

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application	)	
for an Extension of Time for	)	
Permit G-11354, Water Right	)	PROPOSED FINAL ORDER
Application G-12118	)	
Alsea County Service District	)	

Permit Information

Application File G-12118 / Permit G-11354

Basin 18 – Mid Coast Basin / Watermaster District 16

Date of Priority: May 18, 1990

Authorized Use of Water

Source of Water: Two Wells in the North Fork Alsea River Basin

Purpose or Use: Municipal

Maximum Rate: 0.10 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 G-11354, water right Application G-12118. A copy of Permit G-11354 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1998 to October 1, 2020; and
- grant the extension for complete application of water from October 1, 2003 to October 1, 2020.

AUTHORITY

ORS 537.630(2) provides in pertinent part that the Water Resources Department may, for good cause shown, shall order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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 Water Resources 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.

FINDINGS OF FACT

Background

1. Permit G-11354 was granted by the Water Resources Department (Department) on September 30, 1991. The permit authorizes the use of up to 0.10 cfs of water from two wells (Well 1 and Well 2) within the North Fork Alsea River Basin, for municipal use. It specified that construction of the water development project should be completed by October 1, 1993, and that complete application of water was to be made on or before October 1, 1994.
2. Two prior permit extensions have been granted for Permit G-11354. The first extension resulted in the completion dates for construction and full application of water being extended to October 1, 1998. The most recent extension request resulted in the completion date for full application of

water being extended to October 1, 2003.

3. Due to ongoing permit extension rulemaking, the Department placed all pending municipal and quasi-municipal permit extension of time requests on hold and did not require municipal and quasi-municipal water use permit holders to submit an extension application until the new rules were adopted.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 were adopted by the Water Resources Commission November 1, 2002, were further revised, filed with the Secretary of State, and became effective on November 22, 2005.
5. The permit holder, the Alsea County Service District (District), submitted an "Application for Extension of Time" to the Department on November 3, 2003, requesting the time in which to complete construction of the water system be extended from October 1, 1998 to October 1, 2020 and the time in which to accomplish beneficial use of water to the full extent under the terms of Permit G-11354 be extended from October 1, 2003 to October 1, 2020.
6. Notification of the District's extension of time request for Permit G-11354 was published on the Department's Public Notice dated November 11, 2003. No public comment on the extension application was received.
7. On November 20, 2003, June 14, 2005, and March 2, 2006, the District submitted additional information to supplement their Application for Extension of Time.

Review Criteria for Municipal 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. This determination shall consider the applicable requirements of ORS 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴

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

8. The Department received a completed extension of time application and the statutory fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0080(1)(b)]

9. Ground water permits held by municipal corporations for municipal purposes are not subject to the requirement to begin actual construction work within one year from the date of approval of

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.248 applies to reservoir permits only.

³ ORS 537.630 applies to ground water permits only.

⁴ ORS 537.010(5) applies to surface water and ground water permits.

the application.⁵

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

Under OAR 690-315-0080(1)(c)(d), the Department shall find that the time requested is reasonable and the applicant can complete the project within the time requested.

10. The remaining work to be accomplished under Permit G-11354 consists of replacing the existing supply line and distribution lines with larger diameter pipes, installing four fire hydrants, completing construction of the water system and completing application of water.
11. As of June 14, 2005, the permit holder has appropriated 0.11 cfs of water for municipal use, which exceeds the 0.10 cfs authorized under Permit G-11354. There is no "undeveloped portion" of the Permit G-11354 under OAR 690-315-0010(6)(g).
12. In addition to the 0.10 cfs of water allowed under Permit G-11354 (Wells 1 and 2), the District is authorized to use 0.50 cfs of surface water under Permit S-31214 from the North Fork Alsea River, a tributary to the Alsea River. The District's two water rights total 0.60 cfs of water.
13. The District is currently utilizing a total of 0.11 cfs of water from Wells 1 and 2 to meet its present demand for water. Although up to 0.11 cfs of water has been diverted from the North Fork Alsea River under Permit S-31214, this surface water source has been retained for emergency use, and bulk water supply for maintenance operations since 1986. The District has not yet made beneficial use of 0.39 cfs of water under Permit S-31214.
14. The demand projections of the District are defined by the potential demand of the residents, businesses, and schools, as well as agencies that use water outside of the service district. The District provides a small, but unique service to users in an agricultural and forested setting located at the intersection of two state highways.
15. As of November 3, 2003, the population served under Permit G-11354 is estimated at 394. Based on the current growth rate of property development, the District anticipates a population increase, on average, of 1.0 percent per year over the next eighteen years. As the population increases, the demand for water is expected to rise.
16. The District also provides a supply of bulk water at a hydrant connection for various agencies

⁵ Section 5, chapter 410, Oregon Laws 2005, provides:

Sec. 5. (2) The amendments to ORS 537.230 and 537.630 by sections 1 and 2 of this 2005 Act apply to requests for extensions of time to complete construction or to perfect a water right made before, on or after the effective date of this 2005 Act, whether or not construction has commenced under a permit prior to the request.

(3) All final orders by the department that resulted in the issuance of a water right permit, the issuance of a water right certificate or the approval of an extension of time to complete construction or to perfect a water right for a municipal use that were issued before the effective date of this 2005 Act are not subject to challenge in an administrative or judicial proceeding with respect to the requirement to commence and complete construction within a specified period of time. [2005 c.410 §5]

including the U. S. Forest Service, U. S. Bureau of Land Management, Oregon Department of Transportation, and Benton County Public Works. This water is used for emergency response, maintenance, and forest management activities. The District anticipates the demand for these services could double over the next twenty years, as draft stations from streams and rivers become further restricted for protection of threatened and endangered salmon species in the Alsea River Watershed.

17. Based on a projected growth of 1.0 percent per year and bulk supply demands, full development of the remaining portion of Permit G-11354 could occur by the year 2020.
18. Given the amount of development left to occur, the District's projected annual growth rate and associated projected demands for water, demands for bulk water use, and considering the only other water right held by the District; the permit holder's request to have until October 1, 2020, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit G-11354 is reasonable.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)and (4)]

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),(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.

19. Prior to the issuance of Permit G-11354 on September 30, 1991, Wells 1 and 2 were constructed.
20. During the extension period from October 1, 1993 to October 1, 1998, under Permit G- 11354, the following work was completed by the District: sections of the water distribution lines were replaced (1993-1994); a new check valve was installed in the transmission line (1994-1995); a Surface Water Impact Study was completed (1995-1996); the Water System Rehabilitation Project was completed (1995-1998); a new reservoir, 2000 feet of distribution lines, and two hydrants were installed (1997-1998); and new valves were added for repair and maintenance isolation (1997-1998).
21. During the last extension period under Permit G-11354, being from October 1, 1998 October 1, 2003, the following work was completed by the District: sections of the water distribution lines were replaced (1998-2003), the master meter was replaced in 1999, a Water Management Plan was completed in 1999, the interior of the pump station was upgraded (1999-2000), a new hydrant was installed (1999-2000), and a new Chlorine injector pump was installed (2000-2001).
22. As of June 14, 2005, the permit holder has invested \$376,161, which is 63 percent of the total projected cost for complete development of this project. An additional \$216,000 investment is anticipated for the completion of this project.

23. Since the issuance of Permit G-11354 on September 30, 1991, the total 0.10 cfs allowed has been appropriated from Wells 1 and 2 for beneficial municipal purposes under the terms of this permit.
24. The record does not raise concerns about the permit holder's compliance with conditions.

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

25. As of June 14, 2005, the permit holder has invested an approximate total of \$376,161 into the project. Investments into the project included costs to obtain easements and property, and to transfer Alsea Water District to Alsea County Service District; construction of Wells 1 and 2, and the intake control house; completion of a Water Improvement Project, the Water System Rehabilitation Project, and 1999 Water Management Plan; installation of a new reservoir, distribution lines, hydrants, a Chlorine injector pump, a master meter, a check valve, and valves for repair and maintenance isolation; upgrades to the pump station; and replacement of various sections of water distribution lines. An additional \$216,000 investment is anticipated for the completion of this project

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

26. As described in Findings 11 through 17 above, the District is currently relying on full development of Permit G-11354.
27. The District projects a population increase, on average, of 1.0 percent per year over the next eighteen years.
28. Given the District's current water supply situation and current and expected demands, there is a market and present demand for the water to be supplied under Permit G-11354.

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

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

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

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

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

31. Delay of development under Permit G-11354 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years, but also due to lack of available funding. The community served by the District is timber dependant and

qualifies as a low-income area. The remainder of the projects will be accomplished as capital funds become available.

Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]

The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

32. Permit G-11354 is not subject to an evaluation regarding maintaining the persistence of listed fish species because there is no "undeveloped portion" of the Permit G-11354 under OAR in 690-315-0010(6)(g).

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 537.630(2).
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. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, 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, 2020⁶ pursuant to OAR 690-315-0080(1)(d).
6. After considering the reasonable diligence and good faith of the appropriator, the financial investment made, the market and present demands for water, the fair return upon the investment, the requirements of other governmental agencies and uncontrollable events which delayed development under the permit, the Department has determined that the applicant has shown good cause for an extension to complete construction of the water system and to complete the application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. There is no undeveloped portion of the permit to be considered under OAR 360-315-0080(1)(f).

⁶ Pursuant to ORS 537.630(4), 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.

Proposed Order

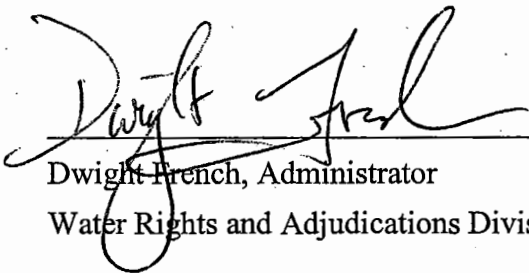
Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit S-52886 from October 1, 1998 to October 1, 2020.

Extend the time for complete application of water to beneficial use under Permit S-52886 from October 1, 2003 to October 1, 2020.

DATED: August 22, 2006

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



Dwight French, Administrator
Water Rights and Adjudications Division

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 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 October 6, 2006 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 any questions about statements contained in this document, please contact Ann L. Reece at 503-986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Mike Reynolds at 503-986-0820.

If you have any questions about the Department, or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

Address any correspondence to: Water Rights and Adjudications Division
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