

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit S-45455, Water Right) **PROPOSED FINAL ORDER**
Application S-60357)
(City of Beaverton))

Permit Information

Application File S-60357 / Permit S-45455

Basin 02 –Willamette Basin / Watermaster District 18

Date of Priority: July 15, 1980

Authorized Use of Water

Source of Water: Tualatin River

Purpose or Use: Municipal

Maximum Rate: 25.0 Cubic Feet per Second (cfs), during the period
beginning September 15 and ending July 31 of each year

**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.

This Proposed Final Order applies only to Permit S-45455, water right Application S-60357. A copy of Permit S-45455 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension to complete construction of the water system from October 1, 1998 to October 1, 2002; and
- grant the extension for complete application of water from October 1, 1998 to October 1, 2002; and

AUTHORITY

ORS 537.230(2) provides in pertinent part that the Water Resources Department may, for good cause shown, order and allow an extension to complete construction or perfect a water right. 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 Water Resources 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.

FINDINGS OF FACT

Background

1. Permit S-45455 was granted by the Water Resources Department (Department) on March 3, 1981. The permit authorizes the use up to 25.0 cfs of water during the period beginning September 15 and ending July 31 of each year, from the Tualatin River, a tributary to the Willamette River, for municipal use. It specified that construction of the water development project should be completed by October 1, 1982, and that complete application of water was to be made on or before October 1, 1983.

2. Two prior extensions have been granted for the permit. This is the third extension of time request for Permit S-45455.
3. Due to ongoing permit extension rulemaking, the Department placed all pending municipal and quasi-municipal permit extension of time requests on hold and did not require municipal and quasi-municipal water use permit holders to submit an extension application until the new rules were adopted.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 were adopted by the Water Resources Commission November 1, 2002, were further revised, filed with the Secretary of State, and became effective on November 22, 2005.
5. The permit holder, the City of Beaverton (City) submitted an "Application for Extension of Time" to the Department on June 29, 2001, requesting the time in which to complete construction of the water system and the time in which to accomplish beneficial use of water to the full extent under the terms of Permit S-45455 be extended from October 1, 1998 to October 1, 2002.
6. Notification of the City's extension of time request for Permit S-45455 was published on the Department's Public Notice dated April 19, 2005. No public comment on the extension application was received.
7. On February 25, 2005, the City 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(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴

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

8. The Department received a completed extension of time application and the statutory fee specified in ORS 536.050 from the permit holder.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.248 applies to reservoir 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.

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

9. Surface water permits held by municipal corporations for municipal purposes or uses are not subject to the requirement to begin actual construction work within one year from the date of approval of the application.⁵

Duration of Extension [OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c)(d), the Department shall 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 S-45455 consists of completing construction of the water system and completing application of the water. A Site Report and Claim of Beneficial Use was submitted to the Department on May 21, 2002.
11. The City of Beaverton is a member of the Joint Water Commission (JWC). The JWC is made up of the Cities of Beaverton, Forest Grove and Beaverton, and the Tualatin Valley Water District. The members of the JWC also have an agreement to supply water to the Tigard water service area (Cities of Tigard, King City and Durham and the adjacent unincorporated areas of Washington County). (May 2002 Site Report and Claim of Beneficial Use for Application No. 60357 / Permit No. 45455, Page 2)
12. The point of diversion for Permit S-45455 is located at the JWC Water Treatment Plant Intake on the Tualatin River (Spring Hill Pumping Plant located 500 feet North and 410 feet East of the Southwest corner of Section 8, Township 1 South, Range 3 West, Willamette Meridian). In addition to the 25.0 cfs under Permit S-45455, this is also the authorized point of diversion for 9.0 cfs under the Certificate 67891 (City of Hillsboro), 33.0 cfs under Permit S-40615 (City of Forest Grove) and 43.0 cfs under Permit S- 46423 (City of Hillsboro). The JWC water treatment plant was operated at its full capacity on January 17, 2002 at a rate of 115.4 cfs. This rate exceeds the 110 cfs of combined certificated and permitted water rights that the City of Beaverton and other JWC members hold on the Tualatin River at the JWC intake diversion point, including Permit S-45455.
13. As of January 17, 2002, the permit holder has diverted the total 25.0 cfs of water allowed under

⁵ Section 5, chapter 410, Oregon Laws 2005, provides:

Sec. 5. (2) The amendments to ORS 537.230 and 537.630 by sections 1 and 2 of this 2005 Act apply to requests for extensions of time to complete construction or to perfect a water right made before, on or after the effective date of this 2005 Act, whether or not construction has commenced under a permit prior to the request.

(3) All final orders by the department that resulted in the issuance of a water right permit, the issuance of a water right certificate or the approval of an extension of time to complete construction or to perfect a water right for a municipal use that were issued before the effective date of this 2005 Act are not subject to challenge in an administrative or judicial proceeding with respect to the requirement to commence and complete construction within a specified period of time. [2005 c.410 §5]

Permit S-45455 for municipal purposes. There is no "undeveloped portion" of the Permit S-45455 under OAR 690-315-0010(6)(g).

14. In addition to the 25.0 cfs of water allowed under Permit S-45455, the City holds a Ground Water Registration GR-328 for 3.0 cfs from two wells. The City's water rights total 28 cfs.
15. The 25.0 cfs of water under Permit S-45455, along with the 3.0 cfs under Ground Water Registration GR-328, are being utilized to meet the current water demands within the JWC service area. However, diversion of water under Permit S-45455 is restricted to the period beginning September 15 and ending July 31. Therefore, long-term water supply contracts held by the JWC with the Bureau of Reclamation for stored water in Scoggins Reservoir, and water rights (Certificates 81024 and 32139, City of Hillsboro) for Barney Reservoir, held by members of the JWC, are used to meet current water demands when surface water is not available.
16. Because the City is currently utilizing all its water rights to meet present demands, and a Site Report and Claim of Beneficial Use was submitted to the Department on May 21, 2002, the permit holder's request to have until October 1, 2002, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit S-45455 is reasonable.

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

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)(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 October 1, 1993, the following work was completed by the City: the diversion, the treatment system, and transmission, storage, pumping and distribution facilities were constructed; and the intake and water treatment plant was expanded in 1986.
18. During the last extension period under Permit S-45455, being from October 1, 1993 to October 1, 1998, the following work was completed by the City: water transmission and distribution system piping was extended to serve new customers (1993 to 1998); the Springhill Water Treatment Plant was expanded, and its chemical feed upgraded in 1998; and the 1998 Water Management and Conservation Plan was completed.

19. Since October 1, 1998, the following work was completed by the City: the Water System Master Plan was completed in 2001, the JWC North Transmission Line No. 2 was completed in 2003, the 2004 Water Management and Conservation Plan Update was completed, and the JWC treatment plant was operated at its full capacity on January 17, 2002.
20. As of February 25, 2005, the permit holder has invested approximately \$68.5 million, which is the total projected cost for the complete development of this project. No additional investment is anticipated for the completion of this project. A Site Report and Claim of Beneficial Use has been submitted to the Department on May 21, 2002 for final certification of this permit.
21. Since the issuance of Permit S-45455 on April 19, 1982, the total 25.0 cfs of water allowed has been diverted from the Tualatin River for beneficial municipal purposes under the terms of this permit.
22. The record does not raise concerns about the permit holder's compliance with conditions.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose

[OAR 690-315-0080(3)(b)]

23. As of February 25, 2005, the permit holder has invested approximately \$68.5 million into the project. Investments into the project included construction of the diversion, the treatment system, and the water transmission, storage, pumping and distribution facilities; expansions of the intake and water treatment plant, and the water transmission and distribution system piping; completion of the Water Management and Conservation Plan and Update, and the Water System Master Plan; completion of the JWC North Transmission Line No. 2; and operation of the JWC treatment plant at its full capacity. No additional investment is anticipated for the completion of this project. A Site Report and Claim of Beneficial Use has been submitted to the Department on May 21, 2002 for final certification of this permit.

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

24. As described in Findings 10 through 16 above, the City is currently relying on full development Permit S-45455.
25. The City supplies water to residential, commercial, and industrial, institutional, and public facilities within the service area of the city of Beaverton
26. Given the City's current water supply situation, its membership in and resulting obligations to the JWC, there is a market and present demand for the water to be supplied under Permit S-45455.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

27. Use and income from the permitted water development project already result in reasonable returns upon the investment made to date.

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

28. Delay in the development of this project was not caused any other governmental requirements.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

29. Delay of development under Permit S-45455 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.

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.

30. Permit S-45455 is not subject to an evaluation regarding maintaining the persistence of listed fish species because there is no "undeveloped portion" of the Permit S-45455 under OAR in 690-315-0010(6)(g).

CONCLUSIONS OF LAW

1. The applicant 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 applicant has submitted a complete extension application form and the fee specified under ORS 536.050, 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 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, 2002, as required by OAR 690-315-0080(1)(d).
6. After considering the reasonable diligence and good faith of the appropriator, the financial investment made, the market and present demands for water, the fair return upon the investment, the requirements of other governmental agencies and uncontrollable events which delayed development under the permit, the Department has determined that the applicant has shown good cause for an extension to complete construction of the water system and to complete the application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. There is no undeveloped portion of the permit to be considered under OAR 360-315-0080(1)(f).

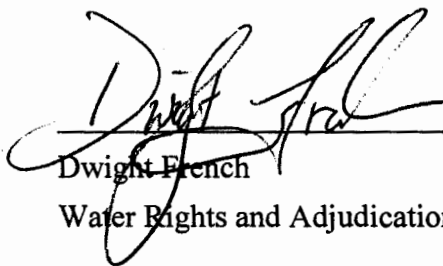
Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit S-45455 from October 1, 1998 to October 1, 2002.

Extend the time for complete application of water to beneficial use under Permit S-45455 from October 1, 1998 to October 1, 2002.

DATED: August 22, 2006


Dwight French
Water Rights and Adjudications Division

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 request a contested case

hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than **October 6, 2006**, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.

2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the 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 final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the 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 petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The 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 request for contested case hearing 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 submitted a timely request for a contested case hearing.

If you have any questions about statements contained in this document, please contact Ann L. Reece at 503-986-0808.

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 Mike Reynolds 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 Rights and Adjudications Division
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Salem, OR 97301-1271
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