

NOTE: Include a copy of the "Important Notice" document along with the original copy of the Final Order being sent to the permit holder.

Mailing List for Extension FO Copies

Application #S-83542
Permit #S-53501

FO Date: August 18, 2004

Original mailed to:

Applicant: Cary Bogs
Route 1, Box 1507
Bandon OR 97411

Copies Mailed

By: P
(SUPPORT STAFF)

on: 8-20-04
(DATE)

For Extension PFO's - Copies sent to:

2. WRD - Appl. File #S-83542/ Permit #S-53501 ✓
3. WRD - Watermaster District: Dist #19 - Mitch Lewis, Coquille ✓
4. WRD - Southwest Region, Grants Pass ✓
5. ODFW - District #1, Jim Brick, Roseburg ✓
6. DEQ - Western Region, John Blanchard, Medford ✓
7. WRD - Support Staff, Salem...*Permit record update* ✓

Other interested parties:

none

CASEWORKER: LJJ/jd

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-83542

Final Order
Extension of Time for Permit Number S-53501

Appeal Rights

This is a final order other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Application History

On October 16, 2002, Cary Bogs submitted an application to the Department for an extension of time for permit number S-53501. The Department issued permit number S-53501 on November 13, 1998. The permit called for complete application of water to beneficial use by October 1, 2002. In accordance with OAR 690-315-0050(2), on June 8, 2004, the Department issued a Proposed Final Order proposing to extend the time for complete application of water to beneficial use to October 1, 2012. The protest period closed July 23, 2004, in accordance with OAR 690-315-0060(1). No protest was filed.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 537.248, 537.630, 539.010(5) and/or OAR 690-315-0040(2).

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. **In accordance with OAR 690-315-0050(6), the permittee must submit a written progress report to the Department by October 1, 2009.** The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:
 - a) The amount of construction completed;
 - b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
 - c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and

- d) Financial investments made toward developing the beneficial water use.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR Chapter 690, Division 86 or ORS 537.099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

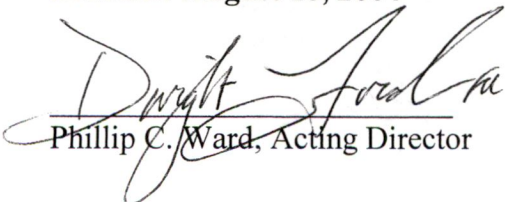
In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

Order

The extension of time for Application Number S-83542, Permit Number S-53501, therefore, is approved. The deadline for application of water to full beneficial use is extended to October 1, 2012.

DATED: August 18, 2004


Phillip C. Ward, Acting Director

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

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.

Extension "Final Order" Checklist

Application # S-83542 / Permit # S-53501

Permit Holder's Name Cary Bogs

This Final Order is processed under: Div. 315 Rules

1. Date Extension Request submitted: 10/16/02
2. Date permit was issued: 11/13/98
3. Original "B" Date from permit: n/a
(Date for completion of construction)
4. Original "C" Date from permit: 10/1/02
(Date for complete application of water)
5. Extension PFO Date: 6/8/04
6. WRD recommends extending "B" Date to: n/a
and extending the "C" Date to: 10/1/12
7. Any conditions from PFO:
5 YR CONDITION WITH CHECKPOINTS ✓
8. Protest Deadline Date from PFO: 7/23/04
9. Any written Protests or written Comments received within the Protest period? Yes / No

Reviewer's Name: jd

Date: 8/5/04

**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 #S-53501, Water Right) PROPOSED FINAL ORDER
Application #S-83542)
(Cary Bogs))

Permit Information

Application File #S-83542 / Permit #S-53501

Basin: #17 - South Coast Basin / Watermaster District: #19
Date of Priority: August 29, 1997

Authorized Use of Water

Source of Water: Three Reservoirs, constructed under Permit #R-12570,
tributary of Conner Creek
Purpose or Use: Cranberry Operations on 10.6 acres
Maximum Rate: 56.6 acre foot (af) per year, being 9.0 af from Reservoir
#1, 20.0 af from Reservoir #2, and 27.6 af from
Reservoir #3

**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 as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit #S-53501, water right Application #S-83542. A copy of Permit #S-53501 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, 2001, to October 1, 2011; and
- make the extension subject to certain conditions set forth below.

AUTHORITY

ORS 537.230(2) provides 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 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(6) allows 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

Background

1. Permit #S-53501 was granted by the Water Resources Department on November 13, 1998. The permit authorizes the appropriation of up to 56.6 af of stored water only from three reservoirs, to be constructed under Permit #R-12570, for Cranberry Operations on 10.6 acres. The permit specified that complete application of water was to be made on or before October 1, 2002.
2. The permit holder submitted an "Application for Extension of Time" to the Department on October 16, 2002, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #S-53501 be extended from October 1, 2002, to October 1, 2012. This is the first extension request for permit # S-53501.

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

As set forth under OAR 690-315-0040(1)(2), the time limits to complete construction 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 537.230, 537.248¹, 537.630 and 539.010(5).

Other Governmental Requirements [ORS 537.230(2)]

3. Delay in the development of this project was caused, in part, by the U.S. Department of Agriculture imposing a 35 percent reduction of cranberry yields beginning September 1, 2001, in an effort to reduce surplus and to help mend the ailing cranberry market.

Start of Construction [ORS 537.230]

4. Construction of the water system began within the time specified in the permit, being June 8, 1999.

¹ ORS 537.248 applies to reservoir permits only.

Financial Investment [ORS 539.010(5)]

5. As of October 16, 2002, the permit holder had invested a total of \$65,000 into the project, consisting of 25 percent excavation of reservoirs under Permit #R-12570, installation of water meters and staff gauges, and completion of spillways. An additional \$100,000 investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1) and 539.010(5)]

Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [ORS 537.260, 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:

Amount of Construction

6. The following construction was completed within the time allowed in the permit or previous extension:
 - a. Construction of the water system began within the time specified in the permit, being June 8, 1999. The work thus far consists of 25 percent excavation of reservoirs under Permit #R-12570, installation of water meters and staff gauges, and completion of spillways.

Beneficial Use of Water

7. The following beneficial use was made of the water during the permit or previous extension time limits:
 - a. Since the issuance of Permit #S-53501 on November 13, 1998, approximately 16.0 acre-feet of stored water has been appropriated from the reservoirs that were constructed under permit #R-12570, and applied to 5.0 acres for cranberry operations.
 - b. Delay of full beneficial use of water under Permit #S-53501 was due to a downturn in the cranberry market, the unavailability of cash flow needed to develop the project and a 35 percent reduction in cranberry production imposed by the U.S. Department of Agriculture.

Compliance with Conditions

8. 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.
 - b. At final proof, the permit holder must demonstrate that the diversion and use of water under Permit #S-53501 complies with the Clean Water Act and utilizes best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement on file with the Department. A condition of three storage reservoirs in associated Permit #R-12570 requires installation of weirs upstream and downstream before water use begins (or, a written waiver from the local Watermaster.)

Financial Investments

9. Financial investments made toward developing the beneficial water use.
 - a. As of October 16, 2002, the permit holder had invested approximately 39 percent of the total projected cost for complete development of this project. A total of \$65,000 has been invested into the project, consisting 25 percent excavation of reservoirs under Permit #R-12570, installation of water meters and staff gauges, and completion of spillways. An additional \$100,000 investment is anticipated for the completion of this project.

The Market and Present Demands for Water (ORS 539.010(5) and 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:

10. The amount of water available to satisfy other affected water rights and scenic waterway flows.
 - a. The permitted points of diversion (the reservoirs constructed under Permit #R-12570), authorized under Permit #S-53501, are not located within or above the designated boundaries of a scenic waterway.

11. 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 diversion, authorized under Permit #S-53501, are located within a stream segment that has been identified by the Oregon Department of Fish and Wildlife as a "highest" needs ranking area for streamflow restoration for fish.
 - b. The permitted points of diversion, authorized under Permit #S-53501, are located within the Conner Creek Basin, which has not been designated by Department of Environmental Quality as being water quality limited.
 - c. The permitted points of diversion, authorized under Permit #S-53501, are not located within the designated reach of a federal wild and scenic river.
12. The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.
 - a. The permitted points of diversion are located within a designated sensitive, threatened or endangered species area for aquatic species utilizing surface water resources, as identified on the Division 33 map furnished by the Oregon Department of Fish and Wildlife.
13. Economic investment in the project to date.
 - a. As of October 16, 2002, the permit holder had invested approximately 39 percent of the total projected cost for complete development of this project. A total of \$65,000 has been invested into the project, consisting of 25 percent excavation of reservoirs under Permit #R-12570, installation of water meters and staff gauges, and completion of spillways. An additional \$100,000 investment is anticipated for the completion of this project.
14. Other economic interests dependent on completion of the project.
 - a. None have been identified.

15. 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 *[ORS 539.010(5)]*

16. The use of water from the permitted water development will result in reasonable returns against the investment made in the project to date.

Duration of Extension *[OAR 690-315-0040(1)(c), ORS 539.010(5)]*

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.

17. As of October 16, 2002, the remaining work to be completed consists of completion of the water system and complete application of water to beneficial use.
18. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2012, to complete construction of the water system and to have until October 1, 2012, to complete the application of water to beneficial use under the terms of Permit #S-53501 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 537.230.
2. The applicant has submitted a complete extension application form and the fee required by ORS 536.050(1)(k).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. 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 complete construction and apply water to full beneficial use pursuant to ORS 537.230(2).

5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2012.²
6. In order to ensure future diligence is exercised in the development and perfection of Permit #S-53501, the Department shall establish progress checkpoints in accordance with OAR 690-315-0050(6). (See Item #1 of the "Conditions" section contained in this Proposed Final Order for an Extension of Time.)

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 #S-53501 from October 1, 2002, to October 1, 2012.

Subject to the following conditions:

CONDITIONS

1. **In accordance with OAR 690-315-0050(6), the permittee must submit a written progress report to the Department by October 1, 2009.** The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:
 - a) The amount of construction completed;
 - b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this

² Pursuant 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 the claim of beneficial use.

- represents;
- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
 - d) Financial investments made toward developing the beneficial water use. The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR Chapter 690, Division 86 or ORS 537.099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

DATED: June 8, 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, July 23, 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)986-0900. 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.

Mailing List for Extension PFO Copies

Application #S-83542
Permit #S-53501

PFO Date: June 8, 2004

Original mailed to:

Applicant: Cary Bogs ✓
87401 Lois Lane ✓
Bandon OR 97411

Copies Mailed
By: <u> </u> (SUPPORT STAFF)
on: <u>6-8-04</u> (DATE)

For Extension PFO's - Copies sent to:

1. WRD - Appl. File #S-83542 / Permit #S-53501 ✓
2. WRD - Watermaster District: #19 ✓
3. DEQ - Western Region - John Blanchard, Medford ✓
4. ODFW - District #1 - Jim Brick, Roseburg ✓

Other interested parties:

NONE

CASEWORKER: LJJ/jd

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Application # S-83542 / Permit # S-53501

Route Slip ... Extension of Time

per Division 315 Rules... (Extensions received on July 1, 2001 or after)

◆ **WRIG...**
Money Received: \$100.⁰⁰ on 10-16-02

◆ **Lisa Juul...**
Extension Completeness: OK - [Signature] 10-16-02
(If NOT complete, send certified letter requesting additional information.)

If Extension Appl complete and \$100 fee submitted, route to...

◆ **Jonnine Fuss...**
Initial 30-day Public Notice: JF 10-22
Update Extension Database: JF 10-22
Files back to filing cabinets: JF 10-29

At the close of the Initial 30-day Comment Period...

◆ **Lisa Juul...**
Pull files for Ext PFO review: _____
Extension PFO completed: _____

Once Extension PFO signed by Dwight French...

◆ **Jonnine Fuss...**
Prepare Ext PFO for mailing to applicant: _____
Mail to those who commented and paid copy fee: _____
Include Ext PFO on weekly Public Notice: _____

Within 60 days after the close of the 45-day PFO Protest Period... (PFO Protest Period ends 45 days from PFO sign date)...

◆ **Lisa Juul...**
Issue an Extension FO: _____

EXTENSION REVIEW CHECKLIST for PFO... per Div. 315 Rules

Application #: S-83542 / Permit #: S-53501

Permittee's Name: Cary Bogs (Lynn & Rena Cary)

Permittee's Mailing Address: 87401 Lois Lane, Bandon OR 97411

POD-Location: Township 30-S Range 14-W Section 7 $\frac{1}{4}$ $\frac{1}{4}$ SW NW

Drainage Stream Basin: So Coast County: Coos

- ✓ 1. Has the applicant completely filled out the updated Extension Application form? Yes / No \$100.00 - Yes
 ***If "No"..... has certified request for the new extension form been sent? Yes / No
- ✓ 2. Shortcomings of Extension Request..... based upon review of updated extension form Yes / No
 *****(NOTE: Any missing Extension information that is needed before an Extension PFO can be completed???)**
- ✓ 3. Date Permit was issued: 11-13-98 (priority = 8-29-97) permit constructed under R-12570
- ✓ 4. Source: Three Reservoirs (Res #1, #2 & #3) - tribs to Conner Creek
- ✓ 5. Use: Cranberry Operations on 10.6 AC
- ✓ 6. "Q": 56.6 AF/YR (Being: Res #1 - 9.0 AF Res #2 - 20.0 AF Res #3 - 27.6 AF)
- ✓ 7. Original "B" Date: _____ Original "C" Date: 10-1-2002
- ✓ 8. Conditions of Permit: Original "A" Date: 6-8-99
 Before Water Use Begins → a totalizing flow meter must be installed at each diversion point.
 shall keep a monthly record of water use --- May be required to report.
 Must comply with Clean Water Act & utilize best management practices.
- ✓ 9. Extension request received: 10-16-02 Request Number (...1st 2nd, 3rd): 1st
- ✓ 10. Last Authorized "B" Date: _____ Last Authorized "C" Date: 10-1-2002
- ✓ 11. Proposed "B" Date: _____ Proposed C Date: 10-1-2012
- ✓ 12. Amount Invested to date: \$65,000.00 Estimated Total Cost: \$165,000.00
 (3990) ***Estimated Remaining Cost: \$100,000.00
 includes Permit R-12570

___13. The water project development made to date has been accomplished in accordance with the terms and conditions contained in the permit. Yes / No ***If "No"..... What permit terms and/or conditions have not been met?

___14. Work on the water development project completed to date includes: _____

___15. The work remaining to be completed consists of: _____

___16. Progress in perfecting the permit is being held up by: _____

___17. Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes / No

See attached

Some Factors that may be considered in determining "Reasonable Diligence" [OAR 690-315-040(3)]
a. The amount of construction completed within the time allowed in the permit or previous extension;
b. The amount of beneficial use made of the water during the permit or previous extension time limits;
c. Water right permit holder conformance with the permit or previous extension conditions; and
d. Financial investments made toward developing the beneficial water use.

___18. Determination of the market and the present demand for water or power to be supplied: _____

Some factors to consider in determining the Market and the Present Demand for water or power [OAR 690-315-040(4)]:
a. The amount of water available to satisfy other affected water rights and scenic waterway flows;
b. Special water use designations established since permit issuance (such as...state scenic waterways, federal wild and scenic rivers, serious water management problem areas, water quality limited sources, etc.);
c. The habitat needs of sensitive, threatened or endangered species, in consultation with ODFW;
d. Economic investment in the project to date;
e. Other economic interests dependent on completion of the project; and
f. Other factors relevant to the determination of the market and the present demand for water or power.

___19. Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. → Approval of Extension Request

No ... "Good Cause" cannot be found. → Denial of Extension Request

___20. Conditions to be included on Extension PFO: _____

Extension "PFO" Dates

Checklist Last Revised: 9 / 12 / 2001

Mailing / Issuance Date: _____

Reviewer's Name: _____

Protest Deadline Date: _____

Date: _____

13. The water project development made to date has been accomplished in accordance with the terms and conditions contained in the permit. **Yes / No** ***If "No"..... What permit terms and/or conditions have not been met?
 - "A" date - met
 - totalizing flow meter at each diversion point prior to water use - meters and staff gauges installed
 - shall keep monthly water use record, may need to report - 1999-2000 submitted, no water used due to incomplete construction
 - 2001-2002 submitted, 5 acres irr.
 - no evidence supplied by applicant

- must comply with clean water act and utilize best management practices *noted in extension*

14. Work on the water development project completed to date includes: _____
 - water meters and staff gauges installed for water at present level
 - spillways complete

25% excavation of Reservoir

15. The work remaining to be completed consists of: _____
 - 75% of reservoir excavation needed
 completion of construction and application of water to beneficial use under the permit conditions

16. Progress in perfecting the permit is being held up by: _____
 - excavation depends on availability of funds

17. Has the applicant pursued perfection of the right in good faith and with reasonable diligence? **Yes / No**

Some Factors that may be considered in determining "Reasonable Diligence" [OAR 690-315-040(3)]

a. The amount of construction completed within the time allowed in the permit or previous extension;

b. The amount of beneficial use made of the water during the permit or previous extension time limits;

c. Water right permit holder conformance with the permit or previous extension conditions; and

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

- Permit holder has completed approximately 35 % of the construction.
- Permit holder has beneficially used 28 % of the total permitted quantity of water. (approx ¹⁶/₈ af to irr. 5 acres)
- Has the permit holder complied with conditions? **Yes**
 —If No, reasons why not? _____
- Permit holder has invested approximately 39 % of the total estimated cost to complete the project.
- Other: cranberry market had substantial loss - farm survival depended on minimizing expenses

18. Determination of the market and the present demand for water or power to be supplied: _____

Some factors to consider in determining the Market and the Present Demand for water or power [OAR 690-315-040(4)]:

a. The amount of water available to satisfy other affected water rights and scenic waterway flows;

b. Special water use designations established since permit issuance (such as...state scenic waterways, federal wild and scenic rivers, serious water management problem areas, water quality limited sources, etc.);

c. The habitat needs of sensitive, threatened or endangered species, in consultation with ODFW;

d. Economic investment in the project to date;

e. Other economic interests dependent on completion of the project; and

f. Other factors relevant to the determination of the market and the present demand for water or power.

- Is the POD/POA located.....
- If a GW permit, is GW hydraulically connected to SW (see original Div. 09 GW review)? N/A
 - within or above a state scenic waterway? no
 - within a ground water limited/critical area? restricted N/A
 - within or above a segment that has been identified as a federal wild and scenic river? no
 - within an area that ODFW has identified as an ST&E Area? yes
 - within an area that ODFW has identified as a highest Needs Ranking Area for streamflow restoration for fish?
 - within an area that DEQ has identified as being water quality limited? 203d no
 - Other: _____ SEED

✓ 19. Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes.. "Good Cause" can be found. → Approval of Extension Request

No ... "Good Cause" cannot be found. → Denial of Extension Request

✓ 20. Conditions to be included in Extension PFO (if applicable)? Yes / No
(NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)

5-year Progress Report Checkpoints

Other: _____

✓ 21. Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987

"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."

COBU Requirement - Surface Water - post July 9, 1987

"Pursuant 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 the claim of beneficial use."

COBU Requirement - Ground Water - post July 9, 1987

"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."

NOTES:

19- Mitch Lewis

Extension "PFO" Dates

Checklist Last Revised: 3/4/ 2004

Mailing / Issuance Date: 6/8/04

WRD Project Manager: HT/jd

Protest Deadline Date: 7/23/04

Date: 6/1/04

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **56328**

158 12TH ST. N.E.
SALEM, OR 97310-0210
378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Lynn A. Cary
BY: _____

APPLICATION	<u>below</u>
PERMIT	
TRANSFER	

CASH: CHECK: # 96-7030 OTHER: (IDENTIFY)

TOTAL REC'D \$ 200.00

0417 WRD MISC CASH ACCT	<u>R 83543 - \$100.00</u>
ADJUDICATIONS	<u>S 83542 - \$100.00</u>
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY)	\$
OTHER: (IDENTIFY)	\$

REDUCTION OF EXPENSE	CASH ACCT.	\$
PCA AND OBJECT CLASS	VOUCHER #	

0427 WRD OPERATING ACCT		
MISCELLANEOUS		
0407 COPY & TAPE FEES		\$
0410 RESEARCH FEES		\$
0408 MISC REVENUE: (IDENTIFY)		\$
(New) TC162 DEPOSIT LIAB. (IDENTIFY)		\$
WATER RIGHTS:	EXAM FEE	RECORD FEE
0201 SURFACE WATER	\$	0202 \$
0203 GROUND WATER	\$	0204 \$
0205 TRANSFER	\$	0206 \$
WELL CONSTRUCTION	EXAM FEE	LICENSE FEE
0218 WELL DRILL CONSTRUCTOR	\$	0219 \$
LANDOWNER'S PERMIT		0220 \$
<u>240</u> OTHER (IDENTIFY) <u>exp of time</u>		<u>\$200.00</u>

0437 WELL CONST. START FEE		
0211 WELL CONST START FEE	\$	CARD #
0210 MONITORING WELLS	\$	CARD #
OTHER (IDENTIFY)		

0539 LOTTERY PROCEEDS	
1302 LOTTERY PROCEEDS	\$

0467 HYDRO ACTIVITY	LIC NUMBER	
0233 POWER LICENSE FEE (FW/WRD)		\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HRDRO APPLICATION		\$

RECEIPT # **56328**

DATED: 10/16/02 BY: Connie Vasse

Black Copy: White Copy: Customer Yellow Copy: Fiscal Blue Copy: File Buff Copy: Fiscal

APPLICATION FOR EXTENSION OF TIME TO THE WATER RESOURCES DIRECTOR OF OREGON

I, CARY BOGS (Lynn or Rena Cary)
NAME

87401 Lois Lane Bandon OR 97411 (541)347-2381
ADDRESS CITY STATE ZIP PHONE

owner of record, or duly authorized agent, of Application No. #S-83542, Permit No #S-53501, do hereby request that the time in which to:

- complete the construction of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, _____, be extended to October 1, _____,

and/or the time in which to:

- accomplish beneficial use of water to the full extent under the terms of the permit, which time now expires on October 1, 2002, be extended to October 1, 2012.

NOTE:

The extension of time requested should be long enough to finish the project. Should this request be approved, it will be the Department's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.

Attached is an instruction sheet to assist you in completing the information on the permit extension application form. Oregon Water Law and Administrative Rules requires this information to be considered by the Water Resources Department when reviewing a permit extension application. All items must be completed or the application will be returned. Please feel free to provide the Department with any additional information that would aid us in making our decision. Please use additional sheets of paper as needed to fully respond to the questions.

After reviewing the application form and the instruction sheet, if you have any questions, you may contact the Department at (503) 378-3739, and request assistance from the Water Rights Division, permit extensions personnel.

1. Did water system construction/well drilling begin within the time specified in the permit [yes/no]?

YES

2. Has construction of diversion/appropriation works, distribution system, and use of water, if any, been accomplished consistent with the limitations and conditions of this permit [yes/no]?

NO

A) Please describe how you have complied with each applicable permit condition (**NOTE: the instruction sheet for permit extension applications provides some direction as to what is an "applicable" condition at time of permit extension review**).

Water meters and staff gauges have been installed for water at present level. Spillways are complete and useable.

B) If you have not complied with all applicable conditions, please explain the reasons why and indicate a date certain, in the near future, by which time you will be in compliance with applicable conditions.

Reservoirs are only about 1/4 of size initially planned for. Completion of excavation will be determined by availability of funds.

3. I have accomplished the following described works, purchases and installation of equipment necessary to the use of water under said permit:

A) Within the past year or, if a prior extension was authorized, during the last permit extension period:

Blank lines for describing works, purchases and installation of equipment.

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OCT 16 2002

WATER RESOURCES DEPT. SALEM, OREGON

B) Prior to the past year or, if a prior extension was authorized, prior to the last extension period:

4. I have accomplished beneficial use of water under the permit to the extent of (amount of water used and acres irrigated):

A) Quantity of Water Used [in cubic feet per second (cfs) or gallons per minute (gpm) if using surface water or ground water.....and/or..... in acre-feet (af) if using stored water]:

16 af (apprx) for 5 ac irrigation.

B) Number of Acres Irrigated (if an irrigation permit):

5. Cost of project to date 65,000. . Estimated remaining cost to complete the project 100,000.

6. Please list the reasons why the project was not constructed, and/or water not beneficially used within permit time limits under the appropriate categories below. Please provide supporting information for each reason identified:

A) The project is of a size and scope that the original intent was to phase it in over a period longer than the timeframes allowed in the permit.

B) Financing and/or cash-flow needs to develop the project precluded completion of the project within authorized timeframes.

Cranberry market had a substantial loss. Farm expenses had to be held to a minimum for farm survival.

C) Good faith attempts to comply with permit conditions and/or to acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

D) Acts of God or other unforeseen events delayed full development of the water system and use of water.

I am the permittee, or have authorization from the permittee, to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for the Department to suspend processing of the request and/or reason to deny the extension.

Lynn A. Cary
Signature

10/14/02
Date

MAIL COMPLETED APPLICATION and STATUTORY FEE OF \$100 TO:

WATER RIGHT PERMIT EXTENSIONS
WATER RESOURCES DEPARTMENT
158 - 12th STREET NE
SALEM, OREGON 97301-4172

revised: September 18, 2002

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OCT 16 2002

WATER RESOURCES DEPT.
SALEM, OREGON

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CARY BOGS
ATTN: LYNN & RENA CARY
87401 LOIS LN
BANDON, OR 97411

2. Article Number

(Transfer from service label)

4073 9608

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

RENA S CARY

 Agent Addressee

B. Received by (Printed Name)

RENA S CARY

C. Date of Delivery

10-3-01

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

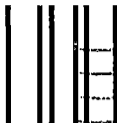
3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

WATER RESOURCES DEPT.
158 12TH ST NE
SALEM OR 97301

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OCT 04 2002

WATER RESOURCES DEPT.
SALEM, OREGON

301+4172





Oregon

John A. Kitzhaber, M.D., Governor

File # S-83542

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130
www.wrd.state.or.us

CERTIFIED MAIL
Return Receipt Requested

October 2, 2002

Cary Bogs
Attn: Lynn and Rena Cary
87401 Lois Lane
Bandon, OR 97411

REFERENCE: File #S-83542 (Permit #S-53501)
File #R-83543 (Permit #R-12570)

Dear Mr. and Mrs. Cary:

The Department recently received your request for an extension of time on the above referenced permits and a \$100 filing fee. The request, however, references both permits on the same application form. You must submit a separate completed Application for Extension of Time for each permit. Additionally, a separate \$100 filing fee is required for each permit for which you are requesting an extension of time.

Because the Department cannot accept your extension application as completed, it is being returned to you, as well as, your check numbered 1062 in the amount of \$100.

In order for the Department to evaluate a request for an extension of time, you must provide the following:

- 1. Please complete and return a separate Application for Extension of Time form for each permit, as required by OAR 690-315-0020(2).** I have enclosed two blank extension forms for your use, as well as, the single application referencing both permits that you recently submitted.
- 2. A total \$200 extension filing fee , being a \$100 filing fee to cover each permit extension of time request, as required by ORS 536.050(1)(k).**

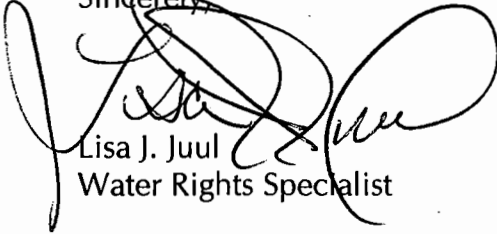
Please submit this information by **Friday, November 1, 2002**. Failure to submit the requested fee by this deadline **may** result in the proposed rejection of your extension request.



If you need to request additional time to submit the information requested above, a written request must be received in the Salem office of the Department by the deadline above. The Department will evaluate timely requests and determine whether or not the request may be granted.

If you should have any questions concerning your extension request or the required materials listed above, you may contact me at (503) 378-8455, extension 272.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa J. Juul', written over the word 'Sincerely,'.

Lisa J. Juul
Water Rights Specialist

cc: File #S-83542 (Permit #S-53501)
File #R-83543 (Permit #R-12570)
Lloyd VanGordan, Watermaster District #19
Fiscal

**APPLICATION FOR EXTENSION OF TIME
TO THE WATER RESOURCES DIRECTOR OF OREGON**

I, CARY BOGS Lynn & Rena Cary
NAME
87401 Lois Ln. Bandon OR 97411 347-2381
ADDRESS CITY STATE ZIP PHONE

Formerly - Rt. 1 Box 1507
owner of record, or duly authorized agent, of Application No. S-83542 Permit No. _____, do
hereby request that the time in which to: R-83543

complete the construction of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, _____, be extended to October 1, _____,

and/or the time in which to:

accomplish beneficial use of water to the full extent under the terms of the permit, which time now expires on October 1, 2002, be extended to October 1, 2012

NOTE: The extension of time requested should be long enough to finish the project. Should this request be approved, it will be the Department's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.

Attached is an instruction sheet to assist you in completing the information on the permit extensions application form. Oregon Water Law and Administrative Rules requires this information to be considered by the Water Resources Department when reviewing a permit extension. All items must be completed or the application will be returned. Please feel free to provide the Department with any additional information that would aid us in making our decision. Please use additional sheets of paper as needed to fully respond to the questions.

After reviewing the application form and the instruction sheet, if you have any questions, please contact the Department at (503) 378-3739, and request assistance from the Water Rights Division, permit extensions personnel.

1. Did water system construction/well drilling begin within the time specified in the permit?
 Yes No

2. Has construction of diversion/appropriation works, distribution system, and use of water, if any, been accomplished consistent with the limitations and conditions of this permit?
 Yes No

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SEP 30 2002
WATER RESOURCES DEPT.
SALEM, OREGON

A Please describe how you have complied with each applicable permit condition (NOTE: the instruction sheet for permit extension applications provides some direction as to what is an "applicable" condition at time of permit extension review).

Water meters and staff gauges have been installed for water at present level.

B If you have not complied with all applicable conditions, please explain the reasons why and indicate a date certain, in the near future, by which time you will be in compliance with applicable conditions.

Reservoir is only about 1/4 of size initially planned for.

3. I have accomplished the following described works, purchases and installation of equipment necessary to the use of water under said permit:

A Within the past year or, if a prior extension was authorized, during the last permit extension period:

B Prior to the past year or, if a prior extension was authorized, prior to the last extension period:

C I have accomplished beneficial use of water under the permit to the extent of (amount of water used or acres irrigated):

16 Acre Ft. (Approx.)

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SEP 30 2002
WATER RESOURCES DEPT.
SALEM, OREGON

4. Cost of project to date \$65,000. Estimated remaining cost to complete the project \$100,000.

5. Please list the reasons why the project was not constructed, and/or water not beneficially used within permit time limits under the appropriate categories below. Please provide supporting information for each reason identified.

A The project is of a size and scope that the original intent was to phase it in over a period longer than the time frames allowed in the permit.

B Financing and/or cash-flow needs to develop the project precluded completion of the project within authorized time frames.

Cranberry market had a substantial loss. It is not financial feasible at this time to complete project.

C Good faith attempts to comply with permit conditions and/or to acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

D Acts of God or other unforeseen events delayed full development of the water system and use of water.

6. Please identify the economic market or markets to which beneficial use of water under the permit is responding.

Cranberry

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SEP 30 2002
WATER RESOURCES DEPT.
SALEM, OREGON

A Has there been any change in this market since the permit was issued?

A price drop of \$70.00 per barrell
to less than \$20.00 per barrell.

B Have these changes, if any, affected the economic feasibility of your project?

Differntately!

7. Are there other present competing demands for water in your community?

No.

A Has there been any change in these demands for water since the permit was issued?

No.

B Are you aware of alternative sources of water that may be able to satisfy the competing demands?

No.

C Are you aware of any adverse affects on your source of water that may have been caused by recent changes in use of water in your community?

No.

8. Will the income or use from the water development project authorized by this permit provide reasonable returns against the investment in the project?

FEASIBILITY will depend on market.
come back.

9. If the extension request is denied, is the current level of water use economically feasible?

Not for full acreage.
3 acres have been completed
with 4 more acres for total
project.

I am the permittee, or have authorization from the permittee, to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for the Department to suspend processing of the request and/or reason to deny the extension.

Lynn A. Cary
Signature

9/26/02
Date

MAIL COMPLETED APPLICATION AND STATUTORY FEE OF \$ 100 TO:

WATER RIGHT PERMIT EXTENSIONS
WATER RESOURCES
158 12TH ST NE
SALEM, OREGON 97310

m:\exchange\leap\extfm98
revised: June 21, 1999

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SEP 30 2002
WATER RESOURCES DEPT.
SALEM, OREGON