

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-13241, Water Right Application G-13934,) PROPOSED FINAL ORDER
in the name of Pumpkin Ridge Joint Venture) TO DENY

Permit Information

Application: G-13934
Permit: G-13241
Basin: 2 – Willamette / Watermaster District 18
Date of Priority: December 29, 1994
Source of Water: Two wells in McKay Creek Basin within the Willamette Basin
Purpose or Use: Supplemental irrigation, pond maintenance, and recreation (golf course)
Maximum Rate: 0.59 cfs being 0.20 cfs from Well #3 for supplemental irrigation and 0.05
 cfs for pond maintenance, not to exceed a maximum cumulative total of
 0.20 cfs; and 0.39 cfs from Well #4 for supplemental irrigation

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, 2006 to October 1, 2018.

- Deny an extension of time to apply water to full beneficial use from October 1, 2006 to October 1, 2018.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

Application – Application for Extension of Time

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. On December 29, 1994, Pumpkin Ridge Partners submitted to the Department an application to use 600 gpm (1.34 cfs) of water from two wells for irrigation of 197.0 acres and pond maintenance. The Application was assigned file number G-13934.
2. On September 10, 1996, the Department issued a Proposed Final Order and Draft Permit proposing to authorize the use of water from two wells at a combined rate of 0.59 cfs.
3. On October 25, 1996, the Applicant submitted a protest to the Proposed Final Order and a request for a contested case hearing.

4. On October 10, 1997, the Department received a signed Agreement and Stipulated Final Order from the Applicant agreeing to the terms for the issuance of a permit.
5. On October 28, 1997, an assignment from Pumpkin Ridge Partners to Pumpkin Ridge Joint Venture was recorded in the records of the Water Resources Department.
6. On October 29, 1997, Permit G-13241 was issued by the Department. The permit authorizes the use of up to 0.59 cfs of water from two wells in McKay Creek Basin within the Willamette Basin for supplemental irrigation of 197.0 acres, pond maintenance and recreation (golf course); being 0.20 cfs from Well #3 for supplemental irrigation and 0.05 cfs for pond maintenance, not to exceed a maximum cumulative total of 0.20 cfs; and 0.39 cfs from Well #4 for supplemental irrigation. The permit specified complete application of water was to be made on or before October 1, 2001.
7. In addition to the 0.59 cfs authorized under Permit G-13241, Pumpkin Ridge Joint Venture hold the following water right certificates and permit:
 - Certificate 70362 for storage of 30.1 acre-feet of water from runoff, a tributary of McKay Creek, in five reservoirs for irrigation and wildlife;
 - Certificate 85944 for the use of 1.11 cfs of water from one well in the McKay Creek Basin (Well #1 WASH 7691) for the irrigation of 197.01 acres and maintenance of three reservoirs;
 - Certificate 85945 for the use of 280.0 gpm (0.624 cfs) of water from a well in the McKay Creek Basin (Well#1 WASH 7691) for commercial use and reservoir maintenance for recreation;
 - Permit S-51615 for the use of no more than 350 acre feet of stored water only from Scoggins Reservoir, constructed under Permit R-5777, a tributary of Tualatin River, for the irrigation of 145.0 acres.
8. On April 23, 2001, the Department received notification that no water has been pumped for irrigation during the water year October 1, 1999 through September 30, 2000.
9. On May 7, 2001, Pumpkin Ridge Joint Venture submitted an Application for Extension of Time to the department requesting the time to accomplish beneficial use of water to the full be extended from October 1, 2001 to October 1, 2006. In the Application, a Pumpkin Ridge Joint Venture states "Construction is essentially complete. Water has not been used from Wells 3 and 4."
10. On February 12, 2002, a Final Order approving the first extension was issued, resulting in the date for completion of construction and application of water to the full beneficial use be extended to October 1, 2006.
11. On March 28, 2001, the Department received well measuring, reporting and monitoring plan.

12. On May 24, 2001, the Department mailed a letter stating the well monitoring plan has been approved.
13. On October 8, 2004, the Department received notification that 252,000 gallons of water was appropriated from Well #4 (LAKE 4436).
14. On December 30, 2004, the Department received a request proposing a change to the Monitoring plan.
15. On January 7, 2005, the Department mailed a letter stating the plan submitted on December 30, 2004 has been reviewed and approved.
16. On August 3, 2016, Elcio Silva, Secretary for Escalante Golf and Manager of Pumpkin Ridge Partners, on behalf of Pumpkin Ridge Joint Venture, submitted an "Application for Extension of Time" to the Department 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-13241 be extended from October 1, 2006 to October 1, 2018. This is the second permit extension requested for Permit G-13241.
17. Notification of the Application for Extension of Time for Permit G-13241 was published in the Department's Public Notice dated August 9, 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 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴.

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

18. On August 3, 2016, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from an authorized representative of Pumpkin Ridge Joint Venture.

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

19. Actual construction of the well began prior to the October 29, 1998 deadline specified in the permit. Information provided in the Application states construction of Well #3 (WASH 3746) began in March of 1994 and construction of Well #4 (WASH 4436) began in May 1995.

According to the well logs received by the Department on March 21, 1994 and May 9, 1995

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.

respectively, construction of Well #3 (WASH 3746) began February 11, 1994, and construction of Well #4 (WASH 4436) began February 28, 1995.

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.

20. As of August 3, 2016, the Application states the remaining work to be completed consists of installation of pumps and meters, connection of pipes and backflow devices, extension of electrical power to the wells, meeting all permit conditions and applying water to full beneficial use.

Given the amount of development left to occur, Pumpkin Ridge Joint Venture'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-13241 would be reasonable.

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)]

21. The Application provides evidence that work was accomplished during the time allowed in Permit G-13241, being from October 29, 1997 through October 1, 2001. The work consisted of the construction of Well #3 (WASH 3746) and Well #4 (WASH 4436).
22. During the most recent extension period, being from October 1, 2001 through October 1, 2006, no physical work has been performed towards the completion of the water system.
23. Since October 1, 2006 no physical work has been performed towards the completion of the water system.

The Application does not provide evidence of progress towards completion of the water system authorized under Permit G-13241 during the most recent Extension of Time period being October 1, 2001 through October 1, 2006 or since October 1, 2006.

Permit G-13241 is supplemental to other water rights held by Pumpkin Ridge Joint Venture (Finding of Fact 7). According to ORS 537.230(6) "for a supplemental water right, the permittee

shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit.” The amount of physical work left to be completed, which consists of installation of pumps, meters and backflow devices, and being ready willing and able to utilize the water for supplemental uses, is identical to the physical work left to be completed at the time the first extension was requested. In the nearly 16 years since the since the Final Order approving the first extension of time, Pumpkin Ridge Joint Venture has not made progress towards the completion of construction and the perfection under Permit G-13241.

The Department cannot find good cause or reasonable diligence towards the complete application of water to beneficial use under Permit G- 13241.

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

24. Pumpkin Ridge Joint Venture states in the Application for Extension of Time that no water has been appropriated under this permit.
25. The Departments records indicate water has been used (Finding of Fact 13) prior to complying with the conditions of;
 - a. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director.; and
 - b. Before water use under this permit begins, backflow prevention devices must be installed to prevent surface water from entering into the well hole.

The Department finds there has been no beneficial use of water since permit issuance.

The Department finds there is no evidence of progress made towards completion of the water development and application to full beneficial use as allowed in the time period specified in the in the Final Order extending the deadline for completing construction and the deadline for applying water to the full beneficial use to October 1, 2006.

26. According to Pumpkin Ridge Joint Venture, delay of beneficial use under Permit G-13241 was due to:

“The main reasons for why construction was not completed are: (1) the current economic downturn, (2) the availability of alternative water, (3) the financial incentive of the past manager wasn’t to complete the work...”

- (1) The current economic downturn has been going on for several years. The prior golf course management firm did not have the financial resources to work on this project. They had difficulties prior to the start of the current recession.

- (2) "Interruptible" water from permit S-51615 (Tualatin Valley Irrigation District-Scoggins Reservoir) has been available in past years, although in some years the golf course was forewarned that the water might not be available. Because the prior golf management firm was not the best financial period at that time, the extra money to complete this project was not made available.
- (3) The past golf course management firm simply managed the golf course and had no financial interest in the actual golf course land and assets. They were simply a golf course management firm. Their interests and incentives were to maximize profits for the management firm and they had no incentive to incur expenses to improve the value of the golf course land and golf course assets themselves. Their incentive was actually opposite, since if they spent money on improving the land (or water rights), they received no compensation for the increase in value, but their profits for the year would decrease dollar for dollar spent for these causes."

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

27. Pumpkin Ridge Joint Venture states in the Application for Extension of Time that not all conditions in the permit have been complied with.

Information provided in the Application for Extension of Time indicates the following conditions have been met:

- a. The condition of "The permittee...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 or more frequently as may be required by the Director."

The Department record shows that annual water use reports have been received for the years 2001 through 2005.

- b. The condition of "Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted to the Department." was met on April 1, 1998.

The Department record shows that an initial static water level measurement for Well #3 (WASH3746) and Well #4 (WASH 4436) were taken on April1, 1998.

- c. The condition of "a water level measurement shall be made each year during the period March 1 through March 31." "The permittee/appropriator shall submit a record of the measurement to the Department."

The Department record shows that annual March static water level measurements of Well #3 (WASH 3746) and Well #4 (WASH 4436) were submitted to the Department for the years 1998 through 2016.

- d. The condition of "Within 2 years from the date of issuance of this permit, the permittee shall submit a plan for measuring, reporting and monitoring for all four wells located on the subject property."

The Department record shows that a proposed monitoring plan was submitted to the Department on May 17, 2001 and was approved on May 24, 2001.

Information provided in the Application for Extension of Time indicates the following condition has not been met:

- e. The condition of "Before water use begins under this permit, backflow prevention devices must be installed to prevent surface water from entering into the well."

The Department record shows that water use has been reported for Well #4 (WASH 4436). The Department record does not show that a backflow device has been installed.

- f. The condition of "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director."

The Department record does not show that a meter or other suitable measuring device has been installed.

The Application provides minimal evidence towards perfecting the water right under the terms and conditions of the permit. Therefore, the Department cannot find reasonable diligence in developing or perfecting the water use permit, or has complied with all terms and conditions specified in Permit G-13241.

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

- 28. In the Application, it states a total investment of \$42,400 has been made towards physical work made toward completion of the water system. The Application lists static water level measurements, water use reporting, use of an attorney to keep water rights progressing properly, use of a water rights consultant to keep water rights processing properly, and use of a contractor to determine timing and costs needed to get the water system completed as physical work made toward completion of the water system. The Department does not consider planning activities as "physical work" towards the completion of the water system, and the costs associated with these activities are not considered in the investment made in the completion of the water system. Eliminating these costs, the approximate investment made towards the completion of the water system was \$31,500, which is approximately 25 percent of the total investment needed to complete the water system.

29. In the Application, it state that work accomplished during the most recent extension of time period, being from October 1, 2001 through October 1, 2006, consisted of water level measurements and water use reporting.

The Application does not provide evidence of financial investment made in physical work towards completion of the water system developing beneficial use of water during the most recent Extension of Time period, being October 1, 2001 through October 1, 2006.

30. In the Application it states that work accomplished after the most recent extension of time period ended, being October 1, 2006 through August 3, 2016, consisted of use of an attorney to keep water rights progressing properly, use of a water rights consultant to keep water rights processing properly, and use of a contractor to determine timing and costs needed to get the water system completed.

The Application does not provide evidence of financial investment made in physical work towards completion of the water system developing beneficial use of water after the most recent Extension of Time period ending on October 1, 2006.

The Department cannot find evidence towards perfecting the water right under the terms and conditions of the permit during the most recent Extension of Time period ending on October 1, 2006.

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

31. Based on Findings of Fact 22, 23, 24, 25, 29 and 30 above, the Department finds that Pumpkin Ridge Joint Venture has not demonstrated good faith in the development of Permit G-13241.

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)].

32. A review of 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-13241; 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.

33. A current review of Permit G-13241 found that:
- A. The proposed points of appropriation for Permit G-13241, located within the McKay Creek Basin, are not located within a limited or critical ground water area.
 - B. McKay 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 located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.
 - C. 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)].

34. No other economic interests 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)].

35. No other factors relevant to the determination of the market and present demand for water and power have been identified.

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

36. According to Pumpkin Ridge Joint Venture, they have made a financial investment of \$31,500 in development of this project during the original development period authorized under Permit G-13241. The Application establishes that no investment was made in physical work towards the development of the water system during the most recent extension of time period being from October 1, 2001 through October 1, 2006, or in the time since the most recent extension of time ended.

The Department finds that no financial investment has been made in physical work towards the completion of the water system during the most recent extension of time period being from October 1, 2001 through October 1, 2006, or in the time since the most recent extension of time ended.

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

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

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

38. No unforeseen events have been identified.

Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]

39. The Application did not state if a denial of the extension would result in undue hardship.

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 during the most recent Extension of Time period ending on October 1, 2006. 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-13241 from October 1, 2006 to October 1, 2018.

Deny the time to apply water to beneficial use under Permit G-13241 from October 1, 2006 to October 1, 2018.

DATED: September 13, 2016


Dwight 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 **October 28, 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>

