

**Oregon Water Resources Department
Water Rights Division**

Water Right Permit Extension Application
for Permit Number G 10968

Water Right Application Number G 12010

Proposed Final Order

This Proposed Final Order applies only to permit number G 10968.

Summary of Recommendation

The Department proposes to:

grant the extension for complete construction of the water system from October 1, 1996 to October 1, 2021, and

grant the extension for complete application of water from October 1, 1996 to October 1, 2021.

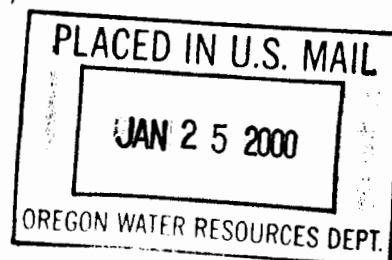
Application History

Permit no. G 10968 was granted by the Water Resources Department on JANUARY 30, 1990. The permit authorizes use of 1.0 CFS of water from ONE WELL for MUNICIPAL USE in the PINE CREEK basin. It specified that construction must be completed by October 1, 1991, and water applied to full beneficial use by October 1, 1992. A copy of permit no. G 10968 is attached.

On JANUARY 31, 1997, the Department received an application from CITY OF HALFWAY for an extension of time to complete construction and to apply water to full beneficial use. The applicant has requested until October 1, 2021 to complete construction of the water system and until October 1, 2021 to apply water to full beneficial use. This is the SECOND permit extension request.

Findings of Fact

ORS 537.230(2) and 537.630 (1) allows the Department to grant an extension of time to perfect a water right for good cause. In evaluating good cause, the Department has considered the written record in the permit application file in relation to the requirements



of ORS 537.230(2), ORS 537.630 (1) and ORS 539.010(5) and makes the following findings.

1. The applicant is legally entitled to apply for an extension on this permit.
2. The applicant has submitted a completed permit extension form and the required fee.
3. The water project development made to date has been accomplished in accordance with the terms and conditions contained in the permit.
4. Progress in perfecting the permit is being held up by the time required to put all the water to use under a municipal permit and water system contamination. An oil spill resulted in the City taking the water system off line for 3-4 years while the Department of Environmental Quality tested the water.
5. The applicant has pursued perfection of the right in good faith and with reasonable diligence.
 - a) Work on the water development project completed to date includes construction of the well, pump and water lines. Water has been applied to a peak use of 0.51 CFS.
 - b) The applicant has invested approximately \$ 500,000 of an estimated total water system project cost of \$ 700,000.
 - c) The work remaining to be completed consists of the remaining construction of the water delivery system and complete application of water.
6. Based on the written record, the Department finds there is good cause to approve the extension request. The applicant has pursued perfection of the right in good faith and with reasonable diligence.
7. Due to the reasons outlined above in item 4 and the water development progress to date, the Department finds that the length of time requested for completion of construction and the length of time requested for completion of the application of water should be extended to October 1, 2021 as requested by the applicant.
8. By mutual consent, the applicant and the Water Resources Department agreed to defer processing of the permit extension request until such time as the Commission had adopted new permit extension rules.

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 an extension application form and the fee required by ORS 536.050(1)(L).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. The applicant has shown good cause for the untimely completion of the water development project and complete application of water to full beneficial use

- pursuant to ORS 537.230(2), and ORS 537.630 (1).
5. The permit extension should be approved until October 1, 2021 to complete construction and to complete the application of water.

Conditions

The permittee must submit a written progress report to the Department by October 1, of 2001, 2006, 2011, and 2016. 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 will result in cancellation of the undeveloped portion of the permit by the Department pursuant to ORS 537.260 or 537.410 to 537.450. Within one year after cancellation, the permittee must submit a final proof survey pursuant to ORS 537.230 and 537.250.

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

- a) request the permittee to submit additional information with which to evaluate diligence;
- 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 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.

Recommendation

The Department proposes to issue an order to:

extend the permit time to complete construction from October 1, 1996 to October 1, 2021 and

extend the permit time to complete application of water from October 1, 1996 to October 1, 2021.

DATED: **JANUARY 25, 2000**



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. Your protest must be in writing and must include the following:
 - a) Your name, address and telephone number;
 - b) Your interest in this proposed final order, and if you claim to represent the public interest, a precise statement of the public interest represented;
 - c) A detailed description of how the action in the proposed final order would impair or be detrimental to your 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 your protest, if known; and
 - f) The \$25 protest fee required under ORS 536.050 (1)(j).
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 **MARCH 10, 2000**.
4. 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.

This document was prepared by Dallas Miller. 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 can reach me toll free within Oregon at 1-800-624-3199 extension 272. Outside of Oregon you can dial 1-503-378-8455.

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 Adam Sussman. His extension number is 262.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 499. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97310, Fax: (503)378-2496.