

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-13202, Water Right Application G-12298,) FINAL
in the name of the City of Nyssa) ORDER

Permit Information

Application File G-12298/ Permit G-13202

Basin 10 – Malheur Basin / Watermaster District 9

Date of Priority: November 15, 1990

Authorized Use of Water

Source of Water:	Well 7 and Well 8 in the Snake River Basin
Purpose or Use:	Municipal Use
Maximum Rate:	1.11 Cubic Feet per Second (cfs), being 0.55 from Well 7 and 0.55 cfs from Well 8

**This Extension of Time request is being processed in accordance with Oregon
Administrative Rule Chapter 690, Division 315.**

*Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.*

This Proposed Final Order applies only to Permit G-13202, water right Application G-12298.

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, 2019 to October 1, 2069.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

City – City of Nyssa

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

Well 7 – MALH 52007

Well 8 – MALH 1998

Units of Measure

cfs – cubic feet per second

gpm – gallons per minute

AUTHORITY

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

ORS 537.630(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under 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 Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. On August 21, 1997, Permit G-13202 was issued by the Department. The permit authorizes the use of up to 1.11 cfs of water being 0.55 from Well 7 and 0.55 cfs from Well 8, within the Snake River Basin, for municipal use. The Permit specified that complete application of water was to be made on or before October 1, 2001.
2. One prior permit extension has been granted for Permit G-13202. The extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2001 to October 1, 2019.
3. The permit holder, the City of Nyssa (City), submitted an “Application for Extension of Time” (Application) to the Department on December 9, 2024, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13202 be extended from October 1, 2019, to October 1, 2069.
4. Notification of the City’s Application for Extension of Time for Permit G-13202 was published in the Department’s Public Notice dated December 24, 2024. No public comments were received regarding the extension application.
5. On February 14, 2005, and March 14, 2005, the City submitted supplemental information and update revisions to their pending Application for Extension of Time.
6. 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 Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080.

This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

7. On December 9, 2024, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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.

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

8. According to the well log submitted to the Department on May 13, 1987, construction of MALH 1998 (Well 8) began April 16, 1987.
9. According to the well log submitted to the Department on February 21, 2003, construction of MALH 52007 (Well 7) began February 1, 1987

The Department has determined that construction of Well 7 and Well 8 began prior to permit issuance.

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

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

10. The remaining work to be accomplished under Permit G-13202 consists of completing construction and applying water to full beneficial use.
11. As of October 1, 2019, the City had appropriated 0.55 cfs of the 1.11 cfs of water authorized under Permit G-13202 for municipal purposes. There is an undeveloped portion of 0.55 cfs of water under Permit G-13202.
12. In addition to the 1.11 cfs of water authorized under Permit G-13202, the City holds the following rights for municipal use:
 - Certificate 32213 for 2.0 cfs of water from the Snake River;
 - Inchoate Transfer T-7094 for 2.0 cfs of water from the Snake River; and
 - Inchoate Transfer T-7096 for 1.0 cfs of water from Wells 7, 8, and 9 in the Snake River Basin.

Certificate 32213 and Inchoate Transfer T-7094 limit the combined rate between the two rights to no more than 2.0 cfs. Though all municipal water rights and permits total 6.11 cfs of water limitations on Certificate 32213 and Inchoate Transfer T-7094, the rights limit the maximum authorized rate of diversion to 4.11 cfs being 2.11 cfs of ground water, 2.0 cfs of live flow (surface) water.
13. According to the City, their peak water demand within its service area boundaries was 5.72 cfs in 2023.
14. As of 2023, the population within the service boundary of the City of Nyssa was 3,363. The City of Nyssa estimates the population will increase at a growth rate of 0.44 percent per year, reaching an estimated population of 3,624 by the year 2069.
15. According to the City, the estimated peak day demand is approximately 6.97 cfs of water by the year 2069.

16. Full development of Permit G-13202 is needed to address the present and future water demand of the City.

Based on Findings of Fact 10, through 16, the Department has determined that the City's request for an extension of time until October 1, 2069, to apply water to full beneficial use under the terms and conditions of Permit G-13202 is both reasonable and necessary.

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

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3) and OAR 690-315-0080(4).

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.

17. Prior to the issuance of Permit G-13202 on August 21, 1997, the City constructed Wells 7 and 8.
18. During the last extension period, being October 1, 2001 to October 1, 2019, the City installed new controls, meters, and piping to Well 7 and Well 8, prepared and submitted a Water Management and Conservation Plan (WMCP).
19. Since 2019, the City has submitted an updated WMCP.

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

20. As of December 9, 2024, they have invested approximately \$332,160⁴, which is approximately 10 percent of the total projected cost for complete development of this project. The City estimates an additional \$3,100,000 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 G-13202, other costs included in this accounting are not partitioned out for G-13202 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 OAR 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.

⁴ Total investment was based on information included in the Application as well as information from the Extension Proposed Final Order issued July 11, 2006.

21. As of October 1, 2019, 0.55 cfs of the 1.11 cfs allowed has been appropriated.
22. The Department has considered the City's compliance with conditions and did not identify any concerns.

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

23. As of December 9, 2024, the City has invested approximately \$332,160, which is 10 percent of the total projected cost for complete development of this project. The City estimates an additional \$3,100,000 investment is needed for the completion of this project.

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

24. As described in Findings 11 through 16 above, the City has indicated, and the Department finds that the City must rely almost exclusively on its water right permits from the Snake River Basin.
25. The City projects a population increase, on average, of 0.44 percent per year over a 46 year period, being the years 2023 to 2069, according to Portland State University population forecast for the City from June 25, 2023.
26. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under G-13202.
27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.55 cfs (not to exceed the maximum amount authorized under this permit, being 1.11 cfs) under Permit G-13202 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 which grants access to a greater appropriation 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.

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

28. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-13202.

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

29. Changes in the regulatory limit for arsenic in drinking water necessitates treatment of water from Well 7 and Well 8.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

30. Delay of development under Permit G-13202 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years.

Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]

The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

31. This will be the second extension of time issued after June 29, 2005, for this permit, which is a municipal use permit issued before November 2, 1998. A Final Order on the first extension of time after June 29, 2005, was issued on September 1, 2006. Thus, this extension of time request is not subject to fish persistence criteria under 690-315-0080(1)(f) and (2).

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 537.630(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 G-13202 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. Complete application of water to beneficial use can be completed by October 1, 2069⁵ pursuant to OAR 690-315-0080(1)(d).

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.

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 has determined 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 21, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 0.55 cfs (not to exceed the maximum amount authorized under this permit, being 1.11 cfs) under Permit G-13202 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).
9. As described in Finding 31, above, this will be the 2nd extension issued after June 29, 2005, for this permit, which is a municipal use permit issued before November 2, 1998; therefore this extension of time request is not subject to fish persistence criteria under 690-315-0080(1)(f) and (2).

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 G-13202 from October 1, 2019 to October 1, 2069.

Subject to the following conditions:

CONDITIONS

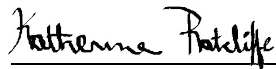
1. Development Limitations

A maximum appropriation of 0.55 cfs of water is currently allowed under Permit G-13202. Any appropriation of water beyond 0.55 cfs (not to exceed the maximum amount authorized under the permit, being 1.11 cfs) 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 appropriation 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 G-13202 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department. For review of water management and conservation plans that propose to increase the maximum rate of water diverted under an Extended Permit, after January 1, 2042, that the additional diversion of water will not impair or be detrimental to the public interest.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-13202 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

DATED: April 8, 2025



Katherine Ratcliffe
Water Right Services Division Administrator, for
Ivan Gall, Director
Oregon Water Resources Department

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 **May 23, 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>.

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- If you have any questions about statements contained in this document, please contact Jeffrey 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 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
 - Fax: 503-986-0901 Salem, OR 97301-1266
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Mailing List for Extension PFO Copies

PFO Date: April 8, 2025

**Application G-12298
Permit G-13202**

Original mailed to Applicant:

City of Nyssa
Attn: Jim Maret
301 Main St.
Nyssa, OR 97913

Copies sent to:

1. WRD - App. File G- 12298/ Permit G-13202
2. Agent &/or CWRE representing the applicant

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving electronic copy via e-mail (10 AM Tuesday of signature date)

4. WRD - Watermaster District 9 – Jared Hoshaw
5. WRD – Kerri Cope and Tamera Smith, Water Supply and Conservation Team (WMCP)
*Done by*_____ *Date*_____

CASEWORKER: JDP

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)