

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
District – Boring Water District 24
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
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 690-315-0090(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-13882 was granted by the Department on March 7, 2001. The permit authorized the use of up to 6.04 cfs of water from two wells within the Johnson Creek Basin, for municipal use. It specified that complete application of water was to be made on or before October 1, 2005.

2. On March 14, 2005 the Department approved Permit Amendment T-9713 (Special Order Volume 63, Page 451) authorizing two additional points of appropriation under Permit G-13882 as (modified by Permit Amendment T-9713), from Compton Well and Lubrecht Well; the amended permit is hereafter referred to simply Permit G-13882
3. The permit holder, the Boring Water District 24 (District), submitted an "Application for Extension of Time" to the Department on February 17, 2015, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13882 be extended from October 1, 2005 to October 1, 2030. This is the first extension of time request for Permit G-13882.
4. Notification of the District's Application for Extension of Time for Permit G-13882 was published in the Department's Public Notice dated February 24, 2015. 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)]

5. On February 17, 2015, 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-13882.

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-13882 consists of construction of Lubrecht Well, adding additional wells through the permit amendment process, completing construction of the new wells and the water system and applying water to

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.

full beneficial use.

8. As of October 1, 2005, the permit holder had appropriated 1.73 cfs of the 6.04 cfs of water from Well 1 (282nd Well-CLAC 53334), Well 2 (Marx Well-CLAC 8570), and Compton Well (CLAC 62338) authorized under Permit G-13882 for municipal purposes.
9. In addition to the 6.04 cfs of water authorized under Permit G-13882, the District holds municipal use Permit G-15328, for 2.9 cfs of water from Well 3 (Telford Well-CLAC-59868), within the Johnson Creek Basin. The District's water rights total 8.94 cfs of water. The district pumps from the Marx, Telford, 282nd and Compton Wells to meet current demands.
10. According to the District, their peak water demand within its service area boundaries was 3.8 cfs in 2014.
11. According to the District, in 2014, the population within the service boundary of the Boring Water District 24 was 2,500. The Boring Water District 24 estimates the population will increase at growth rate of 3 percent per year, reaching an estimated population of 4,010 by the year 2030.
12. According to the District, their peak day demand is projected to be approximately 6.1 cfs of water by the year 2030.
13. Full development of Permit G-13882 is needed to address the present and future water demand of the District, including system redundancy and emergency use.
14. The District's request for an extension of time until October 1, 2030, apply water to full beneficial use under the terms and conditions of Permit G-13882 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.

15. Prior to the issuance of Permit G-13882 on March 7, 2001, the District constructed 282nd and Marx Wells.

16. Work was accomplished during the original development time frame under Permit G-13882. The District installed water meters, submitted water use reports and static water level measurements to the Department, and received Departmental approval on its 2003 Water Management and Conservation Plan (WMCP). The District received approval for Permit Amendment to add two wells.
17. Since 2005, the District constructed Compton Well and had it deepened, and submitted an updated WMCP to the Department.
18. According to the District, as of February 17, 2015, they have invested approximately \$81,228, which is approximately 8.3 percent of the total projected cost for complete development of this project. The District estimates an additional \$900,000 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-13882, other costs included in this accounting are not partitioned out for G-13882 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.
19. As of October 1, 2005, 1.73 cfs of the 6.04 cfs allowed has been appropriated from 282nd and Marx Wells for beneficial municipal purposes under the terms of this permit.
20. 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)]

21. According to the District, as of February 17, 2015, they have invested approximately \$81,228, which is 8.3 percent of the total projected cost for complete development of this project. The District estimates an additional \$900,000 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).

22. 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-13882; 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 points of appropriation for Permit G-13882 are located within the Sandy-Boring Limited Ground Water Area. The points of appropriation for Permit G-13882, located within the Johnson Creek Basin, are located above the Clackamas Scenic Waterway. The points of appropriation are within areas ranked highest for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are 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 points of appropriation are 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)].

23. According to the District, as of February 17, 2015, they have invested \$81,228, which is 8.3 percent of the total projected cost for complete development of this project. The District estimates an additional \$900,000 investment is needed for the completion of this project.

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

24. 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)].

25. As described in Findings 9 through 13 the Boring Water District 24 has indicated, and the Department finds that the District must rely on full development of Permit G- 13882 to meet its present and future water demands.
26. Boring Water District 24 projects a population increase of 3 percent per year over the next 16 years.

27. Given the current water supply situation of the District as well as current and expected

Proposed Final Order: Permit G-13882(modified by Permit Amendment T-9713)

demands, there is a market and present demand for the water to be supplied under Permit G-13882.

28. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 1.73 cfs up to 6.04 cfs under Permit G-13882 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)]

29. The District expects to obtain a fair and reasonable return on investment by continuing development of Permit G-13882.

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

30. 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)]

31. Delay of development under Permit G-13882 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 the limited pump and well capacity of the existing well, and to recent slow economic development.

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 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, 2030⁴ 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 apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As authorized in OAR 690-315-0050(5) and as described in Finding 28, above, the Department has established, as specified under Item 1 of the "Conditions" section of this PFO, a "Municipal Use Extension Condition" that applies to any use of water beyond 1.73 cfs under Permit G-13882.

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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."

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-13882 from October 1, 2005 to October 1, 2030.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Appropriation of any water beyond 1.73 cfs up to 6.04 cfs under Permit G-13882 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-13882 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: April 14, 2015


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 **May 29, 2015**, 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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active Duty service members have a right to stay these proceedings under federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.of.mil>

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- If you have any questions about statements contained in this document, please contact Machel A Bamberger at 503-986-0802.
 - 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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