

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-11608, Water Right Application G-13213, in the)	PROPOSED
name of Terrebonne Domestic Water District)	FINAL ORDER
		TO DENY

Permit Information

Application:	G-13213
Permit:	G-11608
Basin:	5 – Deschutes / Watermaster District 11
Date of Priority:	December 11, 1992
Source of Water:	a well in Crooked River Basin
Purpose or Use:	domestic use for 60 families including irrigation of not to exceed 1/2 acres of lawn and non-commercial garden for each
Maximum Rate:	50.0 gallons per minute (gpm)

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.

In Summary, the Department proposes to:

- Deny an extension of time to complete construction of the water system from October 1, 2003, to October 1, 2021.

- Deny an extension of time to apply water to full beneficial use from October 1, 2003, to October 1, 2021.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
Well – DESC 9656/50917/50965
gpm – gallons per minute
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.

FINDINGS OF FACT

1. On August 30, 1993, Permit G-11608 was issued by the Department. The permit authorizes the use of up to 50.0 gpm of water from a well in Crooked River Basin for domestic use for 60 families including irrigation of not to exceed 1/2 acre of lawn and non-commercial garden for each. The permit specified actual construction of the well to begin by August 30, 1994, construction of the water system was to be completed by October 1, 1995, and complete application of water was to be made on or before October 1, 1996.
2. On August 26, 2003, an assignment from Great Western Homes, Inc to Terrebonne Domestic Water District (District) was recorded in the records of the Water Resources Department.
3. Two prior permit extensions have been granted for Permit G-11608. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1997, to October 1, 2003.

4. On July 8, 2019, Daniel Bruce, District Manager, 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-11608 be extended from October 1, 2003, to October 1, 2021.
5. On July 16, 2019, notification of the Application for Extension of Time for G-11608 was published in the Department’s Public Notice. No public comments were received regarding the extension 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 July 8, 2019, 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 August 30, 1994 deadline specified in the permit.
8. According to the well log received by the Department on December 19, 1994, construction of DESC 9656 began July 26, 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 August 30, 1994.

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 permit or previous extension.¹

9. During the original development time frame under Permit G-11608 DESC 9656 was partially abandoned under DESC 50917 because a portion of the borehole was crooked and undersized.
10. During the first extension of time period, being from October 1, 1996, to October 1, 1997, DESC 9656/50917/50965 (Well) was completed.
11. During the most recent extension period, being from October 1, 1997, to October 1, October 1, 2003, no additional work was accomplished.
12. Since October 1, 2003, no additional work has been accomplished.

Based on FOF 11, and 12, the Department cannot find evidence of progress made towards completion of the water development and application of water to full beneficial use during the most recent extension of time period, or in the sixteen years since the extended time period has passed.

Compliance with Conditions /OAR 690-315-0040(3)(c)

The water right permit holder's conformance with the permit conditions.

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; the record does not show that a meter or other suitable measuring device has been installed. The Department recognizes that it is the intent of the permit holder to comply with all permit conditions at the time the conditions become applicable.

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

The amount of beneficial use made of the water during the permit or previous extensions.

14. No water has been appropriated from the Well under Permit G-11608.
15. Delay of beneficial use of water under Permit G-11608 was due to, the 60 family subdivision this permit was to serve has been incorporated into the Terrebonne Domestic Water District's water system. The well authorized by Permit G-11608, has not been incorporated into the water system.

Based on FOF 13, 14, and 15, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions have been satisfied, and no water has been appropriated from the Well for domestic use.

¹ "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.

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

16. An approximate total of \$62,000 has been invested. The costs included items associated with administrative processes such as filing for previous extensions of time, and preparation of a Claim of Beneficial Use; and installation of a temporary pump for the purpose of testing the well, which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, an approximate total investment for “actual construction” to date of \$33,000, has been made in the development of this project. No investment has been made in the development of the water system since the Well was completed in June 1997. The additional investment necessary to complete development identified in the Application are costs associated with administrative processes, including a Permit Amendment, which are not considered costs towards physical work necessary to complete development, and are therefore not included.

Based on FOF 16, the Department has determined that the permit holder had made an investment in the development of the water system, however, no investment has been made to complete development of the project during the most recent extension of time period, being October 1, 1997, to October 1, 2003.

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 not demonstrated compliance with permit conditions, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has not demonstrated reasonable diligence in previous performance under Permit G-11608.

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.

17. 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-11608; 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).

18. The point of appropriation for Permit G-11608, located within the Crooked River Basin, is located within the Upper Deschutes Groundwater Mitigation Area. New appropriations of groundwater within the Deschutes Groundwater Study Area have the potential for substantial interference with surface water rights as described in OAR 690, division 9, and will measurably reduce scenic waterway flows as defined in ORS 390.835 unless mitigation is provided pursuant to the rules in this division. Permit G-11608, was issued prior to the establishment of the study area, however, not water has been appropriated to date under Permit G-11608. Development of water under Permit G-11608, twenty-six years after permit issuance, will have the practical effect of reducing flows in the scenic waterway.
19. Crooked River is located above the Deschutes Scenic Waterway.
20. 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.

21. Crooked River is located within an area ranked “high” 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.

22. An approximate total of \$33,000 has been invested in the project.
23. No investment has been made in the project during the most recent extension of time period.

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

Other economic interests dependent on completion of the project.

24. The Application identified the 560 residents and 25 business located in Terrebonne, OR as economic interests that may be dependent on completion of the project.
25. The Application refers to the Water Management and Conservation Plan (WMCP) submitted to the Department on February 19, 2016, which identifies Terrebonne Domestic Water District holds Permit G-8542 for 1.0 cubic foot per second (cfs) of water for quasi-municipal use, and Permit G-16938, for 0.5 cfs of water for quasi-municipal use.

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

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

26. 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)]

27. 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)]

28. Delay in the development of this project was caused by any other governmental requirements.

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

29. The Application identifies advice from a previous consultant to submit a Claim of Beneficial Use based on test pumping of the well, to demonstrate proof of beneficial use under the permit.

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

30. The Application identifies that a denial of the extension would result in undue hardship to the District and its customers due to a loss of the investment in the development to date under the permit, likely rate increases and likely restrictions on water use.

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

31. The Application does not provide evidence of good faith of the appropriator under Permit G-11608.

Based on Findings of Fact 11, 12, 13, 14, 15, 16, and 23, above, the Department finds that the Applicant has not demonstrated good faith.

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.

32. As of July 8, 2019, the remaining work to be completed consists of submitting a Permit Amendment to change the authorized point of appropriation, meeting all permit conditions, which include installing a meter; and applying water to full beneficial use.

Based on FOF 11, 12, 14, 15, 16, 23, and 30, the Department cannot find that the applicant can complete the project or apply water to full beneficial use within the time requested for the extension because the applicant did not demonstrate reasonable diligence in the development of Permit G-11608 during the most recent extension of time period, being October 1, 1997, to October 1, 2003, or in the more than fifteen years since October 1, 2003.

Based on FOF 18, the Department cannot find good cause to grant an extension of time to develop water under a permit where no water has been appropriated in the twenty-six years since the permit was issued, when new appropriations within the Upper Deschutes Groundwater Mitigation Area, would require mitigation to protect flow within the scenic waterway.

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 not 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).

CONCLUSIONS OF LAW

1. The permit holder 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 permit holder has not 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).
3. The Application established that there has been no construction, no financial investment or reasonable diligence toward developing the project during the most recent extension of

time period. The permit holder has not 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).

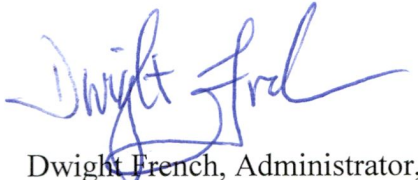
PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny the time to complete construction of the water system under Permit G-11608 from October 1, 2003, to October 1, 2021.

Deny the time to apply water to beneficial use under Permit G-11608 from October 1, 2003, to October 1, 2021.

DATED: August 20, 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.*

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 **October 4, 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

