

**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-33923, (modified by Permit Amendment T-9854), Water)	FINAL
Right Application S-45456 in the name of City of Dunes City)	ORDER

Permit Information

Application:	S-45456
Permit:	S-33923 (modified by Permit Amendment T-9854)
Basin:	Mid Coast / Watermaster District 15
Date of Priority:	October 7, 1968
Source of Water:	Woahink Lake
Purpose or Use:	domestic
Maximum Rate/Volume:	1.4 cubic feet per second (cfs)

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

In summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 2022, to October 1, 2031.
- Grant an extension of time to apply water to full beneficial use from October 1, 2022, to October 1, 2031.¹
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

¹ Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Water Resources Department
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
FOF – Finding of Fact
cfs - cubic feet per second
City – City of Dunes City

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) 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

OAR 690-315-0050(5) states that extension orders may include, but are 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 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

FINDINGS OF FACT

1. On April 9, 1969, Permit S-33923 was issued by the Department. The permit authorizes the use of up to 1.4 cfs of water from Woahink Lake, for domestic. The permit specified actual construction was to begin by April 9, 1970 and construction of the water system

was to be completed by October 1, 1971, and complete application of water was to be made on or before October 1, 1972.

2. On December 2, 2005, the Department approved Permit Amendment T-9854 (Special Order Volume 67, Page 552) authorizing an additional 217 points of diversion under Permit S-33923, (modified by Permit Amendment T-9854) which is hereafter referred to simply as Permit S-33923. Approval of Permit Amendment T-9854 included two additional conditions; 1) a requirement to install in-line flow meters at each of the proposed additional point of diversion, and 2) a requirement for the City to monitor and report monthly cumulative water use from the individual meters to the Department.
3. Eight prior permit extensions have been granted for S-33923. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1998, to October 1, 2022. This extension of time contained two additional conditions; 1) the permit holder must install fish screens at each point of diversion unless Oregon Department of Fish and Wildlife (ODFW) provides a letter that determines fish screens are not necessary, and 2) the permittee shall submit Progress Reports by October 1, 2008, 2013, and 2018.
4. On September 27, 2021, City of Dune City, submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to complete construction of the water system be extended from, October 1, 2022, to October 1, 2031, and the time to apply water to full beneficial use under the terms and conditions of Permit S-33923 be extended from October 1, 2022, to October 1, 2031.
5. On October 12, 2021, notification of the Application for Permit S-33923 was published in the Department's Public Notice. No public comments were received.
6. On October 19, 2021, ODFW Fish Screens and Passage Coordinator, submitted a letter the Department in regard to their coordination with the City pertaining to the installation of the fish screens.
7. On February 23, 2023, ODFW submitted a letter indicating that the City has made satisfactory progress on the installation of fish screens, and highlighting that though the permit authorizes a total of 218 points of diversion, many of the individual tax lots share common points of diversion. As of the end of October 2022, a total of 111 screens have been installed.
8. On December 16, 2024, the City submitted a Priority Task Spreadsheet and Work Plan to the District 15 Watermaster, indicating that 215 of the 217 fish screens have been installed.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or

apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

9. On September 27, 2021, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

10. Permit S-33923, has had eight previous extensions of time, and the Department has previously determined construction began as required by the pertinent statutes.

Based on Findings of Fact (FOF) 10, the Department has determined the permit holder began construction as required by the pertinent statutes.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of “good cause” to approve the extension, the Department shall consider whether the applicant has demonstrated “reasonable diligence” in previous performance under the permit. OAR 690-315-0040(2)(a). In determining “reasonable diligence”, the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

Amount of Construction [OAR 690-315-0040(3)(a)]

The amount of construction completed within the time allowed in the permit or previous extension.²

11. During the most recent extension period, being from October 1, 2003, to October 1, 2022, work accomplished within the time allowed in previous extensions includes, installation of meters (and upgrades).
12. Since October 1, 2022, the permit holder installed a total of 104 fish screens.

² “Actual Construction” is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder’s good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

The water right permit holder's conformance with the permit or previous extension conditions.

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: (1) the record does not show that fish screens have been installed at all points of diversion by October 1, 2022.

Based on FOF 13, the Department has determined that the permit holder has not demonstrated compliance with following condition as required by Permit S-33923, and the previous extension of time:

- "The permit holder must install fish screens at each point of diversion under Permit S-33923, unless the Oregon Department of Fish and Wildlife provides a letter that determines fish screens are not necessary.:

Beneficial use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

The amount of beneficial use made of the water during the permit time limits or previous extension time limits.

14. A maximum rate of 0.5 cfs of water has been diverted from Woahink Lake for domestic use.

Based on FOF 13, the Department has determined that beneficial use of water has not been demonstrated by October 1, 2022.

15. A delay of full beneficial use of water under Permit S-33923 was due, in part, to multiple attempts by the City to form a community water system, which ultimately did not form. The City then pursued adding additional points of diversion for each of the individual lots to be served under the permit. The installation of the necessary pumps, and pipelines were the responsibility of the property owners. The City experienced push back from individual land owners when it was communicated that their points of diversion would require the installation of fish screens.

The Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2022.

Financial Investments to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]

16. The Application identifies an approximate investment of \$136,337, has been made as of September 2021. The costs included items associated with legal fees, surveying, upgrades, reporting costs, repairs and maintenance costs which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$67,400 which is about 90 percent of the total projected cost for complete development of this project. An additional \$7,500 investment is needed to complete this project, which includes completing installation of the required flow meters.

The Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department’s determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) 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);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

17. A review of 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-33923; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an application for a new water right is submitted.
18. Current Water Availability Analysis for Woahink Creek (Tributary of Siltcoos Lake) at the mouth (watershed ID 517) shows that no water is available during the months of April through November at the 80% exceedance level.

OAR 690-315-0040(4)(b)

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).

19. The points of diversion are located on Woahink Lake, and are not located within a Withdrawn Area.
20. Woahink Lake is not located within or above a state or federal scenic waterway.
21. The points of diversion are not in a location listed by the Department of Environmental Quality as a water quality limited stream.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

22. Woahink Lake is located within an area ranked "moderate" 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.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

23. An approximate total of \$67,400, has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

24. Other economic interests dependent on the completion of the project include individual property owners who utilize water under this permit.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

25. No other factors relevant to the determination of the market and present demand for water and power have been identified.
26. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Limitations and Conditions" section of this PFO to meet this condition.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

27. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

Other Governmental Requirements [OAR 690-315-0042(2)(g)]

28. Delay in the development of this project that was not caused by other governmental requirements have not been identified.

Unforeseen Events [OAR 690-315-0040(2)(h)]

29. Early development of Permit S-33923 was complicated by several failed attempts to form a water district and water system by public referendum. The three referendums delayed the development of a water system for at least 15 years. In the meantime, individuals were beginning to construct their own diversions in Woahink Lake, which were added to the permit under Permit Amendment T-9854. This fundamentally changed the way the Dunes City water system was developed. Additionally, the COVID-19 Pandemic affected the ability of the City to procure meters and fish screens, further delaying the development under the permit and compliance with permit conditions.

Denial of an Extension Would Result in Undue Hardship [OAR 690-315-0040(2)(i)]

30. A denial of the extension would result in undue hardship, and there are no other reasonable alternatives that exist for meeting water use needs. Though the City has encountered difficulties in completing the development authorized under Permit G-33923 due to lack of community support, the City has diligently pursued the completion of the necessary works to develop the domestic use.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

31. The Application provides evidence of good faith of the appropriator under Permit S-33923.

Based on FOF 10, 11, 12, 14, 15, 16, and 23, the Department has determined that the applicant has shown good faith and reasonable diligence.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

32. As of September 27, 2021, the permit holder states the remaining work to be completed consists of completing construction of the water system, including completing installation of the remaining fish screens and meters, and applying water to beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2031, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit S-33923 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

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 fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this condition.

CONCLUSIONS OF LAW

1. The Applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The Applicant complied with construction timeline requirements to begin construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

3. Based on Finding of Facts 10, through 32, completion of construction and application of water to beneficial use can be accomplished by October 1, 2031³, as required by OAR 690-315-0040(1)(c).
4. The Applicant can complete the project within the time period requested for the extension on the project.
5. The Applicant has demonstrated good cause for the extension.
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being excised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

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 of the water system under Permit S-33923 from October 1, 2022, to October 1, 2031.

Extend the time to apply water to beneficial use under Permit S-33923 from October 1, 2022, to October 1, 2031.

Subject to the following condition:

LIMITATIONS AND CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2029. *A form will be enclosed with your Final Order.***

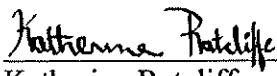
- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit

³Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: March 4, 2025



Katherine Ratcliffe
Water Right Services Division Administrator, for
Ivan Gall, Director
Oregon Water Resources Department

*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 **April 18, 2025** 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 protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

