

POL-1050, Extension of Time on Permits, DRAFT Revision
Water Resources Program Policy
March 5, 2021

Effective Date: 10/31/1991

Revised Date: FORTHCOMING

Contact: Program Development and Operations Support Section

References: *Statute:* Chapter 90.66 RCW; RCWs 90.03.320, 90.03.360, 90.03.470, 90.44.450, and 90.54.020

Administrative Rule: Chapters 43.21B and 371-08 WAC; WAC 173-130A-160, 173-134A-080, and 508-12-030

Policy: Policies 1000, 1280, and 2030; Procedure 1000

Purpose: To provide transparency in the Program's evaluation of requests for an extension of time for any of the development phases of a permit.

Application: This policy applies to all requests for extensions of time on water right permits pursuant to RCWs 90.03.320 or 90.44.060.^{1,2}

This policy supersedes any previous policy statement with which it conflicts.

1. Definitions

Good cause – A valid and compelling justification for why the permit holder has not complied with the applicable development schedule phase.

Good faith – An honest intent and sincere desire as reflected by the efforts and/or actions taken to pursue the project with reasonable diligence and put the allocated water to beneficial use in a timely manner.

Public interest – The balance of positive and negative impacts to the public at large that would result from approval or denial of the extension request.

Provisions – Administrative requirements or conditions imposed as a requisite of water use.

Reasonable diligence – A measure of prudence and activity expected under the facts of the specific or individual request.

¹ Development schedules for changes to water right certificates are governed under POL 1280.

² For permits issued under chapter 90.66 RCW, the Family Farm Water Act, refer to the statute for additional requirements.

1. Background

A water right permit authorizes the permit holder to construct a project and put water to beneficial use. Permits are issued with several deadlines documented in a development schedule. See POL 1000 and PRO 1000 for details on permit issuance. Failure to comply with the development schedule or comply with the provisions of the permit may cause cancellation.

RCW 90.03.320 establishes that a permit holder may request an extension of time to any of the three developmental phases of a permit:

- Beginning of Construction date (BC).
- Completion of Construction date (CC).
- Proof of Appropriation date (PA).

The extension process allows for additional time for a permit holder to develop into their permit, while also preventing a permit holder from retaining an undeveloped right when there is lack of diligence in developing the project or lack of intent to put the water to beneficial use.

2. Request for an Extension of Time

Per RCW 90.03.320, the permit holder must show good cause for needing an extension, and demonstrate reasonable diligence and good-faith efforts made to comply with the development schedule. The permit holder is responsible for ensuring that the permit is in good standing and, if necessary, for initiating requests for extensions.

A request for an extension of time for must be made in writing and accompanied by the statutory fee established in RCW 90.03.470. If a permit holder requests extensions on multiple permits, a written request and fee is required for each individual request. Any subsequent requests must also be made in writing and accompanied by the statutory fee.

For Ecology to evaluate the request for extension, the written letter should address:

- The reason(s) for needing the extension.
- A description of efforts made since the permit issuance or the last extension was granted, and how those efforts contributed towards project development.
- A proposed schedule for completing the current development phase and the impact on the overall project timeline.

Ecology may request additional information, if needed, to adequately evaluate the extension request. Failure to provide the requested information may inhibit Ecology's ability to fully understand and analyze the request, and may result in denial of the extension request. A permit holder may also choose to submit additional pertinent information for consideration. Information may include, but is not limited to:

- Descriptions of other permits or authorizations required for the development and timelines for obtaining those approvals.
- Dates any project construction was started or completed.

- A description of the term and amount of financing required to complete the project.
- A description of the engineering and/or physical impediments encountered during construction.
- Actions related to the State Environmental Policy Act, or other environmental review.
- A demand projection from an approved water system planning document, comprehensive plan, or a county-approved comprehensive plan.
- An anticipated time schedule for completing construction and completing development of the water system, accompanied by an explanation as to how any identified impediments to meeting the current development schedule will be overcome.
- A corresponding document from a financial entity indicating pursuit of financial surety to begin/complete the project.
- Signed and executed contracts needed for the project.

3. Evaluation

Per RCW 90.03.320, Ecology will extend any phase of a permit's development schedule provided that:

- The permit holder has shown good cause;
- The permit holder has shown good faith in developing the project; and
- Ecology has given due regard to the public interests affected.

Ecology may grant subsequent requests for extension of time as necessary, when the conditions above are met. Ecology will not grant extensions if prohibited by rule (see WAC 173-130A-160 and WAC 173-134A-080 (2)(i)).

It is at the discretion of Ecology to determine whether the permit holder has shown good cause and good faith, and to determine the public interests affected by an extension. **The burden is on the permit holder to show good cause and good faith. Specific actions that constitute good cause and good faith may differ depending on the phase of permit development.**

Evaluating Good Cause

The permit holder must show good cause as part of their request for a permit extension. Ecology defines *good cause* as a valid and compelling justification for why the permit holder has not complied with the applicable development schedule phase. Good cause is further defined as "prevention or restriction of water use by operation of federal laws for the time or times fixed for commencing work, completing work, and applying water to beneficial use otherwise authorized under a water right permit issued for a federal reclamation project" (RCW 90.03.320).

To show good cause, the permit holder should cite relevant factors and explain how each factor has delayed or stalled project development.

In evaluating whether the permit holder has shown good cause in development of the permit, Ecology considers the following factors:

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- Changes in the project.
- Unanticipated engineering problems.
- The reasonableness of the original development schedule (see *Concerned Neighbors of Lake Samish v. Department of Ecology*, PCHB Nos. 11-126, 11-127, & 11-128 (July 24, 2012)).
- Litigation that has directly precluded or delayed project development, such as right of way disputes that must be resolved at the pace of the entity having jurisdiction.
- Illness of the permit holder if directly related to the person's ability to pursue development of the project.
- Unforeseen financial problems encountered by the permit holder that have directly precluded or delayed project development.
- Economic conditions, such as economic recessions, or local development patterns that have directly precluded or delayed project development.
- Need to collect additional metering data for issuance of a certificate.
- Delays that may result from planning or existing water conservation or efficiency measures.

Evaluating Good Faith

The permit holder must demonstrate that they have shown good faith in developing the project. Ecology defines *good faith* as an honest intent and sincere desire as reflected by the efforts and/or actions taken to pursue the project with reasonable diligence and put the allocated water to beneficial use in a timely manner. Good faith and reasonable diligence require “vigilance and steady and constant effort with all possible and reasonable expedition” (*Concerned Neighbors of Lake Samish v. Department of Ecology*, PCHB Nos. 11-126, 11-127, & 11-128 (July 24, 2012)). Examples of evidence of good faith and reasonable diligence could include, but are not limited to:

- Pursuit of other regulatory permits and approvals required for project development, e.g. a hydraulics permit.
- Pursuit of additional required environmental studies or review.
- Development or update of a water system plan or water management plan.
- Construction of infrastructure, such as wells, diversionary works, or pipes.
- Land clearing, excavation, or grading of the project site.

Evaluating Public Interests

In evaluating a request for extension, Ecology will consider the public interests affected. Ecology defines *public interests* as the balance of positive and negative impacts to the public at large that would result from a requested action such as extending a development schedule. Considerations should include environmental, aesthetic, recreational, public health and safety, economic effects, and impacts on publicly owned resources and facilities. General guidelines for consideration of the public interests are set forth in the water resources fundamentals in RCW 90.54.020.

Special Circumstances in Evaluation

Multiple extension requests:

Ecology will consider any previous requests for extension when determining whether the permit holder has demonstrated good faith and reasonable diligence. Numerous extension requests citing repeated reasons for project delay may be based on valid and reasonable delay factors, but in some circumstances, it could indicate a lack of diligence.

Requests by municipal water suppliers:

In addition to the factors outlined in this section, if a municipal water system has a water system plan, then Ecology will consider their obligation to serve the entirety of their service area. See Policy 2030 for further detail.

4. Approvals

Upon finding that the permit holder has met the criteria outlined in Evaluation, Section 3, Ecology will extend the development schedule for the permitted rate and quantity of water.³

To bring a permit in line with current statutory and administrative requirements, Ecology may add or remove administrative provisions on a permit extension beyond what was provided in the Report of Examination, existing permit, or any previous extensions (see *Department of Ecology v. Theodoratus*, 135 Wn.2d 582, 957 P.2d 1241 (1998)).⁴ Examples of administrative provisions include, but are not limited to:

- Metering and reporting (RCW 90.03.360, RCW 90.44.450 and WAC 508-12-030).
- Conservation planning.
- Water quality testing and reporting.

The length of time granted for the extension may be for a duration different than was requested by the permit holder. Ecology will consider factors evaluated under Section 3 when determining an appropriate length of time for extension of that development phase. An extension of time to one phase of a development schedule may modify the deadlines for subsequent development phases.

If upon review of the extension request Ecology finds that the permit holder is not in the correct phase of their development schedule, Ecology may change the phase to accurately reflect project status.

Ecology will document the approval of an extension request, including any relevant provisions, in a letter sent to the permit holder. Ecology may also issue a superseding permit if there are significant changes to permit provisions.

5. Denials and Cancellations

³ Unless otherwise requested by the applicant.

⁴ Ecology will not add provisions that operate to limit a permit holder's ability to exercise their lawful water use under the existing permit. For example, Ecology will not provision a permit to be interruptible to an instream flow adopted after the initial permit was issued.

When Ecology determines that the permit holder's request for an extension has failed to adequately meet the standards described in Section 3, Ecology may initiate the process for the water right holder to certify the water put to beneficial use by submitting a proof of appropriation. Ecology may provide a deadline by which proof of appropriation must be submitted. Failure to submit a proof of appropriation by the deadline may result in Ecology initiating cancellation of the permit. The quantity of water available for certification will be the amount of water put to beneficial use under the permit. Any inchoate quantities will not be eligible for certification.

If the permit holder has not put any water under their permit to beneficial use, Ecology may initiate cancellation of the entire permit.

To initiate cancellation of the permit, Ecology will follow procedure set forth in [PRO 1000](#).

Failure to request an extension constitutes noncompliance with the permit development schedule and may result in initiation of permit cancellation.

6. Appeals

The approval or denial of a request for a permit extension and permit cancellations are formal orders issued by Ecology and are appealable actions. Ecology will outline the appeal process in the formal order issued. See chapter 43.21B RCW and chapter 371-08 WAC for further detail.