

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #S-50877, Water Right) **PROPOSED FINAL ORDER**
Application #S-70107)
(Willamette Water Company))

Permit Information

Application File #S-70107 / Permit #S-50877

Basin: #02 - Willamette Basin / Watermaster District: #02
Date of Priority: October 25, 1989

Authorized Use of Water

Source of Water: McKenzie River, a tributary of Willamette River
Purpose or Use: Quasi-Municipal Uses
Maximum Rate: 4.0 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.

This Proposed Final Order applies only to Permit #S-50877, water right Application #S-70107. A copy of Permit #S-50877 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1999, to October 1, 2040;
- grant the extension for complete application of water from October 1, 1999, to October 1, 2040; and
- make the extensions subject to certain conditions as set forth below.

AUTHORITY

ORS 537.230(2) provides in pertinent part that the Water Resources Department shall, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5).

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 Water Resources 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) allows the Department, under certain 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.

OAR 690-315-0090(4) provides in pertinent part that municipal and quasi-municipal water use permit holders that serve a population of less than 1000 are not subject to OAR 690-315-0090(3) unless upon review of certain criteria the Department determines that compliance is necessary.

FINDINGS OF FACT

Background

1. Permit #S-50877 was granted by the Water Resources Department (Department) on February 9, 1990. The permit authorizes the use of up to 4.0 cfs of water from the McKenzie River, a tributary of the Willamette River, for quasi-municipal purposes. It specified that construction of the water development project was to be completed by October 1, 1991, and that complete application of water was to be made on or before October 1, 1992.
2. Two prior extensions have been granted for Permit #S-50877. The most recent extension request resulted in the construction and completion dates being extended to October 1, 1999.
3. The permit holder submitted an "Application for Extension of Time" to the Department on April 28, 2000, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #S-50877 be extended from October 1, 1999, to October 1, 2020.
4. Due to ongoing permit extension rulemaking, the Department placed all pending municipal and quasi-municipal permit extension of time requests on hold and did not require municipal and quasi-municipal water use permit holders to submit an extension application until the new rules were adopted.
5. Municipal and quasi-municipal water use permit extension rules were adopted by the Water Resources Commission and became effective on November 1, 2002 (OAR 690-315-0070 through 690-315-0100).
6. On May 22, 2003, Willamette Water Company (Company) submitted an updated extension of time request for Permit #S-50877. The permit holder requested that both the time in which to complete construction of the water system and to complete beneficial use of water to the full extent under the terms of Permit #S-50877 be extended to October 1, 2020.
7. On October 27, 2004, the Department received a letter from the permit holder requesting that the proposed extension dates for Permit #S-50877 be amended to October 1, 2040.
8. Notification of Willamette Water Company's extension of time request for Permit #S-50877 was published on the Department's Public Notice dated June 17, 2003. No public comment on the extension application was received.

Review Criteria for Municipal and 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(1).

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

9. The Department received a completed extension of time application and the statutory fee specified in ORS 536.050 from the permit holder.

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

10. Construction of the water system began within the time specified in the permit, being February 9, 1991.

Duration of Extension [OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c)(d), the Department shall find that the time requested is reasonable and the applicant can complete the project within the time requested.

11. The remaining work to be accomplished under Permit #S-50877 consists of complete construction of the system and complete application of water to beneficial use.
12. As of May 22, 2003, the permit holder has diverted 0.43 cfs of the 4.0 cfs of water allowed under Permit #S-50877 for quasi-municipal purposes.
13. Willamette Water Company relies exclusively on the 4.0 cfs of water allowed under Permit #S-50877 to meet customer demand.
14. Based on an estimated 3 persons per connection, the Company's current 148 connections equals a population of 444. Willamette Water Company expects an increase in demand of 300% by the year 2020, a result of extending mainlines to several subdivisions. The Company estimates that thereafter an annual residential growth rate of 1.5% will occur. When full beneficial use of water under Permit #S-50877 is expected to occur in the year 2040, the Company estimates there will be a total of 540 service connections serving a population of 1,620.
15. The Company expects commercial and industrial growth will occur in the Goshen area. The addition of large commercial and industrial water users will increase water demand above the 1.5% annual residential growth rate resulting in full beneficial use of water under Permit #S-50877 by October 1, 2040.

16. Given the amount of development left to occur, the Company's projected annual growth rate and associated projected demands for water, and considering the potential commercial and industrial growth that will likely occur in the Goshen area, the permittee's request to have until October 1, 2040, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #S-50877 is reasonable.

Good Cause [OAR 690-315-0080(1)(e) and (2)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(2).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(2)(a)(c) and (3)]

Reasonable diligence and good faith of the appropriator during the permit period constitutes a continuing test of whether and under what conditions 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(3).

17. During the last extension period, being from October 1, 1994, to October 1, 1999, the following occurred: Willamette Water Company installed mainline and four meters.
18. Since October 1, 1999, Willamette Water Company accomplished the following: installation of mainline and three meters.
19. As of May 22, 2003, the permit holder invested 13 percent of the total projected cost for complete development of this project, being an approximate total of \$760,473. Work accomplished thus far consists of construction of a water distribution system and installation of meters. An additional \$5,000,000 investment is anticipated for the completion of this project.
20. Since the issuance of Permit #S-50877 on February 9, 1990, approximately 0.43 cfs of the permitted 4.0 cfs of water has been diverted from the McKenzie River for beneficial quasi-municipal purposes under the terms of the permit.
21. The record does not raise concerns about the permit holder's compliance with conditions.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(2)(b)]

22. As of May 22, 2003, the permit holder has invested an approximate total of \$760,473 into the project, consisting of construction of a water distribution system and installation of meters. An additional \$5,000,000 investment is anticipated for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(2)(d)]

23. As described in findings #12 through #15 above, the Company relies exclusively on Permit #S-50877 to meet its future demands.
24. Given the amount of development left to occur, the Company's projected annual growth rate and associated projected demands for water, and considering the potential commercial and industrial growth that will likely occur in the Goshen area, there is a market and present demand for the water to be supplied under Permit #S-50877.

Fair Return Upon Investment [OAR 690-315-0080(2)(e)]

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

Other Governmental Requirements [OAR 690-315-0080(2)(f)]

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

Events which Delayed Development under the Permit [OAR 690-315-0080(2)(g)]

27. Delay of development under Permit #S-50877 was due to the size and scope of the quasi-municipal water system, which was designed to be expanded as water customers connect to the Company.

CONCLUSIONS OF LAW

1. The permit holder 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.
2. The permit holder 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. The permit holder demonstrated that actual construction on the project began within the time specified in the permit, as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2040¹, [OAR 690-315-0080(1)(d)].
6. After considering the reasonable diligence and good faith of the appropriator, the financial investment made, the market and present demands for water, the fair return upon the investment, the requirements of other governmental agencies and uncontrollable events which delayed development under the permit, the Department has determined that the applicant has shown good cause for an extension to complete construction and complete application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. Considering that the population served under Permit #S-50877 is less than 1000 (as described in Finding #14 above), the Department has reviewed the permit record and determined, pursuant to OAR 690-315-0090(4), that submittal of a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86 is not necessary.

¹ Pursuant to ORS 537.630(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use.


Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit #S-50877 from October 1, 1999, to October 1, 2040; and

Extend the time for complete application of water to beneficial use under Permit #S-50877 from October 1, 1999, to October 1, 2040.

DATED: April 26, 2005


Dwight French
Water Rights Section Manager

*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 request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than **Friday, December 10, 2005**, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the 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 final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the 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 petition upon the water right permit holder; if petitioner is other than the water right permit holder; and
 - g. The 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 request for contested case hearing 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 submitted a timely request for a contested case hearing.

If you have questions about any of the statements contained in this document, please contact Lisa J. Juul at (503)986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds. His telephone number is (503)986-0820.

If you have other 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 Rights Section
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