

**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-11621, Water Right Application G-13178, in ) PROPOSED FINAL ORDER  
the name of Guide Dogs for the Blind, Inc. )

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Permit Information

Application: G-13178  
Permit: G-11621  
Basin: 2C – Lower Willamette / Watermaster District 20  
Date of Priority: November 9, 1992  
Source of Water: A well in the North Fork Deep Creek Basin  
Purpose or Use: Commercial use and irrigation of 17.5 acres  
Maximum Rate: 200 gallons per minute (gpm)

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***Please read this Proposed Final Order in its entirety.***

*In Summary, the Department proposes to:*

- Grant an extension of time to complete construction of the water system from October 1, 1995, to October 1, 2001.
  
- Grant an extension of time to apply water to full beneficial use from October 1, 1996, to October 1, 2001<sup>1</sup>.

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.

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<sup>1</sup>Pursuant 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

gpm – gallons per minute

Well 1 – CLAC 19430

FOF – Finding of Fact

bis – below land surface

## **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 October 7, 1993, Permit G-11621 was issued by the Department. The permit authorizes the use of up to 200 gpm of water from a well in the North Fork Deep Creek Basin for commercial use and irrigation of 17.5 acres. The permit specified actual construction of the well to begin by October 7, 1994, construction of the water system was to be completed by October 1, 1995, and complete application of water was to be made on or before October 1, 1996.
2. On March 20, 2017, on behalf of the permit holder, Michael C. Fryer, Director of Facilities for Guide Dogs for the Blind, Inc., submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to complete construction of the water system be extended from October 1, 1995, to October 1, 2001, and the time to apply water to full beneficial use under the terms and conditions of Permit G-11621

be extended from October 1, 1996, to October 1, 2001. This is the first permit extension requested for Permit G-11621.

3. On March 28, 2017, notification of the Application for Permit G-11621 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)]**

4. On March 20, 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)]**

5. Actual construction of the well began prior to the October 7, 1994 deadline specified in the permit. According to the permit holder, construction of CLAC 19430 (Well 1) began January 13, 1994.
6. According to the well log received by the Department on August 9, 1994, construction of Well 1 began January 13, 1994.

The Department has determined based on Finding of Fact (FOF) 5 and 6 that the prosecution of the construction of the well began prior to October 7, 1994.

#### **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 permit.<sup>2</sup>)

7. Actual construction of the well began prior to the October 7, 1994, deadline specified in the permit.
8. Work was accomplished during the original development time frame under Permit G-11621 is as follows:
  - Completed construction of Well 1; and
  - Completed installation of the water delivery system, which included installation of a pump in Well 1, a 60,000 gallon cistern, piping, a chlorination chamber, a meter, and booster pumps.

The Department has determined based on FOF 7 and 8, that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence towards the 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 permit conditions.*

9. On May 10, 1994, and December 7, 1994, the Department Groundwater section approved the permit holder's proposed water level measurement plan, which included the following:
  - A detailed outline to monitor and report groundwater levels from neighboring wells during construction of Well 1, that are open to each of the aquifers encountered during drilling, being the Upper Troutdale aquifer or the Lower Troutdale aquifer;
  - A plan to perform periodic static water level measurements within the permitted well; and
  - Spot checks of bagged geologic samples will be made and compared to the written geologic log maintained by the drilling contractor.

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<sup>2</sup> "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.

10. On July 7, 1994, a static water level measurement for Well 1 was submitted to the Department.
11. According to the well log received by the Department on August 9, 1994, Well 1 was constructed to a completed depth of 1493 feet below land surface (bls). Well 1 was cased from 2 feet above land surface to 1445 bls, and sealed with cement from land surface to 570 bls; bentonite slurry from 570 bls to 1100 bls; and cement from 1100 bls to 1445 bls.
12. The Application states a meter was installed on Well 1 in 1995.

The Department has determined, based on FOF 9 through 12 that the permit holder has demonstrated compliance with permit conditions as required by Permit G-11621:

- "Groundwater production shall be from an aquifer no shallower than 1100 feet below land surface";
  - "The applicant shall submit to the Water Resources Department:
    - (1) Water level data from each of the aquifers encountered during well construction;
    - (2) Drill cutting samples taken during well construction at an interval of every ten feet or at significant changes in material composition, whichever is more frequent.";
  - "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director";
  - "A static water level measurement shall be made and submitted before any use of water may commence from the well"; and
  - "The permittee shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well."
13. The following permit condition was not evaluated at this time:

"The source of water allowed herein is limited to a confined aquifer within the Columbia River Basalt geologic unit only."
  14. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: annual reports of the amount of water used each month have not been received by the Department by October 1, 1996.

15. Department records show annual water use reports have been submitted for water years 2000 through 2004, and 2014.

The Department has determined based on FOF 15, that the permit holder has demonstrated compliance with following permit conditions on Well 1 as required by Permit G-11621, 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 permit time limits.*

16. The Application states a maximum rate of 200 gpm of water has been appropriated from Well 1 for irrigation of 3.28 acres.

The Department has determined based on FOF 14 that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 1996.

**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 \$400,000, 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-11621.

**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-11621; 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-11621, located within the North Fork Deep Creek Basin, is within the Sandy-Boring Groundwater Limited Area. Groundwater from the shallow Troutdale aquifer and the specially designated portion of the deep Troutdale aquifer in the Sandy-Boring area is classified for exempt uses only. OAR 690-502-0170
20. North Fork Deep Creek is located above the Clackamas Scenic Waterway ORS 390.826 (3)(a).
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. North Fork Deep Creek 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.

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

**Economic interests dependent on completion of the project.**

23. The Application states an approximate total of \$400,000 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. The Application did not identify unforeseen events.

**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-11621.

Based on FOF 5 through 13, 15, 16, 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 20, 2017, the Application states the remaining work to be completed consists of applying water to full beneficial use, as all development is complete and compliance of conditions have been met.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2001, 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-11621 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 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 5 through 30, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2001, 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).

### 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-11621 from October 1, 1995, to October 1, 2001.

Extend the time to apply water to beneficial use under Permit G-11621 from October 1, 1996, to October 1, 2001.

DATED: May 2, 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 16, 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 Corey A Courchane at (503)986-0825.
  - 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  
Salem, OR 97301-1266  
Fax: 503-986-0901
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