

**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-11418, Water Right Application G-12591, ) PROPOSED FINAL ORDER  
in the name of the City of Sisters )

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**Permit Information**

**Application File G-12591/ Permit G-11418**

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: June 25, 1991

**Authorized Use of Water**

Source of Water: One Well within the Whychus Creek Basin  
Purpose or Use: Municipal  
Maximum Rate: 1.56 Cubic Feet per Second (CFS)

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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-11418, water right Application G-12591.

## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1999 to October 1, 2029.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2029.
- 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 Sisters

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

### 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. Under specific circumstances, the Department may condition extensions of time for municipal

water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

**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-11418 was granted by the Department on February 3, 1992. The permit authorized the use of up to 3.34 cfs of water from one well within the Whychus Creek Basin, for municipal use, of which 1.78 cfs was partially perfected under Certificate 85243<sup>1</sup>. The authorized amount remaining under the permit is 1.56 cfs. The permit specified that construction of the water development project was to be completed by October 1, 1994, and that complete application of water was to be made on or before October 1, 1995.
2. One prior permit extension has been granted for Permit G-11418. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1999.
3. 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.
4. 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.
5. The permit holder, the City of Sisters (City), submitted an "Application for Extension of Time" to the Department on November 5, 1999, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-11418 be extended from October 1, 1999 to October 1, 2019. On January 15, 2004, the City submitted an updated application consistent with Division 315 rules and

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<sup>1</sup> Certificate 85243 was superseded by Certificate 87247 following Transfer T-10766 which changed the point of appropriation from Well 2 to Well 3 and changed the place of use.

requested the extended time to complete construction be changed from October 1, 2019 to October 1, 2049, and the extended time to apply water to full beneficial use be changed from October 1, 2019 to October 1, 2049.

6. Notification of the City's Application for Extension of Time for Permit G-11418 was published in the Department's Public Notice dated March 2, 2004. No public comments were received regarding the extension application.
7. On April 18, 2005, and March 3, 2006, the City submitted supplemental information and update revisions to their pending Application for Extension of Time.
8. On March 13, 2013, the permit holder submitted additional information to update their Application for Extension of Time. The amendment requested the extended time to complete construction be reduced from October 1, 2049 to October 1, 2029, and the extended time to apply water to full beneficial use be reduced from October 1, 2049 to October 1, 2029.

**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 537.230<sup>2</sup>, 537.630<sup>3</sup> and/or 539.010(5)<sup>4</sup>*

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

9. On November 5, 1999, 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)]**

10. Permit G-11418 was issued prior to June 29, 2005; therefore, the applicant is not required to provide evidence of actions taken to begin actual construction of the project.<sup>5</sup>

**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.*

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<sup>2</sup> ORS 537.230 applies to surface water permits only.

<sup>3</sup> ORS 537.630 applies to ground water permits only.

<sup>4</sup> ORS 537.010(5) applies to surface water and ground water permits.

<sup>5</sup> Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

11. There is no remaining work to be accomplished under Permit G-11418 in order to complete construction and apply water to full beneficial use; a claim of beneficial use will be submitted after full beneficial use of the water has been made.
12. Permit G-11418 authorized the use of 3.34 of water for municipal purposes, of which 1.78 cfs is perfected under Certificate 87247. There is an undeveloped portion of 1.56 cfs of water under Permit G-11418 as per OAR 690-315-0010(6)(g).
13. In addition to the 1.56 cfs of water authorized under Permit G-11418 (Well 2 - DESC 1034), the City holds the following municipal use rights:
  - Certificate 87247 for 1.78 cfs of water from Well 3 (DESC 57902) within the Whychus Creek Basin;
  - Certificate 88184 for 1.78 cfs of water from Wells 1 (DESC 3023) and 3 (DESC 57902) within the Whychus Creek Basin;
  - Permit G-16794 for 2.0 cfs of water, further limited to 604.6 AF per year, from Wells 1 (DESC 3023), 2 (DESC 1034), 3 (DESC 57902), and 4.

These permits, certificates total 7.12 cfs of water. The City of Sisters has not yet perfected the use of 3.56 cfs of water, being 1.56 under Permit G-11418 and 2.0 cfs of water under Permit G-16794. All municipal water for the City is currently supplied from ground water.

14. The City also holds six municipal use surface water certificates (65091, 13509, 13501, 10028, and 3227) totaling 5.45 cfs from various sources which are pooled into instream lease IL-1243 until December 31, 2016. A municipal use storage right (Certificate 65090) for 6.3 AF is also pooled into the instream lease IL-1243. Surface water usage by the City would require treatment facilities, which are not currently developed.
15. According to the City, their peak water demand within its service area boundaries was 2.72 cfs in 2008.
16. According to the City, in 2008, the population within the service boundary of the City of Sisters was 1,875. The current service area includes two areas within the Urban Growth Boundary (UGB) that are not within the City limits at this time.
17. The City of Sisters estimates the population will increase at growth rate of 3.13 percent per year, reaching an estimated population of 4,217 by the year 2029. The City has potential for growth, including infill within the existing City limits, and from growth on lands planned for annexation.
18. According to the City, their peak day demand is projected to be approximately 7.11 cfs of water by the year 2029.

19. Full development of Permit G-11418 is needed to address the present and future water demand of the City, including system redundancy and emergency use. The City is dependent on ground water supplies to serve community needs.
20. The City's request for an extension of time until October 1, 2029, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-11418 is both reasonable and necessary.

**Good Cause [OAR 690-315-0080(1)(e) and (3)(a-a) 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.*

21. Prior to the issuance of Permit G-11418 on February 3, 1992, the City constructed Well 2 (DESC-1034).
22. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-11418.
23. During the last extension period, being October 1, 1994 to October 1, 1999, the City received Department approval of a water level monitoring plan, completed and updated a Water Management Conservation Plan (WMCP), and replaced significant portions of the distribution system.
24. Since the October 1, 1999 the City has completed and updated a Water System Master Plan and a Water Management Conservation Plan (WMCP).
25. According to the City, as of March 13, 2013, they have invested approximately \$5,245,000, which is the total projected cost for complete development of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under G-11418, other costs included in this accounting are not partitioned out for G-11418 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.

26. As of October 1, 1999, 1.78 cfs of the 3.34 cfs of the permitted rate has been appropriated for beneficial use from Well 2. This amount has been partially perfected under Certificate 87247. Beneficial use of water has not yet been demonstrated for 1.56 cfs.
27. 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)]**

28. According to the City, as of March 13, 2013, they have invested approximately \$5,245,000, which is the total projected cost for complete development of this project.

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

29. As described in Findings 12 through 19 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-11418.
30. The City projects a population increase, on average, of 3.13 percent per year over a twenty-one year period, being the year's 2008 to 2029.
31. Given the current water supply situation of the City, 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 G-11418.
32. 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 1.56 cfs under Permit G-11418<sup>6</sup> 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)]**

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

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<sup>6</sup> The permit was issued for a total of 3.34 cfs; 1.78 cfs of the permit was partially perfected under Certificate 87247.

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

34. 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)(a)]**

35. Delay of development under Permit G-11418 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.

**Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]**

*The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.*

36. On August 3, 2011, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-11418 has the potential for substantial interference (PSI) with surface water in accordance with OAR 690-315-0010(6)(f). The Department estimated that use of the undeveloped portion being 1.56 cfs, will result in impact of 0.02 cfs to Whychus Creek.
37. The pending municipal Application for Extension of Time and the estimated surface water impacts from the undeveloped portion for Permit G-11418 were delivered to ODFW on September 27, 2011, for review under OAR-690-315-0080.
38. Notification that the pending municipal Application for Extension of Time for Permit G-11418 was delivered to ODFW for review was sent to the City on September 28, 2011.
39. Notification that the pending municipal Application for Extension of Time for Permit G-11418 was delivered to ODFW for review was published in the Department's Public Notice dated October 4, 2011. No public comments were received regarding this notice.
40. On February 17, 2015, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-11418.
41. Summary and Excerpts of Advice from ODFW:  
In a ground water review (K. Lite, 2011) the Oregon Water Resources Department found that the hydraulic connectivity between the source of the City's ground water right and water in Whychus Creek was very low; impacts at 360 days of pumping was estimated at 0.02 cfs. This means that of the undeveloped 1.56 cfs, only 0.02 cfs impacts Whychus Creek flow, at one year of pumping.



Because of the minimal impact to Whychus Creek, ODFW has determined that use of the undeveloped portion of the permit, without conditions, will maintain the persistence of listed fish species in the portions of waterways affected by water use under the [undeveloped portion] of the permit.

42. The Department finds, based on existing data and ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-11418 will maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.
43. On February 24, 2015, the Department notified the City as per OAR 690-315-0080(2)(f) of ODFW's written advice for the pending municipal Application for Extension of Time for Permit G-11418.

### **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 Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-11418 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2029<sup>7</sup> pursuant to OAR 690-315-0080(1)(d).
7. 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>7</sup> For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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).

8. In accordance with OAR 690-315-0080(1)(f)(B), and as described in Findings 41 and 42, above, the use of the undeveloped portion will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

### **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-11418 from October 1, 1999 to October 1, 2029.

Extend the time to apply the water to beneficial use under Permit G-11418 from October 1, 1999 to October 1, 2029.

Subject to the following conditions:

### **CONDITIONS**

1. **Development Limitations**

Appropriation of any water up to 1.56 cfs under Permit G-11418<sup>8</sup> 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-11418 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

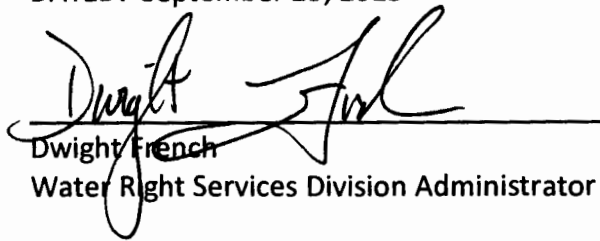
The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-11418 that has been established under a prior WMCP or Extension final order issued by the Department.

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<sup>8</sup> The permit was issued for a total of 3.34 cfs; 1.78 cfs of the permit was partially perfected under Certificate 87247.

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: September 29, 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 **November 13, 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 servicemembers have a right to stay these stay these proceedings under federal Servicemembers 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>

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- If you have any questions about statements contained in this document, please contact Ann Reece at 503-986-0834.
  - 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
  - Fax: 503-986-0901                         Salem, OR 97301-1266
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