

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time) PROPOSED
for Permit S-54348, Water Right Application S-86478,) FINAL
in the name of the Shady Cover Water Works Association) ORDER

Permit Information

Application File S-86478/ Permit S-54348

Basin 15 – Rogue Basin / Watermaster District 13

Date of Priority: January 10, 2006

Authorized Use of Water

Source of Water: Second Pump Station Pond, Permit R-14319
(Application R86479), and Lost Creek Reservoir, a Tributary of the Rogue
River

Purpose or Use: Quasi-Municipal

Maximum Rate: 109.00 Cubic Feet 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-54348, water right Application S-86478.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2016, to October 1, 2024.
- Grant an extension of time to apply water to full beneficial use from October 1, 2016, to October 1, 2024.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
mgd – million gallons per day

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, 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) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0080 provides in pertinent part that the 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) authorizes the Department, under specific 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 WMCP Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. Permit S-54348 was issued by the Department on November 2, 2006. The permit authorizes the use of up to 109.00 cfs of water from the Second Pump Station Pond, Permit R-14319 (Application R86479), and Lost Creek Reservoir, a tributary to the Rogue River for quasi-municipal use. It specified that construction of the water development project was to be completed by October 1, 2011, and that complete application of water was to be made on or before October 1, 2011.
2. One prior permit extensions have been granted for Permit S-54348. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2016.

3. The permit holder submitted an “Application for Extension of Time” (Application) to the Department on December 16, 2020, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit S-54348 be extended from October 1, 2016, to October 1, 2022.
4. Upon receipt of the Application for Extension of Time, the Department made contact with the permit holder to inform them that the previous extension of time contained a condition requiring the submittal of a Water Management and Conservation Plan (WMCP), which had not yet been received by the Department.
5. On October 3, 2023, the permit holder submitted an amendment to their Application requesting the completion date that is being request to be changed from October 1, 2022, to October 1, 2024.
6. Notification of the Application for Extension of Time for Permit S-54348 was published in the Department’s Public Notice dated October 10, 2023. No public comments were received regarding the extension application.

Review Criteria for 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). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

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

7. On December 16, 2020, the Department received a completed application for extension of time and the fee specified in ORS 536.050 from the permit holder.

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

8. Construction of the water system began prior to permit issuance with installation of the point of diversion, fish screen and pumps..

Duration of Extension [OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

9. Work is complete. An extension of time is necessary to allow for demonstration of compliance with the condition of the previous extension of time requiring the submittal of a WMCP, and demonstrate full beneficial use of water after the development limitation is lifted.
10. As of October 1, 2020, the permit holder had diverted 61 AF of the 109.00 AF of water authorized under Permit S-54348 for quasi-municipal purposes.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

11. In addition to the 109.00 cfs of water authorized under Permit S-54348 from the Second Pump Station Pond, Permit R-14319 (Application R86479), and Lost Creek Reservoir, Shady Cover Water Works Association holds the following rights:
 - Permit G-16281 for 0.17 cfs of water from Well 1, Well 2, Well 3 (JACK 32812);

These water rights and permits total 0.17 cfs of groundwater, and 109.0 AF of stored water..
12. The City's peak water demand within its service area boundaries was 109 AF in 2020.
13. According to the Application, in 2020, the population within the service boundary of Shady Cover Water Works Association was 1,018. The City determined the population increased at a growth rate of 1.1 percent per year, reaching an estimated population of 1,161 by the year 2022.
14. According to the Application, the peak demand is projected to be approximately 1,161 AF of water by the year 2022.
15. Full development of Permit S-54348 is needed to meet the present and future water demands of Shady Cover Water Works Association, including system redundancy and emergency use.
16. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2024, to complete construction, and to accomplish the application of water to beneficial use under the terms of Permit S-54348 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a) and (1)(c) and (4)]

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not 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(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

17. Actual construction began prior to the deadline specified in the permit.
18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit S-54348.
19. During the most recent extension period under Permit S-54348, being October 1, 2011 or 2016 to October 1, 2016, the following work was accomplished by Shady Cover Water Works Association:
 - a WMCP was submitted to the Department;
 - mainline upgrades and extensions were constructed;
 - a 30,000 gallon raw water tank was installed; and
 - expanded treatment facility capacity.

20. As of December 16, 2020, the permit holder has invested approximately \$5,240,000, which is the total projected cost for complete development of this project.
21. As of October 1, 2016, 61 AF of the 109.0 AF allowed has been diverted.
22. The Department has considered permit holder's compliance with conditions, and has identified the following concerns:
 - The required WMCP was not submitted to the Department within 3 years of the issuance of the previous extension of time.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

23. As of December 16, 2020, the permit holder has invested \$5240000, which is 100 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$0 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]

For quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0080(5)(a-f)].

24. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-54348; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of diversion for Permit S-54348, located within the Rogue River Basin, are not located within a Withdrawn Area. Rogue River is located within the Rogue Scenic Waterway and it is located within an area ranked highest for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. Rogue River is listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

25. As of December 16, 2020, the permit holder has invested \$5240000, total projected cost for complete development of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

26. None have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

27. As described in Findings 9 through 22 Shady Cover Water Works Association has indicated, and the Department finds that Shady Cover Water Works Association must rely on full development of Permit S- 54348 to meet its present and future water demands.
28. Shady Cover Water Works Association projects a population increase of 1.1 percent per year over a 2 year period, being the years 2020 to 2022.
29. Given the current water supply situation of Shady Cover Water Works Association, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit S-54348.
30. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 61 AF (not to exceed the maximum amount authorized under this permit, being 109.00 AF) under Permit S-54348 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

31. The water user expects to obtain a fair and reasonable return on investment by continuing development of Permit S-54348.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

32. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

33. According to the Application, delay of development under Permit S-54348 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years.

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(3).
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. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 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, 2024⁴, as required by OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As required by OAR 690-315-0090(3) and as described in Finding 30, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 61 AF (not to exceed the maximum amount authorized under this permit, being 109.00 AF) under Permit S-54348 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7).

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

extend the time to complete construction under Permit S-54348 from October 1, 2016, to October 1, 2024.

extend the time to apply the water to beneficial use under Permit S-54348 from October 1, 2016, to October 1, 2024.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

A maximum diversion of 61 AF of water is currently allowed under Permit S-54348. Any diversion of water beyond 61 AF (not to exceed the maximum amount authorized under the permit, being 109.00 AF) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted

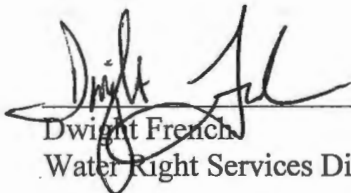
⁴ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

to the Department within 3 years of this Final Order. Use of water under Permit S-54348 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-54348 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

DATED: January 2, 2024



Dwight French
Water Right Services Division Administrator

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

Protests

Pursuant to OAR 690-315-0060(1), the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. Protests must be received by the Water Resources Department no later than **February 16, 2024**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant's interest in the proposed final order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and

