

**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-16074, Water Right Application G-16386,) PROPOSED FINAL ORDER
in the name of the City of Adrian)

Permit Information

Application File G-16386/ Permit G-16074

Basin 11 – Owyhee Basin / Watermaster District 9

Date of Priority: February 10, 2005

Authorized Use of Water

Source of Water:	One well within the Snake River Basin
Purpose or Use:	Municipal
Maximum Rate:	1.0 cubic feet per second (cfs)

**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-16074, water right Application G-16386.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from July 20, 2011 to October 1, 2059.
- Grant an extension of time to apply water to full beneficial use from July 20, 2011 to October 1, 2059.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

City – City of Adrian

ODFW – Oregon Department of Fish and Wildlife

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(2) 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 municipal and/or 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) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or 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-16074 was granted by the Department on July 20, 2006. The permit authorizes the use of up to 1.0 cfs of water from one well within the Snake River Basin, for municipal use. It specified that construction commencement and completion of the water development project was to be completed by July 20, 2011, and that complete application of water was to be made on or before July 20, 2011.
2. The permit holder, the City of Adrian, submitted an "Application for Extension of Time" to the Department on July 10, 2013, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-16074 be extended from July 20, 2011 to October 1, 2050. This is the first extension of time request for Permit G-16074.
3. Notification of the City's Application for Extension of Time for Permit G-16074 was published in the Department's Public Notice dated July 23, 2013. No public comments were received regarding the extension application.
4. On April 20, 2015, the permit holder submitted additional information to supplement and/or update their Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2050 to October 1, 2059, and the extended time to apply water to full beneficial use be changed from October 1, 2050 to October 1, 2059.

Review Criteria for Municipal 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)]

5. On July 10, 2013, the Department received a completed 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)]

6. A date by which actual construction was to begin was specified in Permit G-16074, as July 20, 2011.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

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 municipal and 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.

7. The remaining work to be accomplished under Permit G-16074 consists of applying and receiving approval for a Permit Amendment to change the point of appropriation; developing Well 5; completing construction; meeting all permit conditions and applying water to full beneficial use.
8. As of July 20, 2011, the City states no water has been appropriated.
9. In addition to the 1.0 cfs of water authorized under Permit G-16074 (Well 5), the City holds Permit G-9912 for 0.91 cfs of water from four wells (Well 1 to 4) in the Snake River Basin.

These two permits total 1.91 cfs of ground water. The City of Adrian has not yet made use of 1.30 cfs of water, being 1.0 under Permit G-16074 and 0.30 cfs of water under Permit S-9912.
10. According to the City, the following wells have limitations as follows:
 - Well 1 is currently not in service;
 - Well 2 and 3 are used only as secondary supply due to poor water quality, low yield, and cannot be operated simultaneously for sustained periods due to drawdown conflicts;
 - Well 4's yield declines during the high demand months and has poor water quality; and
 - Well 5 is inaccessible for use.
11. According to the city, their peak water demand within its service area boundaries was 0.15 cfs in 2010. The City often operates its wells 24 hours per day due to well production problems to meet their demand.
12. According to the City, in 2012, the population within the service boundary of the City of Adrian was 180. The City of Adrian estimates the population will increase at growth rate of 1.45 percent per year, reaching an estimated population of 354 by the year 2059.
13. According to the City's April 2013 Water System Master Plan (Section 2, page 10), the City expects an undeveloped area (10% of City's total area) and an area used as agricultural (29% of the City's total area) to be converted to residential, commercial and industrial use.
14. According to the City, their peak day demand is projected to be approximately 1.0 cfs of water by the year 2059, assuming that the City's wells will be operated 7 hours per day.

15. Full development of Permit G-16074 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
16. The City's request for an extension of time until October 1, 2059, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-16074 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) and OAR 690-315-0080(4).

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 municipal or 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.

17. Prior to the issuance of Permit G-16074 on July 20, 2006, the City drilled a test well (MALH 52561) in December, 2004. Construction of Well 5 (MALH 52787) began September 26, 2005 and was completed October 9, 2005.
18. No work was accomplished during the original development time frame under Permit G-16074, as the City completed construction of Well 5 prior to issuance of permit.
19. According to the City, as of July 10, 2013, they have invested approximately \$126,866, which is approximately 7 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,674,500 investment is needed for the completion of this project.
20. As of July 20, 2011, no water has been appropriated for beneficial municipal purposes under the terms of this permit.
21. The Department has considered the City's compliance with conditions, and did not identify any concerns.

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

22. According to the City, as of July 10, 2013, they have invested approximately \$126,866, which is 7 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,674,500 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 municipal or 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).

23. 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)].
 - a. 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-16074; 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 point of appropriation for Permit G-16074 is not located within a limited or critical ground water area. The point of appropriation for Permit G-16074, located within the Snake River Basin, is not located within or above any state or federal scenic waterway. The point of appropriation is within areas ranked low for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is 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 point of appropriation is 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)].

24. According to the City, as of July 10, 2013, they have invested \$126,866, which is 7 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,674,500 investment is needed for the completion of this project.

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

25. 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)].

26. As described in Findings 8 through 15 the City of Adrian has indicated, and the Department finds that the City must rely on full development of Permit G- 16074 to meet its present and future water demands. Furthermore, the wells on the City's only other water right have low yields, reduced well capacity during high demand summer months, and water quality issues.
27. City of Adrian projects a population increase of 1.45 percent per year over the next forty years and also expects commercial and industrial growth.
28. Given the current water supply situation of the City as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-16074.
29. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of any water up to 1.0 cfs under Permit G-16074 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 which grants access to a greater appropriation of water under the 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)]

30. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-16074.

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

31. 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)]

32. Delay of development under Permit G-16074 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years. The City states the development of this permit has proven difficult due to the existing well that was drilled, constructed, and tested for use under this permit is located on land that was not owned by the City. The City had negotiated access to the property with the landowner; however, the access agreement was not formalized prior to the landowner selling the property. The current landowner is not agreeable to providing the City access to the well. As a result, the City is unable to access or use the well.

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(2).
2. The City 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. Pursuant to ORS 540.510(3)(a), water under Permit G-16074 may be applied to beneficial use on land to which the right is not appurtenant.
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. 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 unforeseen events over which the water right permit holder had no control, and the Department has determined that the City has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
6. As required by OAR 690-315-0090(3) and as described in Finding 29, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of any water up to 1.00 cfs under Permit G-16074 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes 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-16074 from July 20, 2011 to October 1, 2059.

Extend the time to apply the water to beneficial use under Permit G-16074 from July 20, 2011 to October 1, 2059.

Subject to the following conditions:

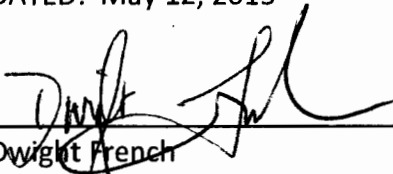
CONDITIONS

1. **Development Limitations**

No appropriation of water is currently allowed under this permit. Appropriation of any water up to 1.0 cfs under Permit G-16074 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes 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. The amount of water used under Permit G-16074 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 the final order may also meet the WMCP submittal requirements of other Department orders.

DATED: May 12, 2015



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 **June 26, 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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active Duty service members have a right to stay these proceedings under federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.of.mil>

Mailing List for Extension PFO Copies

PFO Date: May 12, 2015

**Application G-16386
Permit G-16074**

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>on: _____ (DATE)</p>
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Original mailed to Applicant:

City of Adrian
Attn: Shawn Snyder
503 First Street
Adrian, OR 97901

Copies sent to:

1. WRD - App. File G-16386/ Permit G-16074
2. GSI Water Solutions
Attention Ted Ressler
55 SW Yamhill Street, Suite 300
Portland, OR 97204

Fee paid as specified under ORS 536.050 to receive copy:

1. None

Receiving electronic copy via e-mail (10 AM Tuesday of signature date)

2. WRD - Watermaster District 9 – Ron Jacobs
3. WRD - Lisa Jaramillo, Transfer and Conservation Services (TACS)
Done by _____ Date _____

CASEWORKER: MAB