

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-12721, Water Right Application G-13929,)	FINAL
in the name of the Perrydale Domestic Water Association)	ORDER

Permit Information

Application File G-13929 / Permit G-12721

Basin 2B – Middle Willamette Basin / Watermaster District 22

Date of Priority: December 28, 1994

Authorized Use of Water

Source of Water: eighteen wells within the Willamette River Basin

Purpose or Use: Quasi-Municipal

Maximum Rate: 4.0 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-12721, water right Application G-13929.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1998, to October 1, 2025.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2025.
- 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
Association – Perrdyale Domestic Water Association

Units of Measure

cfs – cubic feet 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) 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 690-315-0090(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 August 28, 1996, Permit G-12721 was issued by the Department. The permit authorizes the use of up to 4.0 cfs of water, from eighteen wells within the Willamette River Basin for quasi-municipal use. It specified construction of the water development project was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.
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. On October 1, 1999, 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, 1998, to October 1, 2060, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12721 be extended from October 1, 1999, to October 1, 2060. This is the first extension of time request for Permit G-12721.
4. Notification of the Application for Extension of Time for Permit G-12721 was published in the Department’s Public Notice. Comments were received from John Elegant and Carla Cudmore, who represent a group of more than 30 nearby residents.
5. On November 13, 2000, the Department received a letter from the Association agreeing to delay additional well development under the permit until June 30, 2001, to allow for additional static water level measurements.
6. On November 14, 2001, the Association submitted a proposal to the Department to limit the production of water under the permit through October 31, 2003, to allow for additional static water level measurements.
7. 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.
8. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.
9. On April 24, 2020, the Association submitted an amendment and additional information to update their Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2060, to October 1,

2025, and the extended time to apply water to full beneficial use be changed from October 1, 2060, to October 1, 2025.

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)]

10. On October 1, 1999, 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)]

11. Actual construction of the well began prior to the August 28, 1997 deadline specified in the permit.
12. According to Well Log received by the Department on March 19, 1996, POLK 50048 (Well R-4a) began February 27, 1996.

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.

13. Work under the permit is complete. An extension of time is necessary to allow time to demonstrate compliance with conditions under the permit, and to address any other issues that arise while preparing a claim of beneficial use.
14. As of June 29, 2005, the permit holder had appropriated 1.05 cfs of the 4.0 cfs of water authorized under Permit G-12721 for quasi-municipal purposes. It is the intent of the Association to prepare a claim of beneficial use which demonstrates a rate of appropriation that is less than the 4.0 cfs authorized under the permit.
15. In addition to the 4.0 cfs of water authorized under Permit G-12721, Perrydale Domestic Water Association holds the following rights:
 - Certificate 60002 for 0.2 cfs of water from well within the Willamette River Basin;
 - Certificate 90023 for 0.42 cfs of water from well within the Middle Willamette River Basin;

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.

- Certificate 94064 for 0.27 cfs of water from well within the Willamette River Basin;
- Permit G-5655 for 0.33 cfs of water from well within the Willamette River Basin;
- Permit G-6352 for 0.2 cfs of water from well within the Willamette River Basin.
- Permit G-10987 for 0.13 cfs of water from a well within the Willamette River Basin;
- Permit G-16772 for 2.23 cfs of water from a well in the Willamette River Basin; and
- Permit G-17909 for 2.0 cfs of water from a well in the Willamette river Basin.

Perrydale Domestic Water Association's permits and certificates total 9.58 cfs of ground water.

16. Of the 9.58 cfs of water authorized by the Associations water right certificates, transfers, and permits, actual use is limited as follows:

- Certificate 60002 is reserved for emergency use due to water quality issues;
- Permit G-10987 is reserved for emergency use due to water quality issues;
- Permit G-5655, modified by Transfer T-10935 is limited to a period of use of March 1 – October 31 and a maximum diversion of 208.25 acre-feet annually;
- Permit G-16772 may be regulated based on minimum bypass flows in the Willamette River.

These limitations result in 6.69 cfs of water authorized that may be reasonably utilized year-round.

17. Perrydale Domestic Water Association's peak water demand within its service area boundaries was 1.21 cfs in 2019.
18. According to the Application, in 2019, the population within the service boundary of Perrydale Domestic Water Association is estimated at 2,506, based on an average of 2.8 persons per household and 895 current service connections. Perrydale Domestic Water Association estimates the population to increase at an estimated growth rate of 1.45 percent per year, reaching an estimated population of 2,732 by the year 2025.
19. According to the Application, their peak demand is projected to be approximately 1.32 cfs of water by the year 2025.
20. Perrydale Domestic Water Association maintains a reciprocal agreement with Rickreall Water Association for temporary emergency water supply.
21. Current development of Permit G-12721 is needed to meet the present and future water demands of Perrydale Domestic Water Association, including system redundancy and emergency use.

22. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2025, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-12721 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.

23. Actual construction of the well and water system began prior to the August 28, 1997, deadline specified in the permit.
24. Work was accomplished (specified in the Application for Extension of Time) during the original development period under the permit.
25. During the original development time frame under Permit G-12721, the following work was completed by the Association:
- constructed POLK 50227 (Well R-3), POLK 50228 (Well R-2), and POLK 50226 (Well R-1),
 - reconstructed POLK 50048 under POLK 50365 (Well R-4);
 - installed meters on Well R-1, Well R-2, Well R-3, and Well R-4;
 - constructed 53,000 gallon reservoir;
 - installed more than 17,000 feet of various sized transmission pipe; and
 - added twenty new service connections.
26. Since October 1, 1999, the Association has accomplished the following work:
- constructed POLK 51165 (Well R-6), POLK 51170 (Well R-9), and POLK 51208 (Well R-7);
 - constructed POLK 52141 (Observation Well);
 - gained approval of a ground water monitoring plan;
 - constructed 300,000 gallon reservoir;
 - completed Water Master Plan update;
 - installation of new valves and transmission pie extensions;
 - added 340 new service connections; and
 - performed general system maintenance and repair.

27. As of April 24, 2020, the Association has invested approximately \$3,539,288, which is the total cost for complete development of this project.
28. As of June 29, 2005, 1.05 cfs of the 4.0 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
29. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a meter or other suitable measuring device has been installed on Well R-6, Well R-9, and Well R-7 by October 1, 1999, (2) the required plan to monitor and report the impact of water use on water levels in the aquifer was not received by the Department by October 1, 1999, and (3) the first annual report of the amount of water used each month was not received by the Department by October 1, 1999.
30. Since October 1, 1999, the Association has demonstrated compliance with all permit conditions.

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

31. As of April 24, 2020, the permit holder invested \$3,539,288, which is the total projected cost for complete development of this project.

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

32. As described in Findings 15 through 21 above, Perrydale Domestic Water Association has indicated, and the Department finds that Perrydale Domestic Water Association must rely exclusively on its ground water right certificates, transfers, and permits within the Willamette River Basin.
33. Perrydale Domestic Water Association projects a population increase of 1.45 percent per year over a 6 year period, being years 2019 to 2025.
34. Given the current water supply situation of Perrydale Domestic Water Association, 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-12721.
35. 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. The Department has determined based on the condition in the permit requiring submittal of a plan to monitor and report the impact of water use under the permit on water levels in the aquifer, and concerns of potential declines effecting neighboring wells, to condition this extension to incorporate the requirements under the approved monitoring plan as a condition of the permit and subsequent certificates.

36. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 1.05 cfs (not to exceed the maximum amount authorized under this permit, being 4.00 cfs) under Permit G-12721 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 2 of the “Conditions” section of this PFO to meet this requirement.

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

37. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

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

38. 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)]

39. According to Application, delay of development under Permit G-12721 was due, in part, to the size and scope of the quasi-municipal water system, which was designed to be phased in over a period of years, and to the availability of funding to expand the water supply system.

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 beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and application of water to beneficial use can be completed by October 1, 2025⁴ pursuant to OAR 690-315-0080(1)(d).

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.

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. As authorized in OAR 690-315-0050(5) and as described in Finding 35 above, the Department has established, as specified under Item 1 of the “Conditions” section of this PFO, a static water level measurement and reporting condition.
8. As required by OAR 690-315-0090(3) and as described in Finding 36, above, and specified under Item 2 of the “Conditions” section of this PFO, the appropriation of water beyond 1.05 cfs (not to exceed the maximum amount authorized under this permit, being 4.00 cfs) under Permit G-12721 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-12721 from October 1, 1998, to October 1, 2025.

extend the time to apply the water to beneficial use under Permit G-12721 from October 1, 1999, to October 1, 2025.

Subject to the following conditions:

CONDITIONS

1. **Monitoring Plan**
The use of water under this permit is subject to annual submittal of static water level measurements, and other provisions of the monitoring and reporting plan dated February 2, 2000. The water user may submit a request for modification of this monitoring and reporting plan, which may be approved by the Department.
2. **Development Limitations**
A maximum appropriation of 1.05 cfs of water is currently allowed under Permit G-12721. Any appropriation of water beyond 1.05 cfs (not to exceed the maximum amount authorized under the permit, being 4.00 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-12721 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-12721 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.

DATED: June 30, 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 **August 14, 2020**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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
 - 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 TO ACTIVE DUTY SERVICEMEMBERS: Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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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 :

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: June 30, 2020

**Application G-13929
Permit G-12721**

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>on: _____ (DATE)</p>
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Original mailed to Applicant:

Perrydale Domestic Water Association
Attn: Steve Caldwell
11475 W. Perrydale Road
Amity, OR 97101

Copies sent to:

1. WRD - App. File G- 13929 / Permit G-12721
2. Agent &/or CWRE representing applicant

Fee paid as specified under ORS 536.050 to receive copy:

3. None

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

4. WRD - Watermaster District 22 – #N/A
5. WRD - **If WMCP needed* – Kerri Cope, Water Supply and Conservation Team (WMCP)
Done by _____ *Date* _____

CASEWORKER: JDP