

**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 G-18079, Water Right Application G-13809,) FINAL
in the name of the Roats Water System Inc.) ORDER

Permit Information

Application File G-13809 / Permit G-18079

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: September 1, 1994

Authorized Use of Water

Source of Water: Hole Ten Well 1 and Hole Ten Well 2 within the Deschutes River Basin
Purpose or Use: Quasi-Municipal
Maximum Rate: 4.16 Cubic Feet per Second (cfs), further limited to 1485.0 acre-feet (AF)

**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 G-18079, water right Application G-13809.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from July 6, 2023, to October 1, 2055.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

cfs – cubic feet per second

gpm – gallons per minute

AF – acre feet

Hole Ten Well 1 – DESC 5655

Hole Ten Well 2 – DESC 5654

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. 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 quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0090(3) requires the Department, under specific circumstances, to condition an extension of time for 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 Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. On July 6, 2018, Permit G-18079 was issued by the Department. The permit authorizes the use of up to 4.16 cfs of water, further limited to 1485.0 acre-feet annually, from Hole Ten Well 1 and Hole Ten Well 2 in the Deschutes River Basin for quasi-municipal use. The Permit specified construction of the well was to begin, and complete application of water was to be made within five years from the date of permit issuance, being July 6, 2023.

2. On September 26, 2022, the permit holder submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-18079 be extended from July 6, 2023, to October 1, 2055. This is the first extension of time request for Permit G-18079.
3. Notification of the Application for Extension of Time for Permit G-18079 was published in the Department’s Public Notice dated October 4, 2022. No public comments were received regarding the extension application.

Review Criteria for 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. 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)]

4. On September 26, 2022, the Department received an Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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

5. Construction of DESC 5655 (Hole Ten Well 1) and DESC 5654 (Hole Ten Well 2) were completed prior to permit issuance.

Based on Findings of Fact (FOF) 5, the Department has determined that construction of the wells began prior to July 6, 2023.

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

Under OAR 690-315-0080(1)(c), (d), in order to approve an extension of time for 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.

6. According to the Application, work left to be accomplished includes submitting an Application for Permit Amendment to add additional wells, and if approved, construct the newly authorized wells, and connect them to the water system. In addition, the District must also provide adequate mitigation prior to full development of the 1485.0 AF authorized annually.
7. As of September 26, 2022, the permit holder had appropriated 3.12 cfs of the 4.16 cfs of water authorized under Permit G-18079 for quasi-municipal purposes.

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.

8. In addition to the 4.16 cfs of water, limited to 1485.0 AF annually, authorized under Permit G-18079, Roats Water System Inc. holds the following rights for quasi-municipal use:

- Certificate 87656 for 3.0 cfs of water, being 0.25 cfs from Well 3, 0.85 cfs from Well 4, 0.95 cfs from Well 9, and 0.95 cfs from New Well 10 within the Deschutes River Basin; and
- Certificate 87659 for 1.1 cfs of water from four Wells (Numbered 5, 6, 7 and 8 within the Deschutes River Basin;

Roats Water System Inc.'s permit and water right transfers total 8.26 cfs of ground water for quasi-municipal use.

9. In addition to the above rights for quasi-municipal use, Roats Water System Inc also holds the following certificates:

- Certificate 87657 for 0.66 cfs of water from Well 3, Well 4, Well 9, and Well 10, for group domestic and supplemental irrigation of 13.0 acres, being 0.50 cfs for group domestic use, and 0.16 cfs for supplemental irrigation of 13.0 acres, and
- Certificate 87658 for 0.56 cfs of water from Well 3, Well 4, Well 9, and Well 10, for group domestic and supplemental irrigation of 5.6 acres, being 0.50 cfs for group domestic and 0.06 cfs for supplemental irrigation of 5.6 acres.

10. Roats Water System Inc.'s peak water demand within its service area boundaries was 4.75 cfs in 2022.

11. According to the Application, in 2022, the population within the service boundary of Roats Water System Inc. was 6,413. Roats Water System Inc. estimates the population to increase at an estimated growth rate of 2.08 percent per year, reaching an estimated population of 13,020 by the year 2055.

12. According to the Application, their peak demand is projected to be approximately 9.48 cfs of water by the year 2055.

13. Full development of Permit G-18079 is needed to meet the present and future water demands of Roats Water System Inc.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2055, to accomplish the application of water to beneficial use under the terms of Permit G-18079 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)and (4)]

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 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.

14. Actual construction of the well and water system began prior to the July 6, 2023, deadline specified in the permit.
15. During the development period under Permit G-18079, being from July 6, 2018, to July 6, 2023, the following work was completed by the District:
 - Fairway and Waterbrook Subdivision mainline expansion;
 - installation of a pump in Tillicum Pond; and
 - preparation of a Water Management and Conservation Plan (WMCP)

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

16. As of September 26, 2022, the permit holder invested \$449,727, which is approximately 21 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,107,000 investment is needed for the completion of this project.
17. As of September 26, 2022, 3.12 cfs of the 4.16 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
18. The Department has considered the permit holder's compliance with conditions, including mitigation requirements, and did not identify any concerns.

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

19. As of September 26, 2022, the permit holder invested \$449,727, which is approximately 21 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,107,000 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 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).

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)].

20. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-18079; 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 points of appropriation for Permit G-18079 are located within Upper Deschutes Ground Water Mitigation Area. The points of appropriation for Permit G-18079, located within the Deschutes River Basin, are located above the Deschutes Scenic Waterway. The points of appropriation are within areas ranked high for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. The points of appropriation are not in an area 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)].

21. As of September 26, 2022, the permit holder invested \$449,727, which is 21 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,107,000 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

22. None have been identified.

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 FOF 8, through 13, Roats Water System Inc. has indicated, and the Department finds that Roats Water System Inc. must rely on full development of Permit G-18079 to meet its present and future water demands.
24. Roats Water System Inc. projects a population increase of 2.08 percent per year over a 33 year period, being 2022 to 2055.
25. Given the current water supply situation of Roats Water System Inc., including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under Permit G-18079.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 3.12 cfs (not to exceed the maximum amount authorized under this permit, being 4.16 cfs) Permit G-18079 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 appropriation of water under the permit consistent with OAR 690-086-0130(7). "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 District expects to obtain a fair and reasonable return on investment by continuing development of Permit G-18079.

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

28. Delays caused by any other governmental requirements in the development of this project have not been identified.

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

29. According to Application, delay of development under Permit G-18079 was due, in part, to the size and scope of the quasi-municipal water system, which was designed to be phased in over a period of years, and to the availability of funding to expand the water supply system.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant 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. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Full application of water to beneficial use can be completed by October 1, 2055⁴ pursuant to OAR 690-315-0080(1)(d).
6. 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

⁴ Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use.

unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

7. 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 appropriation of water beyond 3.12 cfs (not to exceed the maximum amount authorized under this permit, being 4.16 cfs) under Permit G-18079 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 appropriation 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 apply the water to beneficial use under Permit G-18079 from July 6, 2023, to October 1, 2055.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

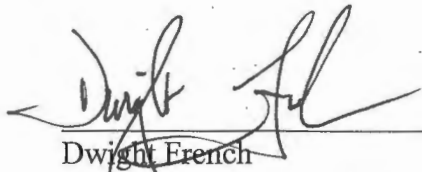
A maximum appropriation of 3.12 cfs of water is currently allowed under Permit G-18079. Any appropriation of water beyond 3.12 cfs (not to exceed the maximum amount authorized under the permit, being 4.16 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation 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. Use of water under Permit G-18079 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department. For review of water management and conservation plans that propose to increase the maximum rate of water diverted under an Extended Permit, after January 1, 2042, that the additional diversion of water will not impair or be detrimental to the public interest.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-18079 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 an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

DATED: November 14, 2023

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.


Dwight French
Water Right Services Division Administrator

Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than **December 29, 2023**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay 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 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- 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 Will Davidson at 503-507-2749.
 - 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
Salem, OR 97301-1266
Fax: 503-986-0901
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