

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #G-9866, Water Right) PROPOSED FINAL ORDER
Application #G-9583)
(City of Troutdale))

Permit Information	
<u>Application File #G-9583 / Permit #G-9866</u>	
Basin: #3 - Sandy Basin / Watermaster District: #20	
Date of Priority: July 17, 1981 for 1.11 cubic feet per second (cfs) and September 20, 1982 for 1.11 cfs	
<u>Authorized Use of Water</u>	
Source of Water:	One Well (Well #4) within the Sandy Basin
Purpose or Use:	Municipal Use
Maximum Rate:	2.22 cubic foot per second (cfs)

This Extension of Time request is being processed in accordance with Oregon Administrative Rule 690-320.

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-9866, water right Application #G-9583. A copy of Permit #G-9866 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 2000, to October 1, 2017;
- grant the extension for complete application of water from October 1, 2000, to October 1, 2017; and
- make the extensions subject to certain conditions as set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Historical Background

1. Permit #G-9866 was granted by the Water Resources Department on October 29, 1982. The permit authorizes the use of up to 2.22 cfs of water from a well (Well #4) for municipal purposes within the Sandy Basin. It specified that construction of the water development project should be completed by October 1, 1984, and that complete application of water was to be made on or before October 1, 1985.
2. Three prior extensions have been granted for Permit #G-9866. The first extended the time limits under the permit from October 1, 1985, to October 1, 1989. The second extended the period from October 1, 1989, to October 1, 1995. The third extended the period from October 1, 1995, to October 1, 2000.
3. The permit holder submitted an "Application for Extension of Time" to the Department on March 13, 2000, requesting the time in which to complete construction of the water system and to accomplish beneficial use of water to the full extent under the terms of Permit #G-9866 be extended from October 1, 2000, to October 1, 2017.

Development Overview

4. Construction of Well #4 was completed on August 7, 1980. Since then, the pumping station was constructed, a water flow meter was installed on the well in 1980, the pumping equipment was installed, the existing domestic system was expanded to include new residential, commercial and industrial development, and the water system received routine maintenance.
5. Delivery of water from Well #4 began in February of 1982. Since the issuance of Permit #G-9866 on October 20, 1982, the following beneficial use of water from Well #4 has been accomplished: 0.441 cfs (104,100,000 gallons) in 1995, 0.492 cfs (116,046,644 gallons) during the 1997/1998 water year, and 0.49 cfs (114,631,000 gallons) in 1999.

Review Criteria [OAR 690-320-0010(6)]

6. As set forth under OAR 690-320-0010(6), the time limits to complete
 - construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the requirements of ORS 537.230, 537.248¹, 537.630 and 539.010(5).

Other Governmental Requirements [ORS 537.230(2)]

7. Based upon information provided by the permit holder, delay in the development of this project was not caused by any other governmental requirements.

Start of Construction [ORS 537.630]

8. Under ORS 537.230(1), permits held by municipal corporations for municipal uses or purposes are exempt from the requirement to begin actual construction work within one year from the date of approval of the application.

¹ ORS 537.248 applies to reservoir permits only.

Based on the statutory exemption, the Department concludes that the permit holder is not required to demonstrate that it initiated construction within one year of the date of approval of the application.

Financial Investment [ORS 539.010(5)]

9. As of March 13, 2000, the permit holder had invested a total of \$200,000.00 into the project, consisting of completion of the well construction, installation of the pump house and pumping equipment, and expansion of the existing domestic system to include new residential, commercial and industrial development. No additional investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1), 537.630(1) and 539.010(5)]

10. Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [ORS 537.260, OAR 690-320-010(9)].
11. On or prior to October 1, 2000, the following had occurred: construction of the well was completed in 1980; the pump station was constructed and the pumping equipment was installed; a water flow meter was installed in the well in 1980; the existing domestic system was expanded to include new residential, commercial and industrial development, and approximately 22% of the authorized quantity of water under Permit #G-9866 has been beneficially used.
12. Delay of full beneficial use of water was due, in part, to the project being of a size and scope that the original intent was to phase it in over a period longer than the time-frames allowed in the permit. Maximum beneficial use of water under Permit #G-9866 is not expected to occur until all of the City's buildable residential lands are fully development. Based upon population projections, the City of Troutdale projects that full build-out will occur approximately in the year 2015 or 2016.

The Market and Present Demands for Water [ORS 539.010(5)]

13. Since the issuance of Permit #G-9866, the population of Troutdale has grown from 6,545 in 1982 to approximately 14,175 in 1999. Troutdale projects a population increase, on average, of 2.5 percent per year over the next fifteen years.
14. Further development of Permit #G-9866 is necessary to meet future demands for water. Based upon the projected population growth rate, the amount of water allowed under the water rights and permits currently held by the City of Troutdale will be needed to meet water demands through the year 2017.
15. The permitted point of appropriation (Well #4), authorized under Permit #G-9866, is not located within the boundaries of any designated ground water limited area.
16. Other alternative sources of water, such as surface water rights from the Columbia and Sandy Rivers, are under increased scrutiny due to the listing of sensitive, threatened and endangered species on these waterways.

Fair Return Upon Investment [ORS 539.010(5)]

17. Reasonable returns against the investment in the project will be gained. The water appropriated from the authorized well (Well #4) is used throughout the City of Troutdale, and the City currently charges a water use rate of \$2.15 for every one-thousand gallons of water used.

Duration of Extension [OAR 690-320-0010(7), ORS 539.010(5)]

18. As set forth under OAR 690-320-0010(7), time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.
19. As of March 13, 2000, the remaining work to be completed consists of complete construction of the water distribution system and complete application of water to beneficial use.

20. The size and scope of the project extended the length of time needed to fully develop and perfect the permit.
21. Completion of construction and full application of water to beneficial use can be completed by October 1, 2017.

Conclusions of Law

1. The applicant 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 537.230 and ORS 537.630.
2. The applicant has submitted a complete extension application form and the fee required by ORS 536.050(1)(k).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause for an extension to complete construction and complete application of water to full beneficial use pursuant to ORS 537.230(2) and ORS 537.630(1).
5. Given the amount of development left to occur and evidence submitted to substantiate the proposed timelines for extension, the Department has determined that the permittee's request to have until October 1, 2017, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #G-9866 is both reasonable and necessary.
6. Pursuant to ORS 537.230(3), 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 for complete construction of the water system under Permit #G-9866 from October 1, 2000, to October 1, 2017; and

Extend the time for complete application of water to beneficial use under Permit #G-9866 from October 1, 2000, to October 1, 2017.

Subject to the following conditions:

CONDITIONS

The permittee must submit a written progress report to the Department by October 1, of the years 2007 and 2012. The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:

- a) The amount of construction completed;
- b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
- d) Financial investments made toward developing the beneficial water use. The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR 690, Division 86 or ORS 537. 099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

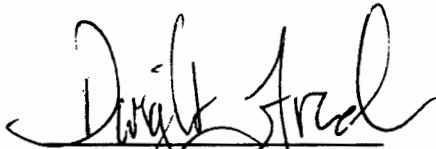
If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

DATED: January 29, 2002



Dwight French
Water Rights Section Manager

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

Protest Rights and Comments

1. Under the provisions of OAR 690-320-0010(8), you have the right to protest this proposed final order.
2. Each person submitting a protest shall raise all reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the comment period.

3. The Water Resources Department must receive written protests or written comments no later than **Friday, March 15, 2002**, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
4. Pursuant to OAR 690-320-0010(11), after the close of the comment and protest period, the Director will either issue a final order, or schedule a contested case hearing if the Director finds there are significant disputes related to the use of water.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503) 387-8455, extension 201. Address all other correspondence to:

Water Rights Section
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97301-4172
Fax #: (503) 378-2496

This document was prepared by Lisa J. Juul. If you have any questions about any of the statements contained in this document, I am most likely the best person to answer your questions. You may contact me by telephone at (503) 378-8455, extension 272.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Dwight French. His extension number is 268.

If you have other questions about the Department or any of its programs, please contact our Water Rights Information Group at extension 201.