

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-12506, modified by Permit Amendment T-8352, Water Right Application G-14031, in the names of Brian and Susan Thompson, and Bernard Damon

Permit Information

Application File:	G-14031
Permit:	G-12506, modified by Permit Amendment T-8352
Basin:	7 – Umatilla / Watermaster District 21
Date of Priority:	April 10, 1995
Source of Water:	Four wells in Willow Creek Basin
Purpose of Use:	Irrigation of 182.8 Acres
Maximum Rate:	2.28 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 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-12506 was granted by the Department on June 19, 1996. The original permit authorized the use of up to 2.28 cfs of water from one well in Willow Creek Basin for irrigation of 182.8 acres. The permit specified construction of the water system was to begin by June 19, 1997, be completed by October 1, 1998, and complete application of

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

2. On February 2, 2010, the Department approved Permit Amendment T-8352 (Special Order Volume 80, Page 245) authorizing three (3) additional points of appropriation, a change in place of use, and cancelling two other groundwater permits.
3. Two prior permit extensions have been granted for Permit G-12506. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2006 to October 1, 2012.
4. The permit holders Thompson and Damon together submitted an "Application for Extension of Time" to the Department on July 24, 2013, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-12506, modified by Permit Amendment T-8352 (hereafter simply called Permit G-12506) be extended from October 1, 2012 to October 1, 2015. The permit holders plan to apply for a second permit amendment to correct the authorized place of use for 40 permitted acres inadvertently transferred by Permit Amendment T-8352.
5. Notification of the Application for Extension of Time for Permit G-12506 was published in the Department's Public Notice dated August 27, 2013. No public comments were received regarding the extension application.
6. On July 3, 2014, the permit holder submitted additional information to supplement their Application for Extension of Time requesting the extended time to apply water to full beneficial use of the water system be changed from October 1, 2015 to October 1, 2017 to allow sufficient time to complete the Department's permit amendment process and to make full beneficial use of water.

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 July 24, 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 June 19, 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 August 15, 2013, the remaining work to be completed consists of completing a permit amendment to correct the authorized place of use 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 accomplish the application of water to beneficial use under the terms and conditions of Permit G-12506 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 June 19, 1997, deadline specified in the permit. Well MORR 50273 was started on December 2, 1996, and subsequently deepened as MORR 50619.
 - b. Work was completed during the original development time frame under Permit G-12506 including drilling and deepening of the original well, installation of three irrigation pivots and two wheel lines on about 130 acres.
 - c. During the most recent extension period, being from October 1, 2006 to October 1, 2012, the following was accomplished:
 - The additional 52.8 acres were irrigated and an additional well MORR 134 (altered as MORR 51897?) was plumbed into the system to help irrigate

the three pivots and wheel lines as allowed by Permit Amendment T-8352.

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-12506 on June 19, 1996, a maximum rate of 2.28 cfs of water has been appropriated from the two constructed wells for irrigation of 182.8 acres.

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

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

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

14. As of August 15, 2013, the permit holder has invested \$410,000, which is approximately 97 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$10,000 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-12506.

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-12506; 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-12506, located within the Willow Creek Basin, are not located within a limited or critical ground water area. Willow Creek is not located within or above any state or federal scenic waterway, however, it 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 not 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. 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 since this is the third permit extension since the permit was issued in 1996, 18 years ago, and the remaining work can be accomplished by the extended date of October 1, 2017.

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

19. 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)]

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

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

21. Unforeseen events extended the length of time needed to fully develop and perfect Permit G-12506, in that Permit Amendment T-8352 inadvertently transferred 40 permitted acres from permit holder Damon's land to permit holder Thompson's land. A new permit amendment is needed to correct this error.

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. 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 18 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-12506 and because a permit amendment and application of water to beneficial use can be achieved by October 1, 2017.

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-12506 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-12506. 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:

