

Oregon Water Resources Department

Water Right Services Division

Water Rights Application
Number R-72115

Final Order

Extension of Time for Permit Number R-12240

Permit Holder: Hide-Away Hills, Inc.

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either file for judicial review, or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

The Department issued Permit R-12240 on August 27, 1997. The permit called for complete application of water to beneficial use by October 1, 2001. On September 23, 2011, Hide-Away Hills, Inc. submitted to the Department an Application for Extension of Time for Permit R-12240. In accordance with OAR 690-315-0050(2), on February 21, 2012, the Department issued a Proposed Final Order (PFO) proposing to deny extension of the time to fully apply water to beneficial use to October 1, 2013. The protest period closed April 6, 2012, in accordance with OAR 690-315-0060(1). Hide-Away Hills, Inc. filed a timely protest.

Except as expressly stated herein, the findings of fact and conclusions of law of the Proposed Final Order are adopted and incorporated by reference as if set fully set out in this Final Order.

Findings of fact:

Finding of fact #2, page 2 of the PFO, incorrectly stated that the application requested an extension of time from October 1, 2001 to October 1, 2014. The extension of time requested was from October 1, 2001 to October 1, 2013. Finding of fact #2 is herein corrected to read:

“The permit holder submitted an “Application for Extension of Time” to the Department on September 23, 2011 requesting 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 R-12240 be extended from October 1, 2001 to October 1, 2013. This is the first permit extension requested for Permit R-12240.

Finding of fact #12, page 4 of the PFO, is herein modified as follows:

- a. In its findings in the PFO, the Department considered the permit holder's compliance with conditions and identified a concern that the permit holder had not yet installed or obtained written documentation from the Oregon Department of Fish and Wildlife of approval of existing fish screens and/or compliance with a requirement to install new fish screens. As a result, the Department determined the public interest had been harmed.
- b. Following issuance of the PFO, the applicant provided additional background information and documentation showing that fish screens were initially installed during the 1960s and were in place at the time the permit was issued; the applicant attempted to obtain direction from the Oregon Department of Fish and Wildlife regarding upgrades or changes in the fish screens that may be required under the permit; and the applicant has made arrangements with ODFW to acquire and install an upgraded fish screen for Ponds 4 and 5. The applicant has provided an affidavit stating its attempts to comply with the fish screening condition and a settlement agreement between the Department and the applicant requires that the fish screen condition is met prior to the issuance of a final order approving an extension of time.

Additional Finding of Fact

Water Resources and Hide-Away Hills, Inc. signed a settlement agreement on January 30, 2014 obligating Hide-Away Hills, Inc. to provide a written statement of its efforts to comply with the fish screen condition in the permit and written confirmation from Oregon Department of Fish and Wildlife that an approved fish screen is installed on the point of diversion for ponds #4 and #5. Water Resources received the statement from Hide-Away Hills, Inc. on September 23, 2013 and the written confirmation of the screen installation on January 14, 2014.

Conclusions of Law:

Conclusion of law #3, page 7 of the PFO, incorrectly stated that the applicant did not comply with the time limit to begin actual construction. Finding of fact #5, page 3 of the PFO, stated that actual construction of the water system began prior to the August 27, 1998 deadline specified in the permit. Conclusion of law #3, page 7 of the PFO, is herein corrected to read:

“The applicant did comply with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).”

Conclusion of law #4, page 7 of the PFO, is herein changed to read:

“As described in Finding of Fact #12 full application of water to beneficial use under the terms and conditions of Permit R-12240 can be completed by October 21, 2013, as required by OAR 690-315-0040(1)(c).”

Conclusion of law #5, page 7 of the PFO, is herein changed to read:

“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).

Order

The extension of time for Application R-72115, Permit R-12240, to apply water to beneficial use under Permit R-12240 from October 1, 2001 to October 1, 2013 is approved.

The attached settlement agreement between Water Resources and Hide-Away Hills, Inc. is incorporated by reference in this order. Storage of 4.0 AF of water in Pond #6 will not be included in a claim of beneficial use for Permit R-12240.

DATED: February 6, 2014

A handwritten signature in black ink, appearing to read "Dwight French", is written over a horizontal line.

Dwight French
Water Right Services Division Administrator, *for*
PHILLIP C. WARD, DIRECTOR

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- If you have any questions about statements contained in this document, please contact Patricia McCarty at (503) 986-0820.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900.
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**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Extension Application for	)	SETTLEMENT
Water Right Permit R-12240, Application	)	AGREEMENT
R-72115, in the name of Hide-Away	)	
Hills, Inc.	)	
<i>Applicant/Protestant</i>	)	

The Oregon Water Resources Department ("Department") and Hide-Away Hills, Inc. do hereby stipulate and agree in this Settlement Agreement as follows:

Background

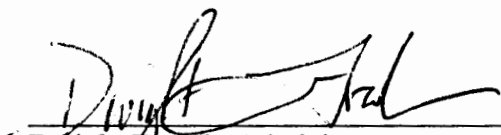
1. On September 23, 2011 the permit holder submitted an "Application for Extension of Time" to the Department requesting the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit R-12240 be extended from October 1, 2001 to October 1, 2013.
2. On February 21, 2012 the Department issued a Proposed Final Order recommending denial of the extension.
3. Hide-Away Hills, Inc. filed a timely protest.

Terms of the Agreement

The Department and Hide-Away Hills, Inc. agree that all issues raised in the protest are resolved solely on the following terms.

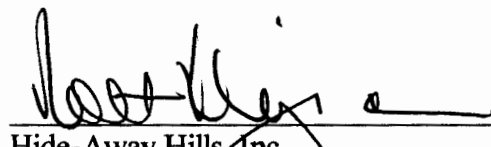
1. The Department will issue a Final Order on Extension of Time for Permit R-12240 consistent with the attached *Draft* Final Order on Extension of Time for Permit R-12240 within 60 days after the Department receives:
 - a. Hide-Away Hills, Inc.'s statement of its efforts to comply with the fish screen condition in the permit, and
 - b. written confirmation from Oregon Department of Fish and Wildlife that an approved fish screen is installed on the point of diversion for ponds #4 and #5 only.
2. Hide-Away Hills, Inc. agrees that the claim of beneficial use for Permit R-12240 will not include pond #6. OWRD acknowledges Pond #6 is included on a Notice of Exempt Reservoir that was timely filed with OWRD on January 31, 1997 (P-82600).
3. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.

4. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
5. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the Draft Final Order on Extension of Time for Permit R-12240 and understands and agrees with the contents thereof.
6. Hide-Away Hills, Inc. waives all right and opportunity to request reconsideration and to seek judicial review of this Settlement Agreement and the Final Order on Extension of Time for Permit R-12240.
7. This Settlement Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Right Services Division
for
Phillip C. Ward, Director

Jan 30, 2014
Date



Hide-Away Hills, Inc.
Robert P. Ellingson III
President

January 10, 2014
Date