

**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-13679, Water Right Application G-14758, ) PROPOSED FINAL ORDER  
in the name of the City of Aumsville )

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**Permit Information**

**Application File G-14758/ Permit G-13679**

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: May 26, 1998

**Authorized Use of Water**

Source of Water: A Well within the Beaver Creek Basin  
Purpose or Use: Municipal  
Maximum Rate: 0.446 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 as it contains  
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit G-13679, water right Application G-14758.

## 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, 2003 to October 1, 2024.
- Make the extension of time subject to certain conditions as set forth below.

### ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

City – City of Aumsville

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(2)** 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 municipal and/or 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)** authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or 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

## **FINDINGS OF FACT**

### **Background**

1. Permit G-13679 was granted by the Department on June 18, 1999. The permit authorizes the use of up to 0.446 cfs of water from a Well within the Beaver Creek Basin, for municipal use. It specified that complete application of water was to be made on or before October 1, 2003.
2. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
3. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
4. The permit holder, the City of Aumsville (City), submitted an "Application for Extension of Time" to the Department on November 14, 2014, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13679 be extended from October 1, 2003 to October 1, 2024. This is the first extension of time request for Permit G-13679.
5. Notification of the City's Application for Extension of Time for Permit G-13679 was published in the Department's Public Notice dated November 25, 2014. No public comments were received regarding the extension application.

### **Review Criteria for Municipal 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)]**

6. On November 14, 2014, the Department received a completed Application for Extension

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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.

of Time and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0080(1)(b)]**

7. Permit G-13679 was issued prior to June 29, 2005; therefore, the applicant is not required to provide evidence of actions taken to begin actual construction of the project.<sup>4</sup>

**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 municipal and 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.*

8. The remaining work to be accomplished under Permit G-13679 consists of completing construction of the water system including drilling the well, connecting piping to the raw water line, and applying water to full beneficial use.
9. As of October 1, 2003 the permit holder had not appropriated any of the 0.446 cfs of water authorized under Permit G-13679 for municipal purposes. There is an undeveloped portion of 0.446 cfs of water under Permit G-13679 as per OAR 690-315-0010(6)(g).
10. In addition to the 0.446 cfs of water from one well as authorized under Permit G-13679, the City holds the following municipal water rights:
- Certificate 65917 for 0.29 cfs of water from Boone Park Well #1 within the Mill Creek Basin;
  - Certificate 32214 for 0.3 cfs of water from Well 3 (Tower Well) within the Mill Creek Basin;
  - Permit G-10223, modified by Permit Amendment T-11186, for 1.4 cfs of water from Wells 1, 2 and Well 3 within the Mill Creek Basin, not to exceed 0.45 cfs from Well 1 and 0.95 cfs from Well 2;
  - Permit G-11891 for 0.45 cfs of water from Reservoir Well within the Mill Creek Basin;

These water rights and permits total 2.886 cfs of water. Park Well #1 is associated with taste and odor problems.

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<sup>4</sup> Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

11. The City also holds an un-adjudicated Ground Water Registration GR-3258 for 85 gpm of water from Baker Well within the Mill Creek Basin. This well is associated with taste and odor problems.
12. According to the City, their peak water demand within its service area boundaries was 1.84 cfs in 2014.
13. According to the City, in 2014, the population within the service boundary of the City of Aumsville was 3,895. The City of Aumsville estimates the population will increase at growth rate of 1 percent per year, reaching an estimated population of 4,733 by the year 2024.
14. According to the City, their peak day demand is projected to be approximately 2.85 cfs of water by the year 2024.
15. Full development of Permit G-13679 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
16. The City's request for an extension of time until October 1, 2024, to apply water to full beneficial use under the terms and conditions of Permit G-13679 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) and OAR 690-315-0080(4).*

**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 municipal or 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. During the original development time frame under Permit G-13679 the City has developed contract documents and specifications for drilling a new water supply well, and drilled test holes.
18. Since October 1, 2003, the City has drafted updates to a WMCP and a Water Master Plan.
19. According to the City, as of November 14, 2014, they have invested approximately \$48,310, which is approximately 7 percent of the total projected cost for complete development of this project. The City estimates an additional \$660,000 investment is

needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under G-13679, other costs included in this accounting are not partitioned out for G-13679 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.

20. As of October 1, 2003, no water has been appropriated from a well for beneficial municipal purposes under the terms of this permit.
21. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: the record does not show that a plan to monitor and report the impact of water use under this permit has been submitted to the Department; the plan was due June 18, 2000.

**Cost to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]**

22. According to the City, as of November 14, 2014, they have invested approximately \$48,310, which is approximately 7 percent of the total projected cost for complete development of this project. The City estimates an additional \$660,000 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 municipal or 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).*

23. 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)].
  - a. 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-13679; 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-13679 is located within the Stayton-Sublimity Limited Ground Water

Area. The point of appropriation for Permit G-13679, located within the Mill 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 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)].**

24. According to the City, as of November 14, 2014, they have invested \$48,310, which is approximately 7 percent of the total projected cost for complete development of this project. The City estimates an additional \$660,000 investment is needed for the completion of this project.

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

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 9 through 15 the City of Aumsville has indicated, and the Department finds that the City must rely on full development of Permit G- 13679 to meet its present and future water demands.
27. City of Aumsville projects a population increase of 1 percent per year over the next ten years.
28. Given the current water supply situation of the City as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-13679.
29. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water any water up to 0.446 cfs under Permit G-13679 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 which grants access to a greater appropriation of water under the permit consistent with OAR 690-086-0130(7). A "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)(g)]**

32. Delay of development under Permit G-13679 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years, and to lack of new development which would fund a construction of a new well under "System Development Charges."

**CONCLUSIONS OF LAW**

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(2).
2. The City 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. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a), water under Permit G-13679 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Full application of water to beneficial use can be completed by October 1, 2024<sup>5</sup> pursuant to OAR 690-315-0080(1)(d).

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<sup>5</sup> For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.



7. 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 City 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).
8. As required by OAR 690-315-0090(3) and as described in Finding 29, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of any water up to 0.446 cfs under Permit G-13679 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

### **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-13679 from October 1, 2003 to October 1, 2024.

Subject to the following conditions:

### **CONDITIONS**

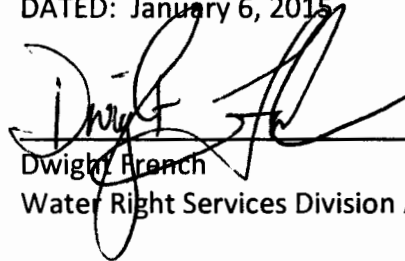
#### **1. Development Limitations**

Appropriation of any water up to 0.446 cfs under Permit G-13679 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes 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. The amount of water used under Permit G-13679 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 the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: January 6, 2015

  
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 **February 20, 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 Ann Reece at 503-986-0834.
  - 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
  - Fax: 503-986-0901                              Salem, OR 97301-1266
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