

**Oregon Water Resources Department
Water Rights Division**

Water Right Permit Extension Application
for Permit Number 52968

Water Right Application Number 71575

Proposed Final Order

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

This Proposed Final Order applies only to permit number 52968.

Summary of Recommendation

The Department proposes to:

grant the extension for complete construction of the water system from October 1, 1998 to October 1, 2024, and

grant the extension for complete application of water from October 1, 1999 to October 1, 2024.

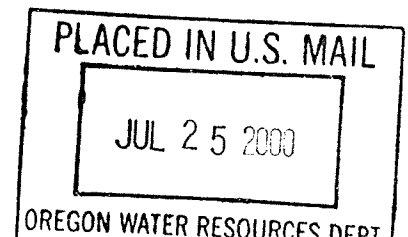
Application History

Permit no. 52968 was granted by the Water Resources Department on NOVEMBER 27, 1996. The permit authorizes use of 0.19 CFS of water from UNNAMED SPRING for GROUP DOMESTIC EXPANDED FOR 62 CUSTOMERS in the COLUMBIA RIVER basin. It specified that construction must be completed by October 1, 1998, and water applied to full beneficial use by October 1, 1999. A copy of permit no. 52968 is attached.

On SEPTEMBER 15, 1999, the Department received an application from HAT ROCK WATER CO, INC. for an extension of time to complete construction and to apply water to full beneficial use. The applicant has requested until October 1, 2024 to complete construction of the water system and to apply water to full beneficial use. This is the first permit extension request.

Findings of Fact

ORS 537.230(2) and 537.630 (1) allows the Department to grant an extension of time to perfect a water right for good cause. In evaluating good cause, the Department has considered the written record in the permit application file in relation to the requirements



of ORS 537.230(2), ORS 537.630 (1) and ORS 539.010(5) and makes the following findings.

1. The applicant is legally entitled to apply for an extension on this permit.
2. The applicant has submitted a completed permit extension form and the required fee.
3. The water project development made to date has been accomplished in accordance with the terms and conditions contained in the permit.
4. Progress in perfecting the permit is being held up by the time it takes to build on all the lots in the development being served under this permit. There is now 34 lots being served with 28 lots remaining to be built upon. The applicant estimates that lot development is at a rate of about 1 house per year, and requests an extension until 2024. The existing houses began being built in 1954.
5. The applicant has pursued perfection of the right in good faith and with reasonable diligence.
 - a) Work on the water development project completed to date includes construction of water system. Water has been applied to 34 houses.
 - b) The applicant has invested approximately \$ 55,000 of an estimated total water system project cost of \$ 100,000.
 - c) The work remaining to be completed consists of the remaining construction of the water delivery system and complete application of water.
6. Based on the written record, the Department finds there is good cause to approve the extension request. The applicant has pursued perfection of the right in good faith and with reasonable diligence. Perfection of the permit has been delayed by the size and scope of the project.
7. Due to the reasons outlined above in item 4 and the water development progress to date, the Department finds that the length of time requested for completion of construction and the length of time requested for completion of the application of water should be extended to October 1, 2024 as requested by the applicant.

Conclusions of Law

1. The applicant 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 537.230, and ORS 537.630.
2. The applicant has submitted an extension application form and the fee required by ORS 536.050(1)(L).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. The applicant has shown good cause for the untimely completion of the water development project and complete application of water to full beneficial use pursuant to ORS 537.230(2), and ORS 537.630 (1).

5. The permit extension should be approved until October 1, 2024 to complete construction and until October 1, 2024 to complete the application of water.

Conditions

The permittee must submit a written progress report to the Department by October 1, 2004, 2009, 2014 and 2019. The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:

- a) The amount of construction completed;
- b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
- d) Financial investments made toward developing the beneficial water use.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above will result in cancellation of the undeveloped portion of the permit by the Department pursuant to ORS 537.260 or 537.410 to 537.450. Within one year after cancellation, the permittee must submit a final proof survey pursuant to ORS 537.230 and 537.250. The Department will take into consideration annual reports submitted under OAR 690, Division 86, or ORS 527.099, and any other reports that demonstrates diligence. Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

In determining whether the permittee has been diligent, the Department will consider information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the

progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

Recommendation


The Department proposes to issue an order to:

extend the permit time to complete construction from October 1, 1998 to October 1, 2024

and

extend the permit time to complete application of water from October 1, 1999 to October 1, 2024.

DATED: JULY 25, 2000


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Comments

1. Under the provisions of OAR 690-320-0010(8) you have the right to protest this proposed final order. Your protest must be in writing and must include the following:
 - a) Your name, address and telephone number;
 - b) Your interest in this proposed final order, and if you claim to represent the public interest, a precise statement of the public interest represented;
 - c) A detailed description of how the action in the proposed final order would impair or be detrimental to your 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 your protest, if known; and
 - f) The \$25 protest fee required under ORS 536.050 (1)(j).
2. Each person submitting a protest shall raise all reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the comment period.
3. The Water Resources Department must receive written protests or written comments no later than **SEPTEMBER 8, 2000**.
4. After the close of the comment and protest period, the Director will either issue a final order, or schedule a contested case hearing if the Director finds there are

significant disputes related to the use of water.

This document was prepared by Dallas Miller. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me toll free within Oregon at 1-800-624-3199 extension 272. Outside of Oregon you can dial 1-503-378-8455.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Brendalee Wilson. Her extension number is 276.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 201. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97310, Fax: (503)378-2496.

Mailing List for Extension PFO Copies

Application # 71575

PFO Date 7/11/00

Original mailed to:
Applicant: Hat Rock Water Co, Inc.

Copies Mailed By: <u>Cap</u> (SUPPORT STAFF) on: <u>7-24</u> (DATE)

For Extension PFO's - Copies sent to:

1. WRD - File # _____
- ✓ 2. WRD - Watermaster District #: 5
- ✓ 3. WRD - Regional Manager: NC
- ✓ 4. ✓ ODFW District Biologist: _____
- ✓ 5. ✓ DEQ Headquarters - Tom Rosetta
6. _____ WRD - John Falk (for reservoir permit extensions only)
7. _____ CWRE: _____

Other interested parties:

8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____

CASEWORKER: DSM

