

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)	PROPOSED FINAL ORDER
for Permit G-7593, Water Right Application G-8476,)	
in the name of the City of Banks)	

Permit Information

Application File G-8476/ Permit G-7593

Basin 2C – Lower Willamette Basin / Watermaster District 18

Date of Priority: September 29, 1977

Authorized Use of Water

Source of Water:	A well in West Fork Dairy Creek Basin
Purpose or Use:	Municipal
Maximum Rate:	0.67 Cubic Foot 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-7593, water right Application G-8476.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2017, to October 1, 2027.
- Grant an extension of time to apply water to full beneficial use from October 1, 2017, to October 1, 2027.
- 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 Banks
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan
APOA – Additional Point of Appropriation
Behrman Well - WASH 7651
Well 2 - WASH 62373
UGB – Urban Growth Boundary

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 690-315-0050(5) authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for 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

1. On December 12, 1977, Permit G-7593 was issued by the Department. The permit authorizes the use of up to 0.67 cfs of water from a well in West Fork Dairy Creek Basin, for municipal use. It specified that construction of the water development project was to begin on or before December 2, 1978, construction was to be completed on or before October 1, 1979, and the complete application of water was to be made on or before October 1, 1980.
2. One prior permit extensions has been granted for Permit G-7593. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1980, to October 1, 2017.
3. On December 28, 2005, the Department received a Permit Amendment T-10055 requesting to add an additional point of appropriation (APOA) to Permit G-7593. The Permit Amendment is under review.
4. On October 2, 2017, the City of Banks (City), submitted an "Application for Extension of Time" (Application) to the Department requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-7593 be extended from October 1, 2017, to October 1, 2027.
5. Notification of the City's Application for Extension of Time for Permit G-7593 was published in the Department's Public Notice dated October 10, 2017. 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

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

6. On October 2, 2017, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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.

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

7. Permit G-7593 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.

8. The remaining work to be accomplished under Permit G-7593 consists of completing construction; which includes gaining approval of Permit Amendment T-10055 requesting an additional point of appropriation (APOA), being WASH 62373 (Well 2), or, if T-10055 is not approved, submitting a new Permit Amendment to add an APOA and constructing a new well, upgrading the distribution system, and applying water to full beneficial use.
9. As of October 1, 2017, the City had appropriated 0.613 cfs of the 0.67 cfs of water authorized under Permit G-7593 for municipal purposes. There is an undeveloped portion of 0.057 cfs of water under Permit G-7593 as per OAR 690-315-0010(6)(g).
10. In addition to the 0.67 cfs of water authorized under Permit G-7593, the City holds the following rights:
- Certificate 5353 for 0.42 cfs of water from a spring, tributary of Dairy Creek for Municipal Use;
 - Certificate 83138 for 0.18 cfs of water from two unnamed streams, tributaries of West Fork Dairy Creek for Municipal Use; and
 - Permit G-16312 for 1.0 cfs of water from a well (WASH 62373) in West Fork Dairy Creek Basin for Municipal Use;

These water rights and permits total 2.89 cfs of water, being 1.67 cfs of ground water and 0.60 cfs of live flow (surface) water. The City of Banks has not yet made use of 1.057 cfs of water, being 0.057 under Permit G-7593 and 1.0 cfs of water under Permit G-16312. The City's water rights are not necessarily additive; water is not available at all sources during all seasons of the year. The City's surface water sources suffer from high turbidity during the winter months, and the limited flow rates creates a less reliable water source in the summer. The City relies on the Behrman Well as the primary source of water, and it is limited by the capacity of the current pump and motor, being 230 gpm. (WMCP Section 2.6)

11. According to the City, their peak water demand within its service area boundaries was 0.39 cfs in 2016.

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

12. The City currently serves an additional 305 customers outside of the place use authorized by Permit G-7593. However, ORS 540.510(3)(a) allows water use under a permit issued to a municipality to be applied to beneficial use on lands to which the right is not appurtenant if the use continues to be for municipal purposes and would not interfere or impair prior vested water rights.
13. In 2016, the population within the service boundary of the City of Banks was 1,785. The City of Banks estimates the population will increase at growth rate of 2.3 percent per year, reaching an estimated population of 2,811 by the year 2030. The city estimates that full buildout to the Urban Growth Boundary (UGB) will likely occur by 2024, based on the estimated population growth. The rapid population growth will likely bring additional commercial ventures, which will also rely on the City's water system. Population estimates provided in the City's 2010 Water Management and Conservation Plan (WMCP) identify an anticipated service area population of 4,044 customers, being 3,739 customers located within the UGB and 305 customers located outside the UGB. There is currently a moratorium on creating new connections outside the UGB, and the 305 customers served outside the UGB are presumed to remain consistent. (WMCP Section 5, Table 5-1)
14. According to the City, their peak day demand is projected to be approximately 2.19 cfs of water by the year 2030. According to the City, future anticipated maximum demand will be 984 gallons per minute (gpm) (2.19 cfs) by 2028. (WMCP Section 5, Table 5-2)
15. Full development of Permit G-7593 is needed to address the present and future water demand of the City, including system redundancy and emergency use.

Based on Findings of Fact 7 through 15, the Department has determined that the City's request for an extension of time until October 1, 2027, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-7593 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. Prior to the issuance of Permit G-7593, the City constructed WASH 7651 (Behrman Well). According to the well log received by the Department on September 6, 1977, construction of Behrman Well began August 16, 1977.
17. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-7593.
18. During the last extension period, being October 1, 1980, to October 1, 2017, the City accomplished the following work:
 - completed an “Engineering Investigation of the Banks Water System and a Master Plan for Future Development”;
 - constructed the 500,000 gallon Carsten Reservoir Tank No. 1;
 - constructed a 12-inch water main loop and 8,000 linear feet of 8-inch distribution piping;
 - constructed the 1,000,000 gallon Carsten Reservoir Tank No. 2;
 - added telemetry and meters to monitor production rates;
 - installed new line from the well to the reservoir;
 - installed metering zones to detect system leaks;
 - installed and updated SCADA program;
 - prepared and submitted a Water Management and Conservation Plan;
 - created intermediate pressure zones; and
 - implemented a Water Conservation program

Based on FOF 16 through 18, the Department has determined that work has been accomplished during the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

19. As of October 2, 2017, they have invested approximately \$2,817,452, which is approximately 75 percent of the total projected cost for complete development of this project. The City estimates an additional \$941,500 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-7593, other costs included in this accounting are not partitioned out for G-7593 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in OAR 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.
20. As of October 1, 2017, a maximum rate of 0.613 cfs of water, of the 0.67 cfs of water allowed has been appropriated from Behrman Well for beneficial municipal purposes under the terms of this permit.
21. 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)]

22. As of October 2, 2017, the City has invested approximately \$2,817,452, which is 75 percent of the total projected cost for complete development of this project. The City estimates an additional \$941,500 investment is needed for the completion of this project.

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

23. As described in Findings 9 through 14 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-7593.
24. The City projects a population increase, on average, of 2.3 percent per year over an 11 year period, being the years 2016 to 2027. According to the City's 2010 WMCP, the City of Banks currently has the supply and storage needed to service its existing customers. Planned land use and the population growth associated with water usage forecasts suggest the City will need to increase its water supply in order to keep up with the rising demand. (WMCP Section 5.0, page 18)
25. 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-7593.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.613 cfs (not to exceed the maximum amount authorized under this permit, being 0.67 cfs) under Permit G-7593 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)]

27. The City employs a rate structure based in part on metered water usage. Water customers are charged a base rate for up to 400 cubic feet per month, and a unit price for any water used above that base amount. The rate structure allows customers to have access to the amount of water they need as well as providing an incentive for conservation. 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)]

28. According to the City, delay in the development of this project was caused, in part, by requirements of the 1986 Federal Surface Water Treatment Rule. The City was required to construct a sand filtration plant, which was completed in 1997.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

29. Delay of development under Permit G-7593 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.

30. 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 November 20, 2008. 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 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. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-7593 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2027⁵ pursuant to OAR 690-315-0080(1)(d).

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.

7. 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).
8. As required by OAR 690-315-0090(3) and as described in Finding 25, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.613 cfs (not to exceed the maximum amount authorized under this permit, being 0.67 cfs) under Permit G-7593 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. As described in Finding 29, 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 complete construction under Permit G-7593 from October 1, 2017, to October 1, 2027.

Extend the time to apply the water to beneficial use under Permit G-7593 from October 1, 2017, to October 1, 2027.

Subject to the following condition:

CONDITION

1. **Development Limitations**

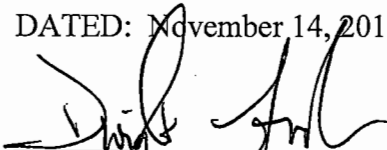
A maximum appropriation of 0.613 cfs of water is currently allowed under Permit G-7593. Any appropriation of water beyond 0.613 cfs (not to exceed the maximum amount authorized under the permit, being 0.67 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation 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-7593 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-7593 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: November 14, 2017



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 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 **December 29, 2017**, 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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have any questions about statements contained in this document, please contact Jeffrey Pierce 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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