

**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-53237, Water Right) PROPOSED FINAL ORDER
Application #S-72364)
(Donald W. Giddings))

Permit Information	
<u>Application File #S-72364 / Permit #S-53237</u>	
Basin: #01 - North Coast / Watermaster District: #01	
Date of Priority: April 30, 1992	
<u>Authorized Use of Water</u>	
Source of Water:	Miles Creek and Two Unnamed Streams
Purpose or Use:	Group Domestic for a Population of up to 2350
Maximum Rate:	1.0 cubic foot per second (cfs), being 0.5 cfs from Miles Creek, 0.25 cfs from an Unnamed Stream #2 and 0.25 cfs from an Unnamed Stream #3

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-53237, water right Application #S-72364. A copy of Permit #S-53237 is enclosed as Attachment 1.

Unnamed Stream #3, for Group Domestic Use for a population of up to 2350. The permit specified that complete application of water was to be made on or before October 1, 2001.

2. The permit holder submitted an "Application for Extension of Time" to the Department on September 4, 2002, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #S-53237 be extended from October 1, 2001, to October 1, 2022.
3. Notification of the permit holder's extension of time request for Permit #S-53237 was published on the Department's Public Notice dated September 10, 2002. No public comment on the extension application was received.

Review Criteria [OAR 690-315-0040(1)(2)]

As set forth under OAR 690-315-0040(1)(2), the time limits to complete construction and/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 537.230¹, 537.248², and/or 539.010(5)³.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

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

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

5. Construction of the water system began within the time specified in the permit, being July 28, 1998.

Cost to Appropriate and Apply Water to a Beneficial Use [OAR 690-315-0040(2)(b)]

6. As of September 4, 2002, \$5,000 has been invested into the project as per the conditions set forth in Permit #S-53237. Additionally, the permit holder has spent \$180,000 for land clearing, \$100,000 in professional fees and applied for

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.248 applies to reservoir permits only.

³ ORS 539.010(5) applies to surface water permits only.

- a. The record does not raise concerns about the permit holder's compliance with conditions.

Financial Investments

10. Financial investments made toward developing the beneficial water use.

- a. As of September 4, 2002, the permit holder had invested approximately 15 percent of the total projected cost for complete development of this project. \$5,000 has been invested into the project as per the conditions set forth in Permit #S-53237. Additionally, the permit holder has spent \$180,000 for land clearing, \$100,000 in professional fees and applied for tentative plan approval for 119 additional lots in preparation for complete construction of the water system and full application of water to beneficial use allowed under the permit. An additional \$30,000 investment is anticipated for the completion of this project.

The Market and Present Demands for Water [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:

11. The amount of water available to satisfy other affected water rights and state scenic waterway flows.
 - a. The permitted points of diversion, authorized under Permit #S-53237, are not located within or above the designated boundaries of a state scenic waterway.
12. 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).
 - a. The permitted points of diversion, authorized under Permit #S-53237, are located within a stream segment that has been identified by the Oregon Department of Fish and Wildlife as a "low" needs ranking area for streamflow restoration for fish.
 - b. The permitted points of diversion are located within the North Coast Basin, the sources of water being Miles Creek, an Unnamed Stream #2 and an Unnamed Stream #3, none of which have been designated by the Oregon Department of Environmental Quality as water quality limited streams.

18. As of September 4, 2002, the remaining work to be completed consists of complete application of water to beneficial use (i.e., 119 lots are awaiting land use approval).
19. Delay of full beneficial use of water under Permit #S-53237 was due, in part, to changes in land ownership. The first permit holder abandoned development due to limited finances. The permit was then assigned to a second permit holder, who, in turn, assigned his rights to the current permit holder. Due to this recent assignment of Permit #S-53237, the current permit holder has not had sufficient time to complete construction of the water system and put the water to full beneficial use. Additionally, the Sandlake Road slide resulted in the need for additional geo-hazard studies which delayed development plans for the project.
20. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2022, to complete the application of water to beneficial use under the terms of Permit #S-53237 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), 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. Full application of water to beneficial use can be completed by October 1, 2022⁴, 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).

⁴ Pursuant to ORS 537.230(3), 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 the claim of beneficial use.

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.

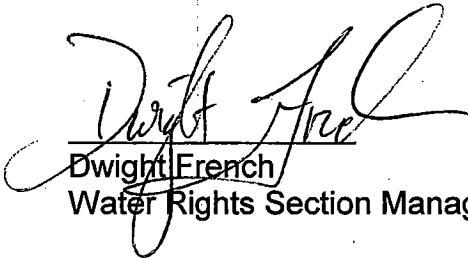
If the Department finds that diligence is questionable, the Department may:

- 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.

DATED: May 3, 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 690-315-0060, 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 17, 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;