

**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, in)
the name of Pumpkin Ridge Joint Venture)

SUPERSEDING
PROPOSED FINAL ORDER

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

***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 apply water to full beneficial use from October 1, 2006, to October 1, 2018¹.

- 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

Agent – Aspen Rural Land Consulting, Eric Urstadt

FOF – Finding of Fact

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 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.

Following the issuance of the Proposed Final Order to Deny an Extension of Time on September 13, 2016, the applicant submitted a protest which provided additional information. The following Findings of Facts (FOF) are corrected to reflect the new information. The Department's continuing evaluation reveals that the following corrections are necessary to accurately reflect the Application for Extension of Time.

Findings of Fact (FOF) 1 through 39 and Conclusions of Law 1 through 4 of the Proposed Final Order issued on September 13, 2016 are replaced with the following:

FINDINGS OF FACT

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 supplemental 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 conditionally approving the use of water from two wells limited to combined rate of 0.59 cfs, being 0.20 cfs from Well #3 (WASH 3746) and 0.39cfs from Well #4 (WASH 4436).
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 (WASH 3746) 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 (WASH 4436) 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 holds the following water right certificates and permit:
 - i. 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;
 - ii. 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;
 - iii. 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;

- iv. Permit S-51615 for the use of no more than 350 acre-feet (AF) 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 [letter] 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 the first Application for Extension of Time to the Department requesting the time to accomplish full beneficial use of water be extended from October 1, 2001, to October 1, 2006. In the Application, Pumpkin Ridge Joint Venture states “Construction is essentially complete. Water has not been used from Wells 3 and 4.”
10. On March 28, 2001, the Department received the required well measuring, reporting and monitoring plan.
11. On May 24, 2001, the Department approved the well monitoring.
12. On October 1, 2001, the Department received notification [letter] that 1,525,800 gallons or 4.69 AF of water was appropriated “Because of the drought conditions and the limited resources of TVID, it was necessary to supplement the water provided by TVID in May and at the end of the irrigation season.”
13. 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.
14. On October 29, 2004, the Department received notification [letter] that 252,000 gallons of water had been used from Well #4 (WASH 4436) for irrigation.
15. On December 30, 2004, the Department received a request proposing a change to the monitoring plan.
16. On January 7, 2005, the Department mailed a letter stating the plan submitted on December 30, 2004, has been reviewed and approved.
17. On November 3, 2005, the Department received a letter stating “Well #3 (WASH 3746) was proofed in September [2004] by Hillsboro Pump. The test ran for 24 hours at 100 gallons per minute and was pumped into the irrigation holding pond adjacent to the well.”
18. 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.

19. 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.
20. On September 13, 2016, the Department issued a Proposed Final Order (PFO) to Deny an extension of time to complete construction and to apply water to full beneficial use under Permit G-13241. The denial was due to the Application establishing that there has been no construction, no financial investment and no diligence towards the development of the project within the time authorized by the first extension issued February 12, 2002.
21. On October 28, 2016, Eric Urstandt of Aspen Rural Land Consulting (Agent), agent for Pumpkin Ridge Joint Venture, submitted a timely protest and request for a contested case hearing for the PFO to deny an Extension of Time for Permit G-13241 (protest). The protest provided additional information to the Department that supplements the original Application and provides evidence of work accomplished towards development of Permit G-13241 during the most recent extension period, a description of adverse effects of the PFO to Deny on the business and identifies additional economic interests dependent on the completion of the project.

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)]

22. 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)]

23. 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.

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.

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

24. As of October 28, 2016, the protest provides evidence that “the conveyance system has all been completed”. The protest states that the remaining work to be completed consists of installation of permanent meters suitable to the Director and installation of electrical service to Well #3 (WASH 3746) or to install an on-site generator to power the pump in Well #3 (WASH 3746).

Given the amount of development left to occur, the Department has determined that the permit holder’s request to have until October 1, 2018, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13241 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)]

25. Work was accomplished during the original development time frame authorized under Permit G-13241, being October 29, 1997 through October 1, 2001. (FOF 13)
26. During the first extension period, being from October 1, 2001, through October 1, 2006, the protest identifies work was accomplished. The work that was accomplished consisted of installation of electrical service and a dedicated electrical meter to Well #4 (WASH 4436) prior to January 19, 2004, and installation of pumps in Well #3 (WASH 3746) and well #4 in 2005.

The Application and protest provide 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)]

27. The protest states a combined maximum rate of 275 gpm, being 100 gpm from Well #3 (WASH 3746) for pond maintenance and 175 gpm from Well #4 (WASH 4436) for supplemental irrigation, pond maintenance and recreational uses, was used.

Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2006.

28. 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 previous golf course management did not keep adequate records in regards to the development of Permit G-13241...

(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 [in] the best financial period at that time, the extra money to complete this project was not made available.”

(3) The protest states; “... loss of knowledge, missing or misplaced records, and lack of record-keeping before and during the business management change” contributed to the delay of full beneficial use of water under this permit.

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

29. Pumpkin Ridge Joint Venture in the Application for Extension of Time and in the protest demonstrates that the following conditions in the permit have been complied with.

a. 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 shows that a dedicated electrical meter was installed on Well #4 (WASH 4436) prior to January 19, 2004.

b. 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.

- c. 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.

- d. 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.

- e. 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.

30. Pumpkin Ridge Joint Venture in the Application for Extension of Time and in the protest demonstrates that the following conditions in the permit have **not** been complied with.

- a. 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 protest states “This requirement is not applicable to the system used or the subject permit and the intent of the permit has been met.”, and “The piping system from the well to the open channels has an obvious ‘air gap’ between the end of the pipe coming from the well and the open channel flowing down to the first reservoir. Because of the air gap, there is no chance for surface water to go up in elevation and back into the well hole.”

OAR 690-200-0050(4) defines "Air Gap" as: a complete physical break between the outlet end of the discharge pipe or other conduit and the discharged substance. The break shall be at least twice the inside diameter of the pipe or conduit. (Back-siphon prevention)

OAR 690-200-0050(13) defines "Back-Siphon [back-flow] Prevention Device" as: a safety device used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals in the opposite direction of that intended. (Back-siphon prevention)

Based on FOF 30a, the Department has determined that there is no evidence that a backflow prevention device has been installed on Well #3 (WASH 3746) or Well #4 (WASH 4436).

The Department has determined that back-flow prevention devices must be installed at each point of appropriation to satisfy compliance with 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."

- b. 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 on Well #3 (WASH 3746).

The Department has determined that this extension will allow installation of a meter or other suitable measuring device on Well #3 (WASH 3746) and installation of a back-flow prevention device on Well #3 (WASH 3746) and Well #4 (WASH 4436) after October 1, 2006, to satisfy compliance of 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"; and "Before water use begins under this permit, backflow prevention devices must be installed to prevent surface water from entering into the well", in an effort to make proof of beneficial use of the water as required by Permit G-13241.

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)]

31. The Application states the permit holder has invested about \$125,000, which is approximately 96 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$5,000 investment is needed for the completion of this project.

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

32. The Department has found good faith of the appropriator under 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)].

33. 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.
34. 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)].

35. The protest states;

"In short, in the event our water source was eliminated and we had no back-up plan, two of the most recognized and acclaimed golf courses in Oregon would be unplayable. We employ more than 100 people and host thousands through the course [each] year. Pumpkin Ridge also has expenses that exceed \$8 million per year that are mostly spent locally in the greater Portland area. In addition, the largest charity golf event that raised

more than \$1.5 million this year, The WinCo Foods Portland Open, would take place at Pumpkin Ridge. Likewise, all the other charity events and fundraisers that we host every year would be forced to find new homes.”

The Department has determined that there are other economic interests dependent on the complete development of Permit G-13241.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].

36. No other factors relevant to the determination of the market and present demand for water and power have been identified.
37. 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 the relatively small amount of work which needs to be accomplished to develop full beneficial use of water as authorized under Permit G-13241.

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

38. 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)]

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

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

40. No unforeseen events have been identified.

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

41. The protest states that denial of the extension would result in undue hardship to the local economy and one of the most recognizable leisure attractions in the state.

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 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.
5. The protest provides evidence which establishes that there has been work accomplished towards the full development of Permit G-13241 during the most recent Extension of Time period ending October 1, 2006.
6. Based on Finding of Facts 16 through 29, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2018, as required by OAR 690-315-0040(1)(c).
7. 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
8. As authorized in OAR 690-315-0050(5) and as described in Finding 18 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-13241.

continued on following page

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

Subject to the following conditions:

CONDITIONS

1. **Last Extension Condition**

This is to be the last extension of time granted for Permit G-13241. Any future extensions of time requests shall be denied.

DATED: December 6, 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 **January 20, 2017**, 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;

