

**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-16338, Water Right Application G-16928,        )        PROPOSED FINAL ORDER  
in the name of the GH2O, Inc.                                        )

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**Permit Information**

**Application File G-16928 / Permit G-16338**  
Basin 12 – Malheur Lake Basin / Watermaster District 10  
Date of Priority: September 17, 2007

**Authorized Use of Water**

Source of Water: Well 1 (HARN 295) and Well 2 (HARN 50578) in Sweek  
Canyon Basin  
Purpose or Use: Quasi-Municipal Use  
Maximum Rate: 1.0 Cubic Foot 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.***

This Proposed Final Order applies only to Permit G-16338, water right Application G-16928.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 2012 to October 1, 2030.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012 to October 1, 2030.

## **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(4)** provides in pertinent part that quasi-municipal water use permit holders that serve a population of less than 1000 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-16338 was issued by the Department on June 23, 2008. The permit authorizes the use of up to 1.0 cfs of water, from Well 1 (HARN 295) and Well 2 (HARN 50578) in Sweek Canyon Basin, for quasi-municipal use. It specified complete construction and complete application of water was to be made on or before October 1, 2012.
2. The permit holder, GH2O, Inc., submitted an "Application for Extension of Time" to the Department on July 24, 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-16338 be extended from October 1, 2012 to October 1, 2030. This is the first extension of time request for Permit G-16338.
3. Notification of the Application for Extension of Time for Permit G-16338 was published in the Department's Public Notice dated August 4, 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 537.230<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)]**

4. On July 24, 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)]**

5. 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.

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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.

**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.*

6. The remaining work to be accomplished under Permit G-16338 consists of completing construction; and applying water to full beneficial use to the remaining 15 empty lots.
7. GH2O, Inc. is a private water supply company formed in 1992 to supply water to Garland Acres Subdivision, which exists within an area less than ½ square mile. According to GH2O, Inc.; the service area is dedicated to supplying water only to a small subdivision, Garland Acres, with a total of 45 lots. Permit G-16338 is the sole source of water to meet the current and future demands associated with the 45 lots within the subdivision.
8. As of October 1, 2012, the permit holder has appropriated 1.0 cfs authorized under Permit G-16338 for quasi-municipal purposes. GH2O, Inc. holds no other water rights.
9. GH2O, Inc.'s peak water demand within its service area boundaries was 1.0 cfs in 2015.
10. According to GH2O, Inc., in 2015, 30 homes were served under this permit. GH2O, Inc. estimates the number of homes served under this permit to increase to a maximum of 45 homes by the year 2030.
11. According to the GH2O, Inc., their peak demand is projected to be approximately 1.0 cfs of water for quasi-municipal use at buildout by the year 2030.
12. Full development of Permit G-16338 is needed to meet the present and future water demands of the 45 homes served under this permit.
13. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2030, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16338 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.*

14. Construction of the well and water system began prior to the deadline specified in the permit. Well 1 (HARN 295) began construction October 6, 1965 and completed October 15, 1965. Well 2 (HARN 50578) began construction August 21, 2000 and completed September 18, 2000. All mainlines were installed and meters installed to each lot.
15. No work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-16338, as all work was completed prior to permit issuance.
16. On May 21, 2015, the Department approved a monitoring plan.
17. As of July 24, 2015, the permit holder invested \$52,000, which is the total projected cost for complete development of this project.
18. As of July 24, 2015, all of the 1.00 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
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 July 24, 2015, the permit holder invested \$52,000, 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)].

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-16338; 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-16338 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16338, located within the Sweek Canyon 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)].

22. As of July 24, 2015, the permit holder invested \$52,000, which is the total projected cost for complete development 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 11 GH2O, Inc. has indicated, and the Department finds that GH2O, Inc. must rely on full development of Permit G- 16338 to meet its present and future water demands on the place of use.
25. GH2O, Inc. projects their current service of 30 homes under this permit, will increase to a maximum of 45 homes by the year 2030.
26. Given the current water supply situation of GH2O, Inc., including current and expected demands, there is a market and present demand for the water to be supplied to 45 homes under Permit G-16338.
27. The Department has determined that the permit holder of Permit G-16338 is not is not required to submit a WMCP consistent with OAR Chapter 690, Division 86 as per OAR 690-315-0090(4); serves a population less than 1000.

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)(a)]**

30. According to GH2O, Inc., delay of development under Permit G-16338 was due, in part, to the slow housing market, the area is not growing, and the total economy is bad in Harney County.

**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, 2030<sup>4</sup> 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. In accordance with OAR 690-315-0090(4), and as described in Finding 27, above, the Department has determined that the permit holder of Permit G-16338 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.

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<sup>4</sup> 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.

## 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-16338 from October 1, 2012 to October 1, 2030.

extend the time to apply the water to beneficial use under Permit G-16338 from October 1, 2012 to October 1, 2030.

DATED: September 22, 2015

*If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.*



Dwight French  
Water Right Services Division Administrator

### 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 **October 23, 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 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>

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- If you have any questions about statements contained in this document, please contact Corey A Courchane at 503-986-0825.
  - 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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