

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-13000 (modified by Permit Amendment)
T-10436), Water Right Application G-12843, in the name of)
John and Marlene Bles

PROPOSED FINAL ORDER

Permit Information

Application:	G-12843
Permit:	G-13000 (modified by Permit Amendment T-10436)
Basin:	14 – Klamath / Watermaster District 17
Date of Priority:	March 30, 1992
Source of Water:	A well in Sprague River Basin
Purpose or Use:	Irrigation of 288.2 acres
Maximum Rate:	2.45 cubic feet per second (cfs)

***Please read this Proposed Final Order in its entirety as it contains
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, 2015 to October 1, 2023.
- Grant an extension of time to apply water to full beneficial use from October 1, 2015 to October 1, 2023¹.
- Make the extension subject to certain conditions set forth below.

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

Application – Application for Extension of Time

PFO – Proposed Final Order

cfs – cubic feet per second

gpm – gallons per minute

POA – Point of Appropriation

Well #3 – Well (KLAM 58165/58232)

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 groundwater 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.

OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

OAR 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

FINDINGS OF FACT

Background

1. On March 30, 1992, Lone Pine Ranch filed an Application for a Permit to Appropriate Ground Water with the Department requesting the use of 1,100 gpm of water from an existing well for irrigation of 288.2 acres. The Application was assigned Application File Number G-12843.
2. On April 2, 1996, the Department issued a Proposed Final Order to deny Application G-12843. The PFO identifies that water is not available in sufficient amounts to sustain the use of water for irrigation purposes during the irrigation season (March 1 through October 31).
3. On April 23, 1996, Leonard W. Gotshalk, President of Lone Pine Ranch, filed a protest to the Proposed Final Order to Deny.
4. On September 24, 1996, the Department issued a letter to Lone Pine Ranch stating, "a second review on July 18, 1996, by the Department's groundwater hydrology section determined that, with the following conditions, the proposed use could be allowed March 1 through October 31." In summary, the proposed conditions would require: 1) the proposed well shall be constructed or reconstructed to produce water from a depth greater than 450 feet below land surface; 2) if withdraw of water from any well authorized under this permit results in substantial interference with senior water rights, use of water from the well(s) shall be discontinued or reduced, and/or the schedule of withdrawal shall be regulated until or unless the department approves or implements an alternative administrative action; and 3) a limited water level decline / interference condition.
5. On November 5, 1996, Lone Pine Ranch submitted a letter to the Department withdrawing their protest.
6. On November 27, 1996, Permit G-13000 was issued by the Department. The permit authorizes the use of up to 2.45 cfs of water from a well in Sprague River Basin for irrigation of 288.2 acres. The permit specified actual construction of the well to begin by November 27, 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. The permit contained a scrivener's error. The permit states above the signature line "Issued September 27, 1996". The permit should read "Issued November 27, 1996".
7. On September 29, 1999, Lone Pine Ranch submitted the first "Application for Extension of Time" to the Department requesting both the time to complete construction and to accomplish beneficial use of water under Permit G-13000 be extended from October 1, 1999 to October 1, 2004. The 1999 Extension Application indicates no water was used.
8. On January 9, 2001, the Department issued a Final Order approving the Extension of Time to complete construction and apply water to full beneficial use to October 1, 2004.

9. On October 8, 2004, Lyman Mason submitted the second "Application for Extension of Time" to the Department requesting both the time to complete construction and to accomplish beneficial use of water under Permit G-13000 be extended from October 1, 2004 to October 1, 2009. The 2004 Extension Application states that the property under this permit has been subject to foreclosure and litigation and that no water has been used.
10. On October 21, 2004, an assignment by deed from Lone Pine Ranch to Lyman Mason was recorded in the records of the Water Resources Department.
11. On April 21, 2006, an assignment by proof from Lyman Mason to John and Marlene Bles was recorded in the records of the Water Resources Department.
12. On April 11, 2007, the permit holder submitted additional information to supplement the 2004 Application.
13. On April 30, 2007, the permit holders submitted a superseding Application for Extension of Time requesting the time to complete construction and accomplish beneficial use of the water be extended from October 1, 2004 to October 1, 2015.
14. On May 4, 2007, the permit holders submitted additional information requested by the Department.
15. On July 12, 2007, the Department issued a Final Order approving the Extension of Time to complete construction and apply water to full beneficial use to October 1, 2015, subject to a "Checkpoint Condition" requiring progress reports to be submitted to the Department by October 1, 2009, and 2014.
16. On January 19, 2010, the permit holders submitted the 2009 Progress Report as required by the 2007 Extension Final Order.
17. On January 22, 2010, the Department approved Permit Amendment T-10436 (Special Order Volume 80, Page 121) authorizing a change in the point of appropriation under Permit G-13000 (modified by Permit Amendment T-10436) which is hereafter referred to simply as Permit G-13000.
18. On March 4, 2010, the Department issued a letter acknowledging receipt of the 2009 Progress Report and stating that it has been determined that diligence towards completion of the project and compliance with the terms and conditions of the permit and extension have been demonstrated.
19. On October 14, 2014, the permit holders submitted the 2014 Progress report as required by the 2007 Extension Final Order.
20. On December 1, 2014, the Department issued a letter acknowledging receipt of the 2014 Progress Report and stating that it has been determined that diligence towards

completion of the project and compliance with the terms and conditions of the permit and extension have been demonstrated.

21. On September 26, 2016, the permit holders, John and Marlene Bles, submitted the third "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-13000 be extended from October 1, 2015, to October 1, 2023.
22. Notification of the Application for Extension of Time for Permit G-13000 was published in the Department's Public Notice dated October 4, 2016. No public comments were received regarding the extension application.
23. On October 19, 2016, the permit holders submitted additional information to the department. In summary, the information was to identify the well which water was appropriated from.

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)]

24. On September 26, 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)]

25. Actual construction of the well began prior to the November 27, 1997 deadline specified in the permit. According to the original Application for a Permit to Appropriate Ground Water, the well was identified as "existing"

According to a Departmental Memo attached to the January 18, 1996 Groundwater Review, "The well listed on this application has a permitted right for 3.6 cfs (Permit G-5060)." The well approved under Permit G-5060 has been identified as Well (KLAM 1434). According to the well log received by the Department on January 12, 1970, Well (KLAM 1434) construction began September 8, 1969. The Department has determined that the prosecution of the construction of the well began prior to November 27, 1997.

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 537.630 applies to groundwater permits only.

⁵ORS 539.010(5) applies to surface water and groundwater permits.

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.

26. As of September 26, 2016, the Application states the remaining work to be completed consists of completing construction of the water system, including making the current system more efficient, well improvements, installation of irrigation pipe, control wire, electrical service, booster pumps, distribution boxes and pivot; meeting all permit conditions; and applying water to full beneficial use on the remaining 162.6 acres.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2023, 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-13000 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)]

27. The Application states, work was accomplished within the time allowed in the permit or previous extension as follows:
- a. Construction of Well (KLAM 1434) was completed on December 18, 1969.
 - b. During the most recent extension period, being from October 1, 2004, to October 1, 2015, the following was accomplished:
 - Gained Department approval of Permit Amendment T-10436 to change the Point of Appropriation (POA);
 - Constructed the well authorized under Permit Amendment T-10436 in 2012. According to the well log received by the Department on June 27, 2012, Well (KLAM 58165) began April 19, 2012, and was completed on June 19, 2012. According to the Well Log (KLAM 58232) received by the Department on August 27, 2012, Well (KLAM 58165) was deepened. Well (KLAM 58165/58232) identify the same well, hereafter referred to as Well #3;

- Installed underground piping, main line, underground electrical wire and one pivot; and
 - Applied water to 125 + acres.
- c. Since October 1, 2015, the applicant states that work was done on increasing the efficiency of the system.

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

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

28. The permit holder states a maximum rate of 1.9 cfs of water has been appropriated from Well #3 for irrigation of 125.60 acres in 2015.
29. According to the permit holder, delay of full beneficial use of water under Permit G-13000 was due, in part, to uncertainty of proposed new well regulations in the area; negotiations with Pacific Power on extending their service lines two miles to the project site and upgrading 10 miles of their primary lines; and limited time to work on the project due to climate and other responsibilities involved in the ranching operation. The permit holder needs more time to obtain the full quantity of water allowed under Permit G-13000.

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

30. The Department has considered the permit holder's compliance with conditions and has identified compliance with the conditions of: (1) "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device. The permittee shall maintain the meter or measuring device in good working order, 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."; (2) "The Department requires the permittee to submit an initial static water level measurement in the month specified above (March) once well construction is complete and annually thereafter until water use begins."; and (3) "The proposed point of appropriation (POA, well) to be constructed under this order shall obtain water from the same ground water source as the original well. To ensure this occurs, the proposed POA (well) shall be constructed in consultation with the Oregon Water Resources Department Ground Water Section hydrologist(s) to request well construction approval. The request shall be in writing, and shall include a rough well log and a proposed construction design for approval by the Department. The request can be approved only if it is received and reviewed prior to placement of any permanent casing and sealing material. If the well is constructed first and then the request is made, the requested well construction and/or modification will not be approved. The total depth and the construction specifications of the proposed POA (well) will be incorporated into any certificate issued for this permit."

31. The record does show the permit holder installed a meter on Well #3 on April 20, 2015, and has submitted an annual water use report for Well #3 in 2015. The record does show that the permit holder has submitted an initial March static water level measurement in 2016. The record does show that the proposal was received by the Department on April 24, 2012, and has been reviewed by the Department.
32. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; (1) the record does not show seven consecutive annual March static water level measurements have been submitted.

The Department has determined that this extension will allow the permit holder to complete construction, comply with the condition of "Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements", obtain the full rate of water allowed under the permit and or to apply the water to full beneficial use on the remaining 162.6 acres.

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)]

33. The Application states the permit holder has invested about \$331,000, which is approximately 56 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$255,000 investment is needed for the completion of this project.

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

34. The Department has found good faith of the appropriator under Permit G-13000.

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)].

35. 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-13000; 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.
36. During a current review of Permit G-13000, the Department determined the following:
- a. The point of appropriation for Permit G-13000, located within the Sprague River Basin, is not located within a limited or critical groundwater area.
 - b. Sprague River is located above the Klamath Scenic Waterway.
 - c. It is located within an area ranked “highest” 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.
 - d. 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)].

37. 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)].

38. No other factors relevant to the determination of the market and present demand for water and power have been identified.
39. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. The Department determined the need to place a “Last Extension Condition” on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary due to this being the third extension requested for this permit, and the lapse of twenty years since the issuance of Permit G-13000.
40. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 2 of the “Conditions” section of this PFO to meet this condition.

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

41. 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)]

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

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

43. No unforeseen events have been identified.

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

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

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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 construction timeline requirements for beginning actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Based on Finding of Facts 25 through 34, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2023, 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).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 39 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-13000.
7. As required by OAR 690-315-0050(6) and as described in Finding 40 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 2), progress checkpoints in order to ensure future diligence is exercised in the development and perfection of Permit G-13000.

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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-13000 from October 1, 2015 to October 1, 2023.

Extend the time to apply water to beneficial use under Permit G-13000 from October 1, 2015 to October 1, 2023.

Subject to the following conditions:

CONDITIONS

1. **Last Extension Condition**

This is to be the last extension of time granted for Permit G-13000. Any future extensions of time requests shall be denied.

2. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2021**. ***A form will be enclosed with your Final Order.***

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: November 8, 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 **December 23, 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>

