

POL-1050

DEPARTMENT OF ECOLOGY WATER RESOURCES PROGRAM
POLICY AND INTERPRETIVE STATEMENT

EXTENSION OF TIME ON PERMITS

- Effective Date: 10/31/1991
- Revised Date: 10/11/2021
- Contact: Program Development and Operations Support Section
- References: *Statute:* Chapters 43.21 and 90.66 RCW; RCWs 90.03.320, 90.03.360, 90.03.470, 90.44.450, and 90.54.020
Administrative Rule: WAC 173-130A-160, 173-134A-080, 371-08, and 508-12-030
Policy: Policies 1000, 1280, and 2030; Procedure 1000
- Purpose: To provide transparency and consistency 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
- For permits issued under chapter 90.66 RCW, the Family Farm Water Act, refer to the statute for additional requirements.

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

1. Definitions

Good cause – A reasonable justification why additional time is necessary to begin construction, complete construction, and/or apply water to beneficial use under a permit.

Good faith – An honest and sincere intent as reflected by the efforts and/or actions taken to pursue the project with reasonable diligence.

Public interests – The consideration of impacts to the public at large that would result from approval or denial of the extension request. General guidelines for consideration of the public interests are set forth in the water resources fundamentals in RCW 90.54.020. As applicable, considerations should include environmental impacts, with emphasis on the protection, restoration, and recovery of threatened and endangered species; environmental justice; implications for public health and safety; aesthetic, recreational, and economic effects; and impacts on publicly owned resources and facilities.

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

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

Reasonable diligence – Effort or activity appropriate under the facts of the current development of the project.

2. Background

A water right permit authorizes the permit holder to construct a project and put water to beneficial use. The prior appropriation doctrine, upon which the state water code is based, requires maximum utilization of state water resources. If a permit holder is unable or unwilling to pursue an authorized project with diligence, that holder's authorization should be terminated. The permit holder must use reasonable diligence, with no more delay than is necessary, to put the 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.

3. Request for an Extension of Time

Per RCW 90.03.320, the permit holder must show good cause, i.e., that an extension of time is reasonably necessary, and demonstrates reasonable diligence as evidence of the permit holder's good faith. 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 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 the design, engineering, treatment, and permitting requirements and timelines for those processes.
- 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.

4. 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 that additional time is reasonably necessary;
- Ecology has given due regard to the permit holder's 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 evidence of good faith. Specific evidence of good cause and good faith may differ depending on the phase of permit development.

When considering a request for extension, Ecology will also consider the initial development schedule and any previous extensions to the development schedule. In determining the initial development schedule for a water right permit, the department, in consultation with the applicant, should have allowed time that is reasonable and just under the conditions existing at the time to complete the project.

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 reasonable justification why additional time is necessary to begin construction, complete construction, and/or apply water to beneficial use under a permit. Under RCW 90.03.320, good cause includes “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 makes additional time reasonably necessary.

In evaluating whether the permit holder has shown good cause for additional time to develop the permit, Ecology may consider factors including, but not limited to:

- Changes in the project, provided that the project scope remains consistent with the original intent of the water right application.
- Unanticipated engineering problems.
- The reasonableness of the original development schedule.
- Litigation that has directly precluded or delayed project development.
- 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 planned or existing water conservation or efficiency measures (see RCW 90.03.320).
- Delays due to the process for securing land use approvals and development agreements.

Evaluating Good Faith and Reasonable Diligence

For Ecology to give due regard to the good faith of the permit holder, the permit holder must show evidence of good faith. Evidence of good faith should include a showing of reasonable diligence in developing the project.

Ecology defines good faith as an honest and sincere intent as reflected by the efforts and/or actions taken to pursue the project with reasonable diligence. Examples of evidence of good faith and reasonable diligence could include, but are not limited to:

- Demonstrated effort to attain other regulatory permits and approvals required for project development.
- Demonstrated effort to attain additional required environmental studies or review.
- Development or update of a water system plan or a small water system management plan.
- Engineering or construction of infrastructure, such as wells, diversionary works, or pipes.
- Legally permitted 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 by the permit extension. Ecology defines public interests as consideration of impacts to the public at large that would result from approval or denial of the extension request. Ecology evaluates the public interest of the requested permit extension; this is not a reconsideration of the public interest evaluation of permit issuance.

General guidelines for consideration of the public interests are set forth in the water resources fundamentals in RCW 90.54.020. As applicable, considerations should include environmental impacts, with emphasis on the protection, restoration, and recovery of threatened and endangered species; environmental justice; implications for public health and safety; aesthetic, recreational, and economic effects; and impacts on publicly owned resources and facilities.

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 duty to serve the entirety of their approved service area(s), as well as changes in zoning or local development patterns and future demand projections.

Additionally, in fixing construction schedules and extensions of time for beneficial use for municipal water supply purposes, Ecology will “take into consideration the term and amount of

financing required to complete the project, delays that may result from planned and existing conservation and water use efficiency measures implemented by the public water system, and the supply needs of the public water system's service area" (RCW 90.03.320).

5. 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.²

To bring a permit in line with current statutory and administrative requirements, Ecology may add or remove administrative provisions on a permit extension different from 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)).³ 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.

When granting an extension, specific tasks may be set and required of the permit holder during the extension period. Specific requirements including but not limited to construction goals, financing achievements, other permit acquisitions, and scheduling can be imposed to ensure progress.

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.

6. Denials and Cancellations

Ecology will deny the permit extension request the agency determines the permit holder's request for an extension has failed to adequately meet the standards described in Section 3, or if a

² Unless a reduced instantaneous or annual quantity of water is requested by the permit holder.

³ 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.

project is permanently precluded from additional development. Ecology's course of action will then depend on the stage of project development. In general:

- If the permit holder has not met the requirements of the current phase including submittal of the appropriate documents, Ecology may initiate cancellation of the permit.
- If the permit holder has put some or all water under their permit to beneficial use, Ecology will initiate the process for the water right holder to certify the water put to beneficial use by submitting a proof of appropriation.⁴ 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.

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.

7. 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.



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Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

To request ADA accommodation, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 800-833-6384.

⁴ The quantity of water available for certification will be the maximum amount of water put to beneficial use under the permit. Any inchoate quantities will not be eligible for certification.