

**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 S-53949, Water Right Application S-85314,	)	FINAL
in the name of the City of Sheridan	)	ORDER

Permit Information

Application File S-85314/ Permit S-53949

Basin 2b – Middle Willamette Basin / Watermaster District 22

Date of Priority: October 8, 2002

Authorized Use of Water

Source of Water:	Stony Mountain Reservoir constructed under Application R-85313, a tributary of Baltimore Creek
Purpose or Use:	Municipal Use
Maximum Rate:	276.00 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 S-53949, water right Application S-85314.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2007 to October 1, 2057.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
City – City of Sheridan
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

AF – acre-feet
cfs – cubic feet per second

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension to complete construction or perfect a water right. 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 municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(5) authorizes the Department to include in an extension order, but is 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 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under OAR Chapter 690, Division 86 which grants access to water under this extended permit.

FINDINGS OF FACT

1. On July 16, 2003, Permit S-53949 was issued by the Department. The permit authorizes the use of up to 276.00 AF of water from the Stony Mountain Reservoir constructed under Application R-85313, a tributary of the Baltimore Creek, for municipal use. It specified that complete application of water was to be made on or before October 1, 2007.
2. On December 4, 2023, City of Sheridan (City) 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 S-53949 be extended from October 1, 2007, to October 1, 2057. This is the first extension of time request for Permit S-53949.
3. Notification of the City's Application for Extension of Time for Permit S-53949 was published in the Department's Public Notice dated December 5, 2023. No public comments were received regarding the extension application.
4. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.

Review Criteria for Municipal and 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(1). 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 December 4, 2023, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

Start of Construction [OAR 690-315-0080(1)(b)]

6. Permit S-53949 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.⁴

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.

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

Duration of Extension [OAR 690-315-0080(1)(c) and (1)(d)]

Under OAR 690-315-0080(1)(c) and (1)(d), in order to approve an extension of time for municipal and 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.

7. The remaining work to be accomplished under Permit S-53949 consists of completing construction of the water system, which includes storage of water under Permit R-13686; and applying water to full beneficial use.
8. As of October 1, 2007, the permit holder had not diverted any of the 276.00 AF of water authorized under Permit S-53949 for municipal use. There is an undeveloped portion of 276.00 AF of water under Permit S-53949 as per ORS 537.230(1).
9. In addition to the 276.00 AF of water authorized under Permit S-53949 the City holds the following municipal use water right certificates and permits:
 - Certificate 34093 for 0.07 cubic feet per second (cfs) of water from an unnamed stream;
 - Certificate 47036 for 0.4 cfs of water, being 0.2 cfs from Baltimore Creek and 0.2 cfs from Pumper Spring;
 - Certificate 49612 for 0.4 cfs of water from the La Toutena Mary Springs;
 - Certificate 83010 for 0.27 cfs of water from the four wells;
 - Permit S-13862 for 8.0 cfs of water, being 6.0 cfs from Willamina Creek and 2.0 cfs from South Fork of Yamhill River;
 - Permit S-44595 for 2.0 cfs of water from East Creek;
 - Permit S-44944 for 0.22 cfs of water from Kegbine Spring #3;
 - Permit S-46730 for 0.4 cfs from an unnamed stream;
 - Permit S-46744 for 0.18 cfs of water from East Fork Willamina Creek;
 - Permit S-47044 for 1.2 cfs from East Fork Baltimore Creek;
 - Permit R-13686 for storage of 276.0 AF of water in Stoney Mountain Offline Storage Facility constructed under Permit R-13686; and
 - Permit G-13620 for 0.447 cfs of water, being 0.112 cfs from Well 1 and 0.334 cfs from Well 2.

These water rights and permits total 12.87 cfs of live flow (surface) water, 0.717 cfs of ground water and the use of 276.00 AF of stored water. City of Sheridan has not yet made use of 3.47 cfs of water under a combination of all their permits, and 276.0 AF under Permits R-13686 S-53949.

10. The City may only divert up to 13.447 cfs in combination with any other earlier right and Permit R-13686.
11. According to the Application, in 2022, the population within the service boundary of City of Sheridan was 6,161. The City estimates the population will increase at a growth rate of 0.68 percent per year, reaching an estimated population of 7,742 by the year 2053.
12. The City's peak water demand within its service area boundaries was 1.56 cfs in 2022.

13. Full development of Permit R-13686 is needed to address future water demand of City of Sheridan, including system redundancy and emergency use.

The Department finds that the City's request for an extension of time until October 1, 2053, to complete construction and to apply water to full beneficial use under the terms of Permit R-13686 is both reasonable and necessary.

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

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 municipal or 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.

14. Prior to the issuance of Permit S-53949, the City began Dam planning, including hydrologic reports, geotechnical and subsurface investigation reports, Design, and Dam Failure Analysis. The City also upgraded water transmission lines.
15. During the original development time frame the City accomplished the following:
 - conducted a supply facility study;
 - began construction on Stoney Mountain Offline Storage Facility;
 - developed stream and spring development;
 - and developed a Water System Master Plan.
16. Since October 1, 2007, the City completed construction of Stoney Mountain Offline Storage Facility, developed operations and maintenance manual, and expanded the distribution system.
17. According to the Application, as of August 7, 2023, the city has invested approximately \$9,100,000, which is about 43 percent of the total projected cost for complete development of this project. The City estimates a \$12,100,000 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-13686, other costs included in this accounting are not partitioned out for R-13686 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 as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.
18. As of October 1, 2007, the City had stored none of the 276.00 AF allowed for beneficial municipal purposes under the terms of this permit.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose
[OAR 690-315-0080(3)(b)]

19. According to the Application, as of August 7, 2023, they have invested approximately \$9,100,000, which is about 43 percent of the total projected cost for complete development of this project. The City estimates a \$12,100,000 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]

For municipal or quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

20. 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 690-315-0080(5)(a-f)]*.

- The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit R-13686; 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 points of diversion for Permit R-13686, located within the Big and Little La Toutena Mary Springs, West and East Forks Baltimore Creek, and Kegbine Springs 1, 2, and 3, tributaries of Baltimore Creek, is/are not located within a Withdrawn Area. The Big and Little La Toutena Mary Springs, West and East Forks Baltimore Creek, and Kegbine Springs 1, 2, and 3, tributaries of Baltimore Creek is not located within or above any state or federal scenic waterway, however it is located within an area ranked highest 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. The Big and Little La Toutena Mary Springs, West and East Forks Baltimore Creek, and Kegbine Springs 1, 2, and 3, tributaries of Baltimore Creek is listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date [OAR 690-315-0080(5)(d)]

21. According to the Application, as of August 7, 2023, they have invested \$9,100,000, which is 43 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$12,100,000 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

22. None have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

23. The City has indicated, and the Department finds that City of Sheridan must rely on full development of Permit R- 13686 to meet its present and future water demands.
24. The City estimates an annual population growth rate of 0.68 percent per year a 31 year period, being to 2053.
25. Given the current water supply situation of City of Sheridan, 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 R-13686.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water any water (not to exceed the maximum amount authorized under this permit, being 276.00 AF) under Permit S-53949 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.
27. OAR 690-315-0050(5) provides for the Department to include any condition necessary to ensure future diligence. Based on FOF 8, and 18, the Department has determined a need to include a Water Use/Last Extension condition on this extension of time to ensure that the City diligently pursues the storage as authorized under the permit, and is specified under Item 2 or the "Conditions" section of this PFO.

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

28. Use and income from the permitted water development project would result in reasonable returns upon the investment made in the project to date.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

29. 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)]

30. Delay of development under Permit R-13686 was due, in part, to the size and scope of the municipal water system, as well as the economic effects of the Great Recession.

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(2).
2. The City 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. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit S-53949 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Full application of water to beneficial use can be completed by October 1, ⁵, as required by OAR 690-315-0080(1)(d).
7. 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 finds that the City 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).
8. As required by OAR 690-315-0090(3) and as described in Finding 26, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of any water (not to exceed the maximum amount authorized under this permit, being 276.00 AF) under Permit S-53949 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7).
9. OAR 690-315-0050(5) provides for the Department to include any condition necessary to ensure future diligence. Based on FOF 27, the Department has determined a need to include a Water Use/Last Extension condition on this extension of time to ensure that the

⁵ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

City diligently pursues the storage as authorized under the permit, and is specified under Item 2 or the "Conditions" section of this PFO.

Proposed Order

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

Extend the time to apply the water to beneficial use under Permit S-53949 from October 1, 2007, to October 1, 2057.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

No diversion of water is currently allowed under Permit S-53949. Diversion of any water (not to exceed the maximum amount authorized under this permit, being 276.00 AF) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit R-13686 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-53949 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of the final order may also meet the WMCP submittal requirements of other Department orders.

2. Water Use/Last Extension Condition

This may be the last extension of time issued for Permit S-53949 if no water is diverted for municipal use by October 1, 2053. In addition, all normal extension standards and rules will be evaluated. ORS 539.010(5); OAR 690-315.

DATED: December 17, 2024


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.*

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 **January 24, 2025**, 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>.

If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503-986-0802.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.

If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

Address any correspondence to:	Water Right Services Division
	725 Summer St NE, Suite A
Fax: 503-986-0901	Salem, OR 97301-1266
