

**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-13811, modified by Permit Amendment T-9759,	)	PROPOSED FINAL
Water Right Application G-15003,	)	ORDER
in the name of John Schmitz and Lori Klinge Schmitz	)	

Permit Information

**Application File G-15003 Permit G-13811, modified by
Permit Amendment T-9759**

Basin: 2 – Willamette / Watermaster District 16

Date of Priority: June 30, 1999

Authorized Use of Water

Source of Water: Three wells within the Pudding River Basin, plus two additional wells from Permit Amendment T-7959

Purpose of Use: Irrigation of 35.26 Acres

Maximum Rate: 0.441 Cubic Feet per Second (cfs), being up to 0.401 cfs from any one well

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 as it contains additional conditions not included in the original permit.

This Proposed Final Order applies only to Permit G-13811, modified by Permit Amendment T-9759, water right Application G-15003.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2013 to October 1, 2015.
- Make the extension subject to certain conditions set forth below.

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) provides 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.

OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

FINDINGS OF FACT

Background

1. Permit G-13811 was granted by the Department on April 18, 2000. The permit authorized the use of up to a cumulative total of not more than 0.441 cfs at any one time, being up to 0.401 cfs of water from Wells #1, #2 (as conditioned in permit) or #3 in the Pudding River Basin for irrigation of 35.26 acres. The permit specified complete application of water was to be made on or before October 1, 2004.
2. On September 30, 2004, the Department approved Permit Amendment T-9759 (Special Order Volume 61, Page 640) authorizing two additional wells under Permit G-13811.
3. Two prior permit extensions have been granted for Permit G-13811, modified by Permit Amendment T-9759. The most recent extension request resulted in the completion dates full application of water being extended from October 1, 2008 to October 1, 2013.
4. The permit holder submitted an "Application for Extension of Time" to the Department on October 23, 2013, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13811, modified by Permit Amendment T-9759 be extended from October 1, 2013 to October 1, 2015.
5. Notification of the Application for Extension of Time for Permit G-13811, modified by Permit Amendment T-9759 (hereafter referred to as simply Permit G-13811) was published in the Department's Public Notice dated October 29, 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 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴.

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

6. On October 23, 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)]

7. Actual construction of the well began prior to the April 13, 2001 deadline specified in the permit.

¹ORS 537.230 applies to surface water permits only.

²ORS 537.248 applies to reservoir permits only.

³ORS 537.630 applies to ground water permits only.

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

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.

8. As of October 23, 2013, the remaining work to be completed consists of developing Schmitz Well #2 and its associated infrastructure; and installing meters, and submitting water level data and water use reports for Schmitz Wells #1 (CLAC 12660) and #2; and applying water to full beneficial use.
9. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2015, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13811, modified by Permit Amendment T-9759 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)]

10. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the Schmitz Well #1 (CLAC 12660) began prior to the April 13, 2001 deadline specified in the permit.
 - b. Work completed (specified in the Application for an Extension of Time) during the original development time frame under Permit G-13811 includes the drilling of the Sharabarin Well #3 (CLAC 55671).
 - c. During the last extension period, from October 1, 2008 to October 1, 2013, no work was accomplished under Permit G-13811, modified by Permit Amendment T-9759.

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

11. The following beneficial use of water was made during the permit or previous extension time limits:
 - a. According to the applicant, since the issuance of Permit G-13811, 0.53 cfs of water has been appropriated from the Sharabarin Well #3 for irrigation of 14.56 acres. This exceeds the amount of water authorized under this permit. The

authorized amount of water for is 0.441, being up to 0.401 from any one well. From the Schmitz Well #1, 0.05 cfs of water has been appropriated, but no irrigation has been done from this well.

- b. Delay of full beneficial use of water from the Schmitz Wells #1 and #2 under Permit G-13811 was due, in part, to financing not being available due to the collapse of the real estate market.

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

- 12. The water right permit holder's conformance with the permit or previous extension conditions.
 - a. The Department has considered the water user's compliance with permit conditions, and identified the concern that water use from the Sharabarin Well #3 has exceeded the quantity allowed on the permit. In addition, the Schmitz Well (CLAC 12660) has been drilled for several years but a meter has not been installed and the required static water level measurements have not been submitted to the Department.

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

- 13. Financial investments made toward developing the beneficial water use.
 - a. As of October 23, 2013, the permit holder has invested approximately \$22,500 which is approximately 26 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$64,000 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)]

- 14. As of October 23, 2013, the permit holder has invested approximately \$22,500 which is approximately 26 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$64,000 investment is needed for the completion of this project.

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

- 15. The Department has found good faith of the appropriator under Permit G-13811, modified by Permit Amendment T-9759.

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:

- 16. 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-13811, modified by Permit Amendment T-9759; 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-13811, modified by Permit Amendment T-9759, located within the Pudding River Basin, are not located within a limited or critical ground water area. Pudding River is not located within or above any state or federal scenic waterway, however it is located within an area ranked "high" 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. Pudding River is not listed by the Department of Environmental Quality as a water quality limited stream.

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

- a. As of October 23, 2013, the permit holder has invested approximately \$22,500.

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

- a. None have been identified.

19. 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.

20. 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, and/or mitigate the effects of the subsequent development on competing demands on the resource. The Department determined the need to place a "Last Extension Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary due to no additional work having been accomplished during the most recent extension period.

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

21. 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)]

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

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

23. Unforeseen events extended the length of time needed to fully develop and perfect Permit G-13811, modified by Permit Amendment T-9759, in that the permit holders were faced with the lack of available finances which restricted their ability to complete development of the project in a timely manner.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to 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. Full application of water to beneficial use can be accomplished by October 1, 2015⁵, 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).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 20 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1),

⁵Pursuant 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.

a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-13811, modified by Permit Amendment T-9759.

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-13811, modified by Permit Amendment T-9759 from October 1, 2013 to October 1, 2015.

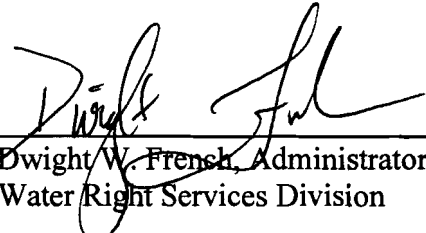
Subject to the following conditions:

CONDITIONS

1. Last Extension Condition

This is to be the last extension of time granted for Permit G-13811, modified by Permit Amendment T-9759. Any future extensions of time requests will be denied.

DATED: January 21, 2014


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

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 **March 7, 2014**, 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;

