

**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-16929, Water Right Application G-14838, in)	PROPOSED
the name of Western AgCredit, FLCA and Paul J. Proudfoot)	FINAL
and Susan A. Proudfoot, Jason Proudfoot, and Megan L.)	ORDER
Patton)	

Permit Information

Application:	G-14838
Permit:	G-16929
Basin:	7 – Umatilla / Watermaster District 5
Date of Priority:	September 17, 1998
Source of Water:	Four wells in Willow Creek Basin
Purpose or Use:	Irrigation of 1,159.8 acres
Maximum Rate:	8.91 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 apply water to full beneficial use from October 1, 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

Applicants - Jason G. Proudfoot, representing Paul J. and Susan A. Proudfoot,
and Megan L. Patton

PFO – Proposed Final Order

cfs – cubic feet per second

gpm – gallons per minute

North Well – MORR 50765 / MORR 50841 / MORR 51092

South Well – MORR 50818

New Well - 51827

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(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

FINDINGS OF FACT

1. On September 30, 1999, Permit G-13735 was issued to Monty Crum by the Department. The permit authorizes the use of up to 8.91 cfs of water from a well in Willow Creek Basin for irrigation of 1,159.8 acres. The permit specified actual construction of the well to begin by September 30, 2000, and complete application of water was to be made on or before October 1, 2003.

2. On January 3, 2002, the Department approved Permit Amendment T-8625 (Special Order Volume 56, Page 6) authorizing an additional point of appropriation under Permit G-13735 (modified by Permit Amendment T-8625) which is hereafter referred to simply as Permit G-13735.
3. One prior permit extension has been granted for Permit G-13735. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2003, to October 1, 2017.
4. On September 24, 2012, the Department approved Permit Amendment T-11122 (Special Order Volume 88, Page 581) authorizing two additional points of appropriation. A superseding Permit G-16929 was issued by the Department to describe an amendment for additional points of appropriation proposed under Permit Amendment Applications T-8625 and T-11122; and the Extension of Time to complete application of water approved on July 12, 2007.
5. On March 28, 2017, an assignment from Monty Crum to Western AgCredit, FLCA; Paul Proudfoot and Susan A. Proudfoot; Jason G. Proudfoot; and Megan L. Patton was recorded in the records of the Water Resources Department.
6. On September 7, 2017, Jason G. Proudfoot, representing Paul J. and Susan A. Proudfoot, and Megan L. Patton (Applicants), submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-16929 be extended from October 1, 2017, to October 1, 2022.
7. On September 19, 2017, notification of the Application for Permit G-16929 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)

8. On September 7, 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)

9. Actual construction of the well began prior to the September 30, 2000, deadline specified in the permit.
10. On July 28, 2000, the Department received a well log indicating construction MORR 50765 of began July 10, 2000.

Based on Finding of Fact (FOF) 9 and 10, the Department has determined that the prosecution of the construction of the well began prior to September 30, 2000, as required under Permit G-13735.

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 and previous extension.²

11. Work was accomplished during the original development time frame under Permit G-16929 is as follows:

- constructed MORR 50765;
- deepened MORR 50765 under MORR 50841 and MORR 51092, hereafter referred to as North Well;
- constructed MORR 50818 (South Well); and
- installed two circle pivots.

12. During the most recent extension period, being from October 1, 2003, to October 1, 2017, the following was accomplished:

- established electrical service to North Well;
- installed a variable drive electric motor in South Well;
- constructed MORR 51827 (New Well);
- established power to New Well; and
- installed a third circle pivot.

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.

Based on FOF 9 through 12, the Department has determined that work has been accomplished during the original permit development time frame and during the last extension period, 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.

North Well and South Well

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

Based on FOF 13, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-16929 for North Well and South Well.

New Well

14. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns, annual reports of the amount of water used each month from New Well have not been received by the Department.

Based on FOF 14, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-16929 for New Well:

- "The permittee 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."

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.

15. As of September 7, 2017, the maximum rate of 2,100 gallons per minute (gpm) (4.68 cfs) of water has been appropriated, being 800 gpm (1.78 cfs) from North Well, 800 gpm (1.78 cfs) from South Well, and 500 gpm (1.11 cfs) from New Well, all for irrigation of 360.0 acres.
16. Delay of full beneficial use of water under Permit G-16929 was due, in part, to the previous land owner not providing information necessary to make the Applicants aware of the need to complete the permit conditions and the wells producing less water than anticipated. The Applicants needs more time in which to construct the final additional point of appropriation if necessary, to obtain the quantity of water allowed under the permit.

Based on FOF 13, the Department has determined that beneficial use of water from North Well and South Well has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2017.

Based on FOF 14, the Department has determined that beneficial use of water from New Well has not yet been demonstrated as not all permit conditions were satisfied by October 1, 2017.

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

17. The investment to date is about \$657,000, which is approximately 86 percent of the total projected cost for complete development of this project. An additional \$110,000 investment is needed for the completion of this project.

Based on FOF 17, 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-16929.

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)

18. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-16929; 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)

19. The points of appropriation for Permit G-16929, located within the Willow Creek Basin, are not located within a limited or critical groundwater area.
20. Willow Creek is not located within or above any state or federal scenic waterway.
21. 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)

22. Willow Creek 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.

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

23. An approximate total of \$657,000 has been invested in the project.

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

24. The Application did identify economic interests other than those of the applicant’s that may be dependent on completion of the project. The Applicants state the mortgage holder has interest in the Extension of Time being approved.

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

25. 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)

26. 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.

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

27. 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)

28. The Application did not identify unforeseen events.

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

29. The Application did state a denial of the extension would result in undue hardship. The Applicants acquired the property believing all conditions had been met and would lose the ability to irrigate the 360 acres they intend to utilize under this permit.

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

30. The Application provides evidence of good faith of the appropriator under Permit G-16929.

Based on FOF 9, 10, 11, 12, 14, 16, and 22, the Department has determined that the applicant has shown good faith and reasonable diligence.

Duration of Extension OAR 690-315-0040(1)(c)

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

31. As of September 7, 2017, the remaining work to be completed consists of completing construction of the final additional point of appropriation if necessary, meeting all permit conditions, which include continuing to submit annual static water level measurements and annual water use reports; 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 accomplish the application of water to beneficial use under the terms and conditions of Permit G-16929 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 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. The Department determined the need to place a “Last Extension Condition” on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary due to the eighteen year lapse of time since issuance of the original permit on September 30, 1999.

CONCLUSIONS OF LAW

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant has complied with the construction timeline requirements to begin actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 9 through 29, 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, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

continued on 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 apply water to beneficial use under Permit G-16929 from October 1, 2017, to October 1, 2022.

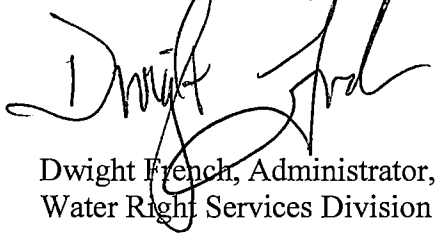
Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. **Last Extension Condition**

This is to be the last extension of time granted for Permit G-16929. Any future extensions of time requests shall be denied.

DATED: October 24, 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 **December 8, 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;

