

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-54398, Water Right Application S-71431
in the name of Bureau of Reclamation

) PROPOSED
) FINAL
) ORDER DENIAL

Permit Information

Application:	S-71431
Permit:	S-54398
Basin:	Owyhee / Watermaster District 9
Date of Priority:	March 25, 1991
Source of Water:	Owyhee Reservoir, constructed under Permit R-599, on the Owyhee River
Purpose of Use:	irrigation of 1679.5 acres and supplemental irrigation of 74.4 acres
Maximum Volume:	7015.6 acre feet (AF)

Please read this Proposed Final Order in its entirety.

In summary, the Department proposes to:

- Deny an extension of time to apply water to full beneficial use from October 30, 2024, to October 1, 2029.

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.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department

PFO – Proposed Final Order

AF - acre feet

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) contain the factors that the Department must consider to make findings that support a “good cause” determination.

FINDINGS OF FACT

1. On May 24, 2007, Permit S-54398 was issued by the Department. The permit authorizes the use of up to 7015.6 AF of water from Owyhee Reservoir, constructed under Permit R-599, on the Owyhee River, for irrigation of 1679.5 acres and supplemental irrigation of 74.4 acres. The permit specified actual construction was to begin by May 4, 2008 and complete application of water was to be made on or before October 1, 2011.
2. One prior permit extension has been granted for Permit S-54398. The extension resulted in the completion dates for full application of water being extended to October 30, 2024.
3. On October 24, 2025, Bureau of Reclamation, submitted an “Application for Extension of Time” to the Department, requesting the time to apply water to full beneficial use under the terms of Permit S-54398 be extended from October 30, 2024 to October 1, 2029.
4. Notification of the Application for Extension of Time for Permit S-54398 was published in the Department’s Public Notice dated November 4, 2025. No public comments were received regarding the extension application.

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)]

5. On October 24, 2025, 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 690-315-0040(1)(b) and 690-315-0040(5)]

6. According to the Application, construction of the Owyhee Dam, laterals and the North Canal were completed prior to permit issuance.

The Department has determined the permit holder began of construction by May 4, 2008.

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 and previous extension.¹

7. The Application does not identify any work having been accomplished during the original development period authorized by the permit as all work was completed prior to permit issuance.
8. The Application does not identify any additional work accomplished during the most recent extension of time period.

¹ “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 Department has determined that no construction work was accomplished during the most recent extension of time period, being from October 1, 2011, to October 30, 2024.

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

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

9. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: diversion of water under Permit S-54398, has occurred without written approval from ODFW that fish screens and bypass devices are not required.
10. The Application asserts that ODFW has provided written documentation that fish screens and by-pass devices are not required, as indicated in an attached order issued in 1987 (Special Order Volume 41, Page 586-594).

The Department has determined upon review of Special Order Volume 41, pages 586-594, the condition requiring the installation of fish screens and by-pass devices has not been satisfied. Though the Application identifies this order issued in 1987 as documentation from ODFW that fish screens and by-pass devices are not required, the order is specific to Application S-62966, Permit S-50639 (Certificate 75821). Permit S-54398, was issued May 24, 2007, and included the following condition:

“The permittee shall install, maintain, and operate fish screening and by-pass devices as required by Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screens and by-pass devices are to be in place, functional and approved by an ODFW representative prior to diversion of any water.”

This condition was included in the permit at the request of Oregon Department of Fish and Wildlife in a comment received on November 25, 1998. The comment from ODFW stated;

“Owyhee Reservoir has several species of game fish. They include largemouth and smallmouth bass, black crappie, channel catfish and trout.
The POD is at a location where fish can enter the canal system. We request that the permit be conditioned to require that fish protection devices be in place and inspected before water is diverted.”

Furthermore, the Final Order Regarding Limited License Request 528, issued September 20, 2001, included the same condition. Limited License 528 was requested to divert water from Owyhee Reservoir, thru the Owyhee Irrigation Canal system.

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

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

11. According to the Application a maximum volume of 7015.6 AF of water has been diverted from the Owyhee Reservoir, for irrigation of 1753.9 acres, being 1679.5 acres of primary irrigation and 74.4 acres of supplemental irrigation.

The Department has determined that beneficial use of water under this permit has not been demonstrated because the requirement to install fish screens and by-pass devices has not been satisfied, and compliance with the condition has not been demonstrated.

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

12. An investment of approximately \$20,000,000, which is the total projected cost for complete development of this project, has been made.

The Department has determined an investment has been made, however no investment has been made in the development of the beneficial use since the permit was issued.

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

The application provides evidence that no work has been accomplished towards completion of the water system within the time allowed in the permit or previous extension; the permit holder has not demonstrated compliance with permit conditions, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has not demonstrated reasonable diligence in previous performance under Permit S-54398.

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.

13. 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 G-54398; 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.

14. Current Water Availability Analysis for the Owyhee River, show that 700,000 acre feet of water is available in the reservoir.

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).

15. The point of diversion is located on Owyhee Reservoir, on the Owyhee River, and is not located within a Withdrawn Area.
16. Owyhee River is not located within or above a state or federal scenic waterway.
17. The point of diversion is in a location listed by the Department of Environmental Quality as a water quality limited stream.
 - a. Owyhee River, River Mile 28.7 to 71 listed under Water Quality Limited for aquatic weeds, mercury, temperature, dissolved oxygen, nutrients, and dieldrin.
 - b. Owyhee River, River Mile 16.8 to 200.4 listed under Water Quality Limited for temperature, and chloride.
 - c. Owyhee River, River Mile 0 to 130.7 listed under Water Quality Limited for phosphate.

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.

18. Owyhee River 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.

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

Economic interests dependent on completion of the project.

19. An approximate total of \$20,000,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

Farmers within the district have been identified as additional economic interests.

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

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

20. 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)]

21. The use and income from the permitted water development will not likely result in reasonable returns upon the investment made to date because the water user has failed to gain approval of fish screens and by-pass devices from ODFW prior to the diversion of water. Failure to install the required fish screens represents a potential harm caused to the public good, which cannot be remedied.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

22. The delay in the timely completion of the development of the project and/or timely application of water to full beneficial use was not caused by additional governmental requirements.

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

23. No unforeseen events were identified that extended the length of time needed to fully develop and perfect Permit S-54398.

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

24. The Application states that a denial of the extension would result in undue hardship, and that no other reasonable alternatives exist for meeting water use needs.

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

25. The Application provide does not evidence of good faith of the appropriator under Permit.

Based on Findings of Fact 9, 10, and 11, above, the Department finds that the Applicant has not demonstrated good faith.

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.

26. As of October 24, 2025, the permit holder states work is complete.

Based on FOF 26, the Application for Extension of Time would be denied because the applicant has indicated that all work is complete, all acres have been irrigated, and compliance with all conditions has been demonstrated by the most recent extension of time completion date of October 30, 2024. The Department has determined that compliance with permit conditions has not been demonstrated.

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 not shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

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 began actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. The application established that there has been no construction, no financial invest or reasonable diligence towards development within the time allowed in the permit or previous extension. The permit holder has not 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).

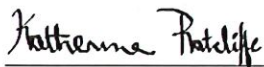
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PROPOSED ORDER

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

Deny the time to apply water to beneficial use under Permit S-54398 from October 30, 2024 to October 1, 2029.

DATED: March 24, 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 **May 8, 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

