

**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-53637, Water Right Application S-69976,) FINAL
in the name of the Meadows Utilities, LLC) ORDER

Permit Information

Application File S-69976/ Permit S-53637

Basin 4 – Hood Basin / Watermaster District 3

Date of Priority: June 29, 1989

Authorized Use of Water

Source of Water: two unnamed reservoirs to be constructed or enlarged under Application R-71657, Permit R-12758, and two unnamed springs, tributaries of East Fork Hood River

Purpose or Use: Quasi-Municipal Use

Maximum Rate: 0.27 Cubic Foot per Second (cfs) total from one or both of the unnamed
LIVE FLOW springs, further limited to not more than 0.055 cfs for erosion control

Maximum Volume: 2.48 Acre-Feet (AF) from stored water only, being 1.54 AF from an
STORED WATER existing reservoir (to be enlarged) and 0.94 AF from a proposed reservoir,
further limited to a maximum cumulative total of live flow and stored water of 166.0 AF per year

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-53637, water right Application S-69976.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2004, to October 1, 2039.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
Meadows – Meadows Utilities, LLC
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic foot per second
gpm – gallons per minute
mgd – million gallons per day

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) 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 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

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 April 14, 1998, Permit S-53259 was issued by the Department. On December 9, 1999, superseding Permit S-53637 was issued to correctly describe the name of the permittee, the priority date, and the amount of stored water that is allowed. The permit authorizes the use of up to 0.27 cfs of water from one or both of two unnamed springs, further limited to not more than 0.055 cfs for erosion control; and up to 2.48 AF from stored water only from the two unnamed reservoirs to be constructed or enlarged under Application R-71657, Permit R-12758, being 1.54 AF from an existing reservoir (to be enlarged) and 0.94 AF from a proposed reservoir, all a tributary to the East Fork Hood River for quasi-municipal use. The combined use of live flow and stored water is further limited to no more than 166.0 AF per year. The permit specified that complete application of water was to be made on or before October 1, 2004.
2. On March 17, 2005, the permit holder, Meadows Utilities, LLC (Meadows) submitted an "Application for Extension of Time" (Application) to the Department requesting the time to apply water to full beneficial use under the terms and conditions of Permit S-53637 be extended from October 1, 2004, to October 1, 2017. This is the first extension of time request for Permit S-53637.
3. Notification of the Application for Extension of Time for Permit S-53637 was published in the Department's Public Notice dated April 5, 2005. Comments were received from Friends of Mount Hood and Oregon Chapter of the Sierra Club.
4. Meadows has requested, and has been granted administrative holds on the Application to allow for the parties involved to concentrate efforts on resolving land use issues. The most recent administrative hold expired on January 1, 2019.
5. On July 15, 2019, the permit holder submitted an amendment to their Application for Extension of Time. The amendment requested the extended time to apply water to full beneficial use be changed from October 1, 2017, to October 1, 2039, and provided updated information to reflect changes to the population projections, project completion schedule, and the federal legislation necessary to complete the land exchange associated with the project.
6. Notification of the updated Application for Extension of Time for Permit S-53637 was published in the Department's Public Notice dated July 23, 2019.

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

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.

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

7. On March 17, 2005, the Department received a completed application for extension of time and the fee specified in ORS 536.050 from the permit holder.

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

8. Actual construction began prior to the June 29, 1990, 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-53637 consists of, completing construction of the water system, which includes installation of electrical service to the pump-house, and construction of a water line to the water treatment facility; and applying water to full beneficial use.
10. In addition to physical work remaining to be accomplished, numerous land use approvals, an appraisal and land exchange, and other administrative and governmental requirements are necessary; and anticipated opposition to each of these necessary steps to the development of the resort, will impact the development timeline.
11. No water authorized under Permit S-53637, has been appropriated for quasi-municipal use.
12. In addition to the 0.27 cfs of live flow water, and 2.48 AF of stored water authorized under Permit S-53637, Meadows holds the following rights:
 - Permit R-12758 for storage of 2.48 AF of water from two springs and a well within the East Fork Hood River Basin for quasi-municipal use;
 - Permit G-13388 for 0.11 cfs of water from a well in the East Fork Hood River Basin for quasi-municipal use;
 - Certificate 48445 for 0.22 cfs of water, being 0.21 cfs of water for ski facility (commercial use) and 0.01 cfs of water for fire suppression from East Fork Hood River;
 - Certificate 88981 for 0.78 cfs of water from a well within the Buck Creek Basin for commercial use;
 - Limited License 1741 for 0.27 cfs of water from a spring within East Fork Hood River Basin for commercial use (expires April 30, 2023); and
 - Limited License 1742 for 0.21 cfs of water from a spring within East Fork Hood River Basin for commercial use (expires April 30, 2023).

Meadows permits, limited licenses, and certificates total 0.38 cfs of water and 2.48 acre-foot (AF) of water for quasi-municipal use, and 1.47 cfs of water for commercial use,

including snowmaking, and 0.01 cfs of water for fire suppression. Meadows Utilities, LLC has not yet made use of 0.27 cfs of water under Permit S-53637, 2.48 AF of water under Permit R-12758, and 0.11 cfs of water under Permit G-13388.

13. Meadows peak water demand within its service area boundaries was 0.46 cfs in 2018.
14. According to the Application, Meadows estimates the peak daily visitation rate to increase at an estimated growth rate of 4.5 percent per year, reaching an estimated population of 14,288 by the year 2039. The estimate is based on the average numbers of skier visiting Mount Hood Meadows on an average peak day.
15. According to the Application, the peak demand is projected to be approximately 0.49 cfs of water by the year 2039.
16. Full development of Permit S-53637 is needed to meet the future water demands of Meadows, 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, 2039, to accomplish the application of water to beneficial use under the terms of Permit S-53637 is both reasonable and necessary.

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 June 29, 1990, deadline specified in the permit.
19. Work accomplished during the original development time frame under Permit S-53637 includes entering into an installation and access agreement with Mt. Hood Railroad.
20. Since October 1, 2004, work accomplished by Meadows Utilities includes:
 - a. purchase and installation of material to construct and maintain a data logger on East Fork Hood River.

The Department has determined that work has been accomplished since permit issuance, which provides evidence of good cause and reasonable diligence in developing the permit.

21. As of July 15, 2019, the permit holder has invested approximately \$885,194, which is less than 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$209,585,343 investment is needed for the completion of this project.
22. No water has been used under Permit S-53637.
23. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns. The Application identifies that the required meter has not yet been installed, however, no water has been used under Permit S-53637.

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

24. As of July 15, 2019, the permit holder has invested approximately \$885,194, which is less than 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$209,585,343 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]

For quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0080(5)(a-f)].

25. 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-53637; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of diversion for Permit S-53637, located within East Fork Hood River Basin, are not located within a Withdrawn Area. East Fork Hood River is not located within or above any state or federal scenic waterway, however it is located within an area ranked low 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. East Fork Hood River is listed by the Department of Environmental Quality as a water quality limited stream for Iron, Biological Criteria, Thallium, Temperature, and Copper.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

26. As of July 15, 2019, the permit holder has invested approximately \$885,194, which is less than 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$209,585,343 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

27. Meadows has identified surrounding communities as having economic interest in the continued development of the project, in that, the use of water under this permit will allow for increased visitation to Mount Hood Meadows ski area. Additional visitation will necessitate additional employees to be hired, who will in turn provide additional economic benefit to the area from local tax payments, as well as providing increased economic activity for local businesses.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

28. As described in Findings 12 through 17 Meadows Utilities has indicated, and the Department finds that Meadows Utilities must rely on full development of Permit S-53637 to meet future water demands.
29. Meadows Utilities projects a population increase of 4.5 percent per year over a 20 year period, being the years 2019 to 2039.
30. Given the current water supply situation of Meadows Utilities, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit S-53637.
31. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this condition.
32. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water (not to exceed the maximum authorized of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) under Permit S-53637 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 2 of the "Conditions" section of this PFO to meet this requirement.

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

33. 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)]

34. Delays in the development of this project that have been caused by other governmental requirements have been identified. Federal Legislation to authorize a land exchange was necessary to begin development of the resort expansion where this water right is to serve. With additional appraisals necessary to complete the land exchange, it is not expected that the land exchange will occur until December 2020.

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

35. According to Application, delay of development under Permit S-53637 was due, in part, to opposition to the expanded resort and subsequent protests, litigation and mediation, as well as slow progress on legislation and the subsequent land exchange with U.S Forrest Service.

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 apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Full application of water to beneficial use can be completed by October 1, 2039⁴, as required by OAR 690-315-0080(1)(d).
6. 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 apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

⁴ 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..

7. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).
8. As required by OAR 690-315-0090(3) and as described in Finding 27, above, and specified under Item 2 of the “Conditions” section of this PFO, the diversion of any water (not to exceed the maximum authorized of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) under Permit S-53637 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).

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 apply the water to beneficial use under Permit S-53637 from October 1, 2004, to October 1, 2039.

Subject to the following conditions:

CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2024, 2029, and 2034. *A form will be enclosed with your Final Order.***

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

2. Development Limitations

No diversion of water is currently allowed under Permit S-53637. Diversion of any water (not to exceed the maximum authorized amount of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) 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 R-12758 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-53637 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: September 10, 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 **October 25, 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 TO ACTIVE DUTY SERVICEMEMBERS: Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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- If you have any questions about statements contained in this document, please contact Jeffrey 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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