

**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-9708, Water Right Application G-10630,) FINAL
in the name of the City of Scotts Mills) ORDER

Permit Information

Application File G-10630/ Permit G-9708

Basin 2B – Middle Willamette Basin / Watermaster District 16
Date of Priority: January 19, 1982

Authorized Use of Water

Source of Water: Two Wells within Butte Creek Basin
Purpose or Use: Municipal Use
Maximum Rate: 0.51 cubic feet per second (cfs), being 0.07 cfs from Well 1
and 0.44 cfs from Well 2

**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-9708, water right Application G-10630.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1997, to October 1, 2027.
- Grant an extension of time to apply water to full beneficial use from October 1, 1997, to October 1, 2027.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
City – City of Scotts Mills
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

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. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under 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 June 22, 1982, Permit G-9708 was issued by the Department. The permit authorizes the use of water from two well, being 0.07 cfs of water from well 1, and 0.44 cfs of water from well 2, and is limited to the amount of water which can be applied to beneficial use and shall not exceed 0.51 cfs, for the purpose of municipal use. It specified that construction of the water development project was to be completed by October 1, 1983, and that complete application of water was to be made on or before October 1, 1984.
2. Three prior permit extensions have been granted for Permit G-9708. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1994, to October 1, 1997.
3. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
5. On June 28, 2007, the City of Scotts Mills (City), 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-9708 be extended from October 1, 1997, to October 1, 2017.
6. Notification of the City's Application for Extension of Time for Permit G-9708 was published in the Department's Public Notice dated July 3, 2007. No public comments were received regarding the extension application.
7. On February 7, 2012, the City submitted an updated Application for Extension of Time.
8. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.
9. On January 2, 2018, the City requested the date the permit to be extended to be change from October 1, 2017, to October 1, 2027.

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)]

10. On June 28, 2007, 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)]

11. Permit G-9708 was issued prior to June 29, 2005; therefore, the applicant is not required to provide evidence of actions taken to begin actual construction of the project.⁴

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.

12. The remaining work to be accomplished under Permit G-9708 consists of completing construction and applying water to full beneficial use.
13. As of June 29, 2005, the City had appropriated 0.49 cfs of the 0.51 cfs of water authorized under Permit G-9708 for municipal purposes. There is an undeveloped portion of 0.02 cfs of water from Well 2 under Permit G-9708.
14. In addition to the 0.51 cfs of water authorized under Permit G-9708, the City holds the following rights for municipal use:
 - Certificate 66080 for 0.22 cfs of water from Well 2 in the Butte Creek Basin;
 - Certificate 24146 for 0.25 cfs of water from Butte Creek;
 - Certificate 62210 for 0.022 cfs of water from a Springs; and
 - Permit G-11936 for 0.13 cfs of water from City Park Well in the Butte Creek Basin;

These water rights and permits total 1.132 cfs of water, being 0.86 cfs of ground water, 0.272 cfs of live flow (surface) water. The City is not currently utilizing any water from their surface water sources.

15. According to the City, based on meters installed at the pumps, their peak water demand within its service area boundaries was 0.64 cfs in 2010.
16. As of 2010, the population within the service boundary of the City of Scotts Mills was

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.

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

357. The City of Scotts Mills estimates the population will increase at growth rate of 0.42 percent per year, reaching an estimated population of 366 by the year 2017. The City does not expect expansion beyond the existing service area, and does not expect additional commercial ventures that would require water use.

17. According to the City, their peak day demand is projected to be approximately 0.66 cfs of water by the year 2017.
18. Full development of Permit G-9708 is needed to address the present and future water demand of the City, including system redundancy and emergency use.

Based on Findings of Fact 12, through 18, the Department has determined that the City's request for an extension of time until October 1, 2027, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-9708 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.

19. Prior to the issuance of Permit G-9708, the City constructed Well 1. Additionally, Well 1 was deepened and reconditioned prior to the permit being issued.
20. During the last extension period, being October 1, 1994, to October 1, 1997, the City:
 - constructed a new 6" waterline;
 - installed meters on Well 1 and Well 2;
 - reconstructed the roof over Lower Reservoir; and
 - conducted water quality testing.
21. Since October 1, 1997, the City:
 - installed new pumps;
 - continued water quality sampling;
 - updated the Water Master Plan;
 - completed the final design for a new water system;
 - drilled a new well to replace Well 2;
 - constructed a new 300,000 gallon reservoir; and
 - replaced all the major water lines in the system.

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

22. As of June 28, 2007, they have invested approximately \$2,297,371, which is approximately 90 percent of the total projected cost for complete development of this project. The City estimates an additional \$248,000 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-9708, other costs included in this accounting are not partitioned out for G-9708 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, 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 City's water rights.
23. As of June 29, 2005, the City has appropriated 0.49 cfs of the 0.51 cfs authorized under the permit, being 0.07 cfs of water from Well 1, and 0.42 cfs of water from Well 2 for beneficial municipal purposes under the terms of this permit.
24. The Department has considered the City's compliance with conditions, and did not identify any concerns.

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

25. As of June 28, 2007, the City has invested approximately \$2,297,371, which is 90 percent of the total projected cost for complete development of this project. The City estimates an additional \$248,000 investment is needed for the completion of this project.

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

26. As described in Findings 12 through 21 above, the City has indicated, and the Department finds that the City must on its water right permits from the within the Butte Creek Basin to meet the present and future demands of the City.
27. The City projects a population increase, on average, of 0.42 percent per year over a 17 year period, being the years 2010 to 2027. The City does not anticipate any significant commercial or industrial growth, and residential growth will be within the existing service area boundary.
28. Given the current water supply situation of the City, 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 G-9708.
29. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.49 cfs (not to exceed the maximum amount authorized under this permit, being 0.51 cfs) under Permit G-9708 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)]

30. The City employs generally accepted utility rate-making practices in fixing rates to capture current operating expenses, maintain the system, make debt payments, and create reserves sufficient to repay current users for their investment in the system and provide funds for future improvements. 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)]

31. According to the Application, delay in the development of this project was caused, in part, by requirements of Oregon Health Authority (OHA) Drinking Water Program. Well 2 needed to be reconstructed or replaced due to comingling of multiple aquifers.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

32. Delay of development under Permit G-9708 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years.
33. Additional delays were due to the City pursuing funding through Oregon Economic and Community Development Department, and USDA Rural development Program.

Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]

The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

34. On January 18, 2012, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-9708 has the potential for substantial interference (PSI) with surface water in accordance with OAR 690-315-0010(6)(f). The Department estimated that use of the undeveloped portion being 0.02 cfs of water from Well 2, will result in impact of 0.01 cfs of water to Butte Creek after 360 days of continuous pumping.
35. The pending municipal Application for Extension of Time for Permit G-9708 was delivered to ODFW on July 28, 2011, for ODFW's review under OAR-690-315-0080.
36. Notification that the pending municipal Application for Extension of Time for Permit G-9708 was delivered to ODFW for review was sent to the City on July 29, 2011.

37. Notification that the pending municipal Application for Extension of Time for Permit G-9708 was delivered to ODFW for review was published in the Department's Public Notice dated August 2, 2011. No public comments were received regarding this notice.
38. On September 22, 2014, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-9708.
39. Summary and Excerpts of Advice from ODFW:
 - The WRD groundwater review found that the hydraulic connection to Butte Creek is very low, being 0.01 cfs after 360 days of pumping.
 - The potential amount of curtailment based on this low level of connectivity is not considered significant.
 - ODFW has determined that the use of the undeveloped portion of Permit G-9708, will maintain the persistence of listed fish species without conditions.
40. The Department finds, based on existing data and ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-9708 will maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

CONCLUSIONS OF LAW

1. The City 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 City 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. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-9708 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2027⁵ pursuant to OAR 690-315-0080(1)(d).

⁵ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner
Proposed Final Order: Permit G-9708

7. 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 City has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
8. As required by OAR 690-315-0090(3) and as described in Finding 29, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.49 cfs (not to exceed the maximum amount authorized under this permit, being 0.51 cfs) under Permit G-9708 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).
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 34, through 40, above, the use of the undeveloped portion of the permit having PSI with surface water will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

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-9708 from October 1, 1997, to October 1, 2027.

Extend the time to apply the water to beneficial use under Permit G-9708 from October 1, 1997, to October 1, 2027.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

A maximum appropriation of 0.49 cfs of water is currently allowed under Permit G-9708. Any appropriation of water beyond 0.49 cfs (not to exceed the maximum amount authorized under the permit, being 0.51 cfs) shall only be authorized upon

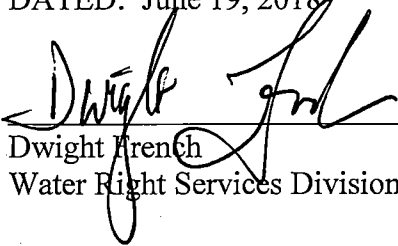
certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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-9708 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-9708 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 19, 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 **August 3, 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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