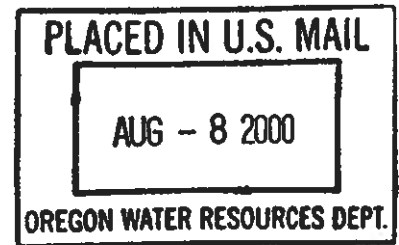


State of Oregon
Water Resources Department



In the matter of Water Right Application G-11935, Permit G-10987)
in the name of Perrydale Domestic Water Association)
Applicant and Protestant)

**Superceding Final
Order Approving
Permit Extension
Request**

Appeal Rights

This is a final order in other than contested case. Pursuant to ORS 536.075 and OAR 137-004-0080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the time specified by ORS 183.484(2).

Background

Permit G-10987, in the name of Perrydale Domestic Water Association, was issued by the Department on March 12, 1990. The permit authorizes the use of 60 gallons per minute (gpm) of water from a well for quasi-municipal use. The permit required construction to be completed by October 1, 1991 and complete application of water to be accomplished by October 1, 1992. Two extensions of time have been granted to the Perrydale Domestic Water Association in the past.

On October 1, 1998, the permittee submitted a completed extension application and fees. On August 31, 1999, the Water Resources Department (Department) notified the permit holder by certified mail that the new extension application form required by the extension of time administrative rule OAR 320 must be submitted by October 1, 1999. The Department did not receive the required form and was not able to determine "good cause" in order to approve the application. On January 19, 2000, the Department issued a Proposed Final Order (PFO) proposing to deny the extension request. In its PFO the Department determined that it could not be determined whether the permittee had pursued the perfection of the water right in good faith and with reasonable diligence because of lack of information. On February 25, 2000 the PFO was protested by Boatwright Engineering on behalf of the permittee. With the protest the permittee submitted additional evidence in support of the extension request and a completed new extension form was received by the Department on February 29, 2000.

On March 8, 2000, the Department issued a Final Order approving the extension of time to complete construction and apply water to full beneficial use to October 1, 2017. However, the

Final Order omitted conditions required under OAR 320. Therefore, the following condition shall apply to the approval of this extension of time request.

Conditions

The permittee must submit a written progress report to the Department by October 1, 2002, 2007, and 2012. 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 537.099, and any other report 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 any 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.

Findings and Conclusions

Under ORS 537.230(2) and OAR 690-320-0010(6) extensions of time to complete construction or to fully apply surface water to a beneficial use may only be granted upon a showing of good cause, including justification for the untimely completion. Pursuant to OAR 690-320-0010(6), a determination of good cause requires, at a minimum, consideration of the factors set out in ORS 539.010(5).

The permittee's new extension application and protest establishes that development of the water right was pursued in good faith and with reasonable diligence but that unforeseen events has delayed water use development. The water from the well under this permit contains a high chloride content, which when mixed with water from the permittee's other three wells, results in a offensive, although not unsafe, odor and taste. The permittee investigated the problem and developed a plan to mix small amounts of the well water with the three other wells to deal with the issue. The other three wells, however, developed problems which made it impossible to mix the water within the time period required. The permittee's protest indicates that this well has been placed on the permittee's plan for use as an emergency water source for the time being until the water quality problem can be corrected.

The permittee states that as a quasi-municipal water supplier, water from the permittee's wells, including the well under this permit, is in high demand to its rural customers in Polk and Yamhill Counties. Plans to begin supplying untreated water from the well under this permit to customers that can use the untreated water will begin this year.

Work on the water development project completed to date includes construction of the well, installation of the pump, and pipelines. These investments toward developing the beneficial water use are approximately \$40,000 out of a total project cost of approximately \$70,000 and demonstrate reasonable diligence and good faith in developing the domestic water use.

The combination of information provided by the permittee -- unforeseen events delaying development of the water use, a plan to address the problems with the well water, and significant financial investments made toward developing the beneficial water use -- demonstrate good cause for the untimely development and due diligence and good faith in developing the subject water right. Through its protest and additional evidence the permittee has demonstrated that its request for an extension of time satisfies the good cause requirements set out in OAR 690-320-0010(6).

Ultimate Findings


- The permittee is entitled to an extension of time under ORS 537.230.
- The permittee has submitted a complete extension application and fee.
- Completion of the project can be reasonably expected to occur within the requested extension period.
- The permittee has demonstrated good cause for an extension and demonstrated good faith and due diligence in developing the water use.

The Final Order shall be modified as provided above.

Order

The request to extend the time to complete construction and apply water to full beneficial use for Permit G-10987 is approved. The time to complete construction and apply water to full beneficial use is extended to October 1, 2017.

Dated this 8th day of August, 2000.



Paul Cleary, Director
Water Resources Department