

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights)
Application G-13809, in the name of)
ROATS WATER SYSTEM, INC.,)
Deschutes County)

FINAL ORDER

Appeal Rights

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Findings of Fact

1. On September 1, 1994, Juniper Utility Company submitted an application to the Department for a water use permit.
2. The Department issued a Superseding Proposed Final Order on February 25, 1997. The protest period closed April 11, 1997, and no protest was filed.
3. The application was put on several administrative holds, the last expiring on August 9, 2016.
4. On October 27, 2016, the application was assigned to Roats Water System, Inc.
5. On February 12, 2018, the applicant amended the application to reduce the annual volume to 1,485 acre-feet (AF), which reduces the mitigation obligation to 594.0 AF, and to propose the use of only two wells, Wells 5 and 6, and to rename those wells as Hole Ten #1 and Hole Ten #2. The applicant submitted an updated map and a satisfactory incremental mitigation development plan.
6. As required by OAR 690-505-0615, the applicant must submit mitigation that meets the requirements of OAR 690-505-0610(2)-(5). Pursuant to OAR 690-505-0620, -0625, and OAR 690-522-0044, a permit shall not be issued until the applicant provides documentary evidence that mitigation has been obtained, in an amount and location satisfying the first increment of the incremental mitigation development plan on file with the Department. Mitigation water must also be legally protected instream before a permit may be issued by the Department.
7. The mitigation obligation for the proposed use is 594.0 AF, which must be provided in the General Zone of Impact, located anywhere in the Deschutes Basin above the Madras gage, which is below Lake Billy Chinook.
8. The applicant has not submitted documentary evidence that mitigation water, in an amount satisfying the first increment of the incremental mitigation development plan has been obtained.

9. The proposed use would not impair or be detrimental to the public interest.

Conclusions of Law

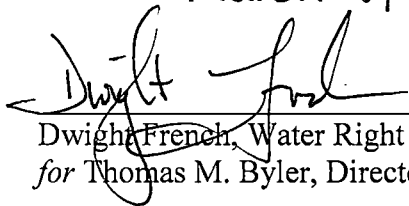
1. The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Order

Application G-13809 is therefore approved, with the above modification to the Proposed Final Order. Upon submission of documentary evidence that satisfactory mitigation has been obtained consistent with the incremental mitigation development plan on file with the Department, a permit shall be issued authorizing the proposed water use.

**This Final Order shall expire 5 years after issuance unless the required mitigation is provided.
OAR 690-505-0620(2).**

DATED March 6, 2018



Dwight French, Water Right Services Division Administrator
for Thomas M. Byler, Director

This order was produced by Kim French. If you have any questions about any of the statements contained in this document I can be reached at 503-986-0816 or Kim.R.French@oregon.gov.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROATS WATER SYSTEM, INC.
61147 HAMILTON LANE
BEND, OR 97702

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-13809

SOURCE OF WATER: HOLE TEN # 1 AND HOLE TEN #2 IN DESCHUTES RIVER BASIN

RATE: 4.16 CUBIC FEET PER SECOND, FURTHER LIMITED TO 1485.0 ACRE-FEET ANNUALLY CONSISTENT WITH THE INCREMENTAL DEVELOPMENT PLAN ON FILE WITH THE DEPARTMENT

DATE OF PRIORITY: SEPTEMBER 1, 1994

USE: QUASI-MUNICIPAL

PERIOD: YEAR-ROUND

Authorized Point of Appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
HOLE TEN # 1	18 S	12 E	WM	20	SW NE	57 DEGREES 51 MINUTES 49 SECONDS WEST, 2673 FEET FROM NE CORNER, SECTION 20
TEN HOLE # 2	18 S	12 E	WM	20	SW NE	57 DEGREES 51 MINUTES 49 SECONDS WEST, 2673 FEET FROM NE CORNER, SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	8	NE SE
18 S	12 E	WM	8	SE SE
18 S	12 E	WM	9	NE NE
18 S	12 E	WM	9	SE NE
18 S	12 E	WM	9	NE SE
18 S	12 E	WM	9	SE SE
18 S	12 E	WM	15	NW NE
18 S	12 E	WM	15	SW NE
18 S	12 E	WM	15	NE SE
18 S	12 E	WM	15	NW SE
18 S	12 E	WM	15	SW SE
18 S	12 E	WM	16	NE NE
18 S	12 E	WM	16	NW NE
18 S	12 E	WM	16	SW NE
18 S	12 E	WM	16	SE NE

Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	16	NE NW
18 S	12 E	WM	16	NW NW
18 S	12 E	WM	16	SW NW
18 S	12 E	WM	16	SE NW
18 S	12 E	WM	16	NE SW
18 S	12 E	WM	16	NW SW
18 S	12 E	WM	16	SW SW
18 S	12 E	WM	16	SE SW
18 S	12 E	WM	16	NE SE
18 S	12 E	WM	16	NW SE
18 S	12 E	WM	16	SW SE
18 S	12 E	WM	16	SE SE
18 S	12 E	WM	17	NE SE
18 S	12 E	WM	17	SW SE
18 S	12 E	WM	17	SE SE
18 S	12 E	WM	19	NE NE
18 S	12 E	WM	19	SE NE
18 S	12 E	WM	19	NE SE
18 S	12 E	WM	19	NW SE
18 S	12 E	WM	19	SW SE
18 S	12 E	WM	19	SE SE
18 S	12 E	WM	20	NE NE
18 S	12 E	WM	20	NW NE
18 S	12 E	WM	20	SW NE
18 S	12 E	WM	20	SE NE
18 S	12 E	WM	20	NE NW
18 S	12 E	WM	20	NW NW
18 S	12 E	WM	20	SW NW
18 S	12 E	WM	20	SE NW
18 S	12 E	WM	20	NE SW
18 S	12 E	WM	20	NW SW
18 S	12 E	WM	20	SW SW
18 S	12 E	WM	20	SE SW
18 S	12 E	WM	20	NW SE

Measurement devices and recording/reporting of annual water use conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Static Water Level Conditions:

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water-level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Static Water Level Measurements:

The Department requires the permittee to report an initial water-level measurement in the month specified above once well construction is complete, and annually thereafter until use of water begins; and

After Use of Water has Begun

Reference Static Water Level Determination:

Following the first year of water use, the user shall report one static water-level measurement in the month specified above which will establish the reference level against which future annual measurements will be compared. The Director may require the user to obtain and report additional static water levels after the reference level has been determined. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement;
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface;
- C. Specify the method used to obtain each well measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or

- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Water Management and Conservation Plan Condition:

Within one year of permit issuance, the permittee shall submit a Water Management and Conservation Plan, addressing use under this permit, consistent with OAR 690-086. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department. No water may be diverted if a Water Management and Conservation Plan is not submitted within one year of permit issuance.

Ground Water Mitigation Conditions:

1. Mitigation Obligation: 594.0 acre-feet of mitigation water in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located below Lake Billy Chinook).
2. Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules) and OAR Chapter 690, Division 522.
3. The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development mitigation plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.
4. The permittee shall not increase the rate or amount of water diverted, as described in the incremental development mitigation plan, prior to increasing the corresponding mitigation.
5. The permittee shall seek and receive Departmental approval prior to changing the incremental mitigation development plan and related mitigation obligation for each stage of permit development.
6. The permittee shall report to the Department the progress of implementing the incremental mitigation development plan and related mitigation no later than April 1 of each year. The annual report shall include the annual volume of water used, the source of mitigation, and any offset used for that period. This annual notification is not necessary if the permittee has completed development and submitted a Claim of Beneficial Use to the Department.
7. Mitigation water must be legally protected instream in the General Zone of Impact for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

8. The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.
9. If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the maintenance and terms and conditions of a valid contract or satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department.
10. Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, and proposing to cancel the ground water permit, or subsequent certificate(s).

Scenic Waterway Condition:

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right, or as those quantities may be reduced subsequently. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the required mitigation is maintained

STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
3. If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
4. The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.
5. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
6. Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

7. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best-practice technologies or conservation practices to achieve this end.
8. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged comprehensive land-use plan.
9. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
10. Complete application of the water to the use shall be made within five years of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
11. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT – NOT A PERMIT

Dwight French, Water Right Services Division Administrator
for, Thomas M. Byler, Director