

**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-17708, Water Right Application G-15315, in) **PROPOSED FINAL**
the name of Lee Sukraw) **ORDER**

Permit Information

Application: G-15315
Permit: G-17708
Basin: 14 – Klamath / Watermaster District 17
Date of Priority: March 9, 2001
Source of Water: Nine wells in Klamath River Basin
Purpose or Use: Supplemental irrigation of 1166.59 acres
Maximum Rate: 14.58 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(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
gpm – gallons per minute
FOF – Finding of Fact
POU – place of use
BOR – Bureau of Reclamation

WELL ID QUICK REFERENCE

Well 5 – KLAM 14559
Well 7 – KLAM 53732
Well 8 – KLAM 53142
Well 9 – KLAM 59347

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.

FINDINGS OF FACT

1. On March 13, 2003, Permit G-13560 was issued by the Department. The permit authorized the use of up to 14.58 cfs of water from eight wells in Klamath River Basin for supplemental irrigation of 1166.59 acres. The permit specified complete application of water was to be made on or before October 1, 2007.

2. One prior permit extension has been granted for Permit G-13560. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2007, to October 1, 2017.
3. On October 21, 2016, the Department approved Permit Amendment T-12319 (Special Order Volume 103, Page 329) authorizing an additional point of appropriation under Permit G-15360. Superseding Permit G-17641 was issued by the Department on October 21, 2016, to reflect the changes.
4. On December 7, 2016, a correcting order was issued (Special Order Volume 103, Page 552) and Superseding Permit G-17708 was issued by the Department to correctly describe an amendment for an additional point of appropriation, and to describe an extension of time for complete application of water approved September 15, 2009. The permit authorizes the use of up to 14.58 cfs of water from nine wells in Klamath River Basin for supplemental irrigation of 1166.59 acres. The permit specified complete application of water was to be made on or before October 1, 2007, and by extension of Time Final Order dated September 15, 2009, the deadline for complete application of water to use was extended to October 1, 2017.
5. On October 6, 2017, the permit holder, Lee Sukraw, 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-17708 be extended from October 1, 2017, to October 1, 2022.
6. On October 10, 2017, notification of the Application for Permit G-17708 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)]

7. On October 6, 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)]

8. Construction of the well began prior to permit issuance.
9. According to the well log received by the Department on November 10, 1965, construction of KLAM 14559 (Well 5) began September 16, 1965.

Based on Finding of Fact (FOF) 8 and 9, the Department has determined that the prosecution of the construction of Well 5 began prior to October 1, 2007.

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 previous extension.²

10. During the most recent extension period, being from October 1, 2007, to October 1, 2017, the following was accomplished:
- completed construction of KLAM 59347 (Well 9) and installed a pump;
 - installed a variable rate irrigation system on a pivot; and
 - installed a linear irrigation system.

Based on FOF 10, the Department has determined that work has been accomplished 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 previous extension conditions.

KLAM 53732 (Well 7) and KLAM 53142 (Well 8)

11. The Department has considered the permit holder’s compliance with conditions, and did not identify any concerns for Well 7 and Well 8.

Based on FOF 11, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-17708 for Well 7 and Well 8.

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.

Well 5

12. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: annual reports of the amount of water used each month from Well 5 have not been received by the Department.

Based on FOF 12, the Department has determined the permit holder has not demonstrated compliance with the following condition for Well 5:

- "The permittee shall maintain the meter or measuring device in good working order, 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"

Well 9

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: the required March static water level measurements of Well 9 have not been received by the Department.

Based on FOF 13, the Department has determined the permit holder has not demonstrated compliance with the following condition for Well 9:

- "To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make 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."

Well 1, Well 2, Well 3, Well 4, and Well 6

14. 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 meter or other suitable measuring device has been installed, (2) the required March static water level measurements have not been received by the Department, and (3) annual reports of the amount of water used each month have not been received by the Department.
15. As of October 6, 2017, Well 1, 2, 3, 4, and 6 have not been constructed.

Based on FOF 14, the Department has determined that the permit holder has not demonstrated compliance with any permit conditions as required by Permit G-17708 for Well 1, Well 2, Well 3, Well 4, and Well 6. 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.

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

The amount of beneficial use made of the water during the previous extension conditions.

16. The combined production capacity of the wells used to date under this permit is 14,000 gpm (31.19 cfs) of water, being 5,000 gpm (11.14 cfs) from Well 7, 5,000 gpm (11.14 cfs) from Well 8, and 4,000 gpm (8.91 cfs) from Well 9. A maximum combined rate of 14.58 cfs of water has been appropriated from varying combinations of these wells for supplemental irrigation of 1,166.59 acres.
17. Water is not currently being appropriated from Well 5.
18. Delay of full beneficial use of water under Permit G-17708 was due, in part to:
 - The market for the products produced on the farm had a downturn which left less money to expand; and
 - Wells 7 and Well 8 are located six miles from the permit holder's place of use (POU), leaving him to use the Bureau of Reclamation (BOR) canal system to transport the water to his POU. There are water level concerns in the area of Wells 7 and 8, which have caused the permit holder to explore for capacity to replace the wells and cease transporting through the BOR system. The permit holder needs more time in which to construct the remaining points of appropriation to obtain the full quantity of water allowed under the permit.

Based on FOF 11 and 16, the Department has determined that beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied on Well 7 and Well 8 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)]

19. An investment of \$321,000, which is approximately 46 percent of the total projected cost for complete development of this project. An additional \$380,000 investment is needed for the completion of this project.

Based on FOF 19, 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 on Well 7 and Well 8, a financial investment has been made, and; beneficial use of water has been demonstrated from Well 7 and Well 8. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-17708.

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.

20. 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-17708; 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).

21. The points of appropriation for Permit G-17708, located within the Lower Klamath Lake Basin, are not located within a limited or critical groundwater area.
22. Lower Klamath Lake is groundwater connected to the Klamath Scenic Water Way.
23. 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:

24. Lower Klamath Lake 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.

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

Economic interests dependent on completion of the project.

25. An approximate total of \$321,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

26. There are no other economic interests dependent on completion of the project identified.

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

Other factors relevant to the determination of the market and present demand for water and power.

27. 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)]

28. 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)]

29. Delay in the development of this project was not caused by any other governmental requirements.

Unforeseen Events [OAR 690-315-0040(2)(h)]

30. No unforeseen events have been identified.

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

31. A denial of the extension would result in undue hardship as the primary irrigation rights are regulated often, and the wells authorized under this permit are necessary to supplement water late in the season, and represent the only other reasonable supply of water available in the area.

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

32. The Application provides evidence of good faith of the appropriator under Permit G-17708.

Based on FOF 8 through 11, 16, 19, and 25, 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.

33. As of October 6, 2017, the remaining work to be completed consists of installing additional linear irrigation equipment and developing the remaining wells; meeting all permit conditions, which includes submitting annual water use report 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, 2022, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-17708 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).

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 8 through 32, 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. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).

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-17708 from October 1, 2017, to October 1, 2022.

DATED: June 5, 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 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 **July 20, 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;

