

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-30624, Water Right Application S-39480,) PROPOSED FINAL ORDER
in the name of the City of Waldport)

Permit Information

Application File S-39480/ Permit S-30624

Basin 18 – Mid Coast Basin / Watermaster District 1

Date of Priority: February 4, 1964

Authorized Use of Water

Source of Water: Southworth Creek, a Tributary of the Alsea River

Purpose or Use: Municipal Use

Maximum Rate: 1.5 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-30624, water right Application S-39480.

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)]

9. On April 14, 2003, 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)]

10. Permit S-30624 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

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.

11. The remaining work to be accomplished under Permit S-30624 includes land acquisition, construction of a Southworth Creek pump station, water treatment plant, and treated water reservoir; expanding an existing plant filter; making improvements to the raw water system; adding, replacing and improving waterlines; and completing construction and applying water to full beneficial use.
12. As 2013, the permit holder has not diverted any of the 1.5 cfs of water authorized under Permit S-30624 for municipal purposes. There is an undeveloped portion of 1.5 cfs of water under Permit S-30624 as per OAR 690-315-0010(6)(g).
13. In addition to the 1.5 cfs of water authorized under Permit S-30624 the City holds the following municipal use water right certificates and permits:
 - Certificate 6335 for 0.5 cfs of water from the Red River;
 - Certificate 88452 for 0.5 cfs of water from the Weist Creek and Eckman Creek;
 - Certificate 88453 for 0.23 cfs of water from the North Fork Weist Creek and Eckman Creek;
 - Certificate 88507 for 0.74 cfs of water from the Eckman Creek (partial perfection of Permit S-18654);

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(1)(d).

- Permit 18654, modified by Permit Amendment T-8834 for 1.26 cfs of water from the Eckman Creek;
 - Permit S-23587, modified by Permit Amendment T-8834 for 2.0 cfs of water from the Eckman Creek;
14. The City's surface water rights total 6.73 cfs from four different sources of water. The city does not currently use water from the Red River. Water supplies from Weist Creek and Northfork Weist Creek are limited in the summer months, and therefore are typically relied on to meet current demands only in the wintertime. When Weist Creek impoundments are insufficient to meet the City's needs, water from Eckman Creek authorized under Certificate 88507 is used to meet current demands
 15. The City does not currently hold any groundwater rights. According the City's current WMCP, information regarding the yield of existing wells within several miles of the City indicates that groundwater is not a viable source form meeting the City's municipal water needs.
 16. The City has a Mutual Aid Agreement with Southwest Lincoln County Water District (SLCWD) to serve the unincorporated area of the City in times of emergency and drought, and for sharing water through a single pipeline intertie during times of surplus. In addition, the following water providers currently share connection for regional emergency water distribution: the Cities of Yachats, Waldport, and Toledo; and SLCWD and Seal Rock Water District.
 17. According to the City, in 2000, the population within the service boundary of City of Waldport was 2,050. The City estimates the population will increase at an approximate growth rate of 1 percent per year, reaching an estimated population of 3,088 by the year 2052.
 18. The City has 1,075 single-dwelling residential connections and 242 multifamily residential connections, which combined constitute approximately 90% of all service connections. The remaining consumption is by commercial, institutional and public water users.
 19. The City's peak water demand within its service area boundaries is 0.74 cfs.
 20. The City's peak day demand is projected to be approximately 1.5 cfs of water by the year 2052.
 21. According the City, there are an estimated 1,821 acres within the current Urban Growth Boundary (UGB) divided into five use classifications: residential lands, commercial lands, public facilities, industrial lands and marine lands. Based on the history of water services added by category (single-dwelling, multifamily, and commercial, institutional and public users), the City anticipates appropriate lands being available to accommodate the growth needed to reach it's projected future water demand within the next 52 years. (See Revisions to Extension Application, FIGURE 5.1.1, dated August14, 2013.)

22. Full development of Permit S-30624 is needed to address the present and future water demand of City of Waldport, including system redundancy and emergency regional use.
23. In accordance with OAR 690-315-0080(1)(d) and as described in Finding 21, above, the City demonstrated that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the water user.
24. The City's request for an extension of time until October 1, 2052, to complete construction and to apply water to full beneficial use under the terms of Permit S-30624 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.

25. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
26. During the last extension period, being October 1, 1995 to October 1, 2000, the City accomplished the following:
 - Completed improvements to downtown waterlines; and
 - Installed computer meter boxes.
27. Since October 1, 2000, the City has accomplished the following:
 - Continued installation of computer meter boxes;
 - Completed improvements to the Salmon, Rose and Michael Street waterlines;
 - Installed the Willow waterline;
 - Surveyed the Southworth POD;
 - Acquired an easement for the Southworth POD;
 - Acquired engineering services and water rights consultation for the permit extension; and
 - Submitted a WMCP to the Department.

28. According to the City, as of 2013, they have invested approximately \$690,782, which is approximately 8 percent of the total projected cost for complete development of this project. The City estimates an \$8,003,500 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 S-30624, other costs included in this accounting are not partitioned out for S-30624 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.
29. Since the issuance of Permit S-30624 on January 5, 1966, the City has not diverted any of the 1.5 cfs allowed for beneficial municipal purposes under the terms of this permit.
30. 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)]

31. According to the City, as of 2013, they have invested approximately \$690,782, which is approximately 8 percent of the total projected cost for complete development of this project. The City estimates an \$8,003,500 investment is needed for the completion of this project.

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

32. As described in Findings 12 through 22 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-30624
33. The City estimates an annual population growth rate of about 1 percent per year over a 52 year period, being the years 2000 to 2052.
34. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and regional emergency water supply, there is a market and present demand for the water to be supplied under Permit S-30624.
35. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water under Permit S-30624 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 water under this extended permit. 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)]**

36. 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)]

37. 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)]

38. Delay of development under Permit S-30624 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.

39. The pending municipal Application for Extension of Time for Permit S-30624 was delivered to ODFW on August 3, 2012, for ODFW's review under OAR-690-315-0080.
40. Notification that the pending municipal Application for Extension of Time for Permit S-30624 was delivered to ODFW for review was sent to the City on August 3, 2012.
41. Notification that the pending municipal Application for Extension of Time for Permit S-30624 was delivered to ODFW for review was published in the Department's Public Notice dated August 7, 2012. No public comments were received regarding this notice.
42. On January 22, 2013, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-30624.
43. Summary and Excerpts of Advice from ODFW:

Use of water under the portion of this permit that is undeveloped as of the date of the extension final order should be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the reach from the mouth of Southworth Creek to the point of diversion on Southworth Creek would be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.

ODFW recognizes that long term climatic variations will affect the amount of water in the system. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. The long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.

44. Department's Findings Based on Review of ODFW's Advice:

There is an undeveloped portion of 1.5 cfs of water under Permit S-30624 per OAR 690-315-0010(6)(g). Authorization to use any water under this permit can only be granted through the Department's review and approval of the municipal water user's future WMCPs (OAR 690-086).

The proposed condition in this extension of time is based on the following findings:

- a. ODFW's advice recognized that the use of the undeveloped portion of the permit would likely represent most or all of the natural streamflow during the summer months, and about 10% of the natural flow during the winter months.
 - b. The key issue to maintaining the persistence of fish persistence when diverting the undeveloped portion of the permit is having sufficient flows between the mouth of Southworth Creek and the POD in order to allow unimpeded movement of fish upstream to spawning and rearing habitat located above the POD.
 - c. Diversion of up to 1.5 cfs from May 1 to October 15 could adversely affect juvenile fish passage between the mouth of Southworth Creek and the POD.
 - d. Passage of adult salmon and steelhead migrating upstream past the POD is a concern from October 15 to April 30.
 - e. The City of Waldport shall work with ODFW to determine the amount of flow necessary to ensure fish passage, and must provide OWRD with an executed agreement between ODFW and the City which sets out specific passage requirements that ensure adequate upstream and downstream passage for fish when diverting up to 1.5 cfs under Permit S-30624.
45. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-30624 will not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, and as a result of the use of the undeveloped portion of the permit, stream flows would be a limiting factor for the listed fish species.
46. Based on ODFW's advice, the Department proposes to require condition to maintain, in the portions of the waterways affected by water use under Permit S-30624, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. (See Item 2 of the "Conditions" section of this PFO.)⁵

⁵ The Department, based on advice from the ODFW, has determined that the conditions contained in this PFO are appropriate for this extension. In other municipal extensions that require conditions to maintain the persistence of listed species, different conditions may be warranted depending on the advice received from ODFW and communications with the particular extension applicant.

47. On October 4, 2013, ODFW notified the Department that the proposed “Conditions to Maintain the Persistence of Listed Fish” for Permit S-30624 are consistent with their advice.
48. On October 4, 2013, the Department notified the City as per OAR 690-315-0080(2)(f) of ODFW’s written advice and the “Conditions to Maintain the Persistence of Listed Fish” proposed in this PFO for the pending municipal Application for Extension of Time for Permit S-30624.

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. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2052⁶. The estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder pursuant to OAR 690-315-0080(1)(d).
6. 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 complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As required by OAR 690-315-0090(3) and as described in Finding 35, above, and specified under Item 2 of the “Conditions” section of this PFO, the diversion of any water beyond under Permit S-30624 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit.

8. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 39 through 48, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use of the undeveloped portion under this municipal use permit, in the absence of special conditions. Therefore, the diversion of any water under Permit S-30624 will be subject to the conditions specified under Item 2 of 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 complete construction under Permit S-30624 from October 1, 2000 to October 1, 2052.

Extend the time to apply the water to beneficial use under Permit S-30624 from October 1, 2000 to October 1, 2052.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water under Permit S-30624 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 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 S-30624 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, on file with 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. Condition to Maintain the Persistence of Listed Fish

Prior to diversion of any water under Permit S-30624 from Southworth Creek, the City of Waldport shall work with ODFW to determine the amount of flow necessary to ensure fish passage from the mouth of Southworth Creek to above the point of diversion on Southworth Creek, and must provide OWRD with an executed agreement between ODFW and the City which sets out specific passage requirements

that ensure adequate upstream and downstream passage for fish when diverting up to 1.5 cfs under Permit S-30624.

DATED: October 8, 2013


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.*

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) 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 **November 22, 2013**, 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;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

If you have any questions about statements contained in this document, please contact Ann L. Reece at 503-986-0834.

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
