

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-16417, Water Right Application G-16796,) PROPOSED FINAL ORDER
in the name of William Markman) TO DENY

Permit Information

Application:	G-16796
Permit:	G-16417
Basin:	4 – Hood / Watermaster District 3
Date of Priority:	February 8, 2007
Source of Water:	Well 1, Well 2, and Well 3 in Fifteenmile Creek Basin
Purpose of Use:	Irrigation use on 819.0 acres
Maximum Rate:	4.46 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.

In Summary, the Department proposes to:

- Deny an extension of time to complete construction of the water system from October 1, 2013 to October 1, 2023.

- Deny an extension of time to apply water to full beneficial use from October 1, 2013 to October 1, 2023.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

cfs – cubic feet per second

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-16417 was issued by the Department on December 11, 2008. The permit authorizes the use of up to 4.46 cfs of water from Well 1, Well 2, and Well 3 in Fifteenmile Creek Basin for irrigation use on 819.0 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, William Markman, submitted an "Application for Extension of Time" to the Department on September 9, 2013, 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-16417 be extended from October 1, 2013 to October 1, 2023. This is the first permit extension requested for Permit G-16417.

3. Notification of the Application for Extension of Time for Permit G-16417 was published in the Department's Public Notice dated September 17, 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)]

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. ORS 537.630 (1) states in part that "the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use" [emphasis added]. Permit G-16417 was issued pursuant to ORS 537.625. The application states that construction of the well has not yet begun.

The Department cannot find that construction of the well authorized under Permit G-16417 began (was prosecuted) within five years of permit issuance, being December 11, 2008 to October 1, 2013, the date established pursuant to ORS 537.630.

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. The Department cannot find that the applicant can complete the project or apply water to full beneficial use within the time requested for the extension because the applicant did not begin construction within the time allowed in the permit (5 years).

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.

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)]

7. The application states that no construction began within the time allowed in Permit G-16417, being December 11, 2008 to October 1, 2013.

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

8. The application states that no water has been appropriated under this permit. There has been no beneficial use of water.

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

9. The application states that none of the conditions in the permit have been complied with. There has been no permit holder conformance with the permit conditions.

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

10. The applicant states that there has been no financial investment made toward developing the beneficial water use.

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

11. Based on Findings of Fact 5, 6, 7, 8, 9, and 10, above, the Department finds that the applicant has not demonstrated good faith.

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:

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)].

12. 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-16417; 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 proposed points of appropriation for Permit G-16417, to be located within the Fifteenmile Creek Basin, are not located within a limited or critical ground water area. Fifteenmile Creek 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. The proposed 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)].

13. 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)].

None have been identified.

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

14. According to the permit holder, they have not made any financial investment in development of this project.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

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

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

16. None have been identified.

CONCLUSIONS OF LAW

1. The permit holder 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 permit holder 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 permit holder has not complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. The application established that there has been no construction, no financial investment or reasonable diligence toward developing the project. The permit holder has not shown that good cause exists for an extension of time to complete construction and 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:

Deny the time to complete construction of the water system under Permit G-16417 from October 1, 2013 to October 1, 2023.

Deny the time to apply water to beneficial use under Permit G-16417 from October 1, 2013 to October 1, 2023.

DATED: March 15, 2016


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 **April 29, 2016**, 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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have questions about statements contained in this document, please contact Mabelle A Bamberger at (503)986-0802.
 - 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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