

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time            )  
for Permit G-12674, Water Right Application G-13700,            )        PROPOSED FINAL ORDER  
in the name of the Agate Water Company                            )

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**Permit Information**

**Application File G-13700 / Permit G-12674**

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: May 31, 1994

**Authorized Use of Water**

Source of Water: Five Wells within the Deschutes River Basin  
Purpose or Use: Quasi-Municipal, for 925 domestic and commercial sites  
Maximum Rate: 2.23 cubic feet per second (cfs), being 0.334 cfs each from  
Wells 1, 2, and 4, and 0.668 cfs from Well 3, and 0.558 cfs  
from Well 5

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**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-12674, water right Application G-13700.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1998 to October 1, 2047.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2047.
- 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

### **Units of Measure**

cfs – cubic feet per second

gpm – gallons per minute

## **AUTHORITY**

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

**ORS 537.630(1)** provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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**

### **Background**

1. Permit G-12674 was granted by the Department on August 14, 1996. The permit authorizes the use of up to 2.23 cfs of water from 5 Wells, being 0.334 cfs each from

Well 1 (Indian Summer), Well 2 (Agate), and Well 4 (River Bluffs) and 0.668 cfs from Well 3 (Choctaw 3) and 0.558 cfs from Well 5 (Shoshone), within the Deschutes River Basin for quasi-municipal use for 925 domestic and commercial sites. The permit specified actual construction was to begin by August 14, 1997, construction of the water development project was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.

2. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
3. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
4. The permit holder submitted an "Application for Extension of Time" to the Department on September 27, 1999, requesting the time to complete construction be extended from October 1, 1998 to October 1, 2008 and the time to apply water to full beneficial use under the terms and conditions of Permit G-12674 be extended from October 1, 1999 to October 1, 2009. This is the first extension of time request for Permit G-12674.
5. On December 22, 2004, the permit holder requested the extended time to complete construction be changed from October 1, 2008 to October 1, 2015, and the extended time to apply water to full beneficial use be changed from October 1, 2008 to October 1, 2017.
6. On September 19, 2011, the permit holder submitted additional information to supplement and update their Application for Extension of Time. On September 26, 2011, the permit holder requested the time to complete construction be extended from October 1, 2015 to October 1, 2047, and the time to apply water to full beneficial use be extended from October 1, 2017 to October 1, 2047.
7. Notification of the Application for Extension of Time for Permit G-12674 was published in the Department's Public Notice dated November 1, 2011. 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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or*

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

539.010(5)<sup>3</sup>

**Complete Extension of Time Application [OAR 690-315-0080(1)(a)]**

8. On September 27, 1999, 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)]**

9. Actual construction of the well began prior to the August 14, 1997 deadline specified in the permit. Construction of Well 1 (Indian Summer) (DESC 5447) began March 16, 1979.

**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.*

10. The remaining work to be accomplished under Permit G-12674 consists of filing a Permit Amendment with the Department to authorize the location of Well 5, and completing construction of the water system including upgrading the wells with motors and pumps, improving the reservoir and distribution system; and applying water to full beneficial use.
11. As of September 19, 2011, the permit holder had appropriated 0.71 cfs of the 2.23 cfs of water authorized under Permit G-12674 for quasi-municipal purposes, being .10 cfs from Well 1 (Indian Summer), 0.19 cfs from Well 2 (Agate), 0.33 cfs from Well 3 (Choctaw) and 0.09 cfs from Well 5 (Shoshone).
12. In addition to the 2.23 cfs of water authorized under Permit G-12674, Agate Water Company holds the following rights:
  - Permit G-11182 for 1.12 cfs of water for domestic use from 3 wells within the Deschutes River Basin ; and
  - Permit G-12884 for 1.36 cfs of water for quasi-municipal use from 2 wells within the Deschutes River Basin.

Agate Water Company's permits total 4.71 cfs of ground water. Agate Water Company has not yet made beneficial use of 2.63 cfs of water, being 1.52 cfs under Permit G-12674, 0.53 cfs under Permit G-11182 and 0.58 cfs under Permit G-12884.

13. Agate Water Company's peak hour water demand within its service area boundaries was 2.1 cfs in 2010.

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<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

14. According to the Agate Water Company, in 2011, the population within its service area was 3054. Agate Water Company estimates the population to increase at an estimated average growth rate of 2.2 percent per year, reaching an estimated population of 7,132 by the year 2050.
15. According to the Agate Water Company, their peak hour demand is projected to be approximately 4.7 cfs of water by the year 2047.
16. Full development of Permit G-12674 is needed to meet the present and future water demands of Agate Water Company, including system redundancy and emergency use.
17. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2047, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-12674 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.*

18. Actual construction of the well and water system began prior to the August 14, 1997 deadline specified in the permit.
19. During the original development time frame under Permit G-12674. The permit holder continued to install water distribution piping, booster pumps and meters, and made improvements to Well 3 (Choctaw).
20. Since October 1, 1999 the following work was completed by Agate Water Company:
  - Installed meters and booster pumps;
  - Abandoned Well 4 (River Bluff) (DESC 54238);
  - Combined its distribution system with Apache Water Systems Company;
  - Constructed a 540,000 gallon water reservoir;
  - Installed new 8 inch mains with hydrants; and
  - Upgraded Well 3 (Choctaw 3) to a variable frequency drive.
21. As of September 19, 2011, the permit holder invested \$1,807,985, which is 39 percent

of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,732,504 investment is needed for the completion of this project.

22. As of September 19, 2011, 0.71 cfs of the 2.23 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit, being .10 cfs from Well 1 (Indian Summer), 0.19 cfs from Well 2 (Agate), 0.33 cfs from Well 3 (Choctaw) and 0.09 cfs from Well 5 (Shoshone).
23. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns:
  - a. The permit holder has not submitted annual water use records as required by Permit G-12674. The permit holder did submit water use records for years 2000 to 2010 with the September 19, 2011 updates their Application for Extension of Time.

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

24. As of September 19, 2011, the permit holder invested \$1,807,985, which is 39 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,732,504 investment is needed for the completion of this project.

**The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]**

25. As described in Findings 11 through 16 above, Agate Water Company has indicated, and the Department finds that Agate Water Company must rely on its groundwater rights within the Deschutes River.
26. Agate Water Company projects a population increase of 2.2 percent per year over a thirty-nine year period, being the years 2011 to 2047.
27. Given the current water supply situation of Agate Water Company, as well as current and expected demands there is a market and present demand for the water to be supplied under Permit G-12674.
28. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.71 cfs being .10 cfs from Well 1 (Indian Summer), 0.19 cfs from Well 2 (Agate), 0.33 cfs from Well 3 (Choctaw) and 0.09 cfs from Well 5 (Shoshone) up to 2.23 cfs under Permit G-12674 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 this permit consistent with OAR 690-086-0130(7). A "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)]**

29. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

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

30. 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)]**

31. According to Agate Water Company, delay of development under Permit G-12674 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, declining housing market, declining water sales, and to lack of available funding to expand the water supply system.

**CONCLUSIONS OF LAW**

1. The applicant is entitled to apply for an extension of time to complete construction and 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 complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2047<sup>4</sup> 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

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<sup>4</sup> 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.

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 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 28, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.71 cfs being .10 cfs from Well 1 (Indian Summer), 0.19 cfs from Well 2 (Agate), 0.33 cfs from Well 3 (Choctaw) and 0.09 cfs from Well 5 (Shoshone) up to 2.23 cfs under Permit G-12674 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).

**Continued on the following page**



## 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 complete construction under Permit G-12674 from October 1, 1998 to October 1, 2047.

extend the time to apply the water to beneficial use under Permit G-12674 from October 1, 1999 to October 1, 2047.

Subject to the following conditions:

### CONDITIONS

#### 1. Development Limitations

Appropriation of any water beyond 0.71 cfs being .10 cfs from Well 1 (Indian Summer), 0.19 cfs from Well 2 (Agate), 0.33 cfs from Well 3 (Choctaw) and 0.09 cfs from Well 5 (Shoshone) up to 2.23 cfs under Permit G-12674 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-12674 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with 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 25, 2014

  
Dwight French  
Water Right Services Division Administrator

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

### **Proposed Final Order Hearing Rights**

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, 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. The written protest must be received by the Water Resources Department no later than **January 9, 2015**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest 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 upon the water right permit holder, if petitioner is other than the water right permit holder; and
  - g. The applicant or non-applicant protest fee required under ORS 536.050.
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 has been submitted, and:
    - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
    - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

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- If you have any questions about statements contained in this document, please contact Mabelle A Bamberger at 503-986-0802.
  - 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 Patricia McCarty at 503-986-0820.
  - 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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