

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-9583

Final Order
Extension of Time for Permit Number G-9866

Application History

On MARCH 13, 2000, the CITY OF TROUTDALE submitted an application to the Department for an extension of time for permit number G-9866. The Department issued permit number G-9866 on OCTOBER 20, 1982. The permit called for completion of construction of the water development project by OCTOBER 1, 1984, and complete application of water to the full beneficial use by OCTOBER 1, 1985. In accordance with OAR 690-320-0010 (8), on JANUARY 29, 2002, the Department issued a Proposed Final Order proposing to extend the time to complete development of the water development project and the time to fully apply water to beneficial use to OCTOBER 1, 2017. The protest period closed MARCH 15, 2002. No protest was filed.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 537.248, 537.630 and/or 539.010(5) and OAR 690-320-0010.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

Periodic Progress Reporting

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.

The Department's continuing evaluation reveals that the following modifications must be made to the Proposed Final Order to establish good cause for extending the permit:

Based upon a Chapter 690, Division 09 ground water review, the Department determined on July 18, 2002, that the authorized point of appropriation (Well #4) under Permit #G-9866, will have the potential for substantial interference with the nearest surface water source, namely Sandy River.

In addition, a detailed analysis of water availability data shows that water is not currently available for new appropriations at any given time during the year. The year round negative flows are due to Instream Water Right (ISWR) Certificate #73015, which was established on April 1, 1991.

Permit #G-9866, however, has priority dates of July 17, 1981, for 1.11 cfs and September 20, 1982, for the remaining 1.11 cfs, which predate the ISWR Certificate #73015. The year round negative flows, therefore, do not affect Permit #G-9866.

The Department also determined that the permitted point of appropriation (Well #4), authorized under Permit #G-9866, is located within or above the designated boundaries of the Sandy Scenic Waterway, is located within a designated sensitive, threatened or endangered species area for aquatic species utilizing surface water resources, as

identified on the Division 33 map furnished by the Oregon Department of Fish and Wildlife (ODFW) and is located within a stream segment that has been identified by ODFW as a "moderate" needs ranking area for streamflow restoration for fish.

Upon consideration of these potential surface water impacts, the Department has concluded that in order to justify the approval for more time in which to further develop Permit #G-9866, additional conditions are necessary to ensure responsible future use of the water. The Department, therefore, has established development limitations. The development limitations establish that, in order to develop additional water under Permit #G-9866, the permit holder must first obtain the Department's approval of a Water Management and Conservation Plan, under OAR Chapter 690, Division 86, demonstrating the need for additional water, as specified below:

Development Limitations

The permittee may continue to appropriate a maximum rate of 0.492 cfs of water under Permit #G-9866 until or unless a revised Water Management and Conservation Plan demonstrating the need for additional water is approved by the Department in accordance with OAR Chapter 690, Division 86. No additional water may be developed until the final order approving the revised Water Management and Conservation Plan under OAR Chapter 690, Division 86 is issued by the Department. The Department will limit the additional quantity of water and may add additional limitations and conditions consistent with the policy and rules of the Department in place at the time the revised Water Management and Conservation Plan is approved.

The factors shown by the applicant, together with the conditions imposed by the Department and the modifications made herein, establish good cause for the permit extension.

Order

The extension of time for Application Number G-9583, Permit Number G-9866, therefore, is approved with the above modifications to the Proposed Final Order. The extension is issued as limited by the conditions set forth in the permit and the conditions and modifications herein. The deadline for completing construction is extended to OCTOBER 1, 2017. The deadline for applying water to full beneficial use is extended to OCTOBER 1, 2017.

DATED: August 16, 2002


Paul R. Cleary, Director

Hearing and Appeal Rights

Under the provisions of ORS 536.075, the applicant may appeal this order by filing a petition for review in the Circuit Court for Marion County or the Circuit Court for the County in which the applicant resides or has a principal business office. The petition for review must be filed within 60 days after the date this order is served. ORS 183.484.