



## **ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources

Application – Application for Extension of Time

PFO – Proposed Final Order

cfs – cubic feet per second

Agent – Hollie Cannon

Production Well 1 – (KLAM 14580/14570)

Production Well 2 – (KLAM 14581/14569)

Production Well 3 – (KLAM 55747/56949)

Well 4 – Re-injection Well

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.

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

## **FINDINGS OF FACT**

1. On June 11, 2009, Permit G-16514 was issued by the Department. The permit authorizes the use of up to 5.57 cfs of water from Production Well 1 (KLAM 14580/14570), Production Well 2 (KLAM 14581/14569), and Production Well 3 (KLAM 55747/56949) in Klamath Strait Basin for industrial use. 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. On May 10, 2017, on behalf of the permit holder, Hollie Cannon (Agent), agent for Liskey Farms, Inc., 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-16514 be extended from October 1, 2013, to October 1, 2042. This is the first permit extension requested for Permit G-16514.
3. On May 16, 2017, notification of the Application for Permit G-16514 was published in the Department's Public Notice. No public comments were received regarding the Application.
4. On June 8, 2017, the permit holder submitted an amendment to their Application. The amendment requested the extended time to complete construction of the water system be changed from October 1, 2042, to October 1, 2027, and the extended time to apply water to full beneficial use of the water system be changed from October 1, 2042, to October 1, 2027.

**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 May 10, 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 three production wells began prior to permit issuance. The permit holder states the following construction was accomplished:
  - Construction of KLAM 55747/56949 (Production Well 3) began December 15, 1954;
  - Construction of KLAM 14581/14569 (Production Well 2) began December 10, 1976; and
  - Construction of KLAM 14580/14570 (Production Well 1) began December 13, 1976.
7. According to the well log compiled by the Department on March 20, 2007, construction of Production Well 3 was completed December 15, 1954.
8. According to the well log received by the Department on December 20, 1976, construction of Production Well 2 began December 6, 1976.

9. According to the well log received by the Department on December 20, 1976, construction of Production Well 1 began December 13, 1976.

The Department has determined based on Finding of Fact (FOF) 6 through 9 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 permit.<sup>2</sup>)

10. Based on FOF 6 through 9, construction of the three production wells began prior to permit issuance.
11. Work was accomplished during the original development time frame under Permit G-16514 is as follows:
- Connected the water delivery system to all three production wells; and
  - Installed a flow meter on Production Well 3.
12. Since October 1, 2013, the permit holder has installed electric hour meters on Production Wells 1 and 2.

Based on FOF 10 and 11, the Department has determined that work has been accomplished prior to permit issuance and 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.

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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.

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

**Compliance with Conditions**

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

**Production Well 1, 2, and 3**

13. The Application states a totalizing flow meter was installed on Production Well 3 in 2012.
14. The Application states electric hour meters were installed on Production Well 1 and 2 in 2016. The permit holder has not submitted documentation from the Director approving those meters as "other suitable measuring devices."
15. Department records show March static water level measurements have been submitted for Production Wells 1, 2, and 3 for water years 2010, and 2012 through 2017.
16. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a totalizing flow meter or other suitable measuring device, as approved by the Director, has been installed on Production Wells 1 and 2, and (2) annual reports of the amount of water used each month under Permit G-16514 have not been received by the Department.

The Department has determined based on FOF 14 and 16, that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-16514:

- "Before water use may begin under this permit, the permittee shall install a totalizing flow meter, or other suitable measuring device as approved by the Director, at each production well and re-injection well. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director."

**Re-injection Well**

17. The Application states the permit holder has not begun construction of the Re-injection Well (Well 4).

Based on FOF 17, the Department has considered the permit holder's compliance with conditions, and has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-16514:

- "Before water use may begin under this permit, the permittee shall install a totalizing flow meter, or other suitable measuring device as approved by the Director, at each production well and re-injection well";

- “Prior to use of water under this permit, the permit holder must register the injection activity with the Oregon Department of Environmental Quality’s Underground Injection Control (UIC) Program”;
- “The system shall comply with OAR 690-230 (Standards and Procedures For Low-Temperature Geothermal Production and Injection Wells And Effluent Disposal Systems)”;
- “A completely closed plumbing system shall convey water from the three production wells to the re-injection well”;
- The re-injection well shall be constructed to return water to the same hydrogeologic unit which supplies the production wells”; and
- Re-injection at the re-injection well shall be concurrent with pumping of the production wells, and the volume and rate at the re-injection well shall be equal to the total rate and volume at the production wells.”

The Department recognizes that it is the intent of the permit holder to comply with all permit conditions at the time the conditions become applicable. 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.

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

**Beneficial Use of Water:** *the amount of beneficial use made of the water during the permit time limits.*

18. The Application states that no water has been appropriated from Production Well 1, Production Well 2, and Production Well 3, under Permit G-16514.
19. According to the permit holder, delay of full beneficial use of water under Permit G-16514 was due, in part, to the inability of the renewable power sales market to be profitable. Raser Power Systems, LLC will not exercise its option to build the geothermal power plant until a financially feasible contract for power sales is in place. The permit holder needs more time in which to obtain the full quantity of water allowed under the permit.

The Department has determined based on FOF 14, 16, 17, and 18 that beneficial use of water has not yet been demonstrated under this permit because no water has been appropriated, and not all permit conditions were satisfied by October 1, 2013.

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

**Financial Investments to Appropriate and Apply Water to a Beneficial Purpose**

20. The Application states an approximate total of \$106,072 has been invested. The Application included costs associated with repair and maintenance costs of a system

which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$99,372 which is about 34 percent of the total projected cost for complete development of this project. The Application states an additional \$195,000 investment is needed to complete this project, which includes construction of the Re-injection Well, installation of piping from the geothermal generator and greenhouses to the Re-injection Well, and installation of heat exchangers in greenhouses and fish ponds.

The Department has determined based on FOF 20, 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.*

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

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

21. 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-16514; 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).

22. The points of appropriation for Permit G-16514, located within the Lower Klamath Lake Basin, are not located within a limited or critical groundwater area.
23. Lower Klamath Lake is groundwater connected to the Klamath Scenic Water Way.
24. The points of appropriation are 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.

25. Lower Klamath Lake 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.

26. The Application states an approximate total of \$99,372 has been invested in the project.

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

Other economic interests dependent on completion of the project.

27. The Application states the re-injection of appropriated water is a wise practice in conservation of the groundwater resource, which will benefit other users of groundwater in the surrounding vicinity.
28. The Application states Well 4 will be installed by Raser Power Systems, LLC. It is projected that a favorable renewable energy sales contract will be available by 2025, which will enable the planning for the construction of Well 4 to begin.

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

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

29. The Application states that denial of the extension would result in continued use of water



authorized under Certificate 67664 (T-10327), which does not require re-injection. Development of Permit G-16514 would aid to conserve the groundwater source by re-injecting all of the water appropriated back into the aquifer.

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

30. 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***

31. 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***

32. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-16514, in that the permit holder was faced with a collapse of the renewable energy market 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***

33. The Application states a denial of the extension would not provide opportunity for conservation of the geothermal water through re-injection into the aquifer.

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

34. The Application provides evidence of good faith of the appropriator under Permit G-16514.

Based on FOF 6 through 11, 13, 15, 20, and 26, 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.***

35. As of May 10, 2017, the Application states the remaining work to be completed consists of completing construction of the water system, including construction of the Re-injection Well, installation of piping from the geothermal generator and greenhouses to

the Re-injection Well, and installation of heat exchangers in greenhouses and fish ponds; meeting all permit conditions, which include installation of totalizing flow meters, or other suitable measuring devices as approved by the Director on Production Well 1 and 2, submitting annual water use reports for Production Well 1, 2, and 3, and all conditions applicable to the Re-injection Well; and 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, 2027, 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-16514 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. Based on Findings of Facts 18, the Department determined the need to place a "Water Use 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 1 of the "Conditions" section of this PFO, was determined to be necessary because no beneficial use of water use under the terms and conditions of the permit has been made since permit issuance, being June 11, 2009.
2. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 2 of the "Conditions" section of this PFO to meet this condition.

## 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-16514 from October 1, 2013, to October 1, 2027.

Extend the time to apply water to beneficial use under Permit G-16514 from October 1, 2013, to October 1, 2027.

Subject to the following conditions:

### LIMITATIONS AND CONDITIONS

**1. Water Use Condition**

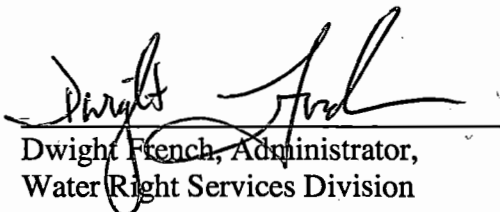
If no water is applied to beneficial use under the terms and conditions of Permit G-16514 on or before October 1, 2027, this shall be the last extension of time granted for Permit G-16514. In order to beneficially use water under Permit G-16514, the water appropriated from Production Well 1, 2, and 3 must be re-injected in Well 4.

**2. Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2022 and 2026. A form will be enclosed with your Final Order.**

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

DATED: June 27, 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.*

## **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 32, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2027, 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. OAR 690-315-0050(5).

**Continued on the following page**

### 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 **August 11, 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>

