



Resolution 2020-04

A Resolution Renewing a Moratorium on New Development in the City of Banks Due to a Documented Shortage of Municipal Water Supply.

The Banks City Council adopts the following findings:

WHEREAS, the City of Banks operates a municipal water system and utility serving all homes and businesses within the City of Banks; and

WHEREAS, the City's Water Utility is established and operating under the rules and regulations codified in Chapter 5.01 (Water) of the Banks Code of Ordinances; and

WHEREAS, the City's supply of potable water is limited, and the City is nearing the planned capacity of its water supply and utility. Without further measures to conserve and increase the current municipal water system capacity, peak water demand in the City will soon exceed the City's water supply and system capacity during the times of year when the supply is most limited; and

WHEREAS, at a June 12, 2018 public workshop, the City Council received information from the City Engineer and the City's water system consultant about the current water system capacity relative to current demand and subsequently received a detailed memorandum from the City Engineer, dated August 7, 2018 that documented the seasonal fluctuations in water system capacity and demand; and

WHEREAS, the Engineer's August 7th report documented that the City's water system capacity during the summer high demand and low supply months (June through August) was equivalent to the then-current number of water system connections (693) with no extra water system capacity remaining in an especially dry year; and

WHEREAS, Engineer's August 7th report also documented that the then-current system capacity during the winter low demand and high supply months (September through May) showed approximately 60 additional connections, or a total of 753 system connections were theoretically available during the wettest parts of the year; and

WHEREAS, the City has undertaken several measures and projects to prevent

water system loss and to increase supply capacity, and is planning others, to increase its water system capacity to accommodate additional connections. These measures include a water line replacement for the City's water mains running down Sellers Road and Cedar Canyon Road, a comprehensive leak detection and repair program and the adoption of water conservation and curtailment measures. The water main replacement projects, however, will take at least one to two years to complete and it is not clear how many, if any, additional system connections these measures, collectively or individually, will produce; and

WHEREAS, until the City's measures for increasing water system capacity are implemented and generate additional water system capacity, the City desires to preserve what little system capacity remains in the water system; and

WHEREAS, the City is aware of several significant undeveloped and underdeveloped areas of the City that may be the subject of development proposals within the next year. If approved, these developments could significantly increase water system demand by creating new connections that would eliminate the few connections that currently exist and quickly exceed the City's estimated water system capacity, which would place the City in a critical water shortage situation; and

WHEREAS, such a critical water shortage would require drastic curtailment measures that would be detrimental to the entire city and cause significant public harm. The city's current development ordinances and land use regulations are not adequate to prevent or slow the submission of development proposals, nor do current regulations allow the City to reserve the current limited number of connections. Instead, state law requires the City to allocate the current limited capacity on a first come, first served basis as development applications are submitted and vest. Thus, the city's current land use regulations were not deemed adequate to prevent irrevocable public harm from development proposals and the consumption of the last remaining water system capacity in the City; and

WHEREAS, based on the foregoing, the City Council adopted a moratorium on new development at its December 11, 2018 regular meeting, following notice and a public hearing (Resolution No. 2018-19) and subsequently adopted a Water Correction Program Plan at its regular meeting on February 12, 2019 which listed and described the steps the City had and would take to increase its water system capacity and reduce water demand during the months of the year when demand is highest and supply is lowest; and

WHEREAS, the City provided notice to the Oregon Department of Land Conservation and Development prior to its hearing and adoption of the moratorium and correction program, at which time the Council accepted public testimony; and

WHEREAS, after 6 months, the City Council renewed the moratorium on new development at its August 13, 2019 regular meeting, following notice and a public

hearing (Resolution 2019-13), along with an up-dated Water Correction Program Plan; and

WHEREAS, since adoption of the Water Correction Program Plan and its first renewal, the City has implemented water curtailment measures to reduce water use during the dry months of the year and has pursued the water main replacement project that should be advertised for bidding in the spring of 2020, yet despite these measures, the water shortage has not changed appreciably; and

WHEREAS, as described in the City Engineer's up-dated Water Correction Program Plan report, attached hereto as Exhibit A, and incorporated herein, the problem that gave rise to the moratorium 12 months ago still exists, *i.e.*, demand for water still exceeds system capacity during a portion of the year, yet the report shows that the City has made significant, demonstrable and reasonable progress toward alleviating the identified causes of the water shortage; and

WHEREAS, alternative methods of achieving the objectives of the moratorium are unsatisfactory due to the State's vesting law and priority for development applications filed with the city; and

WHEREAS the public harm that would be caused by failure to maintain a development moratorium outweighs the adverse effects on other affected local governments, such as shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and

WHEREAS, sufficient resources are available to complete the needed interim measures designed to alleviate the documented water shortage that exists today as the City continues to actively pursue the measures listed and described in Exhibit A; and

WHEREAS, ORS 197.505 to 197.540 authorize the City to declare, impose and renew a moratorium on new development and water system connections to prevent the exceedance of the City's water system capacity, an anticipated critical water shortage situation, and the significant public harm that would occur if the last few remaining water system connections were allocated and the City's water system lost its capacity and ability to serve basic and essential private and public functions; and

WHEREAS, at its regular meeting of February 11, 2020, the City Council convened a duly noticed public hearing to consider renewing and extending for another 6 months a development moratorium as a means of preventing the exceedance of the City's water system capacity and to prevent a critical water shortage situation, at which time the City Council accepted public testimony and comment on the proposed moratorium; and

NOW THEREFORE, based on the foregoing Findings, the Banks City Council resolves as follows:

1. **Development Moratorium Renewed and Extended.** Pursuant to the authority of ORS 197.505 to 197.540 and based upon the foregoing findings, which are incorporated by reference, and the Engineer's report, attached hereto as Exhibit A, the City Council hereby renews and extends a Moratorium on new development and new water system connections whereby, notwithstanding the City's adopted development regulations and procedures, the City shall not accept, process or approve any application for new development that entail one or more new water system connections.

2. **Exceptions to the Moratorium.** Notwithstanding the foregoing development moratorium, proposals for the following development types are deemed to be critical to the City's economy and to meeting the City's need for affordable housing shall be exempt from this development moratorium:
 - a. Any land use application for development that was submitted prior to the effective date of this moratorium.

 - b. Development applications for multi-family housing, including apartments, condominiums and multi-family affordable housing projects, that propose a minimum of 25 dwelling units, a maximum of 40 dwelling units, and incorporate and employ the water conservation measures in Banks Code of Ordinances Chapter 5.24. No more than three such qualifying development applications for multi-family housing shall be accepted, processed and approved during the pendency of this Development Moratorium, including any extensions thereof. In support of this exemption, the Council relies upon the portions of the City's Housing Needs Analysis previously adopted with Resolution 2018-19, which documented a need for more affordable housing in the City.

 - c. Development applications for industrial uses on industrial or mixed-use zoned land that proposes to use no more than 5,000 gallons per day and incorporate and employ the water conservation measures in Banks Code of Ordinances Chapter 5.24.

 - d. Any development that can provide a non-municipal source of water of sufficient quality to serve the new water demand created by the proposed development may submit and the city shall accept a land use application for purposes of verifying the use of the developer's water source for municipal purposes and verifying that the quantity of the developer's water source is sufficient to supply at least 75% of the water demand created by the proposed development. If these facts can be verified, the city may proceed to process and approve such a development. If these facts cannot be verified, within the

sole discretion of the City Council, the City shall suspend and may terminate or deny the application due to lack of sufficient water to serve the demand created by the proposed development.

3. **Exception to the Moratorium – Waitlist for allocation of water connections.**

Notwithstanding the foregoing development moratorium, the City has received significant interest in new development once the water supply moratorium is lifted. To prepare for that eventuality, proposals for development, but not applications, will be accepted by the City, not for development review purposes but for purposes of establishing a waitlist of development applications to accept begin processing once the water moratorium is lifted (the "Waitlist"). Fully complete proposals will be accepted by the city at any time and maintained as the Waitlist in the order in which they were date-stamped received by the City. Once the moratorium is lifted, the City will notify the proposers on the Waitlist and give them 90 calendar days to submit a development application. If the proposers submit a development application within that 90-day period they will be deemed vested according to their previous order of placement on the Waitlist. The order of vesting of development applications in this way will be the order in which the city allocates water connections. If a development applicant fails to make its application complete within 90 days of first submission of the application, that applicant will lose its place on the Waitlist, and the next proposer on the Waitlist to submit an application within the 90-day period will advance on the Waitlist for allocation of water connections. If a development applicant fails to actively pursue approval of its development application, the City may, without notice or recourse, replace that applicant with another development applicant on the Waitlist. To be accepted for placement on the Waitlist, the proposal shall include at least the following:

- Explanation and allocation of zoning that is consistent with the comprehensive plan;
- Type and mix of proposed uses;
- Number and type of dwelling units, *i.e.*, single-family, multi-family;
- Approximate area of commercial and industrial uses proposed, if any;
- Estimated number of water connections;
- Estimate of water demand;
- Conceptual site plan and/or preliminary plat

4. **Implementation of the Water System Correction Program.** The City shall continue to pursue and implement the measures set forth in the adopted Correction Program and Exhibit A to this Resolution to address and resolve the identified water system capacity problem.

5. **Moratorium Duration.** This Moratorium shall remain in effect for a period of 6 months following the date of this Resolution and may be renewed for successive 6-month periods as needed to prevent an exceedance of the City's water system capacity until such time as the City's Correction Program has increased water system capacity.

ADOPTED, APPROVED AND EFFECTIVE this 11th day of February 2020.



Peter C. Edison, Mayor

Attest:



City Recorder: Angie Lanter



6 August 2019

Technical Memorandum

To: Jolynn Becker, City Manager

From: Rob Peacock, PE, City Engineer
Matt Horton

Subject: Corrective Action Plan Report No. 1
Water Supply Development Moratorium Corrective Action Plan
K/J Project Number: 0791015*00

The Banks City Council voted to adopt Resolution No. 2018-19 on 11 December 2018 to declare a moratorium on new development because the municipal water demand is projected to exceed supply under the current development trend (City of Banks, 2018). Pursuant to ORS 197.530, the City adopted a Corrective Action Program to address the water system deficiencies causing the moratorium and presented this plan to the Department of Land Conservation and Development at a public hearing.

A Water Supply Moratorium Corrective Action Plan ("CAP") was adopted by the City Council on 12 February 2019. The CAP listed corrective actions to be taken by the city and stipulated that the results of these actions would be reviewed, compiled, and submitted to the City Council on a semi-annual basis to support continuing the development moratorium or to provide sufficient information to support discontinuing the moratorium.

The purpose of this memorandum is to provide an update on actions taken since the approval of the CAP, including:

- Current water loss status
- Water demand status
- Updates on loss reduction efforts

Current Water Loss Status

Water losses were tracked throughout the water supply and distribution network and were compared to the total metered consumption throughout the Banks service area. Results were compiled monthly and are presented below in Figure 1.

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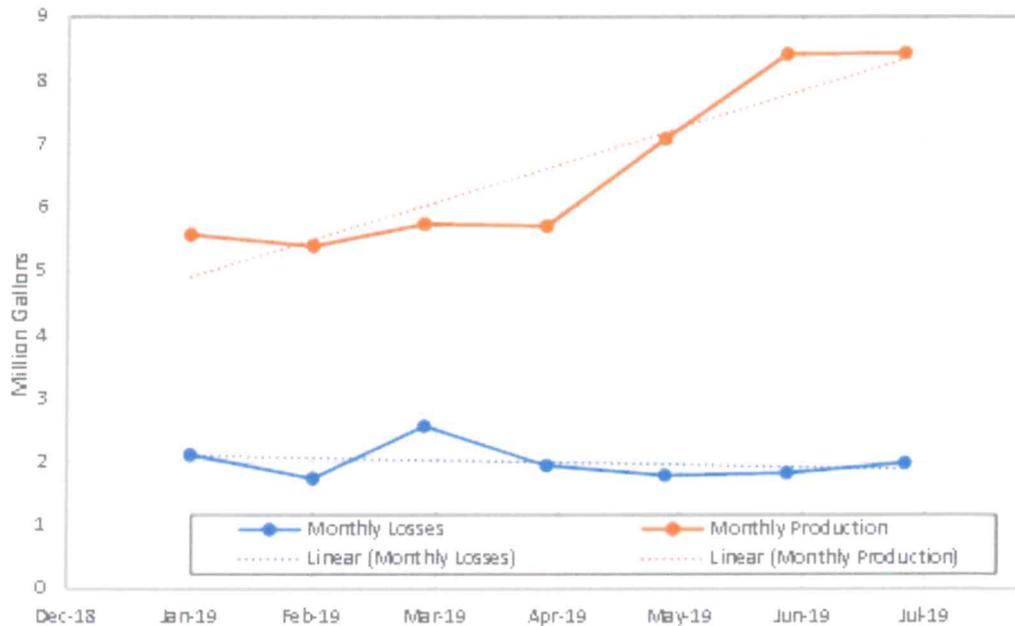


Figure 1: Monthly System Water Production and Losses through July 2019

Total system losses as a percentage of production ranged from a high of 45% in March to a low of 22% in June. Linear trendlines have been applied to system production and losses.

Water Demand Status

Water demand for 2019 relative to 2018 demand is shown in Table 1.

Table 1: 2018 vs. 2019 Monthly Demand (million gallons per month)

	2018	2019	% of 2018 Demand
January	3.75	3.46	92
February	3.70	3.65	99
March	3.62	3.18	88
April	3.77	3.76	100
May	4.62	5.29	114
June	6.84	6.59	96
July	7.64	6.44	84

Water demand for 2019 was slightly lower than the same months for 2018 except April and May.

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A new development, Arbor Village Phase 3, completed public improvements in January 2019, including water distribution mains. Landscape plantings were installed in early 2019 and are currently being irrigated to establish plants. The development currently has approximately 10 homes under construction and are anticipated to be occupied in 2019. The remaining 27 homes are expected to be constructed some time in 2020. While these homes are not yet occupied, landscape irrigation appears to have generated additional water demand during the during the months of May and June 2019.

Monthly demand values were compared to population estimates to estimate a per-capita water demand. Assuming 693 connections with 3 people per connection, the average monthly per capita water usage is 73 gallons per person per day (gpcpd), and the maximum is 106 gpcpd. This water demand is less than the historic peak season demand of 125 gpcpd identified in the CAP. Table 2 below lists per capita water demand data by month during the months of January through July 2019.

Table 2: 2019 Per-capita Water Demand

Month	Water Demand (gpcpd)
Jan	54
Feb	63
March	49
April	60
May	82
June	106
July	100

Updates on Capital Improvement/Leak Repair Projects

The CAP lists several capital improvement and leak detection/repair projects to be undertaken to improve water loss detection, decrease water losses, or increase supply. An updated Water System Capital Improvement Plan (CIP), adopted by City Council on 12 February 2019, includes a number of projects to address water loss detection, decrease water losses, or increase supply. Progress on these projects is reported below:

Sellers Road Transmission Line and Cedar Canyon Road Waterline Replacement

The Transmission Line is the source of significant water losses and will be replaced along its entire 3.2-mile length beginning in 2020. This replacement is estimated to eliminate loss up to approximately 46,100 gallons per day during peak demand months.

The Sellers Road replacement project is currently under design and is being permitted. It is anticipated that this project will go to bid in early 2020 and anticipated to be constructed by early 2021. A portion of the Cedar Canyon Road waterline will be replaced as part of the Transmission Line Project by early 2021.

