

**State of Oregon**  
**Water Resources Department**

In the Matter of the Application )  
for an Extension of Time, )  
Permit Number 46319, ) **FINAL ORDER APPROVING**  
Water Right Application Number 51780 ) **EXTENSION REQUEST**  
In the name of the City of Wilsonville ) **AND DENYING PROTEST**  
*Applicant* )

WaterWatch of Oregon and Oregon Trout  
*Protestants*

**Appeal Rights**

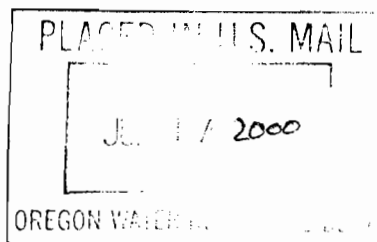
*This is a final order in other than contested case. Pursuant to ORS 536.075 and OAR 137-004-0080 and OAR 690-001-0005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the time specified by ORS 183.484(2).*

**Background**

On March 27, 1974, the City of Wilsonville, hereafter referred to as permit holder, submitted Application no. 51780 to the Water Resources Department. Application no. 51780 proposed to use up to 30.0 cubic feet per second (cfs) of water from the Willamette River for municipal use. On March 30, 1982, the Director issued Permit no. 46319. It specified that construction on the water development project should be completed by October 1, 1983, and that complete application of water was to be made on or before October 1, 1984.

Three prior extensions have been granted. The first extended the time limits under the

Proposed Final Order: Permit No. 46319



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permit from October 1, 1983, to October 1, 1988. The second extended the period from October 1, 1988, to October 1, 1993. The third extended the period from October 1, 1993, to October 1, 1998.

On February 4, 2000, the Department received a completed extension form from the permit holder requesting that the periods for completing construction of the system and fully applying water be extended from October 1, 1998, to October 1, 2050.

On February 29, 2000, a Proposed Final Order (PFO) was issued and notice of its issuance was published in the Department's weekly notice. On April 14, 2000, the Department's PFO was jointly protested by WaterWatch of Oregon and Oregon Trout. The protest asserts the following:

1. That the proposed conditions are inadequate;
2. The City has not shown a need for 19.4 mgd (30 cfs) of water from the Willamette within the next 20 years;
3. That the needs must be justified upon projected demands within the City limits and must be consistent with its Comprehensive Plan;
4. That demand projections must assume some level of efficiency;
5. That the permittee has not shown diligence;
6. That the good faith of the permittee is questionable;
7. The law does not allow fifty year extensions;

### **Findings and conclusions**

Permit no. 46319 authorized use of up to 30.0 cubic feet per second (cfs) of water from the Willamette River for municipal use. The March 27, 1974 permit application indicated that full development of the municipal system and application of the maximum rate was to be phased in over a period of time.

## Reasonable Diligence

Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension. ORS 537.260, OAR 690-320-0010(9). The most recent extension period for permit no. 46319 concluded on October 1, 1998.

On or prior to October 1, 1998, the following had occurred: the permit holder purchased a 31-acre tract of land as the site for a water treatment plant at a cost of \$2,100,000; established a pilot plant in 1992 for treatment process confirmation; adopted a water moratorium; issued a public facilities water strategy; initiated or participated in studies, reports, and monitoring relating to water needs, supply and conservation at a cost of \$650,000; and initiation of funding measures for an estimated additional \$35,000,000 (thirty-five million dollars) to complete the design and construction of the water treatment plant project.

Delay of full development of the water system and use of water was due, in part, because of citizen objection to the use of the Willamette as a water source. The permit holder explored alternative sources of water, including preliminary applications for temporary test wells in the Troutdale aquifer, which applications were met with staff resistance by both Clackamas and Marion Counties and ultimately denied by Clackamas County. Planning was further delayed by the prison siting process, commencing in 1996, for the new Women's Correctional Facility and Men/Women's Intake Center complex.

Permit no. 46319 was applied for as an alternative for water supply not possible through groundwater sources. Historically, the City of Wilsonville has relied on groundwater as its sole source for its municipal water supply. In the early 1970's, however, it became evident that groundwater supplies would not be adequate to meet the City's future water needs. Due to the designation of a limited groundwater area in and around the City of Wilsonville, the WRD informed the permit holder that Permit no. G10515 would be the last permit for the withdrawal of groundwater by the City for municipal use. One of the permit conditions stated: "The City of Wilsonville understands that reliance on ground water for a long-term water supply is unacceptable."

Furthermore, in conformance with a condition of Permit no. G10515, the permit holder submitted the first draft of its required Water Conservation Management Plan to the WRD on April 29, 1996. An extension was granted to allow the permit holder to address

WRD plan comments. A second draft of the plan was submitted September 1, 1998 and a final plan was submitted December 30, 1998. WRD issued its final order approving the plan on November 15, 1999.

Since issuance of Permit no. 46319, the population of Wilsonville has grown from 1230 in 1975 to approximately 13,000 in 2000. Wilsonville projects a population increase, on average, of 3.46 percent per year over the next fifty years. The economy has diversified since 1974 including an increase in commercial/industrial expansion and, this past year, the development of a new state prison. The permit holder is required to supply water to the new prison site by October 2001. However, continued residential, commercial, and industrial development within the City of Wilsonville has been restricted due to lack of an adequate long-term water supply.

The "Recommended Plan", as set forth in the permit holder's Division 86 Management and Conservation Plan, assumes a 5% growth rate with 20% conservation, shows the City's need for water in 2050 would be 20.5 mgd. Using the permit holder's Recommended Plan of a 5% growth rate with 20% conservation phased in over time, this scenario predicts maximum daily demand to be 15.3 mgd by 2020 and 20.5 mgd by 2050, or 19.4 mgd in approximately 2042. 19.4 mgd equals 30 cfs.

Further, since issuance of Permit no. 46319, several fish species have been placed on the federal and state sensitive, threatened, and endangered species lists. The permit holder's point of diversion is located in an area where both federal and state listed salmonid species are known to be present. In proceeding with development of the selected site, permits from the Division of State Lands and the Army Corps of Engineers are required. The permit holder has already been involved in a pre-application meeting with the federal and state agencies involved and most recently filed the necessary permit applications.

Additionally, the City of Wilsonville has been involved in water conservation activities every summer since 1992, many of which have been mandatory in nature. The City estimates that on peak days, conservation measures have reduced overall demand by 13 percent. It is the City's goal to achieve at least a 17 percent reduction with a recommended 20% conservation in peak demand by implementing an even more vigorous conservation program based on the City's comprehensive plan.

## **Duration of Extension**

The permit holder states in the request for extension that construction of the water development system and application of water to beneficial use can be completed by October 1, 2050. From the start, development of the system had been phased in over time because of the size and scope of the project. Multi-year extensions have consistently been requested by the permit holder. However, until the new permit extension rules went into effect on November 2, 1998, only five year extensions were generally allowed by the Department. The remaining work to be completed is to construct the water treatment facility and complete application of the water to beneficial use.

The permit holder stated in the application for extension that the size and scope of the project has extended the length of time needed to fully develop and perfect the permit. On February 4, 2000, the permit holder submitted graphs showing a 50-year estimate of water requirements from 2000 to 2050. The graph indicates a general upward trend in water requirements for the City of Wilsonville over the next 50 years.

Based on the information provided by the permit holder the Department has decided that the reasonable amount of time necessary to completely develop the permit would be 42 years, not 50 years as proposed in the PFO.

As stated above, the "Recommended Plan" assumes a 5% growth rate with 20% conservation which shows the City's need for water in 2050 would be 20.5 mgd. Using a 5% growth rate with 20% conservation phased in over time, the maximum daily demand would be 19.4 mgd in 2042-43, which equals 30 cfs, the rate under permit no. 46319.

## **CONDITIONS**

### **1. Groundwater**

The permittee **shall** submit a plan to the Department by October 1, 2001, for phasing out the City's reliance on its permitted and certificated groundwater sources. The plan shall allow use of groundwater sources for emergency and back-up use only.

2. Fish Screens

The permittee **shall** install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The required screens are to be in place, functional, and in compliance with state and federal law before diversion of any water.

3. Progress Reporting

The permit holder **shall** submit written progress reports to the Department by October 1, in the years 2003, 2008, 2013, 2018, 2023, 2028, 2033, and 2038. The report shall be received by the Department not sooner than 90 days prior to the due date. The permit holder's reports shall describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:

- a) The amount of construction completed under this permit;
- b) The amount of beneficial use of water being made under this permit, including the total volume of water used and the percent of the total allowable water use that this represents;
- c) A review of the permit holder's compliance with terms and conditions of the permit and extension orders; and
- d) Financial investments made toward developing the beneficial water use.

The Department will review the progress report to determine whether the permit holder is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and this order.

In determining whether the permit holder has been diligent, the Department will consider any information submitted to the Department by the permit holder and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the permit holder has not been diligent toward completing the project, and if the Director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

### Ultimate Findings

- **The permit holder is entitled to an extension of time under ORS 537.230.**
- **The permit holder is entitled to an extension of time for the reasonable amount of time necessary for perfecting the permit under OAR 690-320-0010 through 0070.**
- **The permit holder has submitted a complete extension application and fee.**
- **Completion of the project can be reasonably expected to occur within the requested extension period and has been limited to 42 years.**
- **The permit holder has demonstrated good cause for an extension and demonstrated good faith and due diligence in developing the water use.**


**The Proposed Final Order shall be modified and an extension of time shall be granted.**

### Order

This extension is approved pursuant to and subject to the provisions of OAR 690, Division 320, effective November 2, 1998.

The request to extend the time to complete construction and apply water to full beneficial use for permit no. 46319 is approved. The time to complete construction under permit no. 46319 is extended from October 1, 1998, to October 1, 2042 and the time for complete application of water to beneficial use under permit no. 46319 is extended from October 1, 1998, to October 1, 2042. The protest filed by WaterWater of Oregon and Oregon Trout is denied.

Dated this *31* day of May, 2000

  
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**Martha O. Pagel, Director**  
**Water Resources Department**

**Certificate of Service**

I hereby certify that on the 14<sup>th</sup> day of June 2000, I served the within Final Order Approving Permit Extension Request by placing in the United States Post Office at Salem, Oregon a full, true and correct copy thereof addressed to

**Michael A. Stone  
City Engineer  
City of Wilsonville  
30000 SW Town Center Loop E  
Wilsonville, OR 97070**

**Karen Russell  
WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204**

**Aubrey Russell  
Oregon Trout  
117 SW Naito Parkway  
Portland, OR 97204**

  
**Timmie Brandt**