

**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-9513, Water Right Application G-9938,	)	PROPOSED
in the name of the City of Donald	)	FINAL
		ORDER

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**Permit Information**

**Application File G-9938 / Permit G-9513**

Basin 2B – Middle Willamette Basin / Watermaster District 16

Date of Priority: September 16, 1980

**Authorized Use of Water**

Source of Water: Well 1 and Well 2 within the Ryan Creek Basin

Purpose or Use: Municipal

Maximum Rate: 0.78 Cubic Foot per Second (cfs), being 0.39 cfs from each well

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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 G-9513, water right Application G-9938.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1998, to October 1, 2030.
- Grant an extension of time to apply water to full beneficial use from October 1, 1998, to October 1, 2030.

## **ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources

City – City of Donald

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

### Units of Measure

cfs – cubic feet per second

gpm – gallons per minute

### Wells

MARI 562 – Well 1

MARI 563 – Well 2

## **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.

## **FINDINGS OF FACT**

1. Permit G-9513 was issued by the Department on February 8, 1982. The permit authorizes the use of up to 0.78 cfs of water from Well 1 and Well 2 within the Ryan Creek Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1983, and that complete application of water was to be made on or before October 1, 1984.
2. Three prior permit extensions have been granted for Permit G-9513. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1998.



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. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.
6. On September 23, 2019, the City of Donald (City), submitted an “Application for Extension of Time” (Application) to the Department requesting the time to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-9513 be extended from October 1, 1998, to October 1, 2025.
7. Notification of the City’s Application for Extension of Time for Permit G-9513 was published in the Department’s Public Notice dated October 1, 2019. No public comments were received regarding the extension application.
8. On December 4, 2019, the City submitted additional information to supplement their pending Application for Extension of Time. The information submitted was in response to a request from the Department to clarify current and future population and peak demand. Additionally, the extension request was amended from October 1, 2025, to October 1, 2030.
9. On April 6, 2020, Owen McMurtrey, agent representing the City of Donald, submitted additional documentation demonstrating the maximum instantaneous rate appropriated under the permit.

**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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

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

9. On September 23, 2019, 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)]**

10. Permit G-9513 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.<sup>4</sup>

**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.*

11. The remaining work to be accomplished under Permit G-9513 consists of completing construction and applying water to full beneficial use.
12. As of October 1, 1998, the permit holder had appropriated the total 0.78 cfs of water, being 0.39 cfs of water from each well authorized under Permit G-9513 for municipal purposes. There is no “undeveloped portion” of the Permit G-9513 as per OAR 690-315-0010(6)(g).
13. Permit G-9513 is the only water right for municipal use held by the City.
14. The City’s peak water demand within its service area boundaries was 0.475 cfs in 2018.
15. According to the Application, in 2019, the population within the service boundary of the City of Donald was 985. City of Donald estimates the population will increase at a growth rate of 2.52 percent per year, reaching an estimated population of 1,705 by the year 2040. The population projections provided are based Portland State University’s population projections. However, since these numbers were produced, additional lands have been incorporated into the Urban Growth Boundary, resulting in additional residential zoned land being available for as many as 420 new housing units.
16. The City’s peak day demand of is projected to be approximately 0.66 cfs of water by the year 2040.
17. Full development of Permit G-9513 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
18. Based on Findings of Fact 11-17, the Department has determined that the City’s request for an extension of time until October 1, 2030, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-9513 is both reasonable and necessary.

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



**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).*

**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-9513 on July 28, 1980, the City began construction of MARI 562 (Well 1), and on August 15, 1980, the City began construction of MARI 563 (Well 2).
20. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-9513.
21. During the last extension period, being October 1, 1993, to October 1, 1998, the City accomplished the following work:
  - performed copper and lead testing;
  - Well 1 rehabilitation; and
  - performed a water rate study.
22. Since the October 1, 1998, the City has accomplished the following work:
  - performed a source water assessment;
  - relined reservoir 1;
  - replaced water distribution line;
  - performed a water rate study;
  - installed new water distribution lines;
  - replaced sand filter media;
  - installed a fire booster pump;
  - performed reservoir inspection; and
  - prepared a water facilities plan.

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 September 23, 2019, they have invested \$504,000, which is 30 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,190,000 investment is needed for the completion of this project.

24. As of October 1, 1998, all of the 0.78 cfs of water allowed has been appropriated. Each well has operated at the maximum authorized capacity of 0.39 cfs, with pumping times overlapping during normal system operation.
25. The Department has considered the City's compliance with conditions, and did not identify any concerns.

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

28. According to the Application, as of September 23, 2019, they have invested \$504,000, which is 30 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,190,000 investment is needed for the completion of this project.

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

29. The City projects a population increase, on average, of 2.52 percent per year over a 21 year period, being 2019 through 2040. According to Marion County population projections, and the additional lands annexed into the Urban Growth Boundary, an anticipated population of 1,705 is anticipated by 2040.
30. 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-9513.
31. As described in Findings 11 through 30 above, the City has indicated, and the Department finds that the City must rely exclusively on its water right Permit G 9513.

**Fair Return Upon Investment** **[OAR 690-315-0080(3)(e)]**

32. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-9513.

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

33. 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)]**

34. According to the Application, delay of development under Permit G-9513 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years.



**Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]**

*The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.*

35. Permit G-9513 is not subject to an evaluation regarding maintaining the persistence of listed fish species because there is no "undeveloped portion" of the Permit G-9513 as per ORS 537.630(1).

**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-9513 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, 2030<sup>5</sup> pursuant to OAR 690-315-0080(1)(d).
6. 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).

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<sup>5</sup> 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.

7. There is no undeveloped portion of the permit to be considered under OAR 360-315-0080(1)(f).

### **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-9513 from October 1, 1998, to October 1, 2030.

extend the time to apply the water to beneficial use under Permit G-9513 from October 1, 1998, to October 1, 2030.

DATED: October 6, 2020

  
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 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 **November 20, 2020**, 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 TO ACTIVE DUTY SERVICEMEMBERS:** Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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If you have any questions about statements contained in this document, please contact Jeffrey Pierceall at 503-986-0802.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.

If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

Address any correspondence to:      Water Right Services Division  
725 Summer St NE, Suite A  
Fax: 503-986-0901                      Salem, OR 97301-1266

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