Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Water Resources Commission Meeting
Agenda Item H, April 14, 2005

Request for an Exception to the Willamette Basin Program by Springfield Utility Board under ORS 536.295

I. Issue Statement

Under ORS 536.295 the Water Resources Commission may, under certain circumstances, allow the Department to consider an application to appropriate water for a use not classified as an allowable use by the applicable basin program. Springfield Utility Board ("SUB" or "the applicant") has requested an exception to the Willamette Basin Program for their applications G-15241, G-15243, and G-15244 as use of water under these ground water permits is necessary to avoid extreme hardship as provided in ORS 536.295(1)(e).

This report summarizes the information provided by the applicant and evaluates the request against statutory criteria and rules of the Commission. The question before the Commission is whether to allow the Department to consider the application even though the use is not classified under the basin program. If the exception is granted, the application will then be reviewed in the same manner as any other water right application.

II. Background

Basin programs are administrative rules adopted by the Commission that prescribe future allowable uses of water. The act of specifying the allowable future beneficial uses is called "classification" and is authorized under ORS 536.340. Classifying beneficial uses in a basin program involves analysis of basin-specific data and substantial public involvement. However, under ORS 536.295 the Commission may allow the Department to consider an application for a use not classified in a basin program if the use meets one or more of the criteria under ORS 536.295 (1). The Commission also must evaluate whether the proposed use is consistent with the general policies of the applicable basin program.

Commission approval of a request for an exception to a basin program does not guarantee that a permit will be issued, or if it is issued, how it would be conditioned. The Commission is not making a public interest determination on an application. In allowing a basin program exception, the Commission allows the Department to consider an application notwithstanding the basin program classification. All other aspects of the application review process remain the same, and

the Department must consider issues such as water availability, injury to existing water rights, and any other rules of the Commission. Public notice and comment opportunities are provided in the same manner as any other water right application. If the Commission does not grant a request for a basin program exception, the application is processed but will likely be denied or limited because the proposed use is not a classified use in the basin program.

III. Discussion

Copies of applications G-15241, G-15243, and G-15244 are provided in Attachment 1. A summary of these applications and an evaluation of SUB's request for an exception to the basin program are provided below:

A. Application summary and basis for consideration

G-15241: This application proposes to use 400 gallons per minute (gpm) from each of two wells for municipal use.

G-15243: This application proposes to use 1,000 gpm from one well for municipal use.

G-15244: This application proposes to use 600 gpm from each of three wells for municipal use.

A map of the area and the general location of the proposed wells is provided in Attachment 2. For applications G-15241, G-15243, and G-15244, the Department has determined that the proposed wells produce water from unconfined alluvium located within ¼ mile of Cedar Creek, a tributary of the McKenzie River in the Willamette Basin. In the cases of G-15243 and G-15244, the wells are also located within ¼ mile of the McKenzie River in the Willamette Basin.

With respect to ground water applications in the Willamette Basin, "ground water in unconfined alluvium within ¼ mile of the banks of a stream...shall be classified the same as the surface source" (OAR 690-502-240). Therefore, surface water classifications apply to these three applications.

Although surface water classifications allow appropriation of water from the McKenzie River for municipal use year round (OAR 690-502-080(1)(e)), appropriation of water from Cedar Creek for municipal use is allowable only during the period October 1 through June 30 of each year (OAR 690-502-080(1)(d)) (Attachment 3). Therefore, use of ground water under these applications is not classified for municipal use from July 1 through September 30 of each year.

B. Exception request evaluation

1) Summary and evaluation of information provided by the applicant under ORS 536.295(1)

SUB provided the Department with a basin program exception request on February 8, 2005 (Attachment 4). ORS 536.295 authorizes the Commission to allow the Department to consider an application to appropriate water for a use not classified in the applicable basin program if the use is consistent with any one or more of seven statutory criteria (Attachment 5). In its request, the applicant stated that the basis for its request is that the use is necessary to avoid extreme hardship, pursuant to ORS 536.295(1)(e).

As discussed in SUB's request for an exception (Attachment 4, page 6) "extreme hardship" is not defined by the Commission's rules. In a previously approved request for a basin program exception, the Commission considered the term to include a situation where "the failure to allow the use would cause financial or other burdens to a water user that could not be easily overcome" (Pleasant Valley Golf Course, May 1995).

In its exception request, SUB argued that failure to allow the proposed use would cause a burden on SUB and its customers that could not be easily overcome and thus constitutes extreme hardship. The applicant's substantive points regarding the extreme hardship request include the following:

- SUB's Master Plan calls for the development of additional water supplies to keep pace with growth in SUB's service area. Denial of this exception would require SUB to seek alternative water supplies that they assert would equal or exceed the past investment in the proposed use.

- Because the development of alternative water supplies would require additional delays, denial of the exception would increase the likelihood that SUB will not be able to continuously meet customer demand. In this regard the hardship affects both SUB and its customers.

- Denial of the exception would create an inability to provide a safe and adequate water supply to residences and businesses served by SUB. The applicant's request pointed out that the Oregon Legislature has found that "the availability of an adequate water supply is essential to the continued heath and safety of all Oregonians" (ORS 536.241(1)).

- Denial of the exception would result in loss of investment of time and money in the well fields. The applicant asserts that its financial investment in the wells to date exceeds $1 million.

Department analysis: "Extreme hardship" could be interpreted as a relative term that is directly tied to the financial resources of the applicant. However, in past hardship decisions under ORS 536.295, the Commission has not focused on the applicant's financial resources, but instead has

focused on whether denial of the use and the need for the applicant to seek an alternative water supply would cause a burden that is not easily overcome. In this case, staff agree that the failure to allow the use would cause burdens to the applicant and its constituents that could not be easily overcome and that the exception is necessary to avoid extreme hardship.

2) Evaluation of whether the use is consistent with the general policies of the Willamette Basin Program

ORS 536.295(4) requires the Commission to evaluate whether the proposed use is consistent with the general policies of the Willamette Basin Program, provided in Attachment 6. In its exception request, the applicant asserts that the proposed use is not inconsistent with any of the policies of the basin program, and is specifically consistent with at least two of those policies:

- The proposed use would minimize impairment of surface water uses resulting from hydraulic connection between ground and surface water (OAR 690-502-0020(2)(d)) by mitigating any impact to Cedar Creek through the augmentation of streamflows using McKenzie River water. This would increase streamflows at most points along Cedar Creek, even with the proposed use of ground water. Even though the Commission is not being asked to recommend *conditions* that might be included in a permit if one is issued, it is important to note that SUB has amended a pending surface water application (S-85336) so that 4.0 cfs of water can be diverted from the McKenzie River into Cedar Creek. The Department has concluded that these three groundwater applications will have a combined impact to Cedar Creek of no more than 4.0 cfs. So, if groundwater permits are issued, they will contain conditions requiring SUB to deliver 4.0 cfs of water into Cedar Creek to offset any impact to Cedar Creek.

- The application supports coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption (OAR 690-502-0020(3)) by coordinating system planning and cost effective water supply development with Rainbow Water District.

Staff believe that the proposed use is consistent with the general policies of the Willamette Basin Program.

IV. Conclusion

To approve a basin program exception request under ORS 536.295, the Commission must find that the request meets one or more statutory criteria and the proposed use is consistent with the general policies of the applicable basin program. Staff believe that the basin program exception submitted by Springfield Utility Board meets the extreme hardship criterion under ORS 536.295 and that the proposed use is consistent with the general policies of the Willamette Basin Program.

V. Alternatives

The Commission may consider the following actions:

1. Approve the request by SUB for a basin program exception to avoid extreme hardship, recognizing that a permit, if issued, may be conditioned to protect the public health, safety and welfare.

2. Deny the request by SUB for a basin program exception.

3. Take no action and direct staff to continue to work with the applicant.

VI. Recommendation

Staff recommend Alternative 1, that the Commission approve the request by SUB for an exception to the Willamette Basin Program to avoid extreme hardship, recognizing that a permit, if issued, may be conditioned to protect the public health, safety and welfare.

Attachments:

1. ORS 536.295
2. Copy of Applications G-15241, G-15243, and G-15244
3. Map of Area
4. Willamette Basin Program
5. Springfield Utility Board Exception Request
6. Willamette Basin Program General Policies

Dwight French
(503) 986-0819

536.295 Conditions for consideration of application for use not classified in basin program; rules. (1) Notwithstanding any provision of ORS 536.300 or 536.340, the Water Resources Commission may allow the Water Resources Department to consider an application to appropriate water for a use not classified in the applicable basin program if the use:

(a) Will be of short duration during each year;

(b) Will be for a continuous period of no longer than five years;

(c) Is largely nonconsumptive in nature and not likely to be regulated for other water rights;

(d) Is necessary to ensure public health, welfare and safety;

(e) Is necessary to avoid extreme hardship;

(f) Will provide a public benefit such as riparian or watershed improvement; or

(g) Is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program including but not limited to:

(A) Exploratory thermal drilling;

(B) Heat exchange;

(C) Maintaining water levels in a sewage lagoon; or

(D) Facilitating the watering of livestock away from a river or stream.

(2) A permit granted on or before January 1, 1993, for a quasi-municipal use of water shall be considered a permit for a classified use under ORS 536.340 if at the time the application was submitted or the permit was granted, the basin program identified municipal use as a classified use.

(3) The commission by rule may determine the specific uses permitted within a classified use.

(4) In making the determination under subsection (1) of this section, the commission shall evaluate whether the proposed use is consistent with the general policies established in the applicable basin program.

(5) The Water Resources Department shall process and evaluate an application allowed by the commission under subsections (1) to (4) of this section in the same manner as any other water right application, including determining whether the proposed use would result in injury to an existing water right. [1989 c.9 §1; 1993 c.591 §1; 1999 c.703 §1]

COPY

THURSTON MIDDLE SCHOOL
2 WELLS

GW-1 Feb. 24 1999

State of Oregon
Water Resources Department
158 12th Street NE, Salem, OR 97310
(503)378-8455 • (800)624-3199
www.wrd.state.or.us

Application for a Permit to Use Ground Water

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

Appl. # G-15241

1. APPLICANT INFORMATION

A. Individuals

Applicant: _____ (First) _____ (Last)

Co-applicant: _____ (First) _____ (Last)

Mailing address: _____

_____ (City) _____ (State) _____ (Zip)

Phone: _____ (Home) _____ (Work) _____ (Other)

*Fax: _____ *E-Mail address: _____

B. Organizations

(Corporations, associations, firms, partnerships, joint stock companies, cooperatives, public and municipal corporations)

Name of organization: SPRINGFIELD UTILITY BOARD

Name and title of person applying: BART McKEE P.E. - ENGINEER

Mailing address of organization: 202 S. 18TH ST.

SPRINGFIELD (City) OR (State) 97477 (Zip)

Phone: 541-726-2396 (Day) _____ (Evening)

*Fax: 541-747-7348 *E-Mail address: bartm@subutil.com

**Optional information*

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WATER RESOURCES DEPT
SALEM, OREGON

For Department Use

App. No. G-15241 Permit No. _____ Date 12/11/00

G-15241

2. PROPERTY OWNERSHIP

Do you own all the land where you propose to divert, transport, and use water?

- ☐ Yes *(Skip to section 3 "Ground water Development.")*
- ☑ No Please check the appropriate box below.
  - (*) ☑ I have a recorded easement or written authorization permitting access.
  - ☐ I do not currently have written authorization or easement permitting access.

List the names and mailing addresses of all affected landowners.*

(*) SEE ATTACHED COPY OF CITY CHARTER

If more than 25 landowners are involved, a list is not required. See instructions.

3. GROUND WATER DEVELOPMENT

A. Number of well(s): 2 **B.** Name of nearest surface water body: CEDAR CREEK

C. Distance from well(s) to nearest stream or lake: 1) 1# - 1600'

2) 2# - 500' 3) _____ 4) _____

D. If distance from surface water is less than one mile, indicate elevation difference between nearest surface water and well head. 1) ≈ 20'

2) ≈ 20' 3) _____ 4) _____

E. Well Characteristics

Wells must be constructed according to standards set by the Department for the construction and maintenance of water wells. If the well is already constructed, please enclose a copy of the well constructor's log and the well ID number, if available, for each well with this application. Identify each well with a number corresponding to the wells designated on the map and proceed to question F in this section of the form. If the well has not been constructed, or if you do not have a well log, please complete the following:

Well(s) will be constructed by: WELL #1 - SEE ATTACHED LOG; WELL #2 TO BE CONSTRUCTED THROUGH COMPETITIVE BID.

Address: _____

Completion date: WELL #2 ≈ 2006

2. Please provide a description of your well development. *(Attach additional sheets if needed.)*

Well No.	Diameter	Type and size of casing	No. of feet of casing	Intervals casing is perforated (in feet)	Seal depth	Est. depth to water	Est. depth to water bearing stratum	Type of access port or measuring device	Total well depth
2	16"-8"	8"-16" STEEL	≈ 125'	SS 125'-30'	≈ 60'	≈ 30'	≈ 100'	SAUNDERS TUBE	≈ 360'

F. Artesian Flows

If your water well is flowing artesian, describe your water control and conservation works:

N.A.

4. WATER USE

Please read the instruction booklet for more details on "type of use" definitions, how to express how much water you need and how to identify the water source you propose to use. You may [illegible] supplemental form for some uses as they require specific information for that type of use.

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A. Type(s) of Use(s)

See list of beneficial uses provided in the instructions.

- If your proposed use is **domestic**, indicate the number of households to be supplied with water: _____
- If your proposed use is **irrigation**, please attach Form **I**
- If your proposed use is **mining**, attach Form **R**
- If your proposed use is **municipal or quasi-municipal**, attach Form **M** ✓ (SEE ATTACHED)
- If your proposed use is **commercial/industrial**, attach Form **Q**

Application No. G 15241
Permit No.

Ground Water/ **3**

B. Amount of Water

Provide the production rate in gallons per minute (gpm) and the total annual amount of water you need from each well, from each source or aquifer, for each use. You do not need to provide source information if you are submitting a well log with your application.

Well No.	Source or aquifer	Type of use	Total rate of water requested (in gpm)	Total annual quantity (in gallons)	Production rate of well (in gpm)
1	GRAVELS	MUNICIPAL	400	210.2 MG	400
2	"	"	400	210.2 MG	400

C. Maximum Rate of Use Requested

What is the maximum, instantaneous rate of water that will be used? 400 gpm, BOTH WELL

(The fees for your application will be based on this amount.)

D. Period of Use

Indicate the time of year you propose to use the water: BOTH WELLS ALL YEAR

(For seasonal uses like irrigation give dates when water use would begin and end, e.g. March 1–October 31.)

E. Acreage

If you will be applying water to land, please give the total number of acres where water will be applied or used: N.A.

(This number should be consistent with you application map.)

5. WATER MANAGEMENT

A. Diversion

What equipment will you use to pump water from your well(s)?

☒ Pump (give horsepower and pump type) #1-40hp-line shaft turbine; #2-40 hp-line sh turbi

☐ Other means (describe) _____

B. Transport

How will you transport water to your place of use?

☐ Ditch or canal (give average width and depth)

Width _____ Depth _____

Is the ditch or canal to be lined? ☐ Yes ☐ No

☒ Pipe (give diameter and total length)

Diameter _____ Length _____

☒ Other (describe) MUNICIPAL DISTRIBUTION PIPES

C. Application/Distribution Method

What equipment will you use to apply water to your place of use? NA

Irrigation or land application method (check all that apply):

- ☐ Flood
- ☐ High-pressure sprinkler
- ☐ Low pressure sprinkler
- ☐ Drip
- ☐ Water cannons
- ☐ Center pivot system
- ☐ Hand lines
- ☐ Wheel lines
- ☐ Siphon tubes or gated pipe with furrows
- ☐ Other, describe

Distribution method

- ☒ Direct pipe from source
- ☐ In-line storage (tank or pond)
- ☐ Open canal

D. Conservation

What methods will you use to conserve water? Why did you choose this distribution or application method? For example, if you are using sprinkler irrigation rather than drip irrigation, explain. If you need additional space, attach a separate sheet.

MUNICIPAL CONSERVATION PLAN SUBMITTED FOR REVIEW

6. PROJECT SCHEDULE

Indicate the anticipated dates that the following construction tasks should begin. If construction has already begun, or is completed, please indicate that date.

Proposed date construction will begin #1 – 2004 #2 – 2004

Proposed date construction will be completed #1 – 2004 #2 – 2006

Proposed date beneficial water use will begin #1 – 2005 #2 – 2006

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SALEM, OREGON

7. REMARKS

If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.

Application No. G 15241
Permit No.

8. MAP REQUIREMENTS

The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed well location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

9. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all information provided in this application is true and correct to the best of my knowledge:

Ken Courtney, Director — 7/30/03
Signature of Applicant — Date

Signature of Co-applicant — Date

Before you submit your application be sure you have:

- ✓ Answered each question completely.
- Attached a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- ✓ Included the legal description of all the property invoived with this application. You may supply a copy of the deed, land sales contract, or title insurance policy, to meet this requirement.
- ✓ Included a check payable to the Oregon Water Resources Department for the appropriate amount.

Attachment 2

COPY

THURSTON 5,10,6,7

GW-1 Feb. 24 1999

State of Oregon
Water Resources Department
158 12th Street NE, Salem, OR 97310
(503)378-8455 • (800)624-3199
www.wrd.state.or.us

Application for a Permit to Use Ground Water

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

Appl. #G-15243

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1. APPLICANT INFORMATION

A. Individuals

Applicant: _____ (First) _____ (Last)

Co-applicant: _____ (First) _____ (Last)

Mailing address: _____

_____ (City) _____ (State) _____ (Zip)

Phone: _____ (Home) _____ (Work) _____ (Other)

*Fax: _____ *E-Mail address: _____

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SALEM, OREGON

B. Organizations

(Corporations, associations, firms, partnerships, joint stock companies, cooperatives, public and municipal corporations)

Name of organization: SPRINGFIELD UTILITY BOARD

Name and title of person applying: BART E McKEE P.E. - ENGINEER

Mailing address of organization: 202 S 18TH ST

SPRINGFIELD (City) OR (State) 97477-5240 (Zip)

Phone: 541-726-2396 (Day) _____ (Evening)

*Fax: 541-747-7348 *E-Mail address: bartm@subutil.com

**Optional information*

For Department Use

App. No. G-15243 Permit No. _____ Date 12/11/00

2. PROPERTY OWNERSHIP

Do you own all the land where you propose to divert, transport, and use water?

- ☐ Yes *(Skip to section 3 "Ground water Development.")*
- ☒ No Please check the appropriate box below.
  - ☒ I have a recorded easement or written authorization permitting access.
  - ☐ I do not currently have written authorization or easement permitting access.

List the names and mailing addresses of all affected landowners.*

(1) SEE ATTACHED COPY OF CITY CHARTER.

If more than 25 landowners are involved, a list is not required. See instructions.

3. GROUND WATER DEVELOPMENT

A. Number of well(s): 4 B. Name of nearest surface water body: McKenzie River

C. Distance from well(s) to nearest stream or lake: 1) WELL #5 - 600'

2) WELL #10 - 400' 3) WELL #6 - 600' 4) WELL #7 - 300'

D. If distance from surface water is less than one mile, indicate elevation difference between nearest surface water and well head. 1) WELL #5 - ≈ 6'

2) WELL #10 - ≈ 8' 3) WELL #6 - ≈ 5' 4) WELL #7 - ~6'

E. Well Characteristics

Wells must be constructed according to standards set by the Department for the construction and maintenance of water wells. If the well is already constructed, please enclose a copy of the well constructor's log and the well ID number, if available, for each well with this application. Identify each well with a number corresponding to the wells designated on the map and proceed to question F in this section of the form. If the well has not been constructed, or if you do not have a well log, please complete the following:

Well(s) will be constructed by: WELL LOGS ATTACHED FOR WELLS 5, 6, 7. WELL #10 WILL BE CONSTRUCTED IN LATE 2002, BY COMPETITIVE BID.

Address: —

Completion date: WELLS 5, 6, 7 ARE COMPLETE. WELL #10 WILL BE COMPLETE IN 2004.

2. Please provide a description of your well development. *(Attach additional sheets if needed.)*

Well No.	Diameter	Type and size of casing	No. of feet of casing	Intervals casing is perforated (in feet)	Seal depth	Est. depth to water	Est. depth to water bearing stratum	Type of access port or measuring device	Total well depth
10	12"-16"	STEEL ~25'	~25'	~25' TO 60'	21'	7-10'	~25'	SOUNDER TUBE	~60'

F. Artesian Flows

If your water well is flowing artesian, describe your water control and conservation works:

N.A.

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4. WATER USE

Please read the instruction booklet for more details on "type of use" definitions, how to express how much water you need and how to identify the water source you propose to use. You must fill out [illegible] for some uses as they require specific information for that type of use.

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A. Type(s) of Use(s)

See list of beneficial uses provided in the instructions.

- If your proposed use is **domestic**, indicate the number of households to be supplied with water: _____
- If your proposed use is **irrigation**, please attach Form **I**
- If your proposed use is **mining**, attach Form **R**
- If your proposed use is **municipal or quasi-municipal**, attach Form **M** ✓ (See Attached)
- If your proposed use is **commercial/industrial**, attach Form **Q**

Application No G 15243
Permit No.

B. Amount of Water

Provide the production rate in gallons per minute (gpm) and the total annual amount of water you need from each well, from each source or aquifier, for each use. You do not need to provide source information if you are submitting a well log with your application.

Well No.	Source or aquifer	Type of use	Total rate of water requested (in gpm)	Total annual quantity (in gallons)	Production rate of well (in gpm)
#5	GRAVELS	MUNICIPAL	600	315.5 MG	600
#10	GRAVELS	"	"	"	"
#6	GRAVELS	"	"	"	"
#7	GRAVELS	"	400	210.2 MG	400

C. Maximum Rate of Use Requested

What is the maximum, instantaneous rate of water that will be used? #5, 6, 10, 600 gpm; #7, 400 gpm

(The fees for your application will be based on this amount.)

D. Period of Use

Indicate the time of year you propose to use the water: ALL YEAR, ALL WELLS

(For seasonal uses like irrigation give dates when water use would begin and end, e.g. March 1–October 31.)

E. Acreage

If you will be applying water to land, please give the total number of acres where water will be applied or used: N.A.

(This number should be consistent with you application map.)

5. WATER MANAGEMENT

A. Diversion

What equipment will you use to pump water from your well(s)?

☒ Pump (give horsepower and pump type) #5 - 50hp - line shaft turbine; #6 - 40hp - SUBMER; #7 - 30 hp - line shaft turbine; #10 - 50hp - line shaft turbine

~~☐ Other means (describe)~~

B. Transport

How will you transport water to your place of use?

☐ Ditch or canal (give average width and depth)

Width_____ Depth _____

Is the ditch or canal to be lined? ☐ Yes ☐ No

☒ Pipe (give diameter and total length)

Diameter_____ Length _____

☒ Other (describe) MUNICIPAL DISTRIBUTION SYSTEM

C. Application/Distribution Method

What equipment will you use to apply water to your place of use? N.A.

Irrigation or land application method (check all that apply):

- ☐ Flood
- ☐ High-pressure sprinkler
- ☐ Low pressure sprinkler
- ☐ Drip
- ☐ Water cannons
- ☐ Center pivot system
- ☐ Hand lines
- ☐ Wheel lines
- ☐ Siphon tubes or gated pipe with furrows
- ☐ Other, describe

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Distribution method

- ☒ Direct pipe from source
- ☐ In-line storage (tank or pond)
- ☐ Open canal

D. Conservation

What methods will you use to conserve water? Why did you choose this distribution or application method? For example, if you are using sprinkler irrigation rather than drip irrigation, explain. If you need additional space, attach a separate sheet.

MUNICIPAL CONSERVATION PLAN SUBMITTED FOR REVIEW.

6. PROJECT SCHEDULE

Indicate the anticipated dates that the following construction tasks should begin. If construction has already begun, or is completed, please indicate that date.

Proposed date construction will begin ALL WELLS COMPLETED (5, 6, 7) - 10 STORAGE 12/02

Proposed date construction will be completed ALL WELLS COMPLETED (5, 6, 7) - 10 COMPLETE ≈ 12/04

Proposed date beneficial water use will begin 7/1/00 (5, 6, 7) - 10 ≈ 12/06

7. REMARKS

If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.

No. 915243

8. MAP REQUIREMENTS

The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed well location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

9. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all information provided in this application is true and correct to the best of my knowledge:

Ken Cristesky — Signature of Applicant

7/26/00 — Date

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Signature of Co-applicant

Date

Before you submit your application be sure you have:

- ✓ Answered each question completely.
- ✓ Attached a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- ✓ Included the legal description of all the property involved with this application. You may supply a copy of the deed, land sales contract, or title insurance policy, to meet this requirement.
- ✓ Included a check payable to the Oregon Water Resources Department for the appropriate amount.

COPY

THURSTON 8, 9, 11,

GW-1 Feb. 24 1999

State of Oregon
Water Resources Department
158 12th Street NE, Salem, OR 97310
(503)378-8455 • (800)624-3199
www.wrd.state.or.us

Application for a Permit to Use
Ground Water

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

Appl. #G-15244

1. APPLICANT INFORMATION

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A. Individuals

Applicant: _____ (First / Last)

Co-applicant: _____ (First / Last)

Mailing address: _____

_____ (City / State / Zip)

Phone: _____ (Home / Work / Other)

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*Fax: _____ *E-Mail address: _____

B. Organizations

(Corporations, associations, firms, partnerships, joint stock companies, cooperatives, public and municipal corporations)

Name of organization: SPRINGFIELD UTILITY BOARD

Name and title of person applying: BART McKEE, P.E. – ENGINEER

Mailing address of organization: 202 S. 18th ST.

SPRINGFIELD (City) OR (State) 97477 (Zip)

Phone: 541-726-2396 (Day / Evening)

*Fax: 541-747-7348 *E-Mail address: bartm@subutil.com

*Optional information

For Department Use

App. No. G-15244 Permit No. _____ Date 12/11/00

2. PROPERTY OWNERSHIP • UG30

Do you own all the land where you propose to divert, transport, and use water?

- ☐ Yes *(Skip to section 3 "Ground water Development.")*
- ☒ No Please check the appropriate box below.
- (*) ☒ I have a recorded easement or written authorization permitting access.
- ☐ I do not currently have written authorization or easement permitting access.

List the names and mailing addresses of all affected landowners.*

(*) SEE ATTACHED COPY OF CITY CHARTER

If more than 25 landowners are involved, a list is not required. See instructions.

3. GROUND WATER DEVELOPMENT

A. Number of well(s): 3 **B.** Name of nearest surface water body: McKenzie River

C. Distance from well(s) to nearest stream or lake: 1) _____

2) #8 - 500' 3) #9 - 400' 4) #11 - 1000'

D. If distance from surface water is less than one mile, indicate elevation difference between nearest surface water and well head. 1) _____

2) #8 - 7' 3) #9 - 7' 4) #11 - 10'

E. Well Characteristics

Wells must be constructed according to standards set by the Department for the construction and maintenance of water wells. If the well is already constructed, please enclose a copy of the well constructor's log and the well ID number, if available, for each well with this application. Identify each well with a number corresponding to the wells designated on the map and proceed to question F in this section of the form. If the well has not been constructed, or if you do not have a well log, please complete the following:

Well(s) will be constructed by: ALL WELLS WILL BE CONSTRUCTED BY COMPETITIVE BID PROCESS

Address: _____

Completion date: ALL WELLS CONSTRUCTED BY 2005

2. Please provide a description of your well development. *(Attach additional sheets if needed.)*

Well No.	Diameter	Type and size of casing	No. of feet of casing	Intervals casing is perforated (in feet)	Seal depth	Est. depth to water	Est. depth to water bearing stratum	Type of access port or measuring device	Total well depth
12	12-16"	12"-16" STEEL	≈25'	25'-60'	21'	~7-10'	~25'	SOUNDER TUBE	~65'
8	"	"	"	"	"	"	"	"	"
9	"	"	"	"	"	"	"	"	"
11	"	"	"	"	"	"	"	"	"

F. Artesian Flows

If your water well is flowing artesian, describe your water control and conservation works:

N.A.

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4. WATER USE

Please read the instruction booklet for more details on "type of use" definitions, how to express how much water you need and how to identify the water source you propose to use. You must fill out a supplemental form for some uses as they require specific information for that type of use.

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A. Type(s) of Use(s)

See list of beneficial uses provided in the instructions.

- If your proposed use is **domestic**, indicate the number of households to be supplied with water: _____
- If your proposed use is **irrigation**, please attach Form **I**
- If your proposed use is **mining**, attach Form **R**
- If your proposed use is **municipal or quasi-municipal**, attach Form **M** ✓ (SEE ATTACHED)
- If your proposed use is **commercial/industrial**, attach Form **Q**

Application No. 915244
Permit No.

B. Amount of Water

Provide the production rate in gallons per minute (gpm) and the total annual amount of water you need from each well, from each source or aquifer, for each use. You do not need to provide source information if you are submitting a well log with your application.

Well No.	Source or aquifer	Type of use	Total rate of water requested (in gpm)	Total annual quantity (in gallons)	Production rate of well (in gpm)
8	GRAVEL	MUNICIPAL	600	315.4MG	600
9	"	"	"	"	"
11	"	"	"	"	"

C. Maximum Rate of Use Requested

What is the maximum, instantaneous rate of water that will be used? 600 gpm ON ALL WELL

(The fees for your application will be based on this amount.)

D. Period of Use

Indicate the time of year you propose to use the water: ALL WELLS, ALL YEAR

(For seasonal uses like irrigation give dates when water use would begin and end, e.g. March 1–October 31.)

E. Acreage

If you will be applying water to land, please give the total number of acres where water will be applied or used: N.A.

(This number should be consistent with you application map.)

5. WATER MANAGEMENT

A. Diversion

What equipment will you use to pump water from your well(s)?

☒ Pump (give horsepower and pump type) #8, 9, 11, - ALL 50 hp each - ALL

☐ ~~Other means (describe)~~ line shaft turbine.

B. Transport

How will you transport water to your place of use?

☐ Ditch or canal (give average width and depth)

Width_____ Depth _____

Is the ditch or canal to be lined? ☐ Yes ☐ No

☒ Pipe (give diameter and total length)

Diameter_____ Length _____

☒ Other (describe) MUNICIPAL DISTRIBUTION SYSTEM

C. Application/Distribution Method

What equipment will you use to apply water to your place of use? NA

Irrigation or land application method (check all that apply):

- ☐ Flood
- ☐ High-pressure sprinkler
- ☐ Low pressure sprinkler
- ☐ Drip
- ☐ Water cannons
- ☐ Center pivot system
- ☐ Hand lines
- ☐ Wheel lines
- ☐ Siphon tubes or gated pipe with furrows
- ☐ Other, describe_____

Distribution method

- ☒ Direct pipe from source
- ☐ In-line storage (tank or pond)
- ☐ Open canal

D. Conservation

What methods will you use to conserve water? Why did you choose this distribution or application method? For example, if you are using sprinkler irrigation rather than drip irrigation, explain. If you need additional space, attach a separate sheet.

MUNICIPAL CONSERVATION PLAN SUBMITTED FOR REVIEW.

6. PROJECT SCHEDULE

Indicate the anticipated dates that the following construction tasks should begin. If construction has already begun, or is completed, please indicate that date.

Proposed date construction will begin 2001-#9; 2001-#8; 2004-#11

Proposed date construction will be completed 2005-#9; 2001-#8; 2005-#11

Proposed date beneficial water use will begin 2005-#9; 2001-#8; 2005-#11

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7. REMARKS

If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.

ALL WELLS IN EXISTING WELL FIELD

Application No. g 15244
Permit No.

8. MAP REQUIREMENTS

The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed well location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

9. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all information provided in this application is true and correct to the best of my knowledge:

Signature of Applicant — Date 7/27/00

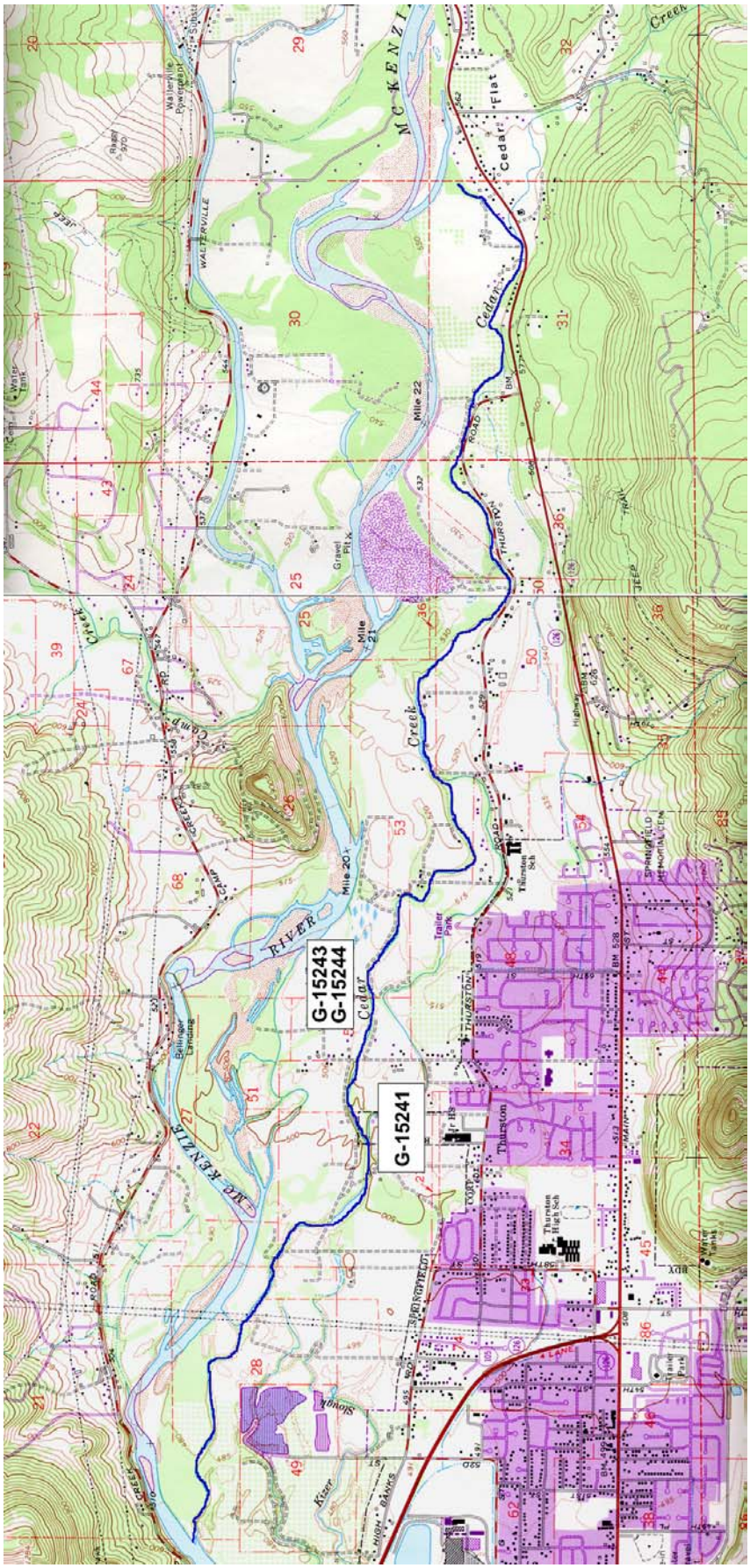
Signature of Co-applicant — Date

Before you submit your application be sure you have:

- Answered each question completely.
- Attached a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- ✓ Included the legal description of all the property involved with this application. You may supply a copy of the deed, land sales contract, or title insurance policy, to meet this requirement.
- ✓ Included a check payable to the Oregon Water Resources Department for the appropriate amount.

WRD on the web:
www.wrd.state.or.us

Attachment 3



690-502-0080

McKenzie River Subbasin

The McKenzie River Subbasin includes the McKenzie River and tributaries above confluence with the Willamette River:

(1) Surface water classification:

(a) The McKenzie River from Clear Lake to Carmen Reservoir, from Tamolitch Falls to Trail Bridge Reservoir and from Trail Bridge Dam to Paradise Campground is designated a state scenic waterway. The McKenzie River and tributaries above Paradise Campground near river mile 73 (Sec 9, T16S, R6E) are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(b) The South Fork McKenzie River from the Three Sisters Wilderness boundary downstream to Cougar Reservoir and from Cougar Dam downstream to the confluence with the McKenzie River is designated a state scenic waterway. The South Fork McKenzie River and its tributaries are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(c) Blue River upstream from its confluence with the McKenzie River and tributaries are classified year-round only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(d) Except as specified in subsections (a), (b), and (c) of this section, all tributaries to the McKenzie River are classified for domestic, livestock, municipal, industrial, irrigation, agri-cultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from October 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through September 30;

(e) Except as specified in subsection (a) of this section, the McKenzie River main stem down-stream from Paradise Campground near river mile 73 (Sec 9, T16S, R6E) is classified only for domestic, livestock, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recre-ation, pollution abatement, wetland enhancement, off-channel power development in conjunction with storage and public instream uses;

Attachment 5

STOEL RIVES LLP
ATTORNEYS AT LAW

900 S.W. Fifth Avenu
Portland, Oregon 97
main 503.224.3380
fax 503.220.2480
www.stoel.com

GREG D. CORBIN
Direct (503) 294-9632
gdcorbin@stoel.com

February 7, 2005

Mr. Dwight French
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Updated Request for Exception from the Willamette Basin Program for Springfield Utility Board's Groundwater Permit Applications G-15241, G-15243, and G-15244; Request to Amend Surface Water Permit Application S-85336

Dear Mr. French:

This office represents the Springfield Utility Board ("SUB") in connection with the above-referenced water right permit applications. This letter represents SUB's request that, pursuant to ORS 536.295, the Oregon Water Resources Commission (the "Commission") allow the Oregon Water Resources Department ("OWRD" or the "Department") to consider SUB's groundwater permit applications G-15241, G-15243, and G-15244 (collectively the "Groundwater Applications") notwithstanding the Willamette Basin Program (the "WBP") classification for Cedar Creek, a tributary of the McKenzie River. As you know, the Department has made a preliminary determination that the Groundwater Applications have the potential for substantial interference with Cedar Creek. The Groundwater Applications are for year-round municipal use. Under the WBP, Cedar Creek is classified for municipal use only for nine months of the year.

SUB also is hereby requesting to amend its surface water right permit application S-85336 (the "Surface Application") as described in Section II below. The Surface Application is integral to approval of the Groundwater Applications and SUB's master water development plan (the "Master Plan"), a copy of which is on file with the Department, because a portion of the Surface Application provides water to mitigate potential interference with Cedar Creek caused by water withdrawals under the Groundwater Applications. We intend to follow up with you regarding this correspondence, but would anticipate that the Commission may consider this matter at its next regularly scheduled Commission meeting.

I. Background

A. SUB's Operations and Water Development Plans

SUB is a customer-owned electric and water utility serving the greater Springfield, Oregon community. Collectively SUB and the Rainbow Water District ("RWD") serve approximately 55,000 customers from groundwater wells and surface water sources. SUB owns the vast majority of wells supplying the SUB/RWD territory. Even with an active water conservation and demand management program currently in place, SUB must develop additional water supplies to continue meeting the needs of the Springfield area into the future. According to its Water Conservation Plan (the "WCP"), a copy of which is on file with the Department, SUB's system is currently inadequate to provide future projected water needs with an adequate reserve capacity. WCP tbl 4-3. The current water supply deficit relative to need will increase over time unless SUB is able to develop additional water supply capacity. WCP fig 4-2.

To meet current and future demands, the Master Plan anticipates adding new wells to the SUB/RWD system out to 2017. The wells associated with the Groundwater Applications are integral to the Master Plan. Without developing these additional sources, SUB must find alternate, and largely more expensive and less reliable, sources of water to continue meeting customer demands.

B. SUB's Groundwater Applications

Consistent with the Master Plan and WCP, SUB filed the Groundwater Applications on November 8, 2000. Application G-15241 is for year-round appropriation of 1.78 cubic feet per second ("cfs") of municipal use water from two wells (0.89 cfs from each) located in the Cedar Creek basin. Application G-15243 is for year-round appropriation of 4.91 cfs of municipal use water from four wells (1.34 cfs from three wells and 0.89 cfs from the fourth well) located within the McKenzie River basin. Application G-15244 is for year-round appropriation of 4.02 cfs of municipal use water from three wells (1.34 cfs from each well) located within the McKenzie River basin.[1]

[1] SUB filed a fourth groundwater permit application on November 8, 2000 that was designated G-15242. That application is on administrative hold pending a final decision on the Groundwater Applications. SUB is not requesting an exception from the WBP for G-15242 at this time but reserves the right to do so.

C. The Department's Reviews of SUB's Applications and SUB's Response

The Department issued initial reviews of the Groundwater Applications on February 9, 2001. It found that the amount of municipal use groundwater to be appropriated from each well is available year-round and allowed under the WBP. OAR 690-502-0160(2). For two of the Groundwater Applications (G-15243 and G-15244), the Department determined that the proposed groundwater use has the potential to interfere substantially with the McKenzie River and, therefore, that those applications must also be consistent with the WBP limits applicable to the McKenzie River. Water from the McKenzie River for municipal use is available year-round. Accordingly, the Department gave applications G-15243 and G-15244 favorable reviews.

The Department reached a different conclusion in its initial review for application G-15241. It found that the proposed use has the potential to interfere substantially with Cedar Creek and, therefore, that application G-15241 must also be consistent with the WBP surface water limits applicable to Cedar Creek. OAR 690-009-0040(2). Cedar Creek is classified for municipal use only from October 1 through June 30. OAR 690-502-0080(1)(d). Application G-15241 for year-round use thus is inconsistent with the WBP classification for Cedar Creek during the three-month period from July 1 to September 30. Accordingly, the Department indicated that it likely would not issue a permit for application G-15241.

On May 21, 2001, SUB provided additional information to the Department to address the issue of potential interference with Cedar Creek (G-15241). SUB explained that Cedar Creek, which begins and ends on the McKenzie River, is essentially a side channel of the McKenzie River composed entirely of McKenzie River water. As noted, McKenzie River water is classified for municipal use and available year-round. However, recognizing that the issue of connectivity between the wells proposed in the Groundwater Applications and the nearby surface water bodies is complex, SUB requested that the Department place the Groundwater Applications on administrative hold while it had an independent consultant study the relationship between the wells and surface water sources. The Department granted the administrative holds.[2] During the administrative hold period, SUB and its consultant, Mark Cunnane of Western Groundwater Services, worked with the Department's hydrogeologist Marc Norton to resolve whether the proposed wells would substantially interfere with surface water sources. Mr. Cunnane's report, supplemented in October 2002, determined that the use proposed in the Groundwater Applications

[2] SUB has requested and received administrative holds for all of its water right permit applications, including G-15241, G-15242, G-15243, G-15244, and S-85336. They are currently on hold until April 30, 2005.

had the potential to affect 7.7 cfs of stream flow in the McKenzie River and 2.995 cfs in Cedar Creek.

Following completion of Mr. Cunnane's report, SUB and its representatives met with Mr. Norton in Salem to discuss options for addressing the potential for interference with Cedar Creek that could result from water withdrawals proposed under the Groundwater Applications. As a means of fully addressing any potential interference, Mr. Norton expressed support for the option of SUB submitting a new application for a surface water right from the McKenzie River, and then having SUB divert water under such a surface water right from the McKenzie River and into Cedar Creek. Although such an approach would take time and add cost to the groundwater diversions, Mr. Norton agreed that such an approach would fully compensate for any interference effect that the Groundwater Applications might have on Cedar Creek, and it would avoid further debate over the existence or extent of the potential for interference.

Based on Mr. Cunnane's report and the additional discussions with the Department described above, on November 6, 2002 SUB filed the Surface Application for year-round diversion of 37.0 cfs of water from the McKenzie River for municipal use, and 3.0 cfs from the McKenzie River for stream flow augmentation in Cedar Creek, for a total of 40.0 cfs from the McKenzie River. The 3.0 cfs of stream flow augmentation was meant to mitigate for stream flow depletion in Cedar Creek associated with the Groundwater Applications.

On May 16, 2003, the Department issued its initial review of the Surface Application. The Department determined that 40.0 cfs of water from the McKenzie River is available year-round but that stream flow augmentation in Cedar Creek is not an allowed use under the WBP. It also determined that the proposed 3.0 cfs of stream flow augmentation in Cedar Creek is not a "municipal use" because Cedar Creek is not a "water service system of an incorporated municipality." OAR 690-502-0010(15).[3]

[3] "Municipal Use" is defined as "the delivery and use of water through the water service system of an incorporated municipality or a nonprofit corporation and includes quasi-municipal uses as defined in OAR 690-011." *Id.* SUB believes the Department's determination that the 3.0 cfs of flow augmentation in the Surface Application is not a "municipal use" is an overly narrow reading of the Commission's definition. However, because SUB is amending the Surface Application as proposed by the Department from 3.0 cfs of stream flow augmentation to 4.1 cfs of instream use for fish life and wildlife (*see* Section II below), SUB is not at this time challenging or seeking a reconsideration of that determination. SUB reserves the right to challenge the Department's determination if the Commission does not grant SUB's request for an exception to

Finally, in October 2003 the Department conducted a final review of the Groundwater Applications. It found that the proposed wells appropriate water from unconfined sands and gravel within one-quarter mile of a surface water source (Cedar Creek and McKenzie River). Under OAR 690-009-0040, the Department assumes that wells of such type are hydraulically connected to the surface water source. The Department found that the proposed uses in the Groundwater Applications would affect a total of 4.1 cfs of Cedar Creek's flow.

D. The Department's Proposals for Approving SUB's Permit Applications

On July 9, 2004, the Department wrote to inform SUB that it was prepared to issue Proposed Final Orders (the "PFOs") for the Groundwater Applications and Surface Application. The Department indicated that the PFOs would find that the Groundwater Applications and stream flow augmentation portion of the Surface Application should not be issued.[4] The Department's letter discussed options that SUB might pursue to allow approval of the Groundwater Applications and Surface Application.

The Department proposed for the Surface Application that SUB either (1) amend the application from 3.0 cfs instream use for flow augmentation to 4.1 cfs instream use "to some other in-stream use or combination of uses, which are allowed by the basin program (*e.g.*, fish life, wildlife)," or (2) petition the Commission "to allow the Department to consider the application notwithstanding the basin program, pursuant to ORS 536.295." As is explained in Section II below, SUB is electing to amend the Surface Application as proposed by the Department.

The Department proposed for the Groundwater Applications that SUB either (1) accept the period of use for Cedar Creek allowed under the WBP, which is three months less than the year-round use applied for, or (2) seek an exception from the Commission to allow the Department to

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the WBP and the Department does not approve the Groundwater Applications and the Surface Application, as amended herein.

[4] The Department's letter states: "As you may recall, on May 16, 2003 the Department issued Initial Reviews (IRs) of these applications indicating it was unlikely that a permit would be issued." As is described above, that statement is only partially correct. The Department's letter dated May 16, 2003 indicated only that application G-15241 had received a negative IR. The Department first indicated that all of SUB's applications would receive negative recommendations in its letter dated July 9, 2004.

consider the application notwithstanding the WBP. As is explained in Section III below, SUB is electing to seek an exception from the WBP for the Groundwater Applications.

II. Amendment of the Surface Application

To the extent necessary to obtain approval of the Groundwater Applications, SUB hereby requests to amend the Surface Application as proposed by the Department, that is, surface water permit application S-85336 should be amended from 37.0 cfs of municipal use and 3.0 cfs for streamflow augmentation to 35.9 cfs for municipal use and 4.1 cfs instream use for fish life and wildlife in Cedar Creek. The 4.1 cfs instream use portion of the Surface Application will fully mitigate any potential impacts on Cedar Creek from the wells proposed in SUB's Groundwater Applications. As the Department indicated in its July 9, 2004 letter, with this amendment to the Surface Application the Department can propose issuance of the permit. This approach to mitigation is consistent with the approach proposed in discussions between Mr. Norton, SUB, and SUB's representatives described above.

III. Exception from the Willamette Basin Program for Permit Applications G-15241, G-15243, and G-15244

As noted above, SUB has invested in a Master Plan to direct development that will allow it to continue meeting customer needs and accommodate projected population and economic growth in the greater Springfield area. The Groundwater Applications and Surface Application are integral to the current phase of the Master Plan. Moreover, the Surface Application, which fully mitigates any impacts to Cedar Creek that may occur as a result of approving the Groundwater Applications, also will provide a net benefit to Cedar Creek by placing up to 4.1 cfs of instream water for fish and wildlife use in that system. Failure to approve the Groundwater Applications would cause an extreme hardship for SUB and its customers and would obviate SUB's need to place water instream in Cedar Creek.

SUB qualifies for an exception to the WBP because the exception is necessary to avoid extreme hardship. ORS 536.295(1)(e). Although "extreme hardship" is not defined by the statute or the Department's rules, or explained in any Oregon case law, the Department and Commission have considered the term to include a situation in which "the failure to allow the use would cause financial or other burdens to a water user that could not be easily overcome." *See* Exhibit F, *OWRD, Memorandum to Water Resources Commission, Request for an Exception to the Willamette Basin Program Due to Extreme Hardship (ORS 536.295(1)(e)) by Pleasant Valley*

Golf Club (May 15, 1995). Thus the burden does not require a showing of complete economic unfeasibility or impossibility.

The "other burdens" that may be considered under the extreme hardship analysis include burdens placed on those who depend on the water use but are not themselves the applicant for a basin program exception. This aspect of the analysis is illustrated by the staff report provided to the Commission in connection with the Greenberry Irrigation District's ("GID") request for an exception to the WBP. *See* OWRD, *Memorandum to Water Resources Commission, Request for an Exception to the Willamette Basin Program Due to Extreme Hardship [ORS 536.295(1)(e)] by Greenberry Irrigation District* (February 14, 2003). GID requested an exception from the WBP for irrigation use, a non-classified use in that region of the Willamette River, that would act as a "bridge" water right while GID arranged to use stored water, a classified use, under contract with the U.S. Bureau of Reclamation. Failure to grant the exception would have financially impacted GID because without a stable water supply it could not obtain financing to construct the irrigation system necessary to supply its patrons. Equally important, however, was that the farmers who rely on GID water, and the people those farms employ, could all suffer financial hardship if GID did not receive an exception from the WBP. According to the staff report, "failure to allow the exception to the basin program would cause extreme hardship due to loss of the economic viability of farms within GID and the potential loss of jobs." *Id.* at 4. Thus the Department and the Commission have recognized that the extreme hardship analysis reaches to those affected by the failure to grant an exception even if they are not the applicant for the basin program exception.

To the analysis in these prior Commission decisions SUB adds another element of the test for extreme hardship: the level of hardship that must be shown ought to be related to the level of resource impact that the proposed use might cause. In a situation such as the present one, in which the threat to the Willamette River Basin's values is negligible because SUB is able to fully mitigate for potential impacts to Cedar Creek, the level of hardship required should be correspondingly reduced.

In the present case, the level of financial hardship that would be caused by denial of the Groundwater Applications would be "extreme," because failure to approve them would result in SUB losing its investment of time and money in the well fields, and that failure is certain to require more time and an even greater financial expenditure to replace the lost capacity.[5] As

[5] SUB notes that its investment to date in the wells that are the subject of the Groundwater Applications easily exceeds $1 million. If SUB cannot put those wells to use, it will have to develop additional wells or seek water from other sources to meet its customers' needs. Thus

noted above, the Master Plan calls for developing additional water supply to keep pace with growth in SUB's service area. SUB has no choice but to find new water supplies. Moreover, the hardship created by any delay serves to increase the likelihood that SUB will not be able to meet customer demand and will have to pass along to its rate payers the costs of additional water supply development.

Similar to the GID situation discussed above, denial of the Groundwater Applications also would create an additional type of extreme hardship, namely, an inability to provide a safe, adequate water supply to the residences and businesses that rely on SUB for water. As noted above, the proposed use is not classified for the three-month period from July 1 through September 30. This three-month period is critically important to SUB as a water utility responsible for supplying municipal water to residential and business customers because the period often corresponds with SUB's peak annual demand. An inability to meet that demand would lead to water shortages in the Springfield area and place the local population at risk of not having an adequate water supply.[6] Water shortages would affect SUB's ability to supply clean, safe water to residential and business customers, causing an extreme hardship over which those customers would have little or no control. Water shortages also would cause extreme hardship by degrading water reserves for fire protection. Such shortages could result in loss of property or life. Thus the use during the three-month period not classified under the WBP is necessary to ensure public health, welfare, and safety for Oregonians in the greater Springfield area, and SUB's inability to supply water for those purposes would cause an extreme hardship for SUB and the local population.[7]

SUB will have lost its current investment and still need to invest an equal or greater amount to replace the lost groundwater use.

[6] The legislature has found as part of the state's water supply policy that "the availability of an adequate water supply is essential to the continued health and safety of all Oregonians." ORS 536.241(1). The legislature's concern over the link between water supply and public health is evident elsewhere in ORS chapter 536. *See, e.g.,* ORS 536.238(1)(d) ("The potential for a future shortage of water poses serious risks to public health, safety and welfare and therefore is a matter of statewide concern."). To the extent that municipal use also includes domestic use or other forms of human consumption, that use also is given priority treatment by the legislature. ORS 536.310(12) (in resolving conflict between uses "preference shall be given to human consumption purposes over all other uses").

[7] After discussion with Department staff, SUB has decided to base this request for exception on ORS 536.295(1)(e). SUB reserves the right to raise other bases for its request for exception, pursuant to ORS 536.295(1), in the event the Commission were to determine that the exception is not warranted under ORS 536.295(1)(e).

IV. Consistency with the Willamette Basin Program's General Policies

The Groundwater Applications also satisfy the exception statute's requirement that the proposed use be consistent with the general policies of the WBP. ORS 536.295(4). The proposed use is not inconsistent with any of the WBP's policies, and it is specifically consistent with at least two of those policies.

A. Groundwater Management

One of the Commission's policies for the Willamette Basin is to "[m]inimize impairment of surface water uses resulting from hydraulic connection between groundwater and surface water." OAR 690-502-0020(2)(d). SUB has repeatedly made every effort to work with the Department to avoid impairing surface water uses. For example, SUB's response to the Department's initial reviews of the Groundwater Applications was to commission a study of the potential hydraulic connection between the proposed groundwater wells and nearby surface water sources. The report that resulted from that study identified a potential for interaction between the aquifer from which the wells appropriate water and Cedar Creek. To alleviate and fully mitigate that potential interaction, SUB filed the Surface Application, which included 3.0 cfs of instream use in Cedar Creek, and as amended will include 4.1 cfs of instream use. Approval of the Surface Application will ensure that approval of the Groundwater Applications will not impair surface water uses from Cedar Creek.

B. Municipal and Domestic Water Systems

Another of the Commission's polices for the Willamette Basin is to "[s]upport coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin." OAR 690-502-0020(3). SUB's activities, including the Groundwater Applications, are consistent with this policy. SUB has extensively invested in coordinated water service planning as evidenced by the Master Plan and WCP. Through the Master Plan, SUB has coordinated efficient water system planning and cost-effective water supply development with RWD. Through the WCP, SUB has identified water conservation opportunities within its service territory and has actively pursued implementing those opportunities. Together the Master Plan and WCP represent SUB's substantial investment in water service planning "to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin." *Id.*

V. Conclusion

In conclusion, SUB requests that, pursuant to ORS 536.295, the Commission allow the Department to consider SUB's year-round Groundwater Applications notwithstanding the WBP classification that Cedar Creek water is available for only nine months of the year. SUB also hereby requests that its Surface Application be amended as described above. Approval of SUB's amended Surface Application will fully mitigate any potential interference between the Groundwater Applications and Cedar Creek.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Greg D. Corbin

cc: Mr. Chuck Arrera, Springfield Utility Board
Mr. David E. Filippi, Stoel Rives LLP

690-502-0020

Policies

Water Resources Commission and Department activities which affect the waters of the Willamette River Basin shall be compatible with the policies established in this rule. Surface water allocation, groundwater management, municipal and domestic water systems, reservoir coordination, conservation and land use coordination are important issues in the Willamette Basin. The Commission's policies on these issues are as follows:

(1) Surface water allocation:

(a) Protect undeveloped streams with instream values for public instream uses;

(b) Seek a balance in the future appropriation of water between instream and total out-of-stream uses on those streams already significantly developed for out-of-stream purposes;

(c) Preserve opportunities for future economic development by reserving water for future use;

(d) Minimize the likelihood of over-appropriation due to new uses;

(e) Manage stored waters which have been released for instream purposes to meet flow needs reflected in established instream water rights;

(f) Allow irrigation use for the longest period possible between March 1 and October 31 provided sufficient water is available.

(2) Groundwater management:

(a) Prevent excessive water level declines, restore aquifer stability in areas of decline and preserve with limited storage capacity for designated uses;

(b) Identify low-yield aquifers and inform local agencies of probable groundwater capacity limitations for some uses;

(c) Ensure safe municipal and domestic groundwater supplies by participating with the Department of Environmental Quality and the State Health Division in a formal monitoring program to document changes in quality and provide data for aquifer management;

(d) Minimize impairment of surface water uses resulting from hydraulic connection between groundwater and surface water;

(e) Encourage the development of programs for making groundwater resource information available to the public and local agencies.

(3) Municipal and domestic water systems: Support coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin.

(4) Reservoir coordination:

(a) Promote funding to study and implement the Willamette River Basin Review Study reconnaissance phase recommendations with significant potential to assist the state in meeting its resource management objectives;

(b) Formalize reservoir operation guidelines with the Corps of Engineers to meet state water management objectives and enter into a memorandum of understanding or other agreement that defines the reservoir coordination process and water management objectives.

(5) Water conservation:

(a) Implement programs to eliminate wasteful water use;

(b) Improve the efficiency of water use through implementation of voluntary conservation measures;

(c) Give priority to developing subbasin conservation plans and providing public assistance in areas of known over-appropriation of surface water and groundwater and in water quality problem areas as listed by the Department of Environmental Quality.

(6) Land use coordination: Promote effective state and local water resource planning and protection and efficient water use through coordination with land use programs.