

**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-13628, Water Right Application G-14808, in	)	PROPOSED
the name of Crum Ranches, LLC and Northwest Farm Credit	)	FINAL
Services, FLCA		ORDER

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Permit Information

Application:	G-14808
Permit:	G-13628
Basin:	7 – Umatilla / Watermaster District 21
Date of Priority:	July 22, 1998
Source of Water:	seven wells in Willow Creek Basin
Purpose or Use:	Primary Irrigation of 1,604.8 acres and Supplemental Irrigation of 763.4 acres
Maximum Rate:	22.98 cubic feet per second (cfs), being 20.1 cfs for primary irrigation and 2.88 cfs for supplemental irrigation

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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 apply water to full beneficial use from October 1, 2017, 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 1 – GILL 89  
Well 2 – GILL 1  
Well 3 – GILL 91  
Well 4 – GILL 87  
Well 5 – GILL 93  
Well 6 – GILL 50050  
Well 7 – GILL 57863  
Well 8 – GILL 50319  
cfs - cubic feet 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.

**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 April 16, 1999, Permit G-13628 was issued by the Department, consistent with the terms of a settlement agreement. The permit authorizes the use of up to 22.98 cfs of water from seven wells in Willow Creek Basin for primary irrigation of 1,604.8 acres and supplemental irrigation of 763.4 acres. The permit specified actual construction of the well to begin by April 16, 2000, and complete application of water was to be made on or before October 1, 2003.
2. On July 21, 2014, an assignment from Monty Crum Ranches, LLC and Northwest Farm Credit Services, FLCA, to Crum Ranches, LLC and Northwest Farm Credit Services, FLCA, was recorded in the records of the Water Resources Department.
3. One prior permit extensions has been granted for Permit G-13628. The most recent extension request resulted in the completion dates for full application of water being extended from October 1, 2003, to October 1, 2017.
4. On November 21, 2018, Robert W. Crum, member of Crum Ranches, LLC, 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-13628 be extended from October 1, 2017, to October 1, 2023.
5. On December 11, 2018, notification of the Application for Permit G-13628 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)]**

6. On November 21, 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 April 16, 2000, deadline specified in the permit.
8. According to the well log received by the Department on February 17, 1969, construction of GILL 87 (Well 4) began September 20, 1968.

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 April 16, 2000.

**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, 2003, to October 1, 2017, the following was accomplished:
  - installed sixteen new irrigation pivots;
  - constructed GILL 57863 (Well 7); and
  - installed 17,000 feet of underground pipeline.
10. Since October 1, 2017, the applicant has modified Well 7 to seal off the lower aquifer within the well to prevent co-mingling.

Based on FOF 9, and 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 permit conditions.*

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

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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.

Based on FOF 11, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-13628.

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

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

12. A maximum rate of 15.81 cfs of water has been appropriated under Permit G-13628, being 4.01 cfs from GILL 89 (Well 1), 3.34 cfs from GILL 1 (Well 2), 2.67 cfs from GILL 91 (Well 3), 0.45 cfs from Well 4, 2.67 cfs from GILL 93 (Well 5), 2.67 cfs from GILL 50050 (Well 6) for irrigation of 1,486.7 acres and supplemental irrigation of 540.0 acres.
13. A maximum rate of 4.46 cfs has been appropriated from GILL 50319 (Well 8), which is not an authorized point of appropriation under Permit G-13628.
14. Delay of full beneficial use of water under Permit G-13628 was due, in part, to Well 7 construction not meeting minimum construction standards, requiring modification of the well to seal off the lower portion of the well to prevent co-mingling of water from two separate aquifers.

Based on FOF 11, and 12, the Department has determined that beneficial use of water has been demonstrated under this permit as 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)]**

15. An approximate total of \$2,749,000 has been invested. The costs included construction of Well 8 which is currently not an authorized point of appropriation under Permit G-13628. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$2,511,000 which is about 91 percent of the total projected cost for complete development of this project. An additional \$261,000 investment is needed to complete this project, which includes seeking authorization of Well 8 through a Permit Amendment, complete construction of Well 7, and install an additional pivot to serve an additional 120.0 acres.

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 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-13628.

## **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-13628; 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 points of appropriation for Permit G-13628, located within the Willow Creek Basin, are not located within a limited or critical groundwater area.
18. Willow Creek is not located within or above any state or federal scenic waterway.
19. 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.

20. 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.

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

Economic interests dependent on completion of the project.

21. An approximate total of \$2,511,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

22. 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.

23. 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)]**

24. 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)]**

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

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

26. Unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-13628, in that the permit holders were required to modify Well 7 to meet minimum well construction standards, but the well construction contractor had additional obligations which prevented the work on the well to be completed with enough time to make beneficial use of the water.

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

27. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs.

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

28. The Application provides evidence of good faith of the appropriator under Permit G-13628.

Based on FOF 7, through 12, 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.*

29. As of November 21, 2018, the remaining work to be completed consists of seeking authorization of Well 8 as an additional point of appropriation, completing construction of Well 7, completing construction of the water system, meeting all permit conditions, 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, 2023, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13628 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).



Extend the time to apply water to beneficial use under Permit G-13628 from October 1, 2017, to October 1, 2023.

Subject to the following conditions:

### **LIMITATIONS AND CONDITIONS**

**1. Permit Amendment Condition**

The use of any water from GILL 50319 (Well 8) under Permit G-13628 is subject to this Condition.

No water may be appropriated from GILL 50319 under Permit G-13628, until a Permit Amendment is approved authorizing GILL 50319 as a point of appropriation under Permit G-13628.

**2. Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2022. 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 22, 2019

  
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.*

## **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. 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 of the use of an unauthorized point of appropriation has occurred under this permit.
2. 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 2 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 28, 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 and/or 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.
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:

### 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 **March 8, 2019**, 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.

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have questions about statements contained in this document, please contact Jeffrey D. Pierceall at 986-0802.
  - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
  - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
  - Address any correspondence to :      Water Right Services Division  
725 Summer St NE, Suite A  
Salem, OR 97301-1266  
Fax: 503-986-0901
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Mailing List for Extension PFO Copies

PFO Date: January 22, 2019

Copies Mailed

Application: G-14808

By: \_\_\_\_\_

Permit: G-13628

On: \_\_\_\_\_

Original mailed to Applicant:

Crum Ranches, LLC  
PO Box 67  
Ione, OR 97843

Copies sent to:

1. WRD - App. File G-14808/ Permit G-13628
2. Agent or CWRE representing the Permit Holder

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving via e-mail (10 AM Tuesday of signature date)  
(DONE BY EXTENSION SPECIALIST)

4. WRD - Watermaster District 21, Ken Thiemann

CASEWORKER: JDP