

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #G-12743, Water Right) PROPOSED FINAL
Application #G-13785) ORDER
(Bob G. McCoy))

Permit Information

Application File #G-13785 / Permit #G-12743

Basin: #05 - Deschutes Basin / Watermaster District: #11

Date of Priority: August 15, 1994

Authorized Use of Water

Source of Water: One Well in the Deschutes River Basin

Purpose or Use: Irrigation of 10.82 acres

Maximum Rate: 0.138 cubic foot per second (cfs)

**This Extension of Time request is being processed in accordance
with Oregon Administrative Rule Chapter 690, Division 320.**

Please read this Proposed Final Order in its entirety.

This Proposed Final Order applies only to Permit #G-12743, water right Application #G-13785. A copy of Permit #G-12743 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1998, to October 1, 2001; and
- grant the extension for complete application of water from October 1, 1999, to October 1, 2001.

AUTHORITY

ORS 537.230 and ORS 537.630(1) provide in pertinent part that the Water Resources Department shall, for good cause shown, order an extension of time within which: irrigation or other works shall be completed; the well or other means of developing and securing ground water 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).

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-320-0010(6) provides in pertinent part that the Water Resources Department may extend the time limits to complete construction or to apply the water to a beneficial use upon showing of good cause for the untimely completion.

FINDINGS OF FACT

Background

1. Permit #G-12743 was granted by the Water Resources Department on August 28, 1996. The permit authorizes the use of up to 0.138 cfs of water from one well, within the Deschutes River Basin, for irrigation of 10.82 acres. It specified that construction of the water development project should be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. The permit holder submitted an "Application for Extension of Time" to the Department on September 28, 2000, requesting the time in which to complete construction of the water system be extended from October 1, 1998, to October 1, 2001, and the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-12743 be extended from October 1, 1999, to October 1, 2001. This is the first extension of time request for Permit #G-12743.

Review Criteria *[OAR 690-320-0010(6)]*

As set forth under OAR 690-320-0010(6), the time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. The good cause determination shall consider the requirements of ORS 537.230, 537.248¹, 537.630 and 539.010(5).

Other Governmental Requirements *[ORS 537.230(2)]*

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

Start of Construction *[ORS 537.630]*

4. Construction of the well and water system began within the time specified in the permit, being August 28, 1997.

¹ ORS 537.248 applies to reservoir permits only.

Financial Investment [ORS 539.010(5)]

5. As of September 28, 2000, the permit holder had invested a total of \$20,000 into the project, consisting of complete construction of the well, installation of the pump, the establishment of electrical power to the pump, installation of a meter, and the installation of an underground distribution system with risers. An additional \$5,000 investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1) and 539.010(5)]

6. On or prior to October 1, 1999, the following had occurred: construction of the well was completed; the pump was installed; electrical power was established to the site; a meter was installed; and an underground distribution system with risers was installed.
7. As of September 28, 2000, the permit holder had appropriated 0.11 cfs of water from the well for the irrigation of 9.0 acres of land.
8. Delay of full beneficial use of water was due, in part, to the permit holder being able to work on the project only as cash flow and free time became available. Additionally, the increasing cost of water distribution equipment further delayed completion of the project.

The Market and Present Demands for Water [ORS 539.010(5)]

9. The permit holder does not hold any other water rights in addition to Permit #G-12743.
10. Permit #G-12743 has a priority date of August 15, 1994, and is junior to instream water rights located on the Deschutes River.
11. Permit #G-12743 was issued on August 28, 1996, and is subject to regulation or mitigation for scenic waterway flows in the Deschutes Basin and the Water Resources Commission Deschutes Mitigation Program (ORS 390.835(9) and OAR Chapter 690, Division 505).
12. Because there are no other reasonable alternative sources of water, such as surface water rights from the Deschutes River, a demand exists for the use of water under Permit #G-12743.

Fair Return Upon Investment [ORS 539.010(5)]

13. Use and income from the permitted water development will result in reasonable returns against the investment made in the project to date.

Duration of Extension [OAR 690-320-0010(7), ORS 539.010(5)]

14. As of September 28, 2000, the remaining work to be completed consists of completion of construction and complete application of water to beneficial use.
15. Work and financial issues extended the length of time needed to fully develop and perfect Permit #G-12743, caused mainly by the permit holder being able to work on the project only as cash flow and free time became available. The increasing cost of water distribution equipment also contributed to the delayed completion of the project.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230 and ORS 537.630.
2. The applicant has submitted an extension application form and the fee required by ORS 536.050(1)(k).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. Permit #G-12743 is junior to instream water rights located on the Deschutes River.
5. Permit #G-12743 is subject to regulation or mitigation for scenic waterway flows.
6. Given the permit holder's current water situation and the demonstrated need for the water, there is presently a demand and market for the use of water under Permit #G-12743.

7. In addition to the demand for water by the permittee, there may be competing demands for the water used under Permit #G-12743. However, these competing demands may be addressed either through the Commission's comprehensive Deschutes Basin Mitigation Program, the direct regulation of water use under the permit, or through administrative actions by the Water Resources Commission as required by OAR Chapter 690, Division 505.
8. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause for the untimely completion of the water development project and complete application of water to full beneficial use pursuant to ORS 537.230(2) and ORS 537.630(1).
9. Given the amount of development left to occur as of September 28, 2000, the Department has determined that the permittee's request to have until October 1, 2001, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #G-12743 is both reasonable and necessary.

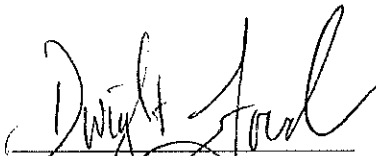
Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit #G-12743 from October 1, 1998, to October 1, 2001; and

Extend the time for complete application of water to beneficial use under Permit #G-12743 from October 1, 1999, to October 1, 2001.

DATED: January 27, 2004


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Comments

1. Under the provisions of OAR 690-320-0010(8), you have the right to protest this proposed final order. Your protest must be in writing and must include the following:
 - a. Your name, mailing address and telephone number;
 - b. Your interest in this proposed final order, and if you claim to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action in the proposed final order would impair or be detrimental to your 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 your protest, if known; and
 - f. The \$250 protest fee required under ORS 536.050(1).
2. Each person submitting a protest shall raise all reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the comment period.
3. The Water Resources Department must receive written protests or written comments no later than ***Friday, March 12, 2004.***
4. After the close of the comment and protest period, the Director will either issue a final order, or schedule a contested case hearing if the Director finds there are significant disputes related to the use of water.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503) 986-0801. Address all other correspondence to:

**Water Rights Section
Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, OR 97301-1271
Fax #: (503) 986-0901**

This document was prepared by Lisa J. Juul. If you have any questions about any of the statements contained in this document, I am most likely the best person to answer your questions. You may contact me by telephone at (503) 986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulon. Her telephone number is (503) 986-0824.

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