

**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 #S-44388, Water Right )        PROPOSED FINAL ORDER  
Application #S-58906 )  
(City of Albany) )

<b>Permit Information</b>	
<b>Application File #S-58906 / Permit #S-44388</b>	
Basin: #02 - Willamette Basin / Watermaster District: #02	
Date of Priority: July 12, 1979	
<b>Authorized Use of Water</b>	
Source of Water:	South Santiam River, tributary to Santiam River
Purpose or Use:	Municipal Use
Maximum Rate:	29.0 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 as it contains  
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit #S-44388, water right Application #S-58906. A copy of Permit #S-44388 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, 2001, to October 1, 2063;
- grant the extension for complete application of water from October 1, 2001, to October 1, 2063; and
- make the extensions subject to certain conditions as set forth below.

## 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).

**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.

**OAR 690-315-0090(3)** allows the Department, under certain 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 Water Management and Conservation Plan under OAR Chapter 690, Division 86.

## **FINDINGS OF FACT**

### **Background**

1. Permit #S-44388 was granted by the Water Resources Department (Department) on September 27, 1979. The permit authorizes the use of up to 29.0 cfs of water from the South Santiam River, tributary to Santiam River, for municipal purposes. It specified that construction of the water development project was to be completed by October 1, 1981, and that complete application of water was to be made on or before October 1, 1982.
2. Four prior extensions have been granted for Permit #S-44388. The most recent extension request resulted in the construction and completion dates being extended to October 1, 2001.
3. The permit holder submitted an "Application for Extension of Time" to the Department on March 4, 2002, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #S-44388 be extended from October 1, 2001, to October 1, 2057.
4. 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.
5. Municipal and quasi-municipal water use permit extension rules were adopted by the Water Resources Commission and became effective on November 1, 2002 (OAR 690-315-0070 through 690-315-0100).
6. On March 21, 2003, the City of Albany (City) submitted an updated extension of time request for Permit #S-44388. The permit holder requested that both the time in which to complete construction of the water system and to complete beneficial use of water to the full extent under the terms of Permit #S-44388 be extended to October 1, 2063.
7. Notification of the permit holder's extension of time request for Permit #S-44388 was published on the Department's Public Notice dated March 25, 2003. No public comment on the extension application was received.

### **Review Criteria for Municipal and 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).*

**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. Surface water permits held by municipal corporations for municipal uses or purposes are not subject to the requirement to begin actual construction work within one year from the date of approval of the application.<sup>1</sup>

**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 #S-44388 consists of complete construction of the water system and complete application of water to beneficial use.
11. As of March 21, 2003, the permit holder has diverted 6.0 cfs of the 29.0 cfs of water allowed under Permit #S-44388 for municipal purposes.
12. In addition to the 29.0 cfs of water allowed under Permit #S-44388, the City of Albany holds Certificate #49386 for 21.0 cfs of water from the South Santiam River for municipal use.

The City of Albany's Parks Department holds the following permits for municipal use: Certificates #45178 for storage of 24.04 acre-feet (af) from Cox Creek; #45179 for 2.0 cfs of water from the South Santiam River; and #56763 for 5.0 cfs from the South Santiam River. These certificates are maintained for flow augmentation in creeks flowing through park lands, maintenance of water levels in lakes within park lands, and for irrigation on specific parks. The City does not plan to use these certificates to meet future municipal water demand.

13. Albany's current municipal demands for water total 27.0 cfs. To meet these demands, the City utilizes 21.0 cfs of water under Certificate #49386 and 6.0 cfs of water under Permit #S-44388. The City has not yet made beneficial use of 23.0 cfs of water under Permit #S-44388.
14. Future demand projections reflect a 1 million gallon per day (MGD) decrease in 2006, a result of the City of Millersburg's water system becoming independent of Albany's.

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<sup>1</sup> ORS 537.230(1) [1997 edition]

15. Based on a growth rate of 1.34 percent, the City of Albany projects that the 2002 population of 41,900 will grow to 94,300 by the year 2063. Full build-out for the City is projected to occur in the year 2074 with an approximate population of 109,000.
16. Current water rights held by the City for municipal purposes total 50.0 cfs. The City of Albany estimates that maximum daily water demand will reach 50.0 cfs by the year 2063. Based upon this projection, the City anticipates that the remaining undeveloped 23.0 cfs of water under Permit #S-44388 could be fully utilized by 2063.
17. Build-out of the Urban Growth Boundary (UGB) is projected to occur by the year 2074 based on a defined growth rate and available land uses. The City of Albany describes three categories of residential land use: developed; partially developed; and vacant. Partially developed and vacant residential areas account for the expected population increase that will result in a need for all of the water under Permit #S-44388. Developed residential lands were not used to project additional future population.

There are 2,930 acres designated as vacant residential and 2,236 acres designated as partially developed residential. The City estimates that the population in vacant and partially developed residential areas will increase by 46,509 and 21,682, respectively, beyond the year 2000 population of 40,852. This will result in an ultimate population of 109,000 at full build-out in the year 2074.

18. Non-residential water use demands include all commercial, heavy and light industrial, schools, and park demands. There are a total of 3,200 acres designated as non-residential. These acres include existing developed non-residential land in the City and currently vacant non-residential lands both in the City and within the Urban Growth Boundary. The City estimates at full build-out in the year 2074, the 3,200 acres will be fully developed and have a corresponding maximum daily demand of 37 million gallons per day (MGD).
19. In accordance with OAR 690-315-0070(3)(k) and as described by findings #16 and #17, the City of Albany demonstrated that their demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.
20. Given the amount of development left to occur, the City's projected annual growth rate and associated projected demands for water, and considering the amounts and types of lands and uses proposed to be served, the permittee's request to have until October 1, 2063, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #S-44388 is reasonable.

**Good Cause [OAR 690-315-0080(1)(e) and (2)]**

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(2).*

**Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(2)(a)(c) and (3)]**

*Reasonable diligence and good faith of the appropriator during the permit period constitutes a continuing test of whether and under what conditions 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(3).*

21. During the last extension period, being from October 1, 1996, to October 1, 2001, the City of Albany installed distribution lines.
22. As of March 21, 2003, the permit holder invested 19 percent of the total projected cost for complete development of this project, being an approximate total of \$43,910,000. An additional \$187,000,000 investment is anticipated for the completion of this project.
23. Since the issuance of Permit #S-44388 on September 27, 1979, approximately 6.0 cfs of the permitted 29.0 cfs of water has been diverted from the South Santiam River for beneficial municipal purposes under the terms of the 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(2)(b)]**

25. As of March 21, 2003, the permit holder has invested an approximate total of \$43,910,000 into the project, consisting of construction of a distribution system including distribution piping, a pumping system, reservoirs, and treatment facilities. An additional \$187,000,000 investment is anticipated for the completion of this project.

**The Market and Present Demands for Water [OAR 690-315-0080(2)(d)]**

26. As described in findings #12 through #17 above, the City anticipates that future growth and development will require the full amount of water under Permit #S-44388 to meet demands..

27. Given the City'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 #S-44388.

**Fair Return Upon Investment [OAR 690-315-0080(2)(e)]**

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

**Other Governmental Requirements [OAR 690-315-0080(2)(f)]**

29. 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(2)(g)]**

30. Delay of development under Permit #S-44388 was due to water use being dependent on population growth and increases in commercial and industrial demands.

**CONCLUSIONS OF LAW**

1. The permit holder 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 permit holder 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 ORS 537.230(1) [1997 edition], 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, 2063<sup>2</sup>, [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 and complete application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. In accordance with OAR 690-315-0090(3), the Department has established, as specified under Item #1 of the "Conditions" section of this Proposed Final Order for an Extension of Time, that the diversion of water beyond 6.0 cfs under Permit #S-44388 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension is final.

### **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-44388 from October 1, 2001, to October 1, 2063; and

Extend the time for complete application of water to beneficial use under Permit #S-44388 from October 1, 2001, to October 1, 2063.

Subject to the following conditions:

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<sup>2</sup> 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 Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625.



## CONDITIONS

### 1. Development Limitations

Appropriation of water beyond 6.0 cfs under Permit #S-44388 shall only be authorized upon issuance of a final order approving a new/revised Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The required Water Management and Conservation Plan shall be submitted to the Department within 3 years from the date this extension is final.

The deadline established in this Final Order for submittal of a Water Management and Conservation Plan shall not relieve a permittee of any existing or future requirements for submittal of a Plan at an earlier date as established through other orders of the Department. A Plan submitted to meet the requirements of this Final Order may also meet the Plan submittal requirements of other Department orders.

DATED: December 7, 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 690-315-0100(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 **Friday, January 21, 2005**, 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.

**This document was prepared by Lisa J. Juul. If you have any questions about any of the statements contained in this document, I am most likely the best person to answer your questions. You may contact me by telephone 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)986-0801.**

**Address any correspondence to:      Water Rights Section  
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