

# Oregon Water Resources Department Water Rights Division

## Application for Extension of Time

In the Matter of the Application	)	
for an Extension of Time for	)	
Permit #G-6831, Water Right	)	PROPOSED FINAL ORDER
Application #G-7380	)	
(City of Hermiston)	)	

<b>Permit Information</b>	
<b>Application File #G-7380 / Permit #G-6831</b>	
Basin: #07 - Umatilla Basin / Watermaster District: #05	
Date of Priority: May 24, 1976	
<b>Authorized Use of Water</b>	
Source of Water:	Shallow Well No. 1, in the Umatilla River Basin
Purpose or Use:	Municipal Purposes
Maximum Rate:	11.04 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-6831, water right Application #G-7380. A copy of Permit #G-6831 is enclosed as Attachment 1.

# Summary of Proposed Final Order for Extension of Time

## The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1996, to October 1, 2020;
- grant the extension for complete application of water from October 1, 1996, to October 1, 2020; and
- make the extensions subject to certain conditions as set forth below.

## AUTHORITY

**ORS 537.230(2)** provides in pertinent part that the Water Resources Department shall, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5).

**OAR 690-315-0080** provides in pertinent part that the Water Resources 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 690-315-0090(3)** allows the Department, under certain 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

### Background

1. Permit #G-6831 was granted by the Water Resources Department (Department) on September 16, 1976. The permit authorizes the use of up to 11.04 cfs of water from Shallow Well No. 1 (permit holder Well #5) within the Umatilla River Basin, for municipal purposes. It specified that construction of the water development project should be completed by October 1, 1977, and that complete application of water was to be made on or before October 1, 1978.
2. Four prior extensions have been granted for Permit #G-6831, the most recent

extension request resulting in the construction and completion dates being extended to October 1, 1996.

3. The permit holder submitted an "Application for Extension of Time" to the Department on August 27, 1997, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-6831 be extended from October 1, 1996, to October 1, 2021.
4. The permit holder submitted an updated "Application for Extension of Time" to the Department on July 23, 1999, revising the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-6831 be extended from October 1, 1996, to October 1, 2016.
5. Due to ongoing permit extension rulemaking, the Department placed all pending municipal and quasi-municipal permit extension of time requests on hold and did not require municipal and quasi-municipal water use permit holders to submit an extension application until the new rules were adopted.
6. Municipal and quasi-municipal water use permit extension rules were adopted by the Water Resources Commission and became effective on November 1, 2002 (OAR 690-315-0070 through 690-315-0100).
7. The permit holder submitted an updated "Application for Extension of Time" to the Department on February 20, 2003, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-6831 be extended to October 1, 2020. The extension application form clearly suggests that construction of the water system is not complete. The Department, therefore, determined that the permit holder's intent was to also request the time in which to complete construction of the water system under Permit #G-6831 be extended from October 1, 1996 to October 1, 2020.
8. Notification of the City of Hermiston's extension of time request for Permit #G-6831 was published on the Department's Public Notice dated March 4, 2003. No public comment on the extension application was received.

**Review Criteria for Municipal and 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(1).*

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

9. The Department received a completed extension of time application and the statutory fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0080(1)(b)]**

10. Construction of the well and water system began within the time specified in the permit, being September 16, 1977.

**Duration of Extension [ORS 539.010(5), OAR 690-315-0080(1)(c)(d)]**

*Under OAR 690-315-0080(1)(c)(d), the Department shall find that the time requested is reasonable and the applicant can complete the project within the time requested.*

11. The remaining work to be accomplished under Permit #G-6831 consists of complete construction of the water system and complete application of water to beneficial use.
12. As of February 26, 2003, the permit holder has diverted 6.68 cfs of the 11.04 cfs of water allowed under Permit #G-6831 for municipal purposes.
13. In 2003, the estimated population served by City of Hermiston was 14,120 people. Based on their growth rate over the last ten years, the City projects an average population increase of 5.0 percent per year for the next twenty years.
14. Over the past twenty years, the City has annexed lands and developed approximately 500 total acres of industrial and commercial land at a rate of 25 acres per year. The City is currently in the process of annexing an additional 400 acres of land for residential development.
15. In addition to the 11.04 cfs of water from Shallow Well #1 (permit holder Well #5) allowed under Permit #G-6831, the City of Hermiston currently holds the following municipal use water rights totaling 48.70 cfs:

Groundwater	Permit G-763, 2.23 cfs Permit G-10418, 0.74 cfs Permit U-169, 1.0 cfs Permit G-3467, 4.46 cfs Certificate 38852, 11.04 cfs Permit G-12350, 20.0 cfs (source is stored water for Aquifer Storage and Recovery [ASR]) Certificate 19619, 2.23 cfs; and
Surface Water	Permit S-40601, 7.0 cfs.

The City plans to cancel or abandon Permit G-12350 because the ASR project is not economically feasible. Low summer flows under Permit S-40601 make full development of this source less economically feasible than development of Permit #G-6831 at this time. The City currently utilizes portions of its remaining ground water rights to meet summertime demands.

16. Based on a growth projection of 5.0 percent per year, full development of the remaining portion of Permit #G-6831 could occur by the year 2020.
17. Given the amount of development left to occur, the City's projected annual growth rate and associated projected demands for water, and considering the economic feasibility and seasonal limitations of the other water rights held by the City of Hermiston, the permittee's request to have until October 1, 2020, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #G-6831 is reasonable.

**Good Cause** [ORS 539.010(5), OAR 690-315-0080(1)(e) and (2)]

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(2).*

**Reasonable Diligence and Good Faith of the Appropriator** [ORS 537.230(1), ORS 539.010(5), OAR 690-315-0080(2)(a)(c) and (3)]

*Reasonable diligence and good faith of the appropriator during the permit period constitutes a continuing test of whether and under what conditions 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(3).*

18. During the period of the prior extension, being October 1, 1991, to October 1, 1996, the City of Hermiston: developed Shallow Well #1 (permit holder Well #5) to produce 6.7 cfs; constructed various diameter waterline within the distribution system, 4.3 MG of water system storage and five booster pump stations; developed and submitted a water master plan and water management and conservation plan; and contracted with consultants for further development of Shallow Well #1 (permit holder Well #5).
19. As of February 26, 2003, the permit holder had invested 76 percent of the total projected cost for complete development of this project, being an approximate total of \$9,535,000. An additional \$3,000,000 investment is anticipated for the completion of this project.
20. Since the issuance of Permit #G-6831 on September 16, 1976, approximately 6.68 cfs of the permitted 11.04 cfs of water has been diverted from Shallow Well

#1 (permit holder Well #5) for beneficial municipal purposes under the terms of the permit.

21. The record does not raise concerns about the permit holder's compliance with conditions of Permit #G-6831.

**Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose** [ORS 539.010(5), OAR 690-315-0080(2)(b)]

22. As of February 26, 2003, the permit holder had invested an approximate total of \$9,535,000 into the project, consisting of: development of Shallow Well #1 (permit holder Well #5) to produce 6.7 cfs; construction of various diameter waterline within the distribution system, 4.3 MG of water system storage and five booster pump stations; development and submittal of a water master plan and water management and conservation plan; and contracting with consultants for further development of Shallow Well #1 (permit holder Well #5). An additional \$3,000,000 investment is anticipated for the completion of this project.

**The Market and Present Demands for Water** [OAR 690-315-0080(2)(d)]

23. As described in findings #13 through #16 above, Shallow Well No. 1 (permit holder Well #5) as well as other groundwater permits, are major sources of municipal water supply for the City of Hermiston. Development of this well under Permit #G-6831 is paramount to the City in order to meet the continuing growth demands of the area.
24. The City of Hermiston projects an average population increase of 5.0 percent per year over the next twenty years. The City is currently in the process of annexing an additional 400 acres of land for residential development.
25. Given the City's current water supply situation and current and expected demands, there is a market and present demand for the water to be supplied under Permit #G-6831.

**Fair Return Upon Investment** [ORS 539.010(5), OAR 690-315-0080(2)(e)]

26. Use and income from the permitted water development project already results in reasonable returns upon the investment made to date.

**Other Governmental Requirements** [ORS 537.230(2), OAR 690-315-0080(2)(f)]

27. Delay in the development of this project was not caused by any other governmental requirements.

**Events which Delayed Development under the Permit (OAR 690-315-0080(2)(g))**

28. Delay of development under Permit #G-6831 was due to limited financial resources as well as the size and scope of the municipal water system, which was designed to be phased in over a period of years.

**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.
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 demonstrated that actual construction on the project began within the time specified in the permit, 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, 2020<sup>1</sup>, [OAR 690-315-0080(1)(d)].
6. After considering the reasonable diligence and good faith of the appropriator, the financial investment made, the market and present demands for water, the fair return upon the investment, the requirements of other governmental agencies and uncontrollable events which delayed development under the permit, the Department has determined that the applicant has shown good cause for an extension to complete construction and complete application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. In accordance with OAR 690-315-0090(3), the Department has established, as specified under Item #1 of the "Conditions" section of this Proposed Final Order for an Extension of Time, that the diversion of water beyond 6.68 cfs under Permit #G-6831 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall

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<sup>1</sup> 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 certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625.

be submitted to the Department within 3 years from the date this extension is final.

**Proposed Order**

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit #G-6831 from October 1, 1996, to October 1, 2020;

Extend the time for complete application of water to beneficial use under Permit #G-6831 from October 1, 1996, to October 1, 2020; and

Subject to the following conditions:

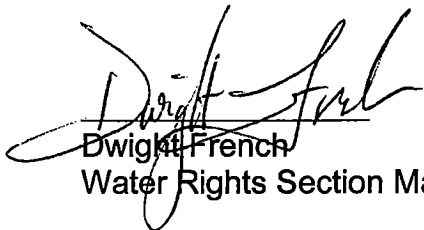
**CONDITIONS**

**1. Development Limitations**

Appropriation of water beyond 6.68 cfs under Permit #G-6831 shall only be authorized upon issuance of a final order approving a new/revised Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension is final.

The deadline established in this Final Order for submittal of a Water Management and Conservation Plan shall not relieve a permittee of any existing or future requirements for submittal of a Plan at an earlier date as established through other orders of the Department. A Plan submitted to meet the requirements of this Final Order may also meet the Plan submittal requirements of other Department orders.

DATED: November 2, 2004

  
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.*

**Proposed Final Order Hearing Rights**

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order



may request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than ***Friday, December 17, 2004***, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.

2. A written request for contested case hearing shall include:
  - a. The name, address and telephone number of the petitioner;
  - b. A description of the petitioner's interest in the 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 final order would adversely affect or aggrieve the petitioner's interest;
  - d. A detailed description of how the 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 petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
  - g. The 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 request for contested case hearing has been submitted, and:
    - A. Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
    - B. The applicant submitted a timely request for a contested case hearing.

**If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503)986-0900. Address all other correspondence to:**

**Water Rights Section  
Oregon Water Resources Department  
725 NE Summer Street, Suite A  
Salem, OR 97301-1271  
Fax #: (503)986-0901**

**This document was prepared by Lisa J. Juul. 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 may contact me by telephone at (503)986-0808.**

**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 Renee Moulun. Her telephone number is (503)986-0824.**

**If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503)986-0900.**