

**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-15983, Water Right Application G-16358, in	)	FINAL
the name of Issa and Ragehda Karam	)	ORDER

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Permit Information

Application:	G-16358
Permit:	G-15983
Basin:	2C – Lower Willamette / Watermaster District 20
Date of Priority:	December 20, 2004
Source of Water:	Well 1 and Well 2 in Clear Creek Basin
Purpose or Use:	nursery use on 40.0 acres
Maximum Rate:	0.50 cubic foot per second(cfs), further limited to 0.056 cfs July 1 through September 30 of each year

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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, 2010, to October 1, 2024.
- Grant an extension of time to apply water to full beneficial use from October 1, 2010, 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**

Agent – Doann Hamilton, Pacific Hydro-Geology Inc.  
Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well 1 – UNKNOWN  
Well 2 – not constructed  
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.

## **FINDINGS OF FACT**

1. On November 17, 2005, Permit G-15983 was issued by the Department, consistent with the terms of a settlement agreement. The permit authorizes the use of up to 0.50 cfs of water from Well 1 and Well 2, further limited to 0.056 cfs July 1 through September 30 of each year, in Clear Creek Basin for nursery use on 40.0 acres. The permit specified construction of the water system was to be completed by October 1, 2010, and complete application of water was to be made on or before, October 1, 2010.



2. On January 14, 2022, the permit holder, Issa and Ragehda Karam, 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-15983 be extended from October 1, 2010, to October 1, 2024. This is the first permit extension requested for Permit G-15983.
3. On February 1, 2022, notification of the Application for Permit G-15983 was published in the Department’s Public Notice. No public comments were received regarding the 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)]**

4. On January 14, 2022, 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)]**

5. Construction of the well began prior to permit issuance.
6. According to the Application for a Permit to Use Ground Water, by the Department on December 20, 2004, Well 1 was existing and no well log could be located.

Based on Finding of Fact (FOF) 5, and 6, the Department has determined that the prosecution of the construction of the well began prior to October 1, 2010.

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

7. Construction of the well began prior to permit issuance.
8. Additional irrigation equipment was installed in 2006, and in 2012.
9. No additional work has been accomplished since 2012.

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 conditions.*

10. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns, annual reports of the amount of water used each month have not been received by the Department by October 1, 2010.

Based on FOF 10, the Department has determined that the permit holder has not demonstrated compliance with all permit conditions as required by Permit G-15983.

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.*

11. A maximum rate of 0.1 cfs of water has been appropriated from the Well 1 for nursery use on 9.4 acres.

Based on FOF 10, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2010.

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

12. An investment of approximately \$18,000, has been made which is about 19 percent of the total projected cost for complete development of this project. An additional \$77000 investment is needed for the completion of this project.

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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.



Based on FOF 12, 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.

13. 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-15983; 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).

14. The points of appropriation for Permit G-15983, located within the Clear Creek Basin, are not located within a limited or critical groundwater area.
15. Clear Creek is located above Clackamas Scenic Waterway.
16. 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.

17. Clear Creek is located within an area ranked “moderate” 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.

18. An approximate total of \$18,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

19. Other economic interests dependent on completion of the project have not been identified.

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

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

20. No other factors relevant to the determination of the market and present demand for water and power have been identified.

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

21. 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)]**

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

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

23. No unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-15983.

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

24. A denial of the extension would result in undue hardship in that the nursery operations represent a significant portion of the permit holder's income. The permit holder also holds water right permit G-16784, which allow for nursery use on 60.0 acres from Well 2, Well 3, and Well 4 at a rate of 0.75 cfs. The 40.0 acres authorized under Permit G-15983, are included in the 60.0 acres authorized under Permit G-16784.
25. The Application (File G-17221) for Permit G-16784, included a letter indicating that the application was being submitted, proposing to drill the wells deeper, to avoid the restriction agreed to for Permit G-15983 (Application File G-16358).

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

26. The Application provides evidence of good faith of the appropriator under Permit G-15983.

Based on FOF 5, 6, 7, 8, 11, 12, and 18, the Department has determined that the applicant has shown good faith and reasonable diligence, enough to allow for a limited extension of time to ensure compliance with all permit conditions is demonstrated.

**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.*

27. As of January 14, 2022, the remaining work to be completed consists of completing construction of the water system, meeting all permit conditions, and applying water to full beneficial use.
28. The amount of beneficial use developed since permit issuance

Given the amount of development, the Department has determined that the permit holder's request to have until October 1, 2030, 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-15983 is not reasonable. The Department has determined an extension of time to October 1, 2024, is both reasonable and necessary to allow for the permit holder to ensure compliance with all permit conditions is demonstrated.

### **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. 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 2 of the “Conditions” section of this PFO, was determined to be necessary due to minimal diligence demonstrated in the development of the beneficial use since 2012.

### **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 5, through 26, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2024, 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 and 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 complete construction of the water system under Permit G-15983 from October 1, 2010, to October 1, 2024.

Extend the time to apply water to beneficial use under Permit G-15983 from October 1, 2010, to October 1, 2024.

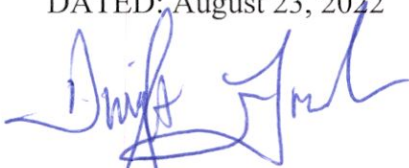
Subject to the following conditions:

### LIMITATIONS AND CONDITIONS

1. **Last Extension Condition**

This may be the last extension of time granted for Permit G-16784. Any future extensions of time request to bring additional acres into nursery production or to increase the rate of water appropriated under the permit will be denied. ORS 539.010(5); OAR 690-315-0040.

DATED: August 23, 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 **October 7, 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;

