

**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-12428, Water Right Application G-12567,)
in the name of Loyal Rookhuyzen) **PROPOSED FINAL ORDER**

Permit Information

Application:	G-12567
Permit:	G-12428
Basin:	14 – Klamath / Watermaster District 17
Date of Priority:	June 12, 1991
Source of Water:	A well in the Lost River Basin
Purpose of Use:	Irrigation of 2.5 Acres
Maximum Rate:	0.03 cubic foot per second (cfs)

Please read this Proposed Final Order in its entirety.

In Summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 1997 to October 1, 2020.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000 to October 1, 2020¹.

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.

FINDINGS OF FACT

Background

1. Permit G-12428 was issued by the Department on July 31, 1996. The permit authorizes the use of up to 0.03 cfs of water from a well in Lost River Basin for irrigation of 2.5 acres. The permit specified actual construction of the well to begin by January 22, 1997, and construction of the water system was to be completed by October 1, 1997, and complete application of water was to be made on or before October 1, 2000.
2. On September 27, 2001, the Department received an application for an extension of time.
3. The Department sent a letter to the permit holder on November 22, 2004, informing them that the Alternative Dispute Resolution conditions were satisfied and a certificate

may be issued for Permit G-12428.

4. On December 1, 2004, the Department received a request to withdraw the pending extension of time application. On December 8, 2004 the request was granted.
5. On July 5, 2011, the Department received a Claim of Beneficial Use Report and map for review.
6. On July, 8, 2011, the Department received a request for a waiver for the requirement of a pump test. On November 25, 2013 the request was granted.
7. On November 23, 2015, the Department issued a Proposed Order of Certification proposing to cancel Permit G-1248 as satisfactory proof of beneficial use was not made.
8. The permit holder, Loyal Rookhuyzen, submitted an "Application for Extension of Time" to the Department on January 7, 2016, requesting the time to complete construction of the water system be extended from October 1, 1999 to October 1, 2020 and the time to apply water to full beneficial use under the terms and conditions of Permit G-12428 be extended from October 1, 2000 to October 1, 2020. This is the first permit extension requested for Permit G-12428.
9. Notification of the Application for Extension of Time for Permit G-12428 was published in the Department's Public Notice dated January 19, 2016. 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 537.230², 537.248³, 537.630⁴ and/or 539.010(5)⁵.

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

10. On January 7, 2016, 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)]

11. Actual construction of the well began prior to the January 31, 1997 deadline, as specified in the permit. The permit holder states, construction began in November 6, 1992.

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.

According to the well start card 46491 received by the Department on January 7, 2016, the well construction began November 6, 1992. The Department has determined that the prosecution of the construction of the well began prior to the January 31, 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.

12. As of January 7, 2016, the permit holder states the remaining work to be completed consists of meeting all permit conditions, completing construction of the water system, and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to meet all permit conditions, complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-12428 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)]

13. The application states, work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Actual construction of the well and water system began prior to the January 31, 1997 deadline specified in the permit. Construction of the well began November 6, 1992 and was completed March 25, 1993. The electrical, irrigation system, and a meter were installed by April 7, 1993.
 - b. No work was completed during the original development time frame under Permit G-12428, as construction was completed prior to permit issuance.
 - c. Since October 1, 2000 the permit holder has drilled another Well (KLAM 56125) adjacent to the existing well in 2007, and installed a pump on the new well.

The Department has determined that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

14. The application states a maximum rate of 0.03 cfs of water has been appropriated from the Well (KLAM 56125) for irrigation of 2.5 acres.
15. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2000.

The Department has determined that this extension will allow the permit holder to obtain static water levels during the months of March and October as specified in the permit after October 1, 2000 to satisfy compliance of the condition in an effort to make proof of beneficial use of the water as required by Permit G-12428

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

The Department has considered the permit holder's compliance with conditions, and has identified the following concerns:

16. The permit contained the below listed condition that was not complied with:

“The permittee shall obtain a static water-level measurement for each well during March and October of each year and report the measurements to the Department. The measurement shall be made by a certified water rights examiner, registered geologist, licensed land surveyor or registered professional engineer, licensed water well constructors, licensed water well drillers or the permittee/appropriators. Water levels shall be reported as depth-to-water below ground level in feet and inches or to one-hundredth of a foot and shall be accompanied by supporting calculations. The water user shall report the static water level(s) in the well(s) to the Groundwater/Hydrology Section of the Water Resources Department by April 15 and November 15, respectively, or each year.”

17. The Department has not received static water level measurements in the months of March and October prior to October 1, 2000.

Therefore, the Department has determined the permit holder did not comply with conditions of the permit, by not submitting any static water level measurement taken in the months of March and October during the period of January 1996 and October 1, 2000, as required by Permit G-12428.

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)]

18. The application states the permit holder has invested about \$88,046, which is approximately 99 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$200 investment is needed for the completion of this project.

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

19. The Department has found good faith of the appropriator under Permit G-12428.

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)].

20. 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-12428; 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 point of appropriation for Permit G-12428, located within the Lost Creek Basin, is not located within a limited or critical ground water area. Lost Creek is not located within or above any state or federal scenic waterway, however, it is located within an area ranked "low" 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 point of appropriation is 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)].

21. 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)].

22. None have been identified.

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

23. 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)]

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

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

25. 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. Based on Finding of Facts 11 through 19, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2020, 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 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:

Extend the time to complete construction of the water system under Permit G-12428 from October 1, 1997 to October 1, 2020.

Extend the time to apply water to beneficial use under Permit G-12428 from October 1, 2000 to October 1, 2020.

DATED: May 10, 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 **June 24, 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;

