

Final Order
Extension of Time for Permit Number S-46199

Appeal Rights

This is a final order other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Application History

On April 7, 2003, the Canby Utility Board submitted an application to the Department for an extension of time for permit number S-46199. The Department issued permit number S-46199 on February 23, 1982. The permit called for completion of construction by October 1, 1983, and complete application of water to beneficial use by October 1, 1984. In accordance with OAR 690-315-0050(2), on September 28, 2004, the Department issued a Proposed Final Order proposing to extend the time to complete construction of the water development project and the time to fully apply water to beneficial use to October 1, 2040. The protest period closed November 12, 2004, in accordance with OAR 690-315-0060(1). No protest was filed.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. Development Limitations

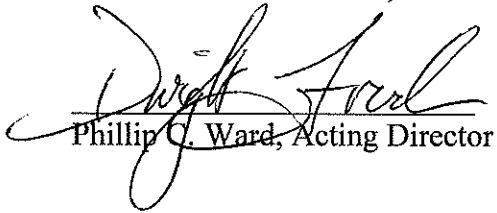
Diversion of water beyond 7.46 cfs under Permit #S-46199 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension is final.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 537.248, 537.630, 539.010(5) and/or OAR 690-315-0040(2).

Order

The extension of time for Application Number S-60921, Permit Number S-46199, therefore, is approved. The deadline for completing construction is extended to October 1, 2040. The deadline for applying water to full beneficial use is extended to October 1, 2040.

DATED: November 17, 2004


Phillip C. Ward, Acting Director

If you have any questions about statements contained in this document, please contact Lisa Juul at (503) 986-0808.

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

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #S-46199, Water Right) PROPOSED FINAL ORDER
Application #S-60921)
(Canby Utility Board))

| Permit Information | |
|---|--|
| Application File #S-60921 / Permit #S-46199 | |
| Basin: #02 - Willamette Basin / Watermaster District: #16 | |
| Date of Priority: October 20, 1980 | |
| Authorized Use of Water | |
| Source of Water: | Molalla River, tributary of Willamette River |
| Purpose or Use: | Municipal Use |
| Maximum Rate: | 10.0 cubic foot per second (cfs) |

**This Extension of Time request is being processed in accordance
with Oregon Administrative Rule Chapter 690, Division 315.**

***Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit #S-46199, water right Application #S-60921. A copy of Permit #S-46199 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 2000, to October 1, 2040;
- grant the extension for complete application of water from October 1, 2000, to October 1, 2040; and
- make the extensions subject to certain conditions as set forth below.

AUTHORITY

ORS 537.230(2) provides in pertinent part that the Water Resources Department shall, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5).

OAR 690-315-0080 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0090(3) allows the Department, under certain circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit #S-46199 was granted by the Water Resources Department (Department) on February 23, 1982. The permit authorizes the use of up to 10.0 cfs of water from the Molalla River, a tributary of the Willamette River, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1983, and that complete application of water was to be made on or before October 1, 1984.
2. Three prior extensions have been granted for Permit #S-46199. The most recent extension request resulted in the construction and completion dates being extended to October 1, 2000.
3. Due to ongoing permit extension rulemaking, the Department placed all pending municipal and quasi-municipal permit extension of time requests on hold and did not require municipal and quasi-municipal water use permit holders to submit an extension application until the new rules were adopted.
4. Municipal and quasi-municipal water use permit extension rules were adopted by the Water Resources Commission and became effective on November 1, 2002 (OAR 690-315-0070 through 690-315-0100).
5. The permit holder submitted an "Application for Extension of Time" to the Department on April 7, 2003, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #S-46199 be extended from October 1, 2000, to October 1, 2040. The extension application form clearly suggests that construction is not complete. The Department, therefore, determined that the permit holder's intent was to also request the time in which to complete construction of the water system under Permit #S-46119 be extended from October 1, 2000, to October 1, 2040.
6. Notification of the Canby Utility Board's (the Board) extension of time request for Permit #S-46199 was published on the Department's Public Notice dated April 8, 2003. No public comment on the extension application was received.

Review Criteria for Municipal and Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1).

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

7. The Department received a completed extension of time application and the statutory fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0080(1)(b)]

8. Surface water permits held by municipal corporations for municipal uses or purposes are not subject to the requirement to begin actual construction work within one year from the date of approval of the application.¹

Duration of Extension [ORS 539.010(5), OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c)(d), the Department shall find that the time requested is reasonable and the applicant can complete the project within the time requested.

9. The remaining work to be accomplished under Permit #S-46199 consists of complete construction of the system and complete application of water to beneficial use.
10. As of April 7, 2003, the permit holder has diverted 7.46 cfs of the 10.0 cfs of water allowed under Permit #S-46199 for municipal use.
11. In addition to the 10.0 cfs of water allowed under Permit #S-46199, the Canby Utility Board holds the following water rights: Certificate #44140 for 1.50 cfs of water from an infiltration system ("springs gallery"); Certificate #GR-266 for 1.78 cfs of water from an infiltration trench; Permit #G-7013 for 0.61 cfs from Well 10; Certificate #10771 for 0.25 cfs from a spring; Certificate #10776 for 0.20 cfs from a spring; and Permit #S-35453 for 10.0 cfs from the Molalla River, tributary of the Willamette River.
12. Based on growth projections of 4.2 percent from 2000 to 2020, 3.5 percent from 2020 to 2030, and 3.2 percent from 2030 to 2040, Canby Utility Board projects that the current population of 13,170 will grow to 57,367 by the year 2040 and full development of the remaining portion of Permit #S-46199 should occur by that time to meet these increased demands for water.
13. Canby Utility Board estimates that peak water demands will reach 33.35 cfs by the year 2040. Current water rights held by the Board total 24.31 cfs. The Board expects to reach use of 24.31 cfs by the year 2030, however if population growth is less than anticipated or if construction of proposed facilities for further development of water are delayed, it may take longer to fully develop the permit. Therefore, Canby Utility Board is requesting through the year 2040 to complete construction and fully apply water to beneficial use under Permit #S-46199.

¹ ORS 537.230(1)

14. Given the amount of development left to occur, the City's projected annual growth rate and associated projected demands for water, the permittee's request to have until October 1, 2040, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #S-46199 is reasonable.

Good Cause [ORS 539.010(5), OAR 690-315-0080(1)(e) and (2)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(2).

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1), ORS 539.010(5), OAR 690-315-0080(2)(a)(c) and (3)]

Reasonable diligence and good faith of the appropriator during the permit period constitutes a continuing test of whether and under what conditions to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(3).

15. Within the previous extension period from October 1, 1995, to October 1, 2000, Canby Utility Board completed and adopted a Water Master Plan and a Water Management and Conservation Plan.
16. As of February 24, 2003, the permit holder had invested approximately 46 percent of the total projected cost for complete development of this project. A total of \$3,100,000 has been invested into the project, consisting of construction of a river infiltration gallery (RIG), a surface water intake, a raw water pump station, transmission and treatment facilities, as well as the completion of a Water Master Plan and a Water Management and Conservation Plan. An additional investment of \$3,600,000 is anticipated for the completion of this project.
17. Since the issuance of Permit #S-46199 on February 23, 1982, approximately 7.46 cfs of the permitted 10.0 cfs of water has been diverted from the Molalla River for beneficial municipal purposes under the terms of the permit.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose [ORS 539.010(5), OAR 690-315-0080(2)(b)]

18. As of April 7, 2003, the permit holder has invested an approximate total of \$3,100,000 into the project, consisting of construction of a river infiltration gallery (RIG), a surface water intake, a raw water pump station, transmission and treatment facilities, as well as the completion of a Water Master Plan and a Water Management and Conservation Plan. An additional investment of \$3,600,000 is anticipated for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(2)(d)]

19. As described in findings #11 through #14 above, the Canby Utility Board needs Permit #S-46199 to meet future demands.
20. The City projects a population increase of 4.2 percent from 2000 to 2020, 3.5 percent from 2020 to 2030, and 3.2 percent from 2030 to 2040. As population grows, the demand for water is expected to increase.
21. Given the City's current water supply situation and current and expected demands, there is a market and present demand for the water to be supplied under Permit #S-46199.

Fair Return Upon Investment [ORS 539.010(5), OAR 690-315-0080(2)(e)]

22. Use and income from the permitted water development project already results in reasonable returns upon the investment made to date, as demonstrated by the City's schedule of rates established for water service.

Other Governmental Requirements [ORS 537.230(2), OAR 690-315-0080(2)(f)]

23. Delay in the development of this project was not caused by any other governmental requirements.

Events which Delayed Development under the Permit [OAR 690-315-0080(2)(g)]

24. Delay of development under Permit #S-46199 was due, in part, to the size and scope of the municipal water system, which was designed to be financed and expanded as population increases.

Conclusions of Law

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230.
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. Pursuant to ORS 537.230(1), the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2040², [OAR 690-315-0080(1)(d)].
6. After considering the reasonable diligence and good faith of the appropriator, the financial investment made, the market and present demands for water, the fair return upon the investment, the requirements of other governmental agencies and uncontrollable events which delayed development under the permit, the Department has determined that the applicant has shown good cause for an extension to complete construction and complete application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. In accordance with OAR 690-315-0090(3), the Department has established, as specified under Item #1 of the "Conditions" section of this Proposed Final Order for an Extension of Time, that the diversion of water beyond 7.46 cfs under Permit #S-46199 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension is final.

² For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625.

Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit #S-46199 from October 1, 2000, to October 1, 2040; and

Extend the time for complete application of water to beneficial use under Permit #S-46199 from October 1, 2000, to October 1, 2040.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**
Diversion of water beyond 7.46 cfs under Permit #S-46199 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension is final.

DATED: September 28, 2004


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than **Friday, November 12, 2004**, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the final order and if the

- protestant claims to represent the public interest, a precise statement of the public interest represented;
- c. A detailed description of how the action proposed in the final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
- a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a request for contested case hearing has been submitted, and:
 - A. Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - B. The applicant submitted a timely request for a contested case hearing.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503)986-0900. Address all other correspondence to:

**Water Rights Section
Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, OR 97301-1271
Fax #: (503)986-0901**

This document was prepared by Lisa J. Juul. If you have any questions about any of the statements contained in this document, I am most likely the best person to answer your questions. You may contact me by telephone at (503)986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her telephone number is (503)986-0824.

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503)986-0900.

