

**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-12928, Water Right Application G-14141, in   | ) | FINAL    |
| the name of John W. Sweet                                 | ) | ORDER    |

---

Permit Information

|                   |  |
|-------------------|--|
| Application:      | G-14141  |
| Permit:           | G-12928  |
| Basin:            | 17 – South Coast / Watermaster District 14   |
| Date of Priority: | July 26, 1995  |
| Source of Water:  | Well #1 and Well #2 located within the Sixes River Basin   |
| Purpose or Use:   | irrigation and agricultural use (frost control and flood harvesting of cranberries) on 16.0 acres, supplemental irrigation and supplemental agricultural use on 20.0 acres (Primary authorized under permit #47642) from Well #1 and supplemental irrigation and supplemental agricultural use on 16.0 acres |
| Maximum Rate:     | 0.86 cubic foot per second (cfs), being not more than 0.86 cfs from Well #1 and 0.40 cfs from Well #2 (Well #1 and Well #2 to be used on the same 16.0 acres, however, they are not to exceed 0.40 cfs at any one time)  |

---

***Please read this Proposed Final Order in its entirety.***

*In Summary, the Department proposes to:*

- Grant an extension of time to complete construction of the water system from October 1, 1998, to October 1, 2003.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2003<sup>1</sup>.

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.

---

<sup>1</sup>Pursuant 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 – Marc Van Camp  
Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well #1 – CURR 1587  
Well #2 – CURR 50053  
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 October 28, 1996, Permit G-12928 was issued by the Department. The permit authorizes the use of up to 0.86 cfs being not more than 0.86 cfs from Well #1 and 0.40 cfs from Well #2 for irrigation and agricultural use (frost control and flood harvesting of cranberries) on 16.0 acres, supplemental irrigation and supplemental agricultural use on 20.0 acres (Primary authorized under permit #47642) from Well #1 and supplemental irrigation and supplemental agricultural use on 16.0 acres (Well #1 and Well #2 to be used on the same 16.0 acres, however, they are not to exceed 0.40 cfs at any one time). The permit specified actual construction of the well to begin by October 28, 1997, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.



2. On June 10, 2021, the permit holder, John W. Sweet, submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to complete construction of the water system be extended from October 1, 1998, to October 1, 2003, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12928 be extended from October 1, 1999, to October 1, 2003. This is the first permit extension requested for Permit G-12928.
3. On July 9, 2021, notification of the Application for Permit G-12928 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 June 10, 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)]**

5. Actual construction of the wells began prior to permit issuance.
6. According to the well log received by the Department on November 12, 1993, construction of CURR 1587 (Well #1) began October 26, 1993.
7. According to the well log received by the Department on July 8, 1996, construction of CURR 50053 (Well #2) began July 1, 1996.

Based on Finding of Fact (FOF) 10 and 11, the Department has determined that the prosecution of the construction of the well began prior to October 28, 1997.

**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.<sup>2</sup>*

8. Construction of the wells and 20 acres of cranberry bogs were complete prior to permit issuance.
9. Work was accomplished during the original development time frame under Permit G-12928 is as follows:
  - installed distribution system from both wells;
  - constructed 16 acres of cranberry bogs; and
  - installed totalizing flow meters at each well.

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.*

10. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; the required March static water level measurements have not been received by the Department by October 1, 1999.
11. The Department record shows the only March static water level measurement submitted was taken on March 3, 2003 for both Well #1, and Well #2.

Based on FOF 10 and 11, the Department has determined that the permit holder has not demonstrated compliance with following permit condition as required by Permit G-12928:

- "To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

---

<sup>2</sup> "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.



**Before use of water takes place**

Initial and Annual Measurements

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

**After use of Water has Begun**

Seven Consecutive Annual Measurements

Following the first year of use, the water user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared.”

An extension of time from October 1, 1999, to October 1, 2003, is sufficient to demonstrate minimum compliance with this condition, sufficient enough to allow for a certificate of water right to be issued upon submittal of the required pump test, and satisfactory review of the Claim of Beneficial Use. However, the water user must continue to demonstrate compliance with the requirement to submit seven consecutive annual static water level measurements taken in the month of March.

Failure to comply with permit conditions constitutes illegal use of water. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that compliance with all conditions of the permit have been demonstrated.

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

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

12. A maximum rate of 0.32 cfs of water has been appropriated, being 0.24 cfs from Well #1 and 0.08 cfs from Well #2 for irrigation of 16.0 acres, supplemental irrigation on 20.0 acres, agricultural uses and supplemental agricultural uses.

Based on FOF 10 and 11, the Department has determined that beneficial use of water in compliance with the terms and conditions of the permit has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 1999.

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

13. An investment of approximately \$51,350, has been made which is the total cost for complete development of this project.

Based on FOF 13, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

### **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.

14. 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-12928; 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).

15. The points of appropriation for Permit G-12928, located within the Sixes River Basin, are not located within a limited or critical groundwater area.
16. Sixes River is not located within or above any state or federal scenic waterway.



17. The points of appropriation are 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.

18. Sixes River 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.

19. An approximate total of \$51,350 has been invested in the project.

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

Other economic interests dependent on completion of the project.

20. 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.

21. 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)]**

22. 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)]**

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

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

24. No unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-12928.

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

25. 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 water provided contributes to a successful cranberry operation, and is in part used to supplement water provided under other water rights and sources.

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

26. The Application provides evidence of good faith of the appropriator under Permit G-12928.

Based on FOF 5, 6, 7, 8, 9, 11, 12, 13, and 19, the Department has determined that the applicant has shown 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.

**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.*

27. As of June 10, 2021, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, which include the submittal of seven consecutive annual March static water level measurements; 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, 2003, 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-12928 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).



## 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 actual 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 5, through 26, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2003, 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, 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.

## 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 complete construction of the water system under Permit G-12928 from October 1, 1998, to October 1, 2003.

Extend the time to apply water to beneficial use under Permit G-12928 from October 1, 1999, to October 1, 2003.

DATED: August 17, 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 Water Resources Department no later than **October 1, 2021**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.





Mailing List for Extension PFO Copies

PFO Date: August 17, 2021

Copies Mailed

Application: G-14141  
Permit: G-12928

By: \_\_\_\_\_  
On: \_\_\_\_\_

Original mailed to Applicant:

John W. Sweet  
1291 N. 9th St  
Coos Bay, OR 97420

Copies sent to:

1. WRD - App. File G-14141/ Permit G-12928
2. Agent or CWRE representing the Permit Holder

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving via e-mail (10 AM Tuesday of signature date)  
(DONE BY EXTENSION SPECIALIST)

4. WRD - Watermaster District 14, Scott Ceciliani

CASEWORKER: JDP