

**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-8796, Water Right Application G-9501,) PROPOSED FINAL
in the name of the City of Sodaville) ORDER

Permit Information

Application File G-9501/ Permit G-8796

Basin 2 – Willamette Basin / Watermaster District 2

Date of Priority: January 3, 1980

Authorized Use of Water

Source of Water: A well in the South Santiam Basin
Purpose or Use: Municipal
Maximum Rate: 0.17 Cubic Foot 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-8796, water right Application G-9501.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2000, to October 1, 2067.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000, to October 1, 2067.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time	Well 1 – (LINN9690/9696)
City – City of Sodaville	Well 2 – (LINN 2228)
Department – Oregon Department of Water Resources	Well 3 – (LINN 52788/54467)
ODFW – Oregon Department of Fish and Wildlife	Well 4 – (LINN 55043)
PFO – Proposed Final Order	Well 5 – (LINN 55249/60466)
WMCP – Water Management and Conservation Plan	

Units of Measure

cfs – cubic foot 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. 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 690-315-0050(5) authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for 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-8796 was issued by the Department on April 9, 1980. The permit authorizes the use of up to 0.17 cfs of water from a well within the South Santiam Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1981, and that complete application of water was to be made on or before October 1, 1982.
2. Four prior permit extensions have been granted for Permit G-8796. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1995, to October 1, 2000.
3. 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.
4. 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.
5. The permit holder, the City of Sodaville (City), submitted an "Application for Extension of Time" (Application) to the Department on February 23, 2015, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-8796 be extended from October 1, 2000, to October 1, 2067.
6. Notification of the City's Application for Extension of Time for Permit G-8796 was published in the Department's Public Notice dated March 5, 2015. No public comments were received regarding the 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

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.

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

7. On February 23, 2015, 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)]

8. Permit G-8796 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.

9. The remaining work to be accomplished under Permit G-8796 consists of completing construction and applying water to full beneficial use.
10. As of October 1, 2000, the permit holder had appropriated 0.14 cfs of the 0.17 cfs of water authorized under Permit G-8796 for municipal purposes. There is an undeveloped portion of 0.03 cfs of water under Permit G-8796 as per OAR 690-315-0010(6)(g).
11. In addition to the 0.17 cfs of water authorized under Permit G-8796, the City holds the following water right permits for municipal uses:
 - Permit G-11796 for 0.06 cfs of water from a well in the Oak Creek Basin; and
 - Permit G-16702 for 0.24 cfs of water from Well 3 (L34726) in Vail Creek Basin, and Well 4 (I56785) and Well 5 (L56773) in Oak Creek Basin.

These water right permits total 0.47 cfs of water. The City of Sodaville has not yet made use of 0.23 cfs of water, being 0.03 under Permit G-8796, 0.03 cfs under Permit G-11796, and 0.17 cfs of water under Permit G-16702.

The City is currently using all five wells authorized under its permits, either separately or in tandem, to supply water directly to municipal water system or to fill a 150,000 gallon reservoir.

The City has identified continued issues with Well 1 authorized under Permit G-8796, in that the production rate of the well has been declining from the original 75 gpm output; and with Well 3, authorized under Permit G-16702, experiencing production shortfalls during dry periods.

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

12. According to the Application, their peak water demand within its service area boundaries was 0.25 cfs in 2014.
13. According to the Application, in 2014, the population within the service boundary of the City of Sodaville was 310. The City of Sodaville estimates the population will increase at growth rate of 1.17 percent per year, reaching an estimated population of 574 by the year 2067. According to the City, this projection is based on the City's current boundaries; however there are no geographic restrictions that would preclude growth. The City anticipates growth will occur as residents of nearby Lebanon move into areas that the City must serve. The City also anticipates potential growth in the service area as the City may begin to serve small, rural housing developments near Sodaville.
14. The City's 2004 Water System Master Plan estimates a maximum population of 506, which is presumed to be based on its current boundaries. There are, however, no geographic restrictions that would preclude growth and expansion of the City. Sufficient land exists outside of the City's current boundaries to allow expansion as population growth occurs. Growth is anticipated to be primarily additional housing and some land outside of the City's boundaries are zoned by Linn County for rural residential uses.
15. According to the Application, their peak day demand is projected to be approximately 0.47 cfs of water by the year 2067.
16. Full development of Permit G-8796 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
17. In accordance with OAR 690-315-0080(1)(d) and as described by Findings 12-16, 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.
18. Based on Findings of Fact 10-16, the Department has determined that the City's request for an extension of time until October 1, 2067, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-8796 is both reasonable and necessary.

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

19. Prior to the issuance of Permit G-8796 on April 9, 1980, the City constructed Well LINN 9696.
20. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-8796.
21. During the last extension period, being October 1, 1995, to October 1, 2000, the City accomplished the following work:
 - installed a static water level probe and temperature probe.
22. Since the 2000 the City has accomplished the following work:
 - added mainline on Sodaville-Waterloo Road to loop both high-pressure and gravity systems.

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

23. According to the Application, as of February 23, 2015, they have invested approximately \$584,826, which is approximately 59 percent of the total projected cost for complete development of this project. The City estimates an additional \$400,000 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-8796, other costs included in this accounting are not partitioned out for G-8796 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 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 City's water rights.
24. As of October 1, 2000, 0.14 cfs of the 0.17 cfs allowed has been appropriated from the well for beneficial municipal purposes under the terms of this permit.
25. The Department has considered the City'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)]

26. According to the Application, as of February 23, 2015, they have invested approximately \$58,4826, which is 59 percent of the total projected cost for complete development of this project. The City estimates an additional \$400,000 investment is needed for the completion of this project.

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

27. As described in Findings of Fact 11 through 15 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-8796.
28. The City projects a population increase, on average, of 1.17 percent per year over a 53 year period, being the years 2014, to 2067.
29. Given the current water supply situation of the City, 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-8796.
30. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.14 cfs (not to exceed the maximum amount authorized under this permit, being 0.17 cfs) under Permit G-8796 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)]

31. 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)]

32. Delays caused by any other governmental requirements in the development of this project have not been identified.

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

33. Delay of development under Permit G-8796 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, a decline in the rate of water produced from the well, and the financial investment needed to rehabilitate the well.

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.

34. On May 3, 2016, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-8796 does not have the potential for substantial interference with surface water.
35. Based upon the Department's determination described in Finding 34, the use of the undeveloped portion of Permit G-8796 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 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-8796 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2067. The estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder 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 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 30, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.14 cfs (not to exceed the maximum amount authorized under this

9. permit, being 0.17 cfs) under Permit G-8796 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).
10. Use of water under this ground water Permit G-8796 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 complete construction under Permit G-8796 from October 1, 2000, to October 1, 2067.

Extend the time to apply the water to beneficial use under Permit G-8796 from October 1, 2000, to October 1, 2067.

Subject to the following conditions:


CONDITIONS

1. **Development Limitations**

A maximum appropriation of 0.14 cfs of water is currently allowed under Permit G-8796. Any appropriation of water beyond 0.14 cfs (not to exceed the maximum amount authorized under the permit, being 0.17 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-8796 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: January 24, 2017



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 **March 10, 2017**, 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 D. 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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