

**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-13110, Water Right Application G-12148, in) PROPOSED FINAL ORDER
the name of The Houret Family Limited Partnership, LLC)

Permit Information

Application: G-12148
Permit: G-13110
Basin: 13 – Goose and Summer Lakes / Watermaster District 12
Date of Priority: June 19, 1990
Source of Water: Two wells in Thomas Creek Basin
Purpose or Use: Irrigation of 292.5 acres and supplemental irrigation of 1,093.7 acres
Maximum Rate: 8.92 cubic feet per second (cfs), not to exceed 4.46 cfs from either well,
being 3.65 cfs for irrigation and 8.92 cfs 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 complete construction of the water system from October 1, 2009, to October 1, 2022.
- Grant an extension of time to apply water to full beneficial use from October 1, 2009, to October 1, 2022¹.
- 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

Agent – Hollie Cannon

Application – Application for Extension of Time

Department – Oregon Department of Water Resources

FOF – Finding of Fact

PFO – Proposed Final Order

Well 1 – LAKE 4076

Well 1A – LAKE 51848

Well 2 – LAKE 50935

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 (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works 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) 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contain the factors that the Department must consider to make findings that support a “good cause” determination.

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.

FINDINGS OF FACT

1. On March 6, 1997, Permit G-13110 was issued by the Department, consistent with the terms of a settlement agreement. The permit authorizes the use of up to 8.92 cfs of water, not to exceed 4.46 cfs from either well, being 3.65 cfs for irrigation of 292.5 acres, and 8.92 cfs for supplemental irrigation of 1,093.7 acres from two wells in

Thomas Creek Basin. The permit specified actual construction of the well to begin by March 26, 1997, construction of the water system was to be completed by October 1, 1999, and complete application of water was to be made on or before October 1, 2000.

2. One prior permit extension has been granted for Permit G-13110 resulting in the completion dates for construction and full application of water being extended to October 1, 2009.
3. On October 25, 2016, an assignment from Robert and Lorraine Houret to the Houret Family Limited Partnership, LLC was recorded in the records of the Water Resources Department.
4. On February 9, 2017, the permit holder, The Houret Family Limited Partnership, LLC, submitted an "Application for Extension of Time" (Application) 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-13110 be extended from October 1, 2009, to October 1, 2022.
5. On February 28, 2017, notification of the Application for Permit G-13110 was published in the Department's Public Notice. No public comments were received regarding the Application.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

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

6. On October 31, 2016, the Department received a completed Application 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)

7. Actual construction of the well began prior to the March 26, 1997, deadline specified in the permit. According to the permit holder, construction of LAKE 4076 (Well 1) began June 13, 1990.
8. According to the well log received by the Department on March 21, 1991, construction of Well 1 began June 13, 1990.

Based on Finding of Fact (FOF) 7 and 8, the Department has determined that the prosecution of the construction of the well began prior to March 26, 1997.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

Amount of Construction OAR 690-315-0040(3)(a) (The amount of construction completed within the time allowed in the previous extension.²)

9. During the most recent extension period, being from October 1, 2000, to October 1, 2009, the following was accomplished:
 - constructed ditches and distribution system;
 - completed construction of LAKE 51848 (Well 1A), an unauthorized point of appropriation under Permit G-13110; and
 - installed a pump.

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.

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

The water right permit holder's conformance with the previous extension conditions.

10. The Application states that meters have been installed, annual water use reports have been submitted and the wells have been capped to prevent uncontrolled discharge.

Based on FOF 10, the Department has determined the permit holder has demonstrated compliance the following permit conditions as required by Permit G-13110:

² "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A)and(B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

- “Before water use may begin under this permit, the permittee shall install a meter of 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 annually.”; and
 - “The wells, for use under this permit, shall be capped in a manner which prevents the uncontrolled discharge of water due to artesian pressure.”
11. On November 27, 2002, the Department Well Construction Enforcement Section determined that Well 1 and Well 2 do not meet the permit condition that ground water shall be produced from a depth greater than 100 feet below land surface (bls).
12. The Department has considered the permit holder’s compliance with conditions, and has identified the following concerns: (1) the record does not show that Well 1 or Well 2 produce groundwater only from a depth of 100 feet below land surface, and (2) Well 1A has been constructed for use under this permit but has not been authorized.

Based on FOF 11 and 12, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-13110:

- “Ground water for use under this permit shall be produced from a depth greater than 100 feet below land surface.”; and
- “If the number, location, or construction of any well deviates from that proposed in the permit application or permit conditions, the conclusions of the Proposed Final Order or Final Order under which this permit was granted may be revised, conditions may be appropriately revised, or this permit may not be valid.”

Failure to comply with permit conditions constitutes illegal use of water. 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.

Beneficial Use of Water OAR 690-315-0040(3)(b): the amount of beneficial use made of the water during the permit or previous extension conditions.

13. The Application states a maximum combined rate of 2,400 gpm (5.35 cfs) of water, being 600 gpm (1.34 cfs) from Well 1A and 1,800 gpm (4.01 cfs) from Well 2, has been appropriated for supplemental irrigation of 874.53 acres. No water has been appropriated from authorized Well 1.

Based on FOF 12 and 13, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2009.

14. The Application states that 600 gpm (1.34 cfs) of water has been appropriated from Well 1A, an unauthorized POA under Permit G-13110.

Based on FOF 12 through 14, the Department has determined that unauthorized use has occurred under Permit G-13110. Use from an authorized well is illegal use of water. In order to legally appropriate water from Well 1A under Permit G-13110, the water user must obtain authorization through a Permit Amendment as allowed under ORS 537.211(4). Any use of water from Well 1A under this permit without gaining authorization is illegal use.

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

15. The Application states the permit holder has invested about \$145,000, which is approximately 45 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$260,000 investment is needed for the completion of this project.

Based on FOF 15, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

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:

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) 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);*

- (c) *The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- (d) *Economic investment in the project to date;*
- (e) *Other economic interests dependent on completion of the project; and*
- (f) *Other factors relevant to the determination of the market and present demands for water and power.*

The amount of water available to satisfy other affected water rights and scenic waterway flows OAR 690-315-0040(4)(a)

16. 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-13110; 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.

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) OAR 690-315-0040(4)(b)

17. The points of appropriation for Permit G-13110, located within the Thomas Creek Basin, are not located within a limited or critical groundwater area
18. Thomas Creek is not located within or above any state or federal scenic waterway.
19. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife OAR 690-315-0040(4)(c)

20. Thomas Creek 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.

Economic interests dependent on completion of the project OAR 690-315-0040(4)(d)

21. The Application states an approximate total of \$145,000 has been invested in the project.

Other economic interests dependent on completion of the project OAR 690-315-0040(4)(e)

22. The Application did not identify economic interests other than those of the applicant’s that may be dependent on completion of the project.

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

23. 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)

24. The Application did not identify that the 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)

25. The Application did not identify any delay in the development of this project that was caused by any other governmental requirements.

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

26. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-13110, in that when the permit holders acquired the property they were not aware that the permit allowed for additional irrigation of lands beyond those which had already been irrigated as supplemental, and they were faced with health issues that restricted their ability to complete development of the project in a timely manner. New management took over the ranch in 2015 and understands what needs to be completed under the permit.

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

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

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

28. The Application provides evidence of good faith of the appropriator under Permit G-13110.

Based on FOF 7 – 10, 13, 15, 21 and 28, the Department has determined that the applicant has shown good faith and reasonable diligence.

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.

29. As of October 31, 2016, the Application states the remaining work to be completed consists of completing construction of the water system which includes:

- submitting a Permit Amendment to gain authorization of Well 1A;
- further developing Well 1A;
- bringing Well 2 into permit compliance or constructing a new well and submitting a Permit Amendment to gain authorization to use the well;
- installing a half mile of underground pipe; and
- installing pumps.

30. As of October 31, 2016, the Application states the remaining work to be completed consists of meeting all permit conditions which includes installing meters on any new points of appropriation and continuing to submit annual water use reports; and applying water to full beneficial use on the remaining 292.5 acres for primary irrigation and 228.0 acres for supplemental irrigation.

Based on FOF 29 and 30, and given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2022, 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-13110 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

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).

LIMITATIONS AND CONDITIONS

1. 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.
 - a. Based on Findings of Facts 10, 12, 13 and 14, the Department determined the need to place a "Permit Amendment 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 because of the use of an unauthorized point of appropriation, being Well 1A, under this permit.
 - b. Based on Findings of Facts 12 and 13, the Department determined the need to place a "Well Construction Compliance Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 2 of the "Conditions" section of this PFO, was determined to be necessary because construction of Well 1 and Well 2 were determined to be insufficient to meet the well construction conditions in the permit.
 - c. 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 3 of the "Conditions" section of this PFO, was determined to be necessary due to the amount of time since permit issuance.

CONCLUSIONS OF LAW

1. 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).
2. The applicant has complied with the construction timeline requirements to begin actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 8 through 30, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2022, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to mitigate the effects of the subsequent development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).

5. The applicant has demonstrated good cause for the extension, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

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-13110 from October 1, 2009, to October 1, 2022.

Extend the time to apply water to beneficial use under Permit G-13110 from October 1, 2009, to October 1, 2022.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. Permit Amendment Condition

The use of any water from Well LAKE 51848 under Permit G-13110 is subject to this Condition.

The permit holder shall submit an application to the Department for a permit amendment pursuant ORS 537.211(4) for approval of Well 1A as an authorized point of appropriation, by November 5, 2017. No water may be used from LAKE 51848 until it is authorized for use under this permit.

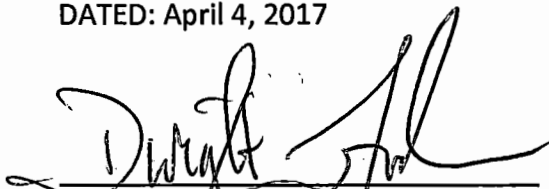
2. Well Construction Compliance Condition

No water may be used from LAKE 4076 or LAKE 50935 until the Department Groundwater Hydrology section determines, in writing, that Lake 4076 and LAKE 50935 meet the condition of "Ground water for use under this permit shall be produced from a depth greater than 100 feet below land surface." as required by Permit G-13110.

3. Last Extension Condition

This is to be the last extension of time granted for Permit G-13110. Any future extensions of time requests shall be denied.

DATED: April 4, 2017


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 **May 19, 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;
 - 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>

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- If you have questions about statements contained in this document, please contact Jeffrey D. Pierceall at (503)986-0802.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to : Water Right Services Division
 725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
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