

**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-51243, Water Right) **PROPOSED FINAL ORDER**
Application #S-48348)
(Mount Joseph Water Association))

Permit Information

Application File #S-48348 / Permit #S-36249
Basin: #8 - Umpqua Basin / Watermaster District: #6
Date of Priority: June 21, 1971

Authorized Use of Water

Source of Water:	Two Unnamed Streams, tributaries of Willowa River
Purpose or Use:	Domestic Use for 90 Families
Maximum Rate:	0.09 cubic feet per second (cfs), being 0.045 cfs from each stream

**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-36249, water right Application #S-48348. A copy of Permit #S-36249 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, 2000, to October 1, 2005; and
- grant the extension for complete application of water from October 1, 2000, to October 1, 2005.

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) 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 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

FINDINGS OF FACT

Background

1. Permit #S-36249 was granted by the Water Resources Department on January 17, 1973. The permit authorizes the use of up to 0.09 cfs of water from two unnamed streams, tributaries of the Wallowa River, for domestic

use for 90 families. The permit specified that construction of the water system was to be completed by October 1, 1974, and complete application of water was to be made on or before October 1, 1975.

2. Seven prior extensions of time have been approved for Permit #S-36249. The most recent extension request resulted in the construction and completion dates being extended to October 1, 2000.
3. The permit holder submitted an "Application for Extension of Time" to the Department on December 17, 2001, requesting the time in which to complete construction of the water system and to accomplish beneficial use of water to the full extent under the terms of Permit #S-36249 be extended from October 1, 2000, to October 1, 2005.
4. Notification of the permit holder's extension of time request for Permit #S-36249 was published on the Department's Public Notice dated November 20, 2001. No public comment on the extension application was received.

Review Criteria IOAR 690-315-0040(1)(2)

As set forth under OAR 690-315-0040(1)(2), the time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the applicable requirements of ORS 537.230, 537.248¹, and 539.010(5).

Other Governmental Requirements IORS 537.230(2)

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

Start of Construction IORS 537.230

6. Construction of the water system under Permit #S-36249 began within the time specified in the permit, being January 17, 1974.

¹ ORS 537.248 applies to reservoir permits only.

Financial Investment [ORS 539.010(5)]

7. As of December 17, 2001, the permit holder had invested a total of \$150,000 into the project, and during the last extension period completed work consisting of complete construction of the diversion works from unnamed stream #1 which serves a total of 30 users, installation of fire hydrants, work to obtain an easement, and survey for Phase 2. An additional \$60,000 investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1) and 539.010(5)]

Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [ORS 537.260, OAR 690-315-0040(3)].

In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

Amount of Construction

8. The following construction was completed within the time allowed in the permit or previous extension:

- a. The amount of construction completed within the time allowed in the permit or previous extension.

Construction of the water system began within the time specified in the permit, being January 17, 1974. The work completed during the last extension period consisted of complete construction of the diversion works from unnamed stream #1 which now serves a total of 30 users, installation of fire hydrants, work to obtain an easement, and survey for Phase 2.

Beneficial Use of Water

9. The following beneficial use was made of the water during the permit or previous extension time limits:

- a. During the last extension period, the permit holder has diverted water from unnamed stream #1, a tributary of Wallowa River, for domestic

use for 30 households. The extension of time application does not identify the maximum rate of beneficial water use accomplished during the previous extension period.

Compliance with Conditions

10. The water right permit holder's conformance with the permit or previous extension conditions.
 - a. The record does not raise concerns about the permit holder's compliance with conditions.

Financial Investments

11. Financial investments made toward developing the beneficial water use.
 - a. As of December 17, 2001, the permit holder had invested approximately 71 percent of the total projected cost for complete development of this project. A total of \$150,000 has been invested into the project, and during the last extension period completed work consisted of complete construction of the diversion works from unnamed stream #1 which serves a total of 30 users, installation of fire hydrants, work to obtain an easement, and survey for Phase 2. An additional \$60,000 investment is anticipated for the completion of this project.

The Market and Present Demands for Water (ORS 539.010(5) and OAR 690-315-0040(4))

In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

12. The amount of water available to satisfy other affected water rights and scenic waterway flows.
 - a. The permitted points of diversion, authorized under Permit #S-36249, are not located within or above designated boundaries of the Wallowa-Grande Ronde state scenic waterway.
13. Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

- b. The permitted points of diversion, authorized under Permit #S-36249, are located within a stream segment that has been identified by the Oregon Department of Fish and Wildlife as a "high" needs ranking area for streamflow restoration for fish, and that has been identified by the Oregon Department of Environmental Quality as a water quality limited area.
 - a. The permitted points of diversion, authorized under Permit #S-36249, are located above a segment of the Willowa River designated as a federal wild and scenic river.
- 14. The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.
 - a. The permitted points of diversion, authorized under Permit #S-36249 are located within a designated sensitive, threatened or endangered species area for aquatic species utilizing surface water resources, as identified by the Oregon Department of Fish and Wildlife.
- 15. Economic investment in the project to date.
 - a. As of December 17, 2001, the permit holder had invested approximately 71 percent of the total projected cost for complete development of this project. A total of \$150,000.00 has been invested into the project, and during the last extension period completed work consisting of complete construction of the diversion works from unnamed stream #1 which serves a total of 30 users, installation of fire hydrants, work to obtain an easement, and survey for Phase 2. An additional \$60,000 investment is anticipated for the completion of this project.
- 16. Other economic interests dependent on completion of the project.
 - a. None have been identified.
- 17. Other factors relevant to the determination of the market and present demand for water and power.
 - b. None have been identified.

Fair Return Upon Investment [ORS 539.010(5)]

18. The use of water from the permitted water development will result in reasonable returns against the investment made in the project to date.

Duration of Extension [OAR 690-315-0040(1)(c), ORS 539.010(5)]

As set forth under OAR 690-315-0040(1)(c), time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.

19. As of December 17, 2001, the remaining work to be completed consists of completion of construction, and full application of water to beneficial use under Permit #S-36249.
20. Unforeseen events extended the length of time needed to fully develop and perfect the permit, caused mainly by problems obtaining an easement from the property owner to gain access to the water from unnamed stream #2 and by the time needed to sell and build homes on all of the lots.
21. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2005, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #S-36249 is both reasonable and necessary.

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.
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0040(1)(a).
3. The applicant demonstrated that actual construction on the project began within the time specified in the permit, as required by OAR 690-315-0040(1)(b).

4. Completion of construction and full application of water to beneficial use can be completed by October 1, 2005², as required by OAR 690-315-0040(1)(c).
5. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause exists for an extension to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

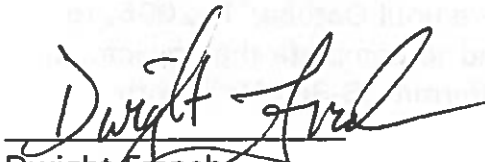
Proposed Order

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-36249 from October 1, 2000, to October 1, 2005; and

Extend the time for complete application of water to beneficial use under Permit #S-36249 from October 1, 2000, to October 1, 2005.

DATED: May 18, 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 690-315-0060, 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

² 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.

for contested case hearing must be in writing and must be received by the Water Resources Department no later than Friday, July 2, 2004, 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:
 - A. Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or
 - B. The applicant submitted a timely request for a contested case hearing.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503)986-0801. Address all other correspondence to:

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

If you have any questions about statements contained in this document, please contact Lisa 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 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 Rights Information Group at (503)986-0900.