

**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-15533, Water Right Application G-15678, in ) PROPOSED FINAL ORDER  
the name of Randy Travis, City of Klamath Falls )

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Permit Information

Application:	G-15678
Permit:	G-15533
Basin:	14 – Klamath / Watermaster District 17
Date of Priority:	January 7, 2002
Source of Water:	A well in Lake Ewauna Basin
Purpose of Use:	Industrial use and nursery use on 4.5 Acres
Maximum Rate:	1.0 cubic foot 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, 2008 to October 1, 2017<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  
RM – River Mile

## **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-15533 was issued by the Department on December 19, 2003. The permit authorizes the use of up to 1.0 cfs of water from a well in Lake Ewauna Basin for industrial use and nursery use on 4.5 acres. The permit specified complete application of water was to be made on or before October 1, 2008.
2. On August 10, 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-15533 would begin.

3. The permit holder, Randy Travis, City Water/Geothermal Manager for the City of Klamath Falls, submitted an "Application for Extension of Time" to the Department on February 5, 2016, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15533 be extended from October 1, 2008 to October 1, 2017. This is the first permit extension requested for Permit G-15533.
4. On February 5, 2016, the Department received documents supporting the Application for Extension of Time, in which an agreement was executed on September 1, 2012, between the City of Klamath Falls and IFA Nurseries, Inc. The agreement identified a few conditions, including: the well, water works, and all other appurtenances necessary to remove water from the ground is exclusively owned by the City; IFA Nursery owns the nursery use water distribution line, and may use water in accordance with the terms and conditions of Permit G-15533; and IFA Nursery shall be responsible for all of "permittee's" responsibilities under the permit, including but not limited to the measurement, recording and reporting conditions.
5. Notification of the Application for Extension of Time for Permit G-15533 was published in the Department's Public Notice dated March 22, 2016. No public comments were received regarding the extension application.
6. On March 23, 2016, the City of Klamath Falls submitted additional information to supplement their Application for Extension of Time.

**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 City of Klamath Falls 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>.*

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

7. On February 5, 2016, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the City of Klamath Falls.

**Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]**

8. Construction of the well began prior to the complete application of water date specified in the permit, being October 1, 2008. The City of Klamath Falls states, construction of the well began May 10, 1993.

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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.

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

According to the well log received by the Department on June 17, 1993, Well (KLAM 10747) construction began May 10, 1993. The Department has determined that the prosecution of the construction of the well began prior to October 1, 2008.

**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.*

9. As of February 5, 2016, the City of Klamath Falls states the remaining work to be completed consists of meeting all permit conditions, including developing and submitting a plan to monitor and report the impact of water use from the well; and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the City of Klamath Falls' request to have until October 1, 2017, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-15533 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. 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, 2008. Construction of Well IFA/Pine Cone (KLAM 10747) began construction May 10, 1993 and was completed May 26, 1993. The City of Klamath Falls also installed a pump and flow meter. Development of the nursery use began with construction of greenhouses by IFA Nursery.
  - b. Work was completed during the original development time frame under Permit G-15533. The City of Klamath Falls constructed a permanent 4" water main line to the IFA Nursery site from Well IFA/Pine Cone (KLAM 10747). Construction of greenhouses by IFA Nursery was completed.

The Department has determined that work has been accomplished prior to permit issuance and within the time allowed in the permit, 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)]***

11. The application states a maximum rate of 155 gpm (0.35 cfs) of water has been appropriated from Well IFA/Pine Cone (KLAM 10747) for industrial use and nursery use on 3.8 acres.
12. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2008.

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

13. Since October 1, 2008 the City of Klamath Falls has submitted the annual water use records, required under Permit G-15533.
14. The Department has considered the City of Klamath Falls' compliance with conditions, and has identified the following concern: (1) the record does not show that a plan to monitor and report the impact of water use from the well was submitted to the Department.

The application states that a flow meter was installed prior to 2003.

Department records show annual water use reports have been submitted for 2014 and 2015.

The Department has determined that this extension will allow the plan to monitor and report the impact of water use from the well submitted after October 1, 2008 to satisfy compliance of the condition of "The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well (s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department," in an effort to make proof of beneficial use of the water as required by Permit G-15533.

Beneficial 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 City of Klamath Falls must demonstrate that all conditions of the permit have been satisfied.

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

15. The application states the City of Klamath Falls has invested about \$53,170. The City of Klamath Falls leases land to IFA Nursery, Inc. on which the nursery use is located. The City of Klamath Falls estimates IFA Nursery, Inc. has invested about \$3,000,000 towards development of the nursery use. The application states the City of Klamath Falls is uncertain of the estimated remaining cost to complete the project on the IFA Nursery site, as it is stated, “undetermined potential greenhouse with irrigation.” The total projected cost for complete development of this project is \$3,053,170.

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

16. The Department has found good faith of the appropriator under Permit G-15533.

***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)].

17. 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-15533; 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-15533, located within the Lake Ewauna Basin, is not located within a limited or critical ground water area. Lake Ewauna is above the Klamath Scenic Waterway, and, 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. 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)].***

18. 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)].***

19. None have been identified.

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

20. 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)]***

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

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

22. None have been identified.

## **CONCLUSIONS OF LAW**

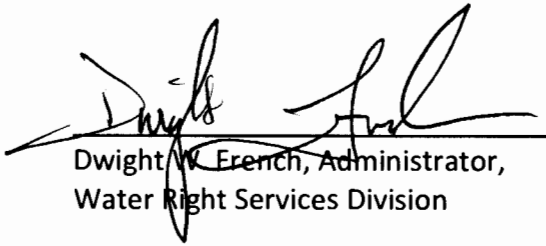
1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin 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 6 through 14, full application of water to beneficial use can be accomplished by October 1, 2017, 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 City of Klamath Falls 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-15533 from October 1, 2008 to October 1, 2017.

DATED: May 31, 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 **July 15, 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 City of Klamath Falls, if petitioner is other than the water right City of Klamath Falls; and
  - g. The applicant or non-applicant protest fee required under ORS 536.050.



