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-16415, Water Right Application G-17016) PROPOSED FINAL ORDER
in the name of Bear Creek Quarter Horse Ranch, LLC)

Permit Information

Application File G-17016 Permit G-16415
Basin: 8 – Grande Ronde / Watermaster District 6
Date of Priority: March 3, 2008

Authorized Use of Water
Source of Water: Three Wells within the Bear Creek Basin
Purpose of Use: Irrigation of 290.8 Acres
Maximum Rate: 2.5 Cubic Feet per Second (cfs)

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

Please read this Proposed Final Order in its entirety.

This Proposed Final Order applies only to Permit G-16415, water right Application G-17016.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time for complete construction of the water system from October 1, 2013 to October 1, 2017.
- Grant an extension of time to apply water to full beneficial use from October 1, 2013 to October 1, 2017.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order

Units of Measure
cfs – cubic feet per second
gpm – gallons per minute

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(1) provide in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which: irrigation or other works shall be completed; the well or other means of developing and securing ground water 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) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

FINDINGS OF FACT

Background

1. Permit G-16415 was granted by the Department on December 4, 2008. The permit authorizes the use of up to 2.5 cfs of water from three wells within the Bear Creek for irrigation of 290.8 acres. The permit specified construction of the water system was to be completed by October 1, 2013, and complete application of water was to be made on or before October 1, 2013.

2. The permit holder submitted an "Application for Extension of Time" to the Department on September 9, 2013, requesting 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-16415 be extended from October 1, 2013 to October 1, 2017. This is the first permit extension requested for Permit G-16415.

3. Notification of the Application for Extension of Time for Permit G-16415 was published in the Department's Public Notice dated October 1, 2013. No public comments were received regarding the extension application.

Review Criteria *[OAR 690-315-0040]*

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230[1], 537.248[2], 537.630[3] and/or 539.010(5)[4].

Complete Extension of Time Application *[OAR 690-315-0040(1)(a)]*

4. On September 9, 2013, the Department received a completed Application for Extension of Time 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)]*

5. Senate Bill 300 (1999 legislation) eliminated the requirement that holders of new surface water and ground water permits start construction on water projects within one year after the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999, including this application.

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.

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[1]ORS 537.230 applies to surface water permits only.

[2]ORS 537.248 applies to reservoir permits only.

[3]ORS 537.630 applies to ground water permits only.

[4]ORS 539.010(5) applies to surface water and ground water permits.

6. As of September 9, 2013, the remaining work to be completed consists of applying for and receiving Department approval for a Permit Amendment to change the points of appropriation and place of use, and completing construction of the water system and applying water to full beneficial use.

7. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2017, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-16415 is both reasonable and necessary.

Good Cause *[OAR 690-315-0040(1)(d)]*

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator *[OAR 690-315-0040(2)(a)]*
The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

Amount of Construction *[OAR 690-315-0040(3)(a)]*

8. Work was accomplished within the time allowed in the permit or previous extension as follows:

    a. Work was completed during the original development time frame under Permit G-16415 as follows:
        - Well 2 (UNIO 52062), Well 3 (UNIO 52061), and Well 1 (UNIO 52063) were all drilled[5];
        - Totalizing meters were installed on each well;
        - Pump tests were completed;
        - The water delivery system from the wells to places of use was constructed;
        - Three pivots, six wheel lines, and two big gun sprinklers were installed;
        - Static level water measurements were completed and submitted to the Department; and
        - Water use reports were completed and submitted to the Department.

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

9. The following beneficial use of water was made during the permit or previous extension time limits:

    a. Since the issuance of Permit G-16415 on December 4, 2008, a maximum rate of

[5]These well numbers are as designated in the permit. The applicant's numbering system designates UNIO 52062 as Well 1, UNIO 52061 as Well 2, and UNIO 52063 as Well 3.

2.5 cfs of water has been appropriated from the three wells for irrigation of 191.3 acres.

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

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

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

Financial Investments *[OAR 690-315-0040(3)(d)]*

11. Financial investments made toward developing the beneficial water use.

    a. As of September 9, 2013 the permit holder has invested approximately $331,550 which is approximately 67 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional $163,650 investment is needed for the completion of this project.

Cost to Appropriate and Apply Water to a Beneficial Purpose *[OAR 690-315-0040(2)(b)]*

12. As of September 9, 2013 the permit holder has invested approximately $331,550 which is approximately 67 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional $163,650 investment is needed for the completion of this project.

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

13. The Department has found good faith of the appropriator under Permit G-16415.

The Market and Present Demands for Water *[OAR 690-315-0040(2)(d-e)]*

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:

14. The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife *[OAR 690-315-0040(4)(a-c)]*.

    a. 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-16415; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of appropriation for

Permit G-16415, located within the Bear Creek Basin, are not located within a limited or critical ground water area. Bear Creek is located above the Wallowa-Grande Ronde scenic waterway. It is located within areas ranked "low" and "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. Bear Creek is not listed by the Department of Environmental Quality as a water quality limited stream.

15. Economic investment in the project to date *[OAR 690-315-0040(4)(d)]*.

    a. As of September 9, 2013, the permit holder has invested approximately $331,550.

16. Other economic interests dependent on completion of the project *[OAR 690-315-0040(4)(e)]*.

    a. None have been identified.

17. Other factors relevant to the determination of the market and present demand for water and power *[OAR 690-315-0040(4)(f)]*.

    a. None have been identified.

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

18. 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)]*

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

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

20. Unforeseen events extended the length of time needed to fully develop and perfect Permit G-16415, in that the permit holders discovered that other lands on contiguous properties are better suited for irrigated agriculture due to soil conditions. And furthermore, one of the proposed new places of use proposed in the permit amendment is currently under USDA Conservation Reserve Enhancement Program (CREP) until October 1, 2016.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).

2. 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).

3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

4. Completion of construction and full application of water to beneficial use can be accomplished by October 1, 2017[6], as required by OAR 690-315-0040(1)(c).

5. 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 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:

Extend the time for complete construction of the water system under Permit G-16415 from October 1, 2013 to October 1, 2017.

Extend the time to apply water to beneficial use under Permit G-16415 from October 1, 2013 to October 1, 2017.

DATED: November 12, 2013

E. Timothy Wall for

Dwight W. 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.

Proposed Final Order Hearing Rights

[6]Pursuant to ORS 537.630(4), 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.

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, 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. The written protest must be received by the Water Resources Department no later than **December 27, 2013,** being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

2. A written protest shall include:

   a. The name, address and telephone number of the petitioner;
   b. A description of the petitioner'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;
   c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
   d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
   e. Any citation of legal authority supporting the petitioner, if known;
   f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
   g. The applicant or non-applicant protest fee required under ORS 536.050.

3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:

   a. Issue a final order on the extension request; or
   b. Schedule a contested case hearing if a protest has been submitted, and:
      1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
      2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

- If you have any questions about statements contained in this document, please contact Craig Kohanek at (503) 986-0823.
- 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 Patricia McCarty at 503-986-0819.
- If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
- Address any correspondence to : Water Right Services Division
  725 Summer St NE, Suite A
  Fax: 503-986-0901 Salem, OR 97301-1266