

**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-16175, Water Right Application G-16671,)
in the name of the Knappa Water Association) **PROPOSED FINAL ORDER**

Permit Information

Application File G-16671 / Permit G-16175
Basin 1 – North Coast Basin / Watermaster District 1
Date of Priority: May 17, 2006

Authorized Use of Water

Source of Water: Two Wells within the Big Noise Creek Basin
Purpose or Use: Quasi-Municipal
Maximum Rate: 0.656 cubic feet per second (cfs), being 0.267 cfs from
Well 6-1 (CLAT 52476) and 0.389 cfs from Well 6-2
(CLAT 52477)

**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-16175, water right Application G-16671.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2011 to October 1, 2051.
- Grant an extension of time to apply water to full beneficial use from October 1, 2011 to October 1, 2051.
- Make the extension of time subject to certain conditions as set forth below.

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(3) requires the Department, under specific circumstances, to condition an extension of time for 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-16175 was granted by the Department on April 12, 2007. The permit authorizes the use of up to 0.656 cfs of water, being 0.267 cfs from Well 6-1 (CLAT

52476) and 0.389 cfs from Well 6-2 (CLAT 52477), within Big Noise Creek Basin for quasi-municipal use. It specified both construction of the water development project and complete application of water was to be made on or before October 1, 2011.

2. The permit holder submitted an "Application for Extension of Time" to the Department on July 1, 2013, 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-16175 be extended from October 1, 2011 to October 1, 2051. This is the first extension of time request for Permit G-16175.
3. Notification of the Application for Extension of Time for Permit G-16175 was published in the Department's Public Notice dated July 16, 2013. No public comments were received regarding the extension application.
4. On July 24, 2014 the permit holder submitted additional information to supplement their Application for Extension of Time.

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 July 1, 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 use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

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.

7. The remaining work to be accomplished under Permit G-16175 consists of developing additional well(s), applying for a Permit Amendment, receiving Department approval for permit amendment, completing construction and applying water to full beneficial use.
8. As of July 1, 2013, the permit holder had appropriated 0.215 cfs of the 0.656 cfs of water authorized under Permit G-16175 for quasi-municipal purposes, being 0.115 cfs from Well 6-1 and 0.10 cfs from Well 6-2.
9. In addition to the 0.656 cfs of water authorized under Permit G-16175, Knappa Water Association holds the following rights:
 - Certificate 68353 for 0.04 cfs of water from Well 1 within the Columbia River Basin for quasi-municipal use;
 - Certificate 82963 for 1.0 cfs of water from Well 2 within the Columbia River Basin for quasi-municipal use;
 - Permit G-10572 for 1.203 cfs of water from four wells within the Gnat Creek Basin for quasi-municipal use;
 - Permit G-11676 for 0.1003 cfs of water from one well within the Columbia River Basin;
 - Permit G-13427 for 0.156 cfs of water from one well within the Supply Creek Basin for quasi-municipal use;
 - Certificate 33899 for 0.5 cfs of water from Mill Creek for domestic use;
 - Certificate 68351 for 0.75 cfs of water from Mill Creek for domestic use;
 - Certificate 68352 for 0.78 cfs of water from Mill Creek for domestic use;
 - Permit S -46048 for 1.0 cfs of water diverted from Rock Creek, a tributary of Columbia River for quasi-municipal use; and
 - Permit S-69806 for 1.0 cfs of water diverted from Hunt Creek, a tributary of Columbia River for quasi-municipal use.

Knappa Water Association's permits total 7.19 cfs, being 3.16 cfs of ground water and 4.03 cfs of surface water. Knappa Water Association has not yet made beneficial use of 0.441 cfs of water being 0.152 from Well 6-1 and 0.289 from Well 6-2 under Permit G-16175, 0.73 cfs under Permit G-10572, 0.23 cfs under Permit G-11676, 0.076 cfs under Permit G-13427, 1.0 cfs under Permit S-46048 and 1.0 cfs under Permit S-69806.

10. According to Knappa Water Association, as of July 1, 2013 they switched from surface water to ground water in 1991. The surface water rights are maintained, however for back up. Certificate 33899, 68351, and 68352 are currently leased to Oregon Department of Fish & Wildlife for in-stream use for trout habitat until September 19,

2015.

11. According to Knappa Water Association most of the wells stress after being used more than ten hours/day, and thus produce lower quantity of water than authorized (Certificates 68353, 82963 and Permits G-10572, G-11676, G-13427). Permit G-10572 Well TW85-2 is hydraulically connected to TW85-1, may never be used.
12. Knappa Water Association's peak water demand within its service area boundaries was 0.36 cfs in 2012.
13. According to the Knappa Water Association, in 2012, the population within the service boundary of Knappa Water Association was 1,427. Knappa Water Association estimates the population to increase at an estimated growth rate of 0.8 percent per year, reaching an estimated population of 1,876 by the year 2052.
14. According to the Knappa Water Association, their peak demand is projected to be approximately 0.47 cfs of water by the year 2052.
15. Full development of Permit G-16175 is needed to meet the present and future water demands of Knappa Water Association, including system redundancy and emergency use.
16. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2051, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16175 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.

17. Actual construction of the well and water system began prior to the deadline specified in the permit. Construction of Well 6-2 (CLAT 52477) began February 24, 2006. Construction of Well 6-1 (CLAT 52476) began March 15, 2006.
18. Work was accomplished during the original development time frame under Permit G-16175.

- Water from the wells were tested;
 - water distribution lines were installed;
 - pump stations were constructed, pumps were installed;
 - meters were installed; and
 - Static water levels were measured.
19. As of July 1, 2013, the permit holder invested \$142,039, which is the total projected cost for complete development of this project.
 20. As of October 1, 2011, the permit holder has appropriated 0.215 cfs of the 0.656 cfs authorized for quasi-municipal use, being 0.115 cfs from Well 6-1 and 0.10 cfs from Well 6-2.
 21. 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)]

22. As of July 1, 2013, the permit holder invested \$142,039, which is the 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)].

23. 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-16175; 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-16175 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16175, located within the Big Noise 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 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)].

24. As of July 1, 2013, the permit holder invested \$142,039, 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)].

25. 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)].

26. As described in Findings 8 through 14 Knappa Water Association has indicated, and the Department finds that Knappa Water Association must rely on full development of Permit G- 16175 to meet its present and future water demands.
27. Knappa Water Association projects a population increase of 0.8 percent per year over a 40 year period, being 2012 to 2051. Knappa Water Association is bordered on the North by the Columbia River, on the West by Wickiup Water District, and on the South and East by state and industrial forest lands. Thus their service area is unlikely to expand. The service area is rural and unincorporated, the Brownsmead area is tide land pasture and is not subject to development, and very few acres are designated commercial. All considered, the Knappa Water Association anticipates slow future growth within their current boundaries.
28. Given the current water supply situation of Knappa Water Association, including current and expected demands, there is a market and present demand for the water to be supplied under Permit G-16175.
29. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of any water beyond 0.215 cfs, being 0.115 cfs from Well 6-1 and 0.10 cfs from Well 6-2 up to 0.656 cfs (0.267 cfs from Well 6-1 and 0.389 cfs from Well 6-2) under Permit G-16175 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 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7). "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)]

30. 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)]

31. 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)(a)]

32. According to Knappa Water Association, delay of development under Permit G-16175 was due, in part, to both wells while currently producing at their full potential, are below the authorized amount under this permit. In addition, Siting wells in the Knappa Water service area has been a challenge. The Association drilled six essentially dry holes and one well that can't be used because it is hydraulically connected to another well. Time is needed to do the studies necessary to choose new drilling sites and accumulate the resources to develop well(s). Funds for capital improvements accumulate through hook-up fees, and since the economic downturn in 2008 and the association has averaged four hook-ups per year it will take a number of years to accumulate the funding to expand the water supply system. An finally, due to conservation technology customers are using less water.

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, 2051⁴ pursuant to OAR 690-315-0080(1)(d).

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.

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. As required by OAR 690-315-0090(3) and as described in Finding 28, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of any water beyond 0.215 cfs, being 0.115 cfs from Well 6-1 and 0.10 cfs from Well 6-2 up to 0.656 cfs (0.267 cfs from Well 6-1 and 0.389 cfs from Well 6-2) under Permit G-16175 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 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

Continued on the following page

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-16175 from October 1, 2011 to October 1, 2051.

extend the time to apply the water to beneficial use under Permit G-16175 from October 1, 2011 to October 1, 2051.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Appropriation of any water beyond 0.215 cfs, being 0.115 cfs from Well 6-1 and 0.10 cfs from Well 6-2 up to 0.656 cfs (0.267 cfs from Well 6-1 and 0.389 cfs from Well 6-2) under Permit G-16175 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 that grants 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. Use of water under Permit G-16175 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 this order may also meet the WMCP submittal requirements of other Department orders.

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.
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 Machel 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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