

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)
Permit G-16243, Water Right Application G-16403, in the)
name of 4-R Equipment)

**PROPOSED
FINAL ORDER
TO DENY**

Permit Information

Application:	G-16403
Permit:	G-16243
Basin:	5 – Deschutes / Watermaster District 11
Date of Priority:	March 7, 2005
Source of Water:	Well 1 in Dry River Basin
Purpose or Use:	industrial use (gravel mining)
Maximum Rate:	1.0 cubic foot per second (cfs), further limited to 6.0 acre feet per year

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 apply water to full beneficial use from October 1, 2022, to October 1, 2035.
- Cancel Permit G-16243.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
cfs – cubic 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.

ORS 537.260(1) provides that the Oregon Water Resources Department may cancel a permit after 60 days notice by registered mail or by certified mail with return receipt, when proof of completion of the appropriation has not been submitted.

FINDINGS OF FACT

1. On November 1, 2007, Permit G-16243 was issued by the Department. The permit authorizes the use of up to 1.0 cfs of water from Well 1 in Dry River Basin for industrial use (gravel mining) acres. The permit specified complete application of water was to be made on or before October 1, 2012.
2. One prior permit extension has been granted for Permit G-16243. The extension request resulted in the completion dates for full application of water being extended from October 1, 2012, to October 1, 2022.
3. On September 23, 2025, the permit holder submitted an “Application for Extension of Time” (Application) to the Department, requesting time to apply water to full beneficial use under the terms and conditions of Permit G-16243 be extended from October 1, 2022, to October 1, 2035.

4. On September 30, 2025, notification of the Application for Extension of Time for G-16243 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 September 23, 2025, 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)]

ORS 537.630 (2) states in part that “the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use” [emphasis added]. Permit G-16243 was issued pursuant to ORS 537.625. The application states that construction of the well has not yet begun.

OAR 690-315-0040(5) states “ if the extension is requested pursuant to OAR 537.230 or 573.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended, and the Department may begin cancellation proceeding pursuant to ORS 537.260 or 537.410.”

6. The Application provides no evidence of any action taken to begin construction authorized under this permit, being October 1, 2012, or during the time authorized by the extension of time authorized to October 1, 2022.

The Department cannot find that construction of the well authorized under Permit G-16243 began (was prosecuted) within five years of permit issuance, being November 1, 2007 to November 1, 2012, the date established pursuant to ORS 537.630, or by the date authorized for complete application of water by the extension of time, being October 1, 2022.

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 an previous extension.¹

7. Prior to permit issuance, test wells and test pits were constructed.
8. During the time authorized for development under the permit ending October 1, 2012, no work towards the development of the water system was accomplished.
9. During the most recent extension period, being from October 1, 2012, to October 1, 2022, no work towards the development of the water system was accomplished.
10. Since October 1, 2022, no work towards the development of the water system was accomplished.

The Application does not provide evidence of progress of physical work made towards completion of the water system. The Department cannot find that the permit holder has demonstrated reasonable diligence towards the complete application of water to a beneficial use under G-16243..

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

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

11. The Department has considered the permit holder’s compliance with conditions, and has identified the following concerns: (1) the record does not show that a meter or other suitable measuring device has been installed, (2) the required March static water level measurements have not been received by the Department, and (3) the required Progress Report due October 1, 2018, was not submitted until September 23, 2025. The Department recognizes that compliance with the conditions requiring the installation of a meter and submittal of march static water level measurements have not been demonstrated because the well authorized by the permit has not been constructed.

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.

The Department has determined that the permit holder has not demonstrated compliance with all permit conditions as required by Permit G-16243.

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.

12. No water has been appropriated from the well.
13. Delay of beneficial use of water under Permit G-16243 was caused, in part, because the well authorized for use under the permit has not been constructed.

The Department has determined that Beneficial use of water has not yet been demonstrated under this permit because no water has been appropriated, and not all permit conditions were satisfied by October 1, 2022.

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

14. The Application identifies an investment of \$168,400 has been made. These costs include the costs associated with legal and professional work associated with land use permitting and appeals, and towards the construction of test pits and test wells prior to permit issuance, and are not considered investments towards the construction of the water system and application of water to the beneficial use. After deducting these costs, no investment has been made towards the construction of the water system and the application of water to the beneficial use.

The Department has determined that the permit holder has not made an investment towards the development of the water system, which does not provide evidence of 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 that no work has been accomplished towards completion of the water system; 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-16243.

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-16243; 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-16243, located within the Dry River Basin, is located within the Upper Deschutes Groundwater Mitigation zone.
17. Dry River is located above Deschutes Scenic Waterway located within or above any state or federal 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. Dry River is located within an area ranked “moderate” 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. No investment has been made in the project.

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

Other economic interests dependent on completion of the project.

21. The Application does not identify any specific economic interest directly dependent on the 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.

22. 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)]

23. The Application states; “once the mine is completed, the business income from mineral sales over time will provide a fair and reasonable return on our investment.”

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

24. Delay in the development of this project was due to a need to pursue zoning changes, and the subsequent appeals to the change. According to the Application these proceeding occurred between 2007 – 2015. The Application included a copy of Ordinance No. 2015-022, approving the zoning change, which became effective November 23, 2015. The permit holder is still pursuing the “required Site Plan Review for Surface Mining Operation.”

The Department has considered the delays in the development of the authorized use that may have been caused by land use issues, however, ORS 537.630 does not provide for the ability to authorize an extension of time when construction of the well has not started within five years from the date of permit issuance.

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

25. The Application identifies the COVID-19 Pandemic as causing significant disruption during the most recent extension period.

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

26. The Application asserts an undue hardship would be the result of a denial because the permit holder “will be unable to construct the mine and develop the water right as part of

the project, which will cause a significant hardship in the form of a substantial financial loss due to sunk costs applied to the project to date.”

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

27. The Application does not provide evidence of construction of the authorized well, or of any construction of the water system necessary to apply water to beneficial use under the permit. The Department cannot find good faith of the appropriator under Permit G-16243.

Based on Findings of Fact 6, 7, 8, 9, 10, 11, 12, 13, 14, and 24 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.

28. As of September 23, 2025, the remaining work to be completed consists of starting construction of the well and water system, 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 because the applicant did not begin construction within the time allowed in the permit or during the previous extension period.

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 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 not complied with the time allowed for construction work under

the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

3. The Application established that there has been no construction, no financial investment or reasonable diligence toward developing the project during the most recent extension of time period, being 2012, to 2022. 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).
4. The Department has provided notice pursuant ORS 537.260 to begin cancelation of the permit.

PROPOSED ORDER

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

Deny the time to apply water to beneficial use under Permit G-16243 from October 1, 2022, to October 1, 2035.

DATED: February 17, 2026



Katherine Ratcliffe
Water Right Services Division Administrator, for
Ivan Gall, Director
Oregon Water Resources Department

*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 April 3, 2026, 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 \$720 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$1,425 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 971-453-1175, 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
Fax: 503-986-0901 Salem, OR 97301-1266

Mailing List for Extension PFO Copies

PFO Date: February 17, 2026

Copies Mailed

Application: G-16403

By: _____

Permit: G-16243

On: _____

Original mailed to Applicant:

Certified Mail Tracking #:

4-R Equipment

P.O. Box 1699

Redmond, OR 97756

Copies sent to:

1. WRD - App. File G-16403/ Permit G-16243
2. Water Right Solutions, ATTN Bryce Withers

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving via e-mail (10 AM Tuesday of signature date)

(DONE BY EXTENSION SPECIALIST)

4. WRD - Watermaster District 11, Jeremy Giffin
5. WRD – SCR Regional Manager, Carolyn Sufit

CASEWORKER: JDP