

# Oregon Water Resources Department Water Rights Division

## Application for Extension of Time

No extension required  
12-16-04

In the Matter of the Application	)	
for an Extension of Time for	)	
Permit #S-51439, Water Right	)	PROPOSED FINAL ORDER
Application #S-71293	)	
(Bureau of Reclamation, U.S.A.,	)	
Pacific NW Region)	)	

<b>Permit Information</b>	
<b>Application File #S-71293 / Permit #S-51439</b>	
Basin: #07 - Umatilla Basin / Watermaster District: #05	
Date of Priority: February 14, 1991	
<b>Authorized Use of Water</b>	
Source of Water:	Columbia River, tributary of Pacific Ocean
Purpose or Use:	Umatilla River instream flow enhancement through an exchange with irrigation water from the Umatilla River
Maximum Rate:	240.0 cubic feet per second (cfs)

**This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 315.**

***Please read this Proposed Final Order in its entirety.***

This Proposed Final Order applies only to Permit #S-51439, water right Application #S-71293. A copy of Permit #S-51439 is enclosed as Attachment 1.

# Summary of Proposed Final Order for Extension of Time

## The Department proposes to:

- grant the extension for complete application of water from October 1, 2001, to October 1, 2006.

## AUTHORITY

**ORS 537.230(2)** provides in pertinent part that the Water Resources Department shall, 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)** provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0040** provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

## FINDINGS OF FACT

### Background

1. Permit #S-51439 was granted by the Water Resources Department on April 21, 1992. The permit authorizes the use of up to 240.0 cfs of water from the Columbia River, tributary of the Pacific Ocean, for Umatilla River instream flow enhancement, through an exchange with irrigation water from the Umatilla River. The permit specified that construction of the water system was to be completed by October 1, 1996, and complete application of water was to be made on or before October 1, 1996.
2. One prior extension of time has been approved for Permit #S-51439. It resulted in the completion dates for construction and application of water to full beneficial use being extended to October 1, 2001.

3. The permit holder submitted an "Application for Extension of Time" to the Department on February 27, 2004, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #S-51439 be extended from October 1, 2001, to October 1, 2006.
4. Notification of the permit holder's extension of time request for Permit #S-51439 was published on the Department's Public Notice dated March 9, 2004. No public comment on the extension application was received.

**Review Criteria** [OAR 690-315-0040(1)(2)]

As set forth under OAR 690-315-0040(1)(2), the time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the applicable requirements of ORS 537.230, 537.248<sup>1</sup>, and 539.010(5).

**Other Governmental Requirements** [ORS 537.230(2)]

5. Delay in the development of this project was not caused by any other governmental requirements.

**Start of Construction** [ORS 537.230]

6. Construction of the water system under Permit #S-51439 began within the time specified in the permit, being April 21, 1993.

**Financial Investment** [ORS 539.010(5)]

7. As of February 27, 2004, the permit holder had invested a total of \$56,362,000 into the project, consisting of: completion of the Cold Springs Pumping plant and discharge line; completion of the North Branch Furnish Ditch enlargement; completion of the Columbia River pump plant and discharge line; completion of the Columbia-Cold Springs Canal; installation of fish screens as required by National Marine Fisheries Service (NMFS); completion of the Stanfield Branch Furnish Canal enlargement; construction of the Stanfield Relift pump plant and discharge line; construction of the Upper Furnish and Echo area facilities; installation of the control system; and completion of all staged Phase II construction. No additional investment is anticipated for the completion of this project.

---

<sup>1</sup> ORS 537.248 applies to reservoir permits only.

**Reasonable Diligence and Good Faith of the Appropriator** [ORS 537.230(1) and 539.010(5)]

Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [ORS 537.260, OAR 690-315-0040(3)].

In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

**Amount of Construction**

8. The following construction was completed within the time allowed in the permit or previous extension:
  - a. Construction of the water system began within the time specified in the permit, being April 21, 1993.
  - b. As of October 1, 1996, work accomplished consisted of completion of the Cold Springs Pumping plant and discharge line, and the North Branch Furnish Ditch enlargement; completion of the Columbia River pump plant and discharge line, and the Columbia-Cold Springs Canal; and installation of fish screens as required by National Marine Fisheries Service (NMFS.).
  - c. During the period of the most previously approved extension of time for Permit #S-51439 from October 1, 1996, to October 1, 2001, work accomplished consisted of Stanfield Branch Furnish Canal enlargement, Stanfield Relift pump plant and discharge line construction, Upper Furnish and Echo area facilities construction, control system installation, and completion of all staged Phase II construction.

**Beneficial Use of Water**

9. The following beneficial use was made of the water during the permit or previous extension time limits:
  - a. Since the issuance of Permit #S-51439 on April 21, 1992, the permit holder has diverted 188.0 cfs of the permitted 240.0 cfs of water from the Columbia River for Umatilla River instream flow enhancement, through an exchange with irrigation water from the Umatilla River.
  - b. Full beneficial use of water under Permit #S-51439 was delayed due to the need for full capability of pumping and conveyance facilities to be in place concurrently when maximum designated demands are required (a weather-dependent function.)

Compliance with Conditions

10. The water right permit holder's conformance with the permit or previous extension conditions.
  - a. The record does raise not concerns about the permit holder's compliance with conditions.
  - b. At time of request for certification, the permit holder will need to supply documentation of compliance with the permit condition that prior to the diversion of water for beneficial use, fish screening devices were installed, operated and maintained to National Marine Fisheries Service specifications.

Financial Investments

11. Financial investments made toward developing the beneficial water use.
  - a. As of February 27, 2004, the permit holder had invested a total of \$56,362,000 into the project, consisting of: completion of the Cold Springs Pumping plant and discharge line; completion of the North Branch Furnish Ditch enlargement; completion of the Columbia River pump plant and discharge line; completion of the Columbia-Cold Springs Canal; installation of fish screens as required by National Marine Fisheries Service (NMFS); completion of the Stanfield Branch Furnish Canal enlargement; construction of the Stanfield Relift pump plant and discharge line; construction of the Upper Furnish and Echo area facilities; installation of the control system; and completion of all staged Phase II construction. No additional investment is anticipated for the completion of this project.

**The Market and Present Demands for Water** *[ORS 539.010(5) and OAR 690-315-0040(4)]*

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:

12. The amount of water available to satisfy other affected water rights and state scenic waterway flows.
  - a. The permitted points of diversion, authorized under Permit #S-51439, are not located within or above designated boundaries of a state scenic waterway.
13. 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).

- a. The permitted points of diversion, authorized under Permit #S-51439, are located within a stream segment that has been identified by the Oregon Department of Fish and Wildlife as a "low" needs ranking area for streamflow restoration for fish.
  - b. The permitted points of diversion, authorized under Permit #S-51439, are located on a segment of the Columbia River which has been identified by the Oregon Department of Environmental Quality as water quality limited.
  - c. The permitted points of diversion, authorized under Permit #S-51439, are not located within a segment of the Columbia River designated as a federal wild and scenic river.
14. The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.
- a. The permitted points of diversion are located within a designated sensitive, threatened or endangered species area for aquatic species utilizing surface water resources, as identified by the Oregon Department of Fish and Wildlife.
15. Economic investment in the project to date.
- A. As of February 27, 2004, the permit holder had invested a total of \$56,362,000 into the project, consisting of: completion of the Cold Springs Pumping plant and discharge line; completion of the North Branch Furnish Ditch enlargement; completion of the Columbia River pump plant and discharge line; completion of the Columbia-Cold Springs Canal; installation of fish screens as required by National Marine Fisheries Service (NMFS); completion of the Stanfield Branch Furnish Canal enlargement; construction of the Stanfield Relift pump plant and discharge line; construction of the Upper Furnish and Echo area facilities; installation of the control system; and completion of all staged Phase II construction. No additional investment is anticipated for the completion of this project.
16. Other economic interests dependent on completion of the project.
- a. None have been identified.
17. Other factors relevant to the determination of the market and present demand for water and power.
- a. None have been identified.

**Fair Return Upon Investment** [ORS 539.010(5)]

18. The use of water from the permitted water development will result in reasonable returns against the investment made in the project to date.

**Duration of Extension** [OAR 690-315-0040(1)(c), ORS 539.010(5)]

As set forth under OAR 690-315-0040(1)(c), time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.

19. As of February 27, 2004, the remaining work to be completed consists of full application of water to beneficial use within valid time-frames under Permit #S-51439.
20. Full beneficial use of water under Permit #S-51439 was delayed due to the need for full capability of pumping and conveyance facilities to be in place concurrently when maximum designated demands are required (a weather-dependent function.)
21. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2006, to complete the application of water to beneficial use under the terms of Permit #S-51439 is both reasonable and necessary.

**CONCLUSIONS OF LAW**

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230.
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0040(1)(a).
3. The applicant demonstrated that actual construction on the project began within the time specified in the permit, as required by OAR 690-315-0040(1)(b).
4. Full application of water to beneficial use can be completed by October 1, 2006<sup>2</sup>, as required by OAR 690-315-0040(1)(c).

---

<sup>2</sup> Pursuant to ORS 537.230(3), 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 the claim of beneficial use.


5. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause exists for an extension to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

### **Proposed Order**

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete application of water to beneficial use under Permit #S-51439 from October 1, 2001, to October 1, 2006.

DATED: October 26, 2004

  
Dwight French  
Water Rights Section Manager

*If you have any questions,  
please check the information  
box on the last page for the  
appropriate names and  
phone numbers.*

### **Proposed Final Order Hearing Rights**

1. Under the provisions of OAR 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than ***Friday, December 10, 2004***, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
  - a. The name, address and telephone number of the petitioner;
  - b. A description of the petitioner's interest in the final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
  - c. A detailed description of how the action proposed in the final order would adversely affect or aggrieve the petitioner's interest;
  - d. A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
  - e. Any citation of legal authority supporting the petitioner, if known;



- f. Proof of service of the petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
  - g. The protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
- a. Issue a final order on the extension request; or
  - b. Schedule a contested case hearing if a request for contested case hearing has been submitted, and:
    - 1) Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or
    - 2) The applicant submitted a timely request for a contested case hearing.

**If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503)986-0801. Address all other correspondence to:**

**Water Rights Section  
Oregon Water Resources Department  
725 NE Summer Street, Suite A  
Salem, OR 97301-1271  
Fax #: (503)986-0901**

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

**If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her telephone number is (503)986-0824.**

**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.**

