

**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-7029, Water Right Application G-7563,) PROPOSED FINAL ORDER
in the name of the City of Fairview)

Permit Information

Application File G-7563/ Permit G-7029

Basin 2 – Willamette Basin / Watermaster District 20

Date of Priority: October 27, 1976

Authorized Use of Water

Source of Water: One Well within the Fairview Creek Basin
Purpose or Use: Municipal
Maximum Rate: 2.2 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-7029, water right Application G-7563.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2009 to October 1, 2040.
- Grant an extension of time to apply water to full beneficial use from October 1, 2010 to October 1, 2040.
- 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 Fairview

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.

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-7029 was granted by the Department on January 18, 1977. The permit authorizes the use of up to 2.2 cfs of water from Well 6 (MULT 3104) within the Fairview Creek Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1978, and that complete application of water was to be made on or before October 1, 1979.
2. Five prior permit extensions have been granted for Permit G-7029. The most recent extension request resulted in the completion date for construction being extended to October 1, 2009, and full application of water being extended to October 1, 2010.
3. The permit holder, the City of Fairview (City), submitted an "Application for Extension of Time" to the Department on July 29, 2011, requesting the time to complete construction be extended from October 1, 2009 to October 1, 2040, the time to apply water to full beneficial use under the terms and conditions of Permit G-7029 be extended from October 1, 2010 to October 1, 2040.
4. Notification of the City's Application for Extension of Time for Permit G-7029 was published in the Department's Public Notice dated August 9, 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 537.230¹, 537.630² and/or 539.010(5)³

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.

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

5. On July 29, 2011, 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. Permit G-7029 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.⁴

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-7029 consists of providing water treatment for Well 6, applying for and receiving approval from the Department for a permit amendment for adding an additional point of appropriation, completing construction including drilling and constructing a new well once approved, and applying water to full beneficial use.
8. As of October 1, 2010, the permit holder had appropriated 0.76 cfs of the 2.2 cfs of water authorized under Permit G-7029 for municipal purposes. There is an undeveloped portion of 1.44 cfs of water under Permit G-7029 as per OAR 690-315-0010(6)(g).
9. In addition to the 2.2 cfs of water authorized under Permit G-7029 (Well 6 - MULT 3104), the City holds the following municipal use water rights:
 - Certificate 87103 for 1.0 cfs of water from Well 9 within the Fairview Creek Basin;
 - Certificate 87104 for 2.2 cfs of water from Wells 5 and 9 within the Fairview Creek Basin;
 - Certificate 74803 for 0.67 cfs of water from Well 7 in the Fairview Creek Basin;
 - Certificate 88274 for 2.67 cfs of water from Well 8 within the Columbia River Basin; and
 - Ground water Registration GR-363 for 100 gpm (0.22 cfs) of water from a pump well within the Fairview Creek Basin.

These ground water rights total 8.96 cfs of water. GR-363 is an un-adjudicated water right, and it is not used to meet current demand because the well needs replacing. Use of water from Wells 6 (Permit G-7029) and 7 (Certificate 88274) are used for backup supply due to water quality issues. Thus the reliable water rights for the City at this time

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

total 5.87 cfs, being 1.0 cfs under Certificate 87103, 2.2 cfs under Certificate 87104, and 2.67 cfs under Certificate 88274. Although included as a reliable source, Well 9 is currently off-line due to potential well fouling issues.

10. Approximately 1200 people within the City of Fairfield are served by Rockwood Water People's Utility District, and are excluded from the demand projections and service area boundary population estimates provided below.
11. According to the City, their peak water demand within its service area boundaries was 2.59 cfs in 2010.
12. According to the City, in 2010, the population within the service boundary of the City of Fairview was 8,700. The City of Fairview estimates the population will reach 9,800 by the year 2040 which calculates to a growth rate of 0.4 percent per year.
13. According to the City, their peak day demand is projected to be approximately 4.04 cfs of water by the year 2040.
14. According to the City, although the current production capacity of the City's water supply wells exceeds their projected demand, the capacity is not sufficient for meeting projected demand due to lack of system redundancy. The loss of a single well or decreased capacity in one or more of their existing wells would result in demand exceeding current supply. The City must fully utilize the remaining 1.44 cfs of undeveloped capacity under Permit G-7029 to provide the needed margin of redundancy and reliability for the City's water supply system.
15. The City of Fairview has an agreement with the City of Portland to supply emergency water to the Interlachen Water Public Utility District (IWPUD) when pumping from the City of Portland's well field causes interference with IWPUD's wells.
16. Full development of Permit G-7029 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
17. The City's request for an extension of time until October 1, 2040, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-7029 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.

18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-7029.
19. During the last extension period, being October 1, 1999 to October 1, 2010, the City rehabilitated Well 6, equipped the well with electronic flow measurement instrumentation, replaced the well pump motor (twice), installed chlorination facilities, modified motor controls, and added a soft starter; conducted a water rights evaluation and ground water source options study; and received Department approval on a Water Management and Conservation Plan (2005 WMCP).
20. According to the City, as of July 29, 2011, they have invested approximately \$187,254, which is approximately 11 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,532,750 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under G-7029, other costs included in this accounting are not partitioned out for G-7029 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.
21. As of October 1, 2010, 0.76 cfs of the 2.2 cfs allowed has been appropriated from Well 6 for beneficial municipal purposes under the terms of this permit.
22. 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)]

23. According to the City, as of July 29, 2011, they have invested approximately \$187,254, which is 11 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,532,750 investment is needed for the completion of this project.

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

24. As described in Findings 8 through 16 the City has indicated, and the Department finds that the City must rely on full development of Permit G-7029 to meet its present and future water demands.

25. The population is calculated to increase 0.4 percent per year over a thirty year period, being the year's 2010 to 2040.
26. 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-7029.
27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.76 cfs under Permit G-7029 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)]

28. 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)]

29. 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)]

30. In addition to the difficulty in developing the source and financial constraints of the city, delay of development under Permit G-7029 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.

31. On August 9, 2011, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-7029 has the potential for substantial interference with surface water. The Department determined that use undeveloped portion of Permit G-7029, being 1.44 cfs will result in 0.082 cfs of surface water interference with Fairview Creek after 360 days of pumping.
32. The pending municipal Application for Extension of Time for Permit G-7029 was delivered to ODFW on May 1, 2013, for ODFW's review under OAR-690-315-0080.

33. Notification that the pending municipal Application for Extension of Time for Permit G-7029 was delivered to ODFW for review was sent to the City on May 2, 2013.
34. Notification that the pending municipal Application for Extension of Time for Permit G-7029 was delivered to ODFW for review was published in the Department's Public Notice dated March 7, 2013. No public comments were received regarding this notice.
35. On June 24, 2013, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-7029 stating that the use of the undeveloped portion of Permit G-7026 [having PSI with Fairview Creek] would maintain the persistence of listed species in the portions of waterways affected by water use under the permit. The advice indicated that curtailment of 0.059 of PSI after 180 days of pumping would be minimal and that even this small amount of depletion in Fairview Creek would likely be buffered by inflow from the Columbia River.
36. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-7029 that impacts on Fairview Creek surface water will maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.
37. On July 19, 2013, 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-7029.

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, 2040⁵ 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 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 27, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.76 cfs under Permit G-7029 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. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 31 to 37, above, the use of the undeveloped portion of the permit having PSI with surface water 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-7029 from October 1, 2009 to October 1, 2040.

Extend the time to apply the water to beneficial use under Permit G-7029 from October 1, 2010 to October 1, 2040.

Subject to the following conditions:

⁵ 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.

CONDITIONS

1. **Development Limitations**

Appropriation of any water beyond 0.76 cfs under Permit G-7029 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-7029 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: July 8, 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 **August 22, 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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