

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time
for Permit S-53496, Water Right Application S-83725
in the name of Columbia River Nitrogen, LLC

) PROPOSED
) FINAL
) ORDER

Permit Information

Application:	S-83725
Permit:	S-53496
Basin:	North Coast / Watermaster District 18
Date of Priority:	December 16, 1997
Source of Water:	Columbia River, a tributary of Pacific Ocean
Purpose or Use:	industrial use
Maximum Rate:	38.0 cubic feet per second (cfs) (limited to no more than 6.4 cfs by the Final Order on Extension of Time issued January 8, 2022)

Please read this Proposed Final Order in its entirety as it contains specific instruction on issues with condition compliance and additional conditions not included in the original permit.

In summary, the Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2025, to October 1, 2032.¹
- 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

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..

FINDINGS OF FACT

1. On November 4, 1998 Permit S-53496 was issued by the Department. The permit authorizes the use/storage of up to 38.0 cfs of water from the Columbia River, a tributary of Pacific Ocean, for industrial use. The permit specified actual construction was to begin by September 24, 1999, and complete application of water was to be made on or before October 1, 2002.
2. On January 12, 2004, an assignment from Coastal Refining and Marketing, Herold G. Nelson, to Dyno Nobel, Inc was recorded in the records of the Water Resources Department.

3. Two prior permit extensions have been granted for S-53496. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2007, to October 1, 2025.
4. On September 2, 2025, Fran Erickson, Environmental Manager of Dyno Nobel Inc, submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit S-53496 be extended from October 1, 2025, to October 1, 2032.
5. On September 30, 2025, notification of the Application for Permit S-53496 was published in the Department's Public Notice. No public comments were received.
6. On September 19, 2025, the permit holder submitted additional information to supplement their Application.
7. On October 17, 2025, an assignment from Dyno Nobel, Inc, to Columbia River Nitrogen, LLC was recorded in the records of the Water Resources Department.

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)]

8. On September 2, 2025, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.
9. Construction of the water system began prior to permit issuance.
10. According to Application, the permit shares an intake with Water Right Certificate 42701, issued December 5, 1975.

The Department has determined the permit holder began construction prior to September 24, 1999.

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. Construction of the water system or reservoir began prior to permit issuance.
12. During the original development time frame under Permit S-53496, work accomplished includes upgrading of three pumps.
13. During the period, being from October 1, 2002, to May 10, 2021, (the date the previous application for extension of time was submitted) work accomplished includes upgrading an electrical transformer.
14. During the period of time from May 10, 2021, to October 1, 2025, new fish screens were installed, and effluent diffusers were upgraded.

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 and previous extension conditions.

15. The Department has considered the permit holder’s compliance with conditions, and has identified the following concern; the record does not show that the required fish screening and bypass devices have been approved by Oregon Department of Fish and Wildlife.

The Department has determined that the permit holder has not demonstrated compliance with following permit condition as required by Permit S-53496:

- “The permittee shall install, maintain and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screens and by-pass devices

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.

are to be in place, functional and approved by an Oregon Department of Fish and Wildlife representative prior to diversion of any water.”

The Application identifies the installation of a fine mesh Tee screen that meets National Marine Fisheries Services criteria; however, neither the Application nor the Department record contain documentation of approval of the fish screen and fish by-pass devices. **FISH SCREEN AND FISH BY-PASS DEVICES MUST BE APPROVED, IN WRITING, BY A REPRESENTATIVE FROM OREGON DEPARTMENT OF FISH AND WILDLIFE, PRIOR TO THE DIVERSION OF ANY WATER AUTHORIZED UNDER PERMIT S-53496.**

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.

16. No water has been diverted under Permit S-53496.
17. The Application identifies a lapse in Department of Environmental Quality NPDES permit, which expired on January 1, 2024, as the reason no water has been diverted under Permit S-53496.

The Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water has been diverted under the permit, and not all permit conditions were satisfied by October 1, 2025.

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

18. The Application identifies an investment of \$16,889,917 has been made. The costs included items associated with upgrades, engineering, planning, inspections, 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 \$16,015,638 which the total projected cost for complete development of this project.

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 the 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.

19. 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-53496; 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.

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).

20. The points of diversion are located on Columbia River, a tributary of Pacific Ocean, and are not located within a Withdrawn Area.
21. The Columbia River, a tributary of Pacific Ocean is not located within or above a state or federal scenic waterway.
22. 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.

23. Columbia River, a tributary of Pacific Ocean is located within an area ranked “low” 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.

24. An approximate total of \$16,015,638 has been invested in the project.

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

Other economic interests dependent on completion of the project.

25. Other economic interests dependent on the completion of the project have been identified. Other economic interests include staff members, and post-industrial water user with whom the applicant has agreements.

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

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

26. No other factors relevant to the determination of the market and present demand for water and power have been identified.

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. The delay in the timely application of water to beneficial use was caused, in part, by delays in receiving new outflow limitations in a new NPDES permit from Department of Environmental Quality.

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

29. No additional unforeseen events were identified that extended the length of time needed to fully develop and perfect Permit S-53496.

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 no other reasonable alternatives exist for meeting water use needs.

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-53496.

Based on FOF 14, 18, and 28, 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 2, 2025, the permit holder's construction work is complete. An extension of time is needed to acquire the required NPDES discharge permit, allowing for the beneficial use of water under the permit.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2032, to accomplish the application of water to beneficial use under the terms and conditions of Permit S-53496 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(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence. Permit S-53496 was issued

November 4, 1998, and as of September 2, 2025, no water has been diverted under the permit. No work was accomplished between October 1, 2007, to May 10, 2021. An extension of time to October 1, 2025, was authorized to provide sufficient time to upgrade the intake structures, and install updated fish screen and by-pass devices, and to divert up to 6.4 cfs of water to meet the projected demand. Work was accomplished during this most recent extension period; however, no water has yet been diverted. During the most recent extension period, the NPDES permit expired, preventing diversion of water through the new intake upgrades. The extension of time to October 1, 2032, is providing 34 years to develop the use under the permit, which is more than sufficient to develop the 6.4 cfs still authorized under Permit S-53496. Because of the significant amount of time being provided for the development of the use under this permit, this is to be the last extension of time authorized for Permit S-53496.

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 14, through 32, application of water to beneficial use can be accomplished by October 1, 2032³, 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, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).

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 apply water to beneficial use under Permit S-53496 from October 1, 2025, to October 1, 2032.

Subject to the following conditions:

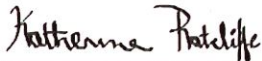
³Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete 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.

LIMITATIONS AND CONDITIONS

1. Last Extension Condition

This shall be the last extension of time granted for Permit S-53496. Any future extensions of time request will be denied. ORS 539.010(5); OAR 690-315-0040.

DATED: March 10, 2026



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 24, 2026, 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 \$720 required by ORS 536.050; and

- If you are not the applicant, the protest fee of \$1,425 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>.

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- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at (503) 979-3213.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

- Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
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