

**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-16926, Water Right Application G-17514, in            )  
the name of Richard W. and Kathryn T. Harrington                )        **PROPOSED FINAL  
ORDER**

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Permit Information

Application:            G-17514  
Permit:                 G-16926  
Basin:                 15 – Rogue / Watermaster District 13  
Date of Priority:       December 9, 2011  
Source of Water:       Well 1 (JACK 2932/JACK 34376) and Well 2 in Hog Creek Basin  
Purpose or Use:        Irrigation of 40.0 acres  
Maximum Rate:         0.34 cubic foot per second (cfs)

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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 June 14, 2017, to October 1, 2022.
- Grant an extension of time to apply water to full beneficial use from June 14, 2017, to October 1, 2022<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

FOF – Finding of Fact

Well 1 – JACK 2932/JACK 34376

Well 2 – JACK 62568

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

## **FINDINGS OF FACT**

1. On June 14, 2012, Permit G-16926 was issued by the Department. The permit authorizes the use of up to 0.34 cfs of water from Well 1 (JACK 2932/JACK 34376) and Well 2 in Hog Creek Basin for irrigation of 40.0 acres. The permit specified completion of construction and application of the water was to be within five years of the date of permit issuance, being June 14, 2017.
2. On June 19, 2017, the permit holder, Richard W. Harrington, 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-16926 be extended from June 14, 2017, to October 1, 2022. This is the first permit extension requested for Permit G-16926.

3. On June 27, 2017, notification of the Application for Permit G-16926 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 June 19, 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. Construction of the well began prior to permit issuance. The permit holder states, construction of the well began January 17, 2017.
6. According to the well log received by the Department on August 30, 1968, construction of JACK 2932/JACK 34376 (Well 1), began August 27, 1968.
7. According to the well log received by the Department on February 6, 2017, construction of JACK 62926 (Well 2), began January 17, 2017.

Based on Finding of Fact (FOF) 5, 6, and 7, the Department has determined that the prosecution of the construction of the well began prior to June 14, 2017.

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

8. Construction of Well 1 began prior to permit issuance.
9. Work was accomplished during the original development time frame under Permit G-16926. The Application states that construction of Well 2 was completed on January 20, 2017, with the installation of an 8" casing and 6" PVC liner

Based on FOF 8 and 9, 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.

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

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

**Well 1**

10. The Department has considered the permit holder's compliance with conditions for Well 1, and did not identify any concerns.

Based on FOF 10, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-16926 for Well 1.

**Well 2**

11. The Department has considered the permit holder's compliance with conditions for Well 2, and has identified the following concerns, the record does not show that a meter or other suitable measuring device has been installed. 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.

Based on FOF 11, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-16926 for Well 2:

- "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 point of appropriation."

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.

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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.

**Beneficial Use of Water: OAR 690-315-0040(3)(b)**

*The amount of beneficial use made of the water during the permit time limits.*

**Well 1**

12. The Application states a maximum rate of 24 gallon per minute (0.05 cfs) of water has been appropriated from Well 1 for irrigation of 1.0 acre.

Based on FOF 12, beneficial use of water has been demonstrated from Well 1 under this permit as all permit conditions were satisfied by June 14, 2017.

**Well 2**

13. The Application states that no water has been appropriated from the Well 2.
14. According to the permit holder, delay of beneficial use of water from Well 2 under Permit G-16926 was due, in part, to encountering a blockage in the PVC liner during the installation of the pump.

Based on FOF 13 and 14, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water was appropriated and not all permit conditions were satisfied for Well 2 by June 14, 2017.

**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 \$25,274, which is approximately 40 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$38,364 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 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-16926.

**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-16926; 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-16926, located within the Rogue River Basin, are not located within a limited or critical groundwater area
18. Rogue River is above located r above the Rogue 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. Rogue River 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.

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

21. The Application states an approximate total of \$25,274 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. The Application identified that installation of the pump was delayed due to the unforeseen blockage in the PVC liner which, in part, prevented the water user from completing the construction of the water system.

**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-16926.

Based on FOF 5 through 15, 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 June 19, 2017, the Application states the remaining work to be completed consists of completing construction of the water system, which includes installation of a pump in Well 2, extending power service to the site, and installing buried and above ground irrigation pipe, valves and pressure tanks; meeting all permit conditions, which include installing a meter on Well 2 and submitting the remaining March static water level measurements on Well 1 and Well 2; 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, 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-16926 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 5 through 29, 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.
5. The applicant has demonstrated good cause for the extension.


## 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-16926 from June 14, 2017, to October 1, 2022.

Extend the time to apply water to beneficial use under Permit G-16926 from June 14, 2017, to October 1, 2022.

DATED: August 1, 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 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 **September 15, 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;

