

Oregon Water Resources Department
Water Right Services Division

PROPOSED FINAL ORDER

In the Matter of the Application for an Extension of Time for Permit G-12527, Water Right Application G-12871, in the name of Larry and Joan Sees, and David Krueger

Permit Information

Application File:	G-12871
Permit:	G-12527, modified by Permit Amendments T-10970 and T-11029
Basin:	14 – Klamath / Watermaster District 17
Date of Priority:	April 13, 1992
Source of Water:	Three wells in the Sprague River Basin
Purpose of Use:	Irrigation of 309.24 Acres
Maximum Rate:	3.87 cubic feet per second (cfs)

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

In Summary, the Department proposes to: -

- Grant an extension of time for complete construction of the water system from October 1, 2012, to October 1, 2017.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012, to October 1, 2017¹.
- 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.

¹Pursuant 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.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

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 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-12527 was granted by the Department on July 24, 1996. The original permit authorized the use of up to 3.87 cfs of water from a well in the Sprague River Basin for irrigation of 309.24 acres. The permit specified construction of the water system was to begin by July 24, 1997, be completed by October 1, 1998, and complete application of

water was to be made on or before October 1, 1999.

2. On November 18, 2010, the Department approved Permit Amendments T-10970 and T-11029 (Special Order Volume 83, Page 81) authorizing a change in the point of appropriation, an additional point of appropriation, and a change in place of use. The permit amendment process resulted in the authorization of the original well, KLAM 10447, plus two additional wells, KLAM 2081 and KLAM 2078.
3. Two prior permit extensions have been granted for Permit G-12527. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2009 to October 1, 2012.
4. Permit holders Larry and Joan Sees and Michael and Eve Bechtholdt submitted an "Application for Extension of Time" to the Department on March 14, 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-12527, modified by Permit Amendments T-10970 and T-11029 (hereafter referred to simply as Permit G-12527) be extended from October 1, 2012 to October 1, 2017. Permit holder Dave Krueger was not a party to the permit extension application.
5. Notification of the Application for Extension of Time for Permit G-12527 was published in the Department's Public Notice dated April 9, 2013. No public comments were received regarding the extension application.
6. On July 19, 2014, that portion of the permit owned by the Bechtholdts at the time of submission of the extension application was assigned by proof of ownership to Larry and Joan Sees.

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 537.230², 537.248³, 537.630⁴ and/or 539.010(5)⁵.

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

7. On March 14, 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)]

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 537.630 applies to ground water permits only.

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

8. Actual construction of the well began prior to the July 24, 1997 deadline specified in the permit.

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.

9. As of March 14, 2013, the remaining work to be completed consists of installing a flow meter on well KLAM 2081, submitting annual static water measurements, submitting annual water use reports to the Department, and applying water to full beneficial use.
10. 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-12527 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)]

11. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the well and water system began prior to the July 24, 1997, deadline specified in the permit. The original well KLAM 10447 was constructed in 1992, while well KLAM 2081 was constructed in 1966. The third well, KLAM 2078, was completed in 1981.
 - b. Work was completed during the original development time frame under Permit G-12527 including the installation of pumps, motors, and water conveyance systems.
 - c. From October 1, 1999, to October 1, 2012, the permit holder has installed a pivot, mainline pipe with risers, diesel engine and generator. A flow meter was installed on well KLAM 10447 and yearly static water level measurements initiated.

- d. Since the last extension expired the permit holder installed electricity and a variable frequency drive pump.

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

12. The following beneficial use of water was made during the permit or previous extension time limits:
 - a. Since the issuance of Permit G-12527 on July 24, 1996, a maximum rate of 3.32 cfs of water has been appropriated from wells KLAM 2081 and KLAM 10447 for irrigation of 265.3 acres. The extension application makes no mention of the water use from well KLAM 2078.
 - b. Delay of full beneficial use of water under Permit G-12527 was due, in part, to a change in ownership and the resulting miscommunication about work remaining to be done under the permit.

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

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the permit holder indicates that a meter has not been installed on well KLAM 2081 and does not indicate if a meter is installed on well KLAM 2078, or not; (2) the required March static water level measurements have not been received by the Department for well KLAM 2081 prior to 2012. There are no static water level measurements on file for well KLAM 2078. The permit holders have identified their intent to satisfy these permit conditions as a primary purpose of the permit extension. The owner of well KLAM 2078, Krueger, was not a party to the extension application.

Failure to comply with permit conditions constitutes illegal use of water. Beneficial use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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

14. As of March 14, 2013, the permit holder has invested approximately \$420,531 which is approximately 99 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$3,000 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-12527.

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)].

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-12527; 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. The points of appropriation for Permit G-12527, located within the Sprague River Basin, are not located within a limited or critical ground water area. Sprague River is located above the Klamath Scenic Waterway, 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. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

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

17. None have been identified.

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

18. Well data for KLAM 10447 shows only an approximately 3 feet decline in groundwater levels between 2010 and 2014, which is less than the amount specified in the permit that would trigger a reduced withdrawal from the wells. However, data provided by the Department's groundwater section from state observation well 279, located in the vicinity of the permit wells, shows an overall persistent decline since the early 1960's.
19. 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 this being the third extension of time since the permit was issued in 1996, eighteen years ago, and the remaining construction and beneficial use of water can be accomplished by October 1, 2017.

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

20. 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)]

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

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

22. None have been identified.

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, 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 19 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-12527.

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-12527 from October 1, 2012, to October 1, 2017.

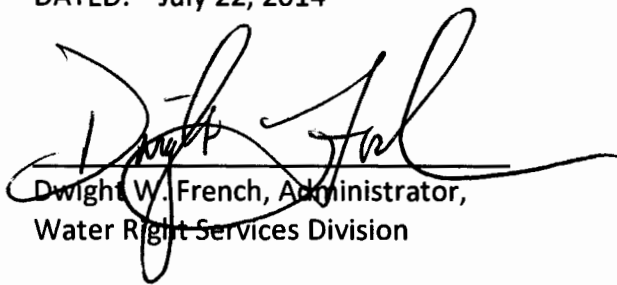
Extend the time to apply water to beneficial use under Permit G-12527 from October 1, 2012, to October 1, 2017.

Subject to the following conditions:

CONDITIONS

1. Last Extension Condition
This is to be the last extension of time granted for Permit G-12527. Any future extensions of time requests will be denied.

DATED: July 22, 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 **September 5, 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;
 - 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.

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- If you have questions about statements contained in this document, please contact Steven Parrett at (503)986-0825.
 - 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 503-986-0820.
 - 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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