

**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-5652, Water Right Application R-48373 ) PROPOSED FINAL ORDER  
in the name of City of Drain )

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**Permit Information**

**Application File R-48373 Permit R-5652**

Basin: 16 – Umpqua / Watermaster District 15

Date of Priority: June 28, 1971

**Authorized Use of Water**

Source of Water: Bear Creek, tributary of Elk Creek & Umpqua River  
Storage Facility: Bear Creek Reservoir Site 3  
Purpose of Use: To be appropriated under Permit S-35252 for Municipal Use  
Maximum Rate: 1000.0 Acre-Feet (AF). The right herein is granted is limited to the storage of 305.0 AF until plans for enlargement have been approved in writing by the State Engineer.

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**This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 315**

*Please read this Proposed Final Order in its entirety.*

This Proposed Final Order applies only to Permit R-5652, water right Application R-48373. A copy of Permit R-5652 is enclosed as Attachment 1.

## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to store and apply water to full beneficial use from October 1, 2000 to October 1, 2010.

### ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department  
PFO – Proposed Final Order  
City - City of Drain

### Units of Measure

cfs – cubic feet per second  
gpm – gallons per minute  
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 complete construction and/or apply water to full beneficial use.

## FINDINGS OF FACT

### Background

1. Permit R-5652 was granted by the Department on July 29, 1971. The permit authorizes storage up to 1000.0 AF in Bear Creek Reservoir Site 3. The source of the stored water is Bear Creek, tributary to the Umpqua River. The purpose of the stored water is to be appropriated under Permit 35252 for municipal use. The permit specified construction of the water system was to begin by July 29, 1972 and complete application of water was to be made on or before October 1, 1973.
2. Five prior permit extensions have been granted for Permit R-5652. The most recent extension request resulted in the completion dates for beginning construction and full application of water being extended to October 1, 2000.

3. The permit holder submitted an "Application for Extension of Time" to the Department on January 31, 2005, requesting the time to apply water to full beneficial use under the terms and conditions of Permit R-5652 be extended from October 1, 2000 to October 1, 2050.
4. Notification of the Application for Extension of Time for Permit R-5652 was published in the Department's Public Notice dated February 8, 2005. 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.<sup>1</sup>*

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

5. On January 31, 2005, 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.*

6. According to the City, the remaining work to be accomplished under Permit R-5652 consists of completing construction of the water system and applying water to full beneficial use.
7. As of January 31, 2005, the City has stored 305.0 AF of the water authorized under Permit R-5652, to be appropriated under Permit 35252 for municipal use.
8. Given the amount of development left to occur, the Department has determined it is both reasonable and necessary that the City to have an extension until October 1, 2010, to receive approval from the State Engineer for plans for to enlarge the reservoir, continue its work towards completing the construction of the water system, and applying water to beneficial use under the terms of Permit R-5652.
9. An extension 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-5652 may not exceed 10 years, and thus may not be extended beyond October 1, 2010 in this extension request.

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<sup>1</sup>ORS 537.248 applies to reservoir permits issued to a county, municipality or district for new storage projects.

**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. Work was accomplished within the time allowed in the permit or previous extension as follows:
  - a. During the original development time frame under Permit R-5652 the City has stored 305 acre-feet of water.
  - b. In February 2000, the City submitted a WMCP to the Department.

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

11. The following beneficial use was made of the water during the permit or previous extension time limits:
  - a. Since the issuance of Permit R-5652 on July 29, 1971, the City has stored 305 AF of water from Bear Creek, tributary to the Umpqua River.
  - b. Delay of full beneficial use of water under Permit R-5652 was due, in part, to the water demand has not yet required the full amount of permitted water and the cost.

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

12. 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 did not identify any concerns.

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

13. Financial investments made toward developing the beneficial water use.
  - a. According to the City, as of January 31, 2005, they have invested approximately \$1,086,445, which is approximately 15 percent of the total projected cost for complete development of this project. The City anticipates an additional \$6,000,000 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 R-5652, other costs included in this accounting are not partitioned out for R-5652 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)]**

14. According to the City, as of January 31, 2005, they have invested approximately \$1,086,445, which is 15 percent of the total projected cost for complete development of this project. The City anticipates a \$6,000,000 investment is needed for the completion of this project.

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

15. The Department has found good faith of the appropriator under Permit R-5652.

**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:*

16. 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-5652; 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 source of water for the reservoir, Bear Creek to be appropriated under Permit 35252 for municipal use, is not located within a Withdrawn Area. Bear Creek is not located within or above any state or federal scenic waterway, however it is 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 is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

Bear Creek to be appropriated under Permit 35252 for municipal use is not listed by the Department of Environmental Quality as a water quality limited stream.

17. Economic investment in the project to date [OAR 690-315-0040(4)(d)].
  - a. As of January 31, 2005, the permit holder has invested approximately \$1,086,445.
18. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
  - a. None have been identified.
19. 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)]**

20. 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)]**

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

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

22. According to the City, delay of development under Permit R-5652 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 537.230(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

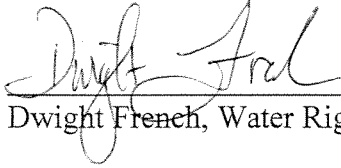
OAR 690-315-0040(1)(d).

**Proposed Order**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to store and apply water to beneficial use under Permit R-5652 from October 1, 2000 to October 1, 2010.

DATED: January 17, 2012



Dwight French, Water Right Services 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 **March 2, 2012**, 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.

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- If you have any questions about statements contained in this document, please contact Jerry Gainey at 503-986-0812.
  - 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
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