

**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-16162, Water Right Application G-15904, in the)	PROPOSED
name of Domaine Drouhin Oregon)	FINAL ORDER TO DENY

Permit Information

Application:	G-15904
Permit:	G-16162
Basin:	2B – Middle Willamette / Watermaster District 22
Date of Priority:	January 7, 2003
Source of Water:	Wells 1 (YAMH 2623) and 2 (Proposed) in Holdridge Creek Basin
Purpose or Use:	agriculture uses; irrigation use on 80.0 acres
Maximum Rate:	0.357 cubic foot per second (cfs) until October 1, 2011, and then 0.067 cfs beginning March 1, 2012

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.

In Summary, the Department proposes to:

- Deny an extension of time to complete construction of the water system from October 1, 2022, to October 1, 2033.

- Deny an extension of time to apply water to full beneficial use from October 1, 2022, to October 1, 2033.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
cfs – cubic foot per second
Well 1 – YAMH 52623
Well 2 – YAMH 54816

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow 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) 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

FINDINGS OF FACT

1. On March 5, 2007, Permit G-16162 was issued by the Department, in accordance with a settlement agreement. The permit authorizes the use of up to 0.357 cfs until October 1, 2011, the 0.067 cfs beginning March 2012, of water from Wells 1 (YAMH 2623) and 2 (Proposed) in Holdridge Creek Basin for agriculture uses; irrigation use on 80.0 acres. The permit specified construction of the water system was to be completed by October 1, 2011, and complete application of water was to be made on or before October 1, 2011. The settlement agreement was reached after the Department initially proposed to deny the permit due to lack of water availability and the concurrent rule making process that was being undertaken to classify the area as a limited groundwater area. The Department moved to approve the permit with specific measurement and reporting conditions since the permit application was submitted prior to the designation of the limited groundwater area.

2. One prior permit extension has been granted for Permit G-16162. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2011, to October 1, 2022.
3. On October 27, 2022, an assignment by proof from Dr. Allen Methven, to Jill M. Methven and Domaine Drouhin Oregon, was recorded in the records of the Water Resources Department.
4. On January 11, 2023, the permit holder submitted an "Application for Extension of Time" (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-16162 be extended from October 1, 2022 to October 1, 2033. This is the first permit extension requested for G-16162.
5. On January 31, 2023, notification of the Application for Extension of Time for G-16162 was published in the Department's Public Notice. No public comments were received regarding the extension application.
6. On February 7, 2023, the permit holder submitted additional information to supplement their Application for Extension of Time. The additional information to clarify the remaining cost to develop the water system.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

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

7. On January 11, 2023, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

8. Construction of a well began prior to permit issuance.
9. According to the well log received by the Department on July 18, 2001, construction of YAMH 52623 (Well 1) began June 21, 2001.

Based on Finding of Fact (FOF) 8, and 9, the Department has determined that the prosecution of the construction of the well began prior to October 1, 2011.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: 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 holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

Amount of Construction OAR 690-315-0040(3)(a)

The amount of construction completed within the time allowed in the permit and previous extension.¹

10. Prior to permit issuance, Well 1 was completed, and an irrigation system serving 25.5 acres was installed.
11. Work was accomplished during the original development time frame under Permit G-16162, being March 5, 2007, through October 1, 2011, is as follows:
 - YAMH 54816 (Well 2) was constructed;
 - irrigation system installed to an additional 8.5 acres; and
 - pumps and pipe were installed at the Winery.
12. During the period between October 1, 2011, and the submittal of the previous Application for Extension of Time on September 24, 2012, the following work was accomplished:
 - a meter was installed on Well 2.
13. During the most recent extension period, being from October 1, 2011, to October 1, 2022, no additional work towards developing the water system or additional irrigated acres was accomplished.
14. Since October 1, 2022, no additional work has been accomplished.

The Department cannot find evidence of progress made towards completion of the water development and application of water to full beneficial use as allowed during the previous extension period. The Application does not provide evidence of progress made towards the development of the authorized use under the permit in over ten years. The Department cannot find good cause or reasonable diligence towards the complete application of water to a beneficial use under G-16162.

¹ "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

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

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

15. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the required static water level measurements have not been received by the Department, and (2) the Progress Report due October 1, 2018, has not been submitted to the Department.

Based on FOF 15, the Department has determined that the permit holder has not demonstrated compliance with following permit and extension of time conditions as required by Permit G-16162:

- "The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water level in the well. (A) a water level measurement shall be made each year during the period March 1 through March 31. (B) Static water level measurements shall be taken in January, March, July, and October of each year from permit issuance through year 2011."
- "The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2018.**"

16. The previous permit holder has submitted March static water level measurements for Well 1 for years 2008, 2009, 2010, 2011, and 2012, and one of the required July measurements in 2011. No measurements required by the permit have been submitted for Well 2.

Beneficial use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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

The amount of beneficial use made of the water during the permit or previous extension conditions.

17. The Application identifies that the maximum combined rate of appropriation from Well 1 and Well 2 is 0.357 cfs. However the Application also identifies the maximum instantaneous rate appropriated from each well individually, being 0.0495 cfs from Well 1, and 0.0495 cfs from Well 2.
18. Based on the maximum instantaneous rate from each well individually, the Department has determined a maximum rate of 0.099 cfs of water has been appropriated from the combination of Well 1, Well 2 for irrigation of 34.0 acres and agricultural use. This exceeds the authorized rate of 0.067 cfs after March 1, 2012.
19. Delay of beneficial use of water under Permit G-16162 was due, in part, economic strain, the COVID-19 Pandemic, and the health of the previous permit holder.

The Department has determined that Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2022.

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

20. An invested for approximately \$119,243, which is approximately 26 percent of the total projected cost for complete development of this project. An additional \$340,000 investment is needed for the completion of this project.
21. No additional investment has been made in the additional development of the authorized use since the previous Application for Extension of Time was submitted on September 24, 2012, has been identified.

Based on FOF 20, the Department has determined that the permit holder had made an investment. However, the Department has also determined that no additional investment has been made in the development of the beneficial use in over 10 years.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application does not provide evidence of progress towards completion of the water system; the permit holder has not demonstrated complete or ongoing compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has not demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

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

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:

- *(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, 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);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(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 present demands for water and power.*

OAR 690-315-0040(4)(a)

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

22. 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-16162; 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.

OAR 690-315-0040(4)(b)

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).

23. The points of appropriation for Permit G-16162, located within the Yamhill River Basin, are located within the Amity Hills/Walnut Hills Limited Groundwater Area.
24. Yamhill River is not located within or above any state or federal scenic waterway.
25. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

26. Yamhill River is located within an area ranked "moderate" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

27. An approximate total of \$119,243 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

28. The Application identifies dispersed economic interests in the project to include manufacturers, contractors the permit holder does business with.

OAR 690-315-0040(4)(f)

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

29. The points of appropriation are located within the Amity Hills/Walnut Hill Groundwater Limited Area.

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

30. The 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)]

31. Delay in the development of this project caused by any other governmental requirements have not been identified.

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

32. The Application identifies the economic downturn of 2008, the COVID-19 pandemic, and the physical decline of the previous permit holder of record as unforeseen events.
33. These unforeseen events occurred prior to the acquisition of the property by the current permit holder and Applicant.

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

34. The Applicant states, "we purchased this property with the hope that we could realize the full potential offered by this permit. There remain about 40 acres of authorized place of use to develop into vineyards. If the extension is denied, we will not be able to realize the full potential from this property, which will result in an undue hardship."
35. The Applicant purchased the property August 1, 2022, one month prior to the extended completion date.

Though the Applicant has identified that a denial would result in an undue hardship, the Department considers the acquisition of the property, with a water right permit near the end of its development timeline, as a business decision. The Applicant assumed the risk that the permit may not be extended when purchasing the property.

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

36. The Application provides evidence of good faith of the appropriator under Permit G-16162.

Based on Findings of Fact 4, 13, 14, 15, 16, 21, 23, and 29, above, the Department finds that the Applicant has not demonstrated good faith.

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.

37. As of January 11, 2023, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, which include March static water level measurements; and applying water to full beneficial use.

The Department has determined that an extension of time, beyond October 1, 2022, cannot be authorized because reasonable diligence and good cause had not been demonstrated during the previous extension period.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

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 not 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). The Application does not identify any progress towards additional development of the authorized use in over ten years. The Department record does not show good faith in compliance with conditions of the permit during the most recent extension period. The Application has not demonstrated that good cause exists to allow for additional development of the authorized use, in an area designated as a Groundwater Limited Area, beginning more than ten years after the most recent development under the permit.

CONCLUSIONS OF LAW

1. The permit holder has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The permit holder has not complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. The Application established that there has been no construction, no financial investment or reasonable diligence toward developing the project during the most recent extension of

time period, October 1, 2011, to October 1, 2022. The permit holder has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

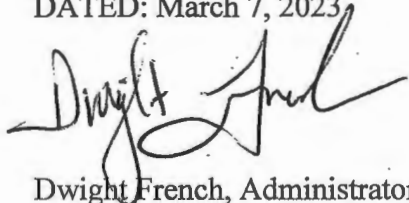
PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny the time to complete construction of the water system under Permit G-16162 from October 1, 2022, to October 1, 2033.

Deny the time to apply water to beneficial use under Permit G-16162 from October 1, 2022, to October 1, 2033.

DATED: March 7, 2023,



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.*

Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than **April 21, 2023**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and

