

**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-16927, Water Right Application G-17488, in) PROPOSED FINAL
the name of Ryan Glaser; G Five LLC; Dennis Glaser and) ORDER
Mid Valley Farms, Inc.)

Permit Information

Application: G-17488
Permit: G-16927
Basin: 2B – Middle Willamette / Watermaster District 2
Date of Priority: September 14, 2011
Source of Water: Well 1, Well 2, Well 3, Well 4 (LINN 59840), Well 5, Well 6, and Well 7
in Lake Creek Basin
Purpose or Use: Irrigation of 884.5 acres
Maximum Rate: 3.0 cubic feet per second (cfs)

***Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.***

In Summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from 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, 2022¹.
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

¹Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

ACRONYM QUICK REFERENCE

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

Agent – Schroeder Law Offices, P.C.

Well 1 – LINN 61229

Well 4 – LINN 59840

Well 7 – LINN 61230

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 14, 2012, Permit G-16927 was issued by the Department. The permit authorizes the use of up to 3.0 cfs of water from Well 1, Well 2, Well 3, Well 4 (LINN 59840), Well 5, Well 6, and Well 7 in Lake Creek Basin for irrigation of 884.5 acres. The permit specified completion of construction and application of the water was to be made within five years of the date of permit issuance, being June 14, 2017.

2. On June 14, 2017, on behalf of the permit holder, Schroeder Law Offices, P.C. (Agent), agent for Ryan Glaser; G Five LLC; and Dennis Glaser and Mid Valley 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-16927 be extended from June 14, 2017, to October 1, 2022. This is the first permit extension requested for Permit G-16927.
3. On June 20, 2017, notification of the Application for Permit G-16927 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 14, 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 LINN 59840 (Well 4) began October 12, 2011.
6. According to the well log received by the Department on October 28, 2011, construction of Well 4 began October 12, 2011.

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 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.*

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

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

7. Construction of Well 4 began prior to permit issuance.
8. Work was accomplished during the original development time frame under Permit G-16927 is as follows:
 - Completed construction of LINN 61229 (Well 1) and LINN 61230 (Well 7);
 - Installed drives, pumps, and electrical on Well 1, Well 4, and Well 7;
 - Completed directional boring; and
 - Installed piping, drip tubing, and linear irrigation system.

The Department has determined, based on FOF 7 and 8, 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.

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

Compliance with Conditions

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

Well 4, Well 1, and Well 7

9. The Application states a totalizing flow meter was installed on Well 1, Well 4, and Well 7 between 2012 and 2015.
10. Department records show that annual water use reports have been submitted for water years 2012 through 2016, and March static water level measurements have been submitted for 2013 through 2017, for Well 4.
11. Department records show that annual water use reports have been submitted for water years 2012 through 2016, and March static water level measurements have been submitted for 2015 through 2017, for Well 1 and Well 7.
12. Department records show Well 1, Well 4, and Well 7 have been assigned Department Well Identification Numbers (Well ID tag), being Well 1 (L-112553), Well 4 (L-107773), and Well 7 (L-112554).

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 Department has determined, based on FOF 9 through 12, that the permit holder has demonstrated compliance with permit conditions for Well 1, Well 4, and Well 7, as required by Permit G-16927.

Well 2, Well 3, Well 5, and Well 6

13. The Application states the permit holder has not begun construction of Well 2, Well 3, Well 5, and Well 6.

Based on FOF 13, 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-16927:

- "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";
- "The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report water-use measurements to the Department annually or more frequently as may be required by the Director";
- "To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual, and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements"; and

- "Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well."

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.*

14. The Application states a combined maximum rate of 1,120 gpm (2.5 cfs) of water, being 400 gpm (0.9 cfs) from Well 1; 320 gpm (0.7 cfs) from Well 4; and 400 gpm (0.9 cfs) from Well 7, has been appropriated for irrigation of 448.3 acres.

The Department has determined based on FOF 9 through 12, and 14, that beneficial use of water has been demonstrated under this permit, because 2.5 cfs of water has been appropriated from Well 1, Well 4, and Well 7 on 448.3 acres.

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

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose

15. The Application states an approximate total of \$1,081,287 has been invested. The Application included costs associated with surveying and planting of crops 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 \$713,930 which is about 49 percent of the total projected cost for complete development of this project. The Application states an additional \$750,000 investment is needed to complete this project, which includes installing two more linear irrigation systems, mainline, piping, and drip tubing, and constructing one or two more wells to achieve the full rate authorized by the permit.

The Department has determined based on FOF 15, 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-16927.

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.

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-16927; 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).

17. The points of appropriation for Permit G-16927, located within the Calapooia River Basin, are not located within a limited or critical groundwater area.
18. Calapooia River is not located within or above any state or federal scenic waterway.
19. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

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.

20. Calapooia River is located within an area ranked “high” 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.

21. The Application identifies an approximate total of \$713,930 has been invested in the project.

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

Other economic interests dependent on completion of the project.

22. 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.

23. 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

24. The Application states that growing hazelnut trees requires large capital expenditures; however the permit holder will receive a large return on investment.

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

Other Governmental Requirements

25. 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

26. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-16927, in that the permit holders were faced with an insufficient yield of water from Well 1 and Well 7. The lack of production from Well 1 and Well 7 has made it necessary for additional wells to be constructed, 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

27. The Application states a denial of the extension would result in undue hardship. There have already been large capital expenditures to develop the current points of appropriation to provide the necessary water for irrigation use on the farm.

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

28. The Application provides evidence of good faith of the appropriator under Permit G-16927.

Based on FOF 5 through 12, 14, 15, and 21, 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 14, 2017, the Application states the remaining work to be completed consists of completing construction of the water system, including constructing one or two more wells, installing two more linear irrigation systems to cover the additional 436.2 acres authorized, and installing 6,000 feet of mainline; meeting all permit conditions on additional wells constructed; and applying water to full beneficial use on the remaining 436.2 acres.

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-16927 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(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 1 of the "Conditions" section

of this PFO to meet this condition.

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 28, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2022, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to mitigate the effects of the subsequent development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).

Continued on the following page

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-16927 from June 14, 2017, to October 1, 2022.

Extend the time to apply water to beneficial use under Permit G-16927 from June 14, 2017, to October 1, 2022.

Subject to the following conditions:

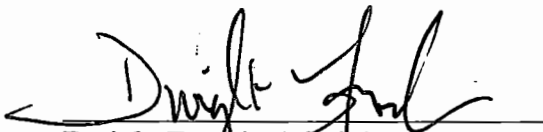
LIMITATIONS AND CONDITIONS

1. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2021**. *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: August 8, 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 22, 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
Fax: 503-986-0901 Salem, OR 97301-1266
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