

**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-49958, Water Right Application S-54580 ) FINAL  
in the name of Tualatin Valley Irrigation District ) ORDER

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**Permit Information**

Application:	S-54580
Permit:	S-49958
Basin:	Lower Willamette / Watermaster District 18
Date of Priority:	January 4, 1984, for 21.6 cfs; and December 18, 1986, for 3.4 cfs
Source of Water:	Unified Sewage Agency Rock Creek Treatment Plant Discharge
Purpose or Use:	Primary Irrigation of 612.5 Acres; and Supplemental Irrigation of 1,389.3 Acres
Maximum Rate	25.0 cubic feet 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 October 1, 1999, to October 1, 2023.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2023.<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> 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.

## **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  
FOF – Finding of Fact  
cfs - cubic feet per second

## **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 May 27, 1987, Permit S-49958 was issued by the Department. The permit authorizes the use of up to 25.0 cfs of water from the Unified Sewage Agency Rock Creek Treatment Plant Discharge, for primary irrigation of 612.5 acres and supplemental irrigation of 1389.3 acres. The permit specified actual construction was to begin by May 27, 1988, and construction of the water system was to be completed by October 1, 1989, and complete application of water was to be made on or before October 1, 1990.
2. Two prior permit extensions have been granted for S-49958. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1995, to October 1, 1999.
3. On June 28, 2018, Joe Rutledge, manager of Tualatin Valley Irrigation District, submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to complete construction of the water system be extended from October 1, 1999, to

October 1, 2023, and the time to apply water to full beneficial use under the terms and conditions of Permit S-49958 be extended from October 1, 1999, to October 1, 2023. This is the first permit extension requested for Permit S-49958.

4. On July 17, 2018, notification of the Application for Permit S-49958 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)]**

5. On June 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)]**

6. Actual construction of the water system began prior to the May 27, 1988, deadline specified in the permit. According to the permit holder, construction consisted of development by individual district patrons of their water systems, which utilize the water under Permit S-49958.

Based on Findings of Fact (FOF) 6, the Department has determined the permit holder began construction prior to October 1, 1990.

**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 or previous extension.<sup>2</sup>*

7. Construction of the water system or reservoir began prior to the May 27, 1988 deadline specified in the permit.
8. During the most recent extension period, being from October 1, 1995, to October 1, 1999, work accomplished within the time allowed in previous extension includes the installation of additional metering equipment.
9. Since October 1, 1999, approximately 200 acres of additional land was irrigated under Permit S-49958.

Based on FOF 8, 9, and 10, the Department has determined that work has been accomplished within the time allowed in the previous extension, which provides evidence of good cause and reasonable diligence from the appropriator 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 or previous extension conditions.*

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

Based on FOF 11, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit S-49958.

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

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

11. A maximum rate of 21.25 cfs of water from Unified Sewage Agency Rock Creek Treatment Plant Discharge has been diverted under Permit S-49958 for primary irrigation of approximately 400 acres, and supplemental irrigation of 1,389.3 acres.

Based on FOF 11, and 12, the Department has determined that beneficial use of 21.25 cfs of water has been used from Unified Sewage Agency Rock Creek Treatment Plant Discharge, for irrigation of approximately 400 acres and supplemental irrigation of 1,389.3 acres.

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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.

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

12. An approximate investment of \$50,000, which is about 77 percent of the projected cost for complete development of this project, has been made in the development of individual water systems served by TVID under this permit. The permit holder anticipates an additional \$15,000 investment is needed for the completion of this project.

Based on FOF 13, 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-49958.

**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-49958; 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 has determined that 25.0 cfs of water is available from Unified Sewage Agency Rock Creek Treatment Plant Discharge, under an agreement with the Washington County Unified Sewage Agency.

**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 the Tualatin River, and are not located within a Withdrawn Area.
16. The Tualatin River is not located within or above a/the state or federal scenic waterway.
17. The points of diversion are in a location listed by the Department of Environmental Quality as a water quality limited stream.
  - a. Tualatin River, River Mile 0.0 through 44.7 is listed under Water Quality Limited for Chlorophyll a, E. Coli, Ammonia, Zinc, Lead, Temperature, and Phosphorus.
  - b. Tualatin River, River Mile 0.0 through 65.8 is listed under Water Quality Limited for Dissolved Oxygen.
  - c. Tualatin River, River Mile 0.0 through 80.7 listed under Water Quality Limited for Biological Criteria, Iron, Copper, and Mercury.

**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. Tualatin 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 \$50,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

20. Other economic interests dependent on the completion of the project have been identified. Individual irrigators within the District rely on water delivered under this permit to supply both primary and supplemental irrigation. Additionally, fees collected from these District patrons, contribute to the operation and maintenance costs of the entire District infrastructure. Loss of these fees could result in higher fees collected from the remaining District patrons and/or reduced levels of maintenance of the District system.

**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 have not been 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-49958.

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

25. A denial of the extension would result in undue hardship, in that District patrons could have their irrigable acres reduced.

**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-49958.

Based on FOF 7 through 13, and 20, 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 June 28, 2018, the permit holder states the remaining work to be completed consists of completing construction of the water system for two points of diversion and applying water to full beneficial use on the remaining 200.0 acres.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2023, 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-49958 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 actual 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 7 through 27, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2023<sup>3</sup>, as required by OAR 690-315-0040(1)(c).

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<sup>3</sup>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.



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.

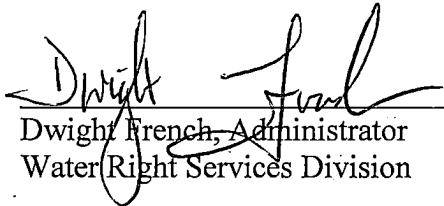
## PROPOSED ORDER

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-49958 from October 1, 1999, to October 1, 2023.

Extend the time to apply water to beneficial use under Permit S-49958 from October 1, 1999, to October 1, 2023.

DATED: August 28, 2018

  
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 **October 12, 2018**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
  - a. The name, address and telephone number of the petitioner;
  - b. A description of the petitioner's interest in the proposed 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 proposed final order would adversely affect or aggrieve the petitioner's interest;

