

State of Oregon

Water Resources Department

In the matter of Water Right Application G-13127, Permit G-11979)
in the name of Skinner Ranches, Inc.)
Applicant)

Final Order
Approving Permit
Extension Request

Appeal Rights

This is a final order in other than contested case. Pursuant to ORS 536.075 and OAR 137-004-0080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the time specified by ORS 183.484(2).

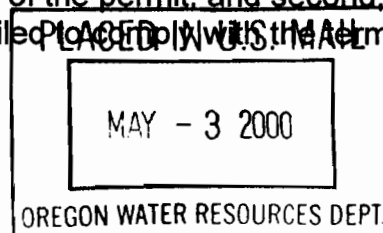
Background

Permit G-11979, in the name of Skinner Ranches, Inc., hereinafter permit holder, was issued by the Department on March 14, 1995. The permit authorizes use of 10.0 CFS of water from a well for irrigation of 350.6 acres and supplemental irrigation of 1709.85 acres in the Jordan Creek basin. The permit required construction to be completed by October 1, 1997 and complete application of water to be accomplished by October 1, 1998. The permit contained conditions resulting from a Stipulated Agreement. The first condition required the permit holder to install a meter or other suitable measuring device prior to using water and required the submission of an annual report of monthly water use.

On July 23, 1999, the Department received an application from the permit holder for an extension of time to complete construction and to apply water to full beneficial use. The applicant requested until October 1, 2005 to complete construction of the water system and to apply water to full beneficial use. This was the first permit extension request.

On March 1, 2000, the Department issued a Proposed Final Order (PFO) granting the permit holder's extension request. On March 31, 2000, WaterWatch of Oregon protested the extension Proposed Final Order. WaterWatch contended that the extension should not be granted for the following reasons.

First, that an extension should not be granted for the "lower lands" portion of the permit as the permit holder has no intention of developing this portion of the permit; and second, that the extension should not be granted as the permit holder failed to comply with the terms of their



permit in failing to maintain the meter in "good working order," making them unable to comply with their measurement requirement. WaterWatch also stated in their protest that they support the inclusion of the progress reporting requirements.

The PFO contained two conditions. The first condition requires the permit holder to repair or install a meter before water use may begin during the year 2000 irrigation season. The permit holder had installed a meter in 1994 as required under the permit and a stipulated agreement. The meter malfunctioned in 1996 and was not repaired or replaced.

The second condition requires the permit holder to submit a written progress report by October 1, 2003. The extension PFO notes that:

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

The PFO further states that:

Failure to submit a progress report by the due date above will result in cancellation of the undeveloped portion of the permit by the Department pursuant to ORS 537.260 or 537.410 to 537.450. Within one year after cancellation, the permittee must submit a final proof survey pursuant to ORS 537.230 and 537.250.

The permit holder was confused as to the requirement of a meter and was assured the water could be measured in another way. Further, because the meter had malfunctioned, the permit holder extrapolated measurements from the two years the meter was in working order, believing this to be sufficient.

The permit holder has agreed to replace the meter before water will be used this irrigation season and to measure and report the water as required under the permit. Further, the Watermaster has been notified of the situation and has stated that water use will not be allowed if the conditions are not followed.

Satisfied with the conditions placed on the extension, WaterWatch has agreed to the issuance of this Final Order and will not be seeking judicial review.

Findings and Conclusions

Under ORS 537.230(2) and OAR 690-320-0010(6) extensions of time to complete construction or to fully apply surface water to a beneficial use may only be granted upon a showing of good cause, including justification for the untimely completion. Pursuant to OAR 690-320-0010(6), a determination of good cause requires, at a minimum, consideration of the factors set out in ORS 539.010(5).

On September 20, 1999, the permit holder requested that the "lower lands" portion of the permit be dropped as they had no intention of developing this portion of the permit. The extension is being issued only for the "upper lands" portion of the permit.

The permit holder's extension application establishes that a digital meter was installed and worked satisfactorily from 1994 until 1996. The permit holder attempted to repair the meter with no success. The permit holder discussed this issue with the Watermaster for District 9 who stated he could measure the flow from the well when the permit holder was using it, satisfying the condition. A letter dated January 16, 2000 from the permit holder sets forth this information.

Further, the permit holder was confused as to the required annual reports that were to be submitted under the permit. The permit holder states that they were able to observe the flow rates based on their observations of the rates when the meter was working. They have submitted a water usage table to show water usage for the years 1994 through 1999. The permit holder understands that annual reports of monthly usage are to be submitted per the permit and extension conditions.

Work on the water development project completed to date includes construction of the well, installation of the pump, and pipelines. These investments toward developing the beneficial water use are approximately \$40,000 out of a total project cost of approximately \$70,000 and demonstrate reasonable diligence and good faith in developing the domestic water use.

On April 11, 2000, to address the issues raised in the protest, the permit holder agreed to the following conditions:

1. The permit holder must install a meter prior to using the water this irrigation season per the permit and extension order.
2. The meter must be maintained in good working order per the permit and extension order.
3. Water use will not be allowed without a working meter.
4. The "lower lands" of this permit are not covered in the extension and have been voluntarily relinquished per the permit holder's request.

The Watermaster for District 9 has agreed to inspect the meter once installed and understands these conditions as set forth in this Final Order.

The combination of information provided by the permittee -- unforeseen events delaying development of the water use, believing the water use could be measured without a meter, an understanding that a meter must be installed prior to water use, and significant financial investments made toward developing the beneficial water use -- demonstrate good cause for

the untimely development and due diligence and good faith in developing the subject water right. Through its agreement to comply with the conditions of the permit and extension, the permittee has demonstrated that its request for an extension of time satisfies the good cause requirements set out in OAR 690-320-0010(6).

Ultimate Findings

- The permittee is entitled to an extension of time under ORS 537.230.
- The permittee has submitted a complete extension application and fee.
- Completion of the project can be reasonably expected to occur within the requested extension period.
- The permittee has demonstrated good cause for an extension and demonstrated good faith and due diligence in developing the water use.

The Proposed Final Order shall be modified and an extension of time shall be granted.

CONDITIONS

1. As required by the permit the permittee **shall** install a meter **before water use begins** in the year 2000 irrigation season. The permittee shall maintain the meter or measuring device in good working order at the point of diversion of water from the well and submit annual water use reports showing monthly water usage.
2. The lands identified in the permit as "tract two-lower lands" are not covered in this extension and the permittee no longer has authorization to apply water to these lands under this permit. This extension only applies to lands identified in the permit as "tract one - upper lands." Total diversion and use of water under this permit shall not exceed the 8.82 cfs limitation set in the permit for the "upper lands".
3. The permittee must submit a written progress report to the Department by October 1, 2003. The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:
 - a) The amount of construction completed;
 - b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;

- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
- d) Financial investments made toward developing the beneficial water use.
- e) Water use reports for each month.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

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

Failure to submit a progress report by the due date above will result in cancellation of the undeveloped portion of the permit by the Department pursuant to ORS 537.260 or 537.410 to 537.450. Within one year after cancellation, the permittee must submit a final proof survey pursuant to ORS 537.230 and 537.250.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence;
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

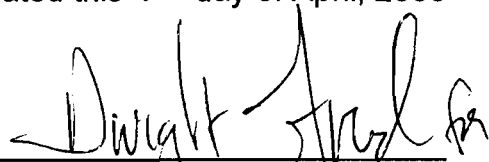
In determining whether the permittee has been diligent, the Department will consider information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

Order

The request to extend the time to complete construction and apply water to full beneficial use for Permit G-11979 is approved. The time to complete construction is extended from October 1, 1997 to October 1, 2005 and the time to complete application of water is extended from October 1, 1998 to October 1, 2005.

Dated this 27 day of April, 2000

A handwritten signature in black ink, appearing to read "Martha O. Pagel", written over a horizontal line.

Martha O. Pagel, Director
Water Resources Department