

**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-36515, Water Right Application S-48909,)
in the name of the Deschutes Valley Water District) **PROPOSED FINAL ORDER**

Permit Information

Application File S-48909/ Permit S-36515

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: December 29, 1971

Authorized Use of Water

Source of Water: Opal Springs, a tributary to Crooked River
Purpose or Use: Quasi-Municipal
Maximum Rate: 11.92 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 as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit S-36515, water right Application S-48909.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2003 to October 1, 2028.
- Grant an extension of time to apply water to full beneficial use from October 1, 2003 to October 1, 2028.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
mgd – million gallons per day

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension to complete construction or perfect a water right. 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 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit S-36515 was granted by the Department on March 13, 1973. The permit authorizes the use of up to 22.30 cfs of water from Opal Springs for quasi-municipal use. It specified that actual construction was to begin by March 13, 1974, construction of the

water development project was to be completed by October 1, 1974, and that complete application of water was to be made on or before October 1, 1975.

2. On February 29, 2008, the Department authorized partial perfection of 10.38 cfs of water under Certificate 83733, subsequently the point of diversion for 10.38 cfs was transferred to District Wells under Transfer T-9720. The residual 11.92 cfs under Permit S-36515 remained in permit status.
3. Seven prior permit extensions have been granted for Permit S-36515. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2003.
4. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
5. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
6. The permit holder submitted an "Application for Extension of Time" to the Department on November 26, 2012, requesting the time to apply water to full beneficial use under the terms and conditions of Permit S-36515 be extended from October 1, 2003 to October 1, 2028.
7. Notification of the Application for Extension of Time for Permit S-36515 was published in the Department's Public Notice dated February 12, 2013. No public comments were received regarding the extension application.
8. On November 19, 2014, the permit holder submitted additional information to supplement and/or update their Application for Extension of Time. The amendment requested time to complete construction from October 1, 2003 to October 1, 2028.

Review Criteria for Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

9. On November 26, 2012, 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 690-315-0080(1)(b)]

10. Actual construction began prior to the March 13, 1974 deadline specified in the permit.

Duration of Extension [OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

11. The remaining work to be accomplished under Permit S-36515 consists of completing construction and applying water to full beneficial use.
12. Permit S-36515 authorized the use of 22.3 cfs of water for quasi-municipal use, of which 10.38 cfs has been perfected under Certificate 83733. There is an undeveloped portion of the 11.92 cfs of water under Permit S-36515 as per OAR 690-315-0010(6)(g).
13. In addition to the 11.92 cfs of water authorized under Permit S-36515 from Opal Springs, Deschutes Valley Water District holds the following rights:
- T-9720 for 10.38 cfs of water from 9 wells for quasi-municipal use;
 - Permit G-16548 for 16.7 cfs of water from three wells for municipal use;
 - Certificate 35632 for 2.2 cfs of water from Opal Springs for municipal use;
 - Certificate 7931 for 3.0 cfs of water from a Spring for domestic use;
 - Certificate 46049 for 1.11 cfs of water from Opal Springs for domestic use.

These water rights and permits total 45.31 cfs of water, being 18.23 cfs of live flow (surface) water and 27.08 cfs of groundwater. Deschutes Valley Water District has not yet made beneficial use of 10.64 cfs of water under Permit S-36515, or 10.38 of groundwater under T-9720.

14. The City's peak water demand within its service area boundaries was 19.5 cfs in 2010.
15. According to Deschutes Valley Water District, in 2012, the population within its service boundary was 8,400. They estimate the population will increase at a growth rate of 2 percent per year, reaching an estimated population of 12,000 by the year 2028.
16. According to Deschutes Valley Water District, their peak demand is projected to be approximately 11.92 cfs of water by the year 2028.
17. Deschutes Valley Water District anticipates growth potential within the district boundaries could include purchase of homes in currently unoccupied developments, increase in current housing developments, increase commercial and industrial development, full utilization of the Deer Ridge Correction Facility, and increased

attendance of the newly constructed Centreal Oregon Community College which will significantly increases its potential for growth in industrial water use demand.

18. Full development of 11.92 cfs under Permit S-36515 is needed to meet the present and future water demands of Deschutes Valley Water District.
19. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2028, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit S-36515 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a) and (1)(c) and (4)]

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

20. Actual construction began prior to the March 13, 1974 deadline specified in the permit.
21. Work was accomplished during the original development time frame under Permit S-36515.
22. During the most recent extension period under Permit S-36515, being October 1, 1998 to October 1, 2003, the following work was accomplished by Deschutes Valley Water District:
 - An estimated 165,000 feet of pipe was installed;
 - A new pump house was constructed at Opal Springs to increase system capacity as well as to provide redundancy in the system; and
 - A new storage tank was installed.
23. Since October 1, 2003, the following work was accomplished by Deschutes Valley Water District:
 - 17.75 miles of main transmission lines were installed;
 - A primary saddle flowmeter was installed;
 - Draft WMCP submitted to the Department;
 - Defective meters were replaced;
 - Back flow valves were installed on new well;
 - 10.38 cfs under Permit S-36515 was partially perfected; and
 - A 3 MG reservoir was constructed.

24. As of November 26, 2012, the permit holder invested approximately \$9,811,507, which is 99 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$15,000 investment is needed for the completion of this project.
25. As of November 26, 2012, none of the 11.92 cfs remaining on the permit has been diverted from Opal Springs for beneficial quasi-municipal purposes under the terms of this permit.
26. The Department has considered permit holder's compliance with conditions, and did not identify any concerns.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

27. As of November 26, 2012, the permit holder has invested \$9,811,507, which is 99 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$15,000 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]

28. As described in Findings 12 through 18 above, the permit holder has indicated, and the Department finds that the permit holder must rely on full development of their Permit S-36515.
29. Deschutes Valley Water District projects a population increase of 2 percent per year over a 16 year period, being 2012 to 2028.
30. Given the current water supply situation of Deschutes Valley Water District, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under S-36515.
31. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water under Permit S-36515 beyond the partially perfected portion of 10.38 cfs under Permit S-36515 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

32. Use and income from the permitted water development project would result in reasonable returns upon the investment made in the project to date.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

33. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

34. According to Deschutes Valley Water District, delay of development under Permit S-36515 was due, in part, to the economic downturn that has limited new development and size and scope of the municipal water system, which was designed to be phased in over a period of years.

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(3).
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0080(1)(b)
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2028⁴, as required by OAR 690-315-0080(1)(d).
6. 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 the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As required by OAR 690-315-0090(3) and as described in Finding 31, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of any

⁴ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

water beyond the partially perfected portion of 10.38cfs under Permit S-36515 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7).

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 complete construction under Permit S-36515 from October 1, 2003 to October 1, 2028.

extend the time to apply the water to beneficial use under Permit S-36515 from October 1, 2003 to October 1, 2028.

Subject to the following conditions:

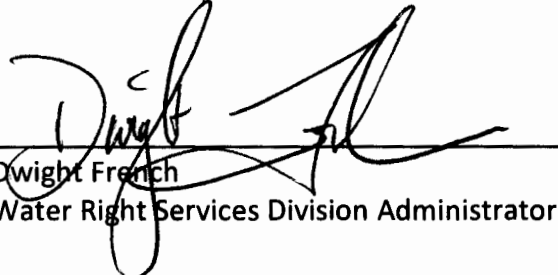
CONDITIONS

1. **Development Limitations**

Diversion of any water under Permit S-36515 beyond the partially perfected portion of 10.38 cfs shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit S-36515 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The deadline established in the Extension Final Order 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.

DATED: December 2, 2014


Dwight French
Water Right Services Division Administrator

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

