

**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-16956, Water Right Application G-17536, in) **PROPOSED FINAL**
the name of Homer and Jeannette Harrison) **ORDER**

Permit Information

Application: G-17536
Permit: G-16956
Basin: 6 – John Day / Watermaster District 4
Date of Priority: February 15, 2012
Source of Water: Well 1 and Well 2 (GRAN 50081) in Dry Creek Basin
Maximum Rate: 0.97 cubic feet per second (cfs) of water, further limited as follows:

Purpose or Use	Maximum Rate	Period of Use
Primary Irrigation of 16.03 acres	0.20 cfs	3/1 – 10/31
Primary Irrigation of 61.87 acres	0.77 cfs	3/1 – 3/31 and 10/1 – 10/31
Supplemental Irrigation of 61.87 acres	0.77 cfs	4/1 – 9/30

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 September 6, 2017, to October 1, 2019.
- Grant an extension of time to apply water to full beneficial use from September 6, 2017, to October 1, 2019¹.

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

FOF – Finding of Fact

PFO – Proposed Final Order

Well 1 – GRAN 51189

Well 2 – GRAN 50081

cfs – cubic feet 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 September 6, 2012, Permit G-16956 was issued by the Department. The permit authorizes the use of up to 0.97 cfs of water, further limited as: 0.20 cfs for primary irrigation of 16.03 acres during the period of March 1 through October 31; 0.77 cfs for primary irrigation of 61.87 acres during the period of March 1 through March 31 and October 1 through October 31; and 0.77 cfs for supplemental irrigation of 61.87 acres during the period of April 1 through September 30 from Well 1 and Well 2 (GRAN 50081) in Dry Creek Basin. The permit specified construction of the water system was to be completed by September 6, 2017, and complete application of water was to be made on or before September 6, 2017.
2. On August 4, 2017, the permit holders, Homer and Jeannette Harrison, 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-16956 be extended from September 6, 2017, to October 1, 2019. This is the first permit extension requested for Permit G-16956.

3. On August 15, 2017, notification of the Application for Permit G-16956 was published in the Department's Public Notice. No public comments were received regarding the Application.
4. On August 28, 2017, the permit holder submitted additional information to supplement their Application. The additional information was to clarify the rate of water used from GRAN 50081(Well 2) and to update the rate of water used from GRAN 51189 (Well 1).

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 August 4, 2017, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction OAR 690-315-0040(1)(b) and 690-315-0040(5)

6. Construction of the well began prior to permit issuance. The permit holder states construction began March 26, 2013.
7. On October 31, 1996, the Department received a well log for Well 2 indicating construction of began October 9, 1996.

Based on Finding of Fact (FOF) 7, the Department has determined that the prosecution of the construction of the well began prior to September 6, 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.²

8. Construction of the Well 2 began prior to permit issuance.
9. Work was accomplished during the original development time frame under Permit G-16956 is as follows:
 - installed a meter on Well 2;
 - completed construction on Well 1;
 - installed variable frequency drive pump in Well 1; and
 - installed mainline and hand-lines.

Based on FOF 6, 7, 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 2

10. The Department has considered the permit holder's compliance with conditions for Well 1, and has identified the following concern; the record does not show that a meter 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 10, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-16956 for Well 1:

- "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."

Well 1

11. The Department has considered the permit holder's compliance with conditions on Well 2, and did not identify any concerns.

Based on FOF 11, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-16956 for Well 2

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.

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.

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

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

12. As of August 29, 2017, the maximum rate of 663.0 gallons per minute (gpm) (1.47 cfs) of water has been appropriated, being 613 gpm (1.36 cfs) from Well 1, and 50 gpm (0.11 cfs) from Well 2 for primary irrigation of 21.5 acres, of which 19.5 acres is also developed as supplemental irrigation. This exceeds the amount of water for irrigation and supplemental irrigation use authorized under this permit. The authorized amount of water is 0.97 cfs for primary irrigation use and 0.77 cfs for supplemental irrigation use.

Based on FOF 11 and 12, the Department has determined that beneficial use of water from Well 2 has been demonstrated under this permit as all permit conditions were satisfied by September 6, 2017.

Based on FOF 10, the Department has determined that beneficial use of water from Well 1 has not yet been demonstrated under this permit because not all permit conditions were satisfied by September 6, 2017.

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose OAR 690-315-0040(2)(b),(3)(d),(4)(d)

13. The investment to date is approximately \$147,510, which is the total cost for complete development. 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 \$126,459 which is about 95 percent of the total projected cost for complete development of this project. An additional \$6,400 investment is needed to complete this project, which includes construction of additional mainline and installation of additional wheel lines.

Based on FOF 13, 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 for Well 2, a financial investment has been made, and; beneficial use of water has been demonstrated from Well 2. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-16956.

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)

14. 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-16956; 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)

15. The points of appropriation for Permit G-16956, located within the Dry Creek Basin, are not located within a limited or critical groundwater area.
16. Dry Creek is located above the John Day Scenic Waterway.
17. 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)

18. Dry Creek 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.

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

19. An approximate total of \$126,459 has been invested in the project.

Other economic interests dependent on completion of the project OAR 690-315-0040(4)(e)

20. The Application identifies economic interests other than those of the applicant's that may be dependent on completion of the project in that local community members who rely on the fresh produce from the commercial garden would need to travel an additional three hours to obtain the vegetables they need.

Other factors relevant to the determination of the market and present demand for water and power OAR 690-315-0040(4)(f)

21. 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)

22. The Application did identify that the use and income from the permitted water development will likely result in reasonable returns upon the investment made to date. The permit holder anticipates an income of \$5,000 to \$7,000 annually from the sale of produce, and the ability to produce hay for their cattle and for sale with an additional \$20,000 in income annually.

Other Governmental Requirements OAR 690-315-0040(2)(g)

23. 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)

24. The Application did not identify unforeseen events.

Denial of the Extension Will Result in Undue Hardship OAR 690-315-0040(2)(i)

25. The Application did state a denial of the extension would result in undue hardship, in that without the use of water from the wells for the irrigation of their commercial garden they would lose the ability to generate additional income from the sale of produce, and the loss of supplemental irrigation would severally impact their ability to produce hay for their cattle when their primary surface water source is regulated off.

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

26. The Application provides evidence of good faith of the appropriator under Permit G-16956.

Based on FOF 6 through 10 and 12, 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.

27. As of August 4, 2017, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, which include installing a totalizing flow meter on Well 1; and applying water to full beneficial use on the remaining 56.4 acres.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2019, 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-16956 is both reasonable and necessary.

Good Cause OAR 690-315-0040(1)(d)

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

CONCLUSIONS OF LAW

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant has complied with the construction timeline requirements to begin construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

3. Based on Finding of Facts 6 through 27, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2019, 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.

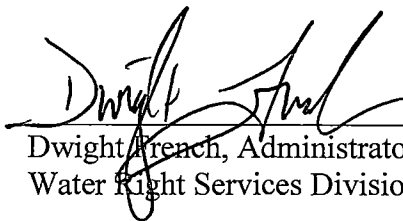
PROPOSED ORDER

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-16956 from September 6, 2017, to October 1, 2019.

Extend the time to apply water to beneficial use under Permit G-16956 from September 6, 2017, to October 1, 2019.

DATED: September 19, 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 **November 3, 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;

