

**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-16914, Water Right Application G-12706,) PROPOSED FINAL ORDER
in the name of the Luckiamute Domestic Water Cooperative)

Permit Information

Application File G-12706 / Permit G-16914

Basin 2 – Middle Willamette Basin / Watermaster District 16

Date of Priority: November 13, 1991

Authorized Use of Water

Source of Water: Wells 1, 2, 3, 4, and 5 in the Willamette River Basin

Purpose or Use: Quasi-Municipal

Maximum Rate: 3.7 Cubic Feet 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 as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit G-16914 (modified by Permit Amendment T-10886), water right Application G-12706.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2015 to October 1, 2025.
- Grant an extension of time to apply water to full beneficial use from October 1, 2015 to October 1, 2025.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

LDWC – Luckiamute Domestic Water Cooperative

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 690-315-0050(5) authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

OAR 690-315-0090(3) requires the Department, under specific circumstances, to condition an extension of time for quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit G-12001 was issued by the Department on June 30, 1995. The permit authorizes the use of up to 3.70 cfs of water, from Wells 1, 2, 3, 4, and 5 in the Willamette River Basin for quasi-municipal use. It specified actual construction work to begin by June 30, 1996, construction of the water development project was to be completed by October 1, 1997, and complete application of water was to be made on or before October 1, 1998.
2. On April 20, 2012, the Department approved Permit Amendment T-10886 (Special Order Volume 87, Page 400) authorizing a change in the point of appropriation and adding an additional point of appropriation under Permit G-12001. The Department issued a superseding Permit G-16896 describing the authorized changes.
3. On April 30, 2012, the Department issued a correcting Final Order to correct a scrivener's error, replacing Permit Amendment T-10886 (Special Order Volume 87, Page 400) with Permit Amendment T-10886 (Special Order Volume 87, Page 356). Permit G-16896 is superseded by Permit G-16914 to correct a scrivener's error in the location description of Well 4 on Permit G-16896, and here forward will be simply known as Permit G-16914.
4. One prior permit extension has been granted for Permit G-16914. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2015.
5. The permit holder, Luckiamute Domestic Water Cooperative (LDWC), submitted an "Application for Extension of Time" to the Department on September 30, 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-16914 be extended from October 1, 2015 to October 1, 2025.

6. Notification of the Application for Extension of Time for Permit G-16914 was published in the Department's Public Notice dated October 6, 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 537.230¹, 537.630² and/or 539.010(5)³

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

7. On September 30, 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)]

8. Actual construction of the well began prior to the June 30, 1996 deadline specified in the permit. Well 1 (POLK 3801) began construction June 6, 1969.

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.

9. The remaining work to be accomplished under Permit G-16914 consists of constructing and testing Well #5; installing a pump, main well transmission pipeline (approx. 1.6 miles), treatment equipment, replacing approximately 2.5 miles of mainline and 11 miles of 4" piping with 8" piping; completing construction; meeting all permit conditions; and applying water to full beneficial use.
10. According to the water user a maximum rate of 3.2 cfs of water has been appropriated, being 0.9 cfs from Well 1 (POLK 3801), 0.45 cfs from Well 2 (POLK 281), 1.0 cfs from Well 3 (POLK 3802), and 0.85 cfs from Well 4 (POLK 51437), for quasi-municipal purposes. The authorized amount of water is 3.7 cfs. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2015.
11. In addition to the 3.7 cfs of water authorized under Permit G-16914, the LDWC holds the following rights:

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.

- Permit G-4480 for 1.00 cfs of water from Well No. 1 within the Willamette River Basin, tributary of Columbia, for Domestic use;
 - Permit G-6093 for 235 gpm of water from Well No. 2 within the Willamette River Basin, a tributary of Columbia, for Quasi-Domestic use;
 - Permit G-8747 for 350 gpm of water from Well No. 3, for Domestic use;
 - Permit G-9543 for 0.05 cfs of water from Well 1, Well 2, and Well 3, for Group Domestic use.
12. In 2012, LDWC drilled test well #5; but this test well continues to show high levels of nitrates. LDWC is contracted to purchase a minimum of 400,000 gallons of water per month from Falls City.
 13. Luckiamute Domestic Water Cooperative's permit and water right transfers total 6.06 cfs of ground water. LDWC has not yet made use of 0.5 cfs of water under Permit G16914.
 14. LDWC's peak water demand within its service area boundaries was 2.36 cfs in 2014.
 15. According to the LDWC, in 2015, the population within the service boundary of Luckiamute Domestic Water Cooperative was 2,785. Luckiamute Domestic Water Cooperative estimates the population to increase at an estimated growth rate of 1.7 percent per year, reaching an estimated population of 3,258 by the year 2025.
 16. According to the LDWC, their peak demand is projected to be approximately 2.76 cfs of water by the year 2025.
 17. Full development of Permit G-16914 is needed to meet the present and future water demands of Luckiamute Domestic Water Cooperative, including system redundancy and emergency use.
 18. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2025, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16914 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.

19. Actual construction of the well and water system began prior to the June 30, 1996 deadline specified in the permit. Well 1 (POLK 3801) began construction June 6, 1969 and was completed June 17, 1969. Well 2 (POLK 281) began construction September 30, 1974 and was completed October 8, 1974. Well 3 (POLK 3802) began construction October 20, 1978 and was completed October 23, 1978.
20. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-16914. The permit holder added 108 miles mainline piping and 13 reservoirs to the water delivery system and meters were installed Wells 1-3.
21. During the most recent extension period under Permit G-16914, being from October 1, 1998 to October 1, 2015, the following work was completed by the City:
 - 4 miles of 6" pipeline and two 250,000 gallon reservoirs were installed;
 - 100 new connections were added to water delivery system;
 - Constructed Well 4 (POLK 51437) and installed a meter;
 - Multiple pipeline improvements were conducted (approx. 12 miles);
 - 300 new connections were added to water delivery system;
 - Constructed test well for Well 5.
22. As of September 30, 2015, the permit holder invested \$11,560,000, which is 78 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$3,290,000 investment is needed for the completion of this project.
23. According to the water user a maximum rate of 3.2 cfs of water has been appropriated, being 0.9 cfs from Well 1 (POLK 3801), 0.45 cfs from Well 2 (POLK 281), 1.0 cfs from Well 3 (POLK 3802), and 0.85 cfs from Well 4 (POLK 51437), for quasi-municipal purposes. The authorized amount of water is 3.7 cfs. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2015.
24. The Department has considered the permit holder's compliance with conditions, and has no concerns:

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

25. As of September 30, 2015, the permit holder invested \$11,560,000, which is 78 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$3,290,000 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]

26. As described in Findings 9 through 17 above, the LDWC has indicated, and the Department finds that the LDWC must rely exclusively on its groundwater permit in the Willamette River Basin.
27. LDWC projects a population increase of 1.7 percent per year over a 10 year period, being the years 2015 to 2025. It states some of the land within the LDWC district has been approved for subdivision with as many as 100 subdivided lots on individual plats. If this were to occur, and all approved land subdivided, water demands could increase by as much as 50% above projected peak demands.
28. Given the current water supply situation of the LDWC, as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-16914.
29. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 3.2 cfs up to 3.7 cfs under Permit G-16914 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation of water under this permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement. As required by Final Order Approving Water Management and Conservation Plan (Special Order Volume 77, Page 646), issued April 29, 2009, the Luckiamute Domestic Water Cooperative shall submit an updated plan no later than May 5, 2018.

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

30. The LDWC expects to obtain a fair and reasonable return on investment by continuing development of Permit G-16914.

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

31. 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)]

32. According to Luckiamute Domestic Water Cooperative, delay of development under Permit G-16914 was due, in part, to the development of Well 5. The proposed site for Test Well 5 has been tested for higher than allowed levels of nitrates, which water monitoring is continuing to show high levels of nitrates in the area. The LDWC board has not reached a consensus to approve drilling Well 5 with the nitrate levels as they are,

due to possible health effects on residents. LDWC is continuing to raise revenue for the project so that money does not need to be borrowed for the project.

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, 2025⁴ 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. As required by OAR 690-315-0090(3) and as described in Finding 28, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 3.2 cfs up to 3.7 cfs under Permit G-16914 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7). As required by Final Order Approving Water Management and Conservation Plan (Special Order Volume 77, Page 646), issued April 29, 2009, the Luckiamute Domestic Water Cooperative shall submit an updated plan no later than May 5, 2018.

⁴ 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-16914 from October 1, 2015 to October 1, 2025.

extend the time to apply the water to beneficial use under Permit G-16914 from October 1, 2015 to October 1, 2025.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Appropriation of any water beyond 3.2 cfs up to 3.7 cfs under Permit G-16914 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit G-16914 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-16914 that has been established under a prior WMCP or Extension final order issued by the Department. The required WMCP update shall be submitted to the Department no later than May 5, 2018. Use of water under Permit G-16914 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

Continued on the following page

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

DATED: November 10, 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 25, 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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Mailing List for Extension PFO Copies

PFO Date: November 10, 2015

**Application G-12706
Permit G-16914**

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>on: _____ (DATE)</p>
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Original mailed to Applicant:

Luckiamute Domestic Water Cooperative
Attn: Jonathan Smith
8585 Suver Rd
Monmouth, OR 97361

Copies sent to:

1. WRD - App. File G- 12706 / Permit G-16914

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 16 – Joel Plahn
4. WRD - **If WMCP needed* - Lisa Jaramillo, Transfer and Conservation Services (TACS)
Done by _____ Date _____

CASEWORKER: CAC