

**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-16125, modified by Permit Amendment T-11213)
Water Right Application G-16514)
in the name of the Oregon Military Department) **PROPOSED FINAL ORDER**

Permit Information

Application File G-16514 / Permit G-16125 (modified by Permit Amendment T-11213)

Basin 1 – North Coast Basin / Watermaster District 1
Date of Priority: August 23, 2005

Authorized Use of Water

Source of Water: Two Wells within the Neacoxie Creek Basin, plus 4 additional wells from Permit Amendment T-11213
Purpose or Use: Quasi-Municipal
Maximum Rate: 0.668 Cubic Feet per Second (cfs) November 1 through June 30, 0.443 cfs July 1 through 31, 0.289 cfs August 1 through 30, 0.41 cfs September 1 through 30 and 0.485 cfs October 1 through 31

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-16125 (modified by Permit Amendment T-11213), water right Application G-16514.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time for complete construction of the water system from October 1, 2011 to October 1, 2019.

- Grant an extension of time to apply water to full beneficial use from October 1, 2011 to October 1, 2019.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

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(1) 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 quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

FINDINGS OF FACT

Background

1. Permit G-16125 (modified by Permit Amendment T-11213) was granted by the Department on November 16, 2006. The permit authorizes the use of up to 0.668 cfs November 1 through June 30, 0.443 cfs July 1 through 31, 0.289 cfs August 1 through 30, 0.41 cfs September 1 through 30 and 0.485 cfs October 1 through 31 of water, from

two wells in the Neacoxie Creek Basin for quasi-municipal use. It specified construction of the water development project was to be completed by October 1, 2011, and complete application of water was to be made on or before October 1, 2011.

2. On June 2, 2011 the Department approved Permit Amendment T-11213 (Special Order Volume 84, Page 367) authorizing a change in the point of appropriation under Permit G-16125 for well 1 and well 2. The Permit Amendment also authorized additional points of appropriations (wells 3,4,5 and 6); the amended permit is hereafter referred to simply Permit G-16125.
3. The permit holder submitted an "Application for Extension of Time" to the Department on April 29, 2013, requesting both the time to complete construction and time to apply water to full beneficial use under the terms and conditions of Permit G-16125 be extended from October 1, 2011 to October 1, 2019. This is the first extension of time request for Permit G-16125.
4. Notification of the Application for Extension of Time for Permit G-16125 was published in the Department's Public Notice dated May 14, 2013. No public comments were received regarding the extension application.

Review Criteria for 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)]

5. On April 29, 2013, the Department received an 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. Senate Bill 300 (1999 legislation) eliminated the requirement that holders of new surface water and ground water permits start construction on water projects within one year after the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999.

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 quasi-municipal water

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.

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-16125 consists of applying water to full beneficial use.
8. As of October 1, 2012 the permit holder had appropriated all of the 0.668 cfs of water authorized under Permit G-16125 for quasi-municipal purposes.
9. Oregon Military Department's peak water demand within its service area boundaries was 0.668 cfs in 2012.
10. According to the Oregon Military Department, in 2012, the population within the service boundary of Oregon Military Department was 3049. Oregon Military Department estimates the population to have no growth rate, reaching an estimated population of 3049 by the year 2021.
11. According to the Oregon Military Department, their peak demand is projected to be approximately 0.691 cfs of water by the year 2021.
12. Full development of Permit G-16125 is needed to meet the present and future water demands of Oregon Military Department.
13. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2019, to accomplish the application of water to beneficial use under the terms of Permit G-16125 is both reasonable and necessary.

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

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

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 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. Construction of Well 1 (CLAT 53838) began January 14, 2001 and was completed April 11, 2001. Construction of Well 2 (CLAT 53837) began January 25, 2001 and was completed April 11, 2011.
15. Work was accomplished during the original development time frame under Permit G-

16125. The permit holder installed totalizing flow meters in July 2011.

16. Since October 1, 2011 the permit holder has completed a Recycled Water Use Plan and Emergency Response Plan in 2012. On March 13, 2013 Water Management and Conservation Plan was approved and final order issued by the Department.
17. As of April 29, 2013, the permit holder has invested \$4,000,000, which is the total projected cost for complete development of this project.
18. As of October 1, 2012, 0.668 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
19. The Department has considered the permit holder'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)]

20. As of April 29, 2013, the permit holder has invested \$4,000,000, which is total projected cost for complete development of this project.

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

For 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).

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)].

21. 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-16125; 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 points of appropriation for Permit G-16125 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16125, located within the Neacoxie Creek Basin, are not located within or above any state or federal scenic waterway. The points of appropriation are within areas 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. The points of appropriation are 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 April 29, 2013, the permit holder has invested \$4,000,000, which is total projected cost for complete development 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. Oregon Military Department does not project any future population.
25. Given the current water supply situation of Oregon Military Department, including current and expected demands, there is a market and present demand for the water to be supplied under Permit G-16125.

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

26. 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)]

27. 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)]

28. According to Oregon Military Department, delay of development under Permit G-16125 was due, in part, to the size and scope of the quasi-municipal water system, which was designed to be phased in over a period of years, and to the availability of funding to expand the water supply system.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant 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. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to 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, 2019⁴ 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 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 permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

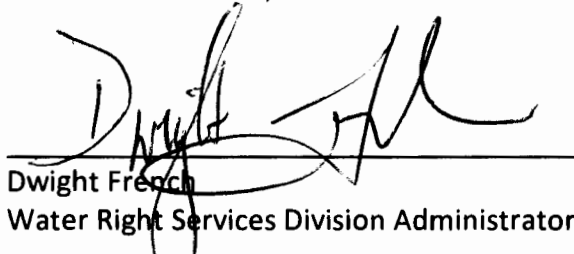
Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Grant an extension of time for complete construction of the water system from October 1, 2011 to October 1, 2019.

Extend the time to apply the water to beneficial use under Permit G-16125 from October 1, 2011 to October 1, 2019.

DATED: October 28, 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.

⁴ Pursuant to ORS 537.630(4), 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 the claim of beneficial use.

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 **December 12, 2014**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner'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;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

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- If you have any questions about statements contained in this document, please contact Mabelle A Bamberger 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 Patricia McCarty at 503-986-0820.
 - 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
Salem, OR 97301-1266
Fax: 503-986-0901
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