

**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-12458, Water Right Application G-12972, in)
the name of Balin Ranch) **PROPOSED FINAL ORDER**

Permit Information

Application:	G-12972
Permit:	G-12458
Basin:	14 – Klamath / Watermaster District 17
Date of Priority:	June 5, 1992 for 250.0 acres, December 23, 1992 for 57.1 acres
Source of Water:	A well in the Lost River Basin
Purpose of Use:	Primary and supplemental irrigation of 307.1 acres
Maximum Rate:	3.5 cubic feet 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, 2015 to October 1, 2020.
- Grant an extension of time to apply water to full beneficial use from October 1, 2015 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
RM – River Mile

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-12236 was issued by the Department on January 18, 1996. The permit authorizes the use of up to 3.5 cfs of water from a well in the Lost River Basin for primary and supplemental irrigation of 307.1 acres.
2. Permit G-12458 was issued by the Department on July 31, 1996, to correctly describe the dates for measuring and reporting static water level, beginning and completion of construction, complete application of the water to the use allowed herein, and water use conditions relating to practical technologies or conservation practices. The permit specified actual construction work was to begin on or before January 18, 1997, construction of the water system was to be completed by October 1, 1997, and complete application of water to the use was to be made by October 1, 2000. Permit

G-12236 is superseded and here forward will simply be referred to as Permit G-12458.

3. Permit G-12458 contained special Alternative Dispute Resolution (ADR) conditions for the Department to determine whether the permit may expire, be extended, or be certificated.
4. On November 22, 2004, the Department notified the permit holder that the groundwater investigation results allowed the Department to make a positive finding that using groundwater under Permit G-12236 would not significantly diminish river stage or Bonanza Big Spring flows. Additionally, the Department finds no excessively declining groundwater levels. These findings mean a certificate may be issued.
5. On June 6, 2013, Application for Permit Amendment T-11607 was submitted to the Department, requesting to add additional point of appropriation Well (KLAM 10748). Permit Amendment T-11607 is currently under review by the Department.
6. Two prior permit extensions have been granted for Permit G-12458. 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, 2015.
7. On behalf of the permit holder, Scott Balin, owner/operator of Balin Ranch, submitted an "Application for Extension of Time" to the Department on April 4, 2016, 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-12458 be extended from October 1, 2015 to October 1, 2020.
8. Notification of the Application for Extension of Time for Permit G-12458 was published in the Department's Public Notice dated April 12, 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)]

9. On April 4, 2016, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

10. Actual construction of the well began prior to the January 18, 1997 deadline specified in the permit. According to the application, construction of the well began October 23, 1992.

According to the well log received by the Department on November 23, 1992, Well 1 (KLAM 10642) construction began September 23, 1992. The Department has determined that the prosecution of the construction of the well began prior to January 18, 1997.

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.

11. As of April 4, 2016, the permit holder states the remaining work to be completed consists of gaining approval for Permit Amendment T-11607 to add an additional point of appropriation; completing construction of the water system; meeting all permit conditions; 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 complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-12458 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)]

12. The application states, work was accomplished within the time allowed in the permit or previous extension as follows:
- a. Actual construction of the well began prior to the January 18, 1997 deadline specified in the permit. Construction of Well 1 (KLAM 10642) began September 23, 1992 and was completed October 23, 1992. A pump was installed in November 1992, and power was installed on Well 1 (KLAM10642) in 1993. A

flowmeter was installed May 1, 1994.

- b. No other work was completed during the original development time frame under Permit G-12458, as a majority of the work was completed prior to permit issuance.

The Department has determined that work has been accomplished prior to permit issuance, 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)]

13. The application states a maximum rate of 3.5 cfs of water has been appropriated from Well 1 (KLAM 10642) for primary and supplemental irrigation of 307.1 acres.
14. Beneficial use of water has been demonstrated under this permit because all permit conditions were satisfied by October 1, 2015.
15. According to the application or previous extension, delay of full beneficial use of water under Permit G-12458 was due, in part, to the delayed completion of the OWRD Eastern Lost River Sub-Basin Ground Water Investigation. Due to a backlog in OWRD, the previous extension of time expired before Permit Amendment T-11607 could be processed and completed. The permit holder needs more time in which to gain approval for the additional point of appropriation as an alternative long term water supply.

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

16. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.
17. Department records show a flow meter was installed May 1, 1994.

On October 5, 2001, the permit holder submitted a plan to the Department, indicating potential economical sources for an alternative long term water supply.

Since the issuance of Permit G-12458, being July 31, 1996, the permit holder has submitted the annual water use records for irrigation years 2005, 2006, and 2012-2014.

Department records show the permit holder has submitted the March static water level measurements for years 1999-2003 and 2010-2014, and the October static water level measurements for years 1996, 1999, 2000, 2008, and 2014 required under Permit G-12458.

The Department has determined that minimal compliance of the condition of "shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department

annually by April 15,” and “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” has been satisfied, in an effort to make proof of beneficial use of the water as required by Permit G-12458

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 \$96,786, which is approximately 94 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$5,575 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-12458.

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-12458; 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-12458, located within the Lost River Basin, is not located within a limited or critical ground water area. Lost River is groundwater connected to The Klamath Scenic Waterway, and, 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 in an area listed by the Department of Environmental Quality as a water quality limited stream for Dissolved Oxygen (RM 4.8 to 65.4), E. Coli (RM 4.8 to 65.4), Ammonia

(RM 4.8 to 65.4), Temperature (RM 4.8 to 65.4), Arsenic (RM 4.8 to 65.4), and Chlorophyll a (RM 4.8 to 65.4).

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. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-12458, in that the permit holder was faced with the expiration of the previous extension of time due to a backlog at OWRD, which restricted their ability to complete development of the project in a timely manner.

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 9 through 18, 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-12458 from October 1, 2015 to October 1, 2020.

Extend the time to apply water to beneficial use under Permit G-12458 from October 1, 2015 to October 1, 2020.

DATED: June 7, 2016


Dwight A. 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 **July 22, 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;

