

**Superceding Final Order
Extension of Time for Permit Number R-12503**

Appeal Rights

This is a final order other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Application History

On July 29, 2003, Richard A. Smith submitted an application to the Department for an extension of time for permit number R-12503. The Department issued permit number R-12503 on August 12, 1998. The permit called for the reservoir to be filled and complete application of the stored water to beneficial use by October 1, 2002. In accordance with OAR 690-315-0050(2), on July 13, 2004, the Department issued a Proposed Final Order proposing to extend the time to fully apply water to beneficial use to October 1, 2010. The protest period closed August 27, 2004, in accordance with OAR 690-315-0060(1). No protest was filed.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 537.248, 537.630, 539.010(5) and/or OAR 690-315-0040(2).

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. **In accordance with OAR 690-315-0050(6), the permittee must submit a written progress report to the Department by October 1, 2009.** The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:
 - a) The amount of construction completed;
 - b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
 - c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and

- d) Financial investments made toward developing the beneficial water use.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR Chapter 690, Division 86 or ORS 537.099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

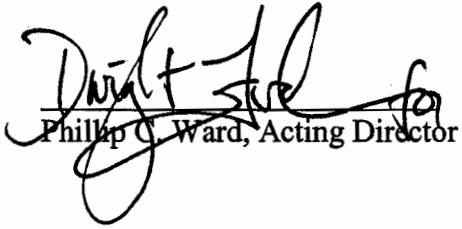
In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

Order

The intent of this superceding final order is to correct a scrivener's error found in the original final order dated September 29, 2004. The final order dated September 29, 2004, incorrectly stated the deadline for filling the reservoir and applying stored water to full beneficial use is extended to October 1, 2004. This superceding final order correctly states the deadline for filling the reservoir and applying stored water to full beneficial use is extended to October 1, 2010.

DATED: June 22, 2006


Phillip C. Ward, Acting Director

If you have any questions about statements contained in this document, please contact Ann Reece at (503) 986-0808.

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900.