

**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-11422, Water Right Application G-12669, ) FINAL  
in the name of the Salmon Valley Water Company ) ORDER

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**Permit Information**

**Application File G-12669 / Permit G-11422**

Basin 2C – Lower Willamette Basin / Watermaster District 20

Date of Priority: October 3, 1991

**Authorized Use of Water**

Source of Water: Two wells in within the Salmon River Basin  
Purpose or Use: Quasi-Municipal  
Maximum Rate: 0.50 cubic foot per Second (cfs)

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**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-11422, water right Application G-12669.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1994, to October 1, 2037.
- Grant an extension of time to apply water to full beneficial use from October 1, 1995, to October 1, 2037.
- 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  
WMCP – Water Management and Conservation Plan  
PLAN – Plan to Obtain a Long-Term Water Supply  
Well 1 - CLAC 7687  
Well 2 - CLAC 1843

### Units of Measure

cfs – cubic foot 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 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 February 10, 1992, Permit G-11422 was issued by the Department. The permit authorizes the use of up to 0.5 cfs of water, from two wells in Salmon River Basin for quasi-municipal use during the period of October 1 through June 30 of each year. It specified that actual construction was to begin by February 10, 1993, construction of the water development project was to be completed by October 1, 1994, and complete application of water was to be made on or before October 1, 1995.
2. 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.
3. 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.
4. On June 19, 2018, the permit holder submitted an “Application for Extension of Time” (Application) to the Department requesting the time to complete construction be extended from October 1, 1994, to October 1, 2023, and the time to apply water to full beneficial use under the terms and conditions of Permit G-11422 be extended from October 1, 1995, to October 1, 2023. This is the first extension of time request for Permit G-11422.
5. Notification of the Application for Extension of Time for Permit G-11422 was published in the Department’s Public Notice dated June 26, 2018. No public comments were received regarding the extension application.
6. On January 14, 2019, the permit holder submitted an update and amendment to the Application that was submitted on June 19, 2018. The update was to provide additional detail in regard to water use and population. The amendment was to change the requested date for completion be changed from October 1, 2023, to October 1, 2037.
7. On April 8, 2019, the permit holder submitted an amendment to the Application. The amendment was to correct the maximum daily demand of the water system.

### **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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 539.010(5) applies to surface water and ground water permits.

**Complete Extension of Time Application** [OAR 690-315-0080(1)(a)]

8. On June 19, 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)]

9. Actual construction of the well began prior to the February 10, 1993, deadline specified in the permit.

**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.*

10. The remaining work to be accomplished under Permit G-11422 consists of complying with permit conditions, which includes submitting a Water Management and Conservation Plan (WMCP) consistent with Oregon Administrative Rule Chapter 609, Division 086, and submitting a Plan to Obtain a Long-Term Water Supply (PLAN); completing construction, which includes installation of a new meter on CLAC 7687 (Well 1); and applying water to full beneficial use.
11. According to the Application, a maximum rate of 0.49 cfs of water has been appropriated, being 0.201 cfs of water from Well 1, and 0.289 cfs of water from CLAC 1843 (Well 2) for quasi-municipal purposes.
12. In addition to the 0.5 cfs of water authorized under Permit G-11422, Salmon Valley Water Company holds the following rights:
- Permit G-11534 for 1.0 cfs of water from six wells within the Salmon River Basin year-round for quasi-municipal use;
  - Permit G-15209 for 0.334 cfs of water from a well within the Sandy River Basin during the period of July 1 through September 30 of each year for quasi-municipal use;
  - Certificate 84220 for 0.37 cfs of water from a well within the Salmon River Basin year-round for quasi-municipal use;
  - Certificate 90091 for 0.37 cfs of water from two wells within the Salmon River Basin during the month of August of each year for quasi-municipal use; and
  - Certificate 85146 for 0.06 cfs of water from a well within the Salmon River Basin for group domestic use.

Salmon Valley Water Company's permits and certificates total 2.134 cfs of ground water in the month of August of each year, 1.93 cfs of ground water during the period of October 1, through June 31, of each year, and 1.764 cfs of ground water during the months of July and September of each year.

13. Salmon Valley Water Company's peak water demand within its service area boundaries was 0.50 cfs in 2017.



14. According to the Application, in 2018, the population within the service boundary of Salmon Valley Water Company was 1,542. Salmon Valley Water Company estimates the population to increase at an estimated growth rate of 1.8 percent per year between 2018 and 2035, then slowing to a rate of 0.5 between 2035 and 2067, reaching an estimated population of 2,147 by the year 2037.
15. According to the Application, their peak demand is projected to be approximately 0.726 cfs of water by the year 2037.
16. Full development of Permit G-11422 is needed to meet the present and future water demands of Salmon Valley Water Company, including system redundancy and emergency use.
17. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2037, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-11422 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.*

18. Actual construction of the well and water system began prior to the February 10, 1993, deadline specified in the permit.
19. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-11422.
20. Since October 1, 1995, the City has developed a Water Master Plan, installed a new meter on Well 2, and prepared a Draft WMCP.

The Department has determined that work has been accomplished, enough to provide evidence of reasonable diligence in developing the permit.

21. As of January 14, 2019, the permit holder invested \$746,450, which is 97 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$24,594 investment is needed for the completion of this project.
22. As of June 29, 2005, 0.49 cfs of the 0.5 cfs allowed has been appropriated for quasi-municipal purposes under this permit.

23. The Department has considered the permit holder's compliance with the terms and conditions of Permit G-11422, and has identified the following concerns:
- a. The permit holder has not submitted a WMCP consistent with the rules adopted by the Commission within one year of September 21, 1995, being the date OAR Chapter 690, Division 86 was adopted by the Commission.
  - b. The permit holder has not submitted a plan or timetable to the Commission which indicates steps to obtain a long-term water supply.
  - c. The permit holder has illegally appropriated water from Well 1, and Well 2 during the months of July and September.

**Failure to comply with the terms and conditions of Permit G-11422 constitutes illegal use of water. Salmon Valley Water Company is hereby notified that use from CLAC 7687 and from CLAC 1843 during the months of July, August, and September, is not authorized under Permit G-11422.**

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

24. As of June 19, 2018, the permit holder invested \$746,450, which is 97 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$24,594 investment is needed for the completion of this project.

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

25. As described in Findings 12 through 16 above, Salmon Valley Water Company has indicated, and the Department finds that Salmon Valley Water Company must rely almost exclusively on its water right permits from the two wells in Salmon River Basin.
26. Salmon Valley Water Company projects a population increase of 1.8 percent per year over a 17 year period, being the years 2018 to 2035 and also expects commercial and industrial growth.
27. Given the current water supply situation of Salmon Valley Water Company, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit G-11422.
28. 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 0.5 cfs) under Permit G-11422 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 that grants access to a greater rate of appropriation of water under this 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 City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-11422.

**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. According to Application, delay of development under Permit G-11422 was due, in part, to lack of operations capacity and commitment by the permit holder to comply with permit conditions, and a landslide which destroyed two water storage tanks which needed to be replaced.

**CONCLUSIONS OF LAW**

1. The applicant is entitled to apply for an extension of time to complete construction and completely apply water to the full beneficial use pursuant to ORS 537.630(2).
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 actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2037<sup>4</sup> pursuant to OAR 690-315-0080(1)(d).
6. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 23c, the Department determined the need to place a “Metering and Reporting Condition” on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 2 of the “Conditions” section of this PFO, was determined to be necessary because

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<sup>4</sup> 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.

Salmon Valley Water Company has been illegally appropriating water from CLAC 7687 and from CLAC 1843 during the months of July and September, which is not authorized under Permit G-11422, or any other permit held by Salmon Valley Water Company.

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 water beyond 0.49 cfs (not to exceed the maximum amount authorized under this permit, being 0.5 cfs) under Permit G-11422 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 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

### **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-11422 from October 1, 1994, to October 1, 2037.

extend the time to apply the water to beneficial use under Permit G-11422 from October 1, 1995, to October 1, 2037.

Subject to the following conditions:

### **CONDITIONS AND LIMITATIONS**

#### **1. Development Limitations**

A maximum appropriation of 0.49 cfs of water is currently allowed under Permit G-11422. Any appropriation of water beyond 0.49 cfs (not to exceed the maximum amount authorized under the permit, being 0.5 cfs) 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 that grants 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. Use of water under Permit G-11422 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-11422 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 this order may also meet the WMCP submittal requirements of other Department orders.



2. **Metering and Reporting Condition**

- A. The permittee shall install a totalizing flow meter at each point of appropriation, **which must be approved in writing by the watermaster**, no later than October 1, 2019. The permittee shall maintain the device in good working order.

**No water may be used under this permit after June 30, 2019, without approval of the totalizing flow meters by the watermaster.**

- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water appropriated each month, and shall submit a report which includes water-use measurements to the Department each month, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

DATED: April 16, 2019

  
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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 **March 31, 2019**, 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:
- The name, address and telephone number of the petitioner;
  - 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
Salem, OR 97301-1266
- 
- Fax: 503-986-0901



**Mailing List for Extension PFO Copies**

**PFO Date: April 16, 2019**

**Application G-12669  
Permit G-11422**

<b>Copies Mailed</b>	
<b>By:</b> _____	
	(SUPPORT STAFF)
<b>on:</b> _____	
	(DATE)

**Original mailed to Applicant:**

Salmon Valley Water Company  
Attn: Michael Bowman  
PO Box 205  
Welches, OR 97067

**Copies sent to:**

1. WRD - App. File G- 12669 / Permit G-11422
2. Lindsay M. Thane  
Schroedr Law Offices  
1915 NE Ceasar E. Chavez BLVD.  
Portland, OR 97212
3. Bob Long

**Fee paid as specified under ORS 536.050 to receive copy:**

4. None

**Receiving electronic copy via e-mail (10 AM Tuesday of signature date)**

5. WRD - Watermaster District 20 – Amy Kim
6. WRD - NWR Manager - Mike McCord
7. WRD - Water measurement and Reporting - Tracy Fox
8. WRD - *\*If WMCP needed* – Kerri Cope, Water Supply and Conservation Team  
(WMCP) Done by \_\_\_\_\_ Date \_\_\_\_\_

CASEWORKER: JDP