

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-54337, Water Right Application S-85733,) FINAL
in the name of the City of Ashland) ORDER

Permit Information

Application File S-85733/ Permit S-54337

Basin 15 – Rogue Basin / Watermaster District 13

Date of Priority: August 11, 2003

Authorized Use of Water

Source of Water: Lost Creek Reservoir, constructed under Permit
R-8141 and R-8142, a tributary of Rogue River

Purpose or Use: Municipal Use

Maximum Rate: 1000.0 Acre-Feet (AF) each 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-54337, water right Application S-85733.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from September 7, 2021, to October 1, 2061.
- Grant an extension of time to apply water to full beneficial use from September 7, 2021, to October 1, 2061.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
City – City of Ashland
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan
TAP – Tangent, Ashland, Phoenix

Units of Measure

AF – Acre-Feet
cfs – cubic feet 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(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 which grants access to water under this extended permit.

FINDINGS OF FACT

1. On September 7, 2006, Permit S-54337 was issued by the Department. The permit authorizes the use of up to 1000.00 cfs of water from the Lost Creek Reservoir, constructed under Permit R-8141 and R-8142, a tributary of the Rogue River, for municipal use. The permit specified complete construction within 15 years from the date of permit issuance, being September 6, 2021.
2. On November 4, 2021, City of Ashland (City) 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-54337 be extended from September 7, 2021, to October 1, 2061. This is the first extension of time request for Permit S-54337.
3. Notification of the City's Application for Extension of Time for Permit S-54337 was published in the Department's Public Notice dated November 23, 2011. No public comments were received regarding the extension application.
4. On April 12, 2022, the Department issued an Order in the matter of Partial Perfection of Water Right Permit S-54337, and Water Right Certificate 96166 for 550.6 AF. The remaining portion of water authorized under Permit S-54337 is 449.4 AF.

Review Criteria for Municipal and 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)]

5. On November 4, 2021, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

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

6. Construction began prior to September 7, 2021, the original time period specified in the permit.
7. According to the Application, construction of the Tangent, Ashland, Phoenix (TAP) Pipeline was completed by 2014.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

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

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

Under OAR 690-315-0080(1)(c) and (1)(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.

8. The remaining work to be accomplished under Permit S-54337 consists of completing construction and applying water to full beneficial use.
9. Permit S-54337 authorized the use of 1000.0 AF of water for municipal purposes, of which 550.6 AF has been perfected under Certificate 96166. There is an undeveloped portion of 449.4 AF of water under Permit S-54337 as per ORS 537.230(1).
10. In addition to the remaining 449.4 AF of water authorized under Permit S-54337 the City holds the following municipal use water right certificates and permits:
 - Certificate 11090 for 0.035 cfs of water from Sulpher Spring;
 - Certificate 16024 for 0.315 cfs of water from Ashland Creek;
 - Certificate 35922 for 0.08 cfs of water from Ashland Creek;
 - Certificate 35923 for 0.08 cfs of water from Ashland Creek;
 - Certificate 39241 for 0.045 cfs of water from Ashland Creek;
 - Certificate 39242 for 0.42 cfs of water from Ashland Creek;
 - Certificate 39243 for 0.16 cfs of water from Ashland Creek;
 - Certificate 41651 for 0.022 cfs of water from Ashland Creek;
 - Certificate 41652 for 0.073 cfs of water from Ashland Creek;
 - Certificate 41772 for 0.04 cfs of water from Ashland Creek;
 - Certificate 44474 for 0.08 cfs of water from Ashland Creek;
 - Certificate 44475 for 0.03 cfs of water from Ashland Creek;
 - Certificate 44573 for 0.19 cfs of water from Ashland Creek;
 - Certificate 67618 for 0.04 cfs of water from Ashland Creek;
 - Certificate 67619 for 0.08 cfs of water from Ashland Creek;
 - Certificate 67620 for 0.09 cfs of water from Ashland Creek;
 - Certificate 67621 for 0.034 cfs of water from Ashland Creek;
 - Certificate 67623 for 0.034 cfs of water from Ashland Creek;
 - Certificate 67624 for 0.011 cfs of water from Ashland Creek;
 - Certificate 67625 for 0.09 cfs of water from Ashland Creek;
 - Certificate 72371 for 0.02 cfs of water from Ashland Creek;
 - Certificate 86353 for 0.045 cfs of water from Ashland Creek; and
 - Certificate 96166 for 550.6 AF of water from Lost Creek Reservoir.
11. The City does not anticipate the boundary of the service area to grow over the next twenty years. Growth within the current service boundary is expected to continue.
12. According to the Application, in 2018, the population within the service boundary of City of Ashland was 21,500. The City estimates the population will increase at a growth rate of 0.27 percent per year, reaching an estimated population of 24,009 by the year 2061.
13. The City's peak water demand within its service area boundaries was 5.5 mgd in 2018 (10.22 cfs based on 24-hour pumping).

14. The City's peak day demand is projected to be approximately 6.41 mgd of water by the year 2061 (11.91 cfs based on 24-hour pumping).
15. The City has a water supply connection with Talent Irrigation District (TID) to supply water to the City during the irrigation season.
16. The City has a connection to the City of Medford Duff Water Treatment Facility, which utilizes the TAP Pipeline to deliver water to the City.
17. Full development of Permit S-54337 is needed to address the present and future water demand of City of Ashland, including system redundancy and emergency use.
18. Based on Findings of Fact 9-18, the Department finds that the City's request for an extension of time until October 1, 2061, to complete construction and to apply water to full beneficial use under the terms of Permit S-54337 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), (3)(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.

19. Work was accomplished during the original development time frame. The City accomplished the following:
 - WMCP was submitted to the Department; and
 - constructed the TAP Pipeline.

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

20. According to the Application, as of November 4, 2021, they have invested approximately \$6,162,122, which is about 33 percent of the total projected cost for complete development of this project. The City estimates a \$12,278,800 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 municipal or 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).

21. 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)*].

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-54337; 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 point of re-diversion for Permit S-54337, located on Rogue River, is located within a Withdrawn Area. Rogue River is located within the Rogue Scenic Waterway, and it is located within an area ranked highest 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. Rogue River is listed by the Department of Environmental Quality as a water quality limited stream.

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

22. According to the Application, as of November 4, 2021, they have invested \$6,162,122, which is 33 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$12,278,800 investment is needed for the completion of this project.

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

23. As described in Findings 9 through 18 the City has indicated, and the Department finds that City of Ashland must rely on full development of Permit S- 54337 to meet its present and future water demands.
24. The City estimates an annual population growth rate of 0.27 percent per year a 43 year period, being (year) to 2061.
25. Given the current water supply situation of City of Ashland, 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-54337.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 550.6 AF (not to exceed the maximum amount authorized under this permit, being 1000.00 AF) under Permit S-54337 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 of water 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)]

27. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit S-54337.

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

28. According to the Application, delay in the development of this project was caused, in part, to agreements to increase the capacity of the TAP Pipeline between multiple governmental entities.

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

29. Delay of development under Permit S-54337 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 City 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 City 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. As required by OAR 690-315-0080(1)(b), the permit holder was able to demonstrate that construction of the project began (commenced) within the time period required by ORS 537.230(2), being no later than September 7, 2021, in order to be within the fifteen year time period as specified in the permit.
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit S-54337 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2061⁴, as required by OAR 690-315-0080(1)(d).
7. 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

⁴ For permits applied for or received after July 9, 1987, within one year after complete development of the permit, the permittee shall submit a Claim of Beneficial Use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Department finds that the City 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).

8. As required by OAR 690-315-0090(3) and as described in Finding 26, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 550. AF (not to exceed the maximum amount authorized under this permit, being 1000.00 AF) under Permit S-54337 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water 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 complete construction under Permit S-54337 from September 7, 2021, to October 1, 2061.

Extend the time to apply the water to beneficial use under Permit S-54337 from September 7, 2021, to October 1, 2061.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

No diversion of water is currently allowed under the unperfected portion of Permit S-54337⁵. Any diversion of the remaining unperfected portion of water under the permit, being 449.4 AF, shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of diversion of water 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. The amount of water used under Permit S-54337 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, 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-54337 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

⁵ Permit S-54337 was issued for a total of 1000.0 AF; 550.6 AF was partially perfected under Certificate 96166.

an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: June 21, 2022


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 **August 5, 2022**, 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.

If you have any questions about statements contained in this document, please contact Jeffrey Pierceall at 503-979-3213.

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
