

**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-15295, Water Right Application G-15135,) PROPOSED FINAL ORDER
in the name of the City of Scappoose)

Permit Information

Application File G-15135/ Permit G-15295

Basin 2 – Willamette Basin / Watermaster District 18

Date of Priority: March 10, 2000

Authorized Use of Water

Source of Water: One Well within the Scappoose Creek Basin
Purpose or Use: Municipal
Maximum Rate: 0.557 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 G-15295, water right Application G-15135.

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, 2007 to October 1, 2050.
- 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 Scappoose

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second

AUTHORITY

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

ORS 537.630(2) 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.

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

Background

1. Permit G-15295 was granted by the Department on December 20, 2002. The permit authorizes the use of up to 0.557 cfs of water from one well (COLU 100) within the Scappoose Creek Basin, for municipal use. It specified that complete application of water was to be made on or before October 1, 2007.
2. The permit holder, the City of Scappoose (City), submitted an "Application for Extension of Time" to the Department on April 11, 2012, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15295 be extended from October 1, 2007 to October 1, 2050. This is the first extension of time request for Permit G-15295.
3. Notification of the City's Application for Extension of Time for Permit G-15295 was published in the Department's Public Notice dated April 24, 2012. No public comments were received regarding the extension application.
4. On May 13, 2012, and October 10, 2014, the permit holder submitted additional information to supplement their Application for Extension of Time.

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)]

5. On April 11, 2012, the Department received a completed 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)]

6. A date by which actual construction was to begin is not specified in Permit G-15295.

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.

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.

7. The remaining work to be accomplished under Permit G-15295 consists applying to the Department for a permit amended to add additional point(s) of appropriation, constructing additional well(s) and associated installations, and applying water to full beneficial use.

8. As of October 1, 2007, the permit holder had not appropriated any of the 0.557 cfs of water authorized under Permit G-15295 for municipal purposes. There is an undeveloped portion of 0.557 cfs of water under Permit G-15295 as per OAR 690-315-0010(6)(g).

9. In addition to the 0.557 cfs of water from Dutch Canyon Well (COLU 100) authorized under Permit G-15295, the City holds the following municipal water rights:

- Permit G-8615 for 0.89 cfs of water from Dutch Canyon Well (COLU 100);
- Permit G-15491 for 2.9 cfs of water, being 2.23 from Miller Road Well 1 (COLU 52428) and 0.67 cfs from Miller Road Well 2 (COLU 51685);
- Certificate 5573 for 10.0 CFS of water from Gourlay Creek, tributary to Scapposse Creek;
- Certificate 42700 for 4.0 cfs of water, being 1.5 cfs from Lazy Creek and 2.5 cfs from South Fork Scappoose Creek, both tributary to Scappoose Creek;

These water rights and permits total 18.347 cfs of water, being 4.347 cfs of ground water and 14.0 cfs of live flow (surface) water.

10. The City also holds a Groundwater Registration GR-926 for 50 gpm (0.11) of water from a Pump Well and Limited License LL-1404 for 500 gpm (1.11 cfs) from Miller Road Well 3 (COLU 52612) for use of water through November 15, 2015. The well authorized under GR-926 no longer exists.

11. The City utilizes both surface water and ground water sources to meet current water demands. Water from its surface water sources and water from the Dutch Canyon well are diverted to the Keys Road Water Treatment Plant. The Miller Road ground water sources are treated at the Miller Road Water Treatment Plant. Use of the City's surface water rights are restricted to 3.1 cfs due to facility limitations, and to as low as 0.55 cfs during peak season due to seasonal lack of water availability during the summer months. The Dutch Canyon Well currently has a maximum production capacity of 0.73 cfs due to stresses on the well, and the Miller Road Wells currently produce up to 1.0 cfs of water. Thus the City has 4.85 cfs of production capacity in the winter months, but only 2.29 cfs in the summer months. (November 2012 WMCP, p. 14.)

12. According to the City, their peak water demand within its service area boundaries was 2.46 cfs in 2009.
13. According to the City, in 2009, the population within the service boundary of the City of Scappoose was 6,204. The City of Scappoose estimates the population will increase at growth rate of 1.8 percent per year, reaching an estimated population of 13,598 by the year 2050.
14. According to the City, their peak day demand is projected to be approximately 5.3 cfs of water by the year 2050.
15. Full development of Permit G-15295 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
16. The City's request for an extension of time until October 1, 2050, to apply water to full beneficial use under the terms and conditions of Permit G-15295 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-15295 on December 20, 2002, the City constructed Dutch Canyon Well (COLU 100).
18. During the original development time frame under Permit G-15295 the City installed a water meter and submitted water use reports.
19. Since October 1, 2007 the City has submitted a Water Management and Conservation Plan (WMCP) to the Department.
20. According to the City, as of April 11, 2012, they have invested approximately \$30,000 which is about 5 percent of the total projected cost for complete development of this project. The City anticipates \$600,000 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-15295, other costs included in this

accounting are not partitioned out for G-15295 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.

21. As of October 1, 2007, none of the 0.557 cfs allowed has been appropriated from the Dutch Canyon Well for beneficial municipal purposes under the terms of this permit.
22. The Department has considered the City's compliance with conditions and did not identify any concerns.

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

23. According to the City, as of April 11, 2012, they have invested approximately \$30,000, which the total projected cost for complete development of this project. The City anticipates \$600,000 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).

24. 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 G-15295; 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 point of appropriation for Permit G-15295 is not located within a limited or critical ground water area. The point of appropriation for Permit G-15295, located within the Jackson Creek Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is 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 point of

appropriation is not in an area 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)].

25. According to the City, as of April 11, 2012, they have invested approximately \$30,000 which is about 5 percent of the total projected cost for complete development of this project. The City anticipates \$600,000 needed for the completion of this project.

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

26. 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)].

27. As described in Findings 8 through 15 the City of Scappoose has indicated, and the Department finds that the City must rely on full development of Permit G- 15295 to meet its present and future water demands.
28. City of Scappoose projects a population increase of 1.8 percent per year over the next forty-one years.
29. Given the current water supply situation of the City as well as current and expected demands, and the need for redundancy in water sources, there is a market and present demand for the water to be supplied under Permit G-15295.
30. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of any water under Permit G-15295 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)]

31. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

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

32. 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)]

33. Delay of development under Permit G-15295 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, and due to low productivity of the Dutch Canyon Well. The City intends to apply to the Department for a permit amendment to add additional point(s) of appropriation in order to increase the amount of water that can be appropriated under this permit.

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. 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, 2050⁴ 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 apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

⁴ Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use.

7. As required by OAR 690-315-0090(3) and as described in Finding 30, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of any water under Permit G-15295 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).

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-15295 from October 1, 2007 to October 1, 2050.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Appropriation of any water up to 0.557 cfs under Permit G-15295 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-15295 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 the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: October 21, 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 **December 5, 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.

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- If you have any questions about statements contained in this document, please contact Ann 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
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