

**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 G-13678, Water Right Application G-14850 ) PROPOSED FINAL ORDER  
in the name of SSD Lands LLC; Sharon & Steve DeRuyter )

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**Permit Information**

**Application File G-14850 Permit G-13678**

Basin: 9 – Powder / Watermaster District 8

Date of Priority: October 9, 1998

**Authorized Use of Water**

Source of Water: A well within the Clover Creek Basin

Purpose of Use: Irrigation of 316.4 Acres

Maximum Rate: 3.95 Cubic Feet per Second (cfs)

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

***Please read this Proposed Final Order in its entirety.***

This Proposed Final Order applies only to Permit G-13678, water right Application G-14850.

## 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, 2013 to October 1, 2018.
- Make this the last extension of time that will be allowed for this permit.

### ACRONYM QUICK REFERENCE

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

#### Units of Measure

cfs – cubic feet per second  
gpm – gallons per minute

### AUTHORITY

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

**ORS 537.630(1)** provide in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which: irrigation or other works shall be completed; the well or other means of developing and securing ground water shall be completed; or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

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

**OAR 690-315-0040** provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to apply water to full beneficial use.

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

## **FINDINGS OF FACT**

### **Background**

1. Permit G-13678 was granted by the Department on June 18, 1999. The permit authorizes the use of up to 3.95 cfs of water from a well within the Clover Creek Basin, for irrigation of 316.4 acres. The permit specified complete application of water was to be made on or before October 1, 2003.
2. A prior permit extension has been granted for Permit G-13678. The most recent extension request resulted in the completion dates for full application of water being extended from October 1, 2003 to October 1, 2013.
3. The permit holder submitted an "Application for Extension of Time" to the Department on August 8, 2013, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13678 be extended from October 1, 2013 to October 1, 2018. This is the second permit extension requested for Permit G-13678.
4. Notification of the Application for Extension of Time for Permit G-13678 was published in the Department's Public Notice dated August 20, 2013. No public comments were received regarding the extension application.

### **Review Criteria** [OAR 690-315-0040]

*The time limits to 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 537.230<sup>1</sup>, 537.248<sup>2</sup>, 537.630<sup>3</sup> and/or 539.010(5)<sup>4</sup>.*

### **Other Governmental Requirements** [ORS 537.231(2)]

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

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

6. On August 8, 2013, 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)]

7. Actual construction of the well began prior to the May 25, 2000 deadline specified in the permit.

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<sup>1</sup>ORS 537.230 applies to surface water permits only.

<sup>2</sup>ORS 537.248 applies to reservoir permits only.

<sup>3</sup>ORS 537.630 applies to ground water permits only.

<sup>4</sup>ORS 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.*

8. As of August 8, 2013, the remaining work consists of applying for and receiving Department approval for a permit amendment to add a point of appropriation (POA), bringing power to this POA, and applying the water to full beneficial use.
9. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2018, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13678 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)]**

10. Work was accomplished within the time allowed in the permit or previous extension as follows:
  - a. Construction of the well and water system began prior to the May 25, 2000 deadline specified in the permit.
  - b. Work was completed (specified in the Application for an Extension of Time) during the original development time frame under Permit G-13678.
  - c. During the most recent extension period, being from October 1, 2003 to October 1, 2013, the following work was accomplished:
    - Construction of a mainline and irrigation infrastructure;
    - Installation of center pivots;
    - Installation of wheel lines;
    - Construction of an additional well to be added to the permit after a Permit Amendment is filed and approved by the Department; and
    - Submission a 2009 Progress Report.

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

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

- a. Since issuance of Permit G-13678, on June 18, 1999, no water has been appropriated from the well and therefore no acres have been irrigated.
- b. Delay of full beneficial use of water under Permit G-13678 was due to chronic health problems and severe financial difficulties of the original permit holder, which precluded the completion of the project within the authorized time frame. In early 2013, the property was sold and the permit was assigned to SSD Lands who have been working diligently to develop this permit.

**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 Final Order for an Extension of Time for Permit G-13678 issued on July 22, 2004, was conditioned with a "Water Level Measurement" condition. The record does not show that the required initial and March static water level measurements have been submitted to the Department, and thus this condition has not been met.
  - b. Failure to comply with permit or prior extension conditions constitutes illegal use of water. The use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

**Financial Investments [OAR 690-315-0040(3)(d)], Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)], and Economic investment in the project to date [OAR 690-315-0040(4)(d)].**

- 13. Financial investments made toward developing the beneficial water use.
  - a. As of August 8, 2013, the permit holder has invested approximately \$452,326 which is approximately 90 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$51,350 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 G-13678.

**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 G-13678; 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 appropriation for Permit G-13678, located within the Clover Creek Basin, is not located within a limited or critical ground water area. Clover Creek is not located within or above any state or federal scenic waterway, however it is located within an area ranked “high” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. Clover Creek is not listed by the Department of Environmental Quality as a water quality limited stream.

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. Based upon the nature of the ground water resources in this area, the Department conditioned its Final Order for an Extension of Time for Permit Number G-13678 dated July 22, 2004, with a “Water Level Measurement” condition to monitor and regulate future development under Permit G-13678. This condition applies to the use of 3.95 cfs of water for irrigation of 316.4 acres under Permit G-13678. This condition is as follows:

**Water Level Measurement Condition (from July 22, 2004 Extension Final Order)**

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

**Before Use of Water Takes Place**  
Initial and Annual Measurements

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

**After Use of Water has Begun**

**Seven Consecutive Annual Measurements**

Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well measurement; and
- D. Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years; or
- B. Annual water level measurements reveal a water level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water level measurements reveal a water level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

- b. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. The Department determined the need to place a "Last Extension Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary due to the failure to meet the Water Level Measurement condition required on the prior extension, and that to date, no water has been applied to beneficial use.

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

- 18. Use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

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

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

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

- 20. Unforeseen events have extended the length of time needed to fully develop and perfect Permit G-13678, in that the original permit holders were faced with serious health and



financial problems that restricted their ability 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 completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Full application of water to beneficial use can be accomplished by October 1, 2018<sup>5</sup>, as required by OAR 690-315-0040(1)(c).
5. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 17(b) above, the Department has established, as specified in the “Conditions” section of this PFO (Item 1), a “Last Extension Condition” in order to ensure future diligence is exercised in the development and perfection of Permit G-13678.

### **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 G-13678 from October 1, 2013 to October 1, 2018.

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<sup>5</sup>Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

Subject to the following conditions:

## CONDITIONS

### 1. Last Extension Condition

This is to be the last extension of time granted for Permit G-13678. Any future extensions of time requests will be denied.

DATED: November 12, 2013



Dwight W. French, Administrator,  
Water Right Services Division  
Oregon Water Resources Department

*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 Water Resources Department no later than **December 27, 2013**, 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.

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- If you have any questions about statements contained in this document, please contact Craig Kohanek at (503) 986-0823.
  - 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 503-986-0819.
  - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
  - Address any correspondence to :      Water Right Services Division  
    725 Summer St NE, Suite A  
Fax: 503-986-0901                              Salem, OR 97301-1266
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