

**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-17506, Water Right Application G-15834, in	)	FINAL
the name of Wood River Improvement District Co.	)	ORDER

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Permit Information

Application:	G-15834
Permit:	G-17506
Basin:	14 – Klamath / Watermaster District 17
Date of Priority:	September 5, 2002
Source of Water:	six wells in Anna Creek Basin
Purpose or Use:	supplemental irrigation use on 2,310.1 acres
Maximum Rate:	28.88 cubic feet per second (cfs)

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***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 apply water to full beneficial use from October 1, 2023, to October 1, 2027<sup>1</sup>.
- 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.

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<sup>1</sup>Pursuant 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.

Anna Creek Basin for supplemental irrigation of 2,310.1 acres. The permit specified complete application of water was to be made on or before October 1, 2008.

2. On August 25, 2005, a partial assignment from Wood River District Improvement Co. to Roger Nicholson and Agri-Water, LLC was recorded in the records of the Water Resources Department.
3. On June 25, 2008, the Department approved Permit Amendment T-10641 (Special Order Volume 75, Page 214) authorizing a change in the point of appropriation and a change in place of use under Permit G-15744 (modified by Permit Amendment T-10641) which is hereafter referred to simply as Permit G-15744.
4. On June 23, 2009, the Department approved an Extension of Time under Permit G-15744, resulting in the completion date for full application of water being extended from October 1, 2008, to October 1, 2018.
5. On February 9, 2012, the Department approved Permit Amendment T-11263 (Special Order Volume 87, Page 53) authorizing an additional point of appropriation under Permit G-15744 (modified by Permit Amendment T-11263), a superseding Permit G-16886 was issued by the Department on February 9, 2012, to reflect the changes.
6. On October 7, 2016, the Department approved Permit Amendment T-12010 (Special Order Volume 103, Page 81) authorizing a change in point of appropriation under Permit G-16886 (modified by Permit Amendment T-10210), a superseding Permit G-17506 was issued by the Department on October 7, 2016, to reflect the changes.
7. Three prior permit extensions have been granted for Permit G-17506. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2018, to October 1, 2023.
8. On September 13, 2024, Duane Martin, president of Wood River Improvement District Co., and Roger Nicholson, member of Agri-Water LLC 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-17506 be extended from October 1, 2023, to October 1, 2027.
9. On September 24, 2024, notification of the Application for Permit G-17506 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).*

Based on FOF 13, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-17506

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

*The amount of beneficial use made of the water during the permit time limits and previous extension.*

14. The Application identifies a maximum rate of 55.7 cfs of water has been appropriated , being 4,500 gallons per minute (gpm) [10.03 cfs] from KLAM 59974 (Well 1A), 5,000 gpm [11.14 cfs] from KLAM 58286 (Well 1), 3,000 gpm [6.68 cfs] from KLAM 59916 (Well 2), 3,000 gpm [6.68 cfs] from KLAM 59319 (Well 3), 4,500 gpm [10.03 cfs] from KLAM 56638 / KLAM 59741 (Well 4), and 5,000 gpm [11.14 cfs] from KLAM 57662 (Well 5). This exceeds the rate of 28.8 cfs authorized by Permit G-17506.
15. Delay of full beneficial use of water under Permit G-17506 was due, in part, discovering that the location of the wells authorized under the permit are not located in the authorized location. The Application asserts that the location of the wells was discovered to be incorrect during the preparation of a Claim of Beneficial, and that the wells only vary slightly from their authorized locations.

The Department cannot determined if beneficial use of water has been demonstrated under this permit because the wells are not in the authorized location. The Department requires that the permit holder submit a permit amendment application to determine if the wells can be authorized for use under the permit.

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

16. An investment of approximately \$1,734,714, has been made which the total projected cost for complete development of this project.

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 does not provide evidence of progress towards completion of the water system during the most recent extension of time period, being October 1, 2018, to October 1, 2023; 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 recognizes that the intent of the request for an extension of time is to gain authorization of the wells utilized under the permit. The Department has determined the applicant has not demonstrated reasonable diligence towards complete application of water to a beneficial use during the most recent extension of time period, however, the department has determined that past diligence is sufficient to allow additional time for the permit holder to try to gain authorization of the wells through a

**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.

21. Anna Creek 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.

22. An approximate total of \$1,734,714 has been invested in the project.

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

Other economic interests dependent on completion of the project.

23. Other economic interests dependent on completion of the project have not been identified.

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

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

24. 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)]**

25. 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)]**

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

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

27. The Application identifies the location the wells were constructed as being unauthorized as an unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-17506.

Though the permit holders identify the incorrect location of the wells as an unforeseen event, the Department does not consider this as an unforeseen event because; 1) the permit holder had the wells constructed after the permit was issued, and did not construct the as authorize, and 2)

Amendment in an attempt to authorize the wells in the location they are currently constructed, and to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d). If the wells, as currently constructed, cannot be authorized by Permit Amendment, the Department may reverse the Good Cause findings.

### **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. The Department determined the need to place a "Permit Amendment Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary because of the use of wells constructed in locations not authorized by the permit. The condition requires the submittal of a Permit Amendment Application within six months from the date the Final Order on this extension of time is issued.

### **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 11, through 30, application of water to beneficial use can be accomplished by October 1, 2027, 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, but the extension is conditioned to ensure future diligence. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).

### **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-17506 from October 1, 2023, to October 1, 2027.

Subject to the following conditions:

- 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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