

**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-10825, Water Right Application G-11773, ) PROPOSED FINAL ORDER  
in the name of the City of Imbler )

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**Permit Information**

**Application File G-11773/ Permit G-10825**

Basin 8 – Grande Ronde Basin / Watermaster District 6

Date of Priority: January 4, 1988

**Authorized Use of Water**

Source of Water: One Well within the Grande Ronde Basin  
Purpose or Use: Municipal and Fire Protection  
Maximum Rate: 2500 Gallons Per Minute (GPM), being 500 GPM for  
Municipal Use and 2000 GPM for Maintenance of the Fire  
Protection System

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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-10825, water right Application G-11773.

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

### **The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1996 to October 1, 2069.
- Grant an extension of time to apply water to full beneficial use from October 1, 1996 to October 1, 2069.
- 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 Imbler  
PFO – Proposed Final Order  
WMCP – Water Management and Conservation Plan

### **Units of Measure**

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. 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-10825 was granted by the Department on July 29, 1988. The permit authorizes the use of up to 2500 Gallons per Minute (GPM), being 500 GPM for Municipal Use and 2000 GPM for Maintenance of the Fire Protection System from an artesian well within the Grande Ronde Basin. It specified that construction of the water development project was to be completed by October 1, 1990, and that complete application of water was to be made on or before October 1, 1991.
2. Two prior permit extensions have been granted for Permit G-10825. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1996.
3. The permit holder, the City of Imbler (City), submitted an "Application for Extension of Time" to the Department on March 5, 1998, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-10825 be extended from October 1, 1996 to October 1, 2006.
4. 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.
5. 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.
6. On September 19, 2011, the permit holder submitted a new extension of time application consistent with the rules in OAR 690-315. The City requested that the extended time to complete construction be changed from October 1, 2006 to October 1, 2069, and the extended time to apply water to full beneficial use be changed from October 1, 2006 to October 1, 2069. Minor application revisions were received on October 31, 2011.
7. Notification of the City's Application for Extension of Time for Permit G-10825 was published in the Department's Public Notice dated November 8, 2011. No public

comments were received regarding the extension application.

**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>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

8. On March 5, 1998, 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)]**

9. Permit G-10825 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>4</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.*

10. The remaining work to be accomplished under Permit G-10825 consists of improving booster pump controls, extending the water main and service line extensions to future development, and upgrading the booster pump system; and of completing construction and applying water to full beneficial use.
11. As of August 2, 1993, the permit holder had appropriated 2325 GPM, being 325 GPM for Municipal Use and 2000 GPM for Maintenance of the Fire Protection System of water authorized under Permit G-10825. There is an undeveloped portion of 175 GPM of water for municipal use under Permit G-10825 as per OAR 690-315-0010(6)(g). There is no undeveloped portion under the permit for maintenance of the fire protection system.
12. Other than Permit G-10825, the City holds no other municipal water rights.
13. According to the City, their peak water demand for municipal use within its service area boundaries was 347 GPM in 1997.
14. According to the City, in 2010, the population within the service boundary of the City of Imbler was 306. The City of Imbler estimates the population will increase at growth rate of 0.5 percent per year, reaching an estimated population of 411 by the year 2069.

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

<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.

<sup>4</sup> Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(1)(d).

15. The City is in the process of building a new school and is considering annexing additional land into the City limits. According to the City's zoning map, potential expansion of residential, commercial and industrial growth is possible.
16. According to the City, their peak day demand for municipal use is projected to be approximately 500 GPM of water by the year 2069.
17. Full development of Permit G-10825 is needed to address the present and future water demand of the City.
18. In accordance with OAR 690-315-0080(1)(d) and as described by Finding 15, the City demonstrated that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.
19. The City's request for an extension of time until October 1, 2069, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-10825 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.*

20. Prior to the issuance of Permit G-10825 on July 29, 1988, the City constructed the artesian well and installed a water meter.
21. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-10825.
22. During the last extension period, being October 1, 1991 to October 1, 1996, the City installed six new service lines.
23. Since October 1, 1996, the City has reprogrammed the booster pump panel.
24. According to the City, as of 2009, they have invested approximately \$626,665, which is approximately 74 percent of the total projected cost for complete development of this project. The City estimates an additional \$225,000 investment is needed for the completion of this project.
25. Since the issuance of Permit G-10825 on July 29, 1988, 325 GPM of water has been used for municipal use and 2000 GPM has been used for maintenance of the fire protection

system allowed has been appropriated from the well for beneficial municipal purposes under the terms of this permit.

26. 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)]**

27. According to the City, as of 2009, they have invested approximately \$626,665, which is approximately 74 percent of the total projected cost for complete development of this project. The City estimates an additional \$225,000 investment is needed for the completion of this project.

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

28. As described in Findings 11 through 18 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-10825.
29. The City projects a population increase, on average, of 0.5 percent per year over a fifty-nine year period, being the years 2010 to 2069.
30. Given the current water supply situation of the City, including current and expected demands, there is a market and present demand for the water to be supplied under G-10825.
31. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 325 GPM for municipal use under Permit G-10825 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 AOR 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)]**

32. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-10825.

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

33. 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)]**

34. Delay of development under Permit G-10825 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.*

35. On December 26, 2007, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-10825 does not have the potential for substantial interference with surface water.
36. Based upon the Department's determination described in Finding 35, the use of the undeveloped portion of Permit G-10825 does not have the potential for substantial interference with surface water, and therefore the persistence of listed fish species will be maintained.

### **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. 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, 2069<sup>5</sup>. The estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder 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 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

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<sup>5</sup> Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use.

to complete construction and 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 31, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 325 GPM for municipal use 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).
8. Use of water under this ground water Permit G-10825 does not have the potential for substantial interference with surface water.

### **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-10825 from October 1, 1996 to October 1, 2069.

Extend the time to apply the water to beneficial use under Permit G-10825 from October 1, 1996 to October 1, 2069.

Subject to the following conditions:

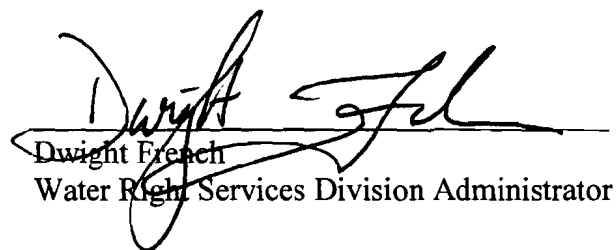
## **CONDITIONS**

1. **Development Limitations**  
Appropriation of any water beyond 325 GPM for municipal use under Permit G-10825 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-10825 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: December 24, 2013

  
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 **February 7, 2014**, 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 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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