

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time ) PROPOSED  
for Permit S-54772, Water Right Application S-87553 ) FINAL  
in the name of Jeannette Brunell ) ORDER

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**Permit Information**

Application:	S-87553
Permit:	S-54772
Basin:	South Coast / Watermaster District 19
Date of Priority:	September 3, 2009
Source of Water:	Two unnamed streams, tributaries of Coos River
Purpose or Use:	Domestic Use Expanded for six households
Maximum Rate:	0.03 cubic foot per second (cfs)

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***Please read this Proposed Final Order in its entirety.***

*In summary, the Department proposes to:*

- Grant an extension of time to complete construction of the water system from August 23, 2017, to October 1, 2020.
- Grant an extension of time to apply water to full beneficial use from August 23, 2017, to October 1, 2020.<sup>1</sup>

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

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<sup>1</sup> Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use.

## **ACRONYM QUICK REFERENCE**

Application – Application for Extension of Time  
Department – Oregon Water Resources Department  
ODFW – Oregon Department of Fish and Wildlife  
PFO – Proposed Final Order  
cfs – cubic feet per second  
FOF – Finding of Fact

## **AUTHORITY**

**Generally, see ORS 537.230 and OAR Chapter 690 Division 315.**

**ORS 537.230(2)** provides in pertinent part that the Oregon Water Resources Department (Department) may, 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)** 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0040** provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

## **FINDINGS OF FACT**

1. On August 23, 2012, Permit S-54772 was issued by the Department. The permit authorizes the use of up to 0.03 cfs of water from two unnamed streams, tributaries of Coos River, for domestic use expanded for six households. The permit specified completion of construction and complete application of water was to be made within five years of the date of permit issuance, being August 23, 2017.
2. On February 28, 2018, Marc Van Camp, agent for the permit holder, submitted an Application for Extension of Time (Application) to the Department, requesting the time to complete construction of the water system extended from August 23, 2017, to October 1, 2020, and the time to apply water to full beneficial use under the terms and conditions of Permit S-54772 be extended from August 23, 2017, to October 1, 2020. This is the first permit extension requested for Permit S-54772.
3. On March 6, 2018, notification of the Application for Permit S-54772 was published in the Department’s Public Notice. No public comments were received.

**Review Criteria [OAR 690-315-0040]**

*In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).*

**Complete Extension of Time Application [OAR 690-315-0040(1)(a)]**

4. On February 28, 2018, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]**

5. Construction of the water system began prior to permit issuance. The permit holder states, the six households have used the water system since approximately 1915.
6. According to the Application for a Permit to Use Surface Water submitted on September 3, 2009, the water system has been in place for 70 to 100 years.

Based on Findings of Fact (FOF) 5 and 6, the Department has determined the permit holder began construction of the water system prior to August 23, 2017.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

*In order to make a finding of “good cause” to approve the extension, the Department shall consider whether the applicant has demonstrated “reasonable diligence” in previous performance under the permit. OAR 690-315-0040(2)(a). In determining “reasonable diligence”, the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.*

**Amount of Construction [OAR 690-315-0040(3)(a)]**

*The amount of construction completed within the time allowed in the permit.<sup>2</sup>*

7. Construction of the water system began prior permit issuance.

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<sup>2</sup> “Actual Construction” is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder’s good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

8. Work was accomplished during the original development time frame under Permit S-54772, which includes installation of an ozone filtration system.

Based on FOF 5 through 8, the Department has determined that work has been accomplished prior to permit issuance and within the time allowed in the permit being from August 23, 2012, to August 23, 2017, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

**Compliance with Conditions [OAR 690-315-0040(3)(c)]**

*The water right permit holder's conformance with the permit conditions.*

9. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

Based on FOF 9, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit S-54772.

**Beneficial Use of Water [OAR 690-315-0040(3)(b)]**

*The amount of beneficial use made of the water during the permit time limits.*

10. A maximum rate of 0.03 cfs of water has been diverted from unnamed stream number one, tributary of Coos River for domestic use expanded of six households.
11. A maximum rate of 0.03 cfs of water has been diverted from unnamed stream number two, tributary of Coos River for domestic use expanded for one household.

Based on FOF 9 through 11, the Department has determined that beneficial use of water has been demonstrated from two unnamed streams, tributaries of Coos River.

**Financial Investments to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]**

12. The permit holder has invested approximately \$3,500, which is about 88 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$500 investment is needed for the completion of this project.

Based on FOF 12, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions; a financial investment has been made, and; beneficial use of water has been demonstrated. The Department

has determined the applicant has demonstrated reasonable diligence in previous performance under Permit S-54772.

**The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]**

*The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). 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:*

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) 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);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

**OAR 690-315-0040(4)(a)**

The amount of water available to satisfy other affected water rights and scenic waterway flows.

13. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-54772; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an application for a new water right is submitted.
14. Current Water Availability Analysis for the Coos River, tributary of Coos Bay at the mouth (watershed ID 31730403) show that water is available year round at the 80% exceedance level.

**OAR 690-315-0040(4)(b)**

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).

15. The points of diversion are located on two unnamed streams, tributaries of Coos River, and are not located within a Withdrawn Area.
16. Coos River, is not located within or above a state or federal scenic waterway.
17. The points of diversion are not in a location listed by the Department of Environmental Quality as a water quality limited stream.

**OAR 690-315-0040(4)(c)**

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

18. Coos River is located within an area ranked “moderate” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

**OAR 690-315-0040(4)(d)**

Economic interests dependent on completion of the project.

19. An approximate total of \$3,500 has been invested in the project.

**OAR 690-315-0040(4)(e)**

Other economic interests dependent on completion of the project.

20. No other economic interests, beyond that of the permit holder, which are dependent on completion of the project have not identified.

**OAR 690-315-0040(4)(f)**

Other factors relevant to the determination of the market and present demand for water and power.

21. No other factors relevant to the determination of the market and present demand for water and power have been identified.

**Fair Return Upon Investment [OAR 690-315-0040(2)(f)]**

22. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

**Other Governmental Requirements [OAR 690-315-0042(2)(g)]**

23. Delay in the development of this project that was caused by other governmental requirements were not identified.

**Unforeseen Events [OAR 690-315-0040(2)(h)]**

24. No unforeseen events were identified that extended the length of time needed to fully develop and perfect Permit S-54772.

**Denial of an Extension Would Result in Undue Hardship [OAR 690-315-0040(2)(i)]**

25. A denial of the extension would not result in undue hardship.

**Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]**

26. The Application provides evidence of good faith of the appropriator under Permit S-54772.

Based on FOF 5 through 12 and 19, the Department has determined that the applicant has shown good faith and reasonable diligence.

**Duration of Extension [OAR 690-315-0040(1)(c)]**

*Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

27. As of February 28, 2018, the permit holder states the remaining work to be completed consists of connecting the point of diversion on unnamed stream number two to the remaining five households, to provide redundancy in the domestic supply, and applying the water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit S-54772 is both reasonable and necessary.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

**CONCLUSIONS OF LAW**

1. The Applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The Applicant complied with construction timeline requirements to begin construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

3. Based on Finding of Facts 5 through 27, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2020<sup>3</sup>, as required by OAR 690-315-0040(1)(c).
4. The Applicant can complete the project within the time period requested for the extension on the project.
5. The Applicant has demonstrated good cause for the extension.

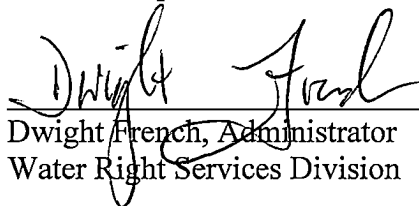
### PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction of the water system under Permit S-54772 from August 23, 2017, to October 1, 2020.

Extend the time to apply water to beneficial use under Permit S-54772 from August 23, 2017, to October 1, 2020.

DATED: April 10, 2018

  
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 Dwight French, Administrator  
 Water Right Services Division

*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 and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **May 25, 2018**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

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<sup>3</sup>Pursuant to ORS 537.230(5), 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 a new or revised claim of beneficial use as deemed appropriate by the Department.



