

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)	FINAL ORDER ON
Permit G-17441, Water Right Application G-16867, in the)	RECONSIDERATION
name of Golden Rule Farms, Inc.)	DENYING
)	APPLICATION FOR
)	EXTENSION OF TIME

Permit Information

Application:	G-16867
Permit:	G-17441
Basin:	12 – Malheur Lake / Watermaster District 10
Date of Priority:	May 23, 2007
Source of Water:	Three wells in Malheur Lake Basin
Purpose or Use:	Irrigation use on 160.0 Acres
Maximum Rate:	2.0 cubic feet per second (cfs)

Summary: The Final Order denying the Application for an Extension of Time for Permit G-17441 is modified and affirmed.

Authority

This order is issued pursuant to Oregon Revised Statute 183.482(6).

Application History

Permit G-17441 was issued by the Department on September 11, 2008. The permit called for completion of construction by October 1, 2012 and complete application of water to beneficial use by October 1, 2012. The most recent Extension of Time specified completion of construction and complete application of the water was to be made by October 1, 2018. On November 19, 2018, Golden Rule Farms, Inc. submitted an Application for Extension of Time for Permit G-17441. In accordance with OAR 690-315-0050(2), on April 16, 2019, the Department issued a Proposed Final Order proposing to deny the time to complete construction to October 1, 2019, and the time to fully apply water to beneficial use to October 1, 2019. The protest period closed May 31, 2019, in accordance with OAR 690-315-0060(1). No protest was filed.

On June 14, 2019, the Department issued a Final Order incorporating the findings of the Proposed Final Order, denying the extension of time.

On August 14, 2019, Golden Rule Farms, Inc. submitted a Petition for Reconsideration. The Petition was denied pursuant to ORS 183.482(1) and OAR 137-003-0080(5).

On December 10, 2019, a Petition for Judicial Review was filed in the Oregon Court of

Appeals (A172879).

On February 22, 2021, the Department issued an Order Withdrawing the Final Order Denying the Extension of Time for Permit G-17441.

FINDINGS OF FACT

Except as expressly stated herein, the Department adopts and incorporates by reference the findings of fact in the Proposed Final Order dated April 16, 2019. Modifications to findings number 17, 20, 22 and 31 are below. Additions are shown in underlined text; deletions are shown in ~~strikethrough~~ text.

6. On March 16, 2017, Permit Amendment T-12609, was filed by Golden Rule Farms, Inc., to change the points of appropriation and the place of use under Permit G-17441. ~~The application is currently pending review.~~ On November 7, 2018, the Department issued a Final Order Denying a Change in Points of Appropriation and a Change in Place of Use in the matter of Permit Amendment T-12609 (Special Order Volume 109, Page 885).

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

17. No water has been ~~appropriated~~ applied to land authorized under this permit.

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

20. No financial investment has been made toward developing the beneficial water use on land authorized by Permit G-17441 during the previous extension of time period, being October 1, 2012, to October 1, 2018.
22. ~~The points of appropriation for Permit G-17441, are located in the Greater Harney Valley Groundwater Area of Concern (GHVGAC) which was established to ensure that groundwater in the GHVGAC is appropriated within the capacity of the resource and that new appropriations of groundwater assure the maintenance of reasonably stable groundwater levels and prevent depletion of the groundwater resource. Current data, comprising substantial evidence, indicate that groundwater levels are declining in areas of the GHVGAC. Additional allocation of groundwater within the GHVGAC may exacerbate these declines. A comparison between estimated annual recharge and previously allocated groundwater volumes indicates that groundwater is fully allocated in some areas of the basin. 690-512-0020(1).~~

The points of appropriation for Permit G-17441 are located in the Greater Harney Valley Groundwater Area of Concern (GHVGAC), which was established in 2016 to ensure that groundwater in the GHVGAC is appropriated within the capacity of the resource and that

new appropriations of groundwater assure the maintenance of reasonably stable groundwater levels and prevent depletion of the groundwater resource.

An analysis by the Department at the time the GHVGAC was established indicated that the volume of groundwater permitted for annual use exceeds the average annual volume of recharge to groundwater. The Department estimates that approximately 30 percent of the total acreage permitted for groundwater use is not yet developed. Groundwater development for these acres will increase the rate of groundwater level decline. Current groundwater level data indicate that groundwater levels are continuing to decline in areas of the GHVGAC.

Within the GHVGAC, the market and present demand for groundwater is high. Permit G-17441 was issued in 2008 and a previous extension of time required development of the permit to be complete by October 1, 2018. No development occurred in the last extension period of 2013 to 2018. In 2017 the permit owner applied to amend the permit to change the proposed wells and place of use to another location. The permit amendment application was denied in November of 2018 because the time left to complete development of the permit had expired and an application for an extension of time for the permit had not been filed.

Development of the permit would appropriate groundwater in the GHVGAC where observed groundwater levels are continuing to decline. The groundwater source is over-appropriated (see OAR 690-400-0010(11)(a)(B)). Development of the remaining portion of this permit will further deplete the groundwater resource.

Applications for extensions of time to complete permits are considered in light of the high market and present demand for groundwater in the GHVGAC. Undeveloped portions of expired permits may be lost.

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

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

Based upon the forgoing, the Department finds that the applicant has not demonstrated good cause to extend the time to complete construction and apply water to beneficial use under Permit G-17441.

CONCLUSION OF LAW

The applicant has not demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0040(2).

ORDER

The extension of time for Application G-16867, Permit G-17441, therefore, is denied.

DATED: June 11, 2021



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

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.

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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) 986-0900
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