

**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 R-13105, Water Right Application R-84049) Final
in the name of The City of The Dalles) Order

Permit Information

Application File R-84049 Permit R-13105

Basin: 4 – Hood / Watermaster District 3

Date of Priority: January 21, 1999

Authorized Use of Water

Source of Water: South Fork Mill Creek with any deficiency in the available supply
from South Fork Mill Creek to be made up by diversion from Dog
River appropriated under Certificate 14954
Storage Facility: Cow Creek Reservoir
Purpose of Use: Storage of Water for Municipal Use
Maximum Rate: 2,100 Acre-Feet (AF)

**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 R-13105, water right Application R-84049.
A copy of Permit R-13105 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to begin construction of the water system from November 20, 2001, to November 20, 2031.
- Grant an extension of time for complete construction of the water system from November 20, 2001, to November 20, 2031.
- Grant an extension of time to apply water to full beneficial use from November 20, 2001, to November 20, 2031.
- Make the extension subject to certain conditions set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
PFO – Proposed Final Order
City - The City of The Dalles

Units of Measure

AF – acre-feet

AUTHORITY

Generally, see **ORS 537.248** and **OAR Chapter 690 Division 315**.

ORS 537.248(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause and reasonable diligence shown, extend the date for beginning and completing construction and for completing perfection of the use for a reservoir permit for a new storage project held by a county, municipality or district. The extension shall not exceed 10 years, but the applicant may request additional extensions.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time pursuant to ORS 537.248 may be approved to begin and complete construction and apply water to full beneficial use.

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. Permit R-13105 was granted by the Department on November 20, 2001. The permit authorizes storage up to 2,100 AF in Cow Creek Reservoir. The source of the stored water is South Fork Mill Creek with any deficiency in the available supply from South Fork Mill Creek to be made up by diversion from Dog River appropriated under Certificate 14954. The permit specified that the reservoir be filled and water applied to full beneficial use on or before November 20, 2011.
2. One prior permit extension has been granted for Permit R-13105. The extension request resulted in the completion dates to fill the reservoir and apply the water to beneficial use under Permit R-13105 and from November 20, 2011, to November 20, 2021.
3. On December 15, 2022, the permit holder submitted an "Application for Extension of Time" to the Department requesting the time fill the reservoir and apply water to full beneficial under the terms and conditions of Permit R-13105, be extended from November 20, 2011 to November 20, 2021.
4. Notification of the Application for Extension of Time for Permit R-13105 was published in the Department's Public Notice dated January 31, 2023. No public comments were received regarding the extension application.

Review Criteria [OAR 690-315-0040]

The time limits to begin and 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 690-315-0040. This determination shall consider the applicable requirements of ORS 537.248.¹

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

5. On December 15, 2022, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

Duration and Justification of Extension

Under ORS 537.248(2) an extension allowed under this subsection may not exceed 10 years, but the applicant may request additional extensions. Under OAR 690-315-0030 the applicant is required to justify why the requested time is needed to begin construction and fully apply water to beneficial use.

¹ORS 537.248 applies to reservoir permits issued on or after July 4, 1995, to a county, municipality or district for new storage projects.

6. According to the City, the remaining work to be accomplished under Permit R-13105 consists of completing the Dog River Pipeline Replacement Project, finalizing design, permitting, and construction of Cow Creek Dam reservoir expansion, storing the permitted volume of water, expanding treatment capacity of Wicks Water Treatment Plant and applying water to full beneficial use.
7. As of December 15, 2022, the City has not stored any of the water authorized under Permit R-13105.
8. Given the amount of development left to occur, the Department has determined that the City's request to have until 2031, to fill the reservoir and apply water to full beneficial use under the terms and conditions of Permit R-13105 is both reasonable and necessary.
9. An extension of time to begin and complete construction and to complete perfection of the use under the terms of Permit R-13105 may not exceed 10 years.

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

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

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

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

Amount of Work Accomplished [OAR 690-315-0040(3)(a)]

10. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. During the original development time frame under Permit R-13105 the City has:
 - developed a Water Master Plan,
 - conducted a water conservation program including public education,
 - completed USFS cultural and natural resource surveys for pipeline replacement for filling the larger reservoir,
 - completed a wetlands analysis in support of the land exchange with the USFS, and
 - completed various surveys and development of a Proposed Action for Dog River pipeline replacement.

- b. During the extension period, being November 20, 2011, to November 20, 2021, the City has:
- contributed support to the Environmental Assessment for Dog River Pipeline replacement; and
 - Developed a WMCP;
- c. Since November 20, 2021, the City has:
- finalized design of Dog River replacement; and
 - began site preparation of the Dog River replacement.

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

11. No water has been stored under Permit R-13105.
12. Beneficial use of water has not yet been demonstrated under this permit because no water has been stored.
13. Delay of full beneficial use of water under Permit R-13105 was due, in part, to the Dog River Pipeline being located within Mount Hood National Forrest. After submittal of Proposed Action to the US Forrest Service in October 2010, an environmental assessment was undertaken. In October 2020 a Decision of Notice was issued.

Compliance with Conditions [OAR 690-315-0040(3)(c)] water right permit holder's conformance with the permit or previous extension conditions:

14. The water right permit holder's conformance with the permit or previous extension conditions.

The Department has considered the permit holder's compliance with conditions, and did not identify any concerns because no water has been stored under Permit R-13105.

Financial Investments [OAR 690-315-0040(3)(d)]

15. Financial investments made toward developing the beneficial water use.
 - a. According to the City, as of December 15, 2022, they have invested approximately \$5,248,678, which is approximately 15 percent of the total projected cost for complete development of this project. The City anticipates an additional \$30,101,823 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under R-13105, other costs included in this accounting are not partitioned out for R-13105 because (1) they are incurred under the development of a water supply system jointly utilized under other

rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith which are not associated with just this permit, but with the development and exercise of all the City's water rights.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)]

16. According to the City, as of December 15, 2022, they have invested approximately \$5,248,678, which is 14.847534975529767 percent of the total projected cost for complete development of this project. The City anticipates a \$30,101,823 investment is needed for the completion of this project.

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

17. The Department has found good faith of the appropriator under Permit R-13105.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

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:

18. The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].
- a. The of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit R-13105; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The sources of water for the reservoir, South Fork Mill Creek, a tributary of Mill Creek, and Dog Creek, a tributary of East Fork Hood River, are not located within a Withdrawn Area. The sources are not located within or above any state or federal scenic waterway, however they are located within an area ranked "high and highest" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are located within the Upper Columbia Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in

consultation with Oregon Department of Fish and Wildlife. Dog Creek is listed by the Department of Environmental Quality as a water quality limited stream.

19. Economic investment in the project to date [OAR 690-315-0040(4)(d)].
 - a. As of December 15, 2022, the permit holder has invested approximately \$5,248,678.
20. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
 - a. None have been identified.
21. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
 - a. None have been identified.
22. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order determine if 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.

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

23. Use and income from the permitted water development results in reasonable returns upon the investment made to date.

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

24. Delay in the development of this project was due, in part, to an Environmental Assessment process.

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

25. According to the City, delay of development under Permit R-13105 was due, in part, additional permitting process through the US Forrest Service to replace the Dog River Pipeline on the portion that runs through Mount Hood National Forrest.

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).

2. The City has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
4. As required by OAR 690-315-0050(6) and as described in Finding 21, above, the Department has established, as specified in the "Conditions" section of this PFO (Item 2), progress checkpoints in order to ensure future diligence is exercised in the development and perfection of Permit R-13105. Intervals between checkpoints are not to exceed five year periods.

Proposed Order

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

Extend the time to fill the reservoir and apply the water to beneficial use under Permit R-13105 and from November 20, 2011, to November 20, 2031.

Subject to the following conditions:

CONDITIONS

1. Checkpoint Condition

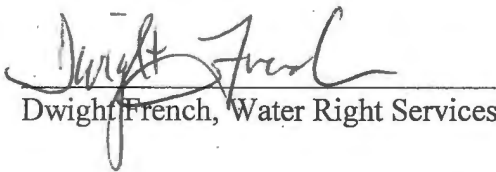
The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2028. A form will be enclosed with your Final Order.**

- (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: October 3, 2023



Dwight French, Water Right Services Administrator

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than **November 17, 2023**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay 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 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Jeffrey Pierce 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 Will Davidson at 503-507-2749.
 - 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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