

**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 R-12177, Water Right Application R-73963) PROPOSED FINAL ORDER
in the name of City of Seaside)

Permit Information

Application File R-73963 Permit R-12177

Basin: 1 – North Coast / Watermaster District 1

Date of Priority: March 28, 1994

Authorized Use of Water

Source of Water:	South Fork and Main Stem of Necanicum River, tributary to the Pacific Ocean
Storage Facility:	Peterson Point Reservoir
Purpose of Use:	Storage of Water for Municipal Use
Maximum Rate:	132.0.0 Acre-Feet (AF)

**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 R-12177, water right Application R-73963.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time for complete construction of the water system from October 1, 2011 to October 1, 2021.
- Grant an extension of time to apply water to full beneficial use from October 1, 2011 to October 1, 2021.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department

PFO – Proposed Final Order

City – City of Seaside

WMCP – Water Management Conservation Plan

Units of Measure

AF – acre-feet

AUTHORITY

Generally, see **ORS 537.248** and **OAR Chapter 690 Division 315**.

ORS 537.248(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause and reasonable diligence shown, extend the date for beginning and completing construction and for completing perfection of the use for a reservoir permit for a new storage project held by a county, municipality or district. The extension shall not exceed 10 years, but the applicant may request additional extensions.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time pursuant to ORS 537. 248 may be approved to begin and complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

FINDINGS OF FACT

Background

1. Permit R-12177 was granted by the Department on May 14, 1997. The permit authorizes storage up to 132.0 AF in Peterson Point Reservoir, originally constructed under Permit R-1228. The source of the stored water is the South Fork and Main Stem of the Necanicum River, tributary to the Pacific Ocean. The purpose of the stored water is for municipal use under Permit S-53159. The permit specified construction of the water system was to begin by May 14, 1998, and construction of the water system and complete application of water were to be made on or before October 1, 2011.
2. One prior permit extension has been granted for Permit R-73963. The most recent extension request resulted in the completion dates for completing construction, and full application of water being extended to October 1, 2011.
3. The permit holder submitted an "Application for Extension of Time" to the Department on December 30, 2015, requesting the time to complete construction of the water system, and the time to apply water to full beneficial use under the terms and conditions of Permit R-12177 be extended from October 1, 2011 to October 1, 2021.
4. Notification of the Application for Extension of Time for Permit R-12177 was published in the Department's Public Notice dated January 12, 2016. No public comments were received regarding the extension application.

Review Criteria [OAR 690-315-0040]

The time limits to begin and 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 690-315-0040. This determination shall consider the applicable requirements of ORS 537.248.¹

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

5. On December 30, 2015, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

Duration and Justification of Extension

Under ORS 537.248(2) an extension allowed under this subsection may not exceed 10 years, but the applicant may request additional extensions. Under OAR 690-315-0030 the applicant is required to justify why the requested time is needed to begin construction and fully apply water to beneficial use.

¹ORS 537.248 applies to reservoir permits issued on or after July 5, 1995, to a county, municipality or district for new storage projects.

6. According to the City, the remaining work to be accomplished under Permit R-12177 consists of submitting a Claim of Beneficial Use.
7. Prior to October 1, 2011, the City has stored 132.0 AF of the water authorized under Permit R-12177.
8. Given the amount of development left to occur, the Department has determined it is both reasonable and necessary that the City be granted an extension until October 1, 2021, to complete construction and apply water to beneficial use under the terms of Permit R-12177.
9. An extension processed under ORS 537.248 to begin and complete construction of the water system and to accomplish the application of water to beneficial use under the terms of Permit R-12177 may not exceed 10 years, and thus this extension request may not be extended beyond October 1, 2021. However, ORS 537.248 provides that the applicant may request additional extensions.

Good Cause [OAR 690-315-0040(1)(d)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

Amount of Work Accomplished [OAR 690-315-0040(3)(a)]

10. Prior to the issuance of Permit R-12177, the City constructed a 32.0 AF reservoir (Peterson Point Reservoir) under Permit R-1228;
11. During the original development time frame under Permit R-12177, the City accomplished the following work:
 - raised the dam;
 - expanded the Peterson Point Reservoir to a capacity of 170.0 AF and submitted As-Builts to the Department;
 - installed the Highway 26 water service line;
 - completed a 2.6 MG finished water storage tank (North Reservoir);
 - completed construction of the water treatment plant
 - installed a water meters;
 - recorded and reported water use;

- installed a fish screen;
- installed water treatment plant telemetry and backwash lagoons; and
- installed the 12th Avenue water main.

12. During the last extension period, being October 1, 2001 to October 1, 2011, the City completed construction of a 4.0 MG finished water storage tank.
13. After October 1, 2011, the City partnered with the Necanicum Watershed Council to construct improvements to fish screening and fish by-pass at the points of diversion.

The Department has determined that work has been accomplished within the time allowed in the most recent extension, which provides evidence of good cause and reasonable diligence from the appropriator towards the complete application of water to a beneficial use.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

14. According to the water user, prior to October 1, 2011, the City has diverted water from the South Fork and Main Stem of Necanicum River, tributary to the Pacific Ocean, for the storage of up to 170.0 AF of water in Peterson Point Reservoir, being 38.0 AF under Certificate 24279 and 132.0 AF under Permit R-12177.
15. Beneficial use of water has not been demonstrated under Permit R-12177 because not all permit conditions were satisfied by October 1, 2011.

The Department has determined that this extension will allow the updated WMCP submitted after October 1, 2011, to satisfy compliance of the condition of submitting a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86, in an effort to make proof of beneficial use of water as required by Permit R-73963.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

16. The water right permit holder's conformance with the permit or previous extension conditions.
 - a. The Department has considered the permit holder's compliance with conditions, and the Department records show the required WMCP was received December 30, 2015.

The Department has determined the City has complied with conditions of the permit, by submitting an updated WMCP under OAR Chapter 690, Division 86, as required by Permit R-73963.

Financial Investments [OAR 690-315-0040(3)(d)]

17. Financial investments made toward developing the beneficial water use.
 - a. According to the City, as of December 30, 2015, they have invested approximately \$11,509,700, which is the total projected cost for complete development of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under R-12177, other costs included in this accounting are not partitioned out for R-12177 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 which are not associated with just this permit, but with the development and exercise of all the City's water rights.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)]

18. According to the City, as of December 30, 2015, they have invested approximately \$11,509,700, which is the total projected cost for complete development of this project.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

19. The Department has found good faith of the appropriator under Permit R-12177.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

20. 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 690-315-0040(4)(a-c)].
 - 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 R-12177; 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 sources of water for the reservoir, the South Fork and Main Stem of the Necanicum River, tributary to the Pacific Ocean, are not located within a Withdrawn Area. The South Fork and Main Stem of the Necanicum River are not located within or above any state or

federal scenic waterway, however they are located 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 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 South Fork and Main Stem of the Necanicum River are not listed by the Department of Environmental Quality as a water quality limited stream.

21. Economic investment in the project to date [OAR 690-315-0040(4)(d)].
 - a. As of December 30, 2015, the permit holder has invested approximately \$11,509,700.
22. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
 - a. None have been identified.
23. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
 - a. None have been identified.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

24. Use and income from the permitted water development results in reasonable returns upon the investment made to date.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

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

Unforeseen Events [OAR 690-315-0040(2)(h)]

26. None have been identified.

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 537.230(3).
2. The City has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).

3. 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 fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

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 R-12177 from October 1, 2011 to October 1, 2021.

Extend the time to apply water to beneficial use under Permit R-12177 from October 1, 2011 to October 1, 2021.

DATED: February 16, 2016


Dwight W. French, Administrator
Water Right Services 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 submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **December 4, 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.

- If you have any questions about statements contained in this document, please contact Corey 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
Salem, OR 97301-1266
Fax: 503-986-0901

Mailing List for Extension PFO Copies

PFO Date: February 16, 2016

Copies Mailed

Application R-73963

By: _____

Permit R-12177

On: _____

Original mailed to Applicant:

City of Seaside
Attn: Dale McDowell
989 Broadway
Seaside, OR 97138

Copies sent to:

1. WRD - App. File R-73963/ Permit R-12177
2. Mike McKillip, Murray, Smith & Associates; 121 SW Salmon, Suite 900; Portland OR 97204

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

3. WRD - Watermaster District 1, Nikki Hendricks

CASEWORKER: CAC