

**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-16138, Water Right Application G-16491,	)	FINAL
in the name of the City of Hubbard	)	ORDER

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**Permit Information**

**Application File G-16491/ Permit G-16138**

Basin 2B – Middle Willamette Basin / Watermaster District 16

Date of Priority: July 1, 2005

**Authorized Use of Water**

Source of Water:	Well 4 (L45374) in Little Bear Creek Basin
Purpose or Use:	Municipal Uses
Maximum Rate:	0.223 Cubic Foot per Second (cfs)

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**This Extension of Time request is being processed in accordance with Oregon  
Administrative Rule Chapter 690, Division 315.**

*Please read this Proposed Final Order in its entirety as it contains  
additional conditions not included in the original permit.*

This Proposed Final Order applies only to Permit G-16138, water right Application G-16491.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from December 14, 2007, to October 1, 2056.
- Grant an extension of time to apply water to full beneficial use from December 14, 2007, to October 1, 2056.
- Make the extension of time subject to certain conditions as set forth below.

## **ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources  
City – City of Hubbard  
ODFW – Oregon Department of Fish and Wildlife  
PFO – Proposed Final Order  
WMCP – Water Management and Conservation Plan

### Units of Measure

cfs – cubic feet per second  
gpm – gallons per minute

## **AUTHORITY**

**Generally, see ORS 537.630 and OAR Chapter 690 Division 315.**

**ORS 537.630(3)** provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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)** provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0080** provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

**OAR 690-315-0090(3)** authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

## **FINDINGS OF FACT**

1. On December 14, 2006, Permit G-16138 was issued by the Department. The permit authorizes the use of up to 0.223 cfs of water from Well 4 (L45374) in Little Bear Creek Basin, for municipal uses. The permit specified that construction of the water development project was to be completed by December 14, 2007.

2. The permit holder, the City of Hubbard (City), submitted an “Application for Extension of Time” (Application) to the Department on August 19, 2024, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-16138 be extended from December 14, 2007, to October 1, 2056. This is the first extension of time request for Permit G-16138.
3. Notification of the City’s Application for Extension of Time for Permit G-16138 was published in the Department’s Public Notice dated September 10, 2024. No public comments were received regarding the extension application.
4. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.

**Review Criteria for Municipal Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]**

*The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080. This determination shall consider the applicable requirements of ORS 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

**Complete Extension of Time Application [OAR 690-315-0080(1)(a)]**

5. On August 19, 2024, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0080(1)(b)]**

6. According to the well log received by the Department on October 6, 2000, construction of MARI 55251 (Well 4) began July 24, 2000.

**Duration of Extension [OAR 690-315-0080(1)(c) and (1)(d)]**

*Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

7. The remaining work to be accomplished under Permit G-16138 consists of completing construction and applying water to full beneficial use.
8. As of December 14, 2007, the City had appropriated 0.111 cfs of the 0.223 cfs of water authorized under Permit G-16138 for municipal purposes. There is an undeveloped portion of 0.112 cfs of water under Permit G-16138.

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 539.010(5) applies to surface water and ground water permits.

9. In addition to the 0.223 cfs of water authorized under Permit G-16138 the City holds the following rights for municipal use:

- Certificate 84092 for 1.56 cfs of water from three wells in the Mill Creek Basin;
- Certificate 84093 for 1.1 cfs of water from three wells in the Pudding River Basin; and
- Certificate 90750 for 0.668 cfs of water from a well in the Mill Creek Basin;

These water rights and permits total 3.551 cfs of ground water..

10. According to the City, their peak water demand within its service area boundaries was 0.84 cfs in 2021.

11. As of 2021, the population within the service boundary of the City of Hubbard was 3,478. The City of Hubbard estimates the population will increase at a growth rate of 0.64 percent per year, reaching an estimated population of 4,354 by the year 2056.

12. According to the City, their peak day demand is projected to be approximately 1.29 cfs of water by the year 2056.

13. Full development of Permit G-16138 is needed to address the present and future water demand of the City, including system redundancy and emergency use.

Based on Findings of Fact 7 through 13, the Department has determined that the City's request for an extension of time until October 1, 2056, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-16138 is both reasonable and necessary.

**Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g) and (4)]**

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3) and OAR 690-315-0080(4).*

**Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a),(3)(c) and (4)]**

*Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.*

14. Prior to the issuance of Permit G-16138 on December 14, 2006, the City constructed Well 4, a pump station, and system connections.

15. During the authorized development time provided by the permit, groundwater level monitoring plan was submitted.

16. Since December 14, 2007, the City has submitted a Water Management and Conservation Plan (WMCP).

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

17. As of August 19, 2024, they have invested approximately \$252,450, which is approximately 10 percent of the total projected cost for complete development of this project. The City estimates an additional \$2,721,000 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under G-16138, other costs included in this accounting are not partitioned out for G-16138 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in OAR 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.
18. As of December 14, 2007, 0.111 cfs of the 0.223 cfs allowed has been appropriated from Well 4 for beneficial municipal purposes under the terms of this permit.
19. The Department has considered the City's compliance with conditions and did not identify any concerns.

**Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose**

*[OAR 690-315-0080(3)(b)]*

20. As of August 19, 2024, the City has invested approximately \$252,450, which is 10 percent of the total projected cost for complete development of this project. The City estimates an additional \$2,721,000 investment is needed for the completion of this project.

**The Market and Present Demands for Water** *[OAR 690-315-0080(3)(d) and (5)(a-f)]*

*For municipal or quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).*

21. The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife *[OAR 690-315-0080(5)(a-f)]*.
  - a. 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-16138; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The point of appropriation for

Permit G-16138 is not located within a limited or critical ground water area. The point of appropriation for Permit G-16138, located within the in Little Bear Creek Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is within areas 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. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

**Economic investment in the project to date [OAR 690-315-0080(5)(d)].**

22. As of August 19, 2024, they have invested \$252,450, which is 10 percent of the total projected cost for complete development of this project. The City estimates an additional \$2,721,000 investment is needed for the completion of this project.

**Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].**

23. None have been identified.

**Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].**

24. As described in Findings 8, through 13, the City of Hubbard has indicated, and the Department finds that the City must rely on full development of Permit G- 16138 to meet its present and future water demands.
25. City of Hubbard projects a population increase of 0.64 percent per year over the next 45 years.
26. Given the current water supply situation of the City as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-16138.
27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.111 (not to exceed the maximum amount authorized under this permit, being 0.223 cfs) under Permit G-16138 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to a greater appropriation of water under the permit consistent with OAR 690-086-0130(7). A “Development Limitation” condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this requirement.

## CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(2).
2. The City has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. As required by OAR 690-315-0080(1)(b), the permit holder was able to demonstrate that actual construction of the project began (commenced) within the time period required by ORS 537.630(2), being no later than December 14, 2007, in order to be within the one year time period as specified in the permit. ORS 537.630(2) provides that the Department may only allow an extension of time to complete construction or to perfect a water right beyond the specified permit under certain conditions. The time to begin construction may not be extended.
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-16138 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2056<sup>4</sup> pursuant to OAR 690-315-0080(1)(d).
7. 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 the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the City has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
8. As required by OAR 690-315-0090(3) and as described in Finding 18, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 0.11 cfs (not to exceed the maximum amount authorized under this permit, being 0.223 cfs) under Permit G-16138 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

**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 under Permit G-16138 from December 14, 2007, to October 1, 2056.

Extend the time to apply the water to beneficial use under Permit G-16138 from December 14, 2007, to October 1, 2056.

Subject to the following conditions:

**CONDITIONS**

1. **Development Limitations**

A maximum appropriation of 0.111 cfs of water is currently allowed under Permit G-16138. Any appropriation of water beyond 0.111 cfs (not to exceed the maximum amount authorized under the permit, being 0.223 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit G-16138 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department. For review of water management and conservation plans that propose to increase the maximum rate of water diverted under an Extended Permit, after January 1, 2042, that the additional diversion of water will not impair or be detrimental to the public interest.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-16138 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: April 8, 2025

Katherine Ratcliffe  
Katherine Ratcliffe  
Water Right Services Division Administrator, for  
Ivan Gall, Director  
Oregon Water Resources Department

*If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.*



## Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than **May 23, 2025**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative

may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Servicemembers:** Active-duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Jeffrey 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 Will Davidson at 503-507-2749.
  - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
  - Address any correspondence to:      Water Right Services Division  
725 Summer St NE, Suite A
  - Fax: 503-986-0901                              Salem, OR 97301-1266
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**Mailing List for Extension PFO Copies**

**PFO Date: April 8, 2025**

**Application G-16491  
Permit G-16138**

**Original mailed to Applicant:**

City of Hubbard  
Attn: Melinda Olinger  
PO Box 380  
Hubbard, OR 97032

**Copies sent to:**

- 1. WRD - App. File G- 16491/ Permit G-16138
- 2. Agent &/or CWRE representing the applicant

**Fee paid as specified under ORS 536.050 to receive copy:**

- 3. None

**Receiving electronic copy via e-mail (10 AM Tuesday of signature date)**

- 4. WRD - Watermaster District 16 – Greg Wacker
- 5. WRD – *\*If **WMCP** needed* – Kerri Cope and Tamera Smith, Water Supply and Conservation Team (WMCP)  
*Done by\_\_\_\_\_Date\_\_\_\_\_*

CASEWORKER: JDP

<b>Copies Mailed</b>
<b>By:</b> _____ (SUPPORT STAFF)
<b>on:</b> _____ (DATE)