

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-48348

Final Order
Extension of Time for Permit Number S-36249

Appeal Rights

This is a final order other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Application History

On December 17, 2001, Mt. Joseph Water Association submitted an application to the Department for an extension of time for permit number S-36249. The Department issued permit number S-36249 on January 17, 1973. The permit called for completion of construction of the water development project by October 1, 1974, and complete application of water to the full beneficial use by October 1, 1975. In accordance with OAR 690-315-0050(2), on May 18, 2004, the Department issued a Proposed Final Order proposing to extend the time to complete construction of the water development project to October 1, 2005, and the time to fully apply water to beneficial use to October 1, 2005. The protest period closed July 2, 2004, in accordance with OAR 690-315-0060(1). Timely comments from the permit holder were received by the Department on July 2, 2004.

The comments filed with the Department on July 2, 2004, explained that the proposed completion dates of October 1, 2005, will not provide sufficient time for the permit holder to complete development of the permit. The permit holder is currently in the process of negotiating an easement to one of the permitted points of diversion. Complete development of the permit cannot be accomplished until the easement is granted. The permit holder expects to obtain the easement and complete the water use project by October 1, 2010.

Based upon the comments received and the Department's continuing evaluation, therefore, the Department has determined that the following modifications must be made to the Proposed Final Order:

The "Proposed Order" section of the Proposed Final Order should be modified to, "Extend the time for complete construction of the water system under Permit #S-36249 from October 1, 2000, to October 1, 2010; and

Extend the time for complete application of water to beneficial use under Permit #S-36249 from October 1, 2000, to October 1, 2010,

Subject to the following conditions:

CONDITIONS

1. **In accordance with OAR 690-315-0050(6), the permittee must submit a written progress report to the Department by October 1, 2009.** The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:
 - a) The amount of construction completed;
 - b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
 - c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
 - d) Financial investments made toward developing the beneficial water.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR Chapter 690, Division 86 or ORS 537.099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

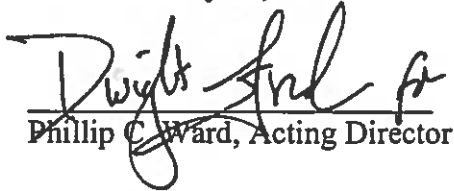
If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.”

The factors shown by the applicant, together with the conditions imposed by the Department and the modifications made herein, establish good cause for the permit extension pursuant to ORS 537.230, 537.248, 537.630, 539.010(5) and/or OAR 690-315-0040(2).

Order

The extension of time for Application Number S-48348, Permit Number S-36249, therefore, is approved with the above modifications to the Proposed Final Order. The deadline for completing construction is extended to October 1, 2010. The deadline for applying water to full beneficial use is extended to October 1, 2010.

DATED: July 14, 2004


Phillip C. Ward, Acting Director

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

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.

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