

**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-12372, Water Right Application G-12996, in the name of James Milgard

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Permit Information

Application:	G-12996
Permit:	G-12372
Basin:	5 – Deschutes / Watermaster District 11
Date of Priority:	June 23, 1992
Source of Water:	Two wells in the Crooked River Basin
Purpose of Use:	Irrigation of 646.0 Acres
Maximum Rate:	8.08 cubic feet per second (cfs) total

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***\*\*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 complete construction of the water system from October 1, 1998 to October 1, 2018.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2018<sup>1</sup>.

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.

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<sup>1</sup>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.

## **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.

## **FINDINGS OF FACT**

### *Background*

1. Permit G-12372 was granted by the Department on April 11, 1996. The permit authorizes the use of up to 8.08 cfs of water from two wells in the Crooked River Basin for irrigation of 646.0 acres. The permit specified actual construction of the wells was to begin by April 11, 1997, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.
2. The permit holder, James Milgard, submitted an "Application for Extension of Time" to the Department on February 26, 2015, requesting both 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-12372 be extended from October 1, 1999 to

October 1, 2018. This is the first permit extension requested for Permit G-12372.

3. Notification of the Application for Extension of Time for Permit G-12372 was published in the Department's Public Notice dated March 3, 2015. 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<sup>2</sup>, 537.248<sup>3</sup>, 537.630<sup>4</sup> and/or 539.010(5)<sup>5</sup>.*

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

4. On February 26, 2015, 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. Actual construction of the wells began prior to the April 11, 1997 deadline specified in the permit. Well 1 (DESC 791) began construction January 21, 1991, and completed construction February 20, 1991. Well 2 (DESC 1283) began construction January 18, 1991, and completed construction March 18, 1991.

**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.*

6. As of February 26, 2015, the remaining work to be completed consists of installing a new pump motor and bowels, pivot maintenance, meeting all permit requirements, 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, 2018, 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-12372 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).*

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<sup>2</sup>ORS 537.230 applies to surface water permits only.

<sup>3</sup>ORS 537.248 applies to reservoir permits only.

<sup>4</sup>ORS 537.630 applies to ground water permits only.

<sup>5</sup>ORS 539.010(5) applies to surface water and ground water permits.

*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. Actual construction of the wells and water system began prior to the April 11, 1997 deadline specified in the permit. Well 1 (DESC 791) began construction January 21, 1991, and completed construction February 20, 1991. Well 2 (DESC 1283) began construction January 18, 1991, and completed construction March 18, 1991. Pumps, motor controls, pipelines and two pivots, and electric meters were installed in the spring of 1991.

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

9. According to the water user a maximum rate of 8.08 cfs of water has been appropriated from the well for irrigation of 646.0 acres.
10. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by the October 1, 1999 deadline.

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

11. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the required March static water level measurements have not been received by the Department, and (2) annual reports of the amount of water used each month prior to complete application of water date October 1, 1999, and years 2009 to 2012 have not been received by the Department, however the Department recognizes the permit holder's diligence towards meeting the conditions of the permit.

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)]*

12. As of February 26, 2015, the permit holder invested approximately \$1,065,350, which is approximately 91 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$105,600 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-12372.

*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)].

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-12372; 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-12372, located within the South Fork Crooked River Basin, are not located within a limited or critical ground water area. South Fork Crooked River is above Deschutes Scenic Waterway, and 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. 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)].*

15. 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)].*

16. None have been identified.

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

17. 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)]*

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

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

19. 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, 2018, 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).

**Continued on the following page**

## 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 complete construction of the water system under Permit G-12372 from October 1, 1998 to October 1, 2018.

Extend the time to apply water to beneficial use under Permit G-12372 from October 1, 1999 to October 1, 2018.

DATED: April 7, 2015

  
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 **May 22, 2015**, 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 Corey A Courchane 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  
Fax: 503-986-0901                         Salem, OR 97301-1266
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