

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)	PROPOSED
for Permit G-18720, Water Right Application G-16388, in)	FINAL
the name of Norway Development)	ORDER

Permit Information

Application:	G-16388
Permit:	G-18720
Basin:	16 – Umpqua / Watermaster District 15
Date of Priority:	February 14, 2005
Source of Water:	eight wells in Davis Creek Basin
Purpose or Use:	domestic expanded for 111 homes acres
Maximum Rate:	0.084 cubic foot per second (cfs)

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

In Summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 2023, to October 1, 2033.
- Grant an extension of time to apply water to full beneficial use from October 1, 2023, to October 1, 2033¹.
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

¹Pursuant to ORS 537.630(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
Well 1 – DOUG 53786
Well 2 – DOUG 53842
Well 3 – DOUG 621
Well 4 – DOUG 53788
Well 5 – DOUG 53992
Well 6 – DOUG 54326
Well 7 – DOUG 55223/58229
Well 8 – DOUG 58228
cfs - cubic foot 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.

OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

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

FINDINGS OF FACT

1. On November 30, 2006, Permit G-16129 was issued by the Department. The permit authorizes the use of up to 0.084 cfs of water from six wells in Davis Creek Basin for domestic expanded for 111 homes acres. The permit specified completion of construction and complete application of water was to be made on or before October 11, 2011.
2. Two prior permit extensions have been granted for Permit G-16129. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, October 1, 2021, to October 1, October 1, 2023.
3. On January 26, 2022, the Department approved Permit Amendment T-13669 (Special Order Volume 122, Page 377) authorizing additional points of appropriation under Permit G-16129 (modified by Permit Amendment T-13669). Superseding Permit G-18720 was issued by the Department on January 26, 2022, to reflect the changes.
4. On April 14, 2023, the permit holder, Carl Coffman, president of Norway Development, 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-18720 be extended from October 1, 2023, to October 1, 2033.
5. On April 25, 2023, notification of the Application for Permit G-18720 was published in the Department’s Public Notice. No public comments were received regarding the 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 April 14, 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)]

7. Construction of the wells began prior to permit issuance.
8. According to the well log received by the Department on June 21, 1991, construction of DOUG 621 (Well 3) May 21, 1991.
9. According to the well log received by the Department on October 1, 2004, construction of DOUG 53786 (Well 1) September 15, 2004.

10. According to the well log received by the Department on May 24, 2005, construction of DOUG 53788 (Well 4) September 20, 2004.
11. According to the well log received by the Department on October 25, 2004, construction of DOUG 53842 (Well 2) September 23, 2004.
12. According to the well log received by the Department on June 16, 2005, construction of DOUG 53992 (Well 5) May 12, 2005.
13. According to the well log received by the Department on June 18, 2005, construction of DOUG 54326 (Well 6) October 13, 2005.

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 previous extension.²

14. During the most recent extension period, being from October 1, 2021, to October 1, 2023, the Application states DOUG 58228 (Well 8) was connected to the distribution system, and replace the control system.³

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

² “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.

³ The previous Application for Extension of Time submitted on April 12, 2021, asserted that water was used from Well 8 prior to issuance of the previous extension of time.

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

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

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

The Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-18720.

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

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

16. A maximum rate of 0.13 cfs (60 gallons per minute) from Well 8, and 0.03 cfs (14.8 gallons per minute) from DOUG 55223 (Well 7) of water has been appropriated for domestic expanded use for 29 households. The use of water from Well 8 exceeds the amount of water authorized for use under this permit. The authorized amount of water for irrigation use is 0.084 cfs (37.7 gallons per minute).
17. Delay of full beneficial use of water under Permit G-18720 was due, in part, to insufficient yield of water from the permitted well. The permit holder needs more time in which to gain approval for the construction of an additional point of appropriation to obtain the full quantity of water allowed under the permit.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2023.

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

18. An approximate total of \$954,707 has been invested. The costs included items associated with repair and maintenance costs of a system, which are not "actual construction" under this permit and therefore are not counted towards development, as well as capping failed wells, which is not a requirement under the permit, and therefore not counted towards development. After deducting these costs, the approximate total investment for "actual construction" to date is approximately \$850,264 which is about 78 percent of the total projected cost for complete development of this project. An estimated investment of \$246,000 is needed to complete this project, which includes connection of the distribution system to the remaining properties.

The Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all

permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has 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.

19. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-18720; 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).

20. The points of appropriation for Permit G-18720, located within the Davis Creek Basin, are not located within a limited or critical groundwater area.
21. Davis Creek is not located within or above any state or federal scenic waterway.
22. 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.

23. Davis Creek is located within an area ranked “low” 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.

24. An approximate total of \$850,264 has been invested in the project.

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

Other economic interests dependent on completion of the project.

25. Other economic interests identified in the Application include individual homeowners and lot owners who are served 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.

26. No other factors relevant to the determination of the market and present demand for water and power have been identified.
27. OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit. Based on FOF 16, the Department has determined the need to place an “Annual Water Use Reporting Condition”, due to use of a rate of water beyond what is authorized by the permit. This condition is specified under Item 1 of the “Limitations and Conditions” section of this PFO.
28. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Limitations and Conditions” section of this PFO to meet this condition.

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

29. 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)]

30. Delay in the development of this project was not caused by any other governmental requirements.

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

31. The Application identifies the recession of 2008 and poor groundwater production as unforeseen events which delayed the development under the permit.

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

32. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs.

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

33. The Application provides evidence of good faith of the appropriator under Permit G-18720.

Based on FOF 7 through 13, 15, 18, and 24, the Department has determined that the applicant has shown good faith and reasonable diligence.

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.

34. As of April 14, 2023, the remaining work to be completed consists of completing construction of the water system, meeting all permit and extension of time conditions, which include submittal of annual water use reports and extension of time progress reports; and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2033, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-18720 is both reasonable and necessary.

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 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).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 16, the Department determined the need to place a “Annual Water Use Reporting Condition” on this extension of time in order to mitigate subsequent development under this permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary due to use of a rate of water beyond what is authorized by the permit.
2. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 2 of the “Limitations and Conditions” section of this PFO to meet this condition.

CONCLUSIONS OF LAW

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant has complied with the construction timeline requirements to begin construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 5, through 33, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2033, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project.
5. The applicant has demonstrated good cause for the extension, but the extension must be conditioned to ensure the appropriation of water under this permit does not exceed the maximum authorized rate under this permit.; OAR 690-315-0050(5).
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

PROPOSED ORDER

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

Extend the time to complete construction of the water system under Permit G-18720 from October 1, 2023, to October 1, 2033.

Extend the time to apply water to beneficial use under Permit G-18720 October 1, 2023, to October 1, 2033.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. Annual Water Use Reporting Condition


The permittee shall keep a complete record of the volume of water used each month, and shall submit an annual report which includes the recorded water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

2. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2028, and 2032. A form will be enclosed with your Final Order.**

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

DATED: August 6, 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.*

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 **September 20, 2024**, 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
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or

private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503- 979-3213.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
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