

**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-18196, Water Right Application G-17741,) PROPOSED
in the name of the City of Baker City) FINAL
ORDER

Permit Information

Application File G-17741 / Permit G-18196

Basin 9 – Powder Basin / Watermaster District 8

Date of Priority: December 6, 2013

Authorized Use of Water

Source of Water: Well 2, Reservoir Well, Golf Course 1, Golf Course
2, Golf Course 3, Bridge 1, Bridge 2, and Bridge 3 within the Old Settlers Slough Basin
Purpose or Use: Municipal
Maximum Rate: 2.23 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-18196, water right Application G-17741.

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 August 27, 2020, to October 1, 2065.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources	<u>Units of Measure</u>
City –City of Baker City	cfs – cubic feet per second
ODFW – Oregon Department of Fish and Wildlife	gpm – gallons per minute
PFO – Proposed Final Order	<u>Wells</u>
WMCP – Water Management and Conservation Plan	Reservoir Well - BAKE 1148
	Golf Course 2 Well – BAKE 52777

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 690-315-0050(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 690-315-0080 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.

FINDINGS OF FACT

1. On August 27, 2015, Permit G-17476 was issued by the Department. The permit authorized the use of up to 2.23 cfs of water from Well 2, in the Old Settlers Slough Basin, for municipal use. The permit specified complete application of water was to be made within five years of the date of permit issuance.
2. On March 18, 2019, the Department approved Permit Amendment T-12979 (Special Order Volume 112, Page 773) authorizing additional points of appropriation under Permit G-17476. Superseding Permit G-18196 was issued on March 18, 2019, authorizing Well

2, Reservoir Well, Golf Course 1, Golf Course 2, Golf Course 3, Bridge 1, Bridge 2, and Bridge 3 in Old Settlers Slough Basin.

3. The Michelle Owen, Public Works Director for the City of Baker City (City), submitted an "Application for Extension of Time" (Application) to the Department on December 10, 2021, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-18196 be extended from August 27, 2020, to October 1, 2040. This is the first extension request for Permit G-18196.
4. Notification of the City's Application for Extension of Time for Permit G-18196 was published in the Department's Public Notice dated December 21, 2021. No public comments were received regarding the extension application.
5. On December 13, and 14, 2021, and April 12, 2022, the City submitted amendments and additional information to supplement the Application for Extension of Time. The amendment requested the date to apply water to full beneficial use be changed from October 1, 2040, to October 1, 2065.

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)]

9. On December 10, 2021, 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)]

10. Construction of an authorized well began prior to permit issuance.
11. According to the well log received by the Department on August 3, 1977, construction of BAKE 1148 (Reservoir Well) began July 18, 1977.

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.

12. The remaining work to be accomplished under Permit G-18196 consists of construction

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.

of the remaining authorized wells, install the necessary pumps, pipes and equipment, and applying water to full beneficial use.

13. As of August 27, 2020, the city had appropriated 2.23 cfs of water authorized under Permit G-18196 from Reservoir Well for municipal purposes. There is no “undeveloped portion” of the Permit G-18196 as per OAR 690-315-0010(6)(g).
14. In addition to the 2.23 cfs of water authorized under Permit G-18196, the City holds the following rights:
 - Inchoate Transfer T-12977 for use of 2.82 cfs of water from eight wells in Powder River Basin, being 2.25 cfs under former Certificate 23384, and 0.57 cfs under former Certificate 68683;
 - Certificate 51748 for use of 5.3 cfs of water from a well in Powder River Basin;
 - Aquifer Storage and Recovery (ASR) Permit AL-1 allows for the use of up to 4,000 gallons per minute (gpm) of water being 2,000 gpm from Reservoir Well and 2,000 gpm from BAKE 52777 (Golf Course 2 Well);
 - Certificate 93501 for use of 0.045 cfs of water from a well in Powder River Basin;
 - Certificate 3987 for the use of 0.625 cfs of water from Powder River, tributary to Snake River;
 - Certificate 39253 for storage of 233.3 AF of water from Goodrich Creek, tributary to Powder River, in Goodrich Reservoir;
 - Certificate 39254 for the use of 233.2 AF of water annually, from Goodrich Reservoir, stored under Certificate 39253, at a rate not to exceed 10.8 cfs;
 - Certificate 51234 for the use of 1.34 cfs of water from Sam-O-Spring;
 - Certificate 80496 for use of 57.375 cfs from 27 separate surface water sources.

The City’s permit, certificates, and water right transfers total 87.205 cfs, being 70.14 cfs of surface water, of which 10.8 cfs is limited to the use of stored water, and 17.065 cfs of ground water. Additionally, up to 3.0 cfs of the water available under Certificate 80496 is authorized for use under ASR Permit AL-1, which may be recovered at a rate of up to 2,000 gpm (4.46 cfs) per ASR Well under ASR Permit AL-1, and is limited to available storage water previously injected into the ASR Wells, subject to the terms of the ASR Permit. The City has faced reduced amounts of water available under their existing surface water rights as a result of climate change, and need to fully develop a redundant ground water supply to provide a reliable source of their municipal supply.

15. The City’s peak water demand within its service area boundaries was 15.6 cfs in 2020.
16. According to the Application, in 2020, the population within the service boundary of the City of Baker City was 10,999. The City estimates the population will increase at a growth rate of 0.3 percent per year, reaching an estimated population of 11,488 by the year 2065.
17. The City’s peak day demand of is projected to be approximately 15.6 cfs of water by the year 2065.

18. Full development of Permit G-18196 is needed to address future water demand of the City, including system redundancy and emergency use.
19. Based on Findings of Fact 13 through 18, the Department has determined that the City's request for an extension of time until October 1, 2065, to apply water to full beneficial use under the terms and conditions of Permit G-18196 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).

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

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

20. Prior to the issuance of Permit G-18196 on August 27, 2015, the City constructed Reservoir Well.
21. Work accomplished during the authorized development timeline includes a well siting study and planning.
22. Since August 27, 2020, construction of Golf Course 2 Well was completed.

The Department has determined that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

23. According to the Application, as of December 10, 2021, they have invested \$1,253,000, which is approximately 13 percent of the total projected cost for complete development of this project. The City estimates an additional \$8,370,000, investment is needed for the completion of this project.
24. As of August 27, 2020, 2.23 cfs of water has been appropriated from Reservoir Well for municipal purposes under the terms of Permit G-18196.
25. The Department has considered the City's compliance with conditions, and did not identify any concerns.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose

[OAR 690-315-0080(3)(b)]

28. According to the Application, as of December 10, 2021, they have invested \$1,253,000, which is approximately 13 percent of the total projected cost for complete development of this project. The City estimates an additional \$8,370,000 investment is needed for the completion of this project.

The Market and Present Demands for Water *[OAR 690-315-0080(3)(d) and (5)(a-f)]*

For municipal or quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

29. The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife *[OAR 690-315-0080(5)(a-f)]*.
30. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-18196; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of appropriation for Permit G-18196 are not located within a limited or critical ground water area. The points of appropriation for Permit G-18196, located within the Old Settlers Slough Basin, are not located within or above any state or federal scenic waterway. The points of appropriation are within areas ranked highest for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date *[OAR 690-315-0080(5)(d)]*.

31. According to the Application, as of December 10, 2021, the City has invested \$1,253,000, which is approximately 13 percent of the total projected cost for complete development of this project. The City estimates an additional \$8,370,000 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project *[OAR 690-315-0080(5)(e)]*.

32. None have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

33. As described in Findings 14, through 18, City of Baker City has indicated, and the Department finds that City of Baker City must rely on full development of Permit G-18196 to meet its present and future water demands.
34. City of Baker City projects a population increase of 0.3 percent per year over the next 45 years and also anticipates commercial and industrial growth on the edge of the urban growth boundary.
35. Given the current water supply situation of City of Baker City, as well as current and expected demands, including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit G-18196.

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

36. A return on investment is anticipated with the development of a more reliable ground water source.

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

37. 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)]

38. According to the Application, delay of development under Permit G-18196 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.

39. Permit G-18196 is not subject to an evaluation regarding maintaining the persistence of listed fish species because the permit was issued after June 29, 2005. (ORS 537,630)

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. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
4. Full application of water to beneficial use can be completed by October 1, 2065⁴ 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 apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. There is no undeveloped portion of the permit to be considered under OAR 360-315-0080(1)(f).

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-18196 from August 27, 2020, to October 1, 2065.

DATED: September 13, 2022



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.

⁴ For permits issued after July 9, 1987, within one year after complete application of water to the beneficial use, the permit holder must 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.

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 **October 28, 2022**, 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 TO ACTIVE DUTY SERVICEMEMBERS: Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

If you have any questions about statements contained in this document, please contact Jeffrey Pierceall at 503-979-3213.

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 503-979-9160.

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
