

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-15809, Water Right Application G-16067,) FINAL
in the name of the Hiland Water Corporation) ORDER

Permit Information

Application File G-16067 / Permit G-15809

Basin 2B – Middle Willamette Basin / Watermaster District 22

Date of Priority: August 8, 2003

Authorized Use of Water

Source of Water: Wells 1 and 2 in Harvey Creek Basin

Purpose or Use: Quasi-Municipal Use

Maximum Rate: 0.14 Cubic Foot 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-15809, water right Application G-16067.

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, 2009, to October 1, 2035.
- 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
Well 1 – YAMH 53380
Well 2 – YAMH 53421

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(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(3) requires the Department, under specific circumstances, to condition an extension of time for quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. On June 23, 2005, Permit G-15809 was issued by the Department. The permit authorizes the use of up to 0.14 cfs of water, from Wells 1 and 2 in the Harvey Creek Basin for quasi-municipal use. The permit specified complete application of water was to be made on or before October 1, 2009.
2. On May 22, 2020, the permit holder 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-15809 be extended from October 1, 2009, to October 1, 2035. This is the first extension of time request for Permit G-15809.
3. Notification of the Application for Extension of Time for Permit G-15809 was published in the Department’s Public Notice dated June 2, 2020. No public comments were received regarding the extension application.

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)]

4. On May 22, 2020, 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)]

5. Construction of the wells began prior to permit issuance.
6. According to the well log received by the Department on June 18, 2003, construction of YAMH 53380 (Well 1) began May 22, 2003.
7. According to the well log received by the Department on August 14, 2003, construction of YAMH 53421 (Well 2) began August 4, 2003.

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.

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.

8. The remaining work to be accomplished under Permit G-15809 consists of completing construction of additional storage and distribution piping, and applying water to full beneficial use.
9. As of October 1, 2009, the permit holder had appropriated all of the 0.14 cfs of water authorized under Permit G-15809 for quasi-municipal purposes.
10. Hiland Water Corporation's peak water demand within its service area boundaries was 0.11 cfs in 2020.
11. According to the Application, in 2020, the population within the service boundary of Hiland Water Corporation was 32. Hiland Water Corporation estimates the population to increase at an estimated growth rate of 8 percent per year, reaching an estimated population of 107 by the year 2035.
12. According to the Application, their peak demand is projected to be approximately 0.14 cfs of water by the year 2035.
13. Full development of Permit G-15809 is needed to meet the present and future water demands of Hiland Water Corporation, including system redundancy and emergency use.
14. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2035, to accomplish the application of water to beneficial use under the terms of Permit G-15809 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.

15. Construction of the well and water system began prior to the deadline specified in the permit.
16. No additional work was accomplished during the original development time frame under Permit G-15809.
17. As of May 22, 2020, the permit holder invested \$64,000, which is 48 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$69,000 investment is needed for the completion of this project.

18. As of October 1, 2009, all of the 0.14 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
19. 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)]

20. As of May 22, 2020, the permit holder invested \$64,000, which is 48 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$69,000 investment is needed for the completion of this project.

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

For 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).

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 [OAR 690-315-0080(5)(a-f)].

21. 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-15809; 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 points of appropriation for Permit G-15809 are not located within a limited or critical ground water area. The points of appropriation for Permit G-15809, located within the Harvey Creek Basin, are not located within or above any state or federal scenic waterway. The points of appropriation are within areas ranked low 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 points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

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

22. As of May 22, 2020, the permit holder invested \$64,000, which is 48 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$69,000 investment is needed for the completion of this project.

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

23. None have been identified.

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

24. As described in Findings 9 through 14 Hiland Water Corporation has indicated, and the Department finds that Hiland Water Corporation must rely exclusively on full development of Permit G- 15809 to meet its present and future water demands.
25. Hiland Water Corporation projects a population increase of 8 percent per year over a 15 year period, being 2020 to 2035.
26. Given the current water supply situation of Hiland Water Corporation, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under Permit G-15809.
27. 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.
28. The Department has determined that the permit holder of Permit G-15809 is not is not required to submit a WMCP consistent with OAR Chapter 690, Division 86 as per OAR 690-315-0090(4) and (5); there is no undeveloped portion of the permit.

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

29. 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)]

30. Delays caused by any other governmental requirements in the development of this project have not been identified.

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

31. According to Application, delay of development under Permit G-15809 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 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 apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Full application of water to beneficial use can be completed by October 1, 2035⁴ 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. As required by 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.

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-15809 from October 1, 2009, to October 1, 2035.

Subject to the following conditions:

CONDITIONS

1. **Checkpoint Condition**

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

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.

- (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 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: 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 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 :

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| Water Right Services Division |
| 725 Summer St NE, Suite A |
| Salem, OR 97301-1266 |
- Fax: 503-986-0901
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Mailing List for Extension PFO Copies

PFO Date: August 25, 2020

**Application G-16067
Permit G-15809**

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|--|
| <p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>on: _____ (DATE)</p> |
|--|

Original mailed to Applicant:

Hiland Water Corporation
Attn: Matt Olson
PO Box 699
Newberg, OR 97132

Copies sent to:

1. WRD - App. File G- 16067 / Permit G-15809
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 – Joel Plahn

CASEWORKER: JDP