

**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-15728, Water Right Application G-15960,) **PROPOSED FINAL ORDER**
in the name of the Nesika Beach Ophir Water District)

Permit Information

Application File G-15960 / Permit G-15728

Basin 17 – South Coast Basin / Watermaster District 19

Date of Priority: March 25, 2003

Authorized Use of Water

Source of Water: One Well within the Greggs Creek Basin
Purpose or Use: Quasi-Municipal
Maximum Rate: 1.0 cubic feet per second (cfs); being 1.0 cfs from
November 1 through June 30; 0.9 cfs from July through
July 31; 0.7 cfs from August 1 through August 31; and 0.6
cfs from September 1 through October 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-15728, water right Application G-15960.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2008 to

October 1, 2033.

- 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-15728 was granted by the Department on September 16, 2004. The permit authorizes the use of up to 1.0 cfs of water, being 1.0 cfs from November 1 through June 30; 0.9 cfs from July 1 through July 31; 0.7 cfs from August 1 through August 31; and 0.6 cfs from September 1 through October 31; from a well within the Greggs Creek Basin for quasi-municipal use. It specified complete application of water was to be made on or before October 1, 2008.
2. The permit holder submitted an "Application for Extension of Time" to the Department on March 10, 2014, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15728 be extended from October 1, 2008 to October 1, 2033. This is the first extension of time request for Permit G-15728.
3. Notification of the Application for Extension of Time for Permit G-15728 was published in the Department's Public Notice dated March 25, 2014. 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 March 10, 2014, 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

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.

complete the project within the time requested.

7. The remaining work to be accomplished under Permit G-15728 consists of drilling the well, meeting all permit conditions, completing construction, and applying water to full beneficial use.
8. As of July 24, 2014, the permit holder has not appropriated any water of the 1.0 cfs of water authorized under Permit G-15728 for quasi-municipal purposes.
9. In addition to the 1.0 cfs of water authorized under Permit G-15728, Nesika Beach Ophir Water District holds the following rights:
 - Permit G-13613 for 0.5 cfs of water from one well for quasi-municipal use;
 - Certificate 37549 for 0.2 cfs of water from one well for group domestic for 112 families;
 - Permit S-53985 for 1.0 cfs of water diverted from Greggs Creek for quasi-municipal use.

Nesika Beach Ophir Water District's permit and certificate total 1.7 cfs of ground water and 1.0 cfs of surface water. Nesika Beach Ophir Water District has not yet made beneficial use of 1.0 cfs of water under Permit G-15728 and 1.0 cfs of water under Permit S-53985.

10. Nesika Beach Ophir Water District's peak water demand within its service area boundaries was 1.24 cfs in 2014.
11. According to the Nesika Beach Ophir Water District, in 2014, the population within its service boundary was 2,167. Nesika Beach Ophir Water District estimates the population to increase at an estimated growth rate of 1.6 percent per year, reaching an estimated population of 2,975 by the year 2033. According to the permit holder they recently annexed 33.22 acres of industrial zoned property into their service area.
12. According to the Nesika Beach Ophir Water District, their peak demand is projected to be approximately 1.7 cfs of water by the year 2033. The newly annexed industrial zoned property that projects water use of 10,000 gallons per day for a wood pyrolyzation facility.
13. Full development of Permit G-15728 is needed to meet the present and future water demands of Nesika Beach Ophir Water District, including system redundancy and emergency use.
14. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2033, to accomplish the application of water to beneficial use under the terms of Permit G-15728 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.

15. During the original development time frame under Permit G-15728, a staff gage was installed and the permit holder began recording stream flow measurements in Greggs Creek.
16. As of March 10, 2014, the permit holder invested \$1,000, which is 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$108,707 investment is needed for the completion of this project.
17. As of July 24, 2014, no water has been appropriated.
18. Since October 1, 2008, the permit holder has installed a staff gauge on Greggs Creek at Ophir Road Bridge and has submitted measurements to the Department required under Permit G-15728.
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 March 10, 2014, the permit holder invested \$1,000, which is 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$108,707 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)].

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-15728; 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 point of appropriation for Permit G-15728 is not located within a limited or critical ground water area. The point of appropriation for Permit G-15728, located within the Greggs Creek Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is 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 is/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 point of appropriation is 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 March 10, 2014, the permit holder invested \$1,000, which is 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$108,707 investment is needed for the completion 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. As described in Findings 7 through 13 Nesika Beach Ophir Water District has indicated, and the Department finds that Nesika Beach Ophir Water District must rely on full development of Permit G- 15728 to meet its present and future water demands.
25. Nesika Beach Ophir Water District projects a population increase of 1.6 percent per year over a 19 year period, being 2014 to 2033 and also expects commercial and industrial growth.
26. Given the current water supply situation of Nesika Beach Ophir Water District, 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 Permit G-15728.

27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of any water up to 1.0 cfs under Permit G-15728 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)]

28. 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)]

29. 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)]

30. According to Nesika Beach Ophir Water District, delay of development under Permit G-15728 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. Full application of water to beneficial use can be completed by October 1, 2033⁴

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.

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).
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 water beyond 0.00 cfs up to 1.000 cfs under Permit G-15728 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 apply the water to beneficial use under Permit G-15728 from October 1, 2008 to October 1, 2033.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Appropriation of any water up to 1.0 cfs under Permit G-15728 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-15728 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 9, 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

