

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time	)	PROPOSED
for Permit G-11728, Water Right Application G-12683, in	)	FINAL
the name of Robert Hartford	)	ORDER

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Permit Information

Application:	G-12683
Permit:	G-11728
Basin:	2B – Middle Willamette / Watermaster District 16
Date of Priority:	October 3, 1991
Source of Water:	a well in Coffee Lake Creek Basin
Purpose or Use:	Irrigation of 57.85 acres
Maximum Rate:	0.723 cubic foot per second (cfs)

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***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, 2003, to October 1, 2023.
- Grant an extension of time to apply water to full beneficial use from October 1, 2003, to October 1, 2023<sup>1</sup>.
- 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.

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<sup>1</sup>Pursuant 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**

Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well – CLAC 19713  
cfs - cubic foot per second

## **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.

## **FINDINGS OF FACT**

1. On May 10, 1994, Permit G-11728 was issued by the Department. The permit authorizes the use of up to 0.723 cfs of water from a well in Coffee Lake Creek Basin for irrigation of 57.85 acres. The permit specified actual construction of the well to begin by May 10, 1995, construction of the water system was to be completed by October 1, 1996, and complete application of water was to be made on or before October 1, 1997.
2. Three prior permit extensions have been granted for Permit G-11728. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2001, to October 1, 2003.

3. On April 30, 2018, the permit holder, Robert Hartford, 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-11728 be extended from October 1, 2003, to October 1, 2023.
4. On May 8, 2018, notification of the Application for Permit G-11728 was published in the Department’s Public Notice. No public comments were received regarding the Application.
5. On June 6, 2018, the permit holder submitted additional information to supplement their Application. The additional information was to clarify the investment made in the water system, and unforeseen events which delayed completion of the project.

**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 April 30, 2018, 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. Actual construction of the well began prior to the May 10, 1995, deadline specified in the permit.
8. According to the well log received by the Department on September 16, 1994, construction of CLAC 19713 (Well) began August 29, 1994.

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 May 10, 1995.

**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.<sup>2</sup>*

9. During the most recent extension period, being from October 1, 2001, to October 1, 2003, the permit holder completed construction of the distribution lines to the 28.65 acres.
10. Since October 1, 2003, the permit holder installed distribution lines to serve the remaining 29.2 acres.

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards 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 or previous extension conditions.*

11. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; the record does not show that the sump being utilized under this permit is constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon.

Based on FOF 11, the Department has determined that the permit holder has not demonstrated compliance with permit conditions as required by Permit G-11728.

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

*The amount of beneficial use made of the water during the permit time limits or previous extension conditions.*

12. No water has been appropriated from the Well authorized under Permit G-11728.
13. A maximum amount of 325 gpm (0.724 cfs) of water has been appropriated from a sump for irrigation of 28.65 acres. Water use from a sump is not authorized under Permit G-11728.
14. Delay of beneficial use of water under Permit G-11728 was due, in part, to the Well not producing water within the authorized water bearing zone of zero to sixty feet below land surface. The permit holder constructed a sump approximately 100 feet south of the authorized well to obtain water from the authorized water bearing zone. A Claim of

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<sup>2</sup> "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.

Beneficial Use (COBU) was submitted to the Department on September 22, 2004, and was returned as incomplete. The COBU was returned to the Certified Water Rights Examiner who submitted the report. The permit holder asserts that he was not aware that the COBU was returned and believed that the work to perfect the permit was complete.

Based on FOF 12, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water has been appropriated from the authorized well.

Based on FOF 13, the Department has determined that unauthorized use of water from a sump has occurred for irrigation of 28.65 acres.

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

15. An approximate total of \$62,000 has been invested. The costs included items associated with construction of a sump, and surveying and consulting costs, 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 \$42,000 which is about 87.5 percent of the total projected cost for complete development of this project. An additional \$6,000 investment is needed to complete this project, which includes developing the remaining acres for irrigation, installing new pivots in areas not previously irrigated, and a possible permit amendment.

Based on FOF 15, 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.

16. 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-11728; 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).

17. The point of appropriation for Permit G-11728, located within the Coffee Lake Creek Basin, is within the Sherwood-Dammasch-Wilsonville Limited Groundwater Area.
18. Coffee Lake Creek is not located within or above any state or federal scenic waterway.
19. The point of appropriation is 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.

20. Coffee Lake 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.

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

Economic interests dependent on completion of the project.

21. An approximate total of \$42,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

22. No other economic interests dependent on completion of the project have been identified.

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

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

23. No other factors relevant to the determination of the market and present demand for water and power have been identified.
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 use and income from the permitted water development will likely result in reasonable returns upon the investment made to date. The irrigated crops that are grown provide a good return on investment. Without irrigation, the income would not be possible.

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

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

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

27. The permit holder identifies a house fire that occurred in 2013 as an unforeseen event which delayed the complete development and perfection of Permit G-11728.
28. No unforeseen events were identified that delayed full development and perfection of Permit G-11728 between the date of permit issuance through the most recent extended completion date, being May 10, 1994, through October 1, 2003.

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

29. A denial of the extension would result in undue hardship, in that over 1,000 hours of the permit holder's time, as well as a significant investment in the water system and the farm operations, would be lost if the irrigation right is not available. Alternative sources of water are not available as the farm is located within an area of groundwater concern and no municipal water sources are available in the area.

**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-11728.

Based on FOF 7 through 10, 15, and 21 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 April 30, 2018, the remaining work to be completed consists of submitting an application for a permit amendment to either authorize the use of the sump or change the point of appropriation; completing construction of the water system, which include installing irrigation equipment to the remaining acres; meeting all permit conditions; and applying water to full beneficial use on the remaining 29.2 acres.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2023, 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-11728 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 Facts 13, the Department determined the need to place a "Permit Amendment 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 illegal use of water from an unauthorized point of appropriation, being a sump, has occurred.

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. Based on Findings of Facts 2, and 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 water use permit. This condition, specified under Item 2 of the “Conditions” section of this PFO, was determined to be necessary because no use of water from an authorized point of appropriation, has occurred under this 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 “Limitations and 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 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 7 through 29, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2023, 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 ensure future diligence towards the beneficial use of water, 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.
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).

## 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-11728 from October 1, 2003, to October 1, 2023.

Extend the time to apply water to beneficial use under Permit G-11728 October 1, 2003, to October 1, 2023.

Subject to the following conditions:

### LIMITATIONS AND CONDITIONS

1. **Permit Amendment Condition**

The permit holder may submit a Permit Amendment to request either a change in point of appropriation, or request an additional point of appropriation be authorized for use under Permit G-11728. No water may be appropriated from any unauthorized point of appropriation under Permit G-11728, until a Permit Amendment is approved authorizing the use.

2. **Water Use / Last Extension Condition**

This may be the last extension of time granted for Permit G-11728. Any future extensions of time request may be denied, unless water is appropriated from an authorized point of appropriation under Permit G-11728. In addition, all normal extension standards and rules will be evaluated. ORS 539.010(5); OAR 690-315-0040.

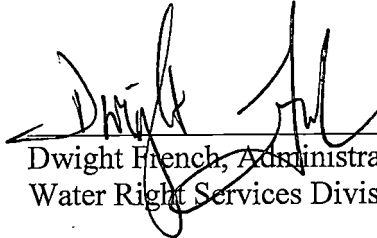
3. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2021. 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: June 26, 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 **August 10, 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.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
  - a. Issue a final order on the extension request; or
  - b. Schedule a contested case hearing if a protest has been submitted, and:
    - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
    - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

