

**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-16425, Water Right Application G-17048, in the                )  
name of Wilber Brothers    )           FINAL ORDER

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Permit Information

Application:                    G-17048  
Permit:                         G-16425  
Basin:                         10 – Malheur / Watermaster District 10  
Date of Priority:             May 1, 2008  
Source of Water:             Well 1 (HARN 50760) in Malheur Basin<sup>1</sup>  
Purpose or Use:             Irrigation use on 66.6 acres; supplemental irrigation use on 439.3 Acres  
Maximum Rate:             2.0 cubic feet per second (cfs), being no more than 0.83 cfs for  
  irrigation of 66.6 acres

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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

Appeal Rights

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

Permit G-16425 was issued by the Department on January 8, 2009. The permit called for completion of construction by October 1, 2013 and complete application of water to beneficial use by October 1, 2013. On January 29, 2019, Pat Wilber, owner of Wilber Brothers submitted to the Department an Application for Extension of Time for Permit G-16425. In accordance with OAR 690-315-0050(2), on March 19, 2019, the Department issued a Proposed Final Order proposing to deny the time to complete construction to October 1, 2023, and the time to fully apply water to beneficial use to October 1, 2023. The protest period closed May 3, 2019, in accordance with OAR 690-315-0060(1). Steven P. Applegate, Agent for Wilber Brothers, filed a timely protest and supplied additional information to the Department.

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<sup>1</sup> Permit G-16425 identified Well 1 as being located within the Malheur Lake Basin. Upon further review, the Department has determined that Well 1 is located in the Malheur Basin.

Except as expressly stated herein, the Department adopts and incorporates by reference the findings of fact and conclusions of law of the Proposed Final Order dated March 19, 2019. Modifications to the Final Order are shown as follows: additions are shown in underlined text; deletions are shown in ~~strikethrough~~ text; or by replacement of an entire Finding of Fact or Conclusion of Law.

## FINDINGS OF FACT

Finding of Fact (FOF) 8 is replaced with the following to reflect the work accomplished during the permit time period:

8. The Applicant states that work was accomplished during permit time period, being January 8, 2009, to October 1, 2013, included installation of electrical service to within ¼ mile of the Well.

~~Based on FOF 8, The Department cannot find evidence of progress made towards completion of the water development and application of water to full beneficial use as allowed in the time period specified in the permit. Therefore, the Department cannot find good cause or reasonable diligence towards the complete application of water to a beneficial use under G-16425.~~

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.

FOF 13 is replaced with the following to reflect the financial investment made during the most recent Extension of Time period.

13. An investment of \$23,306 has been made in the development of this project prior to permit issuance, which is approximately 29 percent of the total projected cost for complete development project. An additional \$54,000 investment is needed for the completion of this project.

~~Based on FOF 13, the Department cannot find evidence of an investment towards perfecting the water right under the terms and conditions of the permit.~~

Additional information provided by the applicant after the issuance of the Proposed Final Order demonstrated additional work, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to its beneficial use, was accomplished during the permit time period.

## 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. 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 the water use permit. This condition, specified under Item 1 of the “Conditions” section of this FO, was determined to be necessary due to minimum amount of work having been accomplished during the permit time period, and non-compliance with terms and conditions of the permit.

## CONCLUSION OF LAW

Conclusion of law #2 is herein replaced with the following:

2. The permit holder has complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

Conclusion of law #3 is herein replaced with the following:

3. Based on Finding of Facts 8 through 27, 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).

## ADDITIONAL CONCLUSIONS OF LAW

4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to 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 an apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

## ORDER

The extension of time for Application G-15232, Permit G-13925, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2013, to October 1, 2023. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2013, to October 1, 2023.

subject to the following condition:

1. **Last Extension Condition**  
This may be the last extension of time granted for Permit G-16425. Any future extensions of time request may be denied, unless the permit holder can provide the Department with

evidence that diligence is shown during this extension period. In addition, all normal extension standards and rules will be evaluated. ORS 539.010(5); OAR 690-315-0040.

DATED: August 9, 2019



Dwight French  
Water Right Services Division Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

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- If you have any questions about statements contained in this document, please contact the Permit Extension Specialist at (503) 986-0802.
  - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-090
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