

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time for ) **PROPOSED**  
Permit G-15440, Water Right Application G-15318, in the ) **FINAL ORDER**  
name of Idaho Power Co. )

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Permit Information

Application:	G-15318
Permit:	G-15440
Basin:	9 – Powder / Watermaster District 8
Date of Priority:	November 6, 2000
Source of Water:	two wells in Pine Creek Basin
Purpose or Use:	fish propagation
Maximum Rate:	1.8 cubic feet per second (cfs)

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***Please read this Proposed Final Order in its entirety as it contains  
additional conditions not included in the original permit.***

*In Summary, the Department proposes to:*

- Grant an extension of time to apply water to full beneficial use from October 1, 2017, to October 1, 2024<sup>1</sup>.
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

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<sup>1</sup>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.

## **ACRONYM QUICK REFERENCE**

Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
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)** 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0040** provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

**OAR 690-315-0050(5)** states that extension orders may include, but are 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.

## **FINDINGS OF FACT**

1. On May 22, 2003, Permit G-15440 was issued by the Department. The permit authorizes the use of up to 1.8 cfs of water from two wells in Pine Creek Basin for fish propagation. The permit specified complete application of water was to be made on or before October 1, 2007.
2. On March 18, 2021, 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-15440 be extended from October 1, 2017 to October 1, 2027.

3. One prior permit extensions has been granted for Permit G-15440. The extension request resulted in the completion dates for full application of water being extended from October 1, 2007, to October 1, 2017.<sup>2</sup>
4. On March 30, 2021, notification of the Application for Extension of Time for G-15440 was published in the Department’s Public Notice. No public comments were received regarding the extension application.

**Review Criteria [OAR 690-315-0040]**

*In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).*

**Complete Extension of Time Application [OAR 690-315-0040(1)(a)]**

5. On March 18, 2021, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]**

6. Construction of the wells began prior to permit issuance.
7. According to the well log received by the Department on March 11, 1992, construction of BAKE 1862 (Well 1) began February 5, 1992.
8. According to the well log received by the Department on March 11, 1992, construction of BAKE 1861 (Well 2) began February 18, 1992.

Based on Finding of Fact (FOF) 6, 7, and 8, the Department has determined that the prosecution of the construction of the wells began prior to October 1, 2007.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

*In order to make a finding of “good cause” to approve the extension, the Department shall consider whether the applicant has demonstrated “reasonable diligence” in previous performance under the permit. OAR 690-315-0040(2)(a). In determining “reasonable diligence”, the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time*

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<sup>2</sup> The Application for Extension of Time submitted on July 2, 2015, identified the installation of the required flow meters was the extent of the work remaining to be accomplished.

limits; c) *Water right holder conformance with the permit or previous extension conditions; and*  
d) *Financial investments made toward developing the beneficial use of water.*

**Amount of Construction OAR 690-315-0040(3)(a)**

*The amount of construction completed within the time allowed in the permit and previous extension.*<sup>3</sup>

9. Construction of the wells was complete prior to permit issuance.
10. Work was accomplished during the original development time frame under Permit G-15440 includes replaced pumps and modified piping of an existing system to increase capacity.<sup>4</sup>
11. During the most recent extension period, being from October 1, 2007, to October 1, 2017, no additional work was accomplished.
12. Since October 1, 2017, no additional work was accomplished.

According to the Application for Extension of Time submitted on July 2, 2015, which resulted in the previous extension of time to October 1, 2017, the remaining work to be accomplished consists of the installation of flow meters to satisfy the conditions of the permit. As of March 18, 2021, these flowmeter have not been installed. The Department cannot find evidence of progress made towards completion of the water development and application of water to full beneficial use as allowed in the time period specified in the previous extension. Therefore, the Department cannot find good cause or reasonable diligence towards the complete application of water to a beneficial use under G-15440.

**Compliance with Conditions /OAR 690-315-0040(3)(c)**

*The water right permit holder's conformance with the permit conditions.*

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; the record does not show that a meter or other suitable measuring device has been maintained.

Based on FOF 13, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit G-15440:

- “The permittee shall maintain measuring devices at the wells. These devices shall meet the satisfaction of the Watermaster”

The previous extension of time from October 1, 2007, to October 1, 2017, was authorized to provide additional time for the permit holder to install and maintain the necessary flow meters

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<sup>3</sup> “**Actual Construction**” is defined in OAR 690-315-0020(3)(d)(A)and(B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

<sup>4</sup> Application for Extension of Time submitted July 2, 2015.

required by the permit. As of March 18, 2021, the required flowmeter has not been installed. The Application does not provide evidence towards perfecting the water right under the terms and conditions of the permit. Therefore, the Department has determined the permit holder has not been diligent in developing or perfecting the water use permit, and has not complied with all terms and conditions specified in Permit G-15440.

**Beneficial Use of Water OAR [690-315-0040(3)(b)]**

*The amount of beneficial use made of the water during the permit or previous extension conditions.*

14. The Application identifies a maximum rate of 3.6 cfs of water has been appropriated being 1.8 cfs from Well 1, and 1.8 cfs from Well 2 for fish propagation. This exceeds the amount of water for irrigation use authorized under this permit. The authorized amount of water for fish propagation is 1.8 cfs.
15. As of March 18, 2021, the required flowmeter has not been installed.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2017.

**Financial Investments to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]**

16. The Application identifies an investment of approximately \$3,033,500. The costs included items associated with operation costs of a system which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, as identified by the Application, the approximate total investment for “actual construction” to date is approximately \$25,000, to construct Well 1 and Well 2, and install flowmeters. An Application for Extension of Time submitted July 2, 2015, identified the cost to construct the two wells, and concrete raceways, and installation of 10 HP pumps was approximately \$275,000. The Application identifies an additional \$8,004,000 investment is needed for the completion of this project. This cost includes the cost for renovation of the hatchery. After deducting the cost of renovation of the existing facility, the actual cost to complete development of the water right is \$4,000 for the installation of two new flow meters to demonstrate compliance with permit conditions.
17. The Application does not identify a financial investment towards the completion of development of the water system during the most recent extension of time period, being October 1, 2007, to October 1, 2017.

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

The Application does not provide evidence of work being accomplished towards completion of the water system during the most recent extension of time being from October 1, 2007, to October 1, 2017; the permit holder has not demonstrated compliance with permit conditions, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has not demonstrated reasonable diligence in previous performance under Permit G-15440.

**The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]**

*The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:*

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) 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);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

**OAR 690-315-0040(4)(a)**

The amount of water available to satisfy other affected water rights and scenic waterway flows.

18. A review of 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-15440; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.

**OAR 690-315-0040(4)(b)**

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).

19. The points of appropriation for Permit G-15440, located within the Snake River Basin, are not located within a limited or critical groundwater area.
20. Snake River is not located within or above any state or federal scenic waterway.
21. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

**OAR 690-315-0040(4)(c)**

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

22. It is located within an area 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.

**OAR 690-315-0040(4)(d)**

Economic interests dependent on completion of the project.

23. An approximate total of \$275,000 has been invested in the project<sup>5</sup>.
24. No investment has been made in the completion of development of the water system during the most recent extension of time period.

**OAR 690-315-0040(4)(e)**

Other economic interests dependent on completion of the project.

25. Other economic interests dependent on the completion of the project include the regional economy in the area of the Hells Canyon Complex. This includes the employment of staff who work in the hatchery, and potentially the hydro-electric project. Additionally, the continuation of the ability to provide energy to the regional customers may be affected.

**OAR 690-315-0040(4)(f)**

Other factors relevant to the determination of the market and present demand for water and power.

26. Use of water under this permit is critical to the Idaho Power’s ability to meet the mitigation responsibilities identified in the 1980 Hells Canyon Settlement Agreement.
27. The hatchery provides an ecological benefit for salmonid conservation, and provides harvest opportunities to residents of Idaho and Oregon, as well as multiple tribes.

**Fair Return Upon Investment [OAR 690-315-0040(2)(f)]**

28. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

**Other Governmental Requirements [OAR 690-315-0040(2)(g)]**

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

**Unforeseen Events [OAR 690-315-0040(2)(h)]**

30. Unforeseen events that contributed to the extended the length of time needed to fully develop and perfect Permit G-15440 were not identified.

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<sup>5</sup> As identified in the Application for Extension of Time submitted on July 2, 2015.

**Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]**

31. A denial of the extension could result in a hardship to staff employed at the hatchery, salmonid conservation, and opportunities for fish harvests by local tribes and residents.

**Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]**

32. The Application does not provide evidence of good faith of the appropriator under Permit G-15440.

Based on Findings of Fact 11, 12, 13, 14, 15, 17, and 24 above, the Department finds that the Applicant has not demonstrated good faith.

**Duration of Extension [OAR 690-315-0040(1)(c)]**

*Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

33. As of March 18, 2021, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, which include installation of the required flowmeters; and applying water to full beneficial use.
34. The Application identifies that installation of the flowmeters could be accomplished by October 2022. The Application also identifies the proposed hatchery renovations would be completed by October 2022.
35. The Application is requesting until October 1, 2027 to complete development of the water use authorized by the permit. The explanation provided for the request of ten years from the current completion date is “potential uncertainty” and timely budgeting, scheduling and completion of the Hatchery Renovation”.

The Department finds the request for an extension of time from October 1, 2017, to October 1, 2027, is unreasonable. The Application establishes that no progress towards the installation of the required meters during the most recent extension period, which was identified as the only remaining work to be accomplished with the previous Application for Extension of Time submitted July 2, 2015. The Application does not provide an explanation of why the required meter was not installed during the previous extension period. Additionally, the Application identifies that the required meters could be installed by October 2022.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

36. The Department has determined the permit holder has not demonstrated good faith in the development of the water use authorized by the permit. However, the economic benefit to



the local economy, the ecological benefit of salmonid conservation, and the recreational fish harvesting by the local community, and the customary fish harvesting by multiple tribes, must also be considered.

Based on FOF 25, 26, 27, and 31, the Department has determined there is good cause to approve an extension of time.

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 fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

### **LIMITATIONS AND CONDITIONS**

1. 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. Based on FOF 11, 12, 13, 14, 15, 17, and 24, the Department determined the need to place a “Last Extension Condition” on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary due to no additional work having been accomplished since 2007, and non-compliance with terms and conditions of the permit.

### **CONCLUSIONS OF LAW**

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant has complied with the construction timeline requirements to begin construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 6, through 36, full application of water to beneficial use can be accomplished by October 1, 2027, as required by OAR 690-315-0040(1)(c), however, based on FOF 33, 34, and 35, the Department has determined beneficial use can be accomplished by October 1, 2024.
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to ensure future diligence and is granted only for the reasonable time necessary to complete water development an apply water to beneficial use. OAR 690-315-0050(5).

5. The applicant has demonstrated good cause for the extension, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

## PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

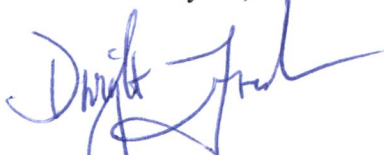
Extend the time to apply water to beneficial use under Permit G-15440 from October 1, 2007, to October 1, 2024.

Subject to the following conditions:

## LIMITATIONS AND CONDITIONS

1. **Last Extension Condition**  
This may be the last extension of time granted for Permit G-15440. Any future extensions of time request may be denied, unless the permit holder can provide the Department with evidence that the condition requiring the installation and maintenance of the required flowmeter has been satisfied. In addition, all normal extension standards and rules will be evaluated. ORS 539.010(5); OAR 690-315-0040.

DATED: May 18, 2021



Dwight French, Administrator,  
Water Right Services Division

*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 **July 2, 2021**, 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
  - 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 questions about statements contained in this document, please contact «Caseworker» at 503- «Caseworker\_Phone».
  - 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 503-986-0900.
  - Address any correspondence to :      Water Right Services Division  
725 Summer St NE, Suite A  
Salem, OR 97301-1266  
Fax: 503-986-0901
-