

**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 Permit G-5383(modified by Permit Amendments	)	PROPOSED
T-7846, and T-9767), Water Right Application G-5478, in	)	FINAL
the name of Pete’s Mountain Water Company	)	ORDER

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Permit Information

Application:	G-5478
Permit:	G-5383 (modified by Permit Amendments T-7846, and T-9767)
Basin:	2c – Lower Willamette / Watermaster District 18
Date of Priority:	April 7, 1971
Source of Water:	two wells in Tualatin River Basin
Purpose or Use:	group domestic expanded for 300 families, including irrigation of not to exceed 1/2 acre lawn and garden each family
Maximum Rate:	0.67 cubic foot 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 complete construction of the water system from October 1, 2018, to October 1, 2038.
- Grant an extension of time to apply water to full beneficial use from October 1, 2018, to October 1, 2038<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**

Agent – Kenneth Roberts  
Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well 1 – CLAC 8886  
Well 2 – CLAC 50840, deepened under CLAC 52191  
cfs - cubic foot 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.

**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.

## **FINDINGS OF FACT**

1. On February 21, 1976, Permit G-5383 was issued by the Department. The permit authorizes the use of up to 0.67 cfs of water from a well in Tualatin River Basin for group

domestic expanded for 300 families, including irrigation of not to exceed 1/2 acre lawn and garden each family acres. The permit specified actual construction of the well to begin by February 21, 1975, construction of the water system was to be completed by October 1, 1976, and complete application of water was to be made on or before October 1, 1977.

2. On April 29, 1999, the Department approved Permit Amendment T-7846 (Special Order Volume 53, Page 620) authorizing an additional point of appropriation under Permit G-5383 (modified by Permit Amendment T-7846).
3. On August 28, 2007, the Department approved Permit Amendment T-9767 (Special Order Volume 73, Page 180) authorizing a change in place of use under Permit G-5383 (modified by Permit Amendments T-7846, and T-9767), which is hereafter referred to as Permit G-5383. This order provided that the use of any quantity of water in excess of 253,350 gallons per day shall be subordinate to all other water rights with priority dates between April 7, 1971 and the date of the order, being August 28, 2007, including water rights established under ORS 537.545, calling on the same source if the permittee is serving homes on lands outside the original location of use for Permit G-5383.
4. Four prior permit extensions have been granted for Permit G-5383. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1997, to October 1, 2018.
5. On September 30, 2019, Kenneth Roberts, Vice-Chairman of Pete's Mountain Water Company, submitted an "Application for Extension of Time" (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-5383 be extended from October 1, 2018, to October 1, 2038.
6. On October 8, 2019, notification of the Application for Permit G-5383 was published in the Department's Public Notice. No public comments were received regarding the Application.
7. On March 24, 2020, Kenneth Roberts submitted additional information to supplement their Application. The additional information was to identify properties connected to the water system.

### **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)]**

8. On September 30, 2019, 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)]**

9. Actual construction of the well began prior to the February 21, 1975 deadline specified in the permit.
10. According to the well log received by the Department on May 6, 1970, construction of CLAC 8886 (Well 1) began September 22, 1967.

Based on Finding of Fact (FOF) 10 and 11, the Department has determined that the prosecution of the construction of the well began prior to February 21, 1975.

**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 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 previous extension.<sup>2</sup>*

11. During the most recent extension period, being from October 1, 1997, to October 1, 2018, expansion of service lines to new services were completed.

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

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

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

12. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: (1) the record does not show a dedicated measuring tube has been installed on CLAC 50840, deepened under CLAC 52191 (Well 2).

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<sup>2</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.

13. According to the Progress Report Form for 2017, submitted October 20, 2017, identifies the pump and motor in Well 2 in 2012. According to the Application, the pump, and motor, was replaced again in July 2018.

Based on FOF 12, and 13, the Department has determined that the permit holder has not demonstrated compliance with following condition as required by Permit G-5383 (as modified by Permit Amendment T-9767):

- “The permittee shall install a dedicated water-level measuring tube in any new or replacement well listed on this permit. Measuring tubes shall be installed in each existing well whenever pumps are removed for maintenance or reconstruction unless the permittee demonstrates that the installation of a measuring tube that meets the Department’s specifications is not feasible.”

In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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

*The amount of beneficial use made of the water during the permit time limits and previous extension conditions.*

14. A maximum rate of 0.67 cfs of water has been appropriated being 0.67 cfs from Well 1, and 0.36 cfs from Well 2 for domestic use expanded at 103 households<sup>3</sup>.
15. Delay of full beneficial use of water under Permit G-5383 was due, in part, to insufficient yield of water from the permitted Well 2, and because customers have been slow to connect to the system, and some have disconnected service and constructed private exempt use wells..

Based on FOF 12, the Department has determined that beneficial use of water from Well 2, in compliance with the terms and conditions of the permit, has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2018.

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

16. An approximate total of \$1,224,000 has been invested. The costs included items associated with planning, repair and maintenance costs of a system which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$1,221,100. An approximate additional \$81,000 investment is needed to complete this project.

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<sup>3</sup> 103 household reported on the Progress Report submitted to the Department on October 20, 2017. Of the 103 household connections identified, 88 were active accounts with the remaining 15 households as inactive accounts.

Based on FOF 16, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

**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.**

17. 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-5383; 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.

**continued on following page**

**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).

18. The points of appropriation for Permit G-5383, located within the Tualatin River Basin, are located within the Sherwood-Dammasch-Wilsonville Limited Groundwater Area.
19. Tualatin River is not located within or above any state or federal scenic waterway.
20. 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.

21. Tualatin River 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.

22. An approximate total of \$1,224,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

23. Other economic interests dependent on completion of the project include property owners who are connected to the water system and who have no other access to a domestic water supply.
24. The Department has identified an economic interest in allowing additional time to develop this water use because having one entity responsible for the distribution of domestic water within this groundwater limited area, provides a greater ability to control water use in an effort to reduce the downward trend of static water levels in area wells.

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

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

25. On December 10, 2019, the Department’s Groundwater section determined, “Based on the available evidence, it appears unlikely that the groundwater resource can support the complete development of the authorized rate.” The Groundwater section identified a

substantial declining trend between 2012 and 2019, with greater than 38.0 feet of decline over the covered period, with the exception of 2018, where the water levels appear to have recovered substantially.

26. Static water level measurements submitted for 2020, indicate a continuing downward trend in the static water level measurement in the authorized wells, and representing roughly an additional decline of approximately 3.5 feet from the levels recorded in 2017.
27. 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 5 of the “Limitations and Conditions” section of this PFO to meet this condition.

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

28. Water curtailment instituted by Pete’s Mountain Water Company in 2018 as a result of low capacity of Well 1, and Well 2. Previous curtailment efforts have resulted in existing customers constructing new exempt use wells and dropping off the system, reducing revenues available for system maintenance, as well as contributing to the declines in Static Water Levels in area wells.
29. The return on investment in the water system may be jeopardized by the continued decline in the water levels in the authorized wells.

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

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

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

31. No unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-5383. The Application for a Permit to Appropriate the Ground Waters of the State of Oregon, submitted on April 7, 1971, anticipated complete development would not likely be completed within the time provided by the State Engineer, indicating the development of the permit would be a long term project.

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

32. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs. Though it could be possible for each of the households to construct their own exempt use wells, static water level declines in this area would likely continue to decline with additional uses.



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

33. The Application provides evidence of good faith of the appropriator under Permit G-5383.

The Department has determined that the applicant has shown good faith and diligence.

**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.*

34. As of September 30, 2019, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, which include installation of a dedicated measuring tube as required by Special Order Volume 73, Page 180, and applying water to full beneficial use.
35. The Permit Holder states that the Pete's Mountain Water Company does not intend to provide water to homeowners in the Amended Place of Use as authorized by Permit Amendment T-9767.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2038, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-5383 is both reasonable and necessary.

**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).*

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 the applicant has shown that good cause exists for an extension of time to complete construction and 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, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 12, 13, 25, 26, 32, and 33, the Department determined the need to place

a “Measuring Tube Condition” on this extension of time in order to mitigate the effects of subsequent development of water use permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary because of the use of an unauthorized point of appropriation; place of use has occurred under this permit.

2. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 12, 13, 25, 26, 32, and 33, the Department determined the need to place a “Annual Static Water Level Measurement Condition” on this extension of time in order to mitigate the effects of subsequent development of water use permit. This condition, specified under Item 2 of the “Conditions” section of this PFO, was determined to be necessary because of the use of an unauthorized point of appropriation; place of use has occurred under this permit.
3. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 12, and 13, the Department determined the need to place a “Benchmark Condition” on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 3 of the “Conditions” section of this PFO, was determined to be necessary because of the use of an unauthorized point of appropriation; place of use has occurred under this permit.
4. 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 4 of the “Limitations and Conditions” section of this PFO to meet this condition.

### **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 actual 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 9, through 33, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2038, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, 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 future diligence; OAR 690-315-0050(5).
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being excised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

## **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 of the water system under Permit G-5383 from October 1, 2018, to October 1, 2038.

Extend the time to apply water to beneficial use under Permit G-5383 from October 1, 2018, to October 1, 2038.

Subject to the following conditions:

## **LIMITATIONS AND CONDITIONS**

**1. Measurement Tube Condition**

The permit holder shall install a dedicated water-level measuring tube on CLAC 50840, deepened under CLAC 52191 (Well 2) by no later than October 1, 2026. The purpose of the tube is to allow unobstructed access for measuring water levels in the borehole. The tube shall be at least 3/4" inch in diameter, and shall extend from the top of the well head to the top of the pump, shall be perforated over at least the lowermost 20 feet, shall be located inside any liners, shall be attached to the pump column, shall be maintained in good working order, and shall be kept free of wire and other obstructions. The diameter, length, and perforated interval of the measurement tube, accompanied by the owner's well name, the permit or certificate number, and the well tag number or the OWRD logid shall be reported in writing to the Department within 30 days of installation or alteration.

If the required dedicated measuring tube is not installed on Well 2 by October 1, 2026, appropriation of water from Well 2 shall be regulated off until the required dedicated measuring tube is installed.

**2. Annual Static Water Level Measurement**

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The Department may require the discontinuance of groundwater use, or reduce the rate or volume of withdrawal, from the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

3. **Benchmark Condition**

The permit holder must demonstrate progress towards demonstrating compliance with conditions and diligence in the development of beneficial use of water under the permit. Demonstration of compliance with conditions and diligence in the development of beneficial use of water will be measured by the permit holder demonstrating achievement based on Benchmarks set by the Department, as identified in the Progress Report Forms provided as part of the Checkpoint Condition described in item 5 below. The benchmarks may include, but not limited to, requirements to install dedicated measuring tubes, and monitoring wells, minimum additional connections added to the water system, implementation of a water conservation program, and

4. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2026, 2031, and 2036. 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;
- (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: January 25, 2022



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 **March 11, 2022**, 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 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 503-986-0900.
  - 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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