

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time	) PROPOSED
for Permit G-14007, Water Right Application G-15095,	) FINAL
in the name of the City of Portland; Portland Water Bureau	) ORDER

Permit Information

Application File G-15095/ Permit G-14007

Basin 2 – Lower Willamette Basin / Watermaster District 20

Date of Priority: February 28, 2000

Authorized Use of Water

Source of Water:	Eight wells in Johnson Creek Basin
Purpose or Use:	Municipal Use
Maximum Rate:	14.3 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-14007, water right Application G-15095.

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, 2005 to October 1, 2055.
- 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 Portland

PWB – Portland Water Bureau

PVRWD - Powell Valley Road Water District

CSSWF - Columbia South Shore Well Field

HCP – Habitat Conservation Plan

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

PP&R – Portland Parks and Recreation

WMCP – Water Management and Conservation Plan

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-14007 was issued by the Department on June 25, 2001. The permit authorizes the use of up to 14.3 cfs of water from eight wells in 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 January 17, 2006, an assignment from Powell Valley Road Water District to Portland Water Bureau was recorded in the records of the Department.
3. On April 26, 2006, the Department received a request from the City of Portland; Portland Water Bureau, requesting to extend the time allowed to complete the Water Management and Conservation Plan (WMCP) required under Permit G-14007. The Department granted the extension of time requested for submitting the City's WMCP, extending the deadline to June 20, 2007.
4. On October 13, 2014, the Department issued a letter to the City of Portland; Portland Water Bureau, requesting either a Claim of Beneficial Use or an extension of time be submitted.
5. The permit holder, the City of Portland; Portland Water Bureau (City), submitted an "Application for Extension of Time" to the Department on January 11, 2016, requesting the time to complete construction be extended from June 25, 2005 to June 25, 2056.
6. Notification of the City's Application for Extension of Time for Permit G-14007 was published in the Department's Public Notice dated February 2, 2016. No public comments were received regarding the extension application.
7. On February 4, 2016, the permit holder submitted additional information to supplement their Application for Extension of Time. The amendment requested the extended time be changed from time to complete construction, to time to apply water to full beneficial use. The amendment requested the time extended be changed from June 25, 2005 to June 25, 2056, to October 1, 2005 to October 1, 2055.

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)]

8. On January 11, 2016, 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)]

9. Permit G-14007 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.

10. The remaining work to be accomplished under Permit G-14007 consists of connecting the Vivian Wells to the City's water supply; completing electrical, pump, and treatment upgrades; completing the Wellhead Protection Program; and applying water to full beneficial use.
11. As of October 1, 2005, the permit holder has appropriated 9.6 cfs of the 14.3 cfs of water authorized under Permit G-14007 for municipal purposes. There is an undeveloped portion of 4.7 cfs of water under Permit G-14007.
12. In addition to the 14.3 cfs of water from Vivian Well Field authorized under Permit G-14007, the City holds the following groundwater rights and permits within the CSSWF for municipal use, all within the Columbia River basin:
 - Certificate 89117 (partial perfection of Permit G-10479) for 7.3 cfs of water from one well (PWB Well No. 34);
 - Permit G-10479 for the remaining unappropriated 1.1 cfs of water from one well (PWB Well No. 34);
 - Certificate 89115 (partial perfection of Permit G-10124) for 39.96 cfs of water from three wells (PWB Wells 17, 18, and 19);

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.

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

- Permit G-10124 for the remaining unappropriated 60.04 cfs from three wells (PWB Wells 17, 18, and 19);
- Permit G- 8755 (modified by Permit Amendment T-10479) for 390.0 cfs of water from 22 wells;
- Permit G-10455 for 16.7 cfs of water from two wells (PWB Wells 12 and 13);

The City's water rights and permits for groundwater from within the CSSWF total 515.1 cfs. The City of Portland has not yet made beneficial use of 320.76 cfs of groundwater from within the CSSWF, being 1.1 cfs under Permit G-10479, 60.04 cfs under Permit G-10124, 242.92 cfs under Permit G-8755, and 16.7 cfs under Permit G-10455 (Wells PW-12 and PW-13, are currently being utilized under the authorization of G-8755).

Groundwater production capacity in the CSSWF was developed primarily because the City recognized that the Bull Run system was vulnerable to events that could disrupt delivery of all or part of this unfiltered surface water supply. The CSSWF has been activated for emergency use 13 times since 1985, producing roughly 9 billion gallons for municipal supply. The wells within the CSSWF provide water when the City's Bull Run main surface water supply is shut down due to emergency conditions such as turbidity events, landslides, fires, or human-caused disruptions, and when the Bull Run supply cannot provide enough water to meet demands during the summer peak season. Increasing the City's groundwater production capacity by fully developing and connecting the former Powell Valley Road Water District wells will help mitigate a range of natural and human-caused events that could cause a supply outage.

The region regularly experiences dry and hot summer/fall conditions with relatively infrequent rainfall. Seasonal dry conditions can affect the City's ability to meet peak season demands solely with the Bull Run surface water supply while ensuring that Bull Run river flows remain protective of fish habitat in the lower Bull Run River and broader Sandy River Basin. PWB manages its surface water and groundwater sources conjunctively to deal with these relatively high-frequency and low-to-moderate impact events. The CSSWF has been activated for seasonal use 14 times since 1985, producing roughly 30 billion gallons for municipal supply. Seasonal augmentation requires a consistent and reliable groundwater supply, which can be affected by unforeseen events such as localized contamination in the area of one or more production wells, and mechanical failures at individual wells or the primary CSSWF pump station.

13. The City holds the following groundwater rights for municipal use, quasi-municipal use, and group domestic/commercial use in four other local areas:
 - Certificate 67341 for 2.23 cfs of water from one well (Hayden Island Well No. 2), within the Columbia River Basin;
 - Certificate 67339 for 4.45 cfs of water from one well (Hayden Island Well No. 3, Tennis Court Well), within the Columbia River Basin;

- Certificate 67342 for 1.19 cfs of water from one well (Hayden Island Well No. 4), within the Columbia River Basin;
- Certificate 35676 for 0.33 cfs of water from one well (Alto Park Well), within the Tryon Creek Basin;

These water rights total 8.2 cfs of groundwater.

14. In addition to the 14.3 cfs of water from the Vivian Well Field authorized under Permit G-14007, as of January 11, 2016, the City holds the following former Powell Valley Road Water District water right for municipal use, within the Johnson Creek basin,
 - Certificate 35779 for 2.67 cfs of water from two wells (Gilbert Wells 3 and 4).
15. The City of Portland depends on surface water for the majority of its primary municipal water supply. The City has statutory rights to the water in the Bull Run watershed for municipal drinking water uses. In 1909, the state legislature enacted ORS 538.420 granting the City of Portland “the exclusive right to use the waters of the Bull Run and Little Sandy Rivers.” The City also has filed three surface water claims for use of the water from Bull Run (SWR-390), the Little Sandy River (SWR-391), and for 28.0 cfs from the Willamette River (SWR-392). The Bull Run watershed has over the most recent five years provided the City an average of 36 billion gallons per year (which is about 20% of the total average flow for the Bull Run watershed of 180 BG). Three regulations affect unrestricted use of Bull Run River water: *The Surface Water Treatment Rule* and 1998, 2002, 2005, and 2006 enhancements; the *Endangered Species Act*; and the *Clean Water Act*. In addition, the Bull Run system storage is limited. As demand has grown it has begun to strain the system’s ability to meet summer peak demands. The City has not made use of its statutory right on the Little Sandy River. The City has proposed, as part of the draft *Habitat Conservation Plan* (HCP), to forego any consumptive use of the Little Sandy River. The City does not currently exercise municipal water rights in the Willamette River, and has not done so since the mid-1920s.
16. The City also holds water rights under the jurisdiction of Portland Parks and Recreation (PP&R). The PP&R water rights are listed in Table 2-3 of the City’s March 2010 draft Water Management and Conservation Plan (WMCP) (Pages 2-22 to 2-23). None of these uses are included in the City’s water demand forecast. These PP&R water rights are summarized as follows:
 - 12.578 cfs of groundwater from various wells, being 7.258 cfs for irrigation and 5.32 cfs for municipal use; this supply of non-potable water is utilized for irrigation of public parks, golf courses, and other recreation facilities;
 - 3.28 cfs of surface water for irrigation and wildlife;
 - 451.6 AF of surface water for wildlife use at Oaks Bottom Wildlife Refuge;

- 13.12 AF of surface water for irrigation and aesthetics at Red Tail Golf Course; and
 - 5.36 AF of surface water for municipal use at the Rose City Golf Course.
17. The City's peak water demand, including both its retail and wholesale service areas, was 229.0 cfs as of 2014. The Water Bureau supplied approximately 58 percent of its water to retail accounts and approximately 42 percent to wholesale customers. These proportions vary each year depending on the weather and wholesale water districts' use of alternative sources of water supply.
 18. Starting in 1912, the City began selling water on a wholesale basis to other public water providers in the metropolitan area. Currently, the City supplies water to 20 wholesale customers. Wholesale contracts specify the amount of water service the City will provide and include terms on guaranteed purchase obligations or interruptible water supplies. In addition, each water contract requires the wholesale purchaser to create a conservation and curtailment plan to be reviewed by the Water Managers Advisory Board. These wholesale water customers are contiguous to the Water Bureau's retail service area, and include Burlington Water District (WD), the Cities of Gresham, Sandy, Tigard, Tualatin, GNR Corporation, Green Valley Water Co., Hideaway Hills Water Co., Lorna Water Co., Lusted WD, Palatine Hills WD, Pleasant Home WD, Raleigh WD, Rockwood Public Utilities District, Skyview Acres Water Co., Tualatin Valley WD, Two Rivers Water Assoc., Valley View WD and West Slope WD.
 19. Additionally, according to the City, in the past they have also provided (non-wholesale) emergency groundwater from the CSSWF for the Cities of Milwaukie, Beaverton, and Lake Oswego. The City also maintains interconnections with other water providers to supply water on an emergency basis.
 20. According to the City, in 2014, the estimated population served under their water rights was 952,714. This includes the retail service area population of 580,224 and the wholesale service area population of 371,130 within 20 regional water providers' service areas. The City of Portland anticipates the retail and wholesale population to increase to an estimated population of 1,163,798 by the year 2055 which calculates to an average growth rate of 0.513 percent per year.
 21. According to the City, their peak day demand is projected to be approximately 512.0 cfs of water by the year 2055.
 22. The City projects that they will continue to wholesale water, and that this wholesaling will require increased amounts of supplies from the CSSWF. Future wholesale opportunities are projected to take place within the existing UGB, but beyond their current service area, or within areas that may be brought into the UGB by Metro and identified in future documents.

23. According to the City, the consistency in their demand forecasts with the amount and types of lands and uses proposed to be served by 2055 is based on (1) land-use-based population forecasts provided by Metro up to 2030, (2) PWB assumed an average annual population growth of 0.6% between 2031 and 2055 to extend the forecast to 2055 when peak demand is expected to reach 330 million gallons a day, (3) new growth being accommodated by infill and redevelopment within the metropolitan area rather than expanded urban growth boundaries, (4) the City continuing to supply water to wholesale customers, and (5) the assumption that additional lands will be brought into the UGBs around wholesale service areas. More specifically, the City projects that a large share of the land uses and future water demands in Portland's current retail and wholesale service areas will take place through infill and redevelopment. It is difficult to predict new industrial or commercial ventures that may affect future water demands. It is clear, however, that growth in housing, commercial, and industrial uses will continue to increase. The newly released 2014 Urban Growth Report by Metro highlights how and where the region will grow. The City is also in the process of updating its comprehensive plan.
24. In accordance with OAR 690-315-0080(1)(d) and as described by Findings 23-24, the City demonstrated that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.
25. Full development of Permit G-14007 is needed to address the present and future water demand of the City, including system redundancy, emergency use, and resiliency plans for emergency preparedness and hardened river crossings. The Oregon Resiliency Plan highlights the dramatic impacts a Cascadia Zone earthquake will have on water supply infrastructure. The PWB is committed to investing in improving critical infrastructure to make the water system more resilient, especially the main supply line to the west side. In order to respond quickly to an emergency, it is also critical that the City's Interstate Campus Facility be able to withstand an earthquake. Interstate houses critical vehicles and equipment needed to repair the water system.
26. Full development of the Vivian Well Field, including Permit G-14007 is a project of such a magnitude and cost that due to the resulting finance and rate impacts the City considers it a fiscal necessity to spread the capital costs out over several decades.
27. The City's request for an extension of time until October 1, 2055, to apply water to full beneficial use under the terms and conditions of Permit G-14007 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.

28. Prior to the issuance of Permit G-14007 on June 25, 2001, PVRWD completed construction of Well PV-6 (MULT 59903), Well PV-7 (MULT 63199), Well PV-8 (MULT 64424), and Well PV-9 (MULT 64423).
29. Between June 25, 2001 and October 1, 2005, PVRWD accomplished the following work:
 - Well telemetering connections were installed.
 - Submersible pumps were replaced.
 - Pump station booster pumps and monitoring equipment were installed.
 - A chlorine contact reservoir was constructed.
 - Pump station building was constructed.
30. Since October 1, 2005, the City has accomplished the following work:
 - *Powell Valley Groundwater Wells Engineering Study* was completed by Portland Water Bureau engineering planning staff.
 - Well PV-9 (MULT 64423) pump and motor rebuild.
 - SCADA upgrades to monitor wells and site security were completed.
 - *Basis of Design Planning Engineering Study* revised from 2007.

The Department has determined that work has been accomplished 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.

31. According to the City, as of January 11, 2016, they have invested approximately \$3,293,108, which is approximately 76 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,060,000 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-14007, other costs included in this accounting are not partitioned out for G-14007 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and (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.

32. As of January 11, 2016, 9.6 cfs of the 14.3 cfs allowed has been appropriated, being 0.9 cfs from Well PV-6 (MULT 59903), 1.5 cfs from Well PV-7 (MULT 63199), 1.8 cfs from Well PV-8 (MULT 64424), and 5.4 cfs from Well PV-9 (MULT 64423) for beneficial municipal purposes under the terms and conditions of this permit.
33. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: (1) annual reports of the amount of water used each month have not been received by the Department.

The use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

Therefore, the Department has determined the permit holder did not comply with conditions of the permit, by not submitting annual water use reports, as required by Permit G-14007.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

34. According to the City, as of January 11, 2016, they have invested approximately \$3,293,108, which is 76 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,060,000 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).

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)].

35. 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-14007; 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-14007 are not located within Johnson Creek Withdrawn ground water area. The points of appropriation for Permit G-14007, located within the Johnson Creek Basin, are not located within or above any state or federal

scenic waterway. The points of appropriation are 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 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)].

36. According to the City, as of January 11, 2016, they have invested \$3,293,108, which is 76 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,060,000 investment is needed for the completion of this project.

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

37. 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)].

38. As described in Findings 11 through 27 the City of Portland-Portland Water Bureau has indicated, and the Department finds that the City must rely on full development of Permit G- 14007 to meet its present and future water demands.
39. City of Portland-Portland Water Bureau projects a population increase of 0.513 percent per year over a 50 year period, being the years 2005 to 2055.
40. Releasing flows for fish downstream of the Bull Run project is a critical factor in developing the Vivian Well Field as a source for groundwater. Bull Run instream flows agreed to in a federally enforceable Habitat Conservation Plan will contribute to more frequent need for groundwater use to meet peak season demand.
41. The City is committed to habitat improvements in the Sandy River Watershed as well as overall infrastructure resiliency and increased supply development. The City anticipates developing the Vivian Wells under Permit G-14007 in the near future, but needs to balance its investment in supply development with all the demands of its overall water system. Therefore, the City needs maximum time flexibility to assure that it can meet all of its ongoing financial commitments as well as any unanticipated emergencies or regulatory changes.
42. The City recently completed a 2015 planning study of one of the three Bull Run conduits conveying water into the City. The results indicate that improvements to Bull Run Conduit No. 3 will lower the costs associated with incorporating the Vivian Wells into its system, thereby making the work proposed under this extension more feasible.

43. 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-14007.
44. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 9.6cfs (not to exceed the maximum amount authorized under this permit, being 14.3 cfs) under Permit G-14007 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)]

45. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

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

46. According to the City, delay in the development of this project was caused, in part, by requirements by the U.S. Environmental Protection Agency (EPA), that all public water systems that use surface water must meet the LT-2 (Long Term 2) rules for water treatment and storage. The outcome of these new rules means that all of the City's original open reservoirs in Mt. Tabor Park and Washington Park need to be protected against contamination from Cryptosporidium, Giardia, and other pathogens by either covering the open storage reservoirs or treating the water from the open reservoirs before it is provided to customer's taps. The decision by the City has been to focus significant resources to the conversion of their existing open reservoir system to a covered storage system. As part of this transformation process to all covered storage, there were several deadlines that were imposed upon the PWB by the EPA that had to be met prior to the start of daily fines. These requirements caused the City to commence a Capital Improvement Project program that has included Powell Butte, Kelly Butte, Forest Park, Washington Park, and Mt. Tabor Reservoirs.
47. The Oregon Resiliency Plan, sponsored by the Oregon Office of Emergency Management, highlights the dramatic impacts a Cascadia Zone earthquake will have on water supply infrastructure. The PWB is committed to investing in improving critical infrastructure to make the water system more resilient, especially the main supply line to the west side of the city. The City completed an Emergency Coordination Center in 2014, and is currently in progress of rehabilitating the Interstate Campus Facility, as well as designing the Willamette River Pipe Crossing.

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

48. Delay of development under Permit G-14007 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.

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. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-14007 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, 2055⁵ 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 44, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 9.60 cfs (not to exceed the maximum amount authorized under this permit, being 14.3 cfs) under Permit G-14007 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).

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.

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-14007 from October 1, 2005 to October 1, 2055.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

A maximum appropriation of 9.6 cfs of water is currently allowed under Permit G-14007. Any appropriation of water beyond 9.6 cfs (not to exceed the maximum amount authorized under the permit, being 14.3 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 shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit G-14007 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-14007 that has been established under a prior WMCP or Extension final order issued by 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 21, 2016


Dwight French
Water Rights 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 August 5, 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 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
 - Fax: 503-986-0901 Salem, OR 97301-1266
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