



March 3, 2026

Jeffrey Pierceall  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301

Dear Mr. Pierceall:

On behalf of the North Clackamas County Water Commission (NCCWC), GSI Water Solutions, Inc. is submitting the enclosed application for an extension of time for the NCCWC's municipal Permit S-43170. The NCCWC is requesting an extension to October 1, 2045 to complete construction and apply water to full beneficial use under the terms and conditions of the permit. A check in the amount of \$1,170 for the application fee is enclosed.

If you have any questions regarding this extension application, please contact me at 971-200-8528 or [thenkle@gsiws.com](mailto:thenkle@gsiws.com).

Sincerely,

A handwritten signature in black ink that reads "Tim Henkle".

Tim Henkle  
Water Resources Consultant

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CC: Wade Hatthorn, North Clackamas County Water Commission

Enclosures: Application for Extension of Time for Permit S-43170  
Check in the amount of \$1,170.00



# Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.oregon.gov/OWRD

Make use of this form, *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, only if the permit uses the word "Municipal" or "Quasi-municipal" in the description of the purpose or use to which water is to be applied.

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

A separate extension application must be submitted for each permit as per OAR 690-315-0070(2). This page, with an original signature by the permit holder of record, must accompany the extension of time application.

*This application and a summary of review criteria and procedures that are generally applicable to this application are available at <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml>*

I, North Clackamas County Water Commission  
NAME OF PERMIT HOLDER [OAR 690-315-0070(1) and (3)(a)]

Wade Hathhorn  
NAME OF CONTACT

17563 SE Armstrong Court  
ADDRESS

Happy Valley  
CITY

OR  
STATE

97015  
ZIP

503-761-0220  
PHONE

whathhorn@sunrisewater.com  
E-MAIL ADDRESS

the permit holder of:

Application Number S-57226

Permit Number S-43170  
[OAR 690-315-0070(3)(b)]

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do hereby request that the time in which to:

complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on October 1, 2025, be extended to October 1, 2045,<sup>1</sup>

and/or the time in which to:

apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, 2025, be extended to October 1, 2045.<sup>2</sup>

I am the permittee, or have written authorization from the permittee, to apply for an extension of time under this permit. I certify that the information I have provided in this application is true and correct to the best of my knowledge.

Wade Hathhorn  
Signature

3-2-26  
Date

<sup>1</sup> The Application must demonstrate that the water system construction will be complete within the time being requested.

<sup>2</sup> The Application must demonstrate that full beneficial use can be made within the time requested.

## Completing the Extension of Time Application for Quasi-Municipal or Municipal Use Permits

Please provide the information requested by item numbers 1-13. OWRD will use this information to evaluate your Application for Extension of Time.

[OAR 690-315-0070(3)]

1. **Submit the appropriate extension of time fee (\$1,170), as specified under ORS 536.050.** If the extension application fee has already been paid, please provide indicate why and when it was paid. **The required fee of \$1,170 is enclosed.**

[OAR 690-315-0070(3)(c)]

2. **For Quasi-Municipal water use permit holders, provide evidence of the actions taken to begin actual construction on the project if required under the applicable statute.** All Quasi-Municipal permits issued prior to October 23, 1999, are generally required to begin actual construction within one (1) year. **N/A**

Begin Date: N/A. Construction of N/A began.  
(month/year) (details)

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OWRD [OAR 690-315-0070(3)(d)]

3. **For Municipal water use permits issued on or after June 29, 2005, evidence of the actions taken to begin actual construction on the project.**

Begin Date: N/A. Construction of N/A began.  
(month/year) (details)

[OAR 690-315-0070(3)(e) and OAR 690-315-0070(3)(i)]

4. **Provide a description of financial expenditures and evidence of actions taken to develop the water right permit within the permitted time period and, if applicable, within the time period of the most recent extension granted. Present the list in chronological order in Chart-I.**

### CHART-I

INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List work/actions done before the permitted was issued – e.g. Well drilled.</i>	COST
1960	Planning, permitting and construction of Gladstone's Ranney collector point of diversion on the Clackamas River	\$41,000
1970	Property purchase and planning for construction of 1.0 and 0.6 million gallon above-ground reservoirs	\$1,000,000
INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED DURING PERMITTED TIME PERIOD (after permit was issued and prior to permit "C-date") <i>List work/actions done during the permitted time period.</i>	COST
<b>8/4/1978</b>	Date the permit was signed - find date above signature on last page of permit.	

1978	Planning and permitting activities for water system	\$5,000
7/25/1979	Date the permit specified "Actual Construction Work" shall begin ("A-Date") - not all permits contain this date.	
1980	Development of Water System Master Plan for City of Gladstone	\$20,000
10/1/1980	Date the permit specified complete application of water to the use shall be made ("C-Date") - all permits contain this date.	
<b>INSERT DATES</b>	<b>ALL WORK AND ACTIONS ACCOMPLISHED AFTER PERMIT "C-Date" and PRIOR TO THE MOST RECENT EXTENSION OF TIME REQUEST</b> <i>For the 1<sup>st</sup> Application for Extension of Time: List work/actions done after the permit "C-date" up to the date of this extension request.</i> <i>For Other than the 1<sup>st</sup> Application for Extension of Time: List any work/actions done after the permit C-Date but prior to the most recent extension.</i>	<b>COST</b>
1985	Planning, permitting, and construction of major transmission line to CRW treatment facility and water line extensions	\$2,500,000
1985-2006	Planning, construction, and improvements of water delivery infrastructure (improved fire flows, new water mains)	\$1,500,000
1995-1996	Permit amendment to change point of diversion to CRW treatment facility	\$6,000
<b>INSERT DATES</b>	<b>ALL WORK AND ACTIONS ACCOMPLISHED DURING THE MOST RECENT EXTENSION OF TIME GRANTED</b> <i>For Other than 1<sup>st</sup> Application for Extension of Time: List any work/actions done during the time period most recent extension.</i>	<b>COST</b>
10/1/2000	Date of the last "Extended From Date" for complete application of water (used on the most recently approved extension of time).	
2002	Construction of Pipeline B (connection to South Fork Water Board)	\$470,000
2005-2008	Rehabilitate View Acres and Valley View booster pump stations	\$100,000
2005	Construct Sunrise Reservoir #10	\$5,000,000
2005	Gladstone became a member of the NCCWC, and this permit was assigned from Gladstone to NCCWC	2,500,000
2007	Construct Sunrise Elevated Tank	\$700,000
2010-2023	Permit extension litigation	\$3,000,000
2020	Construct Sunrise Reservoir #11	\$8,200,000
2021	Water System Master Plan	\$150,000
10/1/2025	Last "Extended To" date for complete application of water (resulting from the most recently approved extension of time).	
<b>INSERT DATES</b>	<b>ALL WORK AND ACTIONS ACCOMPLISHED AFTER THE MOST RECENT EXTENSION OF TIME GRANTED</b> <i>List work/actions done after the last authorized date for complete application of water has passed.</i>	<b>COST</b>
	N/A	
<b>Total Cost to Date</b>		<b>\$25,192,000</b>

[OAR 690-315-0070(3)(f)]

5. Provide evidence of compliance with conditions contained in the original permit, in any previous extension(s), and/or in any permit amendments (Chart II), or the reason the condition was not satisfied (Chart III). [See Attachment B](#)

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5-A) Describe how each condition has been complied with. Include conditions contained in the original permit (and, if applicable, each condition contained in any order approving a permit amendment and/or a final order approving a prior extension of time). Include the date when the condition was satisfied.

**CHART-II**

Condition No.**	Date Satisfied	Describe How Permit Condition Has Been Satisfied
2	2023 (partial)	The NCCWC participates in an annual meeting with ODFW and other listed permit holders on the Clackamas River to devise a strategy to maximize fishery benefits related to the release of stored water from Timothy Lake. The NCCWC will comply with additional conditions to reduce diversions when required to maintain the persistence of listed fish species when water use begins under this permit, as described below in Chart III.

5-B) If applicable conditions have NOT complied with all, explain the reasons why and indicate with a date certain (in the near future) when compliance will occur.

**CHART-III**

Condition No.**	Date Will Comply	Explain Why Each Permit Condition Has NOT Been Satisfied
1	2026	The NCCWC members submitted a joint WMCP in 2005, which was placed on administrative hold due to pending extensions of time for the NCCWC's permits. The final orders approving the permit extensions were protested, and litigation related to these extensions was resolved in August 2023 based on the Oregon Supreme Court's decision to deny the petition for review of the Court of Appeals' final ruling. In 2024, OWRD requested that the NCCWC withdraw or update its 2005 WMCP. The NCCWC is developing an updated WMCP to be submitted in 2026.
2	2026	The NCCWC is required to reduce diversions when required to maintain the persistence of listed fish species. Permit S-43170 currently has a development limitation of 0.0 cfs, so the NCCWC has not yet begun use or needed to reduce diversions. The NCCWC will comply with required reductions in diversions per the extension final order when access to the undeveloped portion of the permit is granted.

[OAR 690-315-0070(3)(g)]

6. Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit. Report water use as of June 29, 2005, or the C-Date of the permit (whichever is later).

6-A) For Surface Water Permit Extensions:

Maximum instantaneous rate (as of June 29, 2005, or C-date (whichever is later)) = 0.0 cfs.

6-B) For Ground Water Permit Extensions: N/A

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**CHART-IV**

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED					
			Well Log Number E.g. MULT	Well Tag Number E.g. # 40151	Is the actual drilled location authorized on	Maximum instantaneous rate used by June 29, 2005,	Is this well authorized or utilized under any	If yes, provide the rate used from this well under each water right. (Typically the total of all uses from a single

			60493	or N/A	this permit or on a permit amendment? (See below)	or C-date (whichever is later) -- from this well -- under this permit only (CFS or GPM)	OTHER water rights?	well will not exceed the well's pumping capacity.)	
								Permit, Certificate, or Transfer No.	Rate (CFS or GPM)
N/A		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	-	
								-	

6-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a permit amendment application been/be filed with OWRD? Yes  No

If a Permit Amendment Application has been filed: Transfer No. T-

Well # \_\_\_\_\_: Actual location: \_\_\_\_\_

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[OAR 690-315-0070(3)(h)]

7. Provide an estimate of the current population served under this permit and a description of the methodology(ies) used to make the estimate.

**Current Population:**

The North Clackamas County Water Commission (NCCWC) provides water to three member agencies: Oak Lodge Water Services, Sunrise Water Authority, and the City of Gladstone. The estimated population served by Oak Lodge was 28,555, Sunrise was 57,353, and Gladstone was 11,763 in 2023. Total population served as of 2023 is 97,671.

Methodology used to estimate current population served:

The NCCWC's most recent planning exercise that included estimating member agency populations occurred in early 2025 to determine 2023 populations. This exercise included the use of population estimates and forecasts conducted by Metro. Metro provides this data for water providers and municipalities within the metro region. The latest data was published by Metro in November 2023. To estimate the 2023 populations of the member agencies, the NCCWC interpolated population estimates using Metro's 2020 population estimate and Metro's 2030 population projections for the members.

[OAR 690-315-0070(3)(p)]

8. Report the current peak water demand of the current population served, and a description of the methodology(ies) used to make the estimate.

**Current Peak Water Demand:** 31.1 cfs as of Year: 2023

Methodology used to estimate current peak demand:

The peak demand was estimated based on production records and wholesale purchases of water from other entities, including Clackamas River Water (CRW) and South Fork Water Board (SFWB). The most recent collection of member agency peak day demand data occurred as part of a planning exercise conducted by the NCCWC in 2025. During this exercise, peak day demands for 2023 were identified. Of the peak 31.1 cfs demand in 2023, 24.48 cfs was

met under NCCWC's water rights as shown in Attachment A, and the remainder was supplied through wholesale purchases and through Sunrise's groundwater supply.

[OAR 690-315-0070(3)(k)]

9. Provide a summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements (if any), relating to the project that have significantly delayed completion of construction or perfection of the right.

Permit S-43170 was originally held by the City of Gladstone and was later conveyed to the NCCWC. The NCCWC submitted a permit extension on June 23, 2006 application requesting until October 1, 2025 to develop Permit S-43170, and OWRD issued a proposed final order (PFO) approving the extension in 2010, but the order was protested. The case was consolidated with several other extension applications for municipal water rights on the Clackamas River and was referred to a contested case hearing. OWRD issued a Final Order (FO) approving the extensions on April 20, 2011. The FO was appealed, and the Oregon Court of Appeals referred the case back to OWRD. Additional hearings were conducted in 2016 to 2018, and on October 24, 2018, OWRD issued a second FO approving the extension applications. On December 11, 2018, the FO was appealed. In March 2023, the Court of Appeals affirmed the FO. On August 31, 2023, the Oregon Supreme Court denied a petition for review of the Court of Appeals' decision, and OWRD's 2018 FO approving the extension application became final. During the contested case process, the NCCWC was unable to develop the permit because of the uncertainty around the extension. The NCCWC does not have access to the undeveloped portion of the permit (1.73 cfs) until granted in an FO approving a WMCP.

[OAR 690-315-0070(3)(l)]

- 10-A. Provide an estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use. The Application must demonstrate that the full rate authorized by the permit can be put to beneficial use within the time being requested.

In developing your estimated demand projections for the permit being extended, you should include the following items:

- a) Inventory of Water Rights Held **See Attachment A**  
List all water rights held, including this permit, currently held by the permit holder. Use the format shown in "Attachment A" (see last page of this Application for Extension of Time). A link to the Water Rights Information System (WRIS), accessed through OWRD's website at <http://apps.wrd.state.or.us/apps/wr/wrinfo/> may be a helpful source for compiling this information.

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Use the "Use Limitations" column to identify and explain why any water right is not currently utilized to meet current peak water demands, or which is used only in a limited capacity.

b) Water Supply Contracts and/or Agreements

List any water supply contracts or agreements for water that will be supplied by the permit holder to other entities.

NCCWC and Oak Lodge have agreements with CRW to supply certain CRW customers located in the NCCWC service area. CRW and SFWB may also purchase water from the NCCWC.

List any water supply contracts or agreements for water that will be supplied from other entities that the permit holder will depend on to meet its own current or anticipated future water needs.

The NCCWC has a supply agreement with CRW executed in 2022 that allows for the NCCWC to purchase up to 10 mgd from CRW. The agreement also includes a requirement for the NCCWC to purchase a minimum of 125 million cubic feet annually. This agreement is effective through 2042.

The NCCWC has had a wholesale purchase agreement in place with SFWB since 2000 that allows the NCCWC to purchase up to 12 mgd of SFWB water during the winter months (October through April), and surplus water as available during the summer months (May through September). SFWB may also purchase water from the NCCWC. The NCCWC and SFWB jointly operate and maintain the transmission line between their WTPs, which has a capacity of approximately 12 mgd.

c) Projected Population

**Population Growth Rate: 1.0 %**

**Projected Population: 122,726 as of Year: 2045**

Projected population in 2045 for Oak Lodge is 30,969; for Sunrise is 79,367; and for Gladstone is 12,390 for a total of 122,726.

Methodology used to estimate projected population and population growth rate:

Metro, the regional government agency and metropolitan planning organization for Multnomah, Washington, and Clackamas Counties, periodically publishes population projections for cities and water districts and authorities. Metro's 2023 forecast of populations included projections for Sunrise, Gladstone, and Oak Lodge every ten years starting in 2030. NCCWC interpolated population projections for its members for 2045.

d) Future Peak Water Demands

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**Projected Peak Water Demand: 44.7 cfs as of Year: 2045**

Methodology used to estimate peak water demand:

For Gladstone and Oak Lodge, a per capita methodology was used to calculate future peak demand. The Metro population forecast was multiplied by the historical average per capita demand and then multiplied by a peaking factor based on historical data. For Gladstone, average per capita demand was 122 gallons per capita per day (gpcd) and peaking factor was 1.7, and for Oak Lodge the average per capita demand was 101 gpcd and peaking factor was 2.6. This yielded a peak demand of 4.0 cfs for Gladstone and 12.6 cfs for Oak Lodge in 2045.

Sunrise's forecast was obtained from the draft master plan (2021), which used a per equivalent residential unit (ERU) approach. Starting from an estimated number of ERUs in 2024, Sunrise multiplied a 300 gpd/ERU factor by the projected growth rate. The ERU factor is based on the previous 15 years of historical use. The projected growth forecast looked at available buildable land and current zoning designations (residential, commercial, and industrial) in the City of Happy Valley's Pleasant Valley/North Carver comprehensive plan. The zoning designations were assigned a corresponding ERU density per acre of buildable land to determine the total number of ERUs anticipated, and this was distributed linearly over a 20-year planning window. This methodology yielded a peak demand of 28.1 cfs for Sunrise in 2045.

In combination with the peak demands for Gladstone (4.0 cfs) and Oak Lodge (12.6), the NCCWC's total estimated peak demand in 2045 is 44.7 cfs.

e) Potential Growth

Describe the potential for growth of the service area (such as the annexation of lands or new industrial and/or commercial ventures locating within the service area) and describe how those projects are expected to affect future water demands.

Sunrise is anticipated to grow significantly relative to Gladstone and Oak Lodge. The limited growth of Gladstone and Oak Lodge is reflective of the smaller buildable areas for growth available as compared to Sunrise.

f) Completion Date

Provide the date by which the water development is anticipated to be completed and water put to full beneficial use. **October 1, 2045**

[OAR 690-315-0070(3)(I)]

- 10-B. **Application for Extension of Time requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.**

NCCWC is asking for an extension of 20 years.

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[OAR 690-315-0070(3)(j) and OAR 690-315-0070(3)(m)]

11. Provide an estimate of the costs to complete water development and summary of the future plan and schedule to complete construction and/or perfect the water right.

Considering the demand projections in Item 10-A, describe major future work and actions that must be accomplished in order to fully develop and perfect the subject permit. Provide a list of the major planning, work and/or actions needed, the approximate time frames, and estimated costs anticipated to complete the water development within the parameters of this permit.

The review of a Capital Improvement Plan (CIP) or other system infrastructure improvement plans may help when formulating a response.

### CHART-V

APPROXIMATE DATE RANGE	WORK AND ACTIONS TO BE ACCOMPLISHED	ESTIMATED COST
Prior to 2040	Permit amendment to add the NCCWC water treatment plant as a point of diversion (current POD is at the CRW treatment plant)	\$7,000
2031-2035	Increase capacity of the water treatment plant to 25 mgd by adding additional membrane filter capacity	\$1,500,000
2035-2045	Increased population and water demand	
Year: <u>2045</u>	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
<b>Estimated Total Cost to Complete Development</b>		<b>\$1,507,000</b>

[OAR 690-315-0070(3)(n)]

12. Justify the time requested to complete the project and/or apply the water to full beneficial use.

A justification should integrate information from Items 5-B, 6-A or 6-B, 9, 10-A, and 11 of this application, and should include any other information or evidence to establish that the requested amount of time is reasonable, and that you will be able to complete the project within the amount of time requested.

The NCCWC expects to meet projected peak demands through a combination of water treatment plant upgrades and wholesale purchases. The NCCWC intends to increase production capacity at its water treatment plant to 25 mgd (38.7 cfs) by installing additional membrane filter capacity between 2031 and 2035. Once this extension application is approved, the NCCWC will include a request for access to greenlight water under Permit S-43170 in its next WMCP in order to develop the permit to meet projected demands.

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[OAR 690-315-0070(3)(o)]

13. Provide any other information you wish OWRD to consider while evaluating the Application for Extension of Time

N/A

OAR 690-315-0070(3)(q)]

14. For Municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, provide a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.  
See Attachment B that includes the extension FO, including fish persistence conditions.

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## Water Rights Inventory for (Name of Entity) North Clackamas County Water Commission (NCCWC)

(List of All Permits, Permit Amendments, Certificates, Transfers, New Applications)

### Ground Water

Application No.	Permit No.	Priority Date	Certificate No.	P.A. <sup>1</sup> or Transfer No.	Source of water identified in water right	Facility Name used by entity	Use	Rate identified in water right (cfs or AF)	Actual Diversion		Notes or Limitations to water use <sup>3</sup>
									Maximum Instantaneous Rate Diverted to Date (cfs)	Authorized Completion Date <sup>2</sup>	

### Surface Water

Application No.	Permit No.	Priority Date	Certificate No.	P.A. or Transfer No.	Source of water identified in water right	Facility Name used by entity	Use	Rate identified in water right (cfs or AF)	Actual Diversion		Notes or Limitations to water use
									Maximum Instantaneous Rate Diverted to Date (cfs)	Authorized Completion Date	
S-47144	S-35297	7/1/1970		T-7389	Clackamas River	NCCWC water treatment plant (WTP), Clackamas River Water (CRW) WTP	Municipal	62.0	19.47	10/1/2030	Greenlight water request in a WMCP is needed to access the 42.53 cfs undeveloped portion, which will be subject to fish persistence conditions
S-60632	S-46120	4/21/1981		T-7434	Clackamas River	CRW WTP	Municipal	8.0	5.01	10/1/2025	Greenlight water request in a WMCP is needed to access the 2.99 cfs undeveloped portion, which will be subject to fish persistence conditions

<sup>1</sup> P.A. = Permit Amendment

<sup>2</sup> Date by which full application of water is to be made within the terms and conditions of the permit (date will be specified in the permit or on the last extension Final Order).

<sup>3</sup> If a particular water right certificate, permit, or transfer is not being utilized to meet current demands, or its use is somehow limited due to quality, seasonal, etc. limitations, or if the actual diversion rate is less than a certificated rate, please explain why.

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7/19/2021

Application for Extension of Time  
Municipal and Quasi-Municipal Water Use Permits  
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S-57226	S-43170	3/28/1978		T-7434	Clackamas River	CRW WTP	Municipal	1.73	0	10/1/2025	Greenlight water request in a WMCP is needed to access the 1.73 cfs undeveloped portion, which will be subject to fish persistence conditions
S-25728	S-20145	3/15/1951	79828	T-10080	Clackamas River	NCCWC WTP, CRW WTP	Municipal	4.0	4.0	10/1/2016	Claim of beneficial use under development

**Pending New Water Right Applications**

Application No.	Priority Date	Source	Proposed Use	Proposed Rate
S-71834	9/13/1991	Willamette River	Municipal	12.4 cfs

**Attachment "A"**  
**For Extension of Time Application**

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## **Attachment B**

Permit S-43170 Extension Final Order

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Application for an Extension of Time for Permit S-43170- North Clackamas County  
Water Commission





and )  
 )  
 City of Tigard, )  
 )  
*Intervenor,* )  
 )  
 vs. )  
 )  
 WaterWatch of Oregon, Inc.; and South )  
 Fork Water Board, )  
 )  
*Protestants.* )

This matter is a consolidated contested case hearing involving applications for extension of eight municipal water rights located in the lower 3.1 miles of the Clackamas River. The case is on remand from the Oregon Court of Appeals. *WaterWatch of Oregon, Inc. v. Water Resources Dept.*, 268 Or App 187 (2014). The court remanded OWRD’s 2010 final orders in this matter to address two specific issues. The court rejected WaterWatch of Oregon, Inc.’s (WaterWatch) other challenges to the 2011 final orders.

The Oregon Water Resources Department (OWRD) referred the remanded case to the Office of Administrative Hearings for limited further hearing to address issues arising from the Court’s remand. Administrative Law Judge (ALJ) Rick Barber presided over the remand hearing and issued his Proposed Order on Remand on January 9, 2018.

Exceptions to the Proposed Order on Remand were timely filed by all parties to the proceeding: the City of Lake Oswego, the Sunrise Water Authority, and the North Clackamas County Water Commission (collectively, the “Joint Municipal Parties”), the South Fork Water Board, WaterWatch, and OWRD. WaterWatch timely filed responses to the exceptions of the Joint Municipal Parties, the South Fork Water Board, and OWRD. The Joint Municipal Parties and South Fork Water Board timely filed responses to the exceptions of WaterWatch.

OWRD adopts the following sections of the Proposed Order on Remand without modification: the History of the Case, Issues on Remand, Evidentiary Rulings, Procedural Issues, and Conclusions of Law.

OWRD adopts the Findings of Fact, Opinion, and Order sections with the modifications described herein. Additions to the ALJ’s Proposed Order on Remand are shown in underlined text; deletions are shown in strikethrough text. In locations where the Proposed Order on Remand uses underlined text, the text has been converted to bold, underlined text to distinguish it from additions.

Finally, because the Court of Appeals’ remand was limited in scope, OWRD incorporates its 2010 final orders (attached). This Final Order on Remand is intended to supplement and clarify the 2010 final orders in a manner that addresses the bases for the Court of Appeals’

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remand. To the extent that there is a direct conflict between the 2010 final orders and this Final Order on Remand, this Final Order on Remand controls.

See excerpt below

## HISTORY OF THE CASE

This matter is a consolidated contested case hearing involving applications for extension of eight municipal water rights located in the lower 3.1 miles of the Clackamas River. The case is on remand from the Oregon Court of Appeals. *WaterWatch of Oregon, Inc. v. Water Resources Dept.*, 268 Or App 187 (2014).

On December 23, 2015, the Oregon Water Resources Department (OWRD, or the Department), referred the remanded case to the Office of Administrative Hearings (OAH) for a limited further hearing<sup>2</sup> to address issues arising from the Court's remand. The OAH assigned Administrative Law Judge (ALJ) Rick Barber to preside over the remand hearing.<sup>3</sup>

ALJ Barber convened a prehearing conference on January 25, 2016. Assistant Attorney General Jesse Ratcliffe represented the Department; Attorney Christopher Crean represented South Fork Water Board (SFWB); Attorney Jeff Ring represented the Joint Municipal Parties (JMP);<sup>4</sup> Attorney Lisa Brown represented WaterWatch. Hearing was initially scheduled for April 26 and 27, 2016, but was postponed and rescheduled for May 10 and 11, 2016.

**Scope of Hearing.** On May 4, 2016, WaterWatch filed an objection to the scope of the remand hearing. On May 6, 2016, the Department filed a Motion for Extension of Hearing,

<sup>2</sup> OAR 137-003-0655 states:

### Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, *the agency shall specify the scope of the hearing* and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(Emphasis added).

<sup>3</sup> ALJ Barber presided over the original consolidated hearing in March 2010 and issued the original Proposed Orders in the case in August 2010.

<sup>4</sup> The Joint Municipal Parties include the City of Lake Oswego, the Sunrise Water Authority, and the North Clackamas County Water Commission. In addition to Mr. Ring, Phil Bender and Mark Strandberg from the same firm were involved in representing the JMP.

OWRD has identified two findings of fact in this subsection that were inadvertently deleted, and hereby incorporates them in this Final Order:

- a. "Both agencies [OWRD and ODFW] agree that the conditions placed in the PFOs were not the verbatim advice given by ODFW."
- b. "There was apparently a miscommunication between the agencies (OWRD and ODFW) and municipalities concerning what would come from those meetings."

3. OWRD has identified a typographical error in footnote #5, of the Amended Proposed Order. OWRD corrects this error, as follows (deletions shown in strikethrough, additions in underline):

"It is important to note that ODFW is not either a party or a participant to this proceeding. As a result, only OWRD's obligations are at issue in this proceeding. This means that parties may not seek to alter ODFW's advice, or question ODFW's ~~OWRD's~~ authority to issue the advice, in this proceeding. Instead, a party must submit "existing evidence" in an attempt to demonstrate that the weight of the evidence requires conditions different from those concurred with, or recommended by ODFW as consistent with its advice."

**Reason for modification:** ODFW is responsible for issuing the advice, not OWRD.

The extension of time for Permit S-35297, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2030. The deadline for applying water to full beneficial use is extended to October 1, 2030.

The extension of time for Permit S-43170, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2025. The deadline for applying water to full beneficial use is extended to October 1, 2025.

The extension of time for Permit S-46120, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2025. The deadline for applying water to full beneficial use is extended to October 1, 2025.

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maximize fishery benefits that can be derived from the agreement with PGE for the release of stored water from Timothy Lake. It is OWRD's intent that ODFW and the permittees shall reach agreement on the strategy. However, if after making a good faith effort ODFW and the permittees are unable to reach agreement on a strategy ODFW shall devise the strategy. In either case, the strategy shall be documented in writing and the permittees shall comply with the strategy. The annual meeting and resulting strategy may cover issues other than Timothy Lake releases that are relevant to both use under Permits S-46120, S-35297, S-43170, S-22581, S-3778, S-9982, S-32410 and S-37839, and to listed fish species; however, the strategy may include actions pertaining to such issues only upon mutual agreement by ODFW and the permittees.

- c. From the first Monday in September through June 30 the maximum total amount of the undeveloped portion of the Permit S-35297 that can legally be diverted shall be reduced in proportion to the amount by which the flows shown in Table 1 are not met based on a seven day rolling average of mean daily flows (measured on the Clackamas River at USGS Gage Number 14211010, Clackamas River near Oregon City, Oregon, or its equivalent), as illustrated in the examples below.

**Example 1:**

On June 15, the last seven mean daily flows were 750, 725, 700, 650, 625, 600 and 575 cfs. The seven day rolling average is 661 cfs. The maximum total amount of the undeveloped portion of the permit that could legally be diverted under this permit would not be reduced because the 7 day average of mean daily flows is greater than the 650 target flow for June 15.

**Example 2:**

If on June 15, the average of the last seven mean daily flows was 578 cfs, then the target flows would be missed by 11% ( $100 - [(578/650) * 100]$ ). If the maximum total amount of the undeveloped portion of the permit that can legally be diverted under this permit is 10 cfs, then the maximum total amount of the undeveloped portion of the permit that could be legally diverted under this permit would be reduced by 11%. The maximum total amount of the undeveloped portion of the permit that could be legally diverted under the permit under this condition would be 8.9 cfs ( $10 - [10 * 0.11] = 8.9$ ).

**Table 1<sup>1</sup>**

MINIMUM FISH FLOW NEEDS ON THE LOWER CLACKAMAS RIVER MEASURED AT USGS GAGE 14211010, CLACKAMAS RIVER NEAR OREGON CITY, OREGON	
Month	Cubic Feet per Second
June – August	650
September	650/800 <sup>2</sup>
October – May	800

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<sup>1</sup> Table 1 was called Table 2 in the Proposed Final Order (PFO)

<sup>2</sup> 650 cfs Sept. 1 through Sept. 15 and 850 cfs September 16 through September 30

**CONDITIONS FOR PERMIT S-43170  
(Modified by Permit Amendment T-7434)**

**1. Development Limitations**

Diversion of any water under Permit S-43170 (modified by Permit Amendment T-7434) shall only be authorized upon issuance of a final order approving a WMCP under OAR Chapter 690, Division 86. A WMCP shall be submitted to the Department within 3 years of an approved extension of time application. Use of water under Permit S-43170 (modified by Permit Amendment T-7434) shall be

consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The deadline established in this PFO 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.

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2. Conditions to Maintain the Persistence of Listed Fish

- a. Minimum fish flow needs on the Lower Clackamas River as recommended by ODFW are in Table 1, below, and are to be measured at USGS Gage Number 14211010, Clackamas River near Oregon City, Oregon, or its equivalent.
- b. In cooperation with the holders of Permits S-46120, S-35297, S-43170, S-22581, S-3778, S-9982, S-32410 and S-37839, the permittee must have an annual meeting with ODFW to devise a strategy to maximize fishery benefits that can be derived from the agreement with PGE for the release of stored water from Timothy Lake. It is OWRD's intent that ODFW and the permittees shall reach agreement on the strategy. However, if after making a good faith effort ODFW and the permittees are unable to reach agreement on a strategy ODFW shall devise the strategy. In either case, the strategy shall be documented in writing and the permittees shall comply with the strategy. The annual meeting and resulting strategy may cover issues other than Timothy Lake releases that are relevant to both use under Permits S-46120, S-35297, S-43170, S-22581, S-3778, S-9982, S-32410 and S-37839, and to listed fish species; however, the strategy may include actions pertaining to such issues only upon mutual agreement by ODFW and the permittees.
- c. From the first Monday in September through June 30 the maximum total amount of the undeveloped portion of the Permit S-43170 (modified by Permit Amendment T-7434) that can legally be diverted shall be reduced in proportion to the amount by which the flows shown in Table 1 are not met based on a seven day rolling average of mean daily flows (measured on the Clackamas River at USGS Gage Number 14211010, Clackamas River near Oregon City, Oregon, or its equivalent), as illustrated in the examples below.

Example 1:

On June 15, the last seven mean daily flows were 750, 725, 700, 650, 625, 600 and 575 cfs. The seven day rolling average is 661 cfs. The maximum total amount of the undeveloped portion of the permit that could legally be diverted under this permit would not be reduced because the 7 day average of mean daily flows is greater than the 650 target flow for June 15.

Example 2:

If on June 15, the average of the last seven mean daily flows was 578 cfs, then the target flows would be missed by 11% ( $100 - [(578/650) * 100]$ ). If the maximum total amount of the undeveloped portion of the permit that can legally be diverted under this permit is 10 cfs, then the maximum total amount of the undeveloped portion of the permit that could be legally diverted under this permit would be reduced by 11%. The maximum total amount of the undeveloped portion of the permit that could be legally diverted under the permit under this condition would be 8.9 cfs ( $10 - [10 \times 0.11] = 8.9$ ).

Table 1<sup>1</sup>

MINIMUM FISH FLOW NEEDS ON THE LOWER CLACKAMAS RIVER MEASURED AT USGS GAGE 14211010, CLACKAMAS RIVER NEAR OREGON CITY, OREGON	
Month	Cubic Feet per Second

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June – August	650
September	650/800 <sup>2</sup>
October – May	800

<sup>1</sup> Table 1 was called Table 2 in the Proposed Final Order (PFO)

<sup>2</sup> 650 cfs Sept. 1 through Sept. 15 and 850 cfs September 16 through September 30

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