

**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-11381, Water Right Application G-12662,) PROPOSED FINAL ORDER
in the name of the Long Butte Water System, Inc.)

Permit Information

Application File G-12662 / Permit G-11381

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: September 23, 1991

Authorized Use of Water

Source of Water: Two wells within the Deschutes River Basin

Purpose or Use: Quasi-Municipal

Maximum Rate: 0.45 cubic foot 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.

This Proposed Final Order applies only to Permit G-11381, water right Application G-12662.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2001 to October 1, 2008.
- Grant an extension of time to apply water to full beneficial use from October 1, 2001 to October 1, 2008.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order
WMCP – Water Management Conservation Plan

Units of Measure

cfs – cubic feet per second

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-11381 was issued by the Department on December 2, 1991. The permit authorizes the use of up to 0.45 cfs of water, from two wells in the Deschutes River

Basin for quasi-municipal use. It specified actual construction of the well to begin by December 2, 1992, construction of the water development project was to be completed by October 1, 1993, and complete application of water was to be made on or before October 1, 1994.

2. One prior permit extension has been granted for Permit G-11381. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2001.
3. The permit holder, Long Butte Water System, Inc., submitted an "Application for Extension of Time" to the Department on June 26, 2015, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-11381 be extended from October 1, 2001 to October 1, 2008.
4. Notification of the Application for Extension of Time for Permit G-11381 was published in the Department's Public Notice dated July 7, 2015. 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 537.230¹, 537.630² and/or 539.010(5)³

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

5. On June 26, 2015, 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. Actual construction of the well began prior to the December 2, 1992 deadline specified in the permit. According to the application Well 1 (DESC 1241) began March 12, 1992.

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-11381 consists of completing construction and applying water to full beneficial use.
8. According to the water user a maximum rate of 0.45 cfs of water has been appropriated from Well 1 and Well 2 for quasi-municipal purposes.
9. Long Butte Water System, Inc. holds no other water rights; the service area is limited to the number of buildable parcels of land available within a defined service area. The water system exclusively serves 327 parcels within the Whispering Pines Estates subdivision in Deschutes County, Oregon.
10. According to the Long Butte Water System, Inc., as of October 1, 2008, Long Butte Water System, Inc. utilized a peak demand of 0.45 cfs of water, from Permit G-11381.
11. According to the Long Butte Water System, Inc., in 2008, the population within the service boundary of Long Butte Water System, Inc. was 650. Long Butte Water System, Inc. service area has reached maximum growth.
12. According to the Long Butte Water System, Inc., they have appropriated the full amount authorized under this permit of 0.45 cfs of water by the year 2008.
13. Full development of Permit G-11381 is needed to meet the present and future water demands of Long Butte Water System, Inc., 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, 2008, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-11381 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. Actual construction of the Well 1 (DESC 1241) and a 100,000 gallon reservoir began March 12, 1992 prior to the December 2, 1992 deadline specified in the permit.

16. Work was accomplished during the original development time frame under Permit G-11381.
17. During the most recent extension period under Permit G-11381, being from October 1, 1994 to October 1, 2001, the following work was completed by the City:
 - Construction of Well 2 (DESC 54080) was completed August 28, 2001;
 - Water distribution lines were installed; and
 - Pressure reducing valves and blow off valves were installed.
18. Since October 1, 2001 the City has completed construction of the water system with approximately 17 miles of distribution lines, two wells with meter, 100,000 gallon concrete reservoir that exclusively services the Whispering Pines Estates subdivision.
19. As of June 26, 2015, the permit holder invested \$2,350,000, which is the total cost for complete development of this project.
20. According to the water user a maximum rate of 0.45 cfs of water has been appropriated from Well 1 and 2 for quasi-municipal purposes.
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 June 26, 2015, the permit holder invested \$2,350,000, which is the total cost for complete development of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]

23. As described in Findings 9 through 13 above, Long Butte Water System, Inc. has indicated, and the Department finds that Long Butte Water System, Inc. must rely almost exclusively on its water right permit from the Deschutes River Basin.
24. According to the Long Butte Water System, Inc., in 2008, the population within the service boundary of Long Butte Water System, Inc. was 650. Long Butte Water System, Inc. service area has reached maximum growth.
25. Given the current water supply situation of Long Butte Water System, Inc., as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit G-11381.
26. The Department has determined that the permit holder of Permit G-11381 is not required to submit a WMCP consistent with OAR Chapter 690 Division 86 as per OAR

690-315-0090(4); a population less than 1,000 is served by an isolated system dedicated to supply water only to Whispering Pines Estates with 327 parcels.

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

27. Long Butte Water System, Inc. expects to obtain a fair and reasonable return on investment by continuing development of Permit G-11381.

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 Long Butte Water System, Inc., delay of development under Permit G-11381 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 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, 2008⁴ pursuant to OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the

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.

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 26, above, the Department has determined that the permit holder of Permit G-11381 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-11381 from October 1, 2001 to October 1, 2008.

extend the time to apply the water to beneficial use under Permit G-11381 from October 1, 2001 to October 1, 2008.

DATED: August 11, 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 **September 25, 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 service members have a right to stay these proceedings under federal Service members 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>

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- If you have any questions about statements contained in this document, please contact Machelie 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
Fax: 503-986-0901 Salem, OR 97301-1266
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Mailing List for Extension PFO Copies

PFO Date: August 11, 2015

**Application G-12662
Permit G-11381**

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>on: _____ (DATE)</p>
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Original mailed to Applicant:

Long Butte Water System, Inc.
Attn: Rebecca Hodge
PO Box 579
Bend, OR 97709

Copies sent to:

1. WRD - App. File G- 12662 / Permit G-11381

Fee paid as specified under ORS 536.050 to receive copy:

2. None

Receiving electronic copy via e-mail (10 AM Tuesday of signature date)

3. WRD - Watermaster District 11 – Jeremy Giffin

CASEWORKER: MAB