

**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-13595, Water Right Application G-14538, ) PROPOSED FINAL ORDER  
in the name of John C. Roth and )  
Northwest Farm Credit Services, FLCA )

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Permit Information

Application: G-14538  
Permit: G-13595  
Basin: 17 – South Coast / Watermaster District 19  
Date of Priority: June 3, 1997  
Source of Water: A sump well in Johnson Creek Basin  
Purpose of Use: Cranberry use on 68.0 Acres  
Maximum Rate: 1.5 cubic feet per second (cfs)

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

*In Summary, the Department proposes to:*

- Grant an extension of time to apply water to full beneficial use from October 1, 2015 to October 1, 2020<sup>1</sup>.

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

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<sup>1</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.

## **ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

cfs – cubic feet per second

gpm – gallons per minute

DEQ – Department of Environmental Quality

OSP – Oregon State Police

## **AUTHORITY**

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

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

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

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

## **FINDINGS OF FACT**

### *Background*

1. Permit G-13595 was issued by the Department on February 22, 1999. The permit authorizes the use of up to 1.5 cfs of water from a sump well in Johnson Creek Basin for nursery use on 68.0 acres. The permit specified actual construction of the well was to begin by September 24, 1999, and complete application of water was to be made on or before October 1, 2002.
2. On February 11, 2002, Bandon Cranberry, Inc. filed an application to amend the point of appropriation allowed under Permit G-13595 by adding two points of appropriation. The Department assigned the application number T-9037.

3. On February 11, 2002, an assignment by deed from C “N” D Farms, Inc. to Bandon Cranberry, Inc. was recorded in the records of the Department.
4. On April 28, 2005, an assignment by deed from Bandon Cranberry, Inc. to John Roth/J&K Farms was recorded in the records of the Department.
5. On May 16, 2005, the Department approved the required monitoring plan as specified in the permit.
6. On August 22, 2006, the Department determined the additional points of appropriation proposed by Permit Amendment Application T-9037 were not consistent with the requirements of ORS 537.211. The Department issued a Final Order Rejecting Two Additional Points of Appropriation.
7. On April 21, 2014, as assignment from John C. Roth to Northwest Farm Credit Services, FLCA and John C. Roth was recorded in the records of the Department.
8. One prior permit extension has been granted for Permit G-13595. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2002 to October 1, 2015.
9. The permit holder, John C. Roth, submitted an “Application for Extension of Time” to the Department on November 16, 2015, requesting the time to complete construction of the water system be extended from October 1, 2015 to October 1, 2020. However, the permit does not contain a specific deadline for completing construction, the Department needs to only consider an extension of the time to apply water to full beneficial use. The Department, therefore, determined that the permit holder’s intent was to request the time in which to accomplish beneficial use of water to the full extent under the terms of Permit G-13595 be extended from October 1, 2015, to October 1, 2020.
10. Notification of the Application for Extension of Time for Permit G-13595 was published in the Department’s Public Notice dated November 24, 2015. 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 537.230<sup>2</sup>, 537.248<sup>3</sup>, 537.630<sup>4</sup> and/or 539.010(5)<sup>5</sup>.*

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<sup>2</sup>ORS 537.230 applies to surface water permits only.

<sup>3</sup>ORS 537.248 applies to reservoir permits only.

<sup>4</sup>ORS 537.630 applies to ground water permits only.

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

11. On November 16, 2015, 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)]**

12. Actual construction of the well began by the deadline as specified in the permit, being September 24, 1999. The application does not specifically state when construction began.

According to an OWRD interoffice memo received by the Department on June 8, 1998, the District 19 Watermaster along with representatives from DEQ and OSP were to perform a site visit, investigating an undocumented dug well, and to verify the source of water for Application G-14538. The OWRD interoffice memo is the earliest record providing evidence of actual construction of the well beginning prior to February 22, 2004 per ORS 537.630(1). The Department has determined the permit holder has satisfied the condition requiring beginning actual construction of the well.

**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.*

13. As of November 16, 2015, the permit holder states the remaining work to be completed consists of completing development of additional acres for cranberry use; and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13595 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:*

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<sup>5</sup>ORS 539.010(5) applies to surface water and ground water permits.

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

14. According to the permit holder, work was accomplished within the time allowed in the permit or previous extension as follows:
  - a. Actual construction of the well and water system began prior to the September 24, 1999 deadline specified in the permit. According to an OWRD interoffice memo received by the Department on June 8, 1998, the District 19 Watermaster along with representatives from DEQ and OSP were to perform a site visit, investigating an undocumented dug well, and to verify the source of water for Application G-14538. The OWRD interoffice memo is the earliest record providing evidence of actual construction of the well beginning prior to February 22, 2004 per ORS 537.630(1). The Department has determined the permit holder has satisfied the condition requiring beginning actual construction of the well.
  - b. Work was completed during the original development time frame under Permit G-13595. A sump well and a transfer pond were constructed.
  - c. During the most recent extension period, being from October 1, 2002, to October 1, 2015, the following was accomplished:
    - Completed construction of the sump well;
    - Developed additional acres for cranberry use; and
    - Installed a totalizing flow meter.

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

15. The application states a maximum rate of 1.5 cfs of water has been appropriated from the well for irrigation of 42.3 acres.
16. Beneficial use of water has not yet been demonstrated under this permit because not all development of the water project was satisfied by October 1, 2015.
17. The application states, delay of full beneficial use of water under Permit G-13595 was due, in part, to an insufficient cranberry market. Cranberry prices have been below production costs since 2010. The permit holder needs more time in which to obtain the full quantity of acres allowed for cranberry use under the permit.

The Department has determined that this extension will allow the permit holder to complete development in an effort to make full beneficial use of the water as required by Permit G-13595.

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

18. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

19. The permit holder has installed a totalizing flow meter. The permit holder has also submitted and gained approval of a water use monitoring plan required under Permit G-13595 in May 2005.

The Department determined the permit holder has complied with the conditions of the permit.

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

20. The application states the permit holder has invested approximately \$100,000, which is approximately 67 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$50,000 investment is needed for the completion of this project.

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

21. The Department has found good faith of the appropriator under Permit G-13595.

***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:*

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)].

22. 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-13595; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an application for a new water right is submitted. The point of appropriation for Permit G-13595, located within the Ferry Creek Basin, is located within the Geiger Creek ground water Withdrawn Authority. Ferry Creek is not located within or above any state or federal scenic waterway, however, it is located within an area ranked "Highest" 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 point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

***Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].***

23. None have been identified.

***Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].***

24. None have been identified.

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

25. 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)]***

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

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

27. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-13595, in that the permit holders were faced with an insufficient cranberry market, in which cranberry prices have been below production costs since 2010, 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 complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Based on Finding of Facts 11 through 19, full application of water to beneficial use can be accomplished by October 1, 2020, 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 G-13595 from October 1, 2015 to October 1, 2020.

DATED: December 29, 2015



Dwight W. French, Administrator,  
Water Right Services Division

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

### 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 **February 12, 2016**, 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;





Mailing List for Extension PFO Copies

PFO Date: December 29, 2015

Copies Mailed

Application: G-14538

By: \_\_\_\_\_

Permit: G-13595

On: \_\_\_\_\_

Original mailed to Applicant:

John C. Roth  
PO Box 362  
Bandon, OR 97411

Northwest Farm Credit Services, FLCA  
2222 NW Kline St  
Roseburg, OR 97471-1739

Copies sent to:

1. WRD - App. File G-14538/ Permit G-13595

Fee paid as specified under ORS 536.050 to receive copy:

2. None

Receiving via e-mail (10 AM Tuesday of signature date)  
(DONE BY EXTENSION SPECIALIST)

3. WRD - Watermaster District 19, Greg Wacker

CASEWORKER: CAC