



**Eugene Water & Electric Board**

500 East 4th Avenue/Post Office Box 10148  
Eugene, Oregon 97440-2148  
541-685-7000  
www.eweb.org

March 22, 2011

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

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MAR 22 2011

WATER RESOURCES DEPT  
SALEM, OREGON

RE: Request for Basin Program Exception Pursuant to ORS 536.295 for Application S-87675, in the name of the Eugene Water & Electric Board

Dear Mr. French:

Under ORS 536.295, the Oregon Water Resources Commission (Commission) may, under certain circumstances, allow the Oregon Water Resources Department (OWRD) to consider an application to appropriate water for a beneficial use not classified as an allowable use by the applicable basin program. The Eugene Water & Electric Board (EWEB) hereby submits this request for the Commission to grant EWEB an exception to the Willamette Basin Program for its pending Application S-87675, along with the required fee of \$500. On February 17, 2011, OWRD issued an initial review for Application S-87675, which determined that the proposed municipal use was only allowed November 1 through June 30 under the Willamette Basin program. The exception will allow OWRD to continue to process EWEB's application for a municipal water use permit for the Willamette River. As described in detail below, EWEB's water right application was filed to provide it with secure, duplicative authorization to use water from the Willamette River as a redundant supply while its surface water registration (SWR-354) is pending at OWRD.

**I. Background**

EWEB needs to establish access to another source of supply because its current McKenzie River municipal water supply is its sole water source. This leaves EWEB vulnerable to supply failure. If, for example, the McKenzie River experienced a contamination event, EWEB could be without a water supply to meet its municipal water demands. EWEB's customers could be without water for human consumption purposes, and insufficient water could be available for fire suppression purposes. As a municipal water provider, EWEB has a duty to serve its customers and to ensure that it

can provide water for all municipal purposes. Consequently, EWEB must secure a redundant supply to meet its duties to its customers and ensure their health and safety. EWEB has attempted to secure a redundant water supply by obtaining a water right certificate for its surface water registration for the Willamette River. EWEB's surface water registration indicates that the use of water from the Willamette River began in March of 1887, well before the enactment of Oregon's 1909 water code. As a result, a State of Oregon water right application could not have been filed at the time water use began. In 1992, the City, acting through EWEB, filed a surface water registration statement describing its pre-1909 vested water right claim (SW-354). EWEB's claim describes initial development of its municipal water right in 1886 and first water use on March 26, 1887 and claims a right to 30.9 cfs. The claim also describes the City's points of diversion on the Willamette River.

Despite the facts that water use began 123 years ago and EWEB filed a surface water registration statement, EWEB has not received a water right certificate confirming its water right for the use of water from the Willamette River. Further, EWEB does not anticipate receiving a water right certificate in the near term. Before OWRD will issue a certificate, it must conduct an adjudication. This process currently consists of an administrative phase at the end of which OWRD issues its Findings of Fact and Order of Determination. The case then goes to the circuit court, which issues a decree that confirms or amends OWRD's order. OWRD then issues certificates consistent with the court's decree. Once initiated, this process will take years or even decades to complete. Despite previous requests, OWRD has indicated that due to budget and staffing limitations, it will not adjudicate the Willamette Basin in the near term. Consequently, EWEB is unable to obtain confirmation of its Willamette River water right. Although EWEB is confident that its surface water registration will ultimately be confirmed and OWRD will issue a certificate for that right, EWEB needs greater certainty before it can make the significant investment necessary to upgrade the infrastructure associated with this source.

EWEB has made several other efforts to obtain a redundant water supply. EWEB applied for and obtained a permit authorizing the use of ground water; however, the ground water right does not provide a reliable redundant supply for a number of reasons, including restrictive permit conditions. In addition, EWEB is an active participant in the effort to obtain access to water stored in the Willamette Basin federal storage projects. EWEB, on behalf of the Southern Willamette Valley Municipal Water Providers, conducted a regional water supply planning project to explore issues limiting access to this stored water for municipal purposes. The project was funded by a grant from OWRD's Oregon Water Supply and Conservation Initiative. Despite the fact that Congress authorized these storage projects for numerous purposes, including municipal water supply, this stored water is not currently available for municipal and industrial purposes for several reasons, including that the State of Oregon water rights authorizing the storage of water are for irrigation purposes only. Finally, although EWEB has developed interconnections with two municipal water supply systems:

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MAR 22 2011

Springfield Utility Board (SUB) and Rainbow Water District, these interconnections do not provide a sufficient redundant supply for EWEB because these two utilities are

substantially smaller than EWEB and do not currently have sufficient capacity to assist EWEB if it were to lose its single source of supply.

Since EWEB has been unable to obtain a secure, redundant water supply through any of the above described efforts, it has applied for a new water right from the Willamette River that is intended to duplicate its claimed 1909 water right (SWR-354). The requested permit will duplicate, and will not be additive to EWEB's SWR-354.

Moreover, the requested permit would not be additive to EWEB's other existing water rights. EWEB's use of water under the requested permit, in combination with its existing water rights, would be limited to the maximum rate currently authorized by EWEB's existing water rights. The requested water right would provide EWEB with the certainty it needs to make significant and continued investments in its Willamette River source.

For OWRD to process EWEB's application, however, the Water Resources Commission (Commission) must grant an exception to the current provisions of the Willamette Basin Program regarding "classified" (allowed) uses of the Willamette River main stem above the confluence with the McKenzie River. The Willamette Basin Program does not classify this portion of the mainstream Willamette River for municipal purposes year-round. Rather, the rule (OAR 690-502-0050(1)(d)) provides that municipal use is a classified use only from November 1 through June 30. (This classification scheme was put in place because the Commission intended to direct the majority of water users to the water stored in the Willamette Basin federal storage projects during the high-demand portion of the year. As previously described, however, this stored water is not available for municipal use.) As a result, OWRD will not continue to review EWEB's application until the Commission has granted an exception to the basin program.

## II. Exception to the Willamette Basin Program

ORS 536.295(1) provides that the Commission may allow OWRD to consider an application to appropriate water for a use not classified in the applicable basin program under certain conditions. The enumerated conditions are if the use:

- (a) Will be of short duration during each year;
- (b) Will be for a continuous period of not longer than five years;
- (c) Is largely non-consumptive 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.

In making this determination, the statute also directs the Commission to evaluate whether the proposed use is consistent with the general policies established in the applicable basin program.

As described in more detail below, EWEB requests an exception to Willamette Basin program based on the following conditions: (d) [the use] is necessary to ensure public health, welfare and safety; and (g) [the use] 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. In addition, EWEB's proposed use of water is consistent with the general policies of the Willamette Basin program.

A. EWEB's water right application is necessary to ensure public health, welfare and safety

EWEB requests an exception to the Willamette Basin program pursuant to ORS 536.295(1)(d) because the proposed use of Willamette River water is necessary to ensure public health, welfare and safety. As described above, EWEB is currently dependent on the McKenzie River as its sole source of supply. EWEB is one of the largest single source water providers in the entire western United States. Of the 20 largest cities in Oregon, Eugene (EWEB) is the only city that does not have access to a second source of supply for redundancy and operational flexibility. EWEB's access to only one source of supply presents potential health and safety risks to its customers.

EWEB's water right application is necessary to ensure public health welfare and safety. If EWEB's McKenzie River supply became unavailable due to mechanical problems, source contamination, or other reasons, EWEB could be left without sufficient water to meet all of its customers' needs. EWEB's in-system storage would provide sufficient water supply for as little as one day during periods of high water demand, or several days during periods of average water demand. Once EWEB's stored water was depleted, it could have an insufficient water supply for human consumption purposes, such as drinking water and sanitation, and would not have sufficient pressure necessary for fire suppression. Consequently, EWEB's ability to obtain water from the Willamette River is necessary to ensure public health, welfare and safety.

B. EWEB's water right application is of an unusual nature and unlikely to have been within the uses considered by the Commission

EWEB's application to duplicate its existing surface water registration with a municipal water use permit is of an unusual nature and unlikely to have been within the uses considered by the Commission in classifying the uses presently allowed in the basin program. EWEB believes that the need to obtain a municipal water right permit to

duplicate a pending municipal surface water registration is of an unusual nature not likely to recur in the basin. Moreover, EWEB believes that it was unlikely to have been considered by the Commission at the time it classified the uses in the Willamette Basin program. While EWEB recognizes that the Commission considered municipal purposes, it is not likely that the Commission consider duplication of a municipal claim for such a use. The Commission clearly anticipated that that stored water from the federal storage facilities would become available for purposes such as municipal use, and as a result likely did not consider the need to obtain a water use permit for live flow to duplicate an existing surface water registration.

C. EWEB's proposed use of water is consistent with the general policies of the Willamette Basin program

When determining whether to grant an application for a basin program exception, ORS 356.295(4) requires the Commission to also evaluate whether the proposed use is consistent with the general policies of the applicable basin program.

EWEB's proposed permit to duplicate its existing surface water registration is consistent with these general policies for surface water and municipal water systems. The new permit would maintain a balance between in-stream and out-of-stream uses on the Willamette River because the existing in-stream water right on the relevant portion of the Willamette River protects flows between 2,000 and 2,500 cfs, which represents between 57 and 254 percent of the river's natural stream flow, according to OWRD's water availability analysis. The proposed duplicative permit would also preserve opportunities for economic development within EWEB's service area. Finally, the new permit will protect safe drinking water supplies for human consumption for all of EWEB's customers. Further, the new permit will support EWEB's continued coordinated water service planning because EWEB provides water to existing and dissolved water districts and the Eugene Airport and Lane Community College special service districts.

In addition to the general policies described above, EWEB is also 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, because this water is not currently available for municipal purposes, EWEB is unable to obtain access to any of the water stored in the federal reservoirs. Having exhausted all other feasible alternatives, EWEB must apply for a new, duplicative water right and seek an exception to the Commission's restrictive classification of the Willamette River under OAR 690-502-0050(1)(d).

**III. Conclusion**

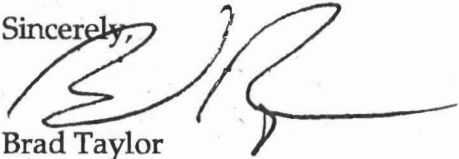
EWEB requests that the Commission allow the Department to consider its water right application S-87675, notwithstanding the classification of the Willamette River under OAR 690-502-0050(1)(d), which only allows municipal use during the period of November 1 to June 30 of each year. EWEB believes that its proposed use of Willamette River water under a permit duplicating its existing surface water registration and not

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MAR 22 2011  
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SALEM, OREGON

seeking more water than already authorized under its existing water rights meets all of the requirements of ORS 536.295.

Thank you for providing EWEB's request to the Commission. Please contact me if you have any questions or need additional information. My telephone number is (541) 685-7385.

Sincerely,



Brad Taylor  
Water Resource & System Planner  
Enclosure: Check for \$500

# Application for a Permit to Use Surface Water



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

## SECTION 1: APPLICANT INFORMATION AND SIGNATURE

### Applicant Information

NAME		PHONE (HM)	
PHONE (WK)	CELL	FAX	
ADDRESS			
CITY	STATE	ZIP	E-MAIL

### Organization Information

NAME EUGENE WATER & ELECTRIC BOARD		PHONE 541-685-7385	FAX 541-685-7385
ADDRESS PO BOX 10148			CELL
CITY EUGENE	STATE OR	ZIP 97440	E-MAIL BRAD.TAYLOR@EWEB.ORG

**Agent Information** – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME ADAM SUSSMAN, GSI WATER SOLUTIONS INC.		PHONE 541-753-0745	FAX 541-754-4211
ADDRESS 1600 WESTERN BLVD., SUITE 240			CELL
CITY CORVALLIS	STATE OR	ZIP 97333	E-MAIL ASUSSMAN@GSIWS.COM

Note: Attach multiple copies as needed

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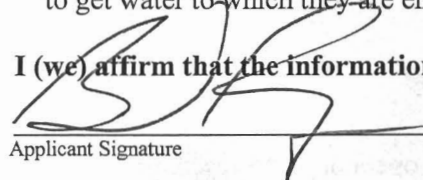
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**By my signature below I confirm that I understand:**

- 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.
- I cannot use water legally until the Water Resources Department issues a permit.
- Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- 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 cancelled.
- 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.

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SALEM, OREGON

**I (we) affirm that the information contained in this application is true and accurate.**

  
Applicant Signature

BRAD TAYLOR 12/27/10  
Print Name and title if applicable Date  
WATER RESOURCES SYSTEM PLANNER

Applicant Signature

Print Name and title if applicable Date

App. No. <u>S-87675</u>	For Department Use Permit No. _____	Date _____
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**SECTION 2: PROPERTY OWNERSHIP**

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- Yes - EWEB owns the property on which one of the proposed points of diversion are located.
  - There are no encumbrances.
  - This land is encumbered by easements, rights of way, roads or other encumbrances.
  
- No - As a municipal water provider, EWEB does not own all of the property to which it conveys water.
  - I have a recorded easement or written authorization permitting access.
  - I do not currently have written authorization or easement permitting access. Not required - Applicant is a public corporation
  - 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 irrigation and/or domestic use only (ORS 274.040).
  - Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

N/A - APPLICANT IS A PUBLIC CORPORATION

**SECTION 3: SOURCE OF WATER**

**A. 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: <u>Willamette River</u>	Tributary to: <u>Columbia River</u>
Source 2: _____	Tributary to: _____
Source 3: _____	Tributary to: _____
Source 4: _____	Tributary to: _____

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JAN 03 2011

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SALEM, OREGON

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** N/A - Applicant is not requesting a permit to use stored water

Do you, or will you, own the reservoir(s) described in item 3A 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 3A 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.

**SECTION 4: WATER USE**

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	USE	PERIOD OF USE	AMOUNT
Willamette River	Municipal purposes	year-round	30.9 <input checked="" type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

**For irrigation use only: N/A – Application does not request the use of water for irrigation**

Please indicate the number of primary and supplemental acres to be irrigated.

Primary: \_\_\_\_\_ Acres                      Supplemental: \_\_\_\_\_ Acres

List the Permit or Certificate number of the underlying primary water right(s): \_\_\_\_\_

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: \_\_\_\_\_

- If the use is **municipal or quasi-municipal**, attach **Form M – See Attachment 1**
- If the use is **domestic**, indicate the number of households: \_\_\_\_\_
- If the use is **mining**, describe what is being mined and the method(s) of extraction:  
 \_\_\_\_\_

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**SECTION 5: WATER MANAGEMENT**

**A. Diversion and Conveyance**

What equipment will you use to pump water from your source? To Be Determined

Pump (give horsepower and type): \_\_\_\_\_

Other means (describe): \_\_\_\_\_

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.

To Be Determined

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**B. Application Method**

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

N/A – Application is for municipal purposes

**C. Conservation**

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent adverse impact to public uses of affected surface waters.

EWEB is currently developing a water management and conservation plan (WMCP) that will describe the various conservation measures that it will implement. EWEB understands that a new permit will include a requirement to update the WMCP within a prescribed period of time.

**SECTION 6: RESOURCE PROTECTION**

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: EWEB will install a fish screen that complies with all applicable state and federal fish screening requirements.
- Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.  
Describe planned actions: During construction, any excavation or clearing of banks will be kept to a minimum. Any necessary removal/fill permits or other state or federal authorizations will be obtained. Use of water under this permit will not require excavation or clearing of banks.
- Operating equipment in a water body will be managed and timed to prevent damage to aquatic life.  
Describe: Any in-water work conducted during construction will occur in compliance with the applicable in-water work periods. Use of water under this permit will not require operating equipment in a water body.
- Water quality will be protected by preventing erosion and run-off of waste or chemical products.  
Describe: During construction, water quality will be protected by preventing erosion and run-off. Use of water under this permit will not cause erosion or run-off of waste or chemical products.

**SECTION 7: PROJECT SCHEDULE**

Date construction will begin: Within 20 years from the date on which the permit is issued

Date construction will be completed: Within 20 years from the date on which the permit is issued

Date beneficial water use will begin: Within 20 years from the date on which the permit is issued

**SECTION 8: REMARKS**

Use this space to clarify any information you have provided in the application (*attach additional sheets if necessary*).

The City of Eugene, acting through EWEB, submitted Surface Water Registration 354 to the Oregon Water Resources Department (Department) claiming a pre-1909 vested water right for the use of 30.9 cfs from the Willamette River for year-round municipal purposes. The registration indicated that development of this right began no later than November 3, 1886 and that water was first used March 26, 1887.

EWEB has had informal discussions with the Department regarding its willingness to adjudicate the Willamette River Basin so that the City can obtain a certificate for this water right. OWRD has indicated that due to budget and staffing restrictions, it does not intend to adjudicate the basin in the near term. As a result, EWEB is submitting this application for 30.9 cfs from the Willamette River to duplicate its existing unadjudicated pre-1909 water right. This water right is necessary because EWEB is currently dependent on the McKenzie River for its sole source of supply, and EWEB needs this right to have adequate certainty for significant and continued investment in its Willamette River water supply. EWEB intends to use its Willamette River water right for source water redundancy and operational flexibility.

EWEB is not requesting to increase the combined maximum authorized rate under its existing water rights through this application. Use of water under this water right, in combination with its existing rights, would be limited to the maximum rate currently authorized by EWEB's existing water rights. Please also see cover letter for additional information.

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EWEB Municipal and Industrial Water Rights Table

Application	Permit	Certificate	Claim	Source	Priority Date	Type of Beneficial Use	Authorized Date for Completion	Quantity (cfs)	Quantity (mgd)	Maximum Withdrawal To Date (cfs)
S-10168	S-8602	15180		McKenzie River	5/16/1925	Municipal	N/A	27.08	17.5	27.08
S-22037	S-17358	68537		McKenzie River, tributary to the Willamette River	10/15/1946	Municipal	N/A	90	58.2	90.0
S-35037	S-27441			McKenzie River	6/14/1961	Municipal	10/1/2000, Permit extension pending	183	118.3	4.82
			SW 354	Willamette River, tributary to Columbia River	3/26/1887	Municipal	N/A	30.9	20	30.9
G-15857	G-16371			McKenzie & Willamette Confluence Well Field	12/20/2002	Municipal	8/13/2028	18.49 (cumulative rate no more than 4,998 cfs from Wells 1,4,7,9,10,11, and 12, and max rate of 2.5 cfs for each well; cumulative rate no more than 13.49 cfs from Wells 2,3,5,6, and 8, and max rate of 2.698 cfs for each well). Note: Limitation of 300.08 cfs of water withdrawal between this rights and the three surface water rights (not SW 354).	12.0	0
S-51130	S-39122	45670		Willamette River, tributary to Columbia River	8/23/1973	Industrial	N/A	128	82.7	128

5-87675

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