

**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-15456, Water Right Application G-14780, in) PROPOSED FINAL
the name of Viesko Quality Concrete) ORDER

Permit Information

Application: G-14780
Permit: G-15456
Basin: 2B – Middle Willamette / Watermaster District 16
Date of Priority: June 22, 1998
Source of Water: Three wells in the Willamette River Basin
Purpose or Use: Industrial use and mining operations
Maximum Rate: 6.91 cubic feet per second (cfs); being 1.34 cfs from Well 1 and 5.57 cfs from Wells 2 and 3

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, 2011, to October 1, 2021¹.

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.

¹Pursuant to ORS 537.630(5), 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

Department – Oregon Department of Water Resources
Application – Application for Extension of Time
PFO – Proposed Final Order
cfs – cubic feet per second
gpm – gallons per minute
Well 1 – MARI 51587
Well 2 – Sump Well 2
Well 3 – Sump Well 3
FOF – Finding of Fact
ODEQ - Oregon Department of Environmental Quality
NPDES – National Pollutant Discharge Elimination System
ODOT – Oregon Department of Transportation
POA – point of appropriation

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(5) states that extension orders may include, but are 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.

FINDINGS OF FACT

1. On August 21, 2003, Permit G-15456 was issued by the Department. The permit authorizes the use of up to 6.91 cfs of water, being 1.34 cfs from Well 1 and 5.57 cfs from Wells 2 and 3 in the Willamette River Basin for industrial use and mining operations. The permit specified complete application of water was to be made on or before October 1, 2005.
2. One prior permit extension has been granted for Permit G-15456. The most recent extension request resulted in the completion date for full application of water being extended from October 1, 2005, to October 1, 2011.
3. On September 6, 2017, the permit holder, Viesko Quality Concrete, 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-15456 be extended from October 1, 2011, to October 1, 2021.
4. On September 12, 2017, notification of the Application for Permit G-15456 was published in the Department’s Public Notice. No public comments were received regarding the Application.
5. On January 11, 2018, the permit holder submitted additional information to supplement their Application. The additional information was to clarify the maximum instantaneous rate used from each of 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)]

6. On September 6, 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)]

7. Construction of the well began prior to permit issuance.
8. According to the well log received by the Department on March 27, 1997, construction of MARI 51587 (Well 1) began July 2, 1993.
9. According to the Application for a Permit to Use Ground Water received by the Department on June 22, 1998, Sump Well 2 (Well 2) and Sump Well 3 (Well 3) are exposed groundwater ponds left behind from gravel operations conducted by previous

owners of the property.

Based on Finding of Fact (FOF) 7, 8, and 9, the Department has determined that the prosecution of the construction of the wells began prior to October 1, 2005.

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 previous extension.²)

10. During the most recent extension period, being from October 1, 2005, to October 1, 2011, the permit holder constructed a trench, and installed a pipe system for water use at the wet plant.
11. Since October 1, 2011, the applicant states the following was accomplished:
 - Installed a water pump, and float system with piping and connections to the current water delivery system; and
 - Installed a new wash plant.

Based on FOF 10, the Department has determined that work has been accomplished during the last extension period, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

² “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.

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

Compliance with Conditions

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

12. Department records show Oregon Department of Environmental Quality (ODEQ) has approved an NPDES (National Pollutant Discharge Elimination System) 1200A permit for the permit holder's industrial use and mining operations.

Well 1

13. Department records show annual water use reports have been submitted for water years 2001, 2003, 2006, 2014, 2015, and 2016.
14. Department records show a March static water level measurement was submitted for 2011.

Well 3

15. Department records show a March static water level measurement was submitted for 2011.

Based on FOF 12 through 15, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-15456.

16. 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 1, Well 2, and Well 3; (2) the required March static water level measurements for Well 2 have not been received by the Department; and (3) annual reports of the amount of water used each month from Well 2 and Well 3 have not been received by the Department.

Well 1

Based on FOF 16, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-15456:

- "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director."

Well 2

Based on FOF 16, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-15456:

- "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a

complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director”; and

- “To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.”

Well 3

Based on FOF 16, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-15456:

- “Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director.”

Failure to comply with permit conditions constitutes illegal use of water. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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

Beneficial Use of Water: *the amount of beneficial use made of the water during the previous extension conditions.*

17. The Application states a maximum combined rate of 6.97 cfs of water, being 1.7 cfs from Well 1, 3.65 cfs from Well 2, and 1.62 cfs from Well 3, has been appropriated for industrial use and mining operations. This exceeds the amount of water authorized for Well 1 under this permit. The authorized amount of water for Well 1 is 1.34 cfs.
18. According to the permit holder, delay of full beneficial use of water under Permit G-15456 was due, in part, to substantial damage done by previous owners of the property. When Viesko Quality Concrete purchased the property in 2011, they thought the existing plant was fully operational. After installing the waterway to the plant, the permit holder realized the existing plant was obsolete, and they had to develop a plan to incorporate a larger capacity rock washing operation. The permit holder needs more time in which to develop the remaining place of use allowed under the permit.

Based on FOF 16, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2011.

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

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose

19. The Application states an approximate total of \$261,215 has been invested. The Application included costs associated with rental and maintenance costs of a system which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$254,000 which is about 37 percent of the total projected cost for complete development of this project. The Application states an additional \$425,000 investment is needed to complete this project, which includes installing a new float system for expansion of the water plant, and doubling the capacity of the wash plant.

Based on FOF 19, the Department has determined 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 of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

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.

20. 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-15456; 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).

21. The points of appropriation for Permit G-15456, located within the Willamette River Basin, are not located within a limited or critical groundwater area.
22. Willamette River is not located within or above any state or federal scenic waterway.
23. 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.

24. Willamette River is located within an area ranked “low” 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.

25. The Application states an approximate total of \$254,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

26. The Application did identify economic interests other than those of the applicant’s that may be dependent on completion of the project. The Oregon Department of Transportation (ODOT) is dependent upon the production of concrete from the permit holder for ODOT projects, which can impact the development of the City of Salem and surrounding communities.

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

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

27. The Application states the only reasonable alternatives for water use are artesian wells, which the permit holder will not pursue due to the high cost.

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

Fair Return Upon Investment

28. The Application states the permit holder provides concrete for ODOT projects, which is vital to their business.

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

Other Governmental Requirements

29. The Application identified when Viesko Quality Concrete took possession of the property in 2011, they had to develop a plan for the safety of personnel, the environment, and to fulfill the requirements set forth by the Mining Safety and Health Administration, which consumed a considerable amount of time.

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

Unforeseen Events

30. The Application did not identify unforeseen events.

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

Denial of the Extension Will Result in Undue Hardship

31. The Application stated a denial of the extension would result in undue hardship, preventing the permit holder from completing future mining expansion.

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

Good Faith of the Appropriator

32. The Application provides evidence of good faith of the appropriator under Permit G-15456.

Based on FOF 7 through 15, 17, 19, and 25, 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.

33. As of September 6, 2017, the Application states the remaining work to be completed

consists of installing a new float system for expansion of the water plant, which includes pumps and piping for future production, and doubling the capacity of the wash plant; meeting all permit conditions, which includes installing meters on Wells 1, 2, and 3, submitting annual water use reports, and March static water level measurements; and applying water to full beneficial use.

34. The permit holder is requesting additional time since their mining season is very dependent on the weather. Water is concurrently lowering and rising over time which impacts the time that they have to mine and develop the property, while adhering to the safety of employees and sensitivity to the environment.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2021, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-15456 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(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Fact 16, the Department determined the need to place a "Water Use Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary because no beneficial use of water use under the terms and conditions of the permit has been made since permit issuance

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 7 through 32, full application of water to beneficial use can be accomplished by October 1, 2021, 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 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, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

Continued on the following page

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-15456 from October 1, 2011, to October 1, 2021.

Subject to the following conditions:

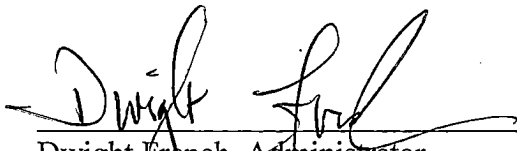
LIMITATIONS AND CONDITIONS

1. **Water Use Condition**

The use of any water under Permit G-15456 is subject to the condition requiring installation of a meter.

- No water may be appropriated under Permit G-15456 until a meter has been installed at each point of appropriation (POA). Use of any water under Permit G-15456 without installation of a meter is illegal use of water.
- The permittee shall install a meter or other suitable measuring device as approved by the Director on each POA, being MARI 51587 (Well 1), Sump Well 2 (Well 2), and Sump Well 3 (Well 3), and submit documentation to the Department by September 17, 2018.
- Failure to comply with the above condition by September 17, 2018, the Extension of Time to October 1, 2021 will be terminated. The Department shall begin cancellation of Permit G-15456.

DATED: January 23, 2018


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 **March 9, 2018**, 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>

-
- 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
-