

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-7903, Water Right Application G-7812,) FINAL
in the name of the Star Satellite Improvement District) ORDER

Permit Information

Application File G-7812 / Permit G-7903

Basin 2C – Lower Willamette Basin / Watermaster District 18
Date of Priority: August 15, 1977

Authorized Use of Water

Source of Water: two wells
Purpose or Use: Quasi-Municipal
Maximum Rate: 0.69 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-7903, water right Application G-7812.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2019, to October 1, 2049.
- Grant an extension of time to apply water to full beneficial use from October 1, 2019, to October 1, 2049.
- 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

District – Star Satellite Improvement District

FOF – Findings of Fact

cfs – cubic feet per second

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) for good cause shown shall order and allow 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) 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 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

OAR 690-315-0090(4-5) provides in pertinent part that quasi-municipal water use permit holders that serve a population of less than 1000 and/or can reasonably demonstrate that fewer than five years is necessary to complete construction and apply the water to beneficial use are not subject to OAR 690-315-0090(3) unless on review of the certain criteria the Department determines that compliance is necessary.

FINDINGS OF FACT

1. On March 10, 1978, Permit G-7903 was issued by the Department. The permit authorizes the use of up to 0.69 cfs of water, from two wells for quasi-municipal use, and specified construction of the water development project was to be completed by October 1, 1979, and complete application of water was to be made on or before October 1, 1980.
2. Four prior permit extensions have been granted for Permit G-7903. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2019.
3. On October 8, 2019, the permit holder submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-7903 be extended from October 1, 2019, to October 1, 2039.
4. Notification of the Application for Extension of Time for Permit G-7903 was published in the Department’s Public Notice dated October 8, 2019. No public comments were received regarding the extension application.
5. On February 14, 2005 the permit holder submitted additional information to supplement their Application for Extension of Time.
6. On January 30, 2020, the permit holder submitted an amended application to update their Application for Extension of Time. The amendment requested the extended time to complete construction and the extended time to apply water to full beneficial use be changed from October 1, 2039, to October 1, 2049.

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 537.230¹, 537.630² and/or 539.010(5)³

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

7. On October 8, 2019, 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)]

8. Actual construction of the well began prior to the March 10, 1977, deadline specified in the permit.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 539.010(5) applies to surface water and ground water permits.

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.

9. The remaining work to be accomplished under Permit G-7903 consists of completing construction and applying water to full beneficial use.
10. As of October 1, 2019, the District has appropriated 0.37 cfs from Well 1, and 0.32 cfs from Well 2 cfs of the 0.69 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit. The full rate of 0.69 cfs has not been appropriated from each well individually.
11. Star Satellite Improvement District (District) holds no other water rights. The District must rely exclusively on Permit G-7903, to provide water to their customers.
12. The District's peak water demand within its service area boundaries was 0.24 cfs in 2019.
13. According to the Application, in 2019, the population within the service boundary of The District was approximately 400. The District estimates the population to increase at an estimated growth rate of between 1.5 and 2.3 percent per year, reaching an estimated population of 566 by the year 2049.
14. According to the Application, their peak demand is projected to be approximately 0.34 cfs of water by the year 2049.
15. Full development of Permit G-7903 is needed to meet the present and future water demands of the District, including system redundancy and emergency use.
16. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2049, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-7903 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.

17. Actual construction of the well and water system began prior to the March 10, 1977 deadline specified in the permit.

18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-7903.
19. During the most recent extension period under Permit G-7903, being from October 1, 1990 to October 1, 2019, the following work was accomplished:
 - a new water 105,000 gallon reservoir was installed;
 - new service lines were installed;
 - SCADA control was installed;
 - fire hydrants were installed;
 - Well 2 pump was upgraded;
 - booster pump was replaced; and
 - general system maintenance occurred.

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.

20. As of January 30, 2020, the permit holder invested \$307,611, which is 52 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$288,500 investment is needed for the completion of this project.
21. As of October 1, 2019, the District has appropriated 0.37 cfs from Well 1, and 0.32 cfs from Well 2 cfs of the 0.69 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit. The full rate of 0.69 cfs has not been appropriated from each well individually.
22. The Department has considered the permit holder'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)]

23. As of January 30, 2020, the permit holder invested \$307,611, which is 52 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$288,500 investment is needed for the completion of this project.

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

24. As described in Findings 10 through 16 above, the District has indicated, and the Department finds that the District must rely exclusively on this water right permit.
25. The District projects a population increase of between 1.5 and 2.3 percent per year over a 50 year period, being the years 2019 to 2049. The District does not anticipate any commercial or industrial growth.

26. Given the current water supply situation of the District, 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-7903.
27. The Department has determined per OAR 690-315-0090(4) that the permit holder of Permit G-7903 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86, because the District serves a population less than 1,000.
28. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Limitations and Conditions” section of this PFO to meet this condition.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

29. The District expects to obtain a fair and reasonable return on investment by continuing development of Permit G-7903.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

30. Delays have been caused, in part, due to land-use restrictions within the District boundaries.

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

31. According to Application, delay of development under Permit G-7903 was due, in part, to slower than anticipated population growth, and restrictions to development on some lands within the District boundary.

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this condition.

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(1).
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, 2049⁴ pursuant to OAR 690-315-0080(1)(d).
6. 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 permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. In accordance with OAR 690-315-0090(4-5), and as described in Finding 27, above, the Department has determined that the permit holder of Permit G-7903 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.

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-7903 from October 1, 2019, to October 1, 2049.

extend the time to apply the water to beneficial use under Permit G-7903 from October 1, 2019, to October 1, 2049.

subject to the following condition:

LIMITATIONS AND CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2025, 2030, 2035, 2040, and 2045**. *A form will be enclosed with your Final Order.*

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after

⁴ Pursuant to ORS 537.630(4), 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.

this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: February 25, 2020



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 **April 10, 2020**, 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

