

**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-294, Water Right Application G-33,) PROPOSED FINAL ORDER
in the name of Chenoweth Water Peoples Utility District)

Permit Information

Application File G-33/ Permit G-294, modified by Permit Amendment T-8495

Basin 4 – Hood Basin / Watermaster District 3

Date of Priority: April 23, 1954

Authorized Use of Water

Source of Water: Wells 2, 3, and 4 within the Columbia River Basin
Purpose or Use: Municipal
Maximum Rate: 4.0 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-294, modified by Transfer T-8495, water right Application G-33.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2001 to October 1, 2051.
- Grant an extension of time to apply water to full beneficial use from October 1, 2001 to October 1, 2051.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

District – Chenoweth Water Peoples Utility District

PFO – Proposed Final Order

UGB – Urban Growth Boundary

WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second

gpm – gallons per minute

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. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

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-294 was granted by the Department on August 24, 1956. The permit authorized the use of up to 4.0 cfs of water from Wells 1, 2 and 3 within the Columbia River Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1957, and that complete application of water was to be made on or before October 1, 1958.
2. On May 23, 2001, the Department approved Permit Amendment T-8495 (Special Order Volume 55, Page 493) authorizing a change in a point of appropriation under Permit G-294 from Well 1 to existing Well 4.
3. Fifteen prior permit extensions have been granted for Permit G-294, modified by Permit Amendment T-8495 (herein simply referred to as Permit G-294). The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2001.
4. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
5. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.

6. The permit holder, the Chenoweth Water Peoples Utility District (District), submitted an "Application for Extension of Time" to the Department on September 17, 2013, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-294 be extended from October 1, 2001 to October 1, 2051.
7. Notification of the District's Application for Extension of Time for Permit G-294 was published in the Department's Public Notice dated October 1, 2013. No public comments were received regarding the extension application.

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)]

8. On September 17, 2013, 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)]

9. Permit G-294 was issued prior to June 29, 2005; therefore, the applicant 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),(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.

10. The remaining work to be accomplished under Permit G-294 consists of applying to the Department for a permit amendment to add two additional points of appropriation (Wells 5 & 6) as replacements to existing Well 5, completing construction of the water system including installing a pump, motor, controls and I&M filters on Well 6, upgrading the system pipe diameter, and upgrading old distribution lines; and applying water to full beneficial use.

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(3)(d).

11. As of October 1, 2001, the permit holder had appropriated 2.78 cfs of the 4.0 cfs of water authorized under Permit G-294 for municipal purposes. There is an undeveloped portion of 1.22 cfs of water under Permit G-294 as per OAR 690-315-0010(6)(g).
12. In addition to the 4.0 cfs of water authorized under Permit G-294 (Wells 2, 3, and 4), the District holds the following municipal ground water right from wells within the Columbia River Basin:
 - Transfer T-8494 for 3.83 cfs of water from Wells 3, 4, 5, and 6, further limited to a total quantity of 811.25 acre-feet during the irrigation season March 1 through October 31.

The District's two water rights total 7.83 cfs from March 1 through October 31, but only 4.0 cfs during the remainder of the year. Permit G-294 is the District's only water right for winter (non-irrigation season) water.

13. The District also holds the following un-adjudicated ground water registrations:
 - Ground Water Registration GR-1645, modified by T-10884, for 500 gpm of water from Wells 3, 4, 5, and 6; and
 - Ground Water Registration GR-1646, modified by T-10885 for 300 gpm of water from Wells 3, 4, 5, and 6.
14. According to the District, their peak water demand within its service area boundaries was 4.63 cfs in 2013 during the summer. Summer demand is met using 3.83 cfs of water from Wells 3 and 4 as authorized under Transfer T-8494, and 0.81 cfs as authorized under Permit G-294. During the winter months, the peak demand of 2.78 cfs is met using water from Well 3 or 4 as authorized under Permit G-294. Well 2 is currently off line. All of the District's wells pump into five reservoirs that deliver water based on demand.
15. The District provides municipal water to the Chenowith, Lower Chenowith, and Columbia Crest communities. These communities are located within the City of Dalles city limits and UGB, and within unincorporated areas of Wasco County.
16. According to the District, in 2013, the population within the service boundary of the Chenowith Water Peoples Utility District was 4,590. The District estimates the population will increase at an average growth rate of 1.2 percent per year, reaching an estimated population of 7,110 by the year 2051.
17. A Buildable Lands Inventory was conducted in 2010 to estimate the vacant and buildable lands within the District's boundaries. There are a variety of land uses that are

planned and zoned as commercial. Other properties are planned and zoned for a variety of residential uses. The purpose of the Buildable Lands Inventory is to ensure the District will be able to provide water service to all properties within its boundaries as needed by existing and future development. The District also anticipates increased future demands on their water supply if the City of the Dalles' proposed expansion of its UBG ultimately includes the area known as Hidden Valley. The District is uniquely positioned to serve this area.

18. According to the District, their peak (summer) day demand is projected to be approximately 7.3 cfs of water by the year 2051.
19. Full development of Permit G-294 is needed to address the present and future water demand of the District.
20. The District's request for an extension of time until October 1, 2051, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-294 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.

21. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-294.
22. During the last extension period, being October 1, 1996 to October 1, 2001, the District constructed Well 4 and received approval for Permit Amendment T-8495 which authorized replacing well 1 with Well 4, added approximately 365 new accounts, installed new mainlines and meters, and planned for future well development for future demand.
23. Since the 2001, the District has added approximately 110 new accounts, upgraded transmission lines to supply new accounts, upgraded new accounts with new meters and telemetry, drilled Well 6, and completed a draft WMCP (December 2011).

24. According to the District, as of September 17, 2013, they have invested approximately \$4,914,500, which is approximately 26 percent of the total projected cost for complete development of this project. The District estimates an additional \$14,155,000 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 G-294, other costs included in this accounting are not partitioned out for G-294 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the District, 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 District's water rights.
25. As of October 1, 2001, 2.78 cfs of the 4.0 cfs allowed has been appropriated from Wells 3 and 4 for beneficial municipal purposes under the terms of this permit.
26. The Department has considered the District'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)]

27. According to the District, as of September 17, 2013, they have invested approximately \$4,914,500, which is approximately 26 percent of the total projected cost for complete development of this project. The District estimates an additional \$14,155,000 investment is needed for the completion of this project.

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

28. As described in Findings 11 through 19 above, the District has indicated, and the Department finds that the District must rely on full development of their Permit G-294.
29. The District projects a population increase, on average, of 1.2 percent per year over a thirty-eight year period, being the years 2013 to 2051.
30. Given the current water supply situation of the District, including current and expected demands, there is a market and present demand for the water to be supplied under G-294.
31. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 2.78 cfs up to 4.0 cfs under Permit G-294 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)]

32. The District expects to obtain a fair and reasonable return on investment by continuing development of Permit G-294.

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 G-294 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 to a dramatic economic decline when a large aluminum smelting operation was terminated in 2001, and commercial and industrial growth being limited by the National Scenic Area and Endangered Species Act (ESA) issues in the local area.

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.

35. On October 9, 2013, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-294 does not have the potential for substantial interference with surface water.
36. Based upon the Department's determination described in Finding 35, the use of the undeveloped portion of Permit G-294 does not have the potential for substantial interference with surface water, and therefore the persistence of listed fish species will be maintained.

CONCLUSIONS OF LAW

1. The District 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 District 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, 2051⁵ 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 District 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 31, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 2.78 cfs up to 4.0 cfs under Permit G-294 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).
8. Use of water under this ground water Permit G-294 does not have the potential for substantial interference with surface water.

⁵ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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 G-294 from October 1, 2001 to October 1, 2051.

Extend the time to apply the water to beneficial use under Permit G-294 from October 1, 2001 to October 1, 2051.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Appropriation of any water beyond 2.78 cfs up to 4.0 cfs under Permit G-294 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-294 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: December 23, 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.

