

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit G-9829, Water Right Application G-10574,) PROPOSED FINAL ORDER
in the name of the City of Tillamook)

Permit Information

Application File G-10574/ Permit G-9829

Basin 1 – North Coast Basin / Watermaster District 1

Date of Priority: July 14, 1982

Authorized Use of Water

Source of Water: One Well within the Trask River Basin
Purpose or Use: Municipal
Maximum Rate: 2.7 Cubic Feet per Second (CFS)

**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-9829, water right Application G-10574.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1999 to October 1, 2040.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2040.
- 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 Tillamook

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

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) 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. Under specific circumstances, the Department may condition extensions of time for municipal

water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

OAR 690-315-0050(5) authorizes the Department to include in an extension order, but is 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.

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

Background

1. Permit G-9829 was granted by the Department on August 31, 1982. The permit authorizes the use of up to 2.7 cfs of water from one well (TILL 073) within the Trask River Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1983, and that complete application of water was to be made on or before October 1, 1984.
2. Three prior permit extensions have been granted for Permit G-9829. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1999.
3. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
5. The permit holder, the City of Tillamook (City), submitted an "Application for Extension of Time" to the Department on September 22, 2009, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-9829 be extended from October 1, 1999 to October 1, 2040.

6. Notification of the City's Application for Extension of Time for Permit G-9829 was published in the Department's Public Notice dated September 29, 2009. No public comments were received regarding the extension application.

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 537.230¹, 537.630² and/or 539.010(5)³

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

7. On September 22, 2009, 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)]

8. Permit G-9829 was issued prior to June 29, 2005; therefore, the applicant is not required to provide evidence of actions taken to begin actual construction of the project.⁴

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.

9. The remaining work to be accomplished under Permit G-9829 consists of replacing a 75hp pump with a 100hp pump, completing construction including upgrading and expanding the system piping, adding service connections, and applying water to full beneficial use.
10. Prior to October 1, 1999, the permit holder had appropriated 1.6 cfs of the 2.7 cfs of water authorized under Permit G-9829 for municipal purposes. There is an undeveloped portion of 1.1 cfs of water under Permit G-9829 as per OAR 690-315-0010(6)(g).
11. In addition to the 2.7 cfs of water from a well (TILL 073) authorized under Permit G-9829, the City holds the following rights:
 - Certificate 32234 for 1.56 cfs of water from Well 1 (TILL 654) within the Trask River Basin;
 - Certificate 35782 for 1.03 cfs of water from the Gienger Road Well within the Trask

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

River Basin;

- Permit G-11784 for 2.23 cfs of water from Well 3 (TILL 013) in the Trask River Basin;
- Certificate 2388 for 6.0 cfs cfs of water from Killam Creek, tributary to the Trask River;
- Certificate 33251 for 6.0 cfs of water from Fawcett Creek and water stored in a reservoir constructed under Permit R-661 [*storage of 2/3 AF of water from Fawcett Creek, tributary of the Tillamook River, under Certificate 49474*];
- Permit S-6673, modified by Permit Amendment T-11197, for 20.0 cfs from Fawcett Creek, tributary of the Tillamook River;
- Permit S-30192 for 700 AF of water from Skookum Lake Reservoir constructed under Permit R-4532 [*storage of 700 AF of water from Fawcett Creek, tributary of the Tillamook River*]; and
- Permit S-41438 for 2.0 cfs of water from Simmons Creek, tributary of the Tillamook River.

These water rights and permits total 35.52 cfs of water, being 7.52 cfs of ground water, 28.0 cfs of live flow (surface) water and the storage and use of 770 AF of water. The City of Tillamook has not yet made beneficial use of 20.0 cfs of water, being 1.1 cfs of groundwater under Permit G-9829, 2.0 cfs of surface water under Permit S-41438 and 16.9 cfs under Permit S-6673; and 700 AF of stored water under Permits S-30192 and R-4532.

12. The wells under Certificates 32234 and 35782 have high iron and are for emergency use only. Water from Killam Creek (Certificate 2388) and Fawcett Creek (Certificate 33251 and Permit S-6673) are subject to low summer flows and winter turbidity. Water from Simmons Creek (Permit S-41438) is for reserve capacity.
13. According to the City, their peak water demand within its service area boundaries was 4.3 cfs in 2008.
14. The City of Tillamook serves customers within the City of Tillamook, individual residents outside of the city limits and along the City's transmission lines, and 11 rural water districts.
15. According to the City, in 2008, the population within the service boundary of the City of Tillamook was 6,250. The City of Tillamook estimates the population will increase at average growth rate of 0.67 percent per year, reaching an estimated population of 7,685 by the year 2040.
16. According to the City, their peak day demand is projected to be approximately 5.4 cfs of water by the year 2040.

17. Full development of Permit G-9829 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
18. The City's request for an extension of time until October 1, 2040, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-9829 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.

19. Prior to the issuance of Permit G-9829 on August 31, 1982, the City constructed the well (TILL 073).
20. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-9829.
21. During the last extension period, being October 1, 1994 to October 1, 1999, the City accomplished installed 13 fire hydrants, conducted drinking water standard tests, extended service to Domingo Court and the Wilson River Loop, completed upgrades at Cedar Street, and completed a Water Master Plan.
22. Since the 1999 the City has accomplished the following work:
 - Installed 13 fire hydrants;
 - Extended service to Linden Drive and 12th Street;
 - Conducted drinking water standard tests;
 - Replaced various sections of the water transmission system;
 - Maintained meters;
 - Developed a well head protection plan; and
 - Replaced a well house.
23. According to the City, as of September 22, 2009, they have invested approximately \$4,319,500, which is approximately 42 percent of the total projected cost for complete development of this project. The City estimates an additional \$6,000,000 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-9829, other costs included in this accounting are not partitioned out for G-9829 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 ORS 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.

24. Prior to October 1, 1999, 1.60 cfs of the 2.7 cfs allowed has been appropriated from the well (TILL 073) for beneficial municipal purposes under the terms of this permit.
25. The Department has considered the City's compliance with conditions and did not identify any concerns.

Cost to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

26. According to the City, as of September 22, 2009, they have invested approximately \$4,319,500, which is 42 percent of the total projected cost for complete development of this project. The City estimates an additional \$6,000,000 investment is needed for the completion of this project.

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

27. As described in Findings 10 through 16 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-9829.
28. The City projects a population increase, on average, of 0.67 percent per year over a thirty-two year period, being the year's 2008 to 2040.
29. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under G-9829.
30. 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, and/or mitigate the effects of the subsequent development on competing demands on the resource. The department determined on September 29, 2009 a need to condition any use of water beyond 1.60 cfs from wells authorized under Permit G-9829 with a "Municipal Use Extension Condition." This condition requires the water user to develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted wells.
31. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 1.60 cfs up to 2.7 cfs under Permit G-9829 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.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

32. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

33. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

34. Delay of development under Permit G-9829 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years.

Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]

The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

35. On September 29, 2009, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-9829 has the potential for substantial interference with surface water. The Department determined that use undeveloped portion of Permit G-9829, being 1.1 cfs will result in 0.17 cfs of surface water interference with Trask River after 360 days of pumping.
36. The pending municipal Application for Extension of Time for Permit G-9829 was delivered to ODFW on December 14, 2012, for ODFW's review under OAR-690-315-0080.
37. Notification that the pending municipal Application for Extension of Time for Permit G-9829 was delivered to ODFW for review was sent to the City.
38. Notification that the pending municipal Application for Extension of Time for Permit G-9829 was delivered to ODFW for review was published in the Department's Public Notice dated December 18, 2012. No public comments were received regarding this notice.

39. On February 5, 2014, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-9829 stating that because the hydraulic connectivity was estimated to be very low, ODFW determined that the use of the undeveloped portion of the permit [having PSI with the Trask River] will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.
40. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-9829 that impacts surface water [the Trask River] will maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.
41. On February 14, 2014, the City was notified, per OAR 690-315-0080(2)(f), of ODFW's written advice for the pending municipal Application for Extension of Time for Permit G-7029.

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. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2040⁵ pursuant to OAR 690-315-0080(1)(d).
6. 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

⁵ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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).

7. As authorized in OAR 690-315-0050(5) and as described in Finding 30, above, the Department has established, as specified under Item 1 of the "Conditions" section of this PFO, a "Municipal Use Extension Condition" that applies to any use of water beyond 1.60 cfs under Permit G-9829.
8. As required by OAR 690-315-0090(3) and as described in Finding 31, above, and specified under Item 2 of the "Conditions" section of this PFO, the appropriation of water beyond 1.60 cfs up to 2.7 cfs under Permit G-9829 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).
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 35 and 41, above, the use of the undeveloped portion of the permit having PSI with surface water will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

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-9829 from October 1, 1999 to October 1, 2040.

Extend the time to apply the water to beneficial use under Permit G-9829 from October 1, 1999 to October 1, 2040.

Subject to the following conditions:

CONDITIONS

1. **Municipal Use Extension Condition**
The use of any water beyond 1.60 cfs under Permit G-9829 is subject to this Municipal Use Extension Condition.

The water user shall develop a plan to monitor and report the impact of water use

under Permit G-9829 on water levels within the aquifer that provides water to the permitted wells. The plan shall be submitted to the Department within one year of the date the Extension Order is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted wells or and adequate substitute such as water levels in nearby wells.

2. **Development Limitations**

Appropriation of any water beyond 1.60 cfs up to 2.7 cfs under Permit G-9829 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-9829 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with 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: September 23, 2014


Dwight French
Water Right Services Division Administrator

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(1) 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 7, 2014**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

