

**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-16027, Water Right Application G-16249,) PROPOSED FINAL ORDER
in the name of the Hiland Water Corporation)

Permit Information

Application File G-16249 / Permit G-16027

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: May 14, 2004

Authorized Use of Water

Source of Water: Four Wells within the Harvey Creek Basin
Purpose or Use: Irrigation on 26.01 Acres and Quasi-Municipal
Maximum Rate: 0.33 cubic feet per second (cfs) for irrigation and 0.13 cfs
for Quasi-Municipal further limited to 16,500 gallons per
day

**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.

This Proposed Final Order applies only to Permit G-16027, water right Application G-16249.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2010 to October 1, 2030.
- Grant an extension of time to apply water to full beneficial use from October 1, 2010 to October 1, 2030.

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.

OAR 690-315-0090(4-5) provides in pertinent part that quasi-municipal water use permit holders that serve a population of less than 1000 and/or can reasonably demonstrate that fewer than five years is necessary to complete construction and apply the water to beneficial use are not subject to OAR 690-315-0090(3) unless on review of the certain criteria the Department determines that compliance is necessary.

FINDINGS OF FACT

Background

1. Permit G-16027 was granted by the Department on March 2, 2006. The permit authorizes the use of up to 0.330 cfs of water for Irrigation use on 26.01 acres and 0.13

cfs for quasi-municipal use, from Four Wells, being Well 1, 2, 3, and 4 within the Harvey Creek Basin. It specified construction of the water development project was to be completed by October 1, 2010, and complete application of water was to be made on or before October 1, 2010.

2. The permit holder submitted an "Application for Extension of Time" to the Department on June 20, 2012, requesting both the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-16027 be extended from October 1, 2010 to October 1, 2020. This is the first extension of time request for Permit G-16027.
3. On June 25, 2012, the permit holder submitted additional information to supplement and/or update their Application for Extension of Time. The amendment requested the time to complete construction be extended from October 1, 2020 to October 1, 2030, and the time to apply water to full beneficial use be extended from October 1, 2020 to October 1, 2030.
4. Notification of the Application for Extension of Time for Permit G-16027 was published in the Department's Public Notice dated July 3, 2012. 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 June 20, 2012, 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.

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.

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 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-16027 consists of constructing Wells 2, 3, and four, pump houses, and ancillary facilities, installing meters, meeting all permit conditions at the time the conditions become applicable, and applying water to full beneficial use.
8. As of October 1, 2012 the permit holder had appropriated 0.04 cfs of the 0.13 cfs authorized for quasi-municipal use, and 0.17 cfs for irrigation on 4.0 acres. The permit authorizes 0.33 cfs for irrigation of a total of 26.01 acres.
9. Hiland Water Corporation holds other water rights but use of water under Permit G-16027 will exclusively serve 11 homes on 26 acres.
10. Hiland Water Corporation has not yet made beneficial use of 0.16 cfs of water for irrigation and 0.09 cfs for quasi-municipal use under Permit G-16027.
11. Hiland Water Corporation's peak water demand under this permit 0.04 cfs for quasi-municipal use and 0.17 cfs for irrigation in 2012.
12. According to the Hiland Water Corporation, in 2012, 7 homes were served under this permit. Hiland Water Corporation estimates the number of homes served under this permit to increase to a maximum of 11 homes by the year 2030.
13. According to the Hiland Water Corporation, their peak demand is projected to be approximately 0.13 cfs of water for quasi-municipal use and 0.33 cfs for irrigation on 26.01 acres by the year 2030.
14. Full development of Permit G-16027 is needed to irrigate 26.01 acres, and meet the present and future water demands of the 11 homes served under this permit.
15. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2030, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16027 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).

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.

16. Construction of Well 1 (YAMH 53637) and water system began February 27, 2004.
17. Work was accomplished during the original development time frame under Permit G-16027. The permit holder completed the water distribution system and installed water meters at each water service.
18. As of June 20, 2012, the permit holder invested \$67,000, which is 39 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$105,000 investment is needed for the completion of this project.
19. As of October 1, 2012 the permit holder had appropriated 0.04 cfs for quasi-municipal use of the 0.13 cfs authorized and 0.17 cfs for irrigation use on 22.01 acres of the 0.330 cfs of water authorized under Permit G-16027.
20. 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)]

21. As of June 20, 2012, the permit holder invested \$67,000, which is 39 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$105,000 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 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)].

22. 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-16027; 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-16027 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16027, are located within the Harvey Creek Basin, are not located within or above any state or federal scenic waterway. The points of appropriation are 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 are 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)].

23. As of June 20, 2012, the permit holder invested \$67,000, which is 39 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$105,000 investment is needed for the completion of this project.

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

24. 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)].

25. As described in Findings 8 through 14 Hiland Water Corporation has indicated, and the Department finds that Hiland Water Corporation must rely on full development of Permit G- 16027 to meet its present and future water demands on the place of use described in this permit.
26. Hiland Water Corporation estimates the number of homes served under this permit to increase to a maximum of 11 homes by the year 2030.
27. Given the current water supply situation of Hiland Water Corporation, including current and expected demands there is a market and present demand for the water to be supplied to 11 homes and irrigation of 26.01 acres under Permit G-16027.
28. The Department has determined that the permit holder of Permit G-16027 is not is not required to submit a WMCP consistent with OAR Chapter 690, Division 86 per OAR 690-315-0090(4) is restricted to 11 homes by land use requirements, this permit only serves the designated place of use, and the place of use is not served by any other water rights.

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

29. 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)]

30. 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)]

31. According to Hiland Water Corporation, delay of development under Permit G-16027 was due, in part, poor economy since 2008 and 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 complete construction and 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 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, 2030⁴ 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

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.

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).

7. In accordance with OAR 690-315-0090(4-5), and as described in Finding 28, above, the Department has determined that the permit holder of Permit G-16027 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.


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-16027 from October 1, 2010 to October 1, 2030.

extend the time to apply the water to beneficial use under Permit G-16027 from October 1, 2010 to October 1, 2030.

DATED: November 25, 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 **January 9, 2015**, 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

