

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

Well P-2 – Production Well MULT 86584

Well I-1 – Injection Well MULT 86585

ODEQ – Oregon Department of Environmental Quality

FOF – Finding of Fact

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) contains the factors that the Department must consider to make findings that support a “good cause” determination.

FINDINGS OF FACT

1. On June 4, 2009, Permit G-16513 was issued by the Department. The permit authorizes the use of up to 0.33 cfs of water from a well (MULT 86584) (P-2) in Willamette River Basin for commercial uses (geothermal heating and cooling). The permit specified completion of construction and complete application of the water to the use was to be made on or before October 1, 2013.
2. One prior permit extension has been granted for Permit G-16513. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2013, to October 1, 2016.

3. On March 3, 2017, the permit holder, Eric Wentland, managing member of Heritage Building, 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-16513 be extended from October 1, 2016, to October 1, 2017.
4. On March 14, 2017, notification of the Application for Permit G-16513 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)]

5. On March 3, 2017, 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)]

6. Construction of the well began prior to permit issuance. The permit holder states, construction of MULT 86584 (Well P-2) began September 20, 2006.
7. According to the well logs received by the Department on November 1, 2006, construction of Well P-2 began September 20, 2006, and construction of MULT 86585 (Well I-1) began September 29, 2006.

The Department has determined based on Finding of Fact (FOF) 6 and 7 that the prosecution of the construction of the wells began prior to October 1, 2013.

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.

OAR 690-315-0040(3)(a)

Amount of Construction (The amount of construction completed within the time allowed in the previous extension.²)

8. During the most recent extension period, being from October 1, 2013, to October 1, 2016, the permit holder purchased a meter to be installed on Well I-1, with the intent to install prior to October 1, 2016.
9. Since October 1, 2016, the applicant states a totalizing flow meter was installed on Well I-1.

The Department has determined based on FOF 9 that 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.

OAR 690-315-0040(3)(c)

Compliance with Conditions

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

10. On December 4, 2006, the Oregon Department of Environmental Quality (DEQ) approved the permit holder's registration of their injection activity with the DEQ's Underground Injection Control (UIC) Program. This approval is in the file for Permit G-16513.
11. On February 1, 2007, a meter was installed on Well P-2.
12. On June 7, 2007, the Department's Groundwater section determined Well P-2 produced water from the Troutdale Gravel Groundwater Reservoir. According to the well log received by the Department on November 1, 2006, for Well P-2, the depth of completed well was identified as 296 feet below land surface.

The Department has determined, based on FOF 10 and 12, that the permit holder has demonstrated compliance with permit conditions as required by Permit G-16513:

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.

- “The production well(s) shall allow ground water only from the Troutdale Gravel ground water reservoir between 180 feet and 400 feet below land surface”; and
 - “Prior to use of water under this permit, the permittee must register its injection activity with the Oregon Department of Environmental Quality’s Underground Injection Control (UIC) Program.”
13. The Department has considered the permit holder’s compliance with conditions, and has identified the following concern: the record does not show that a totalizing flow meter or other suitable measuring device has been installed at Well I-1 by October 1, 2016.
14. On October 15, 2016, a meter was installed on Well I-1.

The Department has determined based on FOF 14, that the permit holder has demonstrated compliance with following permit conditions on Well I-1 as required by Permit G-16513, after the date specified in the permit.

OAR 690-315-0040(3)(b)

Beneficial Use of Water: *the amount of beneficial use made of the water during the previous extension conditions.*

15. The Application states a maximum rate of 140.4 gpm (0.31 cfs) of water has been appropriated from Well P-2 for commercial uses (geothermal heating and cooling).
16. According to the permit holder, delay of full beneficial use of water under Permit G-16513 was due, in part, to medical issues with the contractor hired to install the meter on Well I-1; the meter was installed after October 1, 2016.

The Department has determined based on FOF 13 that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2016.

OAR 690-315-0040(2)(b),(3)(d),(4)(d)

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose

17. The Application states the permit holder has invested about \$54,500, which is the total projected cost for complete development of this project.

The Department has determined based on FOF 17, 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 that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions, a financial investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-16513.

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.*

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

The amount of water available to satisfy other affected water rights and scenic waterway flows.

18. 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-16513; 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.

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

19. The point of appropriation for Permit G-16513, located within the Willamette River Basin, is not located within a limited or critical groundwater area.

20. Willamette River is not located within or above any state or federal scenic waterway.
21. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

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

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

22. Willamette River is located within an area ranked “low” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

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

Economic interests dependent on completion of the project.

23. The Application states an approximate total of \$54,500 has been invested in the project.

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

Other economic interests dependent on completion of the project.

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

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

Other factors relevant to the determination of the market and present demand for water and power.

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

OAR 690-315-0040(2)(f)

Fair Return Upon Investment

26. 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.

OAR 690-315-0040(2)(g)

Other Governmental Requirements

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

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

Unforeseen Events

28. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-16513, in that the permit holders were faced with medical issues concerning the contractor hired to install the meter resulting in the meter being installed after October 1, 2016, which restricted their ability to complete development of the project in a timely manner.

OAR 690-315-0040(2)(i)

Denial of the Extension Will Result in Undue Hardship

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

OAR 690-315-0040(2)(c)

Good Faith of the Appropriator

30. The Application provides evidence of good faith of the appropriator under Permit G-16513.

Based on FOF 6, 7, 9, 10, 11, 12, 14, 15, 17, and 23, 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.

31. As of March 3, 2017, the Application states the remaining work to be completed consists of applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2017, 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-16513 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).

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 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 6 through 30, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2017, 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. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).

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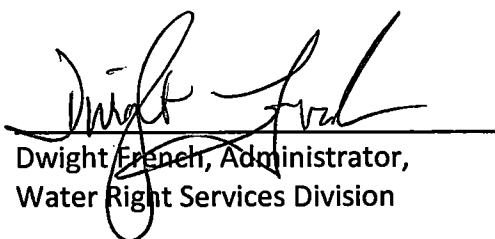
PROPOSED ORDER

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-16513 from October 1, 2016, to October 1, 2017.

Extend the time to apply water to beneficial use under Permit G-16513 from October 1, 2016, to October 1, 2017.

DATED: April 18, 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 **June 2, 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.

