

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)	SUPERSEDING
Permit G-17129, Water Right Application G-14898, in the)	PROPOSED
name of Shane Deruwe)	FINAL ORDER

Permit Information

Application:	G-14898
Permit:	G-17129
Basin:	7 – Umatilla / Watermaster District 23
Date of Priority:	January 5, 1999
Source of Water:	five wells in Raymond Gulch Basin
Purpose or Use:	irrigation of 211.3 acres
Maximum Rate:	2.64 cubic feet per second (cfs)

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

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:

- Grant an extension of time to apply water to full beneficial use from October 30, 2023, to October 1, 2026¹.
- Make the extension subject to certain conditions set forth below.

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.

<u>ACRONYM QUICK REFERENCE</u>	<u>Wells</u>
Application – Application for Extension of Time	Well A – UMAT 53833
Department – Oregon Department of Water Resources	Well B – UMAT 54343
FOF – Finding of Fact	Well C – UMAT 54887
PFO – Proposed Final Order	Well D – UMAT 56219
cfs – cubic feet per second	Well E – UMAT 58571

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 August 13, 1999, Permit G-13717 was issued by the Department. The permit authorized the use of up to 2.64 cfs of water from two wells in Raymond Gulch Basin for irrigation of 211.3 acres. The permit specified actual construction of the well to begin by August 13, 2000, and complete application of water was to be made on or before October 1, 2003.
2. Multiple Permit Amendments have been authorized since issuance of the permit. The most recent being Permit Amendment T-11680, resulting in issuance of Permit G-17129 on February 20, 2014. Permit G-17129 authorizes the use of up to 2.64 cfs from five wells in Raymond Gulch Basin for irrigation of 211.3 acres.
3. Two prior permit extensions have been granted for Permit G-17129. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2014, to October 30, 2023.

4. On May 11, 2023, the permit holder 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-17129 be extended from October 30, 2023 to October 1, 2032.
5. On May 23, 2023, notification of the Application for Extension of Time for G-17129 was published in the Department's Public Notice. No public comments were received regarding the extension application.
6. On October 24, 2023, the Department issued a Proposed Order to Deny the Extension request.
7. On December 6, 2023, the permit holder submitted a timely protest. This superseding PFO is intended to address issues brought up in the protest. This superseding PFO replaces the Proposed Order to Deny issued on October 24, 2023. The Proposed Order to Deny issued on October 24, 2023, is of no further force or effect. The fees submitted with the protest are being refunded.

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)]

8. On May 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)]

9. According to the well log received by the Department on June 6, 2000, construction of UMAT 53833 (Well A) began April 12, 2000.

Based on Finding of Fact (FOF) 9, the Department has determined that the prosecution of the construction of the well began prior to August 13, 2000.

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 or previous extension.²

10. Work accomplished during the original development period, being from August 13, 1999, to October 1, 2003, and during the previous extension of time period, being from October 1, 2003, to October 1, 2014, has previously been considered in the approval of the previous requests for extensions of time.
11. During the most recent extension period, being from October 1, 2014, to October 30, 2023, UMAT 58571 (Well E) was constructed, and four center pivots were installed to serve the previously irrigated 210.0 acres.
12. On August 19, 2024, the Department Ground Water section determined that Well E is constructed to develop water from multiple aquifers, including sand and gravel; and basalt.

The Department has determined that; 1) the installation of four center pivots does not count as construction because the installation did not increase the number of acres irrigated under the permit and was therefore an upgrade of the existing irrigation system rather than work performed toward the completion of the water system, and 2) the work to construct Well E that resulted in Well E accessing water from the basalt aquifer, as opposed to the alluvial (sand and gravel) aquifer, should not be counted toward the amount of construction accomplished because it resulted in Well E accessing water from an unauthorized source.

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

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

13. The Department has considered the permit holder's compliance with conditions and has identified the following concerns: 1) the Progress Report due October 1, 2018, has not been received by the Department. The condition requiring the submittal of the progress report was clearly outlined and defined in the Final Order approving the extension of time to October 30, 2023, issued December 19, 2014, and 2) water has been appropriated from an aquifer other than the one from which the original points of appropriation acquired water.

The Department has determined that the permit holder has not demonstrated compliance with following conditions as required by Permit G-17129:

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.

- “The permit holder must submit a completed Progress Report Form to the Department by October 1, 2018.”
- “Water shall be acquired from the same aquifer as the original points of appropriation.”

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.

14. A maximum rate of 0.66 cfs (300 gallons per minute) of water has been appropriated, being 0.33 cfs (150 gallons per minute) from UMAT 54887 (Well C), and 0.33 cfs (150 gallons per minute) from UMAT 56219 (Well D), for irrigation of 210 acres. No additional acres have been developed since at least 2014.
15. The Application indicates a rate of 0.44 cfs (200 gallons per minute) has been appropriated from Well E. As described in FOF 12, Well E allows for the appropriation of water from both the alluvial aquifer and the basalt aquifer, which is not permissible as per OAR 690-200-0043, and the requirement of the Transfer Final Order for Transfer File T-11680 and Permit G-17129, requiring that water be acquired from the same aquifer as the original points of appropriation. In the Ground Water Review from August 9, 2024, the aquifer which the original wells acquired water from has been determined to be the sand and gravel aquifer, and not the basalt aquifer. Use of water from Well E is, in part, illegal water use, and is not beneficial use because Well E appropriates water, at least in part, from an unauthorized source.
16. Delay of full beneficial use of water under Permit G-17129 was due, in part, insufficient yield from the wells.

Based on the Application and the Department record, the Department has determined that 0.66 cfs of water from Well C and Well D has likely been beneficially used to irrigate 210.0 acres.

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

17. The Application identifies an investment of approximately \$620,872 has been made in the development of the beneficial use. As described in FOF 11, 12, 13, and 15, Well E acquires water from both the sand and gravel aquifer, and the basalt aquifer, and the four pivots that were installed did not increase the number of acres irrigated. These costs associated with upgrades to the water system and the cost of the improperly constructed well, cannot be considered as investments made to develop the beneficial use, and therefor are not counted towards the cost to develop the beneficial use. After deducting these costs, the Department has determined the Applicant has invested approximately \$155,464³ in the development of the authorized use under the permit. The Applicant indicates an additional \$400,000 is needed to complete development.

³ The Department estimated that half of the \$61,172 identified in the Application was likely to install power to Well C, so \$30,568 of that investment has been considered as an investment towards development of the authorized use.

The Department has determined that the permit holder had made an investment, however most of the investment made during the most recent extension of time period, being October 1, 2014, to October 30, 2023, has been made in construction of a well that cannot be utilized under the permit, and for upgrades to the water system, which did not increase the number of acres irrigated, thus being determined to be maintenance of the water system. Therefore, the Department has determined that only a limited investment has been made in the development of the authorized use under the permit.

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

The record provides evidence of the following:

- Work has been accomplished towards completion of the water system. However, some of the work involved constructing a well that violates relevant permit conditions.
- The permit holder has complied with some permit conditions and failed to comply with others.
- The permit holder has demonstrated some beneficial use of water but has also used water from a well that violates relevant permit conditions.
- The permit holder has made an investment toward developing the beneficial use of water.

Based on the above, the Department has determined that the permit holder has demonstrated a minimal level of diligence that justifies granting an extension subject to the limitations and conditions set forth in this Superseding Proposed Final Order.

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.

18. On August 19, 2024, the Department's Groundwater Section determined that the resource cannot support additional development of the rate and duty authorized under the permit.

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).

19. The points of appropriation for Permit G-17129, located within the Raymond Gulch Basin, are located within the Walla Walla River subbasin. In 2017, the Oregon Water Resources Commission took the following actions to address chronic declining groundwater level trends in the Walla Walla River subbasin: (1) updated the Umatilla Basin Program to classify the groundwater resources of the Walla Walla River subbasin for statutorily exempt uses only, OAR 690-507-0030(3); and (2) established a Serious Water Management Problem Area ("SWMPA") in the Walla Walla River subbasin under ORS 540.435 and imposed measurement and reporting requirements on water supply wells within the SWMPA that develop groundwater from the Columbia River Basalt Group, OAR 690-570-0030(4).
20. Raymond Gulch is not located within or above any state or federal scenic waterway.
21. 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.

22. Raymond Gulch 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 investment in the project to date.

23. An approximate total of \$155,464 has been invested in the project.

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

Other economic interests dependent on completion of the project.

24. 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.

25. Groundwater within the Walla Walla River subbasin has been classified for exempt uses only. OAR 690-507-0030(3).

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

26. 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)]

27. The Application indicates that the time the Department took in reviewing the previously submitted permit amendments was an additional governmental requirement.

The Department has determined that additional governmental requirements identified in the Application are not additional governmental requirements therefor did not delay the development of the beneficial use because the Permit Holder chose to submit a Permit Amendment Application in an effort to develop higher rates of appropriation.

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

28. The Application identifies the COVID-19 pandemic as an unforeseen event. The protest identifies the hydrogeologic performance of the alluvial or sand and gravel aquifer, the 1999 Endangered Species Act Notice by the United States Fish and Wildlife Service, the subsequent settlement, and subsequent restoration planning efforts and restoration projects as unforeseen events.

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

29. The Application indicates that a denial of the extension would result in an undue hardship because the rate of water developed is insufficient to irrigate the entire place of use.

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

30. The following considerations weigh against finding good faith of the appropriator:
 - a. failure to comply with permit conditions as identified in Finding of Fact 13; and
 - b. construction and use of water from UMAT 58571 in violation of relevant conditions of Permit G-17129 and the final orders approving permit amendments T-10522 and T-11680 identified in Findings of Fact 11, 12, and 13.
31. The following considerations weigh in favor of finding good faith of the appropriator:

- a. construction and use of water from UMAT 54887 (Well C) and UMAT 56219 (Well D) in accordance with relevant permit conditions; and
- b. compliance with permit conditions other than those identified in Finding of Fact 13.

The Department has determined that the permit holder has shown sufficient good faith to warrant approval of an extension subject to the limitations and conditions set forth in the Superseding Proposed Final Order.

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. This Superseding Proposed Final Order limits development to the 0.066 cubic feet per second already developed from Well C and Well D to irrigate 210 acres. Furthermore, The Extension of Time is conditioned to require the repair of Well E, which once repaired to appropriate water only from the sand and gravel aquifer, the rate the repaired well can produce that is applied to beneficial use, up to 0.44 cfs, may be included in the overall development limitation imposed by this Extension of Time.

The Department has determined that an extension of time to October 1, 2026, is reasonable and necessary to allow for repair of UMAT 58571 and the application of water acquired from the repaired well to beneficial use.

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).

Permit G-17129 (originally G-13717) was issued August 13, 1999, over 24 years prior to the second extension of time expiring on October 30, 2023. Between the date the permit was issued and 2008, the permit holder diligently constructed four of the five wells authorized by the permit. In 2014, the permit holder applied for, and received approval of a permit amendment to add an additional the fifth well to the permit. After the permit amendment was approved, the permit holder submitted an application for extension of time from October 1, 2014, to October 30, 2023, to complete construction of the well. Construction of the fifth well, Well E did not begin until February 2021, nearly seven years after the construction of the well was authorized. In addition, Well E was constructed to acquire water from both the sand and gravel and the basalt aquifers, in violation of relevant conditions of Permit G-17129 and the final orders approving permit amendments T-10522 and T-11680. The Department must also consider the fact that this permit was issued 24 years ago, and little diligence in developing the permit was demonstrated between 2008 and 2021.

In addition to the Department finding minimal diligence during the most recent extension of time, the Department must also consider the amendment of the Umatilla Basin Program in 2017

to classify groundwater within the Walla Walla River subbasin for statutorily exempt uses only with the goal of addressing declining groundwater levels, and the finding that the resource cannot support the additional development authorized under the permit. Ultimately, the Department concludes that there is not good cause to grant an extension that would allow additional development under a 24-year-old permit, in an area that cannot support the additional development, where the Oregon Water Resource Commission has taken action to address declining groundwater levels. However, there is good case to grant an extension that requires the permit holder to repair Well E and does not allow additional development beyond the level of development that occurred prior to October 30, 2023.

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 beneficial use pursuant to OAR 690-315-0040(1)(d), subject to the limitations and conditions in this Superseding Proposed Final Order.

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 mitigate the effects of the subsequent development on competing demands on the resource. The Department determined the need to place a “Well Repair and Development Limitation” on this extension of time to mitigate the effects of subsequent development on competing demands for the resource. This condition, specified under Item 1 of the “Conditions” section of this Superseding Proposed Final Order, was determined to be necessary because the points of appropriation are located in the Walla Walla River subbasin. The condition limits use of water under Permit G-17129 and the perfection of the appropriation authorized by Permit G-17129 to no more than 0.66 cubic feet per second of water from Well C and Well D, for irrigation of 210 acres. Additionally, this condition requires that UMAT 58571 (Well E) be repaired to acquire water only from the sand and gravel aquifer, upon satisfactory completion of the repair, up to 0.44 cfs of water, limited to the actual capacity of the well after repaired and the amount of water from the repaired well that is applied to beneficial use, may be included in addition to the 0.66 cfs from Well C and Well D, in a final certificate of water right. Failure to repair UMAT 58571 (Well E) to acquire water only from the sand and gravel aquifer will result in the loss of the rate of water appropriated from UMAT 58571 (Well E).
2. 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. A “Last Extension” condition on this permit has been determined necessary due to the amount of time already provided to the Permit Holder to develop the beneficial use, and because very little

diligence has been demonstrated between 2014, and 2024.

3. 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. The Department determined the need to place a “No Additional Permit Amendment Condition” on this extension of time. This condition, specified under Item 3, has been determined necessary to prevent further efforts to amend the permit from delaying the development and perfection of the appropriation.

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 permit holder can complete the project, as limited by this Superseding Proposed Final Order, by October 1, 2026, as required by OAR 690-315-0040(1)(c).
4. The permit holder has demonstrated good case for the extension, but the extension must be conditioned to mitigate the effects of the subsequent development on competing demands on the resource and to ensure future diligence.

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 apply water to beneficial use under Permit G-17129 from October 30, 2023, to October 1, 2026.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. Well Repair and Development Limitation Condition

The use of water under Permit G-17129 and the perfection of the appropriation authorized by Permit G-17129 is limited to no more than 0.66 cubic feet per second combined from Well C and Well D, for irrigation of 210 acres, unless Well E is repaired to appropriate water only from the sand and gravel aquifer. Upon satisfactory repair of Well E, as approved by the Department Ground Water Section, the actual capacity of water available from Well E, acquired only from the Sand and Gravel aquifer, up to 0.44

cfs, that is applied to beneficial use, may be included in addition to the 0.66 cfs of water from Well C and Well D.

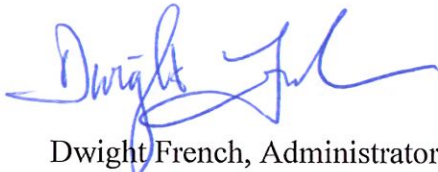
2. **Last Extension Condition**

This shall be the last extension of time that will be authorized for Permit G-17129. Any future requests for an extension of time will be denied.

3. **No Permit Amendment Condition**

The Permit Holder may not submit any additional Permit Amendment Applications to the Department under Permit G-17129. Any Permit Amendment Application submitted for Permit G-17129 will be denied.

DATED: January 7, 2025



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 **February 21, 2025**, 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>.

- 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