

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 R-14616, Water Right Application R-87130
in the name of Mark Spitsbergen

) FINAL
) ORDER
) DENIAL

Permit Information

Application:	R-87130
Permit:	R-14616
Basin:	Klamath / Watermaster District 17
Date of Priority:	March 17, 2008
Source of Water:	Ish Tish Creek, tributary to South Fork Sprague River
Storage Facility:	Baio #1
Purpose of Use:	Multiple Purpose Use
Maximum Volume:	28.4 acre-feet (AF)

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

Appeal Rights

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

On June 22, 2008, Permit R-14616 was issued by the Department. The permit called for the reservoir to be filled, and application of the stored water was to be made by October 1, 2012. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 2018. On November 2, 2018, Mark Spitsbergen submitted an

Application for Extension of Time for Permit R-14616. In accordance with OAR 690-315-0050(2), on January 8, 2019, the Department issued a Proposed Final Order proposing to deny the time to complete construction from October 1, 2018, to October 1, 2020 and the time to apply water to full beneficial use from October 1, 2018, to October 1, 2020. The protest period closed February 22, 2019, in accordance with OAR 690-315-0060(1). On February 15, 2019, the permit holder filed a timely protest.

On July 28, 2020, the Department mailed a letter proposing a settlement offer to the permit holder providing an opportunity to come into compliance with permit conditions within one year of the date of the offer and provide written documentation from Oregon Department of Fish and Wildlife approving the installation of the fish screen or by-pass devices, or documentation from ODFW that fish screens and/or by-pass devices are not required.

Between July 29, 2020, and October 28, 2021, OWRD received copies of e-mail correspondence between the permit holder and ODFW. However, since July 29, 2020, no information regarding completion of the items specified in the settlement offer from OWRD has been received from the permit holder. On January 25, 2023, the Department contacted the permit holder and asked if any of the items had been completed, and if not, informed the permit holder that OWRD would issue a final order denying the extension. The permit holder stated that he wanted to move forward with finalizing the permit, but provided no information that allowed OWRD to conclude that any of the items had been completed.

As of February 9, 2023, the actions identified in the settlement letter, and agreed to by the permit holder, have not been completed.

FINDINGS OF FACT

The Department adopts and incorporates by reference the findings in the Proposed Final Order dated January 8, 2019.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may not be extended.

CONCLUSION OF LAW

The applicant has not demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

ORDER

The extension of time for Application R-87130, Permit R-14616, therefore, is Denied.

DATED: February 24, 2023



Dwight French
Water Right Services Division Administrator, for
Douglas Woodcock, Acting Director
Oregon Water Resources Department

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- If you have any questions about statements contained in this document, please contact Permit Extension Specialist at (503) 979-3213
 - 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
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