

**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-54783, Water Right Application S-49201, ) FINAL  
in the name of the Pacific City Joint Water Sanitary Authority ) ORDER

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**Permit Information**

**Application File S-49201/ Permit S-54783**

Basin 1 – North Coast Basin / Watermaster District 1

Date of Priority: May 3, 1972

**Authorized Use of Water**

Source of Water:       Horn Creek, a Tributary of the Nestucca River  
Purpose or Use:        Quasi-Municipal  
Maximum Rate:         2.0 Cubic Feet per Second (cfs)

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**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-54783, water right Application S-49201.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 2025, to October 1, 2070.
- Grant an extension of time to apply water to full beneficial use from October 1, 2025, to October 1, 2070.
- 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

## 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 690-315-0050(5)** authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

**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. On July 27, 1973, Permit S-36881 was issued by the Department. The permit authorizes the use of up to 2.0 cfs of water from the Horn Creek, a tributary to the Nestucca River for quasi-municipal use. The permit specified that construction of the water development project was to be completed by October 1, 1975, and that complete application of water was to be made on or before October 1, 1976.

2. Four prior permit extensions have been granted for Permit S-54783. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2025.
3. On November 19, 2012, the Department approved Permit Amendment T-11450 (Special Order Volume 88, Page 744) authorizing a change in the point of diversion under and place of use. Superseding Permit S-54783 was issued to reflect the changes.
4. The permit holder submitted an “Application for Extension of Time” (Application) to the Department on April 24, 2023, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit S-54783 be extended from October 1, 2025, to October 1, 2070.
5. Notification of the Application for Extension of Time for Permit S-54783 was published in the Department’s Public Notice dated May 9, 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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

6. On April 24, 2023, 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)]**

7. Four previous extensions of time have been approved which previously determined that actual construction began prior to the July 27, 1974 deadline specified in the permit.

**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.*

8. The remaining work to be accomplished under Permit S-54783 consists of completing construction and applying water to full beneficial use.
9. As of April 24, 2023, the permit holder had diverted 0.67 cfs of the 2.0 cfs of water authorized under Permit S-54783 for quasi-municipal purposes.

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

10. In addition to the 2.0 cfs of water authorized under Permit S-54783 from the Horn Creek, Pacific City Joint Water Sanitary Authority holds the following rights for municipal and quasi-municipal uses:

- Certificate 91174 for 0.19 cfs of water from Horn Creek, tributary to Nestucca River;
- Certificate 91175 for 0.49 cfs of water from Unnamed Stream, tributary of Horn Creek;
- Certificate 86807 for 0.01 cfs of water from Horn Creek, tributary to Nestucca River;
- Certificate 86808 for 0.01 cfs of water from Unnamed Stream, tributary of Horn Creek;
- Certificate 93770 for 0.457 cfs of water from two wells in Nestucca River Basin;
- Certificate 80488 for 0.3 cfs of water from one well in Nestucca River Basin; and
- Certificate 80489 for 300 gallons per minute (0.668 cfs) of water from Well Numbers 4, 5, and 6 in Nestucca River Basin

These water rights and permits total 4.125 cfs being 2.7 cfs of live flow surface water and 1.425 cfs of ground water. The wells which produce water for the above listed ground water permits are susceptible to saltwater intrusion and natural disasters.

11. The City's peak water demand within its service area boundaries was 1.3 cfs in 2021.
12. According to the Application, in 2021, the population within the service boundary of Pacific City Joint Water Sanitary Authority was 1,118, with a seasonal population which exceeded 5,000 tourists in 2021. The City estimates the population will increase at a growth rate of 0.8 percent per year, reaching an estimated population of 1,653 by the year 2070, and anticipates growth of 30% in the seasonal tourism population.
13. According to the Application, the peak demand is projected to be approximately 2.7 cfs of water by the year 2070.
14. Pacific City Joint Water Sanitary Authority has does not anticipate an expansion of the service area.
15. Full development of Permit S-54783 is needed to meet the present and future water demands of Pacific City Joint Water Sanitary Authority, 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, 2070, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit S-54783 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 July 27, 1974 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-54783.
19. During the most recent extension period under Permit S-54783, being October 1, 1990, to October 1, 2025, development of the Lower Horn Creek intake was completed in 2011, and Water Management and Conservation Plans (WMCP) were submitted in 2011, and 2022.

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

20. As of April 24, 2023, the permit holder has invested approximately \$3,626,475, which is 75 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$1,182,406 investment is needed for the completion of this project.
21. As of April 24, 2023, 0.67 cfs of the 2.0 cfs allowed has been diverted from the Horn Creek for beneficial quasi-municipal purposes under the terms of this permit.
22. The Department has considered permit holder's compliance with conditions and did not identify any concerns.

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

23. As of April 24, 2023, the permit holder has invested \$3,626,475, which is 75 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$1,182,406 investment is needed for the completion of this project.

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

24. As described in Findings 13 through 24 above, the permit holder has indicated, and the Department finds that the permit holder must rely on full development of their Permit S-54783.
25. Pacific City Joint Water Sanitary Authority projects a population increase of 0.8 percent per year over a 49-year period, being 2021 to 2070. In addition, the City anticipates an approximate increase of seasonal tourist population of 30% by 2070.

26. Given the current water supply situation of Pacific City Joint Water Sanitary Authority, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under S-54783.
27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.67 cfs (not to exceed the maximum amount authorized under this permit, being 2.0 cfs) under Permit S-54783 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)]**

28. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit S-54783.

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

29. The Application does not identify delays in development caused by any other governmental requirements.

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

30. Delay of development under Permit S-54783 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, 2070<sup>4</sup>, as required by OAR 690-315-0080(1)(d).

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<sup>4</sup> 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 Proposed Final Order: Permit S-54783

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 27, above, and specified under Item 1 of the “Conditions” section of this PFO, the diversion of water beyond 0.67 cfs (not to exceed the maximum amount authorized under this permit, being 2.0 cfs) under Permit S-54783 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-54783 from October 1, 2025 to October 1, 2070.

extend the time to apply the water to beneficial use under Permit S-54783 from October 1, 2025 to October 1, 2070.

Subject to the following conditions:

### **CONDITIONS**

#### **1. Development Limitations**

A maximum diversion of 0.67 cfs of water is currently allowed under Permit S-54783. Any diversion of water beyond 0.67 cfs (not to exceed the maximum amount authorized under the permit, being 2.0 cfs) 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 to the Department within 3 years of this Final Order. Use of water under Permit S-54783 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

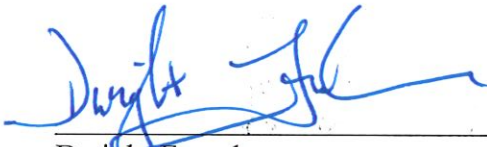
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issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

limitation of the diversion of water under Permit S-54783 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: August 6, 2024

  
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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 **September 20, 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
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a





