

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-11165, Water Right Application G-11916,) FINAL
in the name of the Timberline Rime Water Company) ORDER

Permit Information

Application File G-11916 / Permit G-11165

Basin 2C – Lower Willamette Basin / Watermaster District 20

Date of Priority: May 2, 1989

Authorized Use of Water

Source of Water: Two Wells in Sandy River Basin

Purpose or Use: Quasi-Municipal

Maximum Rate: 0.82 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-11165, water right Application G-11916.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2020, to October 1, 2030.
- Grant an extension of time to apply water to full beneficial use from October 1, 2020, to October 1, 2030.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

Company – Timberline Rim Water Company

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

Well 1 – CLAC 75883

Well 2 – CLAC 7578

Units of Measure

cfs – cubic feet per second

AUTHORITY

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

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

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

OAR 690-315-0090(4) provides in pertinent part that quasi-municipal water use permit holders that serve a population of less than 1000 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 January 7, 1991, Permit G-11165 was issued by the Department. The permit authorizes the use of up to 0.82 cfs of water, from Two Wells in Sandy River Basin in the Sandy River Basin for quasi-municipal use. The permit specified construction of the

water development project was to be completed by October 1, 1992, and complete application of water was to be made on or before October 1, 1993.

2. Two prior permit extensions have been granted for Permit G-11165. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2020.
3. On September 8, 2021, the Lynda Zangerle submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-11165 be extended from October 1, 2020, to October 1, 2030.
4. Notification of the Application for Extension of Time for Permit G-11165 was published in the Department's Public Notice dated September 14, 2021. 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)]

5. On September 8, 2021, 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)]

6. Actual construction of the well began prior to the January 7, 1992, deadline specified in the permit.
7. According to the well log submitted to the Department on December 12, 1968, CLAC 7583 (Well 1), began September 30, 1968.
8. According to the well log submitted to the Department on April 29, 1983, CLAC 7578 (Well 2), began March 10, 1983.

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.

9. The remaining work to be accomplished under Permit G-11165 consists of installation of a larger pump on Well 2, construction of infrastructure south of the river, complete distribution and buildout of the community, and applying water to full beneficial use.
10. As of October 1, 2020, the permit holder had appropriated 0.71 cfs of the 0.82 cfs of water authorized under Permit G-11165 for quasi-municipal purposes.
11. The 0.82 cfs of water authorized under Permit G-11165 for quasi-municipal use, is the only source of water available for the community.
12. Timberline Rime Water Company's (Company) peak water demand within its service area boundaries was 0.71 cfs in 2021.
13. According to the Application, in 2021, the population within the service boundary of the Company was 800. The Company estimates the population to increase at an estimated growth rate of approximately 1 percent per year, reaching an estimated population of 883 by the year 2030.
14. According to the Application, their peak demand is projected to be approximately 0.82 cfs of water by the year 2030.
15. Full development of Permit G-11165 is needed to meet the present and future water demands of the Company, including system redundancy and emergency use.
16. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2030, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-11165 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g) and (4)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a),(3)(c) and (4)]

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

17. Actual construction of the well and water system began prior to the January 7, 1992 deadline specified in the permit.
18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-11165.

19. During the most recent extension period under Permit G-11165, being from October 1, 1998 to October 1, 2020, the following work was completed by the Company:
 - installed a SCADA control system and upgraded electrical panels;
 - installed an emergency 5,000-gallon water tank;
 - repaired water storage tank;
 - upgraded pipe serving south side of the river; and
 - added 10 new service connections.
20. Since October 1, 2020 the Company four new service connection were added.

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

21. As of September 8, 2021, the permit holder invested \$479,675, which is 51. percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$460,600 investment is needed for the completion of this project.
22. As of October 1, 2020, 0.71 cfs of the 0.82 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
23. 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)]

24. As of September 8, 2021, the permit holder invested \$479,675, which is 51 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$460,600 investment is needed for the completion of this project.
25. The Department has determined that the permit holder of Permit G-11165 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86 as per OAR 690-315-0090(4) because it serves a population less than 1,000.

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

26. As described in Findings 11, through 15, the Company has indicated, and the Department finds that Timberline Rime Water Company must rely almost exclusively on its water right permits from the Sandy River.
27. The Company projects a population increase of approximately 1 percent per year over a 9-year period, being the years 2021, to 2030.
28. Given the current water supply situation of the Company, 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-11165.

29. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Limitations and Conditions” section of this PFO to meet this condition.
30. The Department has determined per OAR 690-315-0090(4) that the permit holder of Permit G-11165 is not is not required to submit a WMCP consistent with OAR Chapter 690, Division 86, because it serves a population less than 1,000.

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

31. 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)]

32. 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)]

33. According to Application, delay of development under Permit G-11165 was due, in part, to development of individual lots within the community is determined by the property owner, and the Company has no control over when these properties will be developed.

LIMITATIONS AND CONDITIONS

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

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).

5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2030⁴ pursuant to OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. In accordance with OAR 690-315-0090(4-5), and as described in Finding 29, the Department has determined that the permit holder of Permit G-11165 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.

Proposed Order

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

extend the time to complete construction under Permit G-11165 from October 1, 2020, to October 1, 2030.

extend the time to apply the water to beneficial use under Permit G-11165 from October 1, 2020, to October 1, 2030.

Subject to the following condition:

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2026. A form will be enclosed with your Final Order.**

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

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.

(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: November 9, 2021


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 **December 24, 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 any questions about statements contained in this document, please contact Jeffrey Pierceall at 503-979-3213.
 - 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 503-979-9160.
 - 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
Salem, OR 97301-1266
Fax: 503-986-0901
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