

**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-12245, Water Right Application G-12446, in) PROPOSED FINAL ORDER
the name of Frances E. Farr)

Permit Information

Application:	G-12446
Permit:	G-12245
Basin:	13 – Goose and Summer Lake / Watermaster District 12
Date of Priority:	March 13, 1991
Source of Water:	One well in Goose Lake Basin
Purpose of Use:	Irrigation of 73.5 acres
Maximum Rate:	0.917 cubic foot per second (cfs)

***Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.***

In Summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from, October 1, 1998, to October 1, 2018.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2018¹.
- Make the extension subject to certain conditions set forth below.

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 foot per second
gpm – gallons per minute
bls – below land surface

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.

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. On March 13, 1991, Samuel Farr submitted an application to the Department requesting the use of 411.60 gpm from one well for irrigation use on 73.5 acres. The application was assigned file G-12446.

2. On January 5, 1992, a ground water review was completed by the Karl Wozniak in the Department's Groundwater / Hydrology Section. The review makes a finding that "The applicant's well comingles unconfined and confined groundwaters. In addition, because the well is <1/4 mile from Antelope Creek, Div[ision] 9 forces us to assume hydraulic connection and the potential for substantial interference. If the well is reconstructed to produce water from confined zones only (\geq 150 feet below land surface) the potential for substantial interference will be eliminated and comingling will also cease to occur."
3. On December 9, 1993, the Department prepared a technical review and a draft permit to include conditions supported by the January 5, 1992, groundwater review. Condition number 13 in the draft permit states, "No water may be appropriated under the terms of this permit until the well has been repaired to conform to current well construction standards and proof of such repairs is filed with the Enforcement Section of the Water Resources Department." Condition 14 in the draft permit states, "No water may be appropriated under the terms of this permit from shallower than 150 feet below land surface."
4. On February 2, 1994, the department received a "Letter of Appeal" dated January 31, 1994, from Samuel Farr stating "In my opinion this well has been constructed to meet all conditions".
5. On October 20, 1995, Karl Wozniak prepared a memo to the file which states, "Data from the objection does not support any changes to the original findings by the Groundwater/Hydrology Section."
6. Permit G-12245 was issued by the Department on January 26, 1996. The permit authorizes the use of up to 0.917 cfs of water from one well in Goose Lake Basin for irrigation of 73.5 acres. The permit specified actual construction of the well to begin by January 26, 1997, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.
7. On January 21, 1998, the Department received "Notice of Beginning of Construction" (Form A) from Samuel Farr stating actual construction began on January 13, 1997.
8. On January 21, 1998, the Department received "Notice of Completion of Construction" (Form B) from Samuel Farr stating complete construction was completed on January 14, 1997.
9. On March 10, 1999, the Department received "Notice of Complete Application of Water to a Beneficial Use" (Form C) from Samuel Farr stating complete application of "the water to a beneficial use in accordance with the terms of said permit" on March 9, 1999.
10. On March 10, 2000, a Claim of Beneficial Use (COBU) was submitted to the Department for review.

11. On April 25, 2016, an assignment by proof from Samuel Farr to Frances E. Farr was recorded in the records of the Water Resources Department.
12. The permit holder, Frances E. Farr, submitted an "Application for Extension of Time" to the Department on April 22, 2016, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-12245 be extended from October 1, 1999, to October 1, 2018. This is the first permit extension requested for Permit G-12245.
13. Notification of the Application for Extension of Time for Permit G-12245 was published in the Department's Public Notice dated May 3, 2016. 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)]

14. On April 22, 2016, 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)]

15. Actual construction of the well began prior to the January 26, 1997 deadline specified in the permit. According to the permit holder, construction of the Well (Lake 4144) began on March 4, 1991. A well log received by the Department on November 6, 1992, states that construction of Well (LAKE 4144) began on March 3, 1991, and was completed October 20, 1992.
16. According to the well log received by the Department on November 6, 1992, Well (LAKE4144) construction began March 3, 1991. The Department has determined that the prosecution of the construction of the well began on March 3, 1991, and was completed October 20, 1992. The well was constructed to a completed depth of 350 feet bls with a cement seal from 0 feet to 20 feet bls. A 14 inch steel casing was installed from 0 feet to 160 feet bls with perforations from 25 feet to 160 feet bls. The Groundwater / Hydrology Review conducted by the Department on January 5, 1992, indicated that well

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.

(LAKE 4144) appropriates water from both confined and unconfined aquifers at depths shallower than 150 feet bls.

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.

17. As of April 22, 2016, the application states the remaining work to be completed consists of completing construction of the water system and applying water to full beneficial use. Work which needs to be accomplished consists of reconstruction of the well to meet permit condition of meeting current well construction standards and to appropriate water from no shallower than 150 below land surface (bls).

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 complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-12245 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)]

18. The application states, work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the well began prior to the January 26, 1997 deadline specified in the permit. According to the well log received by the Department on November 6, 1992, the construction of Well (LAKE 4144) began March 3, 1991, and was completed October 20, 1992.
 - b. Work was completed during the original development time frame under Permit G-12245. According to the application, installation of a pump and electric motor, 1320 feet of 6-inch mainline, 1320 feet of 4-inch mainline and a 5-inch wheel-line occurred during the original development time allowed in the permit.

The Department has determined that work has been accomplished prior to permit issuance and within the time allowed in the permit. Based on evidence in the file and information provided by the applicant, Finding of Facts 2 – 10, provides evidence of good cause, but lack of diligence towards the complete application of water to a beneficial use.

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

19. The application states a maximum rate of 0.917 cfs of water has been appropriated from the well for irrigation of 73.5 acres
20. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 1999.

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

21. Prior to October 1, 1998, the permit holder had installed a water meter as required under Permit G-12245.
22. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that Well 3 (LAKE4144) has been repaired to conform to current well construction standards nor has been altered to appropriate no water from shallower than 150 feet bls.

The Department has determined that this extension will allow compliance with well construction standards after October 1, 1998, to satisfy the conditions of: (1) No water may be appropriated under the terms of this permit until the well has been repaired to conform to current well construction standards and proof of such repair is filed with the Enforcement Section of the Water Resources Department; and (2) No water may be appropriated under the terms of this permit from shallower than 150 feet below land surface (bls) in an effort to make proof of beneficial use of the water as required by Permit G-12245.

Failure to comply with permit conditions constitutes illegal use of water. 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 permit holder 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)]

23. The application states the permit holder has invested about \$47,900 towards complete development of this project. The permit holder anticipates an additional investment, which has not yet been determined, is needed for the completion of this project.

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

24. The Department has found good faith of the appropriator under Permit G-12245.

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)].

25. 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-12245; 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-12245, located within the Antelope Creek Basin, is not located within a limited or critical ground water area. Antelope Creek is not located within or above any state or federal scenic waterway, however, it is located within an area ranked "moderate" 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)].

26. 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)].

27. None have been identified.

28. 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 on January 5, 1992, a need to condition any use of water from well (LAKE 4144), authorized under Permit G-12245, with a "Well Construction Condition". These conditions, specified under Item 1 of the "Conditions" section of this PFO, were determined to be necessary due to concerns, as supported in the Findings of Fact 2 – 10, which the construction of Well (LAKE4144) is not in compliance with conditions set forth in the permit. These conditions shall require the permit holder to:

- (1) **No water may be appropriated under the terms of this permit until the well has been repaired to conform to current well construction standards and proof of such repair is filed with the Enforcement Section of the Water Resources Department;** and
- (2) **No water may be appropriated under the terms of this permit from shallower than 150 feet below the land surface.**

No further appropriation of water from this well shall be allowed under the terms of this permit until proof of the above two conditions is submitted to and approved by the Department.

29. 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 2 of the "Conditions" section of this PFO, was determined to be necessary due to the Departments finding of marginal good faith and diligence and permit conditions not being met. Continued use of water from this well under the terms of Permit G-12245 constitutes illegal use as the well (LAKE 4144) does not conform to permit conditions of:
 - (1) **No water may be appropriated under the terms of this permit until the well has been repaired to conform to current well construction standards and proof of such repair is filed with the Enforcement Section of the Water Resources Department;** and
 - (2) **No water may be appropriated under the terms of this permit from shallower than 150 feet below the land surface.**

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

30. 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)]

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

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

32. According to the application, Samuel Farr passed away in 2012. Frances Farr, his widow, states that she recently discovered the well does not meet well construction standards.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and 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 7 through 23, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2018, as required by OAR 690-315-0040(1)(c).
5. The Department has considered the good faith and diligence 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 marginal good cause exists for an extension of time to complete construction and 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 27 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a well construction condition that applies to any use of water under Permit G-12245 in order to ensure future diligence.
7. As authorized in OAR 690-315-0050(5) and as described in Finding 28 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 2), a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-12245.

continued on 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 complete construction of the water system under Permit G-12245 from October 1, 1998, to October 1, 2018.
- Extend the time to apply water to beneficial use under Permit G-12245 from October 1, 1999, to October 1, 2018.

Subject to the following conditions:

CONDITIONS

1. Well Construction Condition

The use of any water under Permit G-12245 is subject to this Well Construction Condition.

- **No water may be appropriated under the terms of this permit until the well has been repaired to conform to current well construction standards and proof of such repair is filed with the Enforcement Section of the Water Resources Department.**
- **No water may be appropriated under the terms of this permit from shallower than 150 feet below the land surface.**

No further appropriation of water from this well shall be allowed under the terms of this permit until proof of the above two conditions is submitted to and approved by the Department.

2. Last Extension Condition

This is to be the last extension of time granted for Permit G-12245. Any future extensions of time requests will be denied.

DATED: June 14, 2016


Dwight 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 29, 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.
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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have questions about statements contained in this document, please contact Jeffrey D. Pierceall at (503)986-0802.
 - 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 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to : Water Right Services Division
 725 Summer St NE, Suite A
 Salem, OR 97301-1266
- Fax: 503-986-0901
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