

**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-16358 (modified by Permit Amendment) PROPOSED FINAL
T-10850), Water Right Application G-16938, in the name of) ORDER
Inman Ranch LLC)

Permit Information

Application: G-16938
Permit: G-16358 (modified by Permit Amendment T-10850)
Basin: 9 – Powder / Watermaster District 8
Date of Priority: September 27, 2007
Source of Water: Well 1, Well 2, Well 3, and Well 4 in Powder River Basin
Purpose or Use: Supplemental irrigation use on 394.7 acres
Maximum Rate: 4.93 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 October 1, 2012, to October 1, 2027.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012, to October 1, 2027¹.
- 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(5), 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

POA – point of appropriation

Well 1 – BAKE 51903

Well 2 – BAKE 51952

Well 3 – BAKE 51965

FOF – Finding of Fact

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(2) 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.

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 July 18, 2008, Permit G-16358 was issued by the Department. The permit authorizes the use of up to 4.93 cfs of water from Well 1 and Well 2 in Powder River Basin for supplemental irrigation use on 394.7 acres. The permit specified completion of construction and complete application of the water to the use was to be made on or before October 1, 2012.
2. On October 9, 2009, the Department approved Permit Amendment T-10850 (Special Order Volume 79, Page 35) authorizing additional points of appropriation (POA) under Permit G-16358 (modified by Permit Amendment T-10850) which is hereafter referred to simply as Permit G-16358.
3. On February 1, 2017, the permit holder, Joyce Inman, owner of Inman Ranch LLC, 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-16358 be extended from October 1, 2012, to October 1, 2027. This is the first permit extension requested for Permit G-16358.
4. On February 7, 2017, notification of the Application for Permit G-16358 was published in the Department's Public Notice. No public comments were received regarding the Application.
5. On February 9, 2017, the permit holder submitted additional information to supplement their Application. The additional information provided was to make findings on the Market and Present Demands.

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)]

6. On February 1, 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)]

7. Construction of the well began prior to October 1, 2012, as specified in the permit as being the date to apply water to full beneficial use.
8. According to the well log received by the Department on September 18, 2008, construction of BAKE 51903 (Well 1) began September 4, 2008.

Based on Finding of Fact (FOF) 7 and 8, the Department has determined that the prosecution of the construction of the well began prior to October 1, 2012.

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

9. Construction of Well 1 began prior to the deadline specified in the permit.
10. Work was accomplished during the original development time frame under Permit G-16358 is as follows:
 - Completed construction of Well 1;
 - Completed construction of BAKE 51952 (Well 2); and
 - Completed construction of BAKE 51965 (Well 3).
11. No other work has been accomplished since October 1, 2012.

Based on FOF 8, 9, and 10, 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.

12. On January 16, 2018, the Department Groundwater Section conducted a review of well construction for Well 1, Well 2, and Well 3. The review identified Well 1 and Well 3 develops water from the alluvial aquifer, and there is no record of well reconstruction.

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.

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a totalizing flow meter or other suitable measuring device has been installed at each POA, (2) the required March static water level measurements have not been received by the Department, and (3) the record does not show that the well conditions specified in the permit have not been satisfied for Well 1 and Well 3.

Based on FOF 12 and 13, the Department has determined that the permit holder has not demonstrated compliance with the following permit conditions as required by Permit G-16358:

- “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 Department requires the water user to obtain, from a qualified individual, and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement”; and
- “The well(s) shall be continuously cased and continuously sealed to a minimum depth of 20 feet into competent bedrock, estimated to be up to 150 feet below land surface. The well(s) may not be completed in such a manner to allow ground water to be developed from the overlying alluvial aquifer.”

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.

14. No water has been appropriated from Well 1, Well 2, or Well 3 for supplemental irrigation.
15. Delay of full beneficial use of water under Permit G-16358 was due, in part, to insufficient yield of water from Wells 1, 2, and 3. The permit holder needs more time in which to obtain the full quantity of water allowed under the permit.

Based on FOF 12 and 13, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2012.

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

16. The Application states the permit holder has invested about \$100,000, which is approximately 49 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$104,000 investment is needed for the

completion of this project.

Based on FOF 16, 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 of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

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

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

17. 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-16358; 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).

18. The points of appropriation for Permit G-16358, located within the Powder River Basin, are not located within a limited or critical groundwater area.
19. Powder River is not located within or above any state or federal scenic waterway.
20. 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.

21. Powder 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.

22. The Application states an approximate total of \$100,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

23. 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.

24. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 2 of the “Limitations and Conditions” section of this PFO to meet this condition.

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

25. The Application identified 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)]

26. 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)]

27. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-16358, in that the ranch manager and another joint owner had passed away before completing plans for additional wells. The heirs of the property were unaware of the permit deadlines, which restricted their ability to complete development of the project in a timely manner.

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

28. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs. The permit holder has been told to turn the pump off early in the irrigation season, being June 2014 and 2015, and May 2016, as the permit holder has a junior priority date. The permit holder was only able to get 1 cut of hay in the three year period, and the inability to irrigate would create an extreme financial difficulty for the family business. The permit holder has other permits for use of surface water from sources such as North Powder River, Powder River, and Warm Springs Creek. During drought years, the permit holder is asked to withdraw from using water from these sources due to having a more junior priority date, and is the last to receive water on the ditch system when water runs out early.

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

29. The Application provides evidence of good faith of the appropriator under Permit G-16358.

Based on FOF 7, 8, 9, 10, 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.

30. As of February 1, 2017, the Application states the remaining work to be completed consists of completing construction of the water system, which includes constructing Well 4, installing a pump, and 2000 feet of 12 inch PVC pipe; meeting all permit conditions, which includes installing a totalizing flow meter on each POA, submitting annual water use reports, and March static water level measurements; and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2027, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-16358 is both reasonable and necessary.

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

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

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

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence. Based on Findings of Fact 12, the Department determined the need to place a “Well Construction Condition” on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary because construction of Well 1 and Well 3 do not satisfy the well construction conditions as required by Permit G-16358.
2. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on FOF 12, 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 2 of the “Conditions” section of this PFO, was determined to be necessary due to non-compliance with terms and conditions of the permit.
3. 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 3 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 7 through 29, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2027, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to mitigate the effects of the subsequent development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

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-16358 from October 1, 2012, to October 1, 2027.

Extend the time to apply water to beneficial use under Permit G-16358 from October 1, 2012, to October 1, 2027.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. **Well Construction Condition**

The use of any water from BAKE 51903 (Well 1) and BAKE 51965 (Well 3) under Permit G-16358 is subject to this Groundwater Condition.

No water shall be appropriated from BAKE 51903 (Well 1) and BAKE 51965 (Well 3) under Permit G-16358 until they have been reconstructed to meet the conditions contained in Permit G-16358. The permit holder must submit proof of compliance that the wells authorized under this permit or by permit amendment are in compliance with the conditions of; "The well(s) shall be continuously cased and continuously sealed to a minimum depth of 20 feet into competent bedrock, estimated to be up to 150 feet below land surface. The well(s) may not be completed in such a manner to allow ground water to be developed from the overlying alluvial aquifer."

2. **Last Extension Condition**

This may be the last extension of time granted for Permit G-16358. Any future extensions of time request may be denied, unless the permit holder can provide the Department with evidence that the well construction conditions have been satisfied for Well 1 and Well 3. In addition, all normal extension standards and rules will be evaluated. ORS 539.010(5); OAR 690-315-0040.

3. **Checkpoint Condition**


The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2021 and 2026. A form will be enclosed with your Final Order.**

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on

the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: January 30, 2018


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(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **March 16, 2018**, 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.

