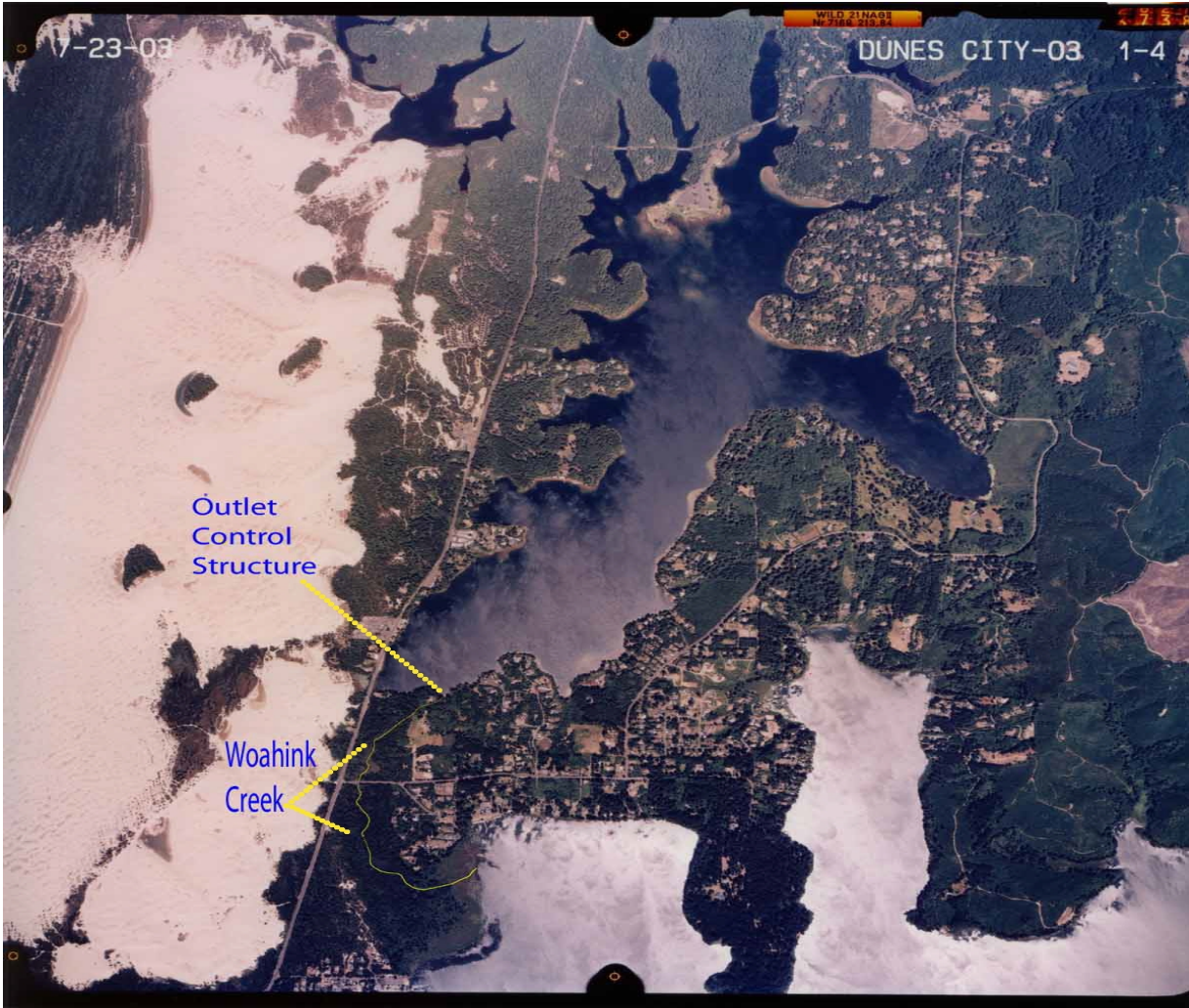


WATER RIGHT ISSUES AND THEIR RELATIONSHIPS WITH THE OUTLET CONTROL STRUCTURE



PREPARED AT THE REQUEST OF THE DUNES CITY COUNCIL
BY THE CITY'S WATER QUALITY COMMITTEE

March 11, 2010

From inception the Water Quality Committee has been involved, to varying extents, with the City's water right permits. The City Council at its meeting of February 11, 2010, asked the Committee to prepare a detailed report with recommendations for presentation at the March 11 Council Meeting. The Committee was asked to review the City's Application for Extension of Time applicable to the water storage permit, and address water right issues and their relationships with the outlet control structure.

Prior to its February meeting, committee members studied copies of the Water Storage Permit document presented during the Council's meeting of February 11th and the Application for Extension of Time. An additional document (copy attached) was reviewed during the committee's February 17th meeting as options and possible recommendations were being discussed. It was agreed that John Stead and Richard Koehler would prepare the committee's report.

APPLICATION FOR AN EXTENSION OF TIME

This application (attached) is a request for an extension of time, until October 1, 2012. "Surveys to identify points of diversion have been completed, water meters to record usage have been installed, and a database to track monthly usage has been completed." [and] The conditions in the permit satisfied: "Initial meter readings recorded at installation. Meters are read monthly and usage information is recorded. Fish passage was provided by the original Output Control Devise" (sic). Cost of the project to date is reported as \$77,138.15. Estimated additional cost to complete the project during 2010 – 2011 is \$50,000.00.

WATER RIGHTS AND THE OUTLET CONTROL STRUCTURE

THE BASICS

All waters of the State belong to the public for use by the people for beneficial purposes without waste. The Oregon Water Resources Commission, appointed by the Governor, establishes basin standards and establishes policies for operation of the Oregon Water Resources Department (OWRD). OWRD allocates the public water through the permitting and certification process whereby the right to use the water is allocated to the first person appropriating it for beneficial use. Permits can be converted into water right certificates after the water has been put to beneficial use for least a year. It is wise for eligible permit holders to obtain certificates as soon as possible since permits are subject to change, while certificates are stable and run with the land, subject only to periods of non-use approaching five years or uses inconsistent with the certificate.

Over the years residents have pumped water from Woahink Lake, streams, springs and wells for home/domestic use — Favoring the economic efficiencies afforded by individual and community water systems (a system shared by three or more residences). According to the *Comprehensive Plan*, voters have rejected the creation of a public water system three different times. And people desire to maintain the City as a predominantly rural residential community without the necessity of a municipal water system.

MID-COAST BASIN PROGRAM

The Water Resources Commission, the Water Resources Board's replacement, oversees and gives direction to OWRD's activities while retaining its authority to amend basin programs. On March 26, 1974 the Mid-coast basin Program Update was approved based on a 1.5 year study. The domestic use purpose for Woahink Lake was reaffirmed.

The waters of Woahink Creek and its tributaries [Woahink Lake] “. . . are classified by the Mid Coast Basin Program as being only for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes.”

The waters of Woahink Lake are classified, “. . . only for utilization of water for domestic, livestock and in-lake uses for recreation, wildlife, and fish life purposes”. Because water right applications must stipulate the water use classifications specified in the basin Program, Dunes City's first permit application asked for and obtained its 1968 domestic use permit. Later, at the Water Resources Board's public hearing in Florence on January 14, 1974, the City requested that the Board revise the Mid-Coast Basin Program to authorize Woahink Lake water for municipal purposes. The Program was amended as follows: “. . . 1.5 cfs of lake water is reserved for municipal purposes and 0.75 cfs for public park purposes.”

DUNES CITY'S WATER RIGHT PERMITS

The first permit (1968 Priority Date), authorizes 1.4 cfs (cubic feet per second) from Woahink Lake for a public water system to provide water for domestic supplies.

This permit was amended in 2005 by adding 217 points of diversion, representing persons who signed a contractual agreement with the City. Use of the City's permit does not guarantee an amount of water, nor does it authorize the use of water for business or commercial purposes. The City's Extension of Time Progress Report Form, sent to OWRD April 1, 2009 reported, a total financial investment of \$77,138.15 through 2008.

The City collects an annual fee of \$150 for each of the approximately 135 active diversions for a total annual amount of \$20,000. The annual fee is not collected from the estimated 82 contract holders not using water.

The second permit (1978 Priority Date), obtained following amendment of the Mid-Coast Basin Program to include municipal purposes, and authorizes 1.5 cfs from Woahink Lake for municipal use. References are made to possible use of the outlet structure and a 10-25-09 letter.

The third permit (2004 Priority Date) authorizes storage of 410 acre-feet of water diverted from Woahink Creek and stored in Woahink Lake for multiple purposes during the storage season at times when instream water right demands are being met. Outside the storage season the City shall pass all live flow. A record shall be kept of the amount of water used month. Out of lake water use requires a secondary permit.

The fourth permit (2005 Priority Date) authorizes use of the stored water for “creek flow augmentation” and “domestic use expanded” — the diversion of water from 217 different points (the same points listed in the amended 1968 permit). Diversion is allowed only when the City has physical control of the water at the outlet control structure. Storage adjustments will be made and readings from a staff gage in Woahink Creek will be recorded on a regular twice-a-

month basis. The Memorandum of Understanding, Item 12, specifies stored water will not be used to satisfy existing rights including the instream water right.

HONEYMAN STATE PARK WATER RIGHT CERTIFICATES

The Oregon State Highway Commission holds a water right certificate (1958 Priority Date) for the purpose of use in Honeyman State Park. It authorizes 3.45 cfs. A second certificate issued to the Oregon State Parks and Recreation Department (1991 Priority Date) authorizes 0.24 cfs for irrigation and park use. Such use may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

WOAHINK CREEK'S INSTREAM WATER RIGHT CERTIFICATE

Issued in 1989 with a priority date of 1974, this certificate specifies minimum flow rates for Woahink Creek on a monthly basis and confirms the right to use the waters of the creek to maintain an instream flow for the purposes of supporting aquatic life and recreation. It requires that flows be maintained from the outlet of Woahink Lake to its confluence with Siltcoos Lake. (Flow rates were initially recommended by the Oregon Department of Fish and Wildlife.)

Based on the doctrine of “prior appropriation”, when creek flow demands are not being met, OWRD can determine that the water supply (Woahink Lake) is over allocated, that water is unavailable, and limit the City’s 1978 municipal permit to human consumption purposes — drinking, cooking and sanitation.

WATER AVAILABILITY

"Water is Available," means Woahink Lake is not over-appropriated during any period of the proposed use [OAR 690-300-0010(57)].

Woahink Lake is an 820-acre sand dune dammed lake abutting an unconfined aquifer extending from the Siuslaw River to Coos Bay. Its surface is 39 feet above sea level and at its deepest point it is 36 feet below sea level—a crypto-depression with a retention time is 1.2 years.

Woahink Lake provides water to meet the needs of Honeyman State Park’s more than 1.5 million visitors per year as well as the park’s irrigation needs.

The City’s 1979 *Comprehensive Plan*, states:

- “There is no problem at present with water withdrawal volumes on any of the lakes. . . [and] Most lakes retain a relatively constant level all year due to subsurface water infiltration.”

The 2008 *Geomorphic and Hydrologic Assessment of Historical Water Level Rise at Cleawox Lake*, authored by the Oregon Department of Geology and Mineral Industries (ODGMI), states, “Observed seasonal water level fluctuations ranged from 3 to 6 feet for ground water and 1.5 to 2.0 feet at lakes. Additionally, ground water discharge maintains local lake levels and stream flow; some inflow comes from surface runoff; and surface outlets keep lake levels fairly constant.”

CONSTRAINTS ON WATER AVAILABILITY

Water availability is based on the capacity of the resource, in this instance, Woahink Lake. Capacity is a balance of public and private uses — without causing over-appropriation of the resource. Today, over-appropriation means that the quantity of water available in a specified time is insufficient to meet the expected demands from all water rights, including instream water rights, 80 percent of the time.

In January 1992, OWRD's over-appropriation standard was changed from 50 percent to 80 percent exceedance. OWRD then used its water availability model (a statistical model) to predict flow rates in Woahink Creek for comparison with the creek's instream water right requirements. Creek flows were found to be inadequate to meet water right demands during seven months of the year.

In December of 1992, the Lane County's Public Health Engineer wrote to the Mayor of Dunes City that he supports the City's efforts towards a city water system and believes,

“ . . . it would be appropriate for the state Water Resources Commission to limit the granting of new water rights for domestic use to private users within the city limits. This action would prevent the diversion of needed support for the municipal water system to private systems. “

In July 1996, OWRD issued its first permit limiting water availability to domestic use four months and human consumption eight months. Later permits and certificates were limited to human consumption for from seven to twelve months of the year, depending on the water right. Prior water rights were authorized domestic use as specified in the Mid-Coast Basin Program and were conditioned to protect senior rights as follows:

“The use confirmed herein is made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.”

According to OWRD's meeting notes of an April 20, 2004 meeting at City Hall with three OWRD staff members, staff advised, “Neither the 50 or 80 percent exceedance factor would allow new live-flow water rights to be issued from Woahink Lake, since water is not available year-round under either standard. Additionally, even if water rights were issued, regulation of water takes place based on real-time data.”

Actions such as these created much consternation, discouraged residents from applying for water rights, and created myriad difficulties for realtors and developers who are required by law to notify potential buyers of water availability.

During a Water Resources Commission work session on August 8, 2002, a developer from Florence spoke about his concerns about illegal diversions of Woahink Lake water and the need for Dunes City to develop a tax base for a municipal water system. The time consumed by Representative, now Senator, Joanne Verger, OWRD staff, members of the Woahink Lake Association, City Council, Water Quality Control Committee and numerous other persons regarding these matters is incalculable.

In 1992 WRD and Dunes City began a collaboration to circumvent the effects of the actions against use of water for domestic purposes. A Woahink Lake Water Rights Community Forum was held on October 29, 2002 at the Florence Events Center. In attendance were eleven staff members from four state agencies and 160 residents, OWRD discouraged potential water right applicants, indicating that use of Dunes City's 1968 water right is the preferred alternative.

OWRD staff member Bob Rice said, “The option for applying for new water rights is possibly not available since there are other options and the water has already been allocated during the months of April through November.” And Tom Paul, OWRD’s Administrator, Field Services Division said, “WRD has no evidence that domestic use has drawn down the lake and the proposed solution will not solve the water flow problem. . . . The issue isn’t stream flow, but the fact that people do not have a right to divert water”
[Woahink Lake Water Rights Meeting Minutes, October 29, 2002].

On May 6, 2004, OWRD staff met with the Water Quality Control Committee and assured the Committee that OWRD will continue to work with locals to find solutions to problems.

ACCESS EASEMENT REQUIREMENTS

On September 18, 2001, OWRD sent letters to right permit holders identifying a lack authorization to place “your works” on State of Oregon property and . . . Failure to obtain the necessary easement may result in the cancellation of your permit. . . . “ This action was followed by an October 5, 2001 letter from the Oregon Division of Sate Lands (ODSL)\ saying the bed and banks of Woahink Lake are state owned and the Division requires that water pipelines be authorized by easement. The application fee is \$750.

Subsequently the legislature changed Oregon law to read,
“a person holding a water right permit, water right certificate, proposed or final order approving a water right permit . . . may occupy state-owned submersible lands for . . . domestic use . . . ” without charge or written documentation to substantiate the permission granted. [ORS 274.040(3)(b)]

The City’s three applications for authorization to use the City’s water right permit require certification that the applicant owns the land, or has an easement allowing the diversion and/or transport of water over land not owned by the applicant, and without such an authorization the application will not be accepted.

The MOU under II. 5., states that the State of Oregon has granted permission for, “. . . domestic water users holding contracts under Dunes City’s water right permit to occupy state-owned submersible land for . . . diversion and delivery of water. ORS 274.040”.

OUTLET CONTROL STRUCTURE OWNERSHIP

Woahink Lake was meandered in 1857. All meandered lakes are navigable and public waters. Title to the submersible and submerged land of such meandered lakes is vested in the State of Oregon [ORS 274.430 (1)]. A DSL document states, “The people of Oregon own the submerged and submersible land underlying all navigable streams, rivers, and lakes in most cases up to the ordinary high water line. . . .”

In the early 1930’s, according to the *Comprehensive Plan*, “Woahink Outlet . . . flowed through the lily pond on the west side of Hwy 101 and then turned back east into Siltcoos Lake. The outlet was diverted into a channel east of the highway to save building two bridges.”

On October 24, 1939, the State of Oregon obtained an easement over Lot 2 to install, maintain and repair the outlet control with the condition that, should the State fail to operate and properly maintain the outlet control for one year, the easement would terminate. The easement does not specify the outlet control’s location, only that the purpose of the easement was to support its construction and maintenance.

In a March 2, 2004 email to John Stead, ODSL's Greg Willnow stated, "There exists a weir located at the south end, whereby the lake is controlled. The concrete structure was built by a federal works project in the 1930's. The State Engineer does not allow manipulation of the weir."

According to the meeting notes of an April 20, 2004 meeting at City Hall to discuss with three OWRD staff members, the problem of flows into Woahink Creek being controlled by the outlet control structure, it was reported that, ". . . The state-built outlet-control structure, which Dunes City repaired this past fall is privately owned."

After the State of Oregon abandoned the Outlet Control, the City, by Resolution 11-13-03 (A), authorized funds for its repair and on March 30, 2005 the State of Oregon quitclaimed its interest in Lot 2 to Richard Anderson et al., the current owner of the property underlying the easement.

CONCLUSIONS

1. The application requesting an extension of time is inaccurate and misleading to the extent that it is fatally flawed. It reports activities lacking relevance to the permit and represents that permit conditions have been satisfied (when they have not) and it reports expenses unsupported by facts.
2. Residents of Dunes City and others have suffered ethically, morally and financially from the perplexing application of heavy handed, arbitrary water management. This worrisome situation is the result of inappropriate resistance by OWRD. Holders of water right certificates conditioned to human consumption are out of compliance as are those diverting water without water rights. Persons using the City's water right permit are out of compliance with the City's permitting process and paying annual fees of \$150, while holders of water rights issued by OWRD are not burdened with any annual fees.
3. Inconsistent standards have arbitrarily been applied to the water management of Woahink Creek and its tributary Woahink Lake.
4. The level of Woahink Lake remains relatively constant as the result of interactions with the unconfined aquifer.
5. Ground water discharge maintains the level of Woahink Lake and the outlet control structure regulates flows into Woahink Creek.
6. ODGMI findings and the City's Comprehensive Plan support the notion that water use by residents has absolutely no impact on the adequacy of flows in Woahink Creek. These flows are regulated by the outlet control structure (weir).
7. The process of approving applications for use of the City's water right appears to be flawed. Many applications were approved contrary to the requirement that written authorization to divert and/or transport water [over submerged state land] is required. The requirement is in agreement with ORS 274.040(3)(b) limiting use submerged state land to those holding water rights. Use of the City's permit does not convey title. While the MOU says contract holders are permitted to

use submerged state land, it also states that nothing in the MOD constitutes a valid defense to parties operating in violation of statutes, rules or permits.

8. The City's water right permit restricts use to water from a natural body of water. Permit number four, authorizes those holding contracts to use the City's permit to use stored water which is in conflict with the City's authorization.

9. Access to and ownership of the outlet control structure is vital to fulfilling the conditions of two and possibly three of the water right permits held by the City. Dunes City will have extreme difficulty in obtaining access to and ownership of the outlet control structure. A paper trail establishing ownership does not exist. The City will have extreme difficulty establishing ownership of the outlet control structure.

10. Implementation of the City's third and fourth water right permits will require regular bi-weekly access to the outlet control structure and a staff gage to be placed in Woahink Creek. After obtaining needed access, the City could install automatic devices for manipulating the outlet control structure and measuring and recording the associated data. However, it is doubtful that the City will be able to obtain access to the outlet control structure and Woahink Creek.

11. Having another 400 acre feet of water impounded in Woahink Lake might someday be a good idea, however in order to capture that water the city would have to have control of the Outlet Control Structure (OCS). In as much as the City cannot get ownership of the OCS with an easement for repairs and maintenance and because of the City's limited resources the Water Quality Committee recommends no further action be taken at this time either on the acquisition of the OCS or the storage permit.

RECOMMENDATIONS

1. Place a stop work order on any further activities regarding the storage of water or the use of stored water.

2. Give serious consideration to statements implicit with the *Comprehensive Plan* that discourage the City's preparations for and implementation of a municipal water system.

3. Survey all Dunes City property owners to determine the level of support for pursuit of a municipal water system for Dunes City.

4. Engage the Water Resources Commission, and members of the Oregon Legislature in efforts to obtain a release of OWRD's strangle hold on the use of water from Woahink Lake for domestic purpose. Success would enable the City to discontinue its extraction of more than \$20,000 annually from selected citizens of Dunes City (\$200,000 over ten years) — A noble effort considering current financial conditions.

OUTLET CONTROL STRUCTURE / WEIR DISCUSSION
WATER QUALITY MEETING
February 17, 2010

HISTORY

October 9 2003, Weir Impending Failure: In a fragile state and in need of repair before the winter storm period. ODOT has claimed no responsibility for its maintenance. The weir is adjacent to Dick Anderson's property. City's contingency fund, \$3,750 used to make repairs.

May 13, 2004, Council took action to proceed with the application to store water. Ward said that Dunes City would work out an arrangement where Dr. Anderson would give the weir to the City along with an easement for access to the weir for maintenance.

June 10, 2004, Ward gave the report for the Water Control Committee. John Stead will be filling out the application to the State to add the 6" board to the Woahink Weir.

September 9, 2004, City Insurance Services (CIS) investigator will be visiting the site of the Weir to determine liability. CIS would be able to defend the City, but not pay damages.

February 10, 2005, Ward said that the permit was received from the Water Resources Department to store water on Woahink Lake using the weir.

January 9, 2006, Signed MOU received by the City.

The permit to store water authorizes the City to construct a reservoir and store the public waters for multiple purposes. Water from Woahink Creek can be diverted to storage October 1 through July 31. Outside the storage season, all live flow must be passed into the creek. Records of the amounts of water used each month must be maintained and reported to WRD annually.

EMAIL – (Opinion from DSL)

From: YOUNG Cyril
Sent: Monday, November 23, 2009 1:55 PM
To: newlands222@msn.com [Councilor Mills' email]
Subject: RE: Woahink Lake Weir Structure

I think I have resolved some of your questions but not all. When Woahink Creek was moved to make way for the Highway 101 construction, that is considered to be an avulsive action and not a natural movement of the creek. At the time that the creek was relocated by ODOT, State ownership would not have moved with the creek, but would have remained with those southern portions of the creek which remained in their original bed. I have reviewed our plat book and other surveys of the lakes and the creek from the early days and compare those to the current Woahink Creek location. The State does not claim the bed and banks of the upper end of Woahink Creek at its current location, it does seem to be in private ownership and if the weir is located with in Parcel 2 or Tax Lot 105 then it is not on state owned lands. . . .

DEFINITIONS

Avulsive

The term "avulsive". At [http://en.wikipedia.org/wiki/Avulsion_\(legal_term\)](http://en.wikipedia.org/wiki/Avulsion_(legal_term))

"In real property law, AVULSION refers to a sudden loss or addition to land, **which results from the action of water.** (emphasis added) It differs from accretion, which describes a gradual loss or addition to land resulting from the action of water."

Avulsion

"The immediate and noticeable addition to land caused by its removal from the property of another, by a sudden change in a water bed or in the course of a stream.

When a stream that is a boundary suddenly abandons its bed and seeks a new bed, the boundary line does not change. It remains in the center of the original bed even if water no longer flows through it. This is known as the rule of avulsion.

Avulsion is not the same as accretion or alluvion, the gradual and imperceptible buildup of land by the continuous activity of the sea, a river, or by other natural causes.

West's Encyclopedia of American Law, edition 2. Copyright 2008

The implication seems to be that the "immediate and noticeable" definition is intended for acts of nature, not man made changes such as the creation of a new channel for the creek incident to road construction.

ORS

274.025 Jurisdiction over submersible and submerged lands generally. (1) The title to the submersible and submerged lands of all navigable streams and lakes in this state now existing or which may have been in existence in 1859 when the state was admitted to the Union, or at any time since admission, and which has not become vested in any person, is vested in the State of Oregon. The State of Oregon is the owner of the submersible and submerged lands of such streams and lakes, and may use and dispose of the same as provided by law.

274.005 Definitions. As used in this chapter, unless the context requires otherwise:

(7) "Submerged lands," except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

Attachment: [Application for extension of time follows](#)

REPORT SUMMARY

WATER RIGHT ISSUES AND THEIR RELATIONSHIPS WITH THE OUTLET CONTROL STRUCTURE

March 11, 2010

Scrivener's Errors:

Page 5, Last paragraph, first sentence: Delete the first two words, "In 1992".

Page 8, Item 10. last sentence: Substitute "it" for "tt".

Item 11, last sentence: Substitute "City's" for "Cities".

Summary:

The Report provides detailed information supporting the following recommendations:

1. Place a stop work order on any further activities regarding the storage of water or the use of stored water.

The City's permits for storage (2004) and use of water (2005) from Woahink Creek allow those already using the City's 1968 water right permit to also use stored water for domestic purposes when the City has physical control of the water. There appears to be a lack of benefit for the City.

These permits require that the City have bi-weekly access to the outlet control structure (weir). Ownership of the weir has not been established nor has access been provided, thus preventing the City from moving forward; and making the application for an extension of time to implement the storage permit a futile effort.

2. Give serious consideration to statements implicit with the *Comprehensive Plan* that discourage the City's preparations for and implementation of a municipal water system.

The City's 1968 and 1978 permits authorize use of Woahink Lake water for a public water system. Voters have denied a public water system three different times, favoring the economic efficiencies afforded by individual and community water systems.

3. Survey all Dunes City property owners to determine the level of support for pursuit of a municipal water system for Dunes City.

Results from such a survey would be useful in guiding Council deliberations concerning pursuit of a municipal water system.

4. Engage the Water Resources Commission, and members of the Oregon Legislature in efforts to obtain a release of OWRD's strangle hold on the use of water from Woahink Lake for domestic purpose. Success would enable the City to discontinue its extraction of more than \$20,000 annually from selected citizens of Dunes City (\$200,000 over ten years) — A noble effort considering current financial conditions.

Residents and others suffer from the perplexing application of water management by OWRD. Those holders of water rights conditioned to human consumption (in home use) are out of compliance water users as are those diverting water without permits.

Persons using the City's water right permit appear to lack the City required authorization for use of submerged state land, have no guarantee of water availability and pay an annual fee. In contrast, holders of water rights issued by OWRD are automatically authorized to use submerged state land, are guaranteed a specific water flow subject only to appropriation by senior water right holders, and are not subject to annual fees.

PRIORITY DATE	PERMIT	PURPOSE	WATER AMOUNTS:		USE LIMITATIONS
			Authorized	Peak Demand	
10/7/1968	S-33923	Domestic Use	1.4 cfs (cubic feet per second)		Water use is authorized from a single point of diversion connected to a Public Water System.
10/7/1968	T-9854*	Domestic Use Expanded	1.4 cfs	0.077 cfs**	Water use is authorized from the listed 217 points of diversion. The City reports monthly water use summaries to OWRD annually.
(Domestic use plus 1/2 acre of lawn and/or garden. Date for complete application of water: 10/1/22 unless extended.)					
8/21/1978	S-44501	Municipal Use	1.5 cfs		Water use is authorized for a municipal water supply system use as long as Woahink Creek's instream water right demands are being met.***
(Municipal use authorized per amendment to the Mid-Coast Basin Program. Municipal system to be completed by 10/1/98. Application for time extension to 10/1/48, completed on 11/29/07)					
10/28/2004	R-14131	Multiple Purpose	410 af (acre feet)		Appropriation to storage is authorized between 10/1 and 7/31 as long as instream water right demands are met.*** A Secondary Permit is required for any and all out of reservoir uses. Access to the outlet control structure is required.
(Reservoir to be filled and complete application of stored water to use before 10/1/09 unless the permit is extended.)					
8/25/2005	S-54405	Domestic Use Expanded and Streamflow Augmentation	410 af		Use of stored water is authorized for creek flow augmentation and persons identified with the same 217 points of diversion authorized under T-9854 only when City has physical control of the water. Access to the outlet control structure is required

(Complete application of stored water to use shall be made on or before 10/1/11 unless the permit is extended.)

* This permit, an amendment to S-33923, was authorized on 12/2/05.

** Estimated maximum flow rate for the listed 217 points of diversion.

*** Woahink Creek's Instream Water Right, S-59892, is junior to the City's domestic use Permit S-33923



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

Application for Extension of Time for a Water Right Permit

(Non-Municipal / Non-Quasi-municipal Water Use)

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

*A separate extension application must be submitted for each permit as per
 OAR 690-315-0020(2).*

*This application and a summary of review criteria and procedures that are generally applicable to this
 application are available at <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml>.*

I, City of Dunes City

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

<u>PO Box 97</u>	<u>Westlake</u>	<u>OR</u>	<u>97493</u>
ADDRESS	CITY	STATE	ZIP
<u>541-997-3338</u>			<u>dunescityrecorder@charterinternet.com</u>
PHONE			E-MAIL ADDRESS

the permit holder of: Application Number R-86125

Permit Number R-14131
 [OAR 690-315-0020(3)(b)]

do hereby request that the time in which to:

complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on October 1, 2009, be extended to October 1, 2012,

N/A (Check this box if the permit does not specify a date by when construction must be completed.)

and/or the time in which to:

apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, N/A, be extended to October 1, N/A.

Before submitting your Application for Extension of Time, make sure the following items are included:

- ? This completed Application for Extension of Time.
- ? Statutory fee of \$500.
- ? Signature page (last page of this Application for Extension of Time).
- ? All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION

along with the

\$500 STATUTORY FEE TO:

**Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301**



GENERAL TIPS:

- ? Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The correct form is *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, available at the following link:
<http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml#other>
- ? Request the reasonable amount of time necessary to fully complete the water construction project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- ? A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- ? An instruction sheet (Instructions for Filling Out Extension of Time Application for Permits) provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at:
<http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.

- ? You may provide OWRD with any additional information or evidence that will aid us in making our decision. Please note that OWRD may require other information that is necessary to evaluate the application. OAR 315-0020(3)(n).
- ? After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights and Adjudications Division.
- ? Once an Application for Extension of Time is received by OWRD, it will be reviewed for completeness. OWRD will return any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- ? The water right permit. If needed, a copy of the water right permit can be downloaded from the Department’s Website at <http://www.wrd.state.or.us> (find the link to the Water Rights Information System (WRIS)). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- ? Documentation which demonstrates compliance with permit conditions (for example, well construction logs; static water level measurement reports; annual water use reports; ODFW fish screen certification; a plan to monitor the effect of water use on ground water aquifers utilized under the permit; etc.).

Answer the Following Questions to Complete this Application for Extension of Time

[OAR 690-315-0020(3)(d)]

1. **Did the actual construction of the water system/well drilling begin within the time specified in the permit?** Yes No **(No date specified in this permit.)**



TIP: *Not all permits specify a date by which construction was to begin.*

Date construction began is: 2004

Details of construction: Surveys to identify points of diversion have been completed, water meters to record usage have been installed and a database to track monthly usage has been completed.

2. Permits typically contain standard or special conditions that must be satisfied to lawfully develop and use permitted water. In the development of this water right, have you satisfied the conditions contained in your permit? Yes No

2-A) Describe how you have complied with each condition contained in the original permit [and, if applicable, each condition contained in any order approving a permit amendment and/or a final order approving a prior extension of time]. Include the date when the condition was satisfied.



TIP: The instruction sheet for the Application for Extension of Time provides an explanation of the typical conditions that must be addressed in this question.

CHART-A

Condition No.**	Date Satisfied	Describe How Permit Condition Has Been Satisfied
1	2004 - Ongoing	Ordinance & Resolutions adopted by City Council providing for property owners to use Dunes City's water right.
1	2004 - Ongoing	Installation of water meters. Initial meter readings recorded at installation.
1	Ongoing	Meters are read monthly and usage information is recorded.
1	Ongoing	Monthly usage information is reported to OWRD.
2	2004 - Ongoing	Agreements have been signed for all property owners using the water right providing for access to the meter by the watermaster.
3		Fish passage was provided by the original Output Control Device.
4		Provision to evacuate water for other downstream needs is facilitated by removing a board(s) from the Output Control Device.

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, permit amendment and prior extension).

2-B) If you have NOT complied with all applicable conditions, explain the reasons why and indicate with a date certain (in the near future) when compliance will occur.

CHART-B

Condition No.**	Date Will Comply	Explain Why Each Permit Condition Has NOT Been Satisfied

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, permit amendment and prior extension).

3. Provide evidence of physical progress made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-C); and if applicable, within the time period of the most recent extension granted (CHART-D).

3-A) CHART-C (below) must be completed for all Application for Extension of Time requests. Use *chronological order*.

CHART-C

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
2004 – Ongoing	Ordinance & Resolutions adopted by City Council providing for property owners to use Dunes City’s water right.	\$11,318.90
2004	Surveys to find points of diversion	\$560.00

DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED <i>and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER</i> <i>List work/actions done during the permitted time period.</i>	COST*
2/3/2005	Date the permit was signed - find date above signature on last page of permit.	
2004-2009	Installation of meters	\$28,501.25
2005-2009	Completion and maintenance of meter reading database	\$29,999.38
2005-2009	Annual meter reading audits	\$6,758.62
N/A	Date the permit specified “Actual Construction Work” shall begin (“A-Date”) -not all permits contain this date.	
10/1/2009	Date the permit specified complete application of water to the use shall be made (“C-Date”) - all permits contain this date.	

CHART-C (continued)

DATE	WORK ACCOMPLISHED AFTER “C-DATE” <i>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR EXTENSION OF TIME: List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
Total Cost for Chart-C		\$77,138.15

* If exact cost is not known, you must provide your best estimate.

3-B) If this is not your 1st Application for Extension of Time request, fill out CHART-D below (in addition to CHART-C above). Use chronological order.

CHART-D

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
N/A	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
10/1/	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

CHART-D (Continued)

DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED <i>List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
Total Cost of Chart-D		

* If exact cost is not known, you must provide your best estimate.

[OAR 690-315-0020(3)(f)]

4. Cost of project to date: \$77,138.15
(The total combined cost from CHART-C and CHART-D)

[OAR 690-315-0020(3)(e)(B)]

5. **Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit and/or prior extensions of time (if any) made to date.**



TIP: Report the rate used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

5-A) For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX):



TIP: Report the rate in the same units of measurement as specified in the permit.

Maximum rate **used to date** = N/A cfs (cubic feet per second) or,

Maximum rate **used to date** = N/A gpm (gallons per minute) or,

Acre-feet stored to date = Estimate 400 AF

5-B) For Ground Water Permit Extensions (e.g. G-XXXX):



TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

CHART-E

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED					
			Well Log Number e.g. MORR 50473	Well Tag Number e.g. # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See 5-C below)	Maximum instantaneous rate used from this well - - under this permit only (CFS or GPM)	Is this well authorized or utilized under additional water rights?	If yes, provide the Permit, Certificate, or Transfer No.
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
Total instantaneous rate from all wells utilized under this permit								

5-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a permit amendment application been/be filed? Yes No

If a Permit Amendment Application has been filed: Transfer No. T-_____

Well # _____: Actual location: _____

Well # _____: Actual location: _____

[OAR 690-315-0020(3)(e)(C)]

6. Provide the total number of acres irrigated to date under this permit (if applicable).

Total acres irrigated to date: N/A

Ground Water Permits: Please specify which wells are being utilized for this irrigation.

Well # _____ Acres _____ Well # _____ Acres _____

Well # _____ Acres _____ Well # _____ Acres _____

[OAR 690-315-0020(3)(j)]

7. Provide a summary of your future plans and schedule to complete the construction of the water system, and/or apply water to full beneficial use under the terms and conditions of the permit.

CHART-F

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
2010 – 2011	Acquire ownership and easements for access to the Output Control Structure	\$20,000.00
2011	Hire Certified Water Right Examiner to prepare Claim of Beneficial Use and submit to OWRD.	\$30,000.00
Year:	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		\$50,000.00

[OAR 690-315-0020(3)(g)]

8. Estimated remaining cost to complete the project: **\$50,000.00**

(The total cost from CHART-F)

[OAR 690-315-0020(3)(h)]

9. List the reasons why the project was not constructed, and/or water was not beneficially used within permit time limits. *Provide supporting information for the reason(s) that best fits your circumstances (A, B, C or D).*

9-A) The project is of a size and scope that was originally planned to be phased in over a time frame longer than the one allowed in the permit.

N/A

9-B) The financial resources needed to develop the project precluded completion of the project within authorized time frames.

N/A

9-C) Good faith attempts to comply with permit conditions and/or acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

Understanding the need to acquire and acquisition of the Output Control Structure and the easement needed for maintenance have taken substantially longer than anticipated.

9-D) Acts of God or other unforeseen events delayed full development of the water system and use of water within the authorized time frames.

N/A

[OAR 690-315-0020(3)(k)]

10. Justify the time requested to complete the project and/or apply the water to full beneficial use. Your justification should combine information from your answers from Questions 2-B, 7, 8, and 9 of this Application for Extension of Time, and should also include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

The remaining items to complete will require at least 18 – 24 months. We have requested a 36 month extension.

11. Provide any other information you wish OWRD to consider while evaluating your Extension of Time Application.

I am the permit holder, or have authorization from the permit holder, to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.

Signature

Date