

**Proposed Rule Revision Tracker****Division 315 – Water Right Permit Extensions**

*Changes made between v2 and v3 RAC version. Changes are highlighted in the v3 RAC version of the rules for RAC member convenience. V3 is the same as the public comment draft except no highlights.*

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
690-315 (General) 12/5	<p>RACM - A RAC member asked why quasi-municipal provisions are combined with municipal when requirements differ between the two.</p> <p>RACM - HB 3342 requires implementation of new extension standards by April 1, 2026, so OWRD's changes to Division 315 are appropriate for this rulemaking.</p>	<p>There are various places in the rules where character of use are combined due to substantial similarities between the rules as they apply to the character of use. This is the structure that was put into place when the rules were initially developed, and the Department has chosen not to break out each character of use into its own subset, as making that change would not add value to the application of the rules.</p>	Complete. No change made.
690-315-0010 12/5	<p>RACM - In our V1 comments, we urged the OWRD to add a definition (and substantive requirements throughout) to make crystal clear that only unexpired rights can apply for an extension.</p> <p>The OWRD responded that this would be a substantial change and declined to address it. We, again, would urge inclusion. We disagree that it is a substantial change. Including this term would simply align rules with the statutory structure governing extensions, cancellations and the basic tenets of western water law. It is an important addition to ensure against the gamesmanship we have seen with regards to extension requests. It would also help avoid the difficult situation where a water permit holder has used significant amounts of water and made infrastructure investments long after the permit expired, without realizing the implications, and where an extension may not be allowable or</p>	<p>OWRD does not see where in statute or rule an extension of time application cannot be filed if the permit is past the C-Date. Adding the definition of "unexpired right" and tying that definition to an ability to apply for an extension would represent a substantial change in historic Department practice, and a change would have a very real adverse effect on permit holders who need an extension to be able to prove up on rights diligently developed (i.e., when condition compliance issues arise during the review of a CBU).</p> <p>Both existing and new rules require a good cause finding to approve an extension of time, which provides the Department with the latitude to approve an extension when the situation warrants, and conversely, deny an extension when the situation warrants. If a permit holder chooses to make investments towards the development of their permit outside of the time authorized by the permit, or previous extension of time, those investments may be at risk of being lost. There are situations where an extension of time may be provided that captures this post</p>	Complete. No change.

	warranted. Requiring timely extension applications is basic water permit management and accountability. In addition to including a new definition, the term “unexpired” should be inserted into 690-315-0020(1)(a) &(b), 690-315-0020 (2), and 690-315-0050(1)	C-Date development if evidence exists that the development was done diligently; and conversely, there may be situations where evidence exists that development was not pursued with diligence, and an extension may be denied. Placing a new restriction on who can apply for an extension of time removes necessary discretion of the Department when determining if and to what extent an extension of time may be authorized.	
690-315-0010(7)(e), (f)  12/5	RACM - We repeat our comment to please change “chapter 690, division 9” to OAR 690-009-0040. RE: This needs to reflect the new groundwater allocation definition, not the old one for regulation that OWRD retained in the Div 9 rules.  This comment was not accepted with the response being that – 0040 is included in the OAR 690-009 citation. OAR 690-009-0040 pertains to Proposed Groundwater Use and therefore is the relevant definition here. OAR 690-009-0060 applies only to groundwater controls (i.e. regulation) and thus is not applicable to extensions. We think the WRD is missing an opportunity to draft clear rules by failing to cite the correct rule subsection here. WRD should draft clear rules to avoid later confusion and unneeded work by referring to the relevant rule subsection here	Though providing the granularity in the reference to only a specific sub-section could provide clarity at this time, it does pose potential issues and confusion in the future if the Div 9 rules are amended, and numbering conventions change. Keeping the broad reference provides the Department a more general rule reference in the 315 rules, which can be further refined in the PFO and FO.	Complete. No change.
690-315-0020(1)  11/11	OWRD Staff: The words “or quasi-municipal” were unintentionally deleted from OAR 690-315-0020(1) and should be reinstated.	Corrected.	Complete. Change made in v3 draft.
690-315-0020(1)  12/5	RACM - General concerns with limiting extensions of group domestic water rights while not considering how much of the group domestic service area has been developed and the potential	The limitation on group domestic use permit extensions is statutory, and cannot be altered or changed via the rules.  The considerations being recommended are already	Complete. No change.

	<p>shift to exempt domestic use. Group domestic water rights have measurement and reporting requirements. Development may still occur on the undeveloped parcels within a group domestic service area, but that development may shift to a new well and with exempt use. Economic downturns can have a dramatic impact on development over multiple years and there is no consideration for this. Does 690-315-0040(2) "good cause" allow some leeway with a group domestic extension or does this only relate to qualifying under the term limits imposed by legislation and the rule updates?</p> <p><b>RACM RECOMMENDATION -</b> Understanding that legislation is guiding this update, consider looking at how much of a group domestic has been developed (%) for extension eligibility/terms to reduce speculative water rights and include the ability to incorporate/consider economic downturns that stall development (and building of much needed housing) into the decision.</p>	<p>considerations under 315-0040, specifically under sub(3) in determining reasonable diligence when evaluating the percentage of development, and under sub(2) for unforeseen events, to include economic downturns. However, these considerations can only result in extensions of no more than the statute allows.</p>	
<p><b>690-315-0020(4)</b></p> <p><b>12/5</b></p>	<p>RACM - One RAC member noted that the rules as revised are unclear with respect to when the window for filing an extension has closed. She noted that ORS 537.450 gives the Department broad authority with respect to allowing extensions and this language should be kept in.</p> <p>RACM - In our V1 comments we noted that this section should be strengthened. In response, the OWRD cut the original language in full. In other words, OWRD staff weakened the existing rule by removing it. OWRD's rationale was that the cancellation statutes speak themselves to when the OWRD may initiate cancellation</p>	<p>It is unlikely that the Department has the authority to not accept an extension based on when it was submitted. This could reduce our ability to allow applicants to come into compliance with permit conditions past their completion date.</p> <p>See response to similar comment above on accepting applications on permits past the C-Date.</p> <p>OWRD has reinstated the rule language, with the clarification that the permit holder has 90 days to either submit a claim of beneficial use or an extension application. The 90-day period to submit a claim of beneficial use is required by ORS 537.260. OWRD may</p>	<p>Complete. Changes made in v3.</p>

	<p>proceedings and removing the language from the rules makes it less likely to cause confusion. We strongly disagree. Removing the language from rule removes a very clear directive to OWRD to begin cancellation proceedings when this trigger was met. The existing language is supported by ORS 537.260 and ORS 537.410.</p> <p>Removing existing language is a “substantial” change that was not discussed with the RAC and is directly contrary to the one RAC comment on this which simply asked OWRD to strengthen it.</p>	<p>thereafter initiate cancellation proceedings.</p>	
<b>690-315-0030(1)</b>  <b>12/5</b>	<p>RACM - RAC members asked why the word “actual” was inserted.</p> <p>RACM - One RAC member noted that this section should be applicable for storage permits after 1995.</p>	<p>The phrase “actual construction” appears in the existing rules at OAR 690-315-0010(1)(a) and in other locations in Division 315. The change is made for consistency with those rules.</p> <p>As previously noted, a change to reference the 1995 date is unnecessary. Permits issued under ORS 537.248 – the statute already cited by existing rules - can only have been issued after July 5, 1995, which is the effective date of this original legislation.</p>	Complete. No change made.
<b>690-315-0040(2)</b>  <b>12/5</b>	<p>RACM - we again ask OWRD to add two additional subsections under due diligence (See DOJ Advice on Compliance with Permit Conditions of February 7, 2002. Also see Dwight French Guidance Memo on same topic of Oct. 15, 2002.):</p> <ul style="list-style-type: none"> <li>▪ Whether the permit holder has complied with all permit conditions;</li> <li>▪ Where there has been a failure to comply with a permit condition, whether measures are available to serve the public interest purposes that the condition was intended to address and achieve a result</li> </ul>	<p>As stated in the previous response, evaluation of permit condition compliance is already a component of the diligence review. The addition of the word “all” does not change the reviews of diligence in the extension, and would only remove the discretion the Department has to approve an extension in the situation where non-compliance (or timely compliance) is not what is considered a fatal flaw that would result in a denial of the extension.</p>	Complete. No change.

	<p>equivalent to what the permit required;</p> <p>OWRD's response to our V1 comments seems to confuse evaluation of due diligence (which should certainly include evaluating compliance with all permit conditions) with identifying permit conditions for which non-compliance requires denial of the extension. These are related but separate inquiries. Non-compliance with a permit condition should not ever be excluded from evaluating due diligence.</p>	<p>Evaluation of conditions is necessary to make determinations of compliance or non-compliance with conditions, and the reference to sub (2) in 0040(5)(c) provides that consideration of compliance with conditions, including those intended to protect the public interest, is part of the finding of good cause. Because many permits contain unique conditions, often to address public interest issues, there is a risk that providing a list of such conditions could restrict the Department's ability to consider these unique conditions when determining good cause.</p>	
<p><b>690-315-0040(5)</b></p> <p><b>12/5</b></p>	<p>RACM - In our V1 comments we urged the OWRD add a subsection that directs denial if an applicant "knowingly makes a false statement on an application".</p> <p>The OWRD responded that the application addresses this. We reviewed the extension applications forms available on the OWRD's website. Our review of the applications shows that only the application for extensions of non-municipal/non-quasi-municipal permit holder contain the information quoted in WRD's response, while the application for extension of time for municipal and quasi-municipal permits states only: "I am the permittee, or have written authorization from the permittee, to apply for an extension of time under this permit. I certify that the information I have provided in this application is true and correct to the best of my knowledge." The municipal/quasi-municipal application needs to be updated to conform to OWRD's response and for consistency. Further, the language quoted in OWRD's response does not direct OWRD</p>	<p>Application updates are part of the implementation process, and the Department will evaluate adding the requested statement to the application form for extension of time for municipal and quasi-municipal permits.</p> <p>The affirmation that information provided in the application is true and accurate is intended to provide the applicant a warning that it is not in their interest to knowingly provide false statements. If the applicant knowingly provides one or more false statements, and the Department has evidence of the intent to deceive, this is a factor in considering if good cause exists under 315-0040(2)(j).</p> <p>It is not clear if the Department would have any additional authority to apply consequences to false statements knowingly submitted.</p>	<p>No change in rule recommended, but updates to the application forms will be looked at during the implementation process.</p>

	to deny the extension if false statements are made, but rather provides OWRD with discretion to do so. While we are pleased to see that at least the non-muni/qm applications contains language addressing this issue, in any case, we would counter that if the application lays out the pathway the OWRD could take if false statements are made, it would be prudent to put that same language in rule for the sake of transparency and to document OWRD's authority and intention when/if a false statement is made.		
<b>690-315-0040(5), old, proposed for deletion)</b>	RACM -We support the OWRD's decision to reinsert language V1 had proposed to delete.	Comment noted.	Complete.
<b>690-315-0040(5, old, proposed for deletion)</b>  <b>12/17</b>	OWRD Staff: There may be other situations where a permit cannot be extended and the requirements for initiating cancellation proceedings are met. The words "the applicant did not begin construction by that date" should be removed. That would still be an applicable scenario, but as currently written, the draft rule language might lead folks to believe that that is the only scenario in which a permit cannot be extended and the requirements for initiating cancellation proceedings are met.	Change made. OWRD notes that cancellation proceedings wouldn't begin solely if the Department finds a permit cannot be extended; the requirements for initiating cancellation proceedings under ORS 537.260(1) must also be met, as reflected in the draft rule language.	Complete. Change made in v3 draft.
<b>690-315-0040(5)(a), -0040(5)(b)</b>  <b>12/5</b>	RACM - HB 3342 provides limited opportunities for some non-domestic and municipal water right permits to obtain one two-year extension if OWRD determines that "[f]ish-related conditions have been satisfied" and that "[g]ood cause for the extension has been shown." This language provides a critical path forward for a small subset of permits to obtain an extension.	As explained in the previous rule summary, this rule would make clearer the Department's longstanding practice of denying applications when the permit holder has used water and has failed to demonstrate compliance with fish-related permit conditions that are required to be met before water use began, and to restructure the location of the begin construction requirement within the rules. Subsection (c) was added to make it clear that factors beyond the new	Complete. No change.

	<p>OWRD's rules already provide a framework to assess whether or not good cause has been shown, and OWRD's addition of OAR 690-315-0040(5) confuses this clear framework to assess "good cause." As written, OAR 690-315-0040(5) provides in relevant part that "the Department shall find good cause has not been shown and deny the extension if:... (c) The Department's evaluation under (2) otherwise finds that good cause has not been shown." This is circular. OWRD should remove OAR 690-315-0040(5)(a), as the existing framework to assess "good cause" is already set forth in OAR 690-315-0040(2).</p> <p>With regard to OAR 690-315-0040(5)(b), OWRD should modify the language to better align with the language in HB 3342. OWRD's proposed language provides: "The permit holder has used water and has failed to demonstrate compliance with fish-related permit conditions that are required to be met before water use began." To better reflect the language from HB 3342, we request that OWRD revise this language to provide: "The permit holder has not satisfied fishrelated permit conditions that are required to be met before water use began."</p>	<p>(5)(a) and (b) rules are part of the good cause determination, as already found in (2). Maintaining the reference to (2) clarifies that the good cause determination is the result of an evaluation under that specific rule.</p>	
<b>690-315-0040(5)(b)</b>  <b>12/5</b>	<p>RACM - One RAC member recommended inserting either "existing permit conditions" or "may include" to clarify that only existing permit conditions should apply.</p> <p>RACM - Another RAC member also noted that between (b) and (c), either "and" or "or" was needed.</p>	<p>The word "or" was added between (b) and (c).</p> <p>The draft rule language which includes reference to fish related conditions is from the statute. The other public interest related conditions, and compliance review remains a consideration under the good cause review, and failure to comply with the public interest related conditions would continue to result in a denial if</p>	<p>Complete. Partial change made in v3 draft.</p>

	<p>RACM - We reiterated our V1 comment that this should be broadened, consistent with DOJ advice, to capture any permit condition that was included on the permit to serve the public interest. Beyond fish-related conditions, this could also include wildlife-related conditions. OWRD's response does not address this issue which is that, in addition to fish-related conditions, there can also be non fish-related conditions on water permits that were added in order to address the public interest. OWRD should be clear about this in the extension rules to avoid confusion and to provide clear guidance for requirements and analysis of extension applications</p>	<p>additional provisions could not address the underlying public interest intent. The Department believes the current proposed language adequately addresses the concerns.</p>	
<b>690-315-0050(3) 12/5</b>	<p>RACM - A RAC member asked why "by electronic means" is no longer included.</p> <p>RACM - Another RAC member asked if electronic copies are sent to people who comment on an application.</p>	<p>The Department noted that the section was supposed to be highlighted to show reversion of the language back to the original rule language for the second sentence. There were concerns about the applicability of the copy fee and the initial change didn't add value.</p> <p>The Department currently does not have a process for providing electronic copies of the PFO to people who comment on extension applications, although it is not difficult for someone to contact the caseworker and asked for an emailed copy.</p>	Complete. No change made.
<b>690-315-0050(6) (proposed for repeal) 12/5</b>	<p>RACM - A RAC member noted that they believed that check point requirements applied to all types of permit extensions and suggested that checkpoints should be retained.</p>	<p>The checkpoint condition no longer provides a value for extensions because, 1) most extensions are limited to no more than 2 years, which would not trigger the checkpoint requirement; 2) QM use permit extensions are limited to 20 years, and require submittal of a WMCP, which would include reporting on all of the items required in a progress report, and QMs are limited to a single 20-year extension, which already eliminates</p>	Complete. No change made.

		<p>the largest consequence of not submitting a progress report, which would likely be a denial of an additional request; and 3) Group Domestic use permit extensions are limited to 1 extension for 10 years. Though they do not have a requirement to submit a WMCP, the limitation to one extension eliminates the main potential consequence of failure to submit the progress report. Municipalities are required to update their WMCPs.</p>	
690-018-0090(1)  12/5	<p>RACM - General concerns with quasi municipal (QM) differentiation while understanding that part of the intent here may be to limit speculative water rights. In central Oregon (and maybe in other areas of the state), some quasimunicipal water providers have contracted service areas with municipalities (Avion Water's relationship with City of Bend for example). The city and developers control permitting and buildout of service areas. This is not within control of the QM while the QM still must provide service or future service to these areas. In addition, a QM has a complicated association with the Public Utilities Commission and may not be able to make decisions as quickly as a municipal entity. Economic downturns can also have a significant impact on how quickly an area can be built out or how long development may be stalled. Does 690-315-0080(5) provide some leeway and if it does, can it be clarified in the rules?</p> <p><b>RACM RECOMMENDATION -</b> Understanding that legislation is guiding this update, consider revisiting this. Consider some accommodating language for QM's closely linked to municipal</p>	<p>The provision limiting QM development timelines and extensions are statutory. Rules cannot alter these maximum allowances.</p> <p>The extension process already includes a consideration for "unforeseen events", which include economic downturns. (690-315-0040(2)(h))</p>	Complete. No change made.

	territories and supplying long established and growing communities. Include an ability to incorporate/consider economic downturns that stall development (and building of much needed housing).		
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