

**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-37278, Water Right	)	PROPOSED FINAL ORDER
Application #S-48925	)	
(Beverly Beach Water District)	)	

Permit Information

Application File #S-48925 / Permit #S-37278

Basin: #18 - Mid Coast Basin / Watermaster District: #01

Date of Priority: January 6, 1971

Authorized Use of Water

Source of Water:	Wade Creek, tributary of Pacific Ocean
Purpose or Use:	Quasi-Municipal
Maximum Rate:	0.5 cubic foot 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-37278, water right Application #S-48925. A copy of Permit #S-37278 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, 2028; and
- grant the extension for complete application of water from October 1, 1998, to October 1, 2028.

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(4) provides in pertinent part that municipal and quasi-municipal water use permit holders that serve a population of less than 1000 are not subject to OAR 690-315-0090(3) unless upon review of certain criteria of the Department determines that compliance is necessary.

FINDINGS OF FACT

Background

1. Permit #S-37278 was granted by the Water Resources Department (Department) on March 11, 1974. The permit authorizes the use of up to 0.5 cfs of water from Wade Creek, a tributary of the Pacific Ocean, for quasi-municipal purposes. It specified that construction of the water development project was to be completed by October 1, 1975, and that complete application of water was to be made on or before October 1, 1976.
2. Five prior extensions have been granted for Permit #S-37278. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1998.
3. The permit holder submitted an "Application for Extension of Time" to the Department on July 2, 2001, requesting the times in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #S-37278 be extended from October 1, 1998, to October 1, 2018.
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. The permit holder submitted an updated "Application for Extension of Time" to the Department on April 28, 2003, requesting 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-37278 be extended to October 1, 2028.
7. Notification of the Beverly Beach Water District's (District) extension of time request for Permit #S-37278 was published on the Department's Public Notice dated May 13, 2003. No public comment on the extension application was received.

8. On March 18, 2005, the District submitted additional information to supplement their Application for Extension of Time.

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)]

9. 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)]

10. Construction of the water system began within the time specified in the permit, being March 11, 1975.

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.

11. The remaining work to be accomplished under Permit #S-37278 consists of complete construction of the system and complete application of water to beneficial use.
12. As of April 28, 2003, the permit holder has diverted 0.09 cfs of the 0.5 cfs of water allowed under Permit #S-37278 for quasi-municipal purposes.
13. Based on an occupancy rate of 1.6 persons per unit, the current 110 units (being 108 developed residential lots and 2 commercial establishments), have an associated population of approximately 170. Assuming a similar occupancy rate, development of the District's remaining 148 vacant lots will add an additional 236 people for a total population of 406 by the year 2028. The District anticipates that full development of the remaining portion of Permit #S-37278 could occur by that time.

14. In addition to the 0.5 cfs of water allowed under Permit #S-37278, the District holds Certificate #22971 which allows the use of 0.15 cfs of water from an unnamed, tributary to Spencer Creek, for municipal purposes and Certificate #45770 allowing the use of 0.3 cfs of water from Wade Creek for group domestic use including the irrigation of lawn or non-commercial garden not to exceed 0.5 acre per family.
15. The District's diversion under Certificate #22971 is not currently in use because it was abandoned in order to provide Beverly Beach State Park with a guaranteed water source. Certificate #45770 is used only in a limited capacity because the water right only allows the District to supply water to a portion of their service area. The District, therefore, relies primarily upon the water under Permit #S-37278 to meet current and future demand, as it is the only water right that covers the District's entire service area.
16. Given the amount of development left to occur, the District's projected growth rate and associated projected demands for water, and considering the District's primary reliance upon the water under Permit #S-37278 to supply the service area, the permittee's request to have until October 1, 2028, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #S-37278 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).

17. During the last extension period under Permit #S-37278, being from October 1, 1993, to October 1, 1998, the following occurred: the District made improvements to their water treatment plant, including ensuring that the laboratory facilities are capable of performing water quality analyses required by the Oregon State Drinking Water Program.

18. As of April 28, 2003, the permit holder invested 46 percent of the total projected cost for complete development of this project, being an approximate total of \$260,000. An additional investment of \$300,000 is anticipated for the completion of this project.
19. Since the issuance of Permit #S-37278 on March 11, 1974, approximately 0.09 cfs of the permitted 0.5 cfs of water has been diverted from Wade Creek for beneficial municipal purposes under the terms of the permit.
20. 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)/

21. As of April 28, 2003, the permit holder has invested an approximate total of \$260,000 into the project, consisting of the following work: construction of the water treatment plant, diversion point, and reservoir; and installation of the transmission lines and distribution system. An additional \$300,000 investment is anticipated for the completion of this project.

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

22. As described in finding #13 above, development of the remaining 148 vacant lots is expected to increase the District's service population.
23. As described in findings #14 and #15 above, the District relies primarily upon Permit #S-37278 to meet current and future water demands within their service area.
24. 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 #S-37278.

Fair Return Upon Investment /OAR 690-315-0080(2)(e)/

25. 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)]

26. 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)]

27. Delay of development under Permit #S-37278 is due to the nature of the project, which is designed to be phased in over a period of years as growth of the service area occurs and lots are developed.

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. The permit holder demonstrated that actual construction on the project began within the time specified in 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, 2028¹, [OAR 690-315-0080(1)(d)].

¹ 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.

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. Considering that the population served under Permit #S-37278 is less than 1000 (as described in finding #13 above), the Department has reviewed the permit record and determined, pursuant to OAR 690-315-0090(4), that submittal of a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86 is not necessary.

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-37278 from October 1, 1998, to October 1, 2028; and

Extend the time for complete application of water to beneficial use under Permit #S-37278 from October 1, 1998, to October 1, 2028.

DATED: April 26, 2005


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, June 10, 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.

If you have questions about any of the statements contained in this document, please contact Lisa J. 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 Mike Reynolds. His telephone number is (503)986-0820.

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