner Responsibilities

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If legal responsibility shifts to another party during project development, a Transfer Request form and fees must be submitted to DEQ to transfer the permit to the new responsible party.

Coverage Termination Process

Be sure to submit a Notice of Termination Request Form to the regional DEQ office when your construction activity is completed. If a Termination Request Form is not received by DEQ, **you will be billed** an annual fee for each additional year your permit remains in effect.

Permit coverage may be terminated when the following conditions are met:

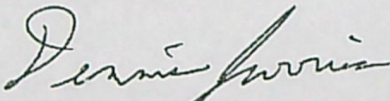
- All construction activities authorized by this permit have been completed –
 - The site is stabilized, including landscaped with vegetation growing, and no exposed soil is present,
 - No further grading or soil disturbances occurring, and
 - Temporary erosion and/or sediment controls have been removed and properly disposed.

For complete details on termination, including termination for a common plan of development or sale, please see permit condition D.3.

Finally, this permit does not authorize excavation or fill in state waterways, including wetlands, and does not replace the requirement for receiving authorization to do this type of work under Section 404 of the Clean Water Act.

Please check the DEQ website at <http://www.deq.state.or.us/wq/stormwater/stormwater.htm> for forms or information. If you have any questions about this permit, please contact Dennis Jurries (503) 229-5937 in our Northwest Region Office or e-mail at jurries.dennis@deq.state.or.us.

Sincerely,



Dennis Jurries, PE
DEQ NWR Storm Water Engineer

Enclosure

cc: File

Date	Check#	To	For	Amount	
3/31/2011	13801	OR Water Resources		500	- permit
4/11/2011	13818	Dept State Lands		653-	permit
4/18/2011	13830	OR Water Resources		125	water right extension request
5/10/2011	13863	OR Water Resources		600	extension application
5/27/2011	13871	ESA		433	storming fee
12/1/2011	14103	ESA		313.5	
4/9/2012	14287	Dept State Lands		670	- permit extension
5/29/2012		permit delivery	parking	8	
6/15/2012	14366	DEQ		1586	storm water permit

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DEPARTMENT OF THE ARMY PERMIT

Permittee: Mist-Birkenfield Rural Fire Department

Permit No: NWP-2010-144

Issuing Office: U.S. Army Corps of Engineers

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NOTE: The term "you" and its derivatives as used in this permit means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The project involves construction of an emergency fire suppression pond. This pond would be created by damming up an intermittent tributary of the Nehalem River.

Construction would involve both excavation and damming for creation of the pond. To create the pond, dam, and both principal and emergency spillways, a total of 10,603 cubic yards (equaling 0.90 acre) of silt, clay and organics would be removed, from both wetlands and uplands. Excavated material would be stockpiled on-site for use in construction of the dam and spillways and excess would be placed in adjacent pasture (not to exceed 12-inches in depth).

The created pond would total 1.87 acre in size and would hold 11.1 acre-feet of water. A total of 1,113 cubic yards of clay would be placed within the excavated area to create a 12-inch liner. Creation of the dam and core trench would involve placing 1,420 cubic yards of clay and geotextile fabric. The total height of the dam would be 7.4 feet. The spillways would be lined with 12" minus aggregate to prevent erosion. Construction of the dam and spillways would result in a total of 2,583 cubic yards of fill placed within 0.90 acre of wetlands adjacent to the proposed impoundment.

Purpose: To provide a firefighting water supply source to serve the Mist-Birkenfield Rural Fire Protection District (Mist-Birkenfield RFPD).

Project Location: The project is located 1000 feet west of the Mist-Birkenfield Fire Station at 12525 Highway 202, Columbia County, Oregon (Section 9, Township 6 North, Range 5 West).

Drawings: (10 of drawings/maps) (Enclosure 1)

General Conditions:

1. The time limit for completing the work authorized ends on May 18, 2017. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General

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Condition No. 4 below. Should you wish to cease to maintain the authorized activity of ~~July 17, 2012~~ you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

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3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Enclosure 2).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. You shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to cenwp.notify@usace.army.mil or mailed to the following address:

U.S. Army Corps of Engineers
CENWP-OD-GC
Permit Compliance, Columbia County
P.O. Box 2946
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

2. You shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure <X>).
3. The Oregon Department of Environmental Quality issued a Water Quality Certification (WQC) for the proposed project. All terms and conditions of this WQC are now terms and conditions of the permit authorization.
4. To compensate for the impacts to waters of the U.S., the permittee will create 1.2 acres of emergenc wetland on-site to replace 0.8 acre of wetlands impacted during dam construction. Mitigation work will commence either prior to or concurrent with construction activities. Further details and specific requirements of the mitigation plan can be seen in the plan entitled, *Fleming Pong Project, Compensatory Mitigation Plan*, dated February 2010. This mitigation plan is now a term and conditions of the permit authorization.

5. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 4 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.
6. Permittee shall immediately notify the Corps at the address in Special Condition (a) above if at any time during the course of the work authorized, human remains or cultural resources are located within the permit area. We also draw your attention to Regional Condition 3.
7. During construction, the Permittee shall ensure best management practices are used to minimize impacts. All temporary sediment curtains, silt fences, etc. employed during construction shall be removed upon project completion or area stabilized.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- ☐ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- ☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).
- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this Authorization:

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition No. 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below as permittee indicates that you accept and agree to comply with the terms and conditions of this permit.

William C. DeJager
(PERMITTEE SIGNATURE)

29 May 12
(DATE)

William C. DeJager
(PRINTED NAME)

President
(TITLE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE COMMANDER, JOHN W. EISENHAUER, P.E. COLONEL, CORPS OF ENGINEERS,
DISTRICT COMMANDER:

Kevin P. Moynahan
(DISTRICT COMMANDER)

5/30/12
(DATE)

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WATER RESOURCES DEPT
SALEM, OREGON

Page 4 of 5

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

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WATER RESOURCES DEPT
SALEM, OREGON

MIST-BIRKENFELD RFPD

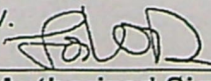
Permit No.:	44509-RF Renewal
Permit Type:	Removal/Fill
Waterway:	Wetland/Nehalem River trib
County:	Columbia
Expiration Date:	July 13, 2013

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-986-5200.

Lori Warner-Dickason, Northern Region Manager
Wetlands & Waterways Conservation Div.
Oregon Department of State Lands


Authorized Signature

July 3, 2012
Date Issued

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WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON

COUNTY OF CLATSOP

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BRUCE FLEMING
1129 SW 20TH
PORTLAND, OR 97205

(503) 223-9513

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

APPLICATION FILE NUMBER: R-85899

SOURCE OF WATER: UNNAMED STREAM, A TRIBUTARY OF NEHALEM RIVER

STORAGE FACILITY: FLEMING POND

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

MAXIMUM STORAGE VOLUME: 11.1 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1
THROUGH MARCH 31 AND JULY 1 THROUGH JULY 31 OF EACH YEAR

DATE OF PRIORITY: DECEMBER 12, 2003

DAM LOCATION: SE 1/4 SW 1/4 SECTION 9, T6N, R5W, W.M.; 396 FEET NORTH
& 1320 FEET EAST FROM SW CORNER, SECTION 9

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE 1/4 SW 1/4
SECTION 9
TOWNSHIP 6 NORTH, RANGE 5 WEST, W.M.

Measurement, recording and reporting conditions:

- ① A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- ② B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

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WATER RESOURCES DEPT
SALEM, OREGON

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- ③ C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
- ④ The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.
- ⑤ The permittee shall pass all live flow outside the storage season described above.

This permit does not provide for the appropriation of water for any out of reservoir uses, the maintenance of the water level or maintaining a suitable fresh water condition. If any water is used for out of reservoir uses, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

STANDARD CONDITIONS

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

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

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

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

This permit does not authorize the permit holder to pursue this right in such a way as to interfere with or affect adjacent property not under the ownership of the permit holder.

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WATER RESOURCES DEPT
SALEM, OREGON

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purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

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

Mailing List for Extension PFO Copies

PFO Date:

Copies Mailed

Application R-85899
Permit R-13974

By: _____
On: _____

Original mailed to Applicant:

Bruce Fleming
1129 SW 20th
Portland, Oregon 97205

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman

Fee paid as specified under ORS 536.050 to receive copy:

3. None

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

4. None

CASEWORKER: ALR

Exhibit A
Reimbursement Authority Process
Itemized Estimate Sheet
For
Extension of Time Application

Application Number: R-85899
Permit Number : R-13974

Name of Applicant: Bruce Fleming

	Item	Time
1	Review of application for completeness.	1.5
2	Evaluation of Criteria for Evaluating Permit Extension Application	3.0
3	Preparation of PFO/FO	3.5
4	Other Factors	2.0
Total Estimated Time:		10.0

Estimated date of completion of the Proposed Final Order: September 14, 2012

Total estimated cost is 10.0 hours at \$90.00 per hour = **\$1,200.00**

Contractor shall notify OWRD in advance if more than 10.0 hours is needed to complete the work described in the Statement of Work above.

Invoices for this Work Order shall be sent to:

Salem Opeifa
Oregon Water Resources Department
Loan Servicing Specialist
725 Summer Street NE, Suite A
Salem, OR 97301-1271

CONTRACTOR, YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY APPROVALS.

Agency may terminate this Work Order:

- a. Immediately upon written notice if the Department fails to receive funding from the Applicant.
- b. Upon receiving a written Termination Notice from the Applicant.

Contractor will be paid for all work performed up to the time of the written Termination Notice but not to exceed the total amount of this Work Order.

ACCEPTANCE OF TERMS BY CONTRACTOR:

Terry Sprecher / Sprecher Group
Name

[Signature] August 30, 2012
Signature Date

APPROVED BY AGENCY:

Tracy Loudon Date
Administrator
Administrative Services
Oregon Water Resources Department

Reviewed as to Legal Sufficiency by Assistant Attorney General Date
(All work orders more than \$75,000 must be approved by the AG's Office)

Mailing List for Extension PFO Copies

PFO Date:

Copies Mailed

Application R-85899

Permit R-13974

By: _____

On: _____

Original mailed to Applicant:

Bruce Fleming
1129 SW 20th
Portland, Oregon 97205

Copies sent to:

1. WRD - App. File R-85899/ Permit R-13974
2. WRD - Watermaster District 1, Greg Beaman

Fee paid as specified under ORS 536.050 to receive copy:

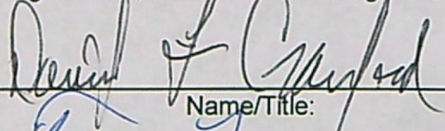
3. None

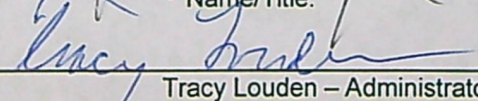
Receiving via e-mail (10 AM Tuesday of signature date)

4. None

CASEWORKER: JMS

7. **Contract Documents.** This Agreement consists of the following documents which are listed in descending order of precedence: this Agreement and the attached Exhibit A. All attached Exhibits are incorporated into this Agreement by reference.
8. **Confidentiality.** Bruce Fleming agrees that any information provided to or acquired by OWRD under this Agreement will be subject to the Oregon Public Records Law and shall be considered public records.
9. **Indemnity.** Applicant shall defend, save, hold harmless, and indemnify the State of Oregon, OWRD, **Sprecher Group** (Contractor) and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Applicant or its representatives, officers, employees, contractors, or agents under this Agreement or with respect to the expedited service. The Applicant acknowledges that the Oregon Water Resources Department cannot and does not guarantee a favorable review under the subject regulatory process.
10. **Termination.** Applicant may request to terminate this agreement only in writing at anytime during the process. The Applicant agrees to pay for the work done by the Contractor up until the time of the written termination request. OWRD, upon receiving such written termination request from the Applicant and appropriately notifying the Contractor, will refund any unspent balance after paying the contractor for the work done.
11. **Funds Authorized and Available.** By its execution of this Agreement, Applicants certify that sufficient funds are authorized and available to cover the expenditures contemplated by this Agreement.
12. **Duration of Estimate.** The Estimate of Time to complete the work in Exhibit A (Statement of Work) becomes null and void after thirty- (30) days from the date the Applicant's Agreement is mailed. If the Applicant's Agreement is not received by the Department within thirty (30) days of mailing the Agreement, the Applicant must re-apply for a new estimate.
13. **Completion Date.** OWRD, by the execution of this Agreement does not guarantee the completion date indicated in this Agreement. Completion date is only an estimate and may be affected by the Department's workload, issues arising from the processing of the requested services and Applicant's timely response to requests for additional information.
14. **Captions.** The captions or headings in this Agreement are for the convenience only and in no way define limit or describe the scope or intent of any provision of this Agreement.
15. **Amendment and Merger.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.
16. **Signatures.** All parties, by the authorized representative's signature below, hereby acknowledge that they have read this Agreement, understand it and agree to be bound by its terms and conditions.

For Applicant:  Firm Chief 08/27/12
Name/Title: _____ Date

For OWRD:  Tracy Loudon - Administrator 8-29-12
Date

Mail signed Agreement to:

Salem Opeifa
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266

Exhibit A
Statement of Work

Application Number: R-85899

Name of Applicant: **Bruce Fleming**

**Reimbursement Authority Process
Itemized Estimate Sheet
For
Extension of Time Application**

	Item	Time
1	Review Permit Conditions	1.5
2	Evaluation of Criteria for Evaluating Permit Extension Application.	3.0
4	Preparation of PFO/FO	3.5
5	Other Factors	2.0
Total Estimated Time:		10.0

Total estimated cost is 10.0 hours at \$120.00 per hour = \$1200.00

Completion of Draft Proposed Order: **September 14, 2012**

**Dates are contingent on the Applicant's expeditious resolution of any deficiency and may be affected by Department's work load.*

**Reimbursement Authority Process
Itemized Estimate Sheet
for
Water Rights Extension of Time**

Application Number: R-85899
Permit Number: R-13974
Name of Applicant: Bruce Fleming

Proposed Timeline

September 14, 2012	Completion of PFO/FO-- but not before the end of the Public Notice comment period and receipt of any comments
Completion of contract work: Submittal of processing notes, Review checklist, PFO/FO.	

All deliverables must be in Microsoft Word


Estimate

	Item	Time
1	Review Permit Conditions	1 $\frac{1}{2}$
2	Evaluation of Criteria for Evaluating Permit Extension Application	3
3	Preparation of PFO/ FO	3 $\frac{1}{2}$
4	Other Factors. _____	2
Total Estimated Time:		10

(Indicate the estimated amount of time, in ½ hour increments, needed to complete each item listed.)

Prior to preparing an estimate, contact Department staff if work could not be performed consistent with the proposed timeline. In developing the estimate, review the application, permit conditions, and Criteria for approval of Application. Pay particular attention to the compliance to Permit conditions and the complexity of the request.

Name of Consultant: Sprecher Group

Authorized Representative: 

Date: 8/10/12

R-85899

BRUCE FLEMING
1129 SW 20TH
PORTLAND OR 97205

R-85899

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