

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #G-13691, Water Right) PROPOSED FINAL ORDER
Application #G-14876)
(Patterson Nursery Sales, Bill Patterson))

Permit Information

Application File #G-14876 / Permit #G-13691

Basin: #02 - Willamette Basin / Watermaster District: #16

Date of Priority: December 10, 1998

Authorized Use of Water

Source of Water:	Wells 1, 2, 3, 4, and 5, in Eagle Creek Basin
Purpose or Use:	Nursery Operations on 100.7 acres
Maximum Rate:	2.675 cubic feet per second (cfs), being 0.535 cfs from each well

**This Extension of Time request is being processed in accordance
with Oregon Administrative Rule Chapter 690, Division 315.**

Please read this Proposed Final Order in its entirety.

This Proposed Final Order applies only to Permit #G-13691, water right Application #G-14876. A copy of Permit #G-13691 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete application of water from October 1, 2003, to October 1, 2007.

AUTHORITY

ORS 537.630(1) provide in pertinent part that the Water Resources Department shall, 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.

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-13691 was granted by the Water Resources Department on June 29, 1999. The permit authorizes the use of up to 2.675 cfs, being 0.535 cfs from each well, from five wells (#1, #2, #3, #4 and #5) in Eagle Creek Basin, for nursery operations on 100.7 acres. The permit specified that complete application of water was to be made on or before October 1, 2003.
2. The permit holder submitted an "Application for Extension of Time" to the Department on May 5, 2004, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-13691 be extended from October 1, 2003, to October 1, 2007. This is the first permit extension requested for Permit #G-13691.
3. Notification of the permit holder's extension of time request for Permit #G-13691 was published on the Department's Public Notice dated May 10, 2004. No public comment on the extension application was received.

Review Criteria [OAR 690-315-0040(1)(2)]

As set forth under OAR 690-315-0040(1)(2), the time limits to complete construction and/or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the applicable requirements of ORS 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

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

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

5. Construction of the well and water system began within the time specified in the permit, being June 29, 2000.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)]

6. As of May 5, 2004, the permit holder had invested a total of \$248,000 into the project, consisting of construction of wells #1, #2, and #5, and a distribution system, and installation of pumps and meters. An additional \$200,000 investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0040(3)]

Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [OAR 690-315-0040(3)].

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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- ¹ ORS 537.230 applies to surface water permits only.
 - ² ORS 537.248 applies to reservoir permits only.
 - ³ ORS 537.630 applies to ground water permits only.
 - ⁴ ORS 539.010(5) applies to surface water permits only.

Amount of Construction

7. The following construction was completed within the time allowed in the permit or previous extension:

- a. As of October 1, 2003, the following was accomplished: construction of wells #1, #2, and #5, and a distribution system; and installation of pumps and meters.

Beneficial Use of Water

8. The following beneficial use was made of the water during the permit or previous extension time limits:

- a. Since the issuance of Permit #G-13691 on June 29, 1999, a maximum rate of 0.67 cfs of the permitted 2.675 cfs has been appropriated for irrigation of 100.7 acres.
- b. Delay of full beneficial use of water under Permit #G-13691 was due to additional time needed to finance the remaining project costs.

Compliance with Conditions

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

- a. The record does not raise concerns about the permit holder's compliance with conditions.

Financial Investments

10. Financial investments made toward developing the beneficial water use.

- a. As of May 5, 2004, the permit holder had invested approximately 55 percent of the total projected cost for complete development of this project. A total of \$248,000 has been invested into the project, consisting of: construction of wells #1, #2, and #5, and a distribution system; and installation of pumps and meters. An additional \$200,000 investment is anticipated for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0040(4)]

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:

- 11. The amount of water available to satisfy other affected water rights and scenic waterway flows.

- a. The Department determined on January 6, 1999, that this use of ground water will, if properly conditioned, adequately protect the surface water from interference. Conditions were, therefore, placed upon Permit #G-13691 in order to avoid injury to existing rights or to the ground water resource.
 - b. The permitted points of appropriation (the wells), authorized under Permit #G-13691, are not located within the boundaries of any designated ground water limited area.
 - c. The permitted points of appropriation, authorized under Permit #G-13691, are located within or above the designated boundaries of a state scenic waterway.
12. 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).
- a. The permitted points of appropriation, authorized under Permit #G-13691, are located within an area of the Eagle Creek Basin which has been identified by the Oregon Department of Fish and Wildlife as a "high" needs ranking area for streamflow restoration for fish. Additionally, Eagle Creek has been designated by the Oregon Department of Environmental Quality as a water quality limited stream. The Department determined on January 6, 1999, however, that this use of groundwater will, if properly conditioned, adequately protect the surface water from interference. The Department, therefore, placed conditions upon Permit #G-13691 in order to avoid injury to existing rights or to the ground water resource. Because of this determination, this application does not raise concerns about surface water impacts.
 - b. The permitted points of appropriation, authorized under Permit #G-13691, are located within a designated reach of a federal wild and scenic river.
13. The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.
- a. The permitted wells are located within a designated sensitive, threatened or endangered species area for aquatic species utilizing surface water resources, as identified by the Oregon Department of Fish and Wildlife. The Department determined on January 6, 1999, however, that this use of groundwater will, if properly conditioned, adequately protect the surface water from interference. The Department, therefore, placed conditions

upon Permit #G-13691 in order to avoid injury to existing rights or to the ground water resource. Because of this determination, this application does not raise concerns about surface water impacts.

14. Economic investment in the project to date.
 - a. As of May 5, 2004, the permit holder had invested approximately 55 percent of the total projected cost for complete development of this project. A total of \$248,000 has been invested into the project, consisting of: construction of wells #1, #2, and #5, and a distribution system; and installation of pumps and meters. An additional \$200,000 investment is anticipated for the completion of this project.
15. Other economic interests dependent on completion of the project.
 - a. None have been identified.
16. Other factors relevant to the determination of the market and present demand for water and power.
 - a. None have been identified.

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

17. Use and income from the permitted water development results in reasonable returns upon the investment made to date.

Duration of Extension [OAR 690-315-0040(1)(c)]

As set forth under OAR 690-315-0040(1)(c), time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.

18. As of May 5, 2004, the remaining work to be completed consists of complete application of water to beneficial use.
19. Unforeseen events extended the length of time needed to fully develop and perfect the permit, caused by additional time needed to finance the remaining project costs.
20. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2007, to accomplish the

application of water to beneficial use under the terms of Permit #G-13691 is both reasonable and necessary.

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.
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0040(1)(a).
3. The applicant demonstrated that actual construction on the project began within the time specified in the permit, as required by OAR 690-315-0040(1)(b).
4. Full application of water to beneficial use can be accomplished by October 1, 2007⁵, as required by OAR 690-315-0040(1)(c).
5. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause exists for an extension 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 for complete application of water to beneficial use under Permit #G-13691 from October 1, 2003, to October 1, 2007.

⁵ Pursuant to ORS 537.630(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 the claim of beneficial use.

DATED: November 9, 2004


Dwight French
Water Rights Section Manager

*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 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than ***Friday, December 24, 2004***, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the 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 final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the 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 petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The 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 request for contested case hearing has been submitted, and:
 - A. Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - B. The applicant submitted a timely request for a contested case hearing.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503)986-0801. Address all other correspondence to:

**Water Rights Section
Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, OR 97301-1271
Fax #: (503)986-0901**

If you have any questions about statements contained in this document, please contact Lisa Juul at (503)986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her telephone number is (503)986-0824.

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503)986-0900.