

**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-16281, Water Right Application G-16710,                )  
in the name of the Shady Cove Waterworks                                )            **PROPOSED FINAL ORDER**

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**Permit Information**

**Application File G-16710 / Permit G-16281**

Basin 15 – Rogue Basin / Watermaster District 13

Date of Priority: August 21, 2006

**Authorized Use of Water**

Source of Water: Three Wells within the Rogue River Basin

Purpose or Use: Quasi-Municipal

Maximum Rate: 0.17 cubic feet 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.***

This Proposed Final Order applies only to Permit G-16281, water right Application G-16710.

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

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 2012 to October 1, 2016.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012 to October 1, 2016.

**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-16281 was granted by the Department on January 17, 2008. The permit authorizes the use of up to 0.17 cfs of water, from three Wells, being Well 1, Well 2 and Well 3 (JACK 32812), in the Rogue River Basin for quasi-municipal use. The wells are

authorized year round for emergency purposes; however, the Wells cannot be used more than 30 days each calendar year. The permit specified both construction of the water development project and complete application of water was to be made on or before October 1, 2012.

2. The permit holder submitted an "Application for Extension of Time" to the Department on November 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-16281 be extended from October 1, 2012 to October 1, 2016. This is the first extension of time request for Permit G-16281.
3. Notification of the Application for Extension of Time for Permit G-16281 was published in the Department's Public Notice dated December 4, 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 537.230<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)]**

4. On November 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)]**

5. 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 use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

6. The remaining work to be accomplished under Permit G-16281 consists of completing construction of the water system, including constructing a water treatment plant,

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

extending the distribution system to service the entire place of use, and applying water to full beneficial use.

7. As of October 1, 2012, the permit holder had appropriated 0.17 cfs of water from Well 2 (JACK 31339) authorized under Permit G-16281 for quasi-municipal purposes.
8. In addition to the 0.17 cfs of water authorized under Permit G-16281, Shady Cove Waterworks holds the following rights:
  - Permit S-54348 for 109.0 AF of water, being 9.0 AF from Second Pump Station Pond and 100.0 AF from Lost Creek Reservoir within the Rogue River Basin; [water from runoff and Red Lick Creek is stored in Second Pump station Pond under Permit R-14319]

Shady Cove Waterworks's permits total 0.17 cfs of ground water and 109.0 AF of surface water. Shady Cove Waterworks has made beneficial use of 0.17 cfs of water under Permit G-16281 and 4.4 AF of water under Permit S-54398.

9. Shady Cove Waterworks's peak water demand within its service area boundaries was 6.3 AF in 2012.
10. According to the Shady Cove Waterworks, in 2012, 18 households were connected to the water system. The population within the service boundary of Shady Cove Waterworks was 41. Shady Cove Waterworks anticipates 350 connections in 2016 and estimates the population to increase at an calculated estimated growth rate of 74.3 percent per year, reaching an estimated population of 800 by the year 2016.
11. According to the Shady Cove Waterworks, their peak demand is projected to be approximately 109 AF of water by the year 2016.
12. Full development of Permit G-16281 is needed to meet the present and future water demands of Shady Cove Waterworks, including emergency use.
13. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2016, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16281 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.*

14. Actual construction of the well and water system began prior to the deadline specified in the permit. Construction of Well 2 (JACK 31339) began November 11, 1991.
15. The following work was accomplished during the original development time frame under Permit G-16281.
  - Well 2 pump house was rebuilt;
  - A submersible pump on Well 2 was replaced;
  - Water meters was installed on Well 2
  - Monthly water use records were recorded
  - Annual static water levels were measured
16. As of November 20, 2012, the permit holder invested \$85,400, which is 3 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,800,000 investment is needed for the completion of this project.
17. As of October 1, 2012, 0.17 cfs of water allowed under the permit has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
18. 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)]**

19. As of November 20, 2012, the permit holder invested \$85,400, which is 3 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,800,000 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)].

20. 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-16281; 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-16281 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16281, located within the Rogue River Basin, are not located within or above any state or federal scenic waterway. The points of appropriation are within areas ranked moderate 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)].

21. As of November 20, 2012, the permit holder invested \$85,400, which is 3 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,800,000 investment is needed for the completion of this project.

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

22. 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)].

23. As described in Findings 7 through 12 Shady Cove Waterworks has indicated, and the Department finds that Shady Cove Waterworks must rely on full development of Permit G- 16281 to meet its present and future water demands.
24. Shady Cove Waterworks projects a population increase of 74.3 percent per year over a 4 year period, being 2012 to 2016.
25. Given the current water supply situation of Shady Cove Waterworks, including current and expected demands, the need for emergency water supply, there is a market and present demand for the water to be supplied under Permit G-16281.
26. The Department has determined that the permit holder of Permit G-16281 is not is not

required to submit a WMCP consistent with OAR Chapter 690, Division 86 as per OAR 690-315-0090(4) and (5); there is no undeveloped portion of the permit and serves a population less than 1000 and the applicant has demonstrated that fewer than five years is necessary to complete construction and apply the water to beneficial use.

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

27. 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)]**

28. 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)]**

29. According to Shady Cove Waterworks, delay of development under Permit G-16281 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 the lack of availability of funding to expand the water supply system, the economic downturn, and financial difficulties of the prior owner.

**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, 2016<sup>4</sup> pursuant to OAR 690-315-0080(1)(d).

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<sup>4</sup> 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.

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).
7. In accordance with OAR 690-315-0090(4-5), and as described in Finding 26, above, the Department has determined that the permit holder of Permit G-16281 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.

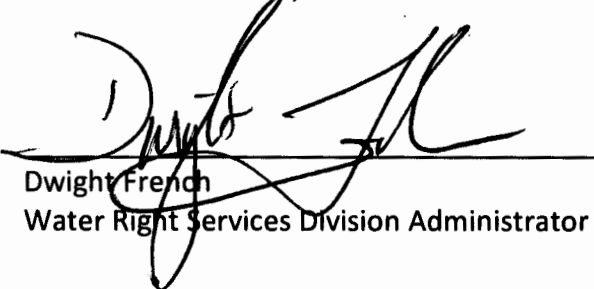
**Proposed Order**

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-16281 from October 1, 2012 to October 1, 2016.

extend the time to apply the water to beneficial use under Permit G-16281 from October 1, 2012 to October 1, 2016.

DATED: December 2, 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 16, 2015**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.



