

**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-15690, Water Right Application G-15866,) FINAL
in the name of the City of Portland Parks and Recreation) ORDER

Permit Information

Application File G-15866/ Permit G-15690

Basin 2C – Lower Willamette Basin / Watermaster District 20

Date of Priority: October 31, 2002

Authorized Use of Water

Source of Water: a well in Columbia Slough Basin
Purpose or Use: Municipal Use to include irrigation of 113.47 acres, dust control and fire suppression
Maximum Rate: 2.67 Cubic Feet per Second (cfs); being no more than 1.42 cfs for irrigation and no more than 2.67 cfs for Municipal Use

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-15690, water right Application G-15866.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2008, to October 1, 2033.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
Parks – City of Portland Parks and Recreation
Raceway – Portland International Raceway
Bureau – Portland Water Bureau
City – City of Portland
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
AF – acre-feet

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(3) 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 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) authorizes the Department, under specific 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

1. On August 6, 2004, the Department issued Permit G-15690. The permit authorizes the use of up to 2.67 cfs of water from a well in Columbia River Basin, being no more than 1.42 cfs for irrigation of 113.47 acres, and no more than 2.67 cfs for municipal use. The permit specified complete application of water was to be made on or before October 1, 2008.
2. On November 13, 2014, the Department issued Certificate 89550 confirming the use of 1.42 cfs of water for irrigation, and 1.56 cfs for municipal use. The remaining authorized amount under the permit is no more than 1.11 cfs of water for Municipal Use.
3. On April 7, 2020, the City of Portland Parks and Recreation (Parks), submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15690 be extended from October 1, 2008, to October 1, 2033. This is the first extension of time request for Permit G-15690.
4. Notification of the City’s Application for Extension of Time for Permit G-15690 was published in the Department’s Public Notice dated April 28, 2020. No public comments were received regarding the extension application.
5. On August 11, 2020, the City provided additional information to supplement their Application. The additional information was to clarify the use of water under this permit is isolated to the use at the Raceway facility.
6. 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.

Review Criteria for Municipal 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 April 7, 2020, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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.

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

8. Construction of the well began prior to October 1, 2008, as specified in the permit as being the date to apply water to full beneficial use. Construction of the MULT 87891 (Well #1) began prior to permit issuance.

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 municipal and 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-15690 consists of completing construction and applying water to full beneficial use. Twenty one potential projects have been identified at the Portland International Raceway (Raceway) site which will necessitate additional water supply. Though specific time frames for completion of any specific project cannot be determined, it is reasonable to anticipate the use of the full rate authorized under this permit will be utilized within the time being requested.
10. Permit G-15690 authorized the use of 2.67 cfs of water for municipal purposes, of which 1.56 cfs is perfected under Certificate 89550. There is an undeveloped portion of 1.11 cfs of water under Permit G-15690 as per ORS 537.630(1).
11. In addition to the undeveloped portion of 1.11 cfs of water authorized under Permit G-15690, City of Portland Parks and Recreation Department holds the following rights for municipal use:
 - Certificate 41717 for 0.10 cfs of water from a well in Columbia River Basin;
 - Certificate 81283 for 0.446 cfs of water from a well in Columbia Slough Basin;
 - Certificate 81318 for 0.56 cfs of water from a well in Willamette River Basin;
 - Certificate 82083 for 0.56 cfs of water from a well in Willamette River Basin;
 - Certificate 82734 for 0.56 cfs of water from a well in Willamette River Basin;
 - Certificate 89550 for 1.56 cfs of water from a well in Columbia Slough Basin;
 - Permit G-15869 for 0.557 cfs of water from a well in Johnson Creek Basin;
 - Permit G-18323 for 0.1671 cfs of water from a well in Sullivan Gulch Basin; and
 - Certificate 83558 for use of 5.36 acre-feet (AF) of water stored in Rose City Golf Course Reservoir under Certificate 83557.

The City of Portland Parks and Recreation Department utilize the above rights at a variety of Park and Recreation facilities throughout the service area. Use of water under Permit G-15960 and Certificate 89550 are exclusive to the Raceway facility. The demand at the Raceway facility has not yet exceeded the 1.56 cfs under Certificate 89550.

12. In addition to the rights listed above in the name of City of Portland Parks and Recreation Department, the City of Portland, Portland Water Bureau (Bureau) holds the following rights for municipal use:

- Certificate 35676 for 0.33 cfs of water from a well in Tyron Creek (Willamette River) Basin;
- Certificate 89115 for 39.96 cfs of water from three wells in Willamette River Basin;
- Certificate 89117 for 7.3 cfs of water from a well in the Willamette River Basin;
- Permit G-8755 for 390.0 cfs of water from thirty wells;
- Permit G-10455 for 16.47 cfs of water from two wells;
- Surface Water Registration 390 for full flow of Bull Run River;
- Surface Water Registration 391 for full flow of Little Sandy River; and
- Surface Water Registration 392 for 28.0 cfs of Water from Willamette River.

These water rights and permits total 482.06 cfs of water, being 545.06 cfs of ground water, and 28.0 cfs of surface water plus reservations for the full flow of the Little Sandy River and Bull Run River.

13. Peak water demand at the Raceways is based on the use of 700 gallons per minute (1.56 cfs) for irrigation.
14. According to the Bureau, their peak water demand within its service area boundaries was 155 Million Gallons per Day (MGD) (239.84 cfs) in 2018.
15. As of 2019, the population served by Bureau was approximately 965,400 (631,900 in retail service area, and 335,500 through wholesale providers). Population growth is expected to continue within the Bureau service area, as well as in the areas served by wholesale customers. It is anticipated that the population served will experience a temporary drop in the year 2026, as Tualatin Valley Water District has provided notice of an intent to end use of water provided by Bureau. Portland State University 2019 Population Projections estimates the population within the general area served will increase at growth rate of approximately 1 percent per year. Beginning in 2026, with an estimated service population of 890,056, and reaching an estimated population of 1,028,351 by the year 2040.
16. According to the Bureau, their peak day demand is projected to be approximately 232.5 cfs of water by the year 2040. The peak demand projected for the Raceway facility will be dependent on the needs of the individual projects identified in the 2016 Master Plan.
17. The Bureau provides water to Tualatin Valley Water District (ending July 1, 2026), West Slope Water District, Raleigh Water District, Valley View Water District, Rockwood Public Utility District, city of Tualatin, Lake Grove Water District, Palatine Hills Water District, Burlington Water District, and Green Valley Water Company.
18. The use of water under this permit is contained entirely within the Portland International Raceway. The projected increase in demand within the Raceway is dependent on implementation of individual projects identified in the 2016 Master Plan.
19. As of 2020, the peak water demand within the Raceway was 1.56 cfs.

20. Full development of Permit G-15690 is needed to address the present and future water demand within the Raceway, including system redundancy and emergency use.
21. Based on Findings of Fact 9, 10, 11, 13, 16, 18, 19, and 20, the Department has determined that the applicant's request for an extension of time until October 1, 2033, to apply water to full beneficial use under the terms and conditions of Permit G-15690 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) and OAR 690-315-0080(4).

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 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(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

22. Prior to the issuance of Permit G-15690, the well was constructed, and altered.
23. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-15690.

The Department has determined that work has been accomplished during the development period authorized under permit G-15690, which provides evidence of good cause and reasonable diligence in developing the permit.

24. As of April 7, 2020, \$199,967 has been invested in the development of the well and the water system within the Raceway.
25. As of October 1, 2008, 1.56 cfs of the 2.67 cfs authorized has been perfected under Certificate 89550. None of the undeveloped portion of 1.11 cfs has been developed.
26. The Department has considered compliance with conditions, and did not identify any concerns.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose

[OAR 690-315-0080(3)(b)]

27. As of April 7, 2020, Parks has invested approximately \$199,967. The additional investment remaining to complete development of the project are dependent on the individual projects identified in the 2016 Master Plan.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]

For municipal or quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

28. The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [*OR 690-315-0080(5)(a-f)*].
- a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-15690; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The point of appropriation for Permit G-15690 is not located within a limited or critical ground water area. The point of appropriation for Permit G-15690, located within the Columbia River Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is within an area ranked highest for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date [*OR 690-315-0080(5)(d)*].

29. As of April 7, 2020, the City has invested \$199,967, to develop this project.

Other economic interests dependent on completion of the project [*OR 690-315-0080(5)(e)*].

30. The Raceway is a regional facility that provides specialized events and services. Individuals who utilize the facility have an interest in completion of development of the project.

Other factors relevant to the determination of the market and present demand for water and power [*OR 690-315-0080(5)(f)*].

31. As described in Findings 9, 10, 11, 13, 16, 18, 19, 20, and 30, the City of Portland Parks and Recreation has indicated, and the Department finds that the City must rely on full development of Permit G- 15690 to meet its present and future water demands.
32. The Bureau projects a population increase of approximately 1 percent per year between 2026 and 2040; and also expects commercial and industrial growth.
33. The service population in the Raceway facility will vary depending on the events hosted at the facility.

34. Given the current water supply situation of the City as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-15690.
35. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 1.56 cfs (not to exceed the maximum amount authorized under this permit, being 2.67 cfs) under Permit G-15690 for municipal use 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 which grants access to a greater appropriation of water under the 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)]

36. The applicant expects to obtain a fair and reasonable return on investment by continuing development of Permit G-15690.

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

37. 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)]

38. Delay of development under Permit G-15690 was due, in part, to the unique nature of the Raceway facility.

CONCLUSIONS OF LAW

1. City of Portland Parks and Recreation 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 537.630(2).
2. City of Portland Parks and Recreation 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. As required by OAR 690-315-0080(1)(b), the permit holder was able to demonstrate that construction of the project began (commenced) within the time period required by ORS 537.630(2). ORS 537.630(2) provides that the Department may only allow an extension of time to complete construction or to perfect a water right beyond the specified permit under certain conditions. The time to begin construction may not be extended.
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-15690 may be applied to beneficial use on land to which the right is not appurtenant.

5. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Full application of water to beneficial use can be completed by October 1, 2033⁴ pursuant to OAR 690-315-0080(1)(d).
7. 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 City 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).
8. As required by OAR 690-315-0090(3) and as described in Finding 35, above, and specified under Item 2 of the “Conditions” section of this PFO, the appropriation of water beyond 1.56 cfs (not to exceed the maximum amount authorized under this permit, being 2.67 cfs) under Permit G-15690 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes 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 apply the water to beneficial use under Permit G-15690 from October 1, 2008, to October 1, 2033.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

No appropriation of water is currently allowed under the unperfected portion of Permit G-15690⁵. Any appropriation of the remaining unperfected portion of water under the

⁴ 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 a new or revised claim of beneficial use as deemed appropriate by the Department.

⁵ Permit G-15690 was issued for a total of 2.67 cfs of water for municipal use; 1.56 cfs of water for municipal use was partially perfected under Certificate 89550.

permit, being 1.11 cfs, shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes 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. The amount of water used under Permit G-15690 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-15690 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 the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: August 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 **October 9, 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 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
 - Fax: 503-986-0901 Salem, OR 97301-1266
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Mailing List for Extension PFO Copies

PFO Date: August 25, 2020

**Application G-15866
Permit G-15690**

Copies Mailed
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

Original mailed to Applicant:

City of Portland Parks and Recreation
Attn: Robin Laughlin
6437 SE Division St
Portland, OR 97214

Copies sent to:

1. WRD - App. File G- 15866/ Permit G-15690
2. Agent &/or CWRE representing the 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 20 – Amy Landvoigt
5. WRD – **If **WMCP** needed* – Kerri Cope, Water Supply and Conservation Team (WMCP)
Done by_____Date_____

CASEWORKER: JDP