

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

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| In the Matter of the Application for an Extension of Time for) | PROPOSED FINAL ORDER TO DENY |
| Permit G-16857, Water Right Application G-15742, in the) | |
| name of Chad Stephenson) | |

Permit Information

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| Application: | G-15742 |
| Permit: | G-16857 |
| Basin: | 5 – Deschutes / Watermaster District 11 |
| Date of Priority: | April 12, 2002 |
| Source of Water: | 7.0 acre-feet (AF) for storage, and 0.056 cubic foot per second(cfs) for pond maintenance |

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 April 26, 2017, to October 1, 2027.

- Deny an extension of time to apply water to full beneficial use from April 26, 2017, to October 1, 2027.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
AF – acre-feet
cfs – cubic foot per second
Well DESC 54270

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 April 26, 2012, Permit G-16857 was issued by the Department. The permit authorizes the storage of 7.0 acre-feet of water, and 0.056 cfs of water for pond maintenance for storage and pond maintenance. The permit specified construction of the water system and complete application of water was to be made within five years from the date of permit issuance, being by April 26, 2017.
2. On March 26, 2024, an assignment from Craig Petrie, to Chad Stephenson was recorded in the records of the Water Resources Department.
3. On July 5, 2024, 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-16857 be extended from April 26, 2017, to October 1, 2027. This

is the first permit extension requested for G-16857.

4. On July 16, 2024, notification of the Application for Extension of Time for G-16857 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)]

5. On July 5, 2024, 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)]

6. According to the well log received by the Department on November 29, 2001, construction of DESC 54270 (Well) began November 21, 2001.

Based on Finding of Fact (FOF) 6, the Department has determined that the prosecution of the construction of the well began prior to April 26, 2017.

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.¹

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.

7. Construction of the well began and installation of piping system was completed prior to the issuance of the permit.
8. No additional work was accomplished during the authorized timeline provided in the permit, Being from April 26, 2012, to April 26, 2017.
9. No additional work has been accomplished since April 26, 2017

The Department cannot find 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. Therefore, the Department cannot find good cause or reasonable diligence towards the complete application of water to a beneficial use under G-16857.

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

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

10. The Department has considered the permit holder's compliance with conditions and has identified the following concern, the record does not show that a meter or other suitable measuring device has been installed.

Based on FOF 10, the Department has determined that the permit holder has not demonstrated compliance with all permit conditions as required by Permit G-16857.

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.

11. The Application identifies a maximum rate of appropriation from the Well under this permit as 0.056 cfs.
12. The reservoir for which the permit authorizes the use of the Well has not been constructed.

Based on FOF 12, the Department has determined that Beneficial use of water has not yet been demonstrated under this permit because the reservoir where the water was to be stored and used has not been constructed.

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

13. An investment of approximately \$35,000, which is approximately 19 percent of the total projected cost for complete development of this project, has been made. An additional \$152,000 investment is estimated for the completion of this project.
14. No investment in the development of the authorized use has been made since issuance of the permit.

The Department finds there is no evidence towards perfecting the water right under the terms and conditions of the permit.

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

The Application provides evidence that no work has been accomplished towards completion of the water system since issuance of the permit on April 26, 2012; the permit holder has not demonstrated compliance with permit conditions, 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-16857.

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.

15. 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-16857; 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).

16. The point of appropriation for Permit G-16857, located within the Tumelo Creek Basin, is located within the Upper Deschutes Mitigation Zone of Impact.
17. Tumelo Creek is located above the Deschutes Scenic Waterway.
18. The point of appropriation is 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.

19. It is located within an area ranked “highest” 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.

20. An approximate total of \$35,000 has been invested in the project.
21. No investment has been made in the development of the authorized use since the permit was issued.

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

Other economic interests dependent on completion of the project.

22. The Application did not identify economic interests other than those of the applicant’s that may be dependent on completion of the project.

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

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

23. No other factors relevant to the determination of the market and present demand for water and power have been identified.

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

24. 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)]

25. The Application identifies government requirements during the COVID-19 Pandemic delayed the development of the authorized use under the permit.

26. Permit G-16587 has a date for completion of construction and application of water to the beneficial use of April 26, 2017, two years prior to the outbreak of the COVID-19 Pandemic.

The Department has determined that the COVID-19 Pandemic, which began two years after the completion date authorized by the permit, does not represent any additional governmental requirement which delayed the development under the permit because the date for completion of construction and for application of water to the beneficial use expired prior to the onset of the pandemic.

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

27. The Application identifies the COVID-19 Pandemic as an unforeseen event which delayed the completion of the project.
28. Permit G-16587 has a date for completion of construction and application of water to the beneficial use of April 26, 2017, two years prior to the outbreak of the COVID-19 Pandemic.

The Department has determined that the COVID-19 Pandemic was not an unforeseen event which delayed the completion of the project because the date authorized for the development of the permit expired prior to the onset of the pandemic.

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

29. The Application asserts that an undue hardship would result from the denial of the extension request because the applicant has “invested money to date to move this project forward”.
30. The Application does not identify any investment in the development of the permit since the permit was issued, nor since the assignment was completed in 2014.

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

31. The Application does not provide evidence of good faith of the appropriator under Permit G-16857.

Based on Findings of Fact 8, 9, 10, 12, and 14, 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.

32. As of July 5, 2024, the remaining work to be completed consists excavation and lining of the reservoir, meeting all permit conditions, and applying water to full beneficial use.

The Department cannot find that the applicant can complete the project or apply water to full beneficial use within the time requested for the extension, however diligence has not been demonstrated in the development of the authorized use under the permit.

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).

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 of the well to begin under the permit pursuant to ORS 537.630.
3. The permit holder has not demonstrated that reasonable diligence in the development of the authorized use under the permit. OAR 690-315-0040
4. The Application established that there has been minimal construction, minimal financial investment or reasonable diligence toward developing the project. 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).

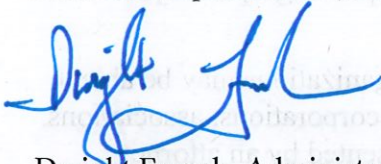
PROPOSED ORDER

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-16857 from April 26, 2017, to October 1, 2027.

Deny the time to apply water to beneficial use under Permit G-16857 from April 26, 2017, to October 1, 2027.

DATED: September 17, 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 **November 1, 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
Fax: 503-986-0901 Salem, OR 97301-1266
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