

**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 S-54204, Water Right Application S-85914) PROPOSED FINAL
in the name of David N. Eshraghi, Linda A. Eshraghi and Northwest) ORDER
FarmCredit Services, FLCA

Permit Information

Application:	S-85914
Permit:	S-54204
Basin:	Lower Willamette / Watermaster District 18
Date of Priority:	January 20, 2004
Source of Water:	Reservoir 1, under permit R-13944 (Application R-85912), and Reservoir 2, under permit R-13945 (Application R-85913), and runoff, tributaries of Tualatin River
Purpose of Use:	Nursery use on 44.3 Acres
Maximum Volume and Rate:	6.0 acre feet (AF), being 1.0 AF from Reservoir 1 and 5.0 AF from Reservoir 2, and 1.56 cubic feet per second (cfs) from runoff

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, 2009, to October 1, 2018.¹

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

¹ Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
PFO – Proposed Final Order
cfs – cubic feet per second
AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) provides 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 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. On January 20, 2004, Gary Baker, for Hard Rock Enterprises submitted an application for a permit to use water to the Department .
2. On August 1, 2005, an assignment of application file S-85914 from Gary Baker and Gary Baker, Hard Rock Enterprises to David N. Eshraghi and Linda A. Eshraghi was recorded in the records of the Water Resources Department.
3. Permit S-54204 was issued by the Department on September 1, 2005. The permit authorizes the use of up to 6.0 AF, being 1.0 AF from Reservoir 1 and 5.0 AF from Reservoir 2, and 1.56 cfs from runoff, tributaries of Tualatin River, for nursery use on 44.3 acres. The permit specified complete application of water was to be made on or before October 1, 2009.
4. On September 6, 2005, an administrative correcting assignment adding Northwest Farm

Credit Services, FLCA was recorded in the records of the Water Resources Department. The record was updated to show David N. Eshraghi and Linda A. Eshraghi and Northwest Farm Credit Services, FLCA as permit holders of record.

5. The permit holder, David Eshraghi, submitted an "Application for Extension of Time" to the Department on May 19, 2016, requesting the time to complete construction of the water system and the time to apply water to full beneficial use under the terms of Permit S-54204 be extended from October 1, 2009, to October 1, 2018. This is the first permit extension requested for Permit S-54204.
6. Notification of the Application for Extension of Time for Permit S-54204 was published in the Department's Public Notice dated May 24, 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 and/or 539.010(5)⁴.

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

7. On May 19, 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)]

8. Construction of the water system began prior to permit issuance. The permit holder states, construction began on June 1, 1999. According to the permit holder, construction of the reservoirs and installation of the conveyance and irrigation system was completed prior to permit issuance.

The Department has determined the permit holder has satisfied the condition requiring beginning of construction of the water works.

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 May 19, 2016, the permit holder states the remaining work to be completed consists of meeting all permit conditions 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, 2018, to accomplish the application

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

of water to beneficial use under the terms and conditions of Permit S-54204 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 water system began prior to October 1, 2009. The application states that construction of Reservoir 1 and Reservoir 2 and the installation of pumps, conveyance and irrigation systems was accomplished prior to permit issuance.
 - b. No other work was completed during the original development time frame under Permit S-54204, as a majority of the work was completed prior to permit issuance.
 - c. Since October 1, 2009, the permit holder installed a meter in 2015.

The Department has determined that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence from the appropriator 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 volume of 6.0 cfs of water has been diverted from Reservoir 1 and Reservoir 2 for nursery use on 44.3 acres.
12. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by the October 1, 2009.

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

13. The water right permit holder's conformance with the permit or previous extension conditions.

The record does show the permit holder has installed a water meter in 2015.

right is submitted. The points of diversion are located on Reservoir 1, under permit R-13944 (Application R-85912), and Reservoir 2, under permit R-13945 (Application R-85913), and runoff, tributaries of Tualatin River, and are not located within a Withdrawn Area. Reservoir 1, under permit R-13944 (Application R-85912), and Reservoir 2, under permit R-13945 (Application R-85913), and runoff, tributaries of Tualatin River are not located within or above a state or federal scenic waterway, however, they are 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 points of diversion are not in a location listed by the Department of Environmental Quality as a water quality limited stream.

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

a. None have been identified.

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

a. None have been identified.

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

19. 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)]

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

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

21. 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 537.230(3).
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 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

The Department has considered the permit holder's compliance with conditions, and has identified the following concern: annual reports of the amount of water used each month have not been received by the Department.

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.

The Department has determined that this extension will allow installation of a meter after 2009, to satisfy compliance of the condition of "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device approved by the Director to the Department. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.", in an effort to make proof of beneficial use of the water as required by Permit G-54204.

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

14. The applications states the permit holder has invested about \$18610.94, which is the total cost for complete development of this project.

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

15. The Department has found good faith of the appropriator under Permit S-54204.

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)].

16. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-54204; 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

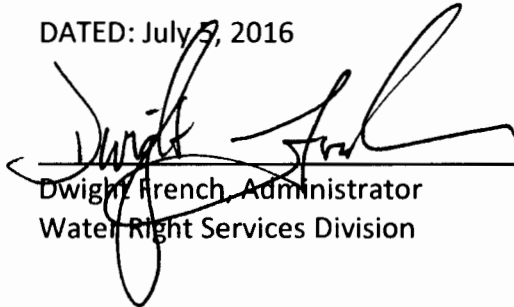
4. Based on Finding of Facts 7 through 14, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2018⁵, as required by OAR 690-315-0040(1)(c).
5. The Department has considered the reasonable diligence and good faith of the appropriator, the cost 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 complete construction and 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 S-54204 from October 1, 2009, to October 1, 2018.

DATED: July 9, 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 19, 2016**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

⁵Pursuant to ORS 537.230(3), 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.

