

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 G-13444, modified by Permit Amendment T-9241)
Water Right Application G-13552,)
in the name of City of LaPine) **PROPOSED FINAL ORDER**

Permit Information

Application File: G-13552
Permit: G-13444, modified by Permit Amendment T-9241
Basin: 5 – Deschutes Basin / Watermaster District 11
Date of Priority: November 8, 1993
Source of Water: Two wells within the Long Prairie Slough Basin
Purpose or Use: Quasi-Municipal
Maximum Rate: 2.23 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 may contain additional conditions not included in the original permit****

This Proposed Final Order applies only to Permit G-13444, modified by Permit Amendment T-9241, water right Application G-13552. A copy of Permit G-13444, modified by Permit Amendment T-9241, is enclosed as Attachment 1.

In Summary, the Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2012, to October 1, 2022¹.
- Make the extension of time subject to certain conditions as set forth below.

¹ Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan
cfs – cubic feet per second
gpm – gallons per minute

AUTHORITY

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

ORS 537.630(1) 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 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) requires the Department, under specific circumstances, to condition an extension of time for 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

Background

1. Permit G-13444 was granted by the Department on August 12, 1998. The permit authorized the use of up to 2.23 cfs of water from one well in the Long Prairie Slough Basin for quasi-municipal use. The permit specified actual construction of the original

well was to begin by August 12, 1999, and complete application of water was to be made on or before October 1, 2002.

2. On March 7, 2008, the Department approved Permit Amendment T-9241 (Special Order Volume 74, Page 324) authorizing changes in the point of appropriation to two new wells and the place of use under Permit G-13444.
3. One prior permit extension has been granted for Permit G-13444, modified by Permit Amendment T-9241. The most recent extension request resulted in the completion date for full application of water being extended to October 1, 2012.
4. The permit holder submitted an "Application for Extension of Time" to the Department on September 10, 2012, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13444, modified by Permit Amendment T-9241 (hereafter referred to simply as Permit G-13444) be extended from October 1, 2012, to October 1, 2022.
5. Notification of the Application for Extension of Time for Permit G-13444 was published in the Department's Public Notice dated September 18, 2012. No public comments were received regarding the extension application.

Review Criteria for 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 537.230², 537.630³ and/or 539.010(5)⁴

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

6. On September 10, 2012, the Department received an Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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

7. Actual construction of the well began prior to the August 12, 1999 deadline specified in the permit. The original well (DESC 9767) was drilled in 1994.

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 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.

8. The remaining work to be accomplished under Permit G-13444 consists of expanding the water system to serve the "Cagle Area" at a projected cost of \$8,300,000, receiving

² ORS 537.230 applies to surface water permits only.

³ ORS 537.630 applies to ground water permits only.

⁴ ORS 537.010(5) applies to surface water and ground water permits.

Department approval of a Water Management and Conservation Plan, and applying water to full beneficial use.

9. As of September 10, 2012, the permit holder had appropriated 1.52 cfs of the 2.23 cfs of water authorized under Permit G-13444 for quasi-municipal purposes.
10. Permit G-13444 is City of LaPine's only water right which allows up to 2.23 cfs of ground water. City of LaPine has not yet made beneficial use of 0.71 cfs of water under Permit G-13444. City of LaPine has one pending water right application, G-17422, for an additional 1.4 cfs and 1013.0 acre-feet.
11. City of LaPine's peak water demand within its service area boundaries was 1.5 cfs in 2012.
12. According to the City of LaPine, the population in 2012 within the service boundary of City of LaPine was 1030 people. City of LaPine estimates the population to increase at an estimated growth rate of 3 percent per year, reaching an estimated population of 2,320 people by the year 2022.
13. According to the City of LaPine, the peak hourly demand is projected to be approximately 2.83 cfs of water by the year 2022.
14. Full development of Permit G-13444 is needed to meet the present and future water demands of City of LaPine.
15. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2022, to accomplish the application of water to beneficial use under the terms of Permit G-13444, is both reasonable and necessary.

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

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 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.

16. Actual construction of the well and water system began prior to the August 12, 1999, deadline specified in the permit.
17. Work was accomplished during the original development time frame under Permit G-13444.

18. During the most recent extension period under Permit G-13444, being from October 1, 2008, to October 1, 2012, the permit holder finalized a Water System Capital Facilities Plan in 2009 and submitted to the Department a Water Management and Conservation Plan in 2012.
19. As of September 10, 2012, the permit holder has invested \$4,997,400, which is 37.5 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$8,307,900 investment is needed for the completion of this project.
20. As of October 1, 2012, 1.52 cfs of the 2.23 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
21. The Department has considered the permit holder's compliance with conditions, and has not identified any concerns.

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

22. As of September 10, 2012, the permit holder has invested \$4,997,400, which is 37.5 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$8,307,900 investment is needed for the completion of this project.

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

23. As described in Findings 8 through 14 above, City of LaPine has indicated, and the Department finds, that City of LaPine currently must rely exclusively on its groundwater permit within the Long Prairie Slough Basin.
24. City of LaPine projects a population increase of 3 percent per year over a 10 year period, being the years 2012 to 2022, and expects additional commercial and industrial growth.
25. Given the current water supply situation of City of LaPine, as well as current and expected demands there is a market and present demand for the water to be supplied under Permit G-13444.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 1.52 cfs under Permit G-13444 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 appropriation of water under this 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)]

27. The City of LaPine expects to obtain a fair and reasonable return on investment by

continuing development of Permit G-13444, amended by Transfer 9241.

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

28. 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)(a)]

29. The delay of development under Permit G-13444 was due, in part, to the size and scope of the project and the City waiting until the LaPine Water District was absorbed into the City of LaPine (incorporated in 2006) for needed financing to provide water service to all residents of the City.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant 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. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Full application of water to beneficial use can be completed by October 1, 2022, 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 permit holder 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).
7. 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 appropriation of water beyond 1.52 cfs under Permit G-13444 shall only be authorized upon issuance of a final order approving a WMCP under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation 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 apply the water to beneficial use under Permit G-13444, modified by Permit Amendment T-9241, from October 1, 2012, to October 1, 2022.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Appropriation of any water beyond 1.52 cfs under Permit G-13444, modified by Permit Amendment T-9241, shall only be authorized upon issuance of a final order approving a WMCP under OAR Chapter 690, Division 86 that grants 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. Use of water under Permit G-13444, modified by Permit Amendment T-9241, must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 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 this 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

