

**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-15101, Water Right Application G-15640,) PROPOSED FINAL ORDER
in the name of the City of John Day)

Permit Information

Application File G-15640/ Permit G-15101

Basin 6 – John Day Basin / Watermaster District 4

Date of Priority: October 22, 2001

Authorized Use of Water

| | |
|------------------|--|
| Source of Water: | Well 5 within the John Day River Basin |
| Purpose or Use: | Municipal |
| Maximum Rate: | 2.23 Cubic Feet per Second (CFS) |

**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-15101, water right Application G-15640.

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, 2006 to October 1, 2019.
- 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 John Day
ODFW – Oregon Department of Fish and Wildlife
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 Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit G-15101 was granted by the Department on July 12, 2002. The permit authorizes the use of up to 2.23 cfs of water from Well 5 within the John Day River Basin, for municipal use. It specified that complete application of water was to be made on or before October 1, 2006.
2. The permit holder, the City of John Day, submitted an "Application for Extension of Time" to the Department on December 29, 2014, requesting the time apply water to full beneficial use under the terms and conditions of Permit G-15101 be extended from October 1, 2006 to October 1, 2019. This is the first extension of time request for Permit G-15101.
3. Notification of the City's Application for Extension of Time for Permit G-15101 was published in the Department's Public Notice dated January 6, 2015. 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 537.230¹, 537.630² and/or 539.010(5)³

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

4. On December 29, 2014, the Department received a completed 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. A date by which actual construction was to begin is not specified in Permit G-15101.

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.

6. The remaining work to be accomplished under Permit G-15101 consists of submitting a Water Management and Conservation Plan and applying water to full beneficial use.

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. As of October 1, 2006 the permit holder had appropriated 1.87 cfs of the 2.23 cfs of water under Permit G-15101 for municipal purposes.
8. In addition to the 2.23 cfs of water authorized under Permit G-15101 (Well 5), the City holds the following rights:
 - Certificate 35080 for 0.47 cfs of water from Well 1 in the John Day River Basin;
 - Certificate 67796 for 2.23 cfs of water from Well 4 in the John Day River Basin;
 - Certificate 30270 for 0.71 cfs of water from Well 2 in the John Day River Basin;
 - Certificate 44465 for 1.34 cfs of water from Well 3 in the John Day River Basin;
 - Certificate 58326 for 0.89 cfs of water from Well 3 in the John Day River Basin;
 - Certificate 25379 for 3.0 cfs of water from Long Gulch Spring;
 - Certificate 21130 for 0.06 cfs of water from Long Gulch Spring; and
 - Certificate 21243 for 0.03 cfs of water from Long Gulch Spring.

These certificates and permit total 10.96 cfs of water, being 7.87 cfs of ground water, 3.09 cfs of live flow (surface) water. The City of John Day has not yet made use of 0.36 cfs of water under Permit G-15101. Well 3 is used as the City's main well.

According to the City the following water sources have limitations:

- Well 1 has been abandoned;
 - Well 4 is used for backup and redundancy;
 - Well 2 pump is undersized and is currently producing 0.45 cfs; and
 - Water authorized under Certificate 25379 Long Gulch Spring is currently only producing 0.27 cfs;
9. According to the City, they have an agreement with the Town of Canyon City to supply 200 gpm whenever they need it.
 10. According to the City, their peak water demand within its service area boundaries was 2.78 cfs in 2014.
 11. According to the City, in 2014, the population within the service boundary of the City of John Day was 1,745. The City of John Day estimates the population will increase at growth rate of 2.2 percent per year, reaching an estimated population of 2,477 by the year 2020.
 12. According to the City, their peak day demand is projected to be approximately 4.05 cfs of water by the year 2020.
 13. Full development of Permit G-15101 is needed to address the present and future water demand of the City, including system redundancy and emergency use.

14. The City's request for an extension of time until October 1, 2019, to apply water to full beneficial use under the terms and conditions of Permit G-15101 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.

15. Work was accomplished during the original development time frame under Permit G-15101. The City began construction on Well 5 (GRAN 50574) November 20, 2002. Well 5 was completed and a meter was installed by March 7, 2003.
16. March 31, 2008 the City received Department approval for a water-level monitoring plan.
17. According to the City, as of December 29, 2014, they have invested approximately \$517,581, which is approximately 98 percent of the total projected cost for complete development of this project. The City estimates an additional \$10,000 investment is needed for the completion of this project.
18. According to the water user a maximum rate of 1.87 cfs of water has been appropriated from Well #5 for municipal purposes. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by the October 12006.
19. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the required Water Management and Conservation Plan has not been received by the Department.

In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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

20. According to the City, as of December 29, 2014, they have invested approximately \$517,581, which is 98 percent of the total projected cost for complete development of this project. The City estimates an additional \$10,000 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).

21. 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-15101; 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-15101 is not located within a limited or critical ground water area. The point of appropriation for Permit G-15101, located within the John Day River Basin, is located above the John Day Scenic Waterway. The point of appropriation is within areas ranked highest 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 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. According to the City, as of December 29, 2014, they have invested \$517,581, which is 98 percent of the total projected cost for complete development of this project. The City estimates an additional \$10,000 investment is needed for the completion of this project.

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

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 14 the City of John Day has indicated, and the

Department finds that the City must rely on full development of Permit G- 15101 to meet its present and future water demands.

25. City of John Day projects a population increase of 2.2 percent per year over the next seven years.
26. 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-15101.
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 2.23 cfs under Permit G-15101 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)]

28. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-15101.

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. Delay of development under Permit G-15101 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 several changes in management between 2004 and 2006 which allowed for some permit condition to go unnoticed.

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to 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-15101 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, 2019⁴ pursuant to OAR 690-315-0080(1)(d).
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 27, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water up to 2.23 cfs under Permit G-15101 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).

Continued on the following page

⁴ Pursuant to ORS 537.630 (4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

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-15101 from October 1, 2006 to October 1, 2019.

Subject to the following conditions:

CONDITIONS

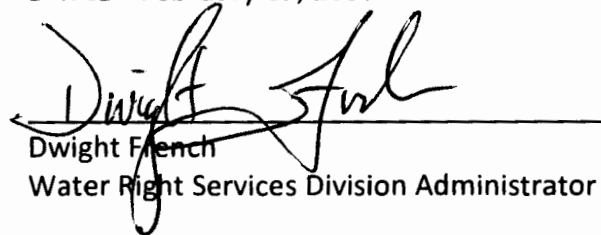
1. **Development Limitations**

Appropriation of any water up to 2.23 cfs under Permit G-15101 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-15101 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-15101 that has been established under a prior WMCP or Extension final order issued by 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: February 17, 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 **April 3, 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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active Duty servicemembers have a right to stay these proceedings under federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.of.mil>

