

**Oregon Water Resources Department  
Water Rights Division**



**Application for Extension of Time**

In the Matter of the Application for an Extension of Time )  
for Permit G-11348, Water Right Application G-11971, ) **PROPOSED FINAL ORDER**  
in the name of the City of Adams. )

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**Permit Information**

**Application File G-11971/ Permit G-11348**  
Basin 7 – Umatilla Basin / Watermaster District 5  
Date of Priority: October 16, 1989

**Authorized Use of Water**

Source of Water: Well No.3 within the Wildhorse Creek Basin  
Purpose or Use: Municipal  
Maximum Rate: 0.39 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-11348, water right Application G-11971. A copy of Permit G-11348 is enclosed as Attachment 1.

## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 2000, to October 1, 2025.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000, to October 1, 2025.
- 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 Adams  
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, shall order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

**ORS 539.010(5)** provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0080** provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

**OAR 690-315-0090(3)** authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

## **FINDINGS OF FACT**

### **Background**

1. Permit G-11348 was granted by the Department on September 23, 1991. The permit authorizes the use of up to 0.39 cfs of water from Well No. 3 within the Wildhorse Creek Basin, for municipal use. The permit specified construction of the water development project was to be completed by October 1, 1994, and 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-11348. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2000.
3. Due to an ongoing permit extension rulemaking, the Department placed all pending Applications for Extension of Time for municipal and quasi-municipal permits on hold and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time until the new rules were adopted.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 were adopted on November 1, 2002, amended, filed with the Secretary of State, and became effective on November 22, 2005.
5. The permit holder, the City of Adams (City) submitted an "Application for Extension of Time" to the Department on March 24, 2008, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit G-11348 be extended from October 1, 2000, to October 1, 2025. The extension application and supporting documentation submitted by the City clearly suggests that construction is not complete. The Department, therefore, determined that the permit holder's intent was to also request the time in which to complete construction of the water system under Permit G-11348 be extended from October 1, 2000, to October 1, 2025.
6. Notification of the City's Application for Extension of Time for Permit G-11348 was published in the Department's Public Notice dated April 8, 2008. 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>, 537.248<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)]**

7. On March 24, 2008, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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

<sup>2</sup> ORS 537.248 applies to reservoir 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.

**Start of Construction [OAR 690-315-0080(1)(b)]**

8. Permit G-11348 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.*

9. The remaining work to be accomplished under Permit G-11348 consists of completing repairs to the Old Reservoir, construction of the booster pump system, updating the Water Management and Conservation Plan, upgrading the pump, controls and motor for Well No.3, and completing construction of the water system and applying water to full beneficial use.
10. As of March 24, 2008, the permit holder has appropriated 0.23 cfs of the 0.84 cfs of water authorized under Permit G-11348 for municipal purposes. Of the 0.23 cfs appropriated, 0.11 cfs has been incrementally perfected in May, 2004 in accordance with OAR 690-320-0040. There is an undeveloped portion of 0.16 cfs of water under Permit G-11348 as per OAR 690-315-0010(6)(g).
11. In addition to the 0.39 cfs of water authorized under Permit G-11348 (Well No. 3), the City holds the following rights:
- T-6593 for 0.35 cfs of water from Well No.3 in Wildhorse Creek Basin; and
  - T-6592 for 0.26 cfs of water from Well No. 2 in the Wildhorse Creek Basin.

These water rights and permits total 1.0 cfs of groundwater. The City of Adams has not yet made beneficial use of 0.16 cfs of water under Permit G-11348.

12. The City currently utilizes a peak day demand total of 0.32 cfs of water from Well No.3 (Permit G-11348) to meet its present demand for water. Water authorized under T-6593 is no longer in use. Water from Well No.2 authorized under T-6592 is used as emergency back-up or as a primary source if Well No.3 is down for maintenance or due to mechanical failure.
13. According to the City, in 2007, the population within the service boundary of the City of Adams was 335. The City of Adams anticipates the population to increase at an estimated growth rate of 1.7 percent per year, which calculates to an estimated population of 454 by the year 2025.
14. The City's projected peak day demand, based on 0.54 cfs in 2020, calculates to 0.56 cfs of water by the year 2025.
15. Full development of Permit G-11348 is needed to address the present and future water demand of the City, including emergency and redundancy uses.
16. The City's request for an extension of time until October 1, 2025, to complete construction of the water system and to apply water to full beneficial use under the terms and conditions of Permit G-11348 is both reasonable and necessary.

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

**Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g) and (4)]**

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3) and OAR 690-315-0080(4).*

**Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a), (3)(c) and (4)]**

*Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.*

17. Prior to the issuance of Permit G-11348 on September 23, 1991, the City constructed Well No. 3.
18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-11348.
19. During the last extension period, being 1995 to 2000, the City completed the Water Distribution System Plan.
20. Since 2000, the City has accomplished the following work:
  - new storage reservoir was constructed,
  - distribution system improvements implemented,
  - modifications made to Well No. 3 pump station,
  - Water Management and Conservation Plan submitted and approved by OWRD.
21. According to the City, as of March 24, 2008, they have invested approximately \$1,014,600 which is approximately 90 percent of the total projected cost for complete development of this project. The City anticipates an additional \$110,000 investment is needed for the completion of this project.
22. Since the issuance of Permit G-11348 on September 23, 1991, approximately 0.23 cfs of the 0.39 cfs allowed has been appropriated from Well No. 3 for beneficial municipal purposes under the terms of this permit.
23. 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)]**

24. As of March 24, 2008, the City has invested approximately \$1,014,600 which is approximately 90 percent of the total projected cost for complete development of this project. The City anticipates an additional \$110,000 investment is needed for the completion of this project:

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

25. As described in Findings 10 through 15 above, the City has indicated, and the Department finds that the City must rely upon full development of its water right permits from the Wildhorse Creek Basin.
26. The City projects a population increase, on average, of 1.7 percent per year over an eighteen year period, being the years 2007 to 2025.

27. 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-11348.
28. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.23 cfs under Permit G-11348 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. 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)]**

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

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

30. 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)]**

31. Delay of development under Permit G-11348 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.*

32. On April 22, 2008, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-11348 does not have the potential for substantial interference with surface water.
33. Based upon the Department's determination described in Finding 32, the use of the undeveloped portion of Permit G-11348 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, 2025<sup>6</sup> 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 of the water system and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
8. As required by OAR 690-315-0090(3) and as described in Finding 28 above and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 0.23 cfs cfs under Permit G-11348 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 32 and 33, above, the use of the undeveloped portion of the permit 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 of the water system under Permit G-11348 from October 1, 2000, to October 1, 2025.

extend the time to apply the water to beneficial use under Permit G-11348 from October 1, 2000, to October 1, 2025.

Subject to the following conditions:

### **CONDITIONS**

#### **1. Development Limitations**


Diversion of any water beyond 0.23 cfs under Permit G-11348 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. The required WMCP shall be submitted to the Department within

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<sup>6</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.

3 years of an approved extension of time application. Use of water under Permit G-11348 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 that is on file with the Department. The deadline established in this PFO 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 this order may also meet the WMCP submittal requirements of other Department orders.

DATED: April 7, 2009

  
Dwight French  
Administrator  
Water Rights and Adjudications Division

*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 **May 22, 2009** 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 protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.
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.



