

**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-15869, Water Right Application G-16195,) PROPOSED FINAL ORDER
in the name of the City of Portland,)
Parks and Recreation Department)

Permit Information

Application File G-16195/ Permit G-15869

Basin 2 – Lower Willamette Basin / Watermaster District 20

Date of Priority: February 25, 2004

Authorized Use of Water

Source of Water: A well in Johnson Creek Basin
Purpose or Use: Municipal Use to include Irrigation, Dust Control and Fire
Suppression
Maximum Rate: 0.557 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-15869, water right Application G-16195.

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, 2009 to October 1, 2012.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
City – City of Portland Parks and Recreation Department
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.

FINDINGS OF FACT

Background

1. Permit G-15869 was issued by the Department on March 17, 2005. The permit authorizes the use of up to 0.557 cfs of water from a well within Johnson Creek Basin, for municipal use to include irrigation, dust control and fire suppression. It specified that complete application of water was to be made on or before October 1, 2009.
2. The permit holder, Gerry Vorhoef, Engineering Manager for the City of Portland, Parks and Recreation Department (City), submitted an "Application for Extension of Time" to the Department on August 31, 2015, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15869 be extended from October 1, 2009 to October 1, 2012. This is the first extension of time request for Permit G-15869.
3. Notification of the City's Application for Extension of Time for Permit G-15869 was published in the Department's Public Notice dated September 15, 2015. No public comments were received regarding the extension application.
4. On September 14, 2015 the City submitted supplemental information and update revisions to their pending Application for Extension of Time.

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)]

5. On August 31, 2015, 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)]

6. A date by which actual construction was to begin is not specified in Permit G-15869.

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

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.

applicant can complete the project within the time requested.

7. The remaining work to be accomplished under Permit G-15869 consists of meeting all permit conditions; and applying water to full beneficial use.
8. As of September 14, 2015, the permit holder had appropriated 0.557 cfs of the 0.557 cfs of water authorized under Permit G-15869 for municipal purposes.
9. The City of Portland, Parks and Recreation Department holds other water rights but use of water under Permit G-15869 will exclusively serve Parklane Park within the urban boundaries of the City of Portland.
10. The City of Portland, Parks and Recreation Department has made beneficial use of 0.557 cfs of water for municipal use to include irrigation, dust control and fire suppression under Permit G-15869.
11. Full development of Permit G-15869 is needed to address the present and future water demand of the City of Portland, Parks and Recreation Department including system redundancy and emergency use.
12. The City of Portland, Parks and Recreation Department's request for an extension of time until October 1, 2012, to apply water to full beneficial use under the terms and conditions of Permit G-15869 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.

13. Construction of Well (MULT 2839) and the water system began construction in 1952.
14. Work was accomplished during the original development time frame under Permit G-15869. The permit holder performed a well test and installed power, controls, piping, and a well seal to a depth of 18 feet.
15. According to the City of Portland, Parks and Recreation Department, as of August 31, 2015, they have invested approximately \$20,262, which is the total projected cost for

complete development of this project.

16. As of October 1, 2012, all of the 0.557 cfs of water allowed has been appropriated from Well (MULT 2839) for beneficial municipal purposes under the terms of this permit.
17. 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)]

18. As of August 31, 2015, the permit holder invested \$20,262, which is the total 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 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).

19. 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-15869; 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-15869 is not located within a limited or critical ground water area; however it is located within the Johnson Creek Withdrawn Authority. The point of appropriation for Permit G-15869, located within the Johnson Creek Basin, is not located within or above any state or federal 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 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)].

20. As of August 31, 2015, the permit holder invested \$20,262, 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)].

21. 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)].

22. As described in Findings 8 through 11 the City of Portland, Parks and Recreation Department has indicated, and the Department finds that the City must rely on full development of Permit G- 15869 to meet its present and future water demands.
23. 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-15869.

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

24. The City of Portland, Parks and Recreation Department, expects to obtain a fair and reasonable return on investment by continuing development of Permit G-15869.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

25. 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)]

26. Delay of development under Permit G-15869 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.

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-15869 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, 2012⁴ 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).

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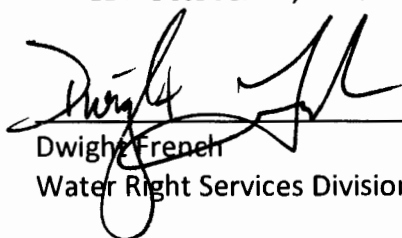
⁴ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required 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.

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-15869 from October 1, 2009 to October 1, 2012.

DATED: October 20, 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 **December 4, 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
 - Fax: 503-986-0901 Salem, OR 97301-1266
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Mailing List for Extension PFO Copies

PFO Date: October 20, 2015

Application G-16195

Permit G-15869

Original mailed to Applicant:

City of Portland Parks and Recreation Department
Attn: Gerry Verhoef
6437 SE Division St
Portland, OR 97206

Copies sent to:

1. WRD - App. File G- 16195/ Permit G-15869

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 20 – Amy Kim

CASEWORKER: CAC

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>on: _____ (DATE)</p>
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