

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-17095, Water Right Application G-17628, in)	FINAL
the name of Larry Wogman)	ORDER

Permit Information

Application:	G-17628
Permit:	G-17095
Basin:	9 – Powder / Watermaster District 8
Date of Priority:	February 8, 2013
Source of Water:	Section 4 Well, Section 8 Well, and Section 17 Well, in Powder River Basin
Purpose or Use:	Irrigation of 955.05 acres, and supplemental irrigation of 285.2 acres
Maximum Rate:	7.0 cubic feet per second (cfs), further limited to no more than 3.6 cfs for supplemental irrigation of 285.2 acres

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 24, 2018, to October 1, 2028.
- Grant an extension of time to apply water to full beneficial use from October 24, 2018, to October 1, 2028¹.
- 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.

2. On October 15, 2018, the permit holder, Larry Wogman, 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-17095 be extended from October 24, 2018, to October 1, 2028. This is the first permit extension requested for Permit G-17095.
3. On October 23, 2018, notification of the Application for Permit G-17095 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)]

4. On October 15, 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)]

5. Construction of the well began prior to October 24, 2018, as specified in the permit as being the date to apply water to full beneficial use.
6. According to the well log received by the Department on September 22, 2014, construction of BAKE 52368 (Section 8 Well) began April 17, 2014.

Based on Finding of Fact (FOF) 5 and 6, the Department has determined that the prosecution of the construction of the well began prior to October 24, 2018.

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.

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-17095.

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.

11. 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-17095; 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).

12. The points of appropriation for Permit G-17095, located within the Powder River Basin, are not located within a limited or critical groundwater area.
13. Powder River is not located within or above any state or federal scenic waterway.

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

22. 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 supplemental portion of the water right is for land covered under Certificate 54069, and allows for full season irrigation of these lands.

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

23. The Application provides evidence of good faith of the appropriator under Permit G-17095.

Based on FOF 5, through 10, and 16, 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.

24. As of October 15, 2018, the remaining work to be completed consists of completing construction of the water system, which includes constructing Section 4 Well and Section 17 Well, install electrical service, and install pivots; meeting all permit conditions, which include constructing the two additional wells in accordance with the conditions of the permit, installing totalizing flow meters at each point of appropriation, submitting annual static water level measurements, and submitting annual water use reports; 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, 2028, 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-17095 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. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2023, and 2027**. *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: December 11, 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 **January 27, 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;