

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-13980, Water Right Application G-15055,) PROPOSED FINAL ORDER
in the name of Edith Pierce, Lynette Pierce,)
Bryan Joyce, Susan and Kuen Lee, and)
Edward and Theresa E Shepard)

Permit Information

Application: G-15055
Permit: G-13980
Basin: 2 – Middle Willamette / Watermaster District 16
Date of Priority: October 27, 1999
Source of Water: Four wells in Willamette River Basin
Purpose of Use: Nursery operations of 21.0 acres
Maximum Rate: 0.223 cubic foot per second (cfs), being 0.056 cfs from each well

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, 2005 to October 1, 2020¹.

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.

¹Pursuant 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

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-13980 was issued by the Department on June 8, 2001. The permit authorizes the use of up to 0.223 cfs of water from four wells in Willamette River Basin for nursery operations of 21.0 acres, being 0.056 cfs from each well. The permit specified complete application of water was to be made on or before October 1, 2005.
2. On March 9, 2015, the Department issued a letter by certified mail, requesting either a Claim of Beneficial Use or an extension of time be submitted, or cancellation proceedings for Permit G-13980 would begin.
3. On July 8, 2015, the Department issued a Cancellation of Certain Permit(s) to Appropriate Water under the provisions of ORS 537.260 for Permit G-13980, for failure

to make proof of appropriation of water under the terms and conditions of the permit.

4. On July 27, 2015, the Department received a request for reconsideration of the cancellation and reinstatement of Permit G-13980, along with the statutory fees for reinstatement.
5. On July 31, 2015, the Department issued a Reinstatement of Permit G-13980.
6. On October 21, 2015, a partial assignment by proof from J.D. and Edith Pierce to Edith Pierce, Lynette Pierce, Bryan Joyce, Susan and Kuen Lee, and Edward W. and Theresa E. Shepard was recorded in the records of the Department.
7. The permit holder, Edith Pierce, submitted an "Application for Extension of Time" to the Department on December 11, 2015, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13980 be extended from October 1, 2005 to October 1, 2020. This is the first permit extension requested for Permit G-13980.
8. Notification of the Application for Extension of Time for Permit G-13980 was published in the Department's Public Notice dated December 22, 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 537.230², 537.248³, 537.630⁴ and/or 539.010(5)⁵.

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

9. On December 11, 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)]

10. Construction of the well began prior to the complete application of water date specified in the permit, being October 1, 2005. The application states, construction of Well 1 (YAMH 2439) began June 25, 1974.

According to the well log received by the Department on July 16, 1974, Well 1 (YAMH 2439) construction began June 25, 1974. The Department has determined that the

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 537.630 applies to ground water permits only.

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

prosecution of the construction of the well began prior to October 1, 2005.

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.

11. As of December 11, 2015, the permit holder states the remaining work to be completed consists of meeting all permit conditions, including submitting annual water use reports and March static water level measurements; submitting and gaining approval of a request to split the permit from the other water right holders; 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-13980 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)]

12. The application states, work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the well was completed prior to October 1, 2005. Construction of Well 1 (YAMH 2439) began June 25, 1974 and was completed June 25, 1974. Well 2 (YAMH 1706) construction began April 14, 1992 and was completed April 16, 1992. Well 3 (YAMH 2838) construction began June 28, 1993 and was completed July 9, 1993. Well 4 (YAMH 51761) construction began August 12, 1999 and was completed August 13, 1999. The previous permit holder installed pumps, a meter on each well, and the irrigation system.
 - b. No work was completed during the original development time frame under Permit G-13980, as all work was completed prior to permit issuance.

- c. Since October 1, 2005 the permit holder has replaced the irrigation system with a drip system, as crops were changed.

The Department has determined that work has been accomplished prior to permit issuance, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

13. The application states a maximum rate of 0.12 cfs of water has been appropriated, being 0.05 cfs from Well 1 (YAMH 2439) for irrigation of 2.5 acres, 0.04 cfs from Well 2 (YAMH 1706) for irrigation of 3.7 acres, and 0.03 cfs from Well 3 (YAMH 2838) for irrigation of 1.0 acre.
14. Beneficial use of water has not yet been demonstrated under this permit because application of the water to a full beneficial use was not made by October 1, 2005.

The Department has determined that this extension will allow the permit holder to submit and gain approval for a request to split the permit, in an effort to make proof of beneficial use of the water as required by Permit G-13980.

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

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

The Department records show a meter was installed on each in March 2000. The Department records indicate the permit holder submitted an annual water use report for each well beginning in October 2000. The Department records also indicate the permit holder submitted an initial March static water level measurement for each well March 15, 2004, however annual measurements for Well 3 (YAMH 2838) haven't been received since 2004, and Well 4 (YAMH 51761) measurements haven't received since 2005. The Department has determined the permit holder has complied with conditions as required by Permit G-13980.

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

16. The application states the permit holder has invested about \$21,700, which is approximately 91.5 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$2,000 investment is needed for the completion of this project.

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

17. The Department has found good faith of the appropriator under Permit G-13980.

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)].

18. 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-13980; 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 points of appropriation for Permit G-13980, located within the Willamette River Basin, are not located within a limited or critical ground water area. Willamette River is not located within or above any state or federal scenic waterway, however, it is located within an area ranked "low" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. The points of appropriation are 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)].

19. 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)].

20. None have been identified.

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

21. 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)]

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

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

23. None have been identified.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. Based on Finding of Facts 10 through 17, full application of water to beneficial use can be accomplished by October 1, 2020, as required by OAR 690-315-0040(1)(c).
4. 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).

Continued on the following page

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-13980 from October 1, 2005 to October 1, 2020.

DATED: January 26, 2016



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 **March 11, 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;
 - 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.

Mailing List for Extension PFO Copies

PFO Date: January 26, 2016

Copies Mailed

Application: G-15055

By: _____

Permit: G-13980

On: _____

Original mailed to Applicant:

Edith Pierce
PO Box 92
Dundee, OR 97115

Copies sent to:

1. WRD - App. File G-15055/ Permit G-13980

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 16, Joel Plahn

CASEWORKER: CAC