

**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-13421, Water Right Application G-14580,) PROPOSED FINAL
in the name of the County of Wasco) ORDER

Permit Information

Application File G-14580/ Permit G-13421

Basin 4 – Hood Basin / Watermaster District 3

Date of Priority: June 23, 1997

Authorized Use of Water

| | |
|------------------|------------------------------------|
| Source of Water: | A Well in the Columbia River Basin |
| Purpose or Use: | Municipal |
| Maximum Rate: | 1.11 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-13421, water right Application G-14580.

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, 2002, 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

County – County of Wasco

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

COBU – Claim of Beneficial Use

UGB – Urban Growth Boundary

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-13421 was issued by the Department on June 22, 1998. The permit authorizes the use of up to 1.11 cfs of water from a well in the Columbia River Basin, for municipal use. It specified that construction of the well was to begin on or before June 22, 1999, and that complete application of water was to be made on or before October 1, 2002.
2. 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.
3. 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.
4. Tyler Stone, on behalf of the County of Wasco (County), submitted an "Application for Extension of Time" (Application) to the Department on October 14, 2014, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-13421 be extended from October 1, 2002, to October 1, 2051. This is the first extension of time request for Permit G-13421.
5. Notification of the County's Application for Extension of Time for Permit G-13421 was published in the Department's Public Notice dated October 28, 2014. 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)]

6. On October 14, 2014, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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.

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

7. Permit G-13421 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.

8. The remaining work to be accomplished under Permit G-13421 consists of completing the municipal water distribution system and applying water to full beneficial use.
9. As of October 1, 2002, the permit holder had appropriated 0.47 cfs of the 1.11 cfs of water authorized under Permit G-13421 for municipal purposes. There is an undeveloped portion of 0.64 cfs of water under Permit G-13421 as per OAR 690-315-0010(6)(g).
10. The Department received a partial Claim of Beneficial Use (COBU) for Permit G-13421 on September 10, 2102.
11. In addition to the 1.11 cfs of water authorized under Permit G-13421, the County holds the following rights for municipal use in the satellite system which currently serves the needs within the Discovery Center and Wasco County Historical Museum:
 - Permit G-10355 (modified by Permit Amendment T-7822) for 80.0 gpm (0.1783 cfs) of water from a well in the Columbia River Basin for municipal purposes;These water right permits total 1.2883 of water, being 1.2883 cfs of ground water. The County of Wasco has not yet made use of 0.64 cfs of water under Permit G-13421.
12. According to the Application, their peak water demand within the exclusive satellite service area was 0.47 cfs in 2014.
13. According to the Application, in 2014, the transient population of people coming to visit The Discover Center and Wasco County Museum is 30,000. The County estimates the transient population will increase at growth rate of 0.15 percent per year, reaching an estimated population of 31,926, within the Discover Center and Wasco County Museum, by the year 2056. According to the application, this permit exclusively serves the Discovery Center and Wasco County Historical Museum and upon approval of The Dalles 2013 Urban Growth Boundary / Urban Area Expansion Proposal and Related Comprehensive Plan Amendments, will be expanded to tie a pipeline into the City of The

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

Dalles Municipal Water Supply System in the future.

14. According to the Application, their peak day demand under Permit G-13421 is projected to be approximately 1.11 cfs of water by the year 2056 and would be inclusive of the Discovery Center and Wasco County Historical Museum, and the connection to the City of The Dalles Municipal Water Supply System.
15. Full development of Permit G-13421 is needed to address the present and future water demand of the County, including system redundancy, emergency use and anticipated connection to the City of The Dalles Municipal Water Supply System.
16. Based on Findings of Fact 8 through 16, the Department has determined that the County's request for an extension of time until October 1, 2051, to apply water to full beneficial use under the terms and conditions of Permit G-13421 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.

17. Prior to the issuance of Permit G-13421 on June 22, 1998, the County constructed Well (WASC 50145). Construction began on August 7, 1996, and was completed on August 22, 1996. The County also constructed infrastructure, including water source and treatment facility.
18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-13421;
 - Installed remote flow monitoring through a SCADA system.
19. Since October 1, 2002, the County has accomplished the following work:
 - Submitted a groundwater monitoring plan on March 23, 2004, and the plan was approved on September 14, 2004;
 - Conducted general maintenance; and
 - Installed the current flow meter in 2012.

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

20. According to the Application, as of October 14, 2014, they have invested approximately \$384,923, which is approximately 1 percent of the total projected cost for complete development of this project. The County estimates an additional \$31,000,000 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-13421, other costs included in this accounting are not partitioned out for G-13421 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the County, and (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in OAR 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the County's water rights.
21. As of October 1, 2002, 0.47 cfs of the 1.11 cfs allowed has been appropriated from Well (WASC 50145) for beneficial municipal purposes under the terms of this permit.
22. The Department has considered the County'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)]

23. According to the Application, as of October 14, 2014, the County has invested approximately \$384,923, which is 1 percent of the total projected cost for complete development of this project. The County estimates an additional \$31,000,000 investment is needed for the completion of this project.

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

24. As described in Findings 18 through 24 above, the County has indicated, and the Department finds that the County must rely almost exclusively on its water right permits from the Columbia River Basin.
25. The County projects a transient population increase within the exclusive satellite service area, on average, of 0.15 percent per year over a 42 year period, being the years 2014 to 2051. The County plans a connection to the City of The Dalles Municipal Water Supply System.
26. Given the current water supply situation of the County, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under G-13421.

27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.47 cfs (not to exceed the maximum amount authorized under this permit, being 1.11 cfs) under Permit G-13421 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)]

28. The County expects to obtain a fair and reasonable return on investment by continuing development of Permit G-13421.

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

29. According to the Application, delay in the development of this project was caused, in part, to the difficulty in gaining approval of an expanded urban growth boundary (UGB) within the federally established Columbia River Gorge National Scenic Area. The County states in the Application (Question 10-A [d]) "The design is for this [well and Permit G-13421] to have a tie pipeline with the City of The Dalles water system. Because of National Scenic Area rules this cannot current[ly] take place. Action is being taken to e[x]pand the Urban Growth Boundary of The Dalles which will be a long multiagency task that could include federal legislation or change in current legislation."

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

30. Delay of development under Permit G-13421 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.

31. On April 15, 2016, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-13421 does not have the potential for substantial interference with surface water.
32. Based upon the Department's determination described in Finding 31, the use of the undeveloped portion of Permit G-13421 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 County 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 County 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. As required by OAR 690-315-0080(1)(b), the permit holder was able to demonstrate that actual construction of the project began (commenced) within the time period required by ORS 537.630(2), being no later than June 22, 1999. ORS 537.630(2) provides that the Department may only allow an extension of time to complete construction or to perfect a water right beyond the specified permit under certain conditions. The time to begin construction may not be extended.
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-13421 may be applied to beneficial use on land to which the right is not appurtenant.
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, 2051⁵ 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 County 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).
8. As required by OAR 690-315-0090(3) and as described in Finding 27, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.47 cfs (not to exceed the maximum amount authorized under this permit, being 1.11 cfs) under Permit G-13421 shall only be authorized upon issuance of

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.

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).

9. Use of water under this ground water Permit G-13421 does not have the potential for substantial interference with surface water.

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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-13421 from
October 1, 2002 to October 1, 2051.

Subject to the following conditions:

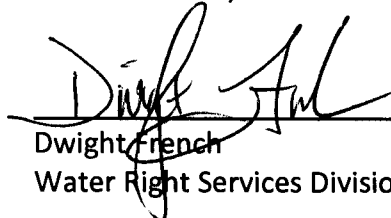
CONDITIONS

1. **Development Limitations**

A maximum appropriation of 0.47 cfs of water is currently allowed under Permit G-13421. Any appropriation of water beyond 0.47 cfs (not to exceed the maximum amount authorized under the permit, being 1.11 cfs) 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, which may be limited to the exclusive satellite service area within the Discover Center and Wasco County Museum, shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit G-13421 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: June 7, 2016



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 **July 22, 2016**, 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 Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have any questions about statements contained in this document, please contact Jeffrey Pierceall 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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