

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-17486, Water Right Application G-17753, in)	FINAL
the name of Travis L. and Kelly R. Singhose)	ORDER

Permit Information

Application:	G-17753
Permit:	G-17486
Basin:	12 – Malheur Lake / Watermaster District 10
Date of Priority:	January 13, 2014
Source of Water:	Well 2 in Sage Hen Creek Basin
Purpose or Use:	irrigation of 309.8 acres
Maximum Rate:	3.87 cubic feet per second (cfs)

***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 August 28, 2020, to October 1, 2023¹.
- 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.

ACRONYM QUICK REFERENCE

Agent – Water Right Services, LLC (John Short & Bryce Withers)

Application – Application for Extension of Time

Department – Oregon Department of Water Resources

FOF – Finding of Fact

PFO – Proposed Final Order

Robey Well 1 – HARN 52225/52882

Robey Well 2 – not constructed

Well C – HARN 52853

Well D – HARN 52863

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.

FINDINGS OF FACT

1. On July 28, 2015, Permit G-17486 was issued by the Department. The permit authorizes the use of up to 3.87 cfs of water from Well 2 in Sage Hen Creek Basin irrigation of 309.8 acres. The permit specified complete application of water was to be made within five years from the date of permit issuance, being August 28, 2020.

2. On December 8, 2015, an assignment from Broken R Ranch, LLC, to Travis L. and Kelly R. Singhose, was recorded in the records of the Water Resources Department.
3. On October 14, 2020, the Department approved Permit Amendment T-13110 (Special Order Volume 117, Page 708) authorizing a change in the point of appropriation, additional points of appropriation, and a change in place of use under Permit G-17486. Superseding Permit G-18470 was issued by the Department on October 14, 2020, to reflect the changes.
4. On December 2, 2020, the Department issued a Reconsideration of a Final Order Recorded in Special Order Volume 117, Pages 708-712, withdrawing a Final Order and Issuing a Superseding Final Order Denying Additional Points of Appropriation, and a change in place of use. This resulted in the cancelation of Permit G-18470, and the reinstatement of Permit G-17486.
5. On February 11, 2021, the permit holder, Travis L. and Kelly R. Singhose, 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-17486 be extended from August 28, 2020, to October 1, 2023. This is the first permit extension requested for Permit G-17486.
6. On March 2, 2021, notification of the Application for Permit G-17486 was published in the Department’s Public Notice. One public comment was received from Ben McCanna.
7. The commenter expressed concerns about over-allocation in the area, and the effect the additional development is having on their well.

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)]

8. On February 11, 2021, 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)]

9. The Application states that construction of HARN 52225/52882 (Robey Well 2) began at an unknown point prior to permit issuance. Alterations to Robey Well 2 were completed July 5, 2015, and a deepening was completed on March 27, 2020.
10. The Application states construction of HARN 52853 (Well C) began September 23, 2019.

11. The Application states construction of HARN 52863 (Well D) began October 16, 2019.
12. These wells are constructed in locations not authorized by Permit G-17486.
13. On June 12, 2019, the Department Ground Water section completed a review under Permit Amendment T-13110, identifying Robey Well 2 (HARN 52225/52882), Proposed Well C and Proposed Well D would appropriate water from the same source as authorized by Permit G-17486. Because the ground water review identifies the well as having been constructed to appropriate water from the authorized source aquifer, a finding that the construction of the well began within the time authorized as required by ORS 537.630 may be made, so long as; the Extension of Time is conditioned to require the submittal of an Application for Permit Amendment within six months from the date of issuance of the Final Order approving the Extension of Time, requesting the well identified in the Application for Extension of Time be authorized under the permit.

Based on Finding of Fact (FOF) 9, through 13, the Department has determined that construction of a well which appropriates water from the authorized source, has been constructed prior to August 28, 2020.

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.²

14. Construction of a well began prior to permit issuance.
15. Work accomplished during the original development time frame under Permit G-17486 is as follows:

² “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.

- competed construction of additional wells; and
- installed a pump, meter, and pivots.

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.

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

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

16. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a meter or other suitable measuring device has been installed, and (2) the required March static water level measurements have not been received by the Department. 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.
17. The permit holder has identified that a meter has been installed and has submitted annual water use reports for Robey Well 1, Well C, and Well D.

The Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-17486 because no well, currently authorized has been utilized under this permit.

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

The amount of beneficial use made of the water during the permit time limits.

18. The Application identifies a maximum rate of 3.25 cfs of water has been appropriated being 1.63 cfs from Robey Well 1, 1.63 cfs from Well C, and 1.63 cfs from Well D for irrigation of 260.0 acres.
19. The Application identifies 130.2 acres have been developed at the authorized place of use.

The Department has determined that beneficial use of water in compliance with the terms and conditions of Permit G-13455 has not yet been demonstrated under this permit because not all permit conditions were satisfied by August 28, 2020.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

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.

20. 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-17486; 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).

21. The points of appropriation for Permit G-17486 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-17486 was issued August 28, 2015, and required development of the permit to be complete by August 28, 2020. Limited development occurred on the authorized place of use. In January 2019 the permit owner applied to amend the permit to add additional wells and to change the place of use to another location. During review of the amendment request, the Department determined the Application for Permit Amendment contained deficiencies. On further review of the amendment request, the Department discovered the lands proposed to move a portion of the permitted lands to has an existing water right Certificate covering the same lands. These issues and deficiencies were not resolved until August 4, 2020. The permit amendment application was approved on October 14, 2020, however, it was reconsidered on December 2, 2020, due to the passing of the completion date of Permit G-17486 prior to the issuance of the order on the permit amendment.³

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.

22. Sage Hen Creek is not located within or above any state or federal scenic waterway.
23. The points 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.

24. Sage Hen 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.

25. An approximate total of \$100,000 has been invested in the project.

³ See Special Order Volume 118, Page 125-129 for detailed timeline.

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

Other economic interests dependent on completion of the project.

26. Other economic interests dependent on completion of the project have not been identified.

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

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

27. 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)]

28. 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)]

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

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

30. Unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-17486, in that the COVID-19 pandemic and subsequent business related closure during the final months of the development timeline.

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

31. The completion of the project is necessary as a means of income.

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

32. The Application provides evidence of good faith of the appropriator under Permit G-17486.

Based on FOF 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, and 25, 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.

33. As of February 11, 2021, the Application identifies the remaining work to be completed

consists of applying for a permit amendment, 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-17486 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).

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. Based on Findings of Facts 9, 10, 11, 12, and 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 points of appropriation; has occurred under this permit.
2. 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. Based on Findings of Facts 16, and 17, the Department determined the need to place a "Meter Installation" condition, and a "Static Water Level Measurement" 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 Items 2, and 3, of the "Conditions" section of this PFO, was determined to be necessary because of the use of an unauthorized points of appropriation; has occurred under this permit.
3. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 17, 18, 19, and 21, the Department determined the need to place a "Development Limitation" 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 2 of the “Conditions” section of this PFO, was determined to be necessary because of the use of an unauthorized points of appropriation.

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 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 9, through 32, 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 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 and 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 future diligence and to mitigate the effects of subsequent development on competing demands on the resource; OAR 690-315-0050(5).

PROPOSED ORDER

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

Extend the time to apply water to beneficial use under Permit G-17486 from August 28, 2020, to October 1, 2023.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. **Permit Amendment Condition**
The permit holder shall submit an application for a permit amendment within 6 months from the date of issuance of the Final Order approving this extension of time. The permit amendment shall request the use of a minimum of one well identified below.

HARN 52225/52882 (Robey Well 2); HARN 52853 (Well C); HARN 52863 (Well D)

If the required permit amendment is not submitted within six months from the date of issuance of the Final Order approving this extension of time, or if at least one well identified above is not approved, the extension of time will be terminated.

2. **Meter Installation**

The permit holder shall install the required meters within 6 months from the date of issuance of this Final Order approving this extension of time, on all wells identified for use in the Application for Extension of Time, being HARN 52225/52882 (Robey Well 2); HARN 52853 (Well C); HARN 52863 (Well D). The permit holder shall submit evidence of installation that identifies the type of meter installed, the date the meter was installed, the well log identification, and the Well ID tag information for each well.

If the required evidence of installation is not submitted by April 30, 2022, the extension of time will be terminated.

3. **Static Water Level Measurements**

The permit holder shall make the required March static water level measurements for all wells utilized under this permit by no later than March 31, 2022, and shall submit the measurements within 30 days from when the measurement is taken.

If the required static water level measurements are not submitted within six months from the date of issuance of the Final Order approving this extension of time, the extension of time will be terminated.

4. **Development Limitation**

The use of water under this permit shall be limited to no more than 1.63 cubic feet per second for irrigation of 130.2 acres. This represents the 130.2 acres developed at the authorized place of use under Permit G-17486 at one-eightieth of one cubic foot per second for each acre irrigated.

DATED: June 15, 2021



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

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.

- If you have questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503- 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