

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-16129, Water Right Application G-16388, in)	FINAL
the name of Norway Development, LLC)	ORDER

Permit Information

Application:	G-16388
Permit:	G-16129
Basin:	16 – Umpqua / Watermaster District 15
Date of Priority:	February 14, 2005
Source of Water:	six wells in Davis Creek Basin
Purpose or Use:	domestic expanded for 111 homes acres
Maximum Rate:	0.084 cubic foot per second (cfs)

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, 2021, to October 1, 2023.
- Grant an extension of time to apply water to full beneficial use from October 1, 2021, 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 – Carl Huffman
Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
Well 1 – DOUG 53786/55224
Well 2 – DOUG 53842
Well 3 – DOUG 621
Well 4 – DOUG 53788
Well 5 – DOUG 53992
Well 6 – DOUG 54326
Well 7 – DOUG 55223/58229
Well 8 – DOUG 58228
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 November 30, 2006, Permit G-16129 was issued by the Department, consistent with the terms of a settlement agreement. The permit authorizes the use of up to 0.084 cfs of water from six wells in Davis Creek Basin for domestic expanded for 111 homes. The permit specified construction of the water system was to be completed by October 1, 2011, and complete application of water was to be made on or before October 1, 2011.

2. One prior permit extension have been granted for Permit G-16129. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2011, to October 1, 2021.
3. On April 12, 2021, the Department received Permit Amendment Application T-13669 requesting additional points of appropriation under Permit G-16129, and is currently under review.
4. On May 6, 2021, the permit holder, Norway Development, LLC, 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-16129 be extended from October 1, 2021, to October 1, 2023.
5. On June 1, 2021, notification of the Application for Permit G-16129 was published in the Department’s Public Notice. No public comments were received regarding the Application.
6. On August 6, 2021, the permit holder submitted additional information to supplement their Application. The additional information was to clarify water used to date, wells constructed for use under the permit, number of households currently served, and work left to be accomplished.

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)]

7. On May 6, 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)]

8. Construction of the wells began prior to permit issuance.
9. According to the well log received by the Department on June 21, 1991, construction of DOUG 621 (Well 3) May 21, 1991.
10. According to the well log received by the Department on October 1, 2004, construction of DOUG 53786 (Well 1) September 15, 2004.
11. According to the well log received by the Department on May 24, 2005, construction of DOUG 53788 (Well 4) September 20, 2004.

12. According to the well log received by the Department on October 25, 2004, construction of DOUG 53842 (Well 2) September 23, 2004.
13. According to the well log received by the Department on June 16, 2005, construction of DOUG 53992 (Well 5) May 12, 2005.
14. According to the well log received by the Department on June 18, 2005, construction of DOUG 54326 (Well 6) October 13, 2005.

Based on Finding of Fact (FOF) 8, through 14, the Department has determined that the prosecution of the construction of the well began prior to October 1, 2011.

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.²

15. Construction of the well began prior to permit issuance.
16. During the most recent extension period, being from October 1, 2011, to October 1, 2021, the following was accomplished well DOUG 55223 was deepened under DOUG 58229 (Well 7), and well DOUG 58228 (Well 8) have been constructed. Though Well 7 and Well 8 are not currently authorized, the permit holder has submitted Permit Amendment T-13669 on April 12, 2021, which is currently under review.

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.

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.

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

The water right permit holder's conformance with the permit and previous extension.

17. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

Based on FOF 17, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-16129.

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

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

18. A maximum rate of 149.3 gallons per minute (gpm) (0.33 cfs) of water has been appropriated being 27 gpm from Well 1, 1.5 gpm from Well 2, 15 gpm from Well 3, 6.0 gpm from Well 4, 10.0 gpm from Well 5, 15.0 gpm from Well 6, 60.0 gpm from Well 7, and 14.8 gpm from Well 8, for domestic expanded use in 30 households. This exceeds the amount of water for domestic expanded use authorized under this permit. The authorized amount of water for domestic expanded use is 37.7 gpm (0.084 cfs).
19. Delay of full beneficial use of water under Permit G-16129 was due, in part, to insufficient yield of water from the permitted well. The permit holder needs more time in which to allow for review of Permit Amendment T-13669, requesting authorization of Well 7, and Well 8.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2021.

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

20. An approximate total of \$850,914 has been invested. The costs included items associated with repair and maintenance costs of a system, and hauling water, which are not "actual construction" under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for "actual construction" to date is approximately \$722,488 which is about 97 percent of the total projected cost for complete development of this project. An additional \$25,000 investment is needed to complete this project, which includes seeking approval for Permit Amendment T-13669,

Based on FOF 20, 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 that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions, a financial

investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-16129.

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.

21. 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-16129; 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).

22. The points of appropriation for Permit G-16129, located within the North Umpqua River Basin, are not located within a limited or critical groundwater area.
23. North Umpqua River is not located within or above any state or federal scenic waterway.
24. 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.

25. North Umpqua 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.

26. An approximate total of \$722,488 has been invested in the project.

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

Other economic interests dependent on completion of the project.

27. Other economic interests dependent on completion of the project have been identified. Individual homeowner and residents of the subdivision rely on the water provided under this permit for their domestic use.

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

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

28. 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)]

29. 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)]

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

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

31. No unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-16129.

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

32. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs. Water available under this permit is the only reasonable source of water. Though the subdivision is located close to the City of Roseburg, the subdivision has not been annexed and cannot gain access to the City water system.

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

33. The Application provides evidence of good faith of the appropriator under Permit G-16129.

Based on FOF 8, through 20, 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.

34. As of May 6, 2021, the remaining work to be completed consists of completing construction of the water system, 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 complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-16129 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 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 8, through 34, 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).
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-16129 from October 1, 2021, to October 1, 2023.

Extend the time to apply water to beneficial use under Permit G-16129 from October 1, 2021, to October 1, 2023.

DATED: October 5, 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 **November 19, 2021**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

