

**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-16311, Water Right Application G-16712,	)	FINAL
in the name of the Port of Tillamook Bay	)	ORDER

Permit Information

Application File G-16712/ Permit G-16311
Basin 1 – North Coast Basin / Watermaster District 1
Date of Priority: August 22, 2006

Authorized Use of Water

Source of Water:	Proposed Well 1, Proposed Well 2, Proposed Well 3, and Proposed Well 4 within the Mill Creek Basin
Purpose or Use:	Municipal
Maximum Rate:	0.80 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-16311, water right Application G-16712.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2012, to October 1, 2050.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012, to October 1, 2050.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
City – Port of Tillamook Bay
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan
Well 1 – TILL 51981

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(2) 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 municipal and/or 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) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or 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 April 24, 2008, Permit G-16311 was issued by the Department. The permit authorizes the use of up to 0.80 cfs of water from Proposed Well 1, Proposed Well 2, Proposed Well 3, and Proposed Well 4 within the Mill Creek Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 2012, and that complete application of water was to be made on or before October 1, 2012.
2. On August 19, 2011, the Port of Tillamook Bay (Port), submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-16311 be extended from October 1, 2012, to October 1, 2052. This is the first extension of time request for Permit G-16311.
3. Notification of the Port's Application for Extension of Time for Permit G-16311 was published in the Department's Public Notice dated August 30, 2011. No public comments were received regarding the extension application.
4. On May 9, 2016, June 13, 2016, and April 27, 2018, the Port submitted supplemental information and updates to their pending Application for Extension of Time.
5. On April 27, 2018, the Port submitted an amendment to their Application for Extension of Time. The amendment requested the extended time to apply water to full beneficial use be changed from October 1, 2052 to October 1, 2050.

Review Criteria for Municipal 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 August 19, 2011, the Department received a completed 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. Construction of the well began prior to October 1, 2012.
8. According to the well log received by the Department on April 24, 2009, construction of TILL 51981 (Well) began on April 21, 2009.

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.

Based on Findings of Fact (FOF) 7 and 8, the Department has determined that prosecution of construction of the well began prior to October 1, 2012.

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 municipal and 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-16311 consists of completing construction of the water system, which includes completing the feasibility study on providing potable water to the Port, completing a Water Management and Conservation Plan, connecting the Well to the existing water system, expanding the water system to accommodate new industrial growth, and applying water to full beneficial use.
10. As of October 1, 2012, the Port has not appropriated any of the 0.80 cfs of water authorized under Permit G-16311 for municipal purposes. There is an undeveloped portion of 0.80 cfs of water under Permit G-16311.
11. In addition to the 0.80 cfs of water authorized under Permit G-16311, the Port holds the following rights for municipal use:

- Permit G-15966 for 0.8 cfs of water, limited to the period of use of December 1 through April 30, from a well in the Trask River Basin;
- Transfer T-9962 for 0.33 cfs of water from March 1 through October 31, limited to maximum 211.3 AF annually, from Well 1 (TILL 653) and Well 2 (TILL 51951) in the Mill Creek Basin;

These water rights and permits total 3.13 cfs of water, limited to 1.13 cfs of water from March 1 through October 31, and 2.8 cfs December 1 through April 30. The Port of Tillamook Bay has not yet made use of any of the water authorized under all of the Port's water rights and permits.

12. According to the Port, their peak water demand within its service area boundaries was 0.36 cfs in 2017. The Port currently utilizes water supplied under contract from the City of Tillamook (City), and is not utilizing any water authorized under any of the Port's rights. The water supplied to the Port from the City is measured in daily volume, and therefore the Port has had to estimate the approximate rate of demand by utilizing the historic daily volumes and comparing them to general operational practices of the industries located in the Port.
13. As of 2017, the population within the service boundary of the Port of Tillamook Bay was approximately 250. This population consists of 50 beds at the Tillamook Youth Correctional Facility and 25 beds at Camp Tillamook Youth Transitional Facility, both of which are considered "permanent populations" and an estimated 175 in "non-permanent population" related to the 50 industrial tenants of the Port. The Port of Tillamook Bay

estimates the population will increase at growth rate of 1.7 percent per year, reaching an estimated population of 500 by the year 2050. According to the Application the Port has approximately 650 acres of buildable industrial land, which is suitable for buildout to meet the needs of a variety of potential industrial tenants.

14. According to the Port, their peak day demand is projected to be approximately 1.13 cfs of water by the year 2050.
15. Full development of Permit G-16311 is needed to address the future water demand of the Port, including system redundancy and emergency use.

Based on FOF 9 through 15, the Department has determined that the Port's request for an extension of time until October 1, 2050, to apply water to full beneficial use under the terms and conditions of Permit G-16311 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) and OAR 690-315-0080(4).

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 municipal or 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. Prior to the issuance of Permit G-16311 the Port constructed a water delivery system to deliver water supplied from the City of Tillamook.
17. Work accomplished during the original development time frame under Permit G-16311, being April 24, 2008, through October 1, 2012, consists of the following:
 - a. completed construction of Well 1;
 - b. continued planning additional water related infrastructure;
 - c. constructed three new service loops;
 - d. constructed an additional service line extension to the Highway 101 frontage property;
 - e. completed a Site Analysis and Strategic Business Plan; and
 - f. developed a Future Land Use Plan

Based on FOF 16 and 17, the Department has determined that work has been accomplished during the permitted time period being from April 24, 2008, through October 1, 2012, which provides evidence of good cause and reasonable diligence in developing the permit.

18. As of April 27, 2018, being the date the Application was most recently updated; the Port has invested approximately \$1,633,234, which is approximately 39 percent of the total

projected cost for complete development of this project. The Port estimates an additional \$2,515,000 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under G-16311, other costs included in this accounting are not partitioned out for G-16311 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the Port, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in OAR 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the Port's water rights.

19. As of April 27, 2018, being the date the Application was most recently updated; no water allowed under this permit has been appropriated for beneficial municipal purposes.
20. 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, and (2) a WMCP has not been submitted.

The use of water under this permit, therefore, has not yet been demonstrated. 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.

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

21. As of April 27, 2018, being the date the Application was most recently updated; the Port has invested approximately \$1,633,234, which is 39 percent of the total projected cost for complete development of this project. The Port estimates an additional \$2,515,000 investment is needed for the completion of this project.

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

For municipal or 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-16311; 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. The point of appropriation for Permit G-16311 is not located within a limited or critical ground water area. The point of appropriation for Permit G-16311, located within the Mill Creek Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is within areas ranked highest 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. 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)].

23. As of April 27, 2018, they have invested \$1,633,234, which is 39 percent of the total projected cost for complete development of this project. The Port estimates an additional \$2,515,000 investment is needed for the completion of this project.

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

24. The Port did not identify any additional economic interests dependent upon the completion of the project.

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

25. As described in FOF 7 through 15, the Port has indicated, and the Department finds that the Port must rely on full development of Permit G- 16311 to meet its future water demands.
26. Port projects a population increase of 1.7 percent per year over the next 32 years which includes an increase in “non-permanent populations” as new industrial tenants locate to the Port.
27. Given the current water supply situation of the Port as well as expected demands, there is a market and present demand for the water to be supplied under Permit G-16311.
28. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of any water under Permit G-16311 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 which grants access to a greater appropriation of water under the 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.

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

29. The Port is currently developing a plan to serve water under its water rights. The initial feasibility assessment is related to the costs and infrastructure requirement that will be necessary. This assessment will also determine the water rate charges that will be necessary to provide the Port with fair and reasonable returns on its investments.

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

30. 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)]

31. Delay of development under Permit G-16311 was due, in part, to the need to develop and finance a plan to connect the existing water system to the Port's authorized water sources to serve water under the Port's own water rights.

CONCLUSIONS OF LAW

1. The Port is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(2).
2. The Port 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. As required by OAR 690-315-0080(1)(b), the permit holder was able to demonstrate that construction of the project began (commenced) within the time period required by ORS 537.630(2), being no later than October 1, 2012. ORS 537.630(2) provides that the Department may only allow an extension of time to complete construction or to perfect a water right beyond the specified permit under certain conditions. The time to begin construction may not be extended.
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, 2050⁴ 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 Port 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 any water under Permit G-15966 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

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 a new or revised claim of beneficial use as deemed appropriate by the Department.

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-16311 from October 1, 2012, to October 1, 2050.

Extend the time to apply the water to beneficial use under Permit G-16311 from October 1, 2012, to October 1, 2050.

Subject to the following conditions:

CONDITIONS

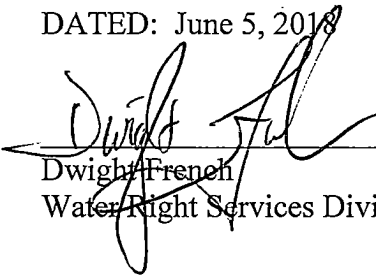
1. Development Limitations

No appropriation of water is currently allowed under Permit G-16311. Appropriation of any water (not to exceed the maximum amount authorized under this permit, being 0.80 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes 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. The amount of water used under Permit G-15966 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-16311 that has been established under a prior WMCP or Extension final order issued by the Department.

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 the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: June 5, 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 **July 20, 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 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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