

**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-53898, Water Right Application S-84029,) PROPOSED FINAL ORDER
in the name of the City of Talent)

Permit Information

Application File S-84029/ Permit S-53898

Basin 15 – Rogue Basin / Watermaster District 13

Date of Priority: December 28, 1998

Authorized Use of Water

Source of Water: Lost Creek Reservoir, a Tributary of Rogue River
Purpose or Use: Municipal Use
Maximum Rate: 1292.0 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 S-53898, water right Application S-84029. A copy of Permit S-53898 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2007 to October 1, 2065.
- Grant an extension of time to apply water to full beneficial use from October 1, 2007 to October 1, 2065.
- 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 Talent

MWC – Medford Water Commission

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

UBG – Urban Growth Boundary

WMCP – Water Management and Conservation Plan

Units of Measure

AF – acre-feet

cfs – cubic feet per second

gpm – gallons per minute

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 690-315-0090(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

Background

1. Permit S-53898 was granted by the Department on March 13, 2003. The permit authorizes the use of up to 1292.0 AF of water from the Lost Creek Reservoir, a tributary of the Rogue River, for municipal use. The period of use is restricted to May 1 through October 31. The permit specified that construction of the water development project was to be completed by October 1, 2007, and that complete application of water was to be made on or before October 1, 2007.
2. On June 11, 2011, City of Talent (City) submitted an "Application for Extension of Time" 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-53898 be extended from October 1, 2007 to October 1, 2065. This is the first extension of time request for Permit S-53898.
3. Notification of the City's Application for Extension of Time for Permit S-53898 was published in the Department's Public Notice dated July 19, 2011. No public comments were received regarding the extension application.

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)]

4. On June 11, 2011, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

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.

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

5. Permit S-53898 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.

6. The remaining work to be accomplished under Permit S-53898 consists of completing construction including constructing a new storage reservoir and delivery pipes; and applying water to full beneficial use.
7. As of October 1, 2007, the permit holder had diverted 533.0 AF of the 1292.0 AF of water authorized under Permit S-53898 for municipal purposes.
8. In addition to the 1292.0 AF of water authorized under Permit S-53898, the City holds the following municipal use water right ground water certificates, ground water registrations, and surface water permit:
 - Certificate 26383 for 0.09 cfs of water from Well #3;
 - Certificate 26384 for 0.17 cfs of water from Well #4;
 - Ground Water Registration GR 620 for 125 gpm of water from the #1 Pump Well;
 - Ground Water Registration GR 621 for 250 gpm of water from the #2 Pump Well; and
 - Permit S-36144 for 1.0 cfs of water from Wagner Creek.

The City does not currently use any of its ground water rights or water from Wagner Creek to meet its current demands. These water rights were used under an old water system that is no longer being utilized. The City no longer owns the property where the wells are sited (2011 WMCP, page 6).

9. The City has a water storage agreement with the United States for water storage space in Lost Creek Reservoir for up to 1,292 AF of water.
10. The City relies on water from Lost Creek Reservoir under Permit S-53898 to meet its current demand during the months of May through September. The Lost Creek Reservoir water is treated at Medford Water Commission's (MWC) Duff Water Treatment Plant and transported to the City's water system through the "TAP" line under an Agreement between the City and WMC. Under the same Agreement, the City

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

purchases water (other sources) from WMC to meet its current demand during the months October through April. (2011 WMCP, page 6.)

11. Nearly 94% of the City's service connections are residential with a limited number of commercial or industrial connections. There are only a few service connections outside of the UGB. The UGB covers an area of approximately 1,120 acres.
12. According to the City, in 2010, the population within the service boundary of City of Talent was 6,670. The City estimates the population will increase at a growth rate of 0.8 percent per year, reaching an estimated population of 11,404 by the year 2065.
13. The City's peak water demand within its service area boundaries was 484.0 AF in 2010.
14. The City's peak day demand May through October is projected to be approximately 1300.0 AF of water by the year 2065. According to the City, projections of water demand to the year 2065 took into account the amount and types of land and uses proposed to be served by the City in the future.
15. Full development of Permit S-53898 is needed to address the present and future water demand of City of Talent from May through October.
16. In accordance with OAR 690-315-0080(1)(d) and as described by Finding 14, the City asserts that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the water user.
17. The City's request for an extension of time until October 1, 2065, to complete construction and to apply water to full beneficial use under the terms of Permit S-53898 is both reasonable and necessary.

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

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.

18. Prior to the issuance of Permit S-53898 on March 13, 2003, the City decommissioned the City's treatment plant and connected the City's water system to a regional supply. They also installed a City pump station at the public works yard, installed a 1 MG storage reservoir (Belmont), and installed a water meter at the City pump station to record

water use.

19. Work was accomplished during the original permit development time frame as follows:
 - An additional pump station (Rapp-Wagner) was installed;
 - A Water Master Plan was completed; and
 - 4000 feet of waterline was replaced.
20. Since October 1, 2007, the City completed a WMCP and new fish screens approved by ODFW were installed.
21. According to the City, as of June 11, 2011, they have invested approximately \$3,107,000, which is about 44 percent of the total projected cost for complete development of this project. The City estimates a \$4,000,000 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 S-53898, other costs included in this accounting are not partitioned out for S-53898 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.
22. As of October 1, 2007, the City had diverted 533.0 AF of the 1292.0 AF allowed for beneficial municipal purposes under the terms of this permit.
23. 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)]

24. According to the City, as of June 11, 2011, they have invested approximately \$3,107,000, which is about 44 percent of the total projected cost for complete development of this project. The City estimates a \$4,000,000 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).

25. 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)].

- a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-53898; 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 source of water under this permit is Lost Creek Reservoir, which is released into the Rogue River to the point of diversion (POD) for Permit S-53898, also located on the Rogue River. The Rogue River is located within a Withdrawn Area and is located above the Rogue Scenic Waterway. The POD 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 Rogue River 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)].

26. According to the City, as of June 11, 2011, they have invested \$3,107,000, which is approximately 44 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$4,000,000 investment is needed for the completion of this project.

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

27. 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)].

28. As described in Findings 7 through 16 the City has indicated, and the Department finds that City of Talent must rely on full development of Permit S- 53898 to meet its present and future water demands.
29. The City estimates an annual population growth rate of 0.8 percent per year a 55 year period, being (year) to 2065.
30. Given the current water supply situation of City of Talent, as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit S-53898.
31. OAR 690-315-0090(3) requires the Department to place a condition on this extension of

time to provide that diversion of water beyond 533.0 AF under Permit S-53898 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.

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

32. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit S-53898.

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

33. 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)]

34. Delay of development under Permit S-53898 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.

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), water under Permit S-53898 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2065⁶. 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).

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 complete construction and 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 31, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 533.0 AF under Permit S-53898 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).

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-53898 from October 1, 2007 to October 1, 2065.

Extend the time to apply the water to beneficial use under Permit S-53898 from October 1, 2007 to October 1, 2065.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water beyond 533.0 AF under Permit S-53898 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 S-53898 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.

DATED: June 24, 2014


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 **August 8, 2014**, 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
