



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

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item K, November 20, 2009
Water Resources Commission Meeting

Request for an Exception to the Willamette Basin Program by the City of Harrisburg 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. The City of Harrisburg (“the applicant”) has requested an exception to the Willamette Basin Program for its Application S-87395 indicating that use of water 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)(Attachment 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 will be processed but likely be denied or limited because the proposed use is not a classified use in the basin program.

III. Discussion

A. *Application Summary Basis for Consideration*

A copy of Application S-87395 is provided in Attachment 2. This application proposes to use 2.61 cubic foot per second (cfs) (1,171 gallons per minute) for municipal use from a new diversion point to be constructed on the Willamette River. A map of the area and the general location of the point of diversion is provided in Attachment 3. In the Department's initial review of the application dated May 12, 2009, the Department determined that water is available for new uses but that municipal use is not a classified use from the Main Stem Willamette River Subbasin in the Willamette Basin Program, from July 1 through August 31.

The Willamette Basin Program states:

“The Willamette River main stem upstream from the west line of Donation Land Claim 55 in T11S, R4W, upstream from the mouth of the Calapooia River near Albany, to the confluence of the McKenzie and Willamette Rivers, except as otherwise specified in subsection (a) of this section, **is classified for** domestic, livestock, **municipal**, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses **from September 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 August 31.**” OAR 690-502-0050(1)(c).

An evaluation of the City of Harrisburg's request for an exception to the basin program is provided below:

B. *Exception request evaluation*

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 1). The City of Harrisburg

provided the Department with a basin program exception request on September 21, 2009 (Attachment 4).

- 1) 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).

Extreme hardship

As discussed in the city's request for an exception (Attachment 4) "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).

The city's request points out that "the extreme hardship analysis can include the burdens on those that depend on the water as well as the burdens on the applicant" and that "the level of financial hardship that would be caused by the denial of Application S-87395 would be extreme."

As discussed in its request, the city has evaluated other water supply options and determined they are not feasible. The city has no redundant water supply in the event of mechanical failure, contamination or other unexpected events. The city's existing wells fail to meet secondary contaminant levels, and produce water that is high in levels of hydrogen sulfide, iron, manganese, chloride, hardness, and total dissolved solids, and requires treatment prior to delivery. Harrisburg does not have an intertie with another municipal water provider, and no such intertie is likely to be developed in the foreseeable future. The city has also explored the option of contracting for stored water from Willamette Basin reservoirs via a contract with the Bureau of Reclamation (BOR). However, the certificates issued to the BOR for these reservoirs allow the BOR to issue contracts only for irrigation and not municipal use. A transfer would need to be filed by the BOR to be able to issue contracts for municipal use. The City of Harrisburg has said it would be interested in pursuing a contract for stored water if that option were to become available.

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 5. In its exception request, the applicant asserts that the proposed use is not inconsistent with any of the policies of the basin program. In addition, the city lists several basin program policies that are consistent with this request (see Attachment 5).

The proposed point of diversion is not within an instream water right reach. Additionally, the city has applied for a source of water that has no history of regulation and has water available for new appropriations year round. Therefore, the proposed use will not result in over-appropriation. The proposed use will help create opportunities for future economic development in the area. Also, the use would protect adequate and safe drinking water supplies for human consumption, while promoting water conservation through the implementation of a Water Management and Conservation Plan under OAR Chapter 690 Division 86. The use is consistent with state and local land use requirements.

Department analysis: Staff agree with the city that the application 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 the City of Harrisburg 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 the City of Harrisburg 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 the City of Harrisburg for a basin program exception.
3. Take no action and direct staff to continue to work with the applicant.

VI. Recommendation

The Director recommends Alternative 1, that the Commission approve the request by the City of Harrisburg 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 Application S-87395
3. Map of Area
4. City of Harrisburg Exception Request
5. Willamette Basin Program General Policies

Dwight French
(503) 986-0819

ORS 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.

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]



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Application for a Permit to Use Surface 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. A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

1. APPLICANT INFORMATION

A. Applicants

RECEIVED

Applicant: Bruce Cleeton, for City of Harrisburg FEB 17 2009
First Last

Mailing Address: 354 Smith St., PO Box 378 WATER RESOURCES DEPT
SALEM, OREGON

Harrisburg Oregon 97446
City State Zip

Phone: 541-995-6655
Home Work Other

*Fax: 541-995-9244 *Email Address: bcleeton@ci.harrisburg.or.us

B. Organizations

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

Name of Organization: City of Harrisburg

Name and Title of Person Applying: Bruce Cleeton, City Administrator

Mailing Address or Organization: 354 Smith St., PO Box 378

Harrisburg Oregon 97446
City State Zip

Phone : 541-995-6655
Day Evening

*Fax: 541-995-9244 *Email Address: bcleeton@ci.harrisburg.or.us

*Optional

| For Department Use | | |
|-------------------------|------------------|------------|
| App. No. <u>S-87395</u> | Permit No. _____ | Date _____ |

Last Updated: 10/01/2008

WR

Surface Water/I

S-87395

2. SOURCE AND PROPERTY OWNERSHIP

A. The Proposed Source of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so:

Source 1: Willamette River Tributary to: Columbia River
 Source 2: _____ Tributary to: _____
 Source 3: _____ Tributary to: _____
 Source 4: _____ Tributary to: _____

If any source listed above is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume, page and/or decree name).

B. Applications to Use Stored Water

Complete this section if any source listed in item 2A above is stored water.

Do you, or will you, own the reservoir(s) described in item 2A above?

- Yes
- No. (Please enclose a copy of your written notification to the operator of the reservoir of your intent to file this application, which you should have already mailed or delivered to the operator.)

If *all* sources listed in item 2A are stored water, the Department will review your application using the expedited process provided in ORS 537.147, unless you check the box below. Please see the instruction booklet for more information.

By checking this box, you are requesting that the Department process your application under the standard process outlined in ORS 537.150 and 537.153, rather than the expedited process provided by ORS 537.147. To file an application under the standard process, you must enclose the following:

- A copy of a signed non-expired contract or other agreement with the owner of the reservoir (if not you) to impound the volume of water you propose to use in this application.
- A copy of your written agreement with the party (if any) delivering the water from the reservoir to you.

RECEIVED

FEB 17 2009

WATER RESOURCES DEPT
SALEM, OREGON

S-87395

C. Property Ownership

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

Yes (Please check appropriate box below then skip to section 3 'Water Use')

There are no encumbrances

This land is encumbered by easements, rights of way, roads or other encumbrances
(please provide a copy of the recorded deed(s))

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.

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigated and/or domestic use only (ORS 274.040).

You must provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.

List the names and mailing addresses of all affected landowners.

City of Harrisburg, 354 Smith St., PO Box 378, Harrisburg, OR 97446.

3. 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.

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**
- If your proposed use is **commercial/industrial**, attach **Form Q**

RECEIVED
FEB 17 2009
WATER RESOURCES DEPT
SALEM, OREGON

S-87395

B. Amount of Water

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):

(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

| Source | Type of use | Amount |
|---------------|-------------|--|
| Willamette R. | Municipal | 2.61 <input checked="" type="radio"/> cfs <input type="radio"/> gpm <input type="radio"/> af |
| | | <input type="radio"/> cfs <input type="radio"/> gpm <input type="radio"/> af |
| | | <input type="radio"/> cfs <input type="radio"/> gpm <input type="radio"/> af |
| | | <input type="radio"/> cfs <input type="radio"/> gpm <input type="radio"/> af |

C. Period of Use

Indicate the time of year you propose to use the water: Year-round

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

If you will be applying water to land, indicate the total number of acres where water will be applied or used: _____

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

4. WATER MANAGEMENT

A. Diversion

What method will you use to divert water from the source?

- Pump (give horsepower and pump type): Estimate 60 hp vertical turbine pump
- Head-gate (give dimensions): _____
- other means (describe): _____

B. Monitoring

How will you monitor your diversion to be sure you are within the limits of your water right (allowed rate and duty) and you are not wasting water?

- Weir
- Meter
- Periodic Sampling
- other means (describe): _____

RECEIVED
 FEB 17 2009
 WATER RESOURCES DEPT
 SALEM, OREGON

S-87395

C. 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 10" Length 130'

 other, describe: Municipal Water Distribution System**D. Application/Distribution Method**

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

Municipal use. Water will be treated and put into Harrisburg's municipal water distribution system.

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

E. Conservation

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

The City has a Water Management and Conservation Plan (WMCP) that describes the various conservation measures that the City will implement. The City understands that a new permit will include a requirement to update the WMCP within a prescribed period of time. Harrisburg currently obtains all of its water from groundwater and has no water supply interconnections with other water providers. Thus, Harrisburg is hoping to obtain access to water from the Willamette River to meet growing demand and to help build in water supply redundancy.

RECEIVED
 FEB 17 2009
 WATER RESOURCES DEPT
 SALEM, OREGON

S-87396

5. RESOURCE PROTECTION

A. Protection Practices

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources.

- Diversion will be screened to prevent uptake of fish and other aquatic life. Describe planned actions:

As needed, Harrisburg will work with state and federal agencies to design and implement screening at the diversion to prevent uptake of fish and other aquatic life.

- Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas. Describe planned actions:

Harrisburg will take appropriate measures to minimize excavation or clearing of banks in order to protect riparian or streamside areas.

- Operating equipment in a water body will be managed and timed to prevent damage to aquatic life. Describe:

At this time, Harrisburg does not anticipate that any in-stream work or construction will be required. In the event that such work is required, Harrisburg will take appropriate measures to prevent damage to aquatic life.

- Water quality will be protected by preventing erosion and run-off of waste or chemical products. Describe:

Harrisburg will take appropriate measures to prevent erosion and run-off of waste or chemical products.

- Other:

Surface Water/6

RECEIVED
 FEB 17 2009
 WATER RESOURCES DEPT
 SALEM, OREGON

S-87395

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: Within 20 years of permit issuance.

Proposed date construction will be completed: Within 20 years of permit issuance.

Proposed date beneficial water use will begin: Within 20 years of permit issuance.

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.

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 points of diversion and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

RECEIVED
FEB 17 2009
WATER RESOURCES DEPT
SALEM, OREGON

S-87395

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, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

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

Bruce Clifton

Signature of Applicant (If more than one applicant, all must sign.)

1/8/09

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. The Department's fee schedule can be found at www.wrd.state.or.us or call (503) 986-0900.

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

RECEIVED
FEB 17 2009
WATER RESOURCES DEPT
SALEM, OREGON

S-87395



Oregon Water Resources Department

FORM M

FOR MUNICIPAL AND QUASI MUNICIPAL WATER SUPPLIES

Unless otherwise noted, water use information should be in acre-feet per year (AFY).
1 acre-foot is equal to 325,851 gallons.

Background Information

Name of water supplier: City of Harrisburg

Name and size of area to be served: City of Harrisburg
(in square miles)

Present population of service area: Approx. 3,400
(Contact county planning staff, if needed.)

Projected population in 20 years: Approx. 6,140 in year 2027, based on 2008 Water Management and Conservation Plan.
(Cite source and year. For example: "20,595 Based upon 1995 Portland State University projections.")

List present water rights and permits held:

| Date of Issuance: | Natural Source of Water: | Amount Permitted: | Utilization: |
|----------------------|--------------------------|-------------------|--------------|
| <u>See Attached.</u> | | | |
| | | | |
| | | | |
| | | | |

Water Use

Average yearly demand: 576 AFY Year: 2008

Per-capita daily consumption (in gallons): 102 gpcd
(Divide average annual water sales by population to arrive at consumption, then divide by 365 to get daily values.)

Peak season (by month/day): July 1 to October 31 Total peak season demand: 195 Acre-feet

Peak season per-capita daily consumption: 152.28 gpcd
(Divide total peak season demand by population and the number of days during the peak.)

Annual amount of water:
produced: 137,802,550 gallons
(diverted or pumped)

delivered: Estimate system loss to be 9%. So, water delivered is approx. 125,400,320 gallons.

Is your system fully metered? Yes No

Describe your rate structure: Flat rate per month plus flat rate per EUU.
(e.g. flat rate, increasing or decreasing block rate or combination of different systems)

RECEIVED
FEB 17 2009
WATER RESOURCES DEPT
SALEM, OREGON

S-87395

Request for Water

- A. Discuss the reason(s) for your request for additional water
(e.g. loss of current supply, peak demand, growth, or other): Harrisburg currently obtains its water from five wells that have limited production and water quality. In order to meet future demand and build in water supply redundancy, Harrisburg is applying for a water right to appropriate 2.61 cfs from the Willamette River for municipal use.
- B. How long is the amount of water requested in this application expected to meet future needs?
(e.g. until the year 2040) 2027
- C. Briefly discuss operation of water system and the most constraining component of the system:
Harrisburg obtains its water from five wells that have limited production and poor water quality. Water is chlorinated and then discharged into two storage tanks before entering the municipal distribution system. The total storage volume is 2.5 million gallons. A pump station near the storage tanks transfers water into the distribution system. The major constraints are the limited water production and quality from the existing wells and lack of water supply redundancy.
- D. Percentage of water use by type:
- | | |
|---|---------------------|
| Residential: _____ | Commercial: _____ |
| Public Authority: _____ | Agricultural: _____ |
| Unaccounted for use: _____ | Industrial: _____ |
| Other (specify use): <u>1,479 residential users (pop. 3,400), 73 commercial, mobile home park, schools, and industrial users.</u> | |
- E. List cost to implement proposed request.
Compare cost and benefits with other water supply, or combination of supply options. This should include water efficiency measures such as replacing current showerheads with low-flow types. (Attach documentation, as available.)
Harrisburg has conducted a comparison of costs and benefits of other water supply options and efficiency measures. For details, please see Harrisburg's 2008 Water Management and Conservation Plan and 2008 Water System Master Plan update that are on file with OWRD.
- F. How and by how much will your proposed water use efficiency programs increase efficiency?
(Express as a percentage of per-capita consumption.)
Harrisburg has conducted analysis of conservation and efficiency measures. For details, please see Harrisburg's 2008 Water Management and Conservation Plan and 2008 Water System Master Plan update that are on file with OWRD.

RECEIVED
 FEB 17 2009
 WATER RESOURCES DEPT
 SALEM, OREGON

Last revision: April 9, 1996

S-87395

Table of Water Rights for the City of Harrisburg

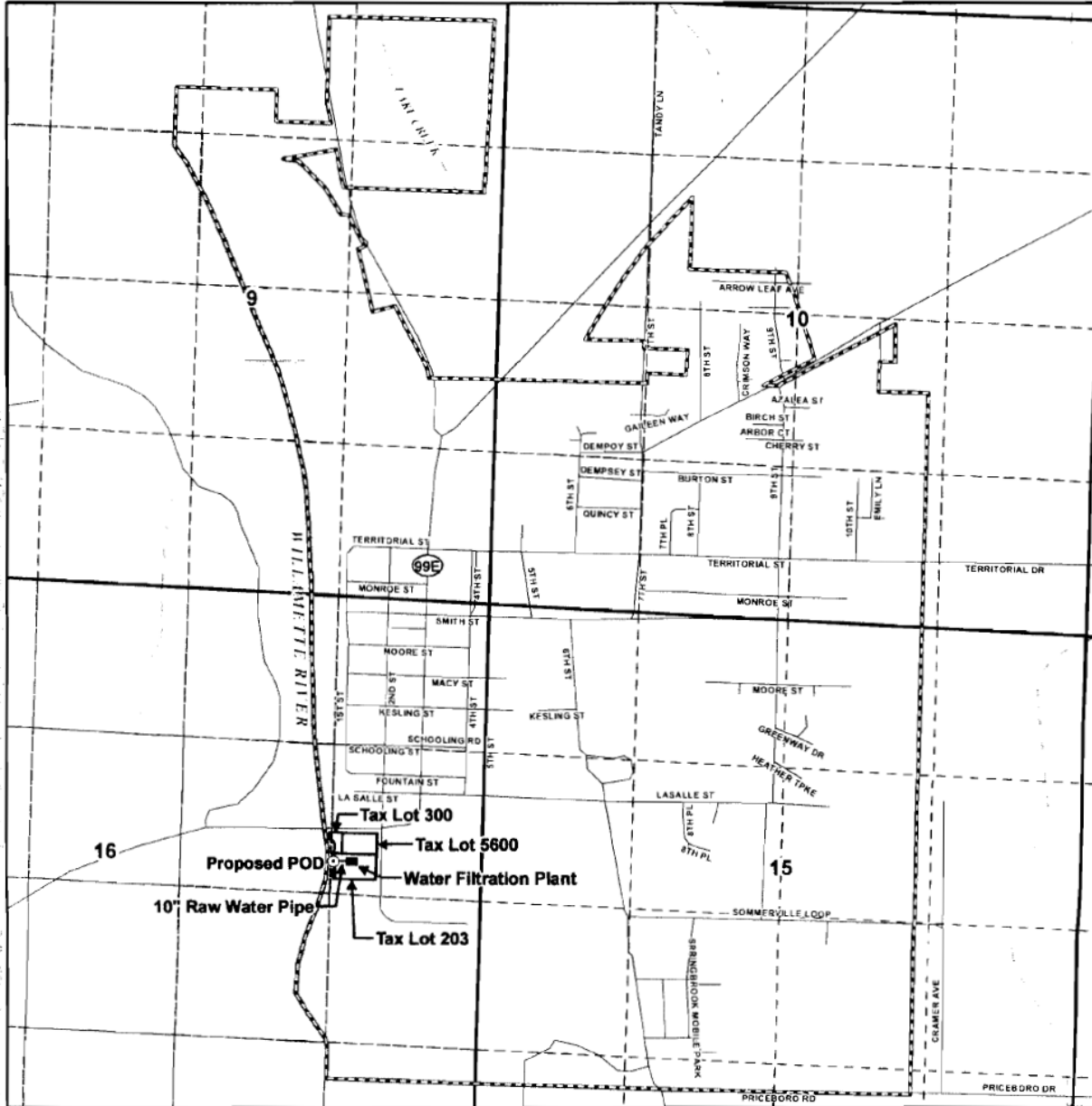
| Source | Priority Date | Identification Number | Rate (cfs) | Type of Use | Date of Issuance |
|-----------------------------|---------------|-----------------------|------------|-------------|--------------------------|
| Groundwater (Well 5) | 12-17-1965 | T-7867 | 0.74 cfs* | Municipal | Transfer issued 7-8-1998 |
| Groundwater (Well 4) | 10-5-1966 | Certificate 41999 | 0.74 cfs* | Municipal | 4-14-1975 |
| Groundwater (Wells 6 and 7) | 8-19-2004 | Permit G-15927 | 1.11 cfs* | Municipal | 6-16-2005 |
| Groundwater (Well 8) | 10-30-2007 | Permit G-16414 | 0.89 cfs | Municipal | 12-4-2008 |

***Note:** Wells 4, 6, and 7 are the primary source of water. The combined capacity of these wells is 328 gpm. Well No. 5 has poor water quality and is only used when Wells 4, 6, and 7 cannot meet demand. Wells 5 and 7 cannot be used simultaneously. When operating Wells 4, 5, and 6, the maximum capacity is 620 gpm. Well 8 was recently constructed, and its estimated sustained capacity is 200 gpm.

RECEIVED
 FEB 17 2009
 WATER RESOURCES DEPT
 SALEM, OREGON

5-07340

Water Right Application Map
In the Name of: The City of Harrisburg
 Proposed Point of Diversion and Place of Use
Township 15 South, Range 4 West (W.M.)



Legend

- Proposed Point of Diversion (POD)
- City Owned Tax Lots
- ▭ Place of Use (POU)
- 10" Raw Water Pipe
- Water Filtration Plant
- Watercourses
- Waterbodies

POD Location Description

Proposed POD
 Located 2,330 feet South and 1,315 feet West from the NE corner of Section 16, Township 15 South, Range 4 West (W.M.)

RECEIVED

MAR 26 2009

WATER RESOURCES DEPT
 SALEM, OREGON



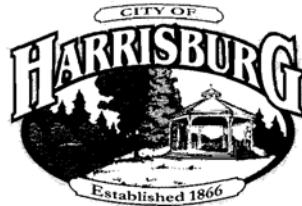
Scale
 0 660 1,320
 1 inch equals 1,320 feet



Map Information
 Projection: Oregon State Plane North Zone
 Datum: North American Datum of 1983
 Date: March 13, 2009
 Prepared By: GSI Water Solutions, Inc.
 Data Sources:
 Oregon Geospatial Data Clearinghouse, ESRI
 Disclaimer
 This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

S-87395

354 Smith Street
PO Box 378
Harrisburg, OR 97446



(541) 995-6655
FAX: (541) 995-9244
TDD: (800) 753-2900

"2002 Award of Excellence"

"2006 All-America City Finalist"

www.ci.harrisburg.or.us

September 21, 2009

Dwight French
Administrator of Water Rights and Adjudications Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

RECEIVED

SEP 23 2009

WATER RESOURCES DEPT
SALEM, OREGON

Re: City of Harrisburg's Request for an Exception to the Willamette Basin Program Pursuant to ORS 536.295 for Application S-87395

Introduction

The City of Harrisburg (City or Harrisburg) submits this request along with the required fee of \$500.00.

This letter represents the City of Harrisburg's request that, pursuant to ORS 536.295, the Water Resources Commission (Commission) allow the Water Resources Department (Department) to consider Harrisburg's surface water application S-87395 notwithstanding the Willamette Basin Program classification for the mainstem Willamette River above Albany. The City requests that the Commission consider this matter at its November 2009 meeting.

Harrisburg's need for water requested under application S-87395 is based on several factors. First, Harrisburg's current water supply is a sole source – groundwater. The City has no redundant supply in the event of mechanical failure, contamination or other unexpected events. Second, the groundwater produced from the City's wells fails to meet secondary contaminant levels with elevated levels of hydrogen sulfide, iron, manganese, chloride, hardness, and total dissolved solids. Third, Harrisburg does not have an intertie with another municipal water provider, and no such intertie is likely to be developed in the foreseeable future. Fourth, Harrisburg cannot obtain a contract for use of stored water from the federal Willamette Basin reservoirs for municipal use. And fifth, based on current well production capabilities, Harrisburg's demand for water will exceed its water supply within approximately six years.

Despite the fact that water is available from the Willamette River near Harrisburg on a year-round basis, under the Willamette Basin Program at OAR 690-502-0050(1)(c), this portion of the Willamette River mainstem is not classified for municipal use during the period of July 1 through August 30 of each year. Unless an exception is granted by the Commission, Harrisburg's application S-87395 will likely be denied. For the reasons outlined below, the use proposed in Harrisburg's application S-87395 is necessary to avoid extreme hardship. We look forward to working with the Commission and Department as they consider this critical water supply issue for the City of Harrisburg.

S-87395

Background

Harrisburg is a small community located in Linn County, approximately 15 miles north of Eugene. The City currently obtains all of its water from groundwater through five wells. The groundwater produced by the City's wells fails to meet secondary contaminant levels, resulting in significant taste, staining, and appearance problems.

The City's current population is 3,435. By the year 2027, it is projected that the City will grow to a population of 6,140. The City's wells produce a maximum of approximately 820 gallons per minute (gpm). The City's current maximum day demand (MDD) is 650 gpm. By 2027, it is estimated that the City's peak day demand will be approximately 1,173 gpm. Thus, it is estimated that the City's water demand will exceed its current well production within six years. While additional wells may be authorized under existing City water rights, this short-term fix does not address the City's water quality issues, the continual decline of well production and the lack of a redundant water supply.

Harrisburg has recently prepared a Water System Master Plan and Water Management and Conservation Plan. Those planning documents highlight the water quality problems and the need for Harrisburg to examine other water sources to meet its current and future water supply needs.

A. Harrisburg's Current Water Supply

Harrisburg currently has five functional wells, designated as Wells 4, 5, 6, 7, and 8, and is developing a request to add a proposed Well 9 under an existing water right. Under current conditions, the maximum capacity of the existing wells is approximately 820 gpm. As described above, water from the City's wells fails to meet secondary contaminant levels which results in taste, odor, staining, and appearance concerns. In the City's 2008 Water System Master Plan Update, the recommended treatment approach (manganese dioxide filtration and reverse osmosis) had an estimated capital cost of \$2.5 million with an annual operations and maintenance budget of \$95,000. With respect to long-term water supply, these costs do not include the cost of additional wells and the associated treatment systems. Moreover this approach does not address the City's lack of a redundant water supply and concerns about long-term well production declines.

B. Willamette River – Opportunities and Impediments

As noted above, the City does not have an intertie with another municipal water provider. Moreover, the City is currently unable to obtain a contract for water from the federal Willamette Basin reservoirs for municipal use. Given the lack of feasible alternatives, the City has turned to "natural flow" from the Willamette River.

According to the Department's Initial Review of the City's application S-87395, surface water is available in the amount and for the full period requested. However, under the Willamette Basin Program at OAR 690-502-0050(1)(c), municipal use is not a classified use during the period of July 1 through August 30. The City understands that this restrictive classification was meant to further the Commission's policy objectives of having new appropriations on the Willamette River rely on releases of stored water from the federal storage reservoirs in the Willamette Basin as opposed to relying on the Willamette River's natural flow.

RECEIVED

SEP 23 2009

WATER RESOURCES DEPT
SALEM, OREGON

S-87395

Ideally, the City could comply with the Commission's objectives and obtain a water right permit to use the abundant stored water from the federal reservoirs. Unfortunately, this opportunity is currently not an option for Harrisburg, because:

(1) the water right certificates issued by the Department for the federal storage reservoirs in the Willamette Basin do not include municipal water use; therefore, the Department cannot issue a permit to use stored water for municipal use, and

(2) even if the federal reservoirs in the Willamette Basin included municipal water use, the Army Corps of Engineers and the Bureau of Reclamation, have indicated that the construction costs associated with the reservoirs have never been allocated to municipal and industrial uses and a reallocation would need to occur before a municipal and industrial use contracting program can be established. In addition, several other questions regarding a contracting program remain unresolved, including the cost of the stored water and what entity would administer a municipal and industrial contract program.

Exception to the Willamette Basin Program

Under ORS 536.295, the Commission may allow the Department to consider an application for a use not classified in the applicable basin program if one of the criteria under ORS 536.295(1)(a) – (g) are met and the proposed use is consistent with the general policies established in the applicable basin program.

A. The Proposed Use is Necessary to Avoid Extreme Hardship

The term "extreme hardship" is not defined by statute or administrative rules. However, based on a number of previous Commission decisions on extreme hardship under ORS 536.295, an extreme hardship has been defined to include a situation where 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 addition, past Commission decisions on extreme hardship have recognized that the extreme hardship analysis can include the burdens on those that depend on the water as well as the burdens on the applicant. See for example Oregon Water Resources Department, Staff Report Agenda Item H, April 14, 2005 *Request for an Exception to the Willamette Basin Program by Springfield Utility Board Under ORS 536.295*.

In this case, the level of financial hardship that would be caused by the denial of application S-87395 would be extreme.

- Harrisburg's water supply situation must be resolved in the near future.
- Harrisburg's immediate options are limited because Department and federal actions currently preclude the City from accessing water stored in federal reservoirs.
- Continued reliance on groundwater would require the construction of several additional wells and special facilities and processes for treating the groundwater. The City's 2008 Water System Master Plan Update estimated that capital costs associated with long-term reliance on groundwater are approximately \$6.9 million, with annual operations and maintenance of \$315,000 and a 20-year planning cost of \$13.2 million.
- In contrast, the City's Water System Master Plan Update estimated the treatment and use of water from the Willamette River would have a capital cost of \$4.7 million, with annual operations and maintenance of \$336,000, and a 20-year planning cost of \$11.4 million. The total cost would be approximately \$2.0 million less than the total cost for the groundwater supply option.

RECEIVED

SEP 23 2009

WATER RESOURCES DEPT
SALEM, OREGON

S-87395

- Resolving only the groundwater supply and treatment issues still leaves the City with a single source of supply.
- No existing surface water rights have been identified that are feasible (or available) to transfer to the City.

Given that the feasible supply alternatives to the Willamette River are significantly (25 percent) more expensive, denial of application S-87395 would place a burden on the City of Harrisburg and its customers that is not easily overcome.

B. The Proposed Use is Not Inconsistent with the General Policies of the Willamette Basin Program

Harrisburg's proposed use of the Willamette River for municipal use is not inconsistent with the general policies of the Willamette Basin Program under OAR 690-502-0020.

Harrisburg's proposed point of diversion is near U.S. Geological Survey gage 1416600 (on the Willamette River at Harrisburg). In this stretch of river, according to the Department's water availability database, water is available year-round for new uses and will not result in over-appropriation as defined by the Commission under OAR 690-400-010(11). In terms of the general surface water allocation policies under OAR 690-502-0020, Harrisburg's proposed use balances surface water allocation policies under OAR 690-502-0020, preserves opportunities for future economic development and does not result in over-appropriation. With respect to other relevant general basin program policies, Harrisburg's proposed use would protect adequate and safe drinking water supplies for human consumption, promote water conservation through updates to the City's Water Management and Conservation Plan, and is consistent with state and local land use requirements.

C. Commission Objectives and Permit Conditions

The City of Harrisburg is aware of the Commission's policy objectives in restrictively classifying the Willamette River to encourage the use of stored water from the federal reservoirs in the Willamette Basin. However, due to circumstances beyond the control of Harrisburg, the City is unable to access the abundant unallocated water stored in the federal reservoirs. Lacking feasible alternatives, Harrisburg must seek an exception to the Commission's restrictive classification of the Willamette River under OAR 690-502-0050(1)(c).

Harrisburg believes that on its face its exception request meets the requirements of ORS 536.295 and should be granted. The granting of an exception by the Commission is not a public interest review of the application, but simply allows the Department to consider the application and evaluate it under the same (public interest) provisions as all other applications. Harrisburg does not believe it is appropriate to pre-determine public interest conditions in the context of an exception request for a pending application. Nonetheless, the City would like to express its willingness to accept a condition in a resulting permit allowing the diversion of water year-round from the Willamette River for municipal use that would provide substantially as follows:

The permit holder shall seek an alternative water supply for the use authorized under this permit between July 1 and August 30 of each year.

On a schedule determined by the Department, the permit holder shall provide a written report to the Department describing the permittee's progress in obtaining an alternative

RECEIVED

SEP 23 2009

WATER RESOURCES DEPT
SALEM, OREGON

S-87395

water supply for the use authorized under this permit between July 1 and August 30 of each year. The report shall specifically describe the permittee's progress in securing a long-term contract and associated water right for the use of stored water from federal reservoirs in the Willamette Basin.

Use of water under this permit shall not be allowed between July 1 and August 30 of each year beginning two years from the date a long-term contract and water right permit are available to the permittee that allows the use of stored water from federal reservoirs in the Willamette Basin for municipal use between July 1 and August 30 of each year.

I. Conclusions

The City of Harrisburg requests that, pursuant to ORS 536.295, the Commission allow the Department to consider the City's water right application S-87395 notwithstanding the classification of the Willamette River under OAR 690-502-0050(1)(c), which does not allow municipal use during the period of July 1 through August 30 of each year.

Please feel free to contact me at 541-995-6655 if you have any questions or need additional information.

Sincerely,



Bruce Cleeton
City Administrator
E-mail: bcleeton@ci.harrisburg.or.us

RECEIVED

SEP 23 2009

WATER RESOURCES DEPT
SALEM, OREGON

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:

Attachment 5

- (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.