

**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-49685, Water Right Application S-68665,) FINAL
in the name of the Hebo Joint Water and Sanitary Authority) ORDER

Permit Information

Application File S-68665/ Permit S-49685
Basin 1 – North Coast Basin / Watermaster District 1
Date of Priority: January 28, 1986

Authorized Use of Water

Source of Water: two unnamed springs, tributary of Three Rivers
Purpose or Use: Quasi-Municipal
Maximum Rate: 0.22 Cubic Feet per Second (cfs), being 0.11 cfs from each spring

**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-49685, water right Application S-68665.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2008, to October 1, 2040.
- Grant an extension of time to apply water to full beneficial use from October 1, 2008, to October 1, 2040.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Authority – Hebo Joint Water and Sanitary Authority
Department – Oregon Department of Water Resources
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second
mgd – million gallons per day

AUTHORITY

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

ORS 537.230(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension to complete construction or perfect a water right. 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 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(5) authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. On August 7, 1986, Permit S-49685 was issued by the Department. The permit authorizes the use of up to 0.22 cfs of water being 0.11 cfs from each of two unnamed springs, tributaries of Three Rivers, for quasi-municipal use. The permit specified that construction of the water development project was to begin by August 7, 1987, be completed by October 1, 1988, and that complete application of water was to be made on or before October 1, 1989.
2. One prior permit extension has been granted for Permit S-49685. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2008.
3. On December 3, 2010, the Department issued an Order in the Matter of Partial Perfection of Water Right Permit S-49685 (Special Order Volume 83, page 71), and Certificate 86691 confirming the right to use up to 0.082 cfs of water from Spring 2, for quasi-municipal uses.
4. On January 16, 2019, Gordon Whitehead, president of Hebo Joint Water and Sanitary Authority (Authority) submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to complete construction, and the time to apply water to full beneficial use under the terms and conditions of Permit S-49685 be extended from October 1, 2008, to October 1, 2040.
5. Notification of the Application for Extension of Time for Permit S-49685 was published in the Department’s Public Notice dated January 29, 2019. No public comments were received regarding the extension application.
6. On March 24, 2005, the permit holder submitted additional information to supplement their Application for Extension of Time.

Review Criteria for Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

7. On January 16, 2019, the Department received a completed application for extension of time and the fee specified in ORS 536.050 from the permit holder.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

Start of Construction [OAR 690-315-0080(1)(b)]

8. Actual construction began prior to the August 7, 1987, deadline specified in the permit.

Duration of Extension [OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c), (d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

9. The remaining work to be accomplished under Permit S-49685 consists of completing construction, which includes improvements of the spring collection site, and replacement of the transmission pipeline; and applying water to full beneficial use.
10. As of October 1, 2008, the permit holder had diverted 0.128 cfs of the 0.22 cfs of water authorized under Permit S-49685 for quasi-municipal purposes. The Authority has perfected 0.082 cfs of water from Spring 2 under Certificate 86691. The remaining portion of Permit S-49685 for which this Extension of Time has been requested is 0.092 cfs of water, being 0.064 cfs from Spring 1, and 0.028 cfs from Spring 2.⁴
11. The Authority holds no additional water right permits or certificates.
12. The Authority's peak water demand within its service area boundaries was 0.078 cfs in 2018.
13. According to the Application, the population within the service boundary of the Authority was estimated to be 275 in 2018. The City estimates the population will increase at a growth rate of 0.006 percent per year, reaching an estimated population of 316 by the year 2040.
14. According to the Application, the peak demand is projected to be approximately 0.1 cfs of water by the year 2040.
15. The Authority does not anticipate additional commercial or industrial uses to be developed within the service area.
16. Full development of Permit S-49685 is needed to meet the present and future water demands of the Authority, including system redundancy and emergency use.
17. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2040, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit S-49685 is both reasonable and necessary.

⁴ Pursuant ORS 537.230(1), the undeveloped portion of Permit S-49685 is 0.092 cfs of water, being 0.064 cfs from Spring 1, and 0.028 cfs from Spring 2.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a) and (1)(c) and (4)]

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

18. Actual construction began prior to the August 7, 1987, deadline specified in the permit.
19. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit S-49685.
20. During the most recent extension period under Permit S-49685, being October 1, 1989, to October 1, 2008, the following work was accomplished by the Authority:
 - completed a water system evaluation report;
 - completed a pre-design engineering report; and
 - incrementally expanded the water system.
21. Since October 1, 2008, the following work was accomplished by the Authority include:
 - completed water system improvement design;
 - installed new storage tanks and chemical feed systems; and
 - incrementally expanded the water system.

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

22. As of January 16, 2019, the permit holder has invested approximately \$2,942,700, which is approximately 49 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$3,000,000 investment is needed for the completion of this project.
23. As of October 1, 2008, 0.046 cfs of the remaining portion of Permit S-49685 not perfected under Certificate 86691, being 0.092 cfs of water, being 0.064 cfs from Spring 1, and 0.028 cfs from Spring 2, has been diverted from the two springs for beneficial quasi-municipal purposes under the terms of this permit.

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

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

25. As of January 16, 2019, the permit holder has invested \$2,942,700, which is approximately 49 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$3,000,000 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]

26. As described in Findings 11 through 16 above, the permit holder has indicated, and the Department finds that the permit holder must rely on full development of their Permit S-49685.
27. The Authority projects a population increase of 0.006 percent per year over a 22 year period, being from 2018 to 2040.
28. Given the current water supply situation of Hebo Joint Water and Sanitary Authority, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under S-49685.
29. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.046 cfs (not to exceed the remaining maximum amount authorized under this permit, being a combined rate of 0.138 cfs of water, being 0.11 cfs from Spring 1, and 0.028 cfs from Spring 2 under Permit S-49685 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

30. Use and income from the permitted water development project would result in reasonable returns upon the investment made in the project to date.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

31. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

32. According to the Application, delay of development under Permit S-49685 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years.

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).
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0080(1)(b)
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. 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 the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
6. As required by OAR 690-315-0090(3) and as described in Finding 29, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 0.046 cfs (not to exceed the remaining maximum amount authorized under this permit, being a combined rate of 0.092 cfs of water, being 0.064 cfs from Spring 1, and 0.028 cfs from Spring 2 under Permit S-49685 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7).

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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 under Permit S-49685 from October 1, 2008, to October 1, 2040.

extend the time to apply the water to beneficial use under Permit S-49685 from October 1, 2008, to October 1, 2040.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

A maximum diversion of 0.046 cfs (not to exceed the remaining maximum amount authorized under this permit, being a combined rate of 0.092 cfs of water, being 0.064 cfs from Spring 1, and 0.028 cfs from Spring 2 under Permit S-49685, is currently allowed under Permit S-49685. Any diversion of water beyond 0.046 cfs (not to exceed the remaining maximum amount authorized under this permit, being a combined rate of 0.092 cfs of water, being 0.064 cfs from Spring 1, and 0.028 cfs from Spring 2 under Permit S-49685 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit S-49685 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-49685 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

DATED: March 12, 2019


Dwight French
Water Right Services Division Administrator

*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 **April 26, 2019**, 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;
 - d. A detailed description of how the proposed 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 protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant 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 protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503-986-0802.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to: Water Right Services Division
 725 Summer St NE, Suite A
 - Fax: 503-986-0901 Salem, OR 97301-1266
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