

**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-13765, Water Right Application G-14397,) PROPOSED FINAL ORDER
in the name of the Port of Morrow)

Permit Information

Application File G-14397/ Permit G-13765

Basin 7 – Umatilla Basin / Watermaster District 5

Date of Priority: October 23, 1996

Authorized Use of Water

Source of Water: Two Wells in the Columbia River Basin
Purpose or Use: Municipal use and Irrigation of 301.0 Acres
Maximum Rate: Not to exceed a maximum cumulative total of 4.96 cubic feet per second (cfs), being 4.96 cfs for municipal use, and 3.76 cfs for irrigation

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-13765, water right Application G-14397.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2012 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

Port – Port of Morrow

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. On December 29, 1997, Permit G-13283 was issued by the Department. This permit was superseded by Permit G-13765 on November 16, 1999 to correctly describe the maximum rate allowed. Permit G-13765 authorizes the use of up to, but not to exceed a cumulative total of 4.96 cfs of water, being 4.96 cfs for municipal use and 3.76 cfs for irrigation of 301.0 acres from two wells (Airport Wells #1 and #2) within the Columbia River Basin. It specified that complete application of water was to be made on or before October 1, 2002.
2. On April 16, 2004, the Department approved the Port of Morrow's (Port) plan to monitor and report the impact of water use under Permit G-13765.
3. On December 20, 2007, an extension of time was granted for Permit G-13765. The extension request resulted in the completion date for full application of water being extended to October 1, 2012.
4. On January 18, 2008, the Department approved a Water Management and Conservation Plan (Special Order Volume 74, Page 69) authorizing up to 0.46 cfs for municipal use under Permit G-13765.
5. On February 27, 2015, the permit holder, the Port of Morrow (Port), submitted an "Application for Extension of Time", requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13765 be extended from October 1, 2012 to October 1, 2040.
6. Notification of the Port's Application for Extension of Time for Permit G-13765 was published in the Department's Public Notice dated March 17, 2015. 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)]

7. On February 27, 2015, 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)]

8. Permit G-13765 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.

9. The remaining work to be accomplished under Permit G-13765 consists of applying water to full beneficial use.
10. As of October 1, 2012, of the 4.96 cfs of water authorized under Permit G-13765, the Port has appropriated 0.46 cfs for municipal use and 3.76 cfs for irrigation. There is an undeveloped portion of 4.5 cfs of water for municipal use, and no undeveloped portion for irrigation use under Permit G-13765 as per OAR 690-315-0010(6)(g).
11. According to the Port's 2007 Water Management and Conservation Plan (WMCP) the only water supply authorized for the Airport Industrial Park (1-1) is under Permit G-13765.
12. According to the Port, their peak water demand for the Airport Industrial Park for municipal use was 0.46 cfs and 3.76 for agricultural use.
13. According to the Port's 2007 WMCP (2-3), The Airport Industrial Park water supply is currently adequate, although an additional groundwater well may be needed to make efficient use of the current water right. Industry could expand especially seasonal business. The site includes 2,700 acres and a 3,070 acre site proposed for expansion is estimated to require an additional 4.96 cfs of water. In addition, the Port of Morrow has the only permitted major northwest motor speedway site, and requires 1.78 cfs.
14. Full development of Permit G-13765 is needed to address the present and future water demand at the Airport Industrial Park.
15. The Port's request for an extension of time until October 1, 2040, to apply water to full

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

beneficial use under the terms and conditions of Permit G-13765 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.

16. Between the issuance of Permit G-13283 on December 29, 1997 and the issuance of superseding Permit G-13765 on November 16, 1999, the Port constructed Airport Well #1 (MORR 50471).
17. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-13765. Airport Well #1 (MORR 50471/ alteration log MORR 50531) was retrofitted March, 1999. The Port also installed a meter, pipelines and a pivot system.
18. During the last extension period, being October 1, 2002 to October 1, 2012, the Port received approval of the Port's plan to monitor and report the impact of water use under this permit on April 16, 2004. On January 18, 2008, the Department approved the Port's 2007 WMCP (Special Order Volume 74, page 69). Airport Well #1 (MORR 50471/ MORR 50531/MORR 51712) was repaired February 2009.
19. According to the Port, as of February 27, 2015, they have invested approximately \$620,000, which is the total cost for complete development of this project.
20. As of October 1, 2012, 4.22 cfs of the 4.96 cfs allowed, being 0.46 cfs for municipal use and 3.76 cfs for irrigation has been appropriated from Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) for beneficial use under the terms of this permit.
21. The Department has considered the Port's compliance with conditions and has identified the following concern: (1) Permit G-13765 includes the condition of "groundwater shall not be produced from the basalt source".
22. A review of the records indicate that Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) is producing water from the basalt source which is an unauthorized source. Neither of the alterations had any effect on the source aquifer for the Well. As, a

result, MORR 50471/MORR 50531/ MORR 51712 still produces from the same source devolved by the Port's Well #1 (MORR 752) and #4 (MORR 1526), which is from the basalt source. Therefore, Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) does not meet the basalt source condition as set forth on Page 3 of Permit G-13765.

Failure to comply with permit conditions constitutes illegal use of water. Beneficial use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

The Department has determined that this extension will allow the permit holder to retrofit or abandon and replace Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) , so that production of groundwater is from the authorized source; and obtain the full rate of water allowed under the permit and to apply the water to full beneficial use.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

23. According to the Port, as of February 27, 2015, they have invested \$620,000, which is the total cost for complete development of this project.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

24. The Port expects to obtain a fair and reasonable return on investment by continuing development of Permit G-13765.

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

25. 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)]

26. Delay of development under Permit G-13765 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.

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

27. As described in Findings 10 through 14 above, the Port has indicated, and the Department finds that the Port must rely exclusively on full development of their Permit G-13765 for the Airport Industrial Park.

28. Given the current water supply situation of the Port, including current and expected demands, there is a market and present demand for the water to be supplied under

G-13765.

29. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of subsequent development on competing demands on the resource. The Department determined on July 18, 2016 a need to condition any use of water from Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) authorized under Permit G-13765 with a "Well Condition." This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary due to non-compliance with the permit condition that groundwater under Permit G-13765 shall not be produced from the basalt source developed by Port of Morrow wells #1 and # 4. This condition requires the permit holder to provide written documentation that the Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) is not producing water from the basalt source on or before October 1, 2021. If the Department does not receive written documentation on or before October 1, 2021, the Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) will be excluded on the final certificate.
30. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.46 cfs up to 4.96 cfs under Permit G-13765 for municipal use 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 2 of the "Conditions" section of this PFO to meet this requirement.

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 July 18, 2016 the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-13765 does not have the potential for substantial interference with surface water.
32. Based upon the Department's determination described in Finding 31, the use of the undeveloped portion of Permit G-13765 does not have the potential for substantial interference with surface water, and therefore the persistence of listed fish species will be maintained.
33. This will be the second extension of time issued after June 29, 2005 for this permit, which is a municipal use permit issued before November 2, 1998. A Final Order on the first extension of time after June 29, 2005, was issued on December 20, 2007, thus, this

extension of time request is not subject to fish persistence criteria under 690-315-0080(1)(f) and (2).

CONCLUSIONS OF LAW

1. The Port is entitled to apply for an extension of time to completely apply water to the full beneficial use pursuant to ORS 537.630(2).
2. The Port 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 apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. 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 Port has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As authorized in OAR 690-315-0050(5) and as described in Finding 29 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a groundwater condition that applies under Permit G-13765, The permit holder shall provide written documentation that Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) is not producing water from the basalt source on or before October 1, 2021. If the Department does not receive written documentation on or before October 1, 2021, the Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) will be excluded on the final certificate.

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.

8. As required by OAR 690-315-0090(3) and as described in Finding 30, above, and specified under Item 2 of the "Conditions" section of this PFO, the appropriation of water beyond 0.46 cfs up to 4.96 cfs under Permit G-13765 for municipal 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).
9. Use of water under this ground water Permit G-13765 does not have the potential for substantial interference with surface water.
10. As described in Finding 33, above, this will be the 2nd extension issued after June 29, 2005 for this permit, which is a municipal use permit issued before November 2, 1998; therefore this extension of time request is not subject to fish persistence criteria under 690-315-0080(1)(f) and (2).

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 apply the water to beneficial use under Permit G-13765 from October 1, 2012 to October 1, 2040.

Subject to the following conditions:

CONDITIONS

1. Well Condition

The use of any water under Permit G-13765 is subject to this Groundwater Condition.

The permit holder shall provide written documentation that Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) is not producing water from the basalt source which is common to the Port of Morrow Wells #1 and 2 on or before October 1, 2021. If the Department does not receive written documentation on or before October 1, 2021, the Airport Well #1 (MORR 50471/MORR 50531/ MORR 51712) will be excluded on the final certificate.

2. Development Limitations

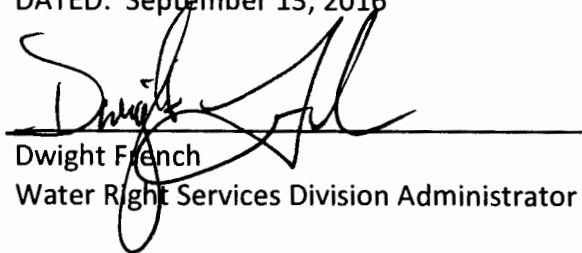
Appropriation of any water beyond 0.46 cfs up to 4.96 cfs under Permit G-13765 for municipal use shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation 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-13765 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-13765 that has been established under a prior WMCP or Extension final order issued by 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: September 13, 2016


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 **October 28, 2016**, 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

- 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 Service members have a right to stay these proceedings under federal Service members 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 Machel A Bamberger at 503-986-0802.
 - 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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