

**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-12673 (modified by Permit Amendment) PROPOSED FINAL ORDER
T-8818), Water Right Application G-13010, in the name of)
Highgate Farms)

Permit Information

Application: G-13010
Permit: G-12673 (modified by Permit Amendment T-8818)
Basin: 2 – Middle Willamette / Watermaster District 16
Date of Priority: June 26, 1992
Source of Water: A well in Rock Creek Basin within the Willamette Basin
Purpose or Use: Irrigation of 37.0 acres and supplemental irrigation of 17.7 acres
Maximum Rate: 0.68 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, 2003, to October 1, 2026.
- Grant an extension of time to apply water to full beneficial use from October 1, 2004, to October 1, 2026¹.
- 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

Application – Application for Extension of Time

PFO – Proposed Final Order

cfs – cubic feet per second

gpm – gallons per minute

Well 1 – Well drilled in 1950; no well log available

Well 2 – CLAC 59386

POA – point of appropriation

FOF – Finding of Fact

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 groundwater 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.

OAR 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

FINDINGS OF FACT

1. On August 14, 1991, Permit G-12673 was issued by the Department. The permit authorizes the use of up to 0.68 cfs of water from a well in Rock Creek Basin within the Willamette Basin for irrigation of 37.0 acres and supplemental irrigation of 17.7 acres. The permit specified actual construction of the well to begin by August 14, 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.
2. On January 7, 2003, the Department approved Permit Amendment T-8818 (Special Order Volume 57, Page 17) authorizing a change in the point of appropriation (POA) from Well 1 to Well 2, under Permit G-12673 (modified by Permit Amendment T-8818) which is hereafter referred to simply as Permit G-12673.
3. One prior permit extension has been granted for Permit G-12673. The most recent extension request resulted in the completion date for construction being extended from October 1, 1998 to October 1, 2003, and the completion date for full application of water being extended from October 1, 1999, to October 1, 2004.
4. On December 1, 2016, the permit holder, Joann Gribble, owner of Highgate Farms, submitted an "Application for Extension of Time" to the Department, requesting the time to complete construction of the water system be extended from October 1, 2003 to October 1, 2026, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12673 be extended from October 1, 2004, to October 1, 2026.
5. On December 6, 2016 notification of the Application for Extension of Time for Permit G-12673 was published in the Department's Public Notice. No public comments were received regarding the extension application.
6. On December 14, 2016, the permit holder submitted additional information to supplement their Application for Extension of Time. The additional information addressed the use of water from Well 1 and the number of acres irrigated for primary and supplemental irrigation.

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.

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 537.630 applies to groundwater permits only.

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

7. On December 1, 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. Actual construction of the well began prior to the August 14, 1997 deadline specified in the permit. According to the permit holder, construction of Well 1 began in 1950.
9. On October 24, 1994, the Department received an Application for a Permit to Appropriate Ground Water that stated Well 1 was drilled in 1950 and a well log is not available.

The Department has determined that the prosecution of the construction of Well 1 began prior to August 14, 1997.

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. Between August 14, 1996 and October 1, 1999, the permit holder repaired the pump on Well 1, and appropriated 40 gpm (0.09 cfs) of water from Well 1 for irrigation on 5.0 to 15.0 acres.
11. During the most recent extension period, being from October 1, 1999 to October 1, 2004, the following was accomplished:
 - Gained approval for a Permit Amendment to change the POA;
 - Completed construction of Well 2 (CLAC 59386);
 - Installed 4 inch PVC pipe to the reservoir; and
 - Installed a drip irrigation system.

The Department has determined, based on Finding of Fact (FOF 11) that work has been accomplished within the time allowed in the last extension, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

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

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

The Department has determined the following conditions have been met:

- Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director.
- To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

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

13. The Application states a maximum rate of 40 gpm (0.09 cfs) of water was appropriated from Well 1, to irrigate a portion of 20.0 acres until 2002.
14. The Application states that beginning in the fall of 2003, a maximum rate of 80 gpm (0.18 cfs) of water was appropriated from Well 2 for primary irrigation of 2.3 acres, and supplemental irrigation of 17.7 acres.
15. According to the permit holder, delay of full beneficial use of water under Permit G-12673 was due, in part, to serious health issues and an insufficient yield of water from Well 1 and Well 2. The permit holder needs more time in which to gain approval for the construction of an additional point of appropriation to obtain the full quantity of water allowed under the permit.

The Department has determined based on FOF 12, 13, and 14, beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2004.

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 \$21,600, which is approximately 39 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$34,000 investment is needed for the completion of this project.

The Department has determined based on FOF 16, the permit holder has made an investment in the development of Permit G-12673.

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

17. The Department has found good faith of the appropriator under Permit G-12673.

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.

18. As of December 1, 2016, the Application states the remaining work to be accomplished consists of gaining approval for a Permit Amendment to authorize an additional point of appropriation (Well 3); completing construction of the water system, including constructing Well 3 and installing the irrigation system to Well 3; meeting all permit conditions for Well 3; and applying water to full beneficial use on the remaining 34.7 primary acres.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2026, 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-12673 is both reasonable and necessary.

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)].

19. A review of 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-12673; 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.
20. During a current review of Permit G-12673, the Department determined the following:
 - a. The point of appropriation for Permit G-12673, located within the Rock Creek Basin, is located within the Rock Creek Withdrawn Authority, and Gladtidings Limited Groundwater Area.
 - b. Rock Creek is not located within or above any state or federal scenic waterway.

- c. Rock Creek 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.
- d. 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)].

- 21. The Application did not identify other economic interests dependent on the completion of the project.

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

- 22. 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 1 of the “Conditions” section of this PFO, was determined to be necessary due to no additional work having been accomplished since 2004, and the amount of time that has lapsed since the issuance of Permit G-12673.
- 23. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 2 of the “Conditions” section of this PFO to meet this condition.

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

- 24. 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)]

- 25. The Application did not identify any delay in the development of this project that was caused by any other governmental requirements.

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

- 26. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-12673, in that the permit holders were faced with serious health issues and an insufficient yield of water from Well 1 and Well 2, which restricted their ability to complete development of the project in a timely manner.

Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]

27. The Application did not state if a denial of the extension would result in undue hardship.

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 the construction timeline requirements to begin actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Based on Finding of Facts 8 through 17, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2026, 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).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 22 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-12673.
7. As required by OAR 690-315-0050(6) and as described in Finding 23 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 2), progress checkpoints in order to ensure future diligence is exercised in the development and perfection of Permit G-12673.

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-12673 from October 1, 2003, to October 1, 2026.

Extend the time to apply water to beneficial use under Permit G-12673 from October 1, 2004, to October 1, 2026.

Subject to the following conditions:

CONDITIONS

1. Last Extension Condition

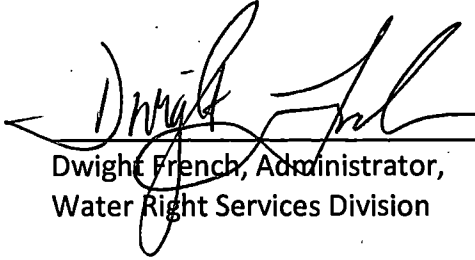
This is to be the last extension of time granted for Permit G-12673. Any future extensions of time requests shall be denied.

2. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2020 and 2025. A form will be enclosed with your Final Order.**

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: January 10, 2017



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 **February 24, 2017**, 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.

