

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 feet per second

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 February 15, 2002, Permit G-15024 was issued by the Department. The permit authorizes the use of up to 6.46 cfs of water from three wells in Klamath River Basin, being 5.0 cfs for irrigation of 400.0 acres, 1.0 cfs for commercial use, and 0.46 cfs for pond filling & maintenance for multi-purpose use for reservoirs constructed under Permits R-13130, R-13131, R-13132, R-13133, R-13134, R-13135, R-13136, R-13137, R-13138, R-13139, R-13140, and R-13141 acres. The permit specified complete application of water was to be made on or before October 1, 2006.
2. One prior permit extension has been granted for Permit G-15024. The extension request resulted in the completion dates for full application of water being extended from October 1, 2006, to October 1, 2017.
3. On September 13, 2021, a partial assignment by proof from Perry Welker, to Christopher David Edlebeck, was recorded in the records of the Water Resources Department.

4. On August 27, 2021, Christopher David Edlebeck submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15024 be extended from October 1, 2017, to October 1, 2041.
5. On September 14, 2021, notification of the Application for Extension of Time for G-15024 was published in the Department's Public Notice. No public comments were received regarding the extension application.

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)]

6. On August 27, 2021, 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)]

7. Construction of a well began prior to October 1, 2006, as specified in the permit as being the date to apply water to full beneficial use.
8. According to the well log received by the Department on October 4, 2004, construction of KLAM 54594 (Well 1) began September 27, 2004.

Based on Finding of Fact (FOF) 7, and 8, the Department has determined that the prosecution of the construction of the well began prior to October 1, 2006.

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

9. Construction of a well began prior to the date specified in the permit for complete application of water to the beneficial use.
10. During the most recent extension period, being from October 1, 2006, to October 1, 2017, a pump was installed in Well 1 in 2008.
11. The Application does not identify any additional work being accomplished since 2008.

The Department finds minimal evidence of progress made towards completion of the water development and application of water to full beneficial use as allowed in the time period specified in the permit and previous extension of time. The Department has determined that diligence has not been demonstrated in the development of the use authorized under the permit.

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

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

12. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a meter or other suitable measuring device has been installed, and (2) the required plan to monitor and report the impact of water use has not been submitted, and (3) the Progress Report for 2016, required by the Extension of Time Final Order issued January 10, 2008, has not been submitted.

The Department has determined that the permit holder has not demonstrated compliance with permit conditions as required by Permit G-15024. Beneficial use of water under this permit has not yet been demonstrated.

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.

13. No water has been appropriated from the well.

The Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water has been appropriated and not all permit conditions have been satisfied.

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.

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

14. An invested for approximately \$35,000, which is approximately 5 percent of the total projected cost for complete development of this project. An additional \$728,000 investment is needed for the completion of this project.
15. The Application does not identify any investment in the development of the water system since 2008.

The Department has determined that the permit holder had made an investment towards the complete application of water to a beneficial use. However, no investment has been made towards the development of the authorized use under the permit since 2008.

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

The Application provides minimal evidence of work accomplished towards completion of the water system; the permit holder has not demonstrated compliance with permit or previous extension conditions, no water has been appropriated, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has not demonstrated reasonable diligence in previous performance under Permit G-15024.

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.

16. 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-15024; however, no water has been appropriated under this permit since issuance, and water availability conditions have drastically changed in the over two decades since the permit was issued.

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).

17. The points of appropriation for Permit G-15024, located within the Klamath River Basin, are not located within a limited or critical groundwater area.
18. Klamath River is located above Klamath Scenic Waterway.
19. 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.

20. Klamath River 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 not 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.

21. An approximate total of \$35,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

22. The Application identifies perspective land buyers as having economic interest in the development of the water use authorized under the permit.

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

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

23. On June 21, 2024, the Department Ground Water section found:

- “The Klamath Basin in the vicinity of the Bureau of Reclamation (BOR) Klamath Project has seen a basin-wide trend of lowering groundwater levels since 2001 attributed to lower volume BOR project surface water deliveries, increase groundwater pumping, and drought. Continuous and current groundwater data is not as readily available near the POA (KLAM 54594), authorized under permit G-15024 as other portions of the Klamath River Valley. However, KLAM 12537 located approximately ¼-mile to the east-southeast of the authorized POA exhibits similar groundwater elevation levels in 2015 and 2016 when comparing annual high-water levels. Spring groundwater levels measured at KLAM 12537 have declined nearly 10 feet between the years 2000 and 2017, more recent data is not available. Significant year-over-year declines were observed in the BOR Project area between 2019 and 2023 associated with groundwater pumping during drought years. These year-over-year declines associated with drought years and annual highs that do not recover to previous year’s levels suggest that groundwater storage in the area is being depleted. This period is not captured by the water level record available for KLAM 12537, however, it is likely additional water level declines have occurred since 2017 given BOR Project area and vicinity trends. Existing water rights in the area that have permit conditions requiring discontinued or reduced use if water level records show 25 ft or more of decline (including G-15024) are at risk of being triggered if groundwater declines continue. Therefore, if groundwater use were to begin under this permit, that use would have the potential to contribute to declines and lead to permit conditions being triggered on existing rights. **This would preclude the perpetual use of the aquifer by limiting the rights of existing users and therefore the resource is unlikely able to support the development of the authorized rate and additional use would not be in the capacity of the resource.**”

The Department has considered the effect of the beginning the use authorized under the permit on water levels in the area and has determined that the use would likely result in the continued lowering of groundwater levels in the aquifer, and the resource could not support the development of the use under this permit.

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

24. The current permit holder would like to partition the current land parcels into separate lots. These lots would eventually be sold to prospective buyers. The water use permitted for the land will retain the value of the properties and would provide a fair and reasonable return on the investment.

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

25. The delay in the timely completion of the development of the project and timely application of water to full beneficial use caused, in part, by additional government requirements. The Application identifies delays caused by the City of Klamath Falls in the early phases of the project development.

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

26. The original permit holder passed away during the permit development timeframe.

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

27. The Application identifies denial of the extension would result in undue hardship as the current property owner would lose the water use authorized under the permit, and the value of the land would drop significantly. The Application indicates the permit holder could apply for a new ground water right but believe it would not likely be approved.

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

28. The Application does not provide evidence of good faith of the appropriator under Permit G-15024.

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.

29. As of August 27, 2021, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, which include installing the required meters, and submitting the required monitoring plan; and applying water to full beneficial use. The Application does not provide any specific timeline for development of the water use authorized under the permit, and identifies that there is an intention to partition the land for sale.

The Department has determined the development could be completed within the time requested in the Application, however, diligence has not been demonstrated in the development of the authorized use under the permit, and the resource would not be able to support the use, and the request for an extension of time is denied.

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).

Though some work was accomplished in 2008 with the installation of a pump in Well 1, no additional work was accomplished to complete the development of the water system in the 13 years from the installation of the pump in the well to the submittal of the Application for Extension of Time. Additionally, no water has been appropriated under the permit, in the more than two decades since permit issuance. 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

CONCLUSIONS OF LAW

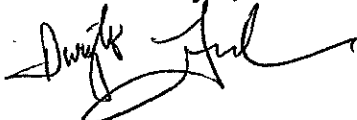
1. The permit holder has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The permit holder has complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. The Application established that there has been minimal construction, minimal financial investment, and no water has been used since permit issuance. The permit holder has not shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

PROPOSED ORDER

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

Deny the time to apply water to beneficial use under Permit G-15024 from October 1, 2017, to October 1, 2041.

DATED: July 2, 2024



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 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 **August 16, 2024**, 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;

