

WATER RESOURCES DEPARTMENT

DIVISION 315

WATER RIGHT PERMIT EXTENSIONS

690-315-0010

Purpose

(1) OAR 690-315-0010 through 690-315-0100 establish the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:

(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law, or

(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.

(2) OAR 690-315-0010 through 690-315-0100 do not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.

(3) Except as provided in subsection (4) of this Section, these rules shall become effective July 1, 2001, superceding OAR 690-320-0010 and all applications requesting extensions of time to begin construction and perfect water rights permits filed with the Department on or after July 1, 2001 shall be governed by OAR 690-315-0010 through 690-315-0060.

(4) Notwithstanding subsection (3), all extension applications for municipal and quasi-municipal water use permits requesting additional time to complete construction and/or apply water to full beneficial use for which the Department has not issued a Proposed Final Order by November 1, 2002, shall be governed by 690-315-0070 through 690-315-0100.

(5) For the purpose of the rules in this Division "Protest" means a written statement expressing disagreement with a proposed final order issued under OAR 690-315-0050, filed in the manner and having the content as described in OAR 690-315-0060.

(6) For the purpose of the rules in 690-315-0070 through 690-315-0100:

(a) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection,

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irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power;

(b) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses except: an irrigation district organized under ORS Chapter 545, a drainage district organized under ORS Chapter 547, a water improvement district organized under ORS Chapter 552, or a water control district organized under ORS Chapter 553; ~~and~~

(c) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation, other than a public corporation, created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use[-];

~~(d) "Maintain the persistence of listed fish species" means the use of the undeveloped portion of the permit in such a way as to maintain the viability of listed fish species populations in the portions of waterways affected by water use under the permit;~~

~~(e) "Viability" means populations of naturally produced fish comprising the Evolutionarily Significant Unit are sufficiently abundant, productive, and diverse in terms of life histories and geographic distribution that the Evolutionarily Significant Unit as a whole will persist into the foreseeable future;~~

~~(f) "Population" means a group of listed fish species, as described in subsection (6)(d) of this rule, originating and reproducing in a particular time which does not interbreed to any substantial degree with any other group reproducing in a different area, or in the same area at a different time;~~

~~(d)~~ ~~(e)~~ **"Fish species listed as sensitive, threatened, or endangered under state or federal law" and "Listed fish species" means fish species listed as threatened or endangered under the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C.) or listed as sensitive, threatened or endangered by the Oregon State Fish and Wildlife Commission under ORS 496.172 to 496.176 and OAR Chapter 635, Division 100;**

~~(e)~~ ~~(h)~~ **"Use of the undeveloped portion of the permit" means the diversion of the undeveloped portion of a surface water permit or the impact on a stream from pumping the undeveloped portion of a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR Chapter 690, Division 09;**

~~(f)~~ ~~(i)~~ **"Portions of waterways affected by water use under the permit" means**

~~(A)~~ **Those portions of the river drainage basin at or below the point of diversion for a surface water permit or the location of impact on a stream from a ground water permit where the Department has determined there is a potential for substantial interference pursuant to**

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OAR Chapter 690, Division 9 ~~where use of the undeveloped portion of the permit will affect the persistence of listed fish species;~~

~~(B) The watershed, where use of the undeveloped portion of the permit occurs, downstream to the lower-most point within the applicable river basin as identified by the Department pursuant to its authority under ORS 536.700;~~

~~(g) (i) “Undeveloped portion of the permit” means the portion of the permit that is the difference between the maximum rate, or duty if applicable, specified in the permit and the maximum rate, or duty if applicable, diverted for beneficial use before the extension; and~~

~~(h) (ii) “Water Management and Conservation Plan” means a Water Management and Conservation Plan pursuant to OAR Chapter 690, Division 86.~~

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 1-2001, f. & cert. ef. 1-31-01; WRD 1-2002, f. & cert. ef. 4-30-02; WRD 4 2002, f. & cert. ef. 11-1-02

690-315-0020

Application for Extension of Time for Other Than Municipal and Quasi-Municipal Water Use Permits

(1) Under this rule, water right permit holders **for other than municipal or quasi-municipal uses** may apply to the Department for extensions of time to complete construction and/or apply the water to the full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a water right permit holder shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) If the water right permit holder receives delivery of the subject water right permit from a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water;

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(d) Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:

(A) "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence;

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.

(e) Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to:

(A) The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied;

(B) The maximum rate, **or duty if applicable**, of diversion, if any, made to date; and

(C) If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.

(f) A description of financial expenditures made toward completion of the water development;

(g) An estimate of the cost to complete the water development;

(h) A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project which have significantly delayed completion of construction or perfection of the right;

(i) The date by which the water development will be completed and water put to full beneficial use;

(j) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(k) Justification of why the requested time in subsection (i) is needed to complete the project and/or apply the water to full beneficial use;

(l) A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs;

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(m) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; and

(n) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application within 90 days after the required date of completion specified by the permit or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.260 or 537.410.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 4 2002, f. & cert. ef. 11-1-02

690-315-0030

Application for Extension of Time to Begin Construction on Storage Projects

(1) Counties, municipalities or districts constructing new storage projects pursuant to ORS 537.248 may apply for extensions of time to begin construction.

(2) To apply for an extension of time under this rule, a water right permit holder shall submit to the Department a completed application for extension of time. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application to begin construction must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) A summary of any unforeseen events which delayed the beginning of construction;

(d) The date by which the water development will be completed and water applied to the full beneficial use;

(e) A justification of why the requested time is needed to begin construction and fully apply water to beneficial use;

(f) Any additional information the applicant determines is relevant to evaluate the application in accordance with applicable statutory requirements and these rules; and

(g) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

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(4) If the Department does not receive an extension application 90 days after the required date specified by the permit to begin construction or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.410.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98

690-315-0040

Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits

(1) 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 shall find:

(a) The applicant has submitted a completed application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;

(c) The applicant can complete the project within the time period requested for the extension; and

(d) There is good cause to approve the extension.

(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;

(b) The cost to appropriate and apply the water to a beneficial purpose;

(c) The good faith of the appropriator;

(d) The market for water or power to be supplied;

(e) The present demands for water or power to be supplied;

(f) The income or use that may be required to provide fair and reasonable returns on investment;

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- (g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;
- (h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;
- (i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and
- (j) Any other factors relevant to a determination of good cause.
- (3) In determining reasonable diligence in subsection (2)(a), 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 permit holder conformance with the permit or previous extension conditions; and
- (d) Financial investments made toward developing the beneficial water use.
- (4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:
- (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 demand for water and power.
- (5) If the extension is requested pursuant to ORS 537.230 or 537.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B),

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during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended and the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410.

(6) The Department may request additional information necessary to evaluate an application.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4-1998, cert. ef. 11-2-98

690-315-0050

Department Action on Extension Applications

If the Department finds an applicant has submitted a completed application as required in 690-315-0020 or 690-315-0030, the Department shall process the application as established in this rule.

(1) The Department shall publish notice of the extension application in its weekly public notice prior to issuance of a proposed final order on the extension request. The notice shall include a request for comments on the application, the date by which comments must be received by the Department and information about how an interested person may review or obtain a copy of the application. The comment period shall be at least 30 days. The notice shall also include the following information about the permit and the extension application:

(a) Applicant name and address;

(b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;

(c) Common name of water source(s) listed in the permit;

(d) Permit number;

(e) Use allowed in the permit;

(f) Proposed extended date of completion; and

(g) A statement that copy fees are required to receive a proposed final order.

(2) After consideration of the administrative record, including but not limited to any comments filed on the extension application, the Department shall issue a proposed final order granting the extension request, with or without additional conditions, or denying the extension request. The Department is not required to respond directly to comments, but may

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respond to the issue, if applicable and relevant to the decision, within the proposed final order.

(3) The Department shall mail the proposed final order issued under subsection (2) of this rule to the applicant and a copy of the proposed final order to any person who submitted comments and has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.

(4) Permit time extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(5) Extension orders may include, but are not limited to, any condition or provision needed to:

(a) Ensure future diligence;

(b) Mitigate the effects of the subsequent development on competing demands on the resource; and

(c) Periodically document the continued need for the permit.

(6) For extensions exceeding five years, the Department shall 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.

(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 described in subsection (6)(a) of this rule 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.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98

690-315-0060

Proposed Final Order Hearing Rights

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(1) The applicant or any other person adversely affected or aggrieved by the proposed final order described in OAR 690-315-0050(2) may ~~[request]~~ **submit a written protest to** ~~[a contested case hearing on]~~ the proposed final order. The written **protest** ~~[request for contested case hearing]~~ must be filed within 45 days from the date of publication of the proposed final order in the Department's weekly notice.

(2) A written **protest** ~~[request for contested case hearing]~~ shall include:

(a) The name, address and telephone number of the petitioner;

(b) A description of the petitioner's interest in the **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** ~~[petition]~~ upon the water right permit holder, if petitioner is other than the water right permit holder; and

(g) The protest fee required under ORS 536.050, **if petitioner is other than the water right permit holder.**

(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** ~~[request for contested case hearing]~~ has been submitted, and:

(A) Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or

(B) The applicant **submits** ~~[submitted]~~ a ~~[timely]~~ **written** request for a contested case hearing **within 30 days after the close of the period for submitting protests.**

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630 & ORS

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98

690-315-0070

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Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits

(1) Under this rule, holders of municipal and quasi-municipal water use permits may apply to the Department for an extension of time to complete construction and/or apply the water to full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a holder of a municipal or quasi-municipal water use permit shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) For quasi-municipal water use permit holders, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d), if required under the applicable statute;

(d) For municipal water use permits issued on or after June 29, 2005, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d);

(e) [~~d~~] Evidence of actions taken to develop the right within the permitted time period and/or time period of the previous extension;

(f) [~~e~~] Evidence of compliance with conditions contained in the permit and any previous extension(s) or the reason the condition was not satisfied;

(g) [~~f~~] Evidence of the maximum rate, **or duty if applicable, diverted for beneficial use,** [~~of diversion,~~] if any, made to date;

(h) [~~g~~] An estimate of the population served and a description of the methodology(ies) used to make the estimate;

(i) [~~h~~] A description of financial expenditures made toward completion of the water development;

(j) [~~i~~] An estimate of the cost to complete the water development;

(k) [~~j~~] A summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project that have significantly delayed completion of construction or perfection of the right;

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(l) ~~(k)~~ An estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use. Extension requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.

(m) ~~(l)~~ A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(n) ~~(m)~~ Justification for the time requested to complete the project and/or apply the water to full beneficial use;

(o) ~~(n)~~ Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and rules; ~~and~~

(p) ~~(o)~~ Any other information required by the Department that is necessary to evaluate the application in accordance with applicable statutory requirements[-]; **and**

(q) For municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, the completed application must include a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

690-315-0080

Criteria for Department Review of Extension Applications for Municipal and Quasi-Municipal Water Use Permits

(1) In order to approve an application for an extension of time for municipal and quasi-municipal water use permits holders to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, the Department shall find:

(a) The application is complete, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) The applicant began actual construction on the project, as defined in 690-315-0020(3)(d), within the time period, if any, required under the applicable statute;

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(c) The time requested to complete construction or apply water to full beneficial use is reasonable;

(d) The applicant can complete the project within the time period requested for the extension; and, if the request is for more than 50 years that the estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder; [~~and~~]

(e) There is good cause to approve the extension; **and**

(f) For the first extension issued after June 29, 2005 for municipal water use permits issued before November 2, 1998:

(A) There are agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or

(B) It is determined that use of the undeveloped portion of the permit will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or

~~(C)~~ **(B) If it is determined that use of the undeveloped portion of the permit would not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, the undeveloped portion of the permit is conditioned to maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.**

(2) The Department's finding for municipal use permits under subsection (1)(f) of this rule shall be based on data that is available at the time of the permit extension and advice of the Oregon Department of Fish and Wildlife (ODFW). The Department's finding shall be limited to impacts related to streamflow as a result of use of the undeveloped portion of the permit and further limited to where streamflow is a limiting factor for the subject listed fish species.

(a) Except for municipal ground water permit extension applications where the Department has determined there is not the potential for substantial interference with surface water under OAR Chapter 690 Division 9, the ~~The~~ Department shall notify ODFW of each pending municipal water use permit extension application that is subject to subsection (1)(f) of this rule and provide at least 60 days for ODFW to respond prior to issuing a proposed final order under 690-315-0050. The Department may issue a proposed final order prior to 60 days if comments are received from ODFW.

(b) Upon notifying ODFW under subsection (2)(a) of this rule, the Department shall also notify the applicant that its municipal permit extension application has been sent to ODFW for review.

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(c) For ground water permits submitted to ODFW under this rule, the Department shall provide to ODFW and the applicant the Department's estimate of surface water impacts that would result from use of the undeveloped portion of the ground water permit.

(d) ~~(b)~~ ODFW shall provide its written advice to the Department on the extension application within 60 days of the Department's notice in subsection (2)(a) of this rule or notify the Department that additional time, not to exceed 120 days unless the applicant consents to more time, will be needed to complete its evaluation.

(e) ~~(e)~~ If ODFW's written advice to the Department indicates ~~it is determined that use of the undeveloped portion of the permit would not maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit~~ where it is determined streamflow is a limiting factor, ODFW may recommend to the Department fishery resources protection conditions for inclusion in the proposed final order under 690-315-0050 that would provide protection to maintain the persistence of listed fish species.

(f) Upon receiving ODFW's written advice, the Department shall notify the applicant of any fishery resource protection conditions that may be proposed in the proposed final order under 690-315-0050. The Department's notice shall also provide the applicant an opportunity to request the Department place the permit extension application on administrative hold.

(g) ~~(d)~~ The Department may place fishery resource protection conditions on the undeveloped portion of the permit in the extension proposed and final order under 690-315-0050 if the Department finds that, without such conditions, ~~at the time of the permit extension that use of the undeveloped portion of the permit will not maintain, in the portions of waterway affected by water use under the permit, the persistence of listed fish species.~~

(3) ~~(2)~~ The Department's determination of good cause shall consider:

- (a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;
- (b) The cost to appropriate and apply the water to a beneficial purpose;
- (c) The good faith of the appropriator;
- (d) The market and present demands for water or power to be supplied;
- (e) The income or use that may be required to provide fair and reasonable returns on investment;
- (f) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right; and

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(g) Any events over which the water right permit holder had no control and which delayed development under the permit.

(4) [~~3~~] In determining reasonable diligence and good faith of the holder of a municipal or quasi-municipal water use permit, the Department shall consider activities associated with the development of the right that may include, but are not limited to: water management planning; conservation planning; development of a water master plan for the Oregon Health Division; planning of a diversion system; demand forecasting; flow or water quality monitoring; source evaluation; entry into intergovernmental agreements for water delivery; property acquisition; engagement in governmental permitting or project financing; procurement of planning, design, or construction services; surveying; and any physical work performed toward completion of the system and development of the right.

(5) [~~4~~] For municipal **and quasi-municipal** water **use** [~~supply~~] permits issued after November 2, 1998, in making a determination of good cause **pursuant to subsection (3)(d) above**, in addition to subsections (1) (a) – (e) [~~through~~] (3), **and (4)** of this rule, the Department shall also consider, **but is not limited to**, the **following** factors [~~in 690-315-0040(4)~~]:

(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 demand for water and power.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

690-315-0090

Time of Extensions and Additional Development of Municipal and Quasi-Municipal Water Use Permits

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(1) Extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(2) A holder of a municipal or quasi-municipal water use permit is not precluded from seeking additional extensions of time as provided in OAR 690-315-0070 through 690-315-0100.

(3) Except as provided in subsection (4) and (5), any water right permit extended under OAR 690-315-0070 to 690-315-0100 shall be conditioned to provide that diversion of water beyond the maximum rate, or duty if applicable, diverted for beneficial use before the extension under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan [~~under OAR chapter 690, division 86~~]. The required Water Management and Conservation Plan shall be submitted within 3 years of an approved extension application.

(4) [~~Municipal and q~~] **Q**uasi-municipal water use permit holders that serve a population of less than 1000 are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary.

(5) [~~Municipal and q~~] **Q**uasi-municipal water use permit holders that can reasonably demonstrate that fewer than 5 years is necessary to complete construction and apply the water to beneficial use are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary. Additional extensions that, together with the initial extension, exceed a cumulative total of 5 years will be subject to the requirements of subsection (3) above.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

690-315-0100

Department Action on Extension Applications by Holders of Municipal Water Supply Permits

If the Department finds an applicant has submitted a completed application as required under 690-315-0070, the Department shall process the application as established under 690-315-0050(1) through (5) and 690-315-0060.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 537.230, ORS 537.248, ORS 537.630 & ORS 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

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