

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time) PROPOSED
for Permit G-15438, Water Right Application G-15650,) FINAL
in the name of the Pristine Water Source, LLC) ORDER

Permit Information

Application File G-15650 / Permit G-15438

Basin 14 – Klamath Basin / Watermaster District 17

Date of Priority: November 9, 2001

Authorized Use of Water

Source of Water: A well in Klamath Lake Basin
Purpose or Use: Quasi-Municipal Use
Maximum Rate: 4.0 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.*

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2007, to October 1, 2052.
- 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
Pristine Well – KLAM 53203
FOF - Finding of Fact
cfs – cubic feet per second
gpm – gallons per minute

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630 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

1. On May 12, 2003, Permit G-15426 was issued by the Department, consistent with the terms of a Settlement Agreement. The permit authorized the use of up to 1.3 cfs of water, from a well in Klamath Lake Basin for quasi-municipal use. It specified complete application of water was to be made on or before October 1, 2007.
2. On June 5, 2003, Superseding Permit G-15438 was issued by the Department to correct an error in the rate of water authorized in the permit to reflect the rate of water agreed to in the Settlement Agreement. The permit authorizes the use of up to 4.0 cfs of water, from a well in Klamath Lake Basin for quasi-municipal use. It specified complete application of water was to be made on or before October 1, 2007.
3. On May 13, 2016, an assignment by proof from Southview Water Services, LLC, to Pristine Water Source, LLC, was recorded in the records of the Water Resources Department.
4. On January 26, 2018, Bob Ekblad, COO for Premier Community Bank, agent for Pristine Water Source, LLC, 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-15438 be extended from October 1, 2007, to October 1, 2052. This is the first extension of time request for Permit G-15438.
5. Notification of the Application for Extension of Time for Permit G-15438 was published in the Department's Public Notice dated January 30, 2018. 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)]

6. On January 26, 2018, 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)]

7. Senate Bill 300 (1999 legislation) eliminated the requirement that holders of new surface water and ground water permits start construction on water projects within one year after

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.

the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999.

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.

8. The remaining work to be accomplished under Permit G-15438 consists of construction of a 1,000,000 gallon storage tank, construction and development of a water distribution system to serve planned residential districts, mixed-use districts, a commercial district, and recreation facility, and applying water to full beneficial use.
9. As of October 1, 2007, Pristine Water Source, LLC had appropriated 143 gpm (0.32 cfs) of the 4.0 cfs of water authorized under Permit G-15438 for quasi-municipal purposes.
10. Pristine Water Source, LLC, holds no additional water rights.
11. Pristine Water Source, LLC's peak water demand within its service area boundaries was 0.32 cfs in 2017.
12. According to the Application, in 2017, the population within the service boundary of Pristine Water Source, LLC was 248. Pristine Water Source, LLC estimates the population to increase at an estimated growth rate of 7.6 percent per year, reaching an estimated population of 3,325 by the year 2052.
13. According to the Application, their peak demand is projected to be approximately 4.0 cfs of water, by the year 2052. Included in the demand projection is the rate necessary to comply with Chapter 7 of the City of Klamath Falls Public Works Engineering Standards, which mandates the ability to serve water at 140% of peak daily demand.
14. Full development of Permit G-15438 is needed to meet the present and future water demands of Pristine Water Source, LLC, including system redundancy and emergency use.
15. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2052, to accomplish the application of water to beneficial use under the terms of Permit G-15438 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.

16. Construction of the well and water system began prior to permit issuance, and includes the following:
 - completed construction of KLAM 53203 (Pristine Well);
 - installed a 25 horsepower pump, and constructed a 550,000 gallon storage tank;
 - constructed 2,500 feet of 12 inch line connecting pump house and storage tank; and
 - constructed pressure reducing line from pump house to subdivision.
17. Work was accomplished during the original development time frame under Permit G-15438, which consisted of the installation of 99 water service connections to residential sites and performing a pump test on the Pristine Well.
18. No other work has been accomplished since October 1, 2007.

Based on Findings of Fact (FOF) 7, and 16 through 18, the Department has determined 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.

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

19. As of October 1, 2007, 143 gpm (0.32 cfs) of the 4.0 cfs allowed has been appropriated from Pristine Well for beneficial quasi-municipal purposes under the terms of this permit.
20. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.
21. As of January 26, 2018, an approximate investment of \$1,475,000, which is 37 percent of the total projected cost for complete development of this project, has been made. The permit holder estimates an additional \$2,500,000 investment is needed for the completion of this project.

Based on FOF 19 through 21, the Department has determined that an investment has been made to apply water to the beneficial use, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]

For quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

22. 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-15438; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted.
23. The point of appropriation for Permit G-15438 is not located within a limited or critical ground water area.
24. The point of appropriation for Permit G-15438, located within the Klamath Basin, is located above the Klamath Scenic Waterway.
25. The point of appropriation is within areas 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.
26. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

27. As of January 26, 2018, the permit holder invested \$1,475,000, which is 37 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,500,000 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

28. Other economic interests dependent upon the completion of the project include the 99 residential properties connected to the water system.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

29. As described in Findings of Fact 9 through 15 Pristine Water Source, LLC has indicated, and the Department finds that Pristine Water Source, LLC must rely on full development of Permit G- 15438 to meet its present and future water demands, including mixed-use and commercial build-out.
30. Pristine Water Source, LLC projects a population increase of 7.6 percent per year over a 34 year period, being 2017 to 2052, and also expects commercial growth.
31. Given the current water supply situation of Pristine Water Source, LLC Water Source, LLC, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under Permit G-15438.

32. OAR 690-315-0050(6) requires the Department to place 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 “Limitations and Conditions” section of this PFO to meet this condition.

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

33. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

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

34. 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)]

35. According to the Application, delay of development under Permit G-15438 was due, in part, to the size and scope of the quasi-municipal water system, which was designed to be phased in over a period of years. The current water system is used to serve water to 99 homes in the “Southview Development.” Southview Development is a 605.0 acre mixed use planned development in the City of Klamath Falls. The development was expected to serve 1,330 residential units and 487,250 square feet of commercial space at complete build-out. In 2009, growth in the development slowed due to the recession and the previous permit holder, Southview Water Services, LLC, went bankrupt.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to completely apply water to the full beneficial use pursuant to ORS 537.630.
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 construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Full application of water to beneficial use can be completed by October 1, 2052⁴ pursuant to OAR 690-315-0080(1)(d).

⁴ Pursuant 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 the claim of beneficial use.

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. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

continued on 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 the water to beneficial use under Permit G-15438 from October 1, 2007, to October 1, 2052.

Subject to the following condition:

CONDITION

1. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2023, 2028, 2033, 2038, 2043, 2048, and 2051. 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: March 20, 2018


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 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 **May 4, 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>

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- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503-986-0802.
 - 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
Fax: 503-986-0901 Salem, OR 97301-1266
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