

**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-15273, Water Right Application G-14300,        )        PROPOSED FINAL ORDER  
in the name of the City of St. Paul                                )

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**Permit Information**

**Application File G-14300/ Permit G-15273**

Basin 2 – Middle Willamette Basin / Watermaster District 16

Date of Priority: April 26, 1996

**Authorized Use of Water**

Source of Water:        A Well in the Mission Creek Basin  
Purpose or Use:         Municipal  
Maximum Rate:         1.25 Cubic Feet per Second (CFS)

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**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-15273, water right Application G-14300.

**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, 2059.
- 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 St. Paul

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

UGB – Urban Growth Boundary

### **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-15273 was issued by the Department on November 6, 2002. The permit authorizes the use of up to 1.25 cfs of water from a well within the Mission Creek Basin, for municipal use. It specified that that complete application of water was to be made on or before October 1, 2007.
2. The permit holder submitted an "Application for Extension of Time" to the Department on June 29, 2015, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15273 be extended from October 1, 2007 to October 1, 2059. This is the first extension of time request for Permit G-15273.
3. Notification of the City's Application for Extension of Time for Permit G-15273 was published in the Department's Public Notice dated July 7, 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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

4. On June 29, 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)]**

5. A date by which actual construction was to begin is not specified in Permit G-15273.

### **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.*

6. The remaining work to be accomplished under Permit G-15273 consists of receiving approval of a Permit Amendment to add an additional point of appropriation; constructing a new well with a seal depth needed to meet a permit condition for year

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

round use; connecting the new well to the water system; replacing or upgrading the water treatment system; adding new service connections to the water system; and applying water to full beneficial use.

7. As of October 1, 2007 or , the permit holder had appropriated 0.67 cfs of the 1.25 cfs of water authorized under Permit G-15273 for municipal purposes.

8. In addition to the 1.25 cfs of water authorized under Permit G-15273 (Well 2), the City municipal water holds Certificate 89444 for 0.24 cfs of water from Well 1 in the Mission Creek Basin for municipal use.

These water rights total 1.49 cfs of water. The City of St. Paul has not yet made use of 1.25 cfs of water, being 0.58 under Permit G-15273.

9. The City also holds an unadjudicated Groundwater Registration (GR-241) for 0.41 cfs of water from Well 2 for municipal use. Well 2 under this Groundwater Registration is the same Well 2 for Permit G-15273.

10. In 2013, the maximum sustainable yield of Well 2 declined to below 0.33 cfs likely due to sand pumping before the 2013 rodeo. As a result, the City now uses Well 1 as its primary source of supply from September to May, which has a maximum sustainable yield of approximately 0.22 cfs. This is not sufficient to meet peak demand, and the capacity of Well 1 declines to approximately 0.11 cfs when Well 2 is operating due to interference between the two wells. The City has completed two efforts to rehabilitate Well 2, resulting in maximum sustainable yield of 0.5 cfs. This loss of production capacity has resulted in the City having to curtail water use during the summer, especially in late June and early July surrounding the rodeo. Due to the expenses associated with rehabilitating Well 2 and other financial constraints, the City has not yet been able to drill additional well(s) that would enable the City to appropriate water at the maximum authorized rate.

11. According to the City, its peak water demand within its service area boundaries was 0.67 cfs in 2014. The City's ability to respond to peak demands during the St. Paul Rodeo is dependent on its well capacity. Once the City has access to additional water supply, it could potentially expand water service to new residences on lands currently zoned "Urban Transition." It is also possible that the City will expand the existing Urban Growth Boundary (UGB) since, as required, the UGB encompasses enough land to provide only a 20 year supply of land for the growth and development of the community.

12. According to the City, in 2014, the population within the service boundary of the City of St. Paul was 425. The City of St. Paul estimates the population will increase at growth rate of 1.4 percent per year, reaching an estimated population of 798 by the year 2059.

13. According to the City, their peak day demand is projected to be approximately 1.27 cfs of water by the year 2059.
14. The City's peak demands result from water demands during the annual St. Paul Rodeo, in which the maximum number of visitors to the Rodeo is unknown, because the event attracts a large number of people who do not purchase tickets. Increased full time resident population doesn't necessarily drive increases in the City's peak-day demands, but rather increased demand will come from increased attendance to the Rodeo and the associated increase in the use of the City's water service connections for temporary uses during the Rodeo (concessions, trailers, livestock, and recreational vehicles).
15. The loss of production capacity from Well 2 has resulted in the City having to curtail water use during the summer, prior to and after the Rodeo. The City's ability to respond to peak demands during the St. Paul Rodeo is dependent on its well capacity.
16. The City's UGB could be expanded to include vacant and low-density residential areas adjacent to the City, allowing for expansion of service to new commercial uses during the rodeo, as well as additional residential growth. There are no physical barriers that would prohibit St. Paul's expansion to lands adjacent to the current city limit.
17. Full development of Permit G-15273 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
18. The City's request for an extension of time until October 1, 2059, to apply water to full beneficial use under the terms and conditions of Permit G-15273 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.*

19. Prior to the issuance of Permit G-15273 on November 6, 2002, the City constructed the well. Well 2 (MARI 1213) began construction May 22, 1979 and was completed June 21, 1979.

20. During the original development time frame under Permit G-15273 the City installed a new electrical panel and motor, and received Department approval for a water level monitoring plan.
21. Since the October 1, 2007, the City has accomplished the following work:
  - Rehabilitation of Well 2 (MARI 1213), plugging the bottom of the well to fix a split in the well casing and prevent sand heaving; and
  - Installation of new pumping equipment and refurbished motor.
22. According to the City, as of June 29, 2015, it has invested approximately \$123,500, which is approximately 5.4 percent of the total projected cost for complete development of this project. The City estimates an additional \$2,140,000 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-15273, other costs included in this accounting are not partitioned out for G-15273 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.
23. According to the water user a maximum rate of 0.67 cfs of water has been appropriated from Well 2 (MARI 1213) for municipal purposes.
24. 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)]**

25. According to the City, as of June 29, 2015, they have invested approximately \$123,500, which is 5.4 percent of the total projected cost for complete development of this project. The City estimates an additional \$2,140,000 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).*

26. 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-15273; 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-15273 is not located within a limited or critical ground water area. The point of appropriation for Permit G-15273, located within the Mission Creek Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is within areas ranked low 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)].**

27. According to the City, as of June 29, 2015, they have invested \$123,500, which is 5.4 percent of the total projected cost for complete development of this project. The City estimates an additional \$2,140,000 investment is needed for the completion of this project.

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

28. 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)].**

29. As described in Findings 7 through 17 the City of St. Paul has indicated, and the Department finds that the City must rely on full development of Permit G- 15273 to meet its present and future water demands.
30. City of St. Paul projects a population increase of 1.4 percent per year over the next forty four years.
31. Given the current water supply situation of the City as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-15273.

32. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.67 cfs up to 1.25 cfs under Permit G-15273 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)]**

33. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-15273.

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

34. 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)]**

35. Delay of development under Permit G-15273 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. The City states the development of this permit has proven difficult due to the unanticipated decline in production from Well 2, combined with the City's limited finances, preventing the City from continuing development of Permit G-15273.

**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. Full application of water to beneficial use can be completed by October 1, 2059. 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).
5. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).



6. Full application of water to beneficial use can be completed by October 1, 2059<sup>4</sup> 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 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 30, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.67 cfs up to 1.25 cfs under Permit G-15273 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).

**Continued on the following page**

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<sup>4</sup> 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 apply the water to beneficial use under Permit G-15273 from October 1, 2007 to October 1, 2059.

Subject to the following conditions:

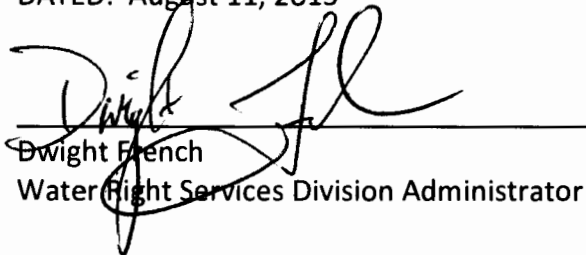
### CONDITIONS

**1. Development Limitations**

Appropriation of any water beyond 0.67 cfs up to 1.25 cfs under Permit G-15273 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-15273 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: August 11, 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 **September 25, 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 servicemembers have a right to stay these stay these proceedings under federal Servicemembers 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 Corey A Courchane at 503-986-0825.
  - 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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**Mailing List for Extension PFO Copies**

**PFO Date: August 11, 2015**

**Application G-14300  
Permit G-15273**

**Original mailed to Applicant:**

City of St. Paul  
Attn: Frank Sinclair  
PO Box 7  
St. Paul, OR 97137

**Copies sent to:**

1. WRD - App. File G- 14300/ Permit G-15273
2. GSI Water Solutions, Inc.  
Attn: Kenny Janssen  
55 SW Yamhill Street, Suite 300  
Portland, OR 97204

**Fee paid as specified under ORS 536.050 to receive copy:**

3. None

**Receiving electronic copy via e-mail (10 AM Tuesday of signature date)**

4. WRD - Watermaster District 16 – Joel Plahn
5. WRD – ***\*If WMCP needed*** - Lisa Jaramillo, Transfer and Conservation Services (TACS)  
*Done by*\_\_\_\_\_ *Date*\_\_\_\_\_

CASEWORKER: CAC

<p><b>Copies Mailed</b></p> <p><b>By:</b> _____ (SUPPORT STAFF)</p> <p><b>on:</b> _____ (DATE)</p>
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