

**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-15275, Water Right Application G-15665, in            )  
the name of Columbia Hills Homeowners Association                )        **PROPOSED FINAL  
ORDER**

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Permit Information

Application:                G-15665  
Permit:                     G-15275  
Basin:                     2C – Lower Willamette / Watermaster District 18  
Date of Priority:         December 11, 2001  
Source of Water:         Seven wells in Raymond Creek Basin  
Purpose or Use:         Domestic expanded use for 130 households  
Maximum Rate:         0.27 cubic foot per second (cfs)

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***Please read this Proposed Final Order in its entirety as it contains  
additional conditions not included in the original permit.***

*In Summary, the Department proposes to:*

- Grant an extension of time to apply water to full beneficial use from October 1, 2007, to October 1, 2051<sup>1</sup>.
  
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

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<sup>1</sup>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 a new or revised claim of beneficial use as deemed appropriate by the Department.

## **ACRONYM QUICK REFERENCE**

Agent – GSI Water Solutions, Inc.  
Application – Application for Extension of Time  
CC&R – Covenant, Condition, and Restriction  
cfs – cubic feet per second  
CHHOA – Columbia Hills Home Owners Association  
City - City of Scappoose  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
gpm – gallons per minute  
PFO – Proposed Final Order  
WMCP – Water Management and Conservation Plan

Well #1 – COLU 3176  
Well #2 – COLU 3174/COLU 55007  
Well #4 – COLU 993  
Well #6 – COLU 52048  
Well #7 – COLU 52049  
Well #F1 – COLU 53503  
Well #F2 – Well #9

## **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) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. 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)** 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0040** provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

**OAR 690-315-0050(6)** requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

## **FINDINGS OF FACT**

1. On February 13, 2003, Permit G-15275 was issued by the Department. The permit authorizes the use of up to 0.27 cfs of water from seven wells in Raymond Creek Basin for domestic expanded use for 130 households. The permit specified complete application of the water to the use was to be made on or before October 1, 2007.

2. On June 12, 2017, on behalf of the permit holder, Owen McMurtrey of GSI Water Solutions, Inc. (Agent), agent for Columbia Hills Homeowners Association, submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15275 be extended from October 1, 2007, to October 1, 2051. This is the first permit extension requested for Permit G-15275.
3. On June 20, 2017, notification of the Application for Permit G-15275 was published in the Department's Public Notice. No public comments were received regarding the Application.
4. On July 12, 2017, the permit holder submitted additional information to supplement their Application. The additional information was to correctly identify dates of installation for meters on the wells.

**Review Criteria [OAR 690-315-0040]**

*In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).*

**Complete Extension of Time Application [OAR 690-315-0040(1)(a)]**

5. On June 12, 2017, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]**

6. Construction of the wells began prior to permit issuance. Columbia Hills Home Owners Association (CHHOA) states, construction of the wells 1 through 7 began prior to permit issuance.
7. According to the well log received by the Department on April 6, 1979, construction of COLU 3176 (Well #1) began March 21, 1979.

The Department has determined based on Finding of Fact (FOF) 6 and 7 that the prosecution of the construction of the wells began prior to October 1, 2007.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

*In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.*

**OAR 690-315-0040(3)(a)**

**Amount of Construction** (The amount of construction completed within the time allowed in the permit.<sup>2</sup>)

8. Construction of the wells began prior to permit issuance. Construction of Well #1 was completed in 1979; construction of COLU 3174/COLU 55007 (Well #2) was completed in 1985; construction of COLU 993 (Well #4) was completed in 1995; and construction of COLU 52048 (Well #6) and COLU 52049 (Well #7) was completed in 1997.
9. Work was accomplished during the original development time frame under Permit G-15275 is as follows:
  - Installed storage tank, well house, treatment and filtration equipment for Well #7;
  - Completed construction of COLU 53503 (Well #F1), including installation of pump house and piping;
  - Began installation of storage tank, pump, well house, treatment and filtration equipment for Well #4;
  - Installed storage tank, treatment and re-pressure equipment for Well #1; and
  - Began installation of the water distribution system, plumbing, and electrical to the Wells.
10. Since October 1, 2007, the permit holder has accomplished the following:
  - Continued installation of storage tank, pump, well house, treatment and filtration equipment for Well #4; and
  - Installed a liner with a shale trap on Well #2.

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<sup>2</sup> "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

The Department has determined based on FOF 7, 8, and 9, that work has been accomplished prior to permit issuance and within the time allowed in the permit, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

OAR 690-315-0040(3)(c)

Compliance with Conditions

*The water right permit holder's conformance with the permit conditions.*

11. The Application states meters were installed as follows:

- Well #1, Well #2, Well #4, and Well #7 on October 1, 2002; and
- Well #F1 on March 1, 2006.

12. On September 29, 2008, the Department approved a plan to monitor and report water use.

The Department has determined, based on FOF 11 and 12, that the permit holder has demonstrated compliance with the following permit conditions for Wells #1, #2, #4, #7, and #F1, as required by Permit G-15275:

- “Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director”; and
- “The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s).”

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a meter or other suitable measuring device has been installed on Well #6 by October 1, 2007, and (2) the record does not show that a Water Management and Conservation Plan (WMCP) was submitted by October 1, 2007.

14. On March 1, 2016, the permit holder submitted a WMCP to the Department for review.

15. The Application states that on April 1, 2017, a meter was installed on Well #6.

The Department has determined, based on FOF 14 and 15, that the permit holder has demonstrated compliance with following permit conditions after the date specified in the permit, being October 1, 2007, as required by Permit G-15275:

- “Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director”; and
- “Within 3 years of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86.”

**OAR 690-315-0040(3)(b)**

**Beneficial Use of Water:** *the amount of beneficial use made of the water during the permit time limits conditions.*

16. The Application states a combined maximum rate of 49 gpm (0.11 cfs) of water, being 5 gpm (0.01 cfs) from Well #1, 5 gpm (0.01 cfs) from Well #2, 2 gpm (0.004 cfs) from Well #4, 7 gpm (0.02 cfs) from Well #6, 5 gpm (0.01 cfs) from Well #7, and 25 gpm (0.06 cfs) from Well #F1, has been appropriated for domestic expanded use for 25 households.
17. The Application states Well #4 and Well #7 in the lower system, and Well #F1 in the upper system frequently operate simultaneously. The rate of use during periods of simultaneous operation would have been a minimum of 30 gpm (0.07 cfs). If Well #1, Well #2, Well #4, Well #7, and Well #F1 were all operating simultaneously, the combined pumping rate would have been 49 gpm (0.11 cfs), but records do not indicate whether this has occurred during normal operation of the Wells.

The Department has determined based on FOF 13 that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2007.

**OAR 690-315-0040(2)(b),(3)(d),(4)(d)**

**Financial Investments to Appropriate and Apply Water to a Beneficial Purpose**

18. The Application states the permit holder has invested about \$709,640, which is approximately 61 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$460,000 investment is needed for the completion of this project.

The Department has determined based on FOF 18, that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions after October 1, 2007, a financial investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-15275.

**The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]**

*The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:*

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) 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);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

**OAR 690-315-0040(4)(a)**

The amount of water available to satisfy other affected water rights and scenic waterway flows.

19. A review of 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-15275; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.

**OAR 690-315-0040(4)(b)**

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).

20. The points of appropriation for Permit G-15275, located within the Raymond Creek Basin, are not located within a limited or critical groundwater area.
21. Raymond Creek is not located within or above any state or federal scenic waterway.
22. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

**OAR 690-315-0040(4)(c)**

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

23. Raymond Creek is located within an area ranked "high" 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.

**OAR 690-315-0040(4)(d)**

Economic interests dependent on completion of the project.

24. The Application states an approximate total of \$709,640 has been invested in the project.

**OAR 690-315-0040(4)(e)**

Other economic interests dependent on completion of the project.

25. The Application states owners of over 90 percent of the lots within the planned service area for Permit G-15272 have negotiated Covenants, Conditions, and Restrictions (CC&Rs) with Columbia County that ban private wells, specifying that building permits will only be issued for single family homes served with water from a community water system. As Permit G-15275 is the only water right appurtenant to those lots, and the water supply from the City of Scappoose would not be economically feasible, the only available source of water supply for those lots is the CHHOA water system. The economic interests of owners of all remaining undeveloped lots with CC&Rs are dependent upon the build-out of the CHHOA water system.

**OAR 690-315-0040(4)(f)**

Other factors relevant to the determination of the market and present demand for water and power.

26. The Application states the City of Scappoose (City) is the only water provider close enough to potentially provide water to the CHHOA system, but the distance to the City and elevation gain pose a significant technical challenge to developing an interconnection. Additionally, the City's previous negative experience providing water to a nearby area outside city limits virtually ensures that buying water from the City, or being incorporated into its system is non-negotiable.

**OAR 690-315-0040(2)(f)**

**Fair Return Upon Investment**

27. The Application states the rate CHHOA charges is sufficient to recover the costs of water supply as the development continues to grow. Because the CHHOA water system is the only feasible source of water for both developed and undeveloped lots, the continued development of the CHHOA water system is a pre-requisite for the continued build-out of the Columbia Hills community.

**OAR 690-315-0040(2)(g)**

**Other Governmental Requirements**

28. The Application did not identify any delay in the development of this project that was caused by any other governmental requirements.



***OAR 690-315-0040(2)(h)***

***Unforeseen Events***

29. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-15275, in that the permit holder was faced with declining production in Well #4 and Well #7, due to biological fouling, which has restricted their ability to complete development of the project in a timely manner. CHHOA is seeking other alternatives to improve security of the water supply.

***OAR 690-315-0040(2)(i)***

***Denial of the Extension Will Result in Undue Hardship***

30. The Application states Permit G-15275 is currently the only source of water for homes within CHHOA. If the extension were denied, it would jeopardize the continued build-out of the development, the value of undeveloped tax lots to owners would decrease, and it would leave current homeowners without an immediate water supply.

***OAR 690-315-0040(2)(c)***

***Good Faith of the Appropriator***

31. The Application provides evidence of good faith of the appropriator under Permit G-15275.

Based on FOF 6 through 12, 14, 15, 16, 18, and 24, the Department has determined that the applicant has shown good faith and reasonable diligence.

***Duration of Extension [OAR 690-315-0040(1)(c)]***

*Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

32. As of June 12, 2017, the Application states the remaining work to be completed consists of the following:
- Constructing 20,000 to 60,000 gallons of new storage and water treatment facility;
  - Rehabilitating Well #1, Well #2, Well #6, Well #7, and Well #F1;
  - Gaining approval of a Permit Amendment to add an additional point of appropriation, being Well #10;
  - Constructing Well #9 (Well #F2) and Well #10, including plumbing and treatment upon approval of a Permit Amendment;
  - Expanding water treatment and distribution system to tax lots within the subdivision not currently served by CHHOA;

- Meeting all permit conditions on newly developed wells, which include installation of a meter, or other suitable measuring device; and
- Applying water to full beneficial use to the remaining 105 households.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2051, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-15275 is both reasonable and necessary.

### **Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

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 fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

## **LIMITATIONS AND CONDITIONS**

1. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this condition.

## **CONCLUSIONS OF LAW**

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant has complied with the construction timeline requirements to begin construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 6 through 32, full application of water to beneficial use can be accomplished by October 1, 2051, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to mitigate the effects of the subsequent

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- If you have 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 503-986-0900.
  - 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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development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).

5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).

## 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 water to beneficial use under Permit G-15275 from October 1, 2007, to October 1, 2051.

Subject to the following conditions:

## LIMITATIONS AND CONDITIONS

1. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2022, 2027, 2032, 2037, 2042, 2047, and 2050. A form will be enclosed with your Final Order.**

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: August 1, 2017

  
Dwight French, Administrator,  
Water Right Services Division

*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 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 **September 15, 2017**, 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 Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>