



## ACRONYM QUICK REFERENCE

Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
cfs – cubic foot 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) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. 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)** 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0040** provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

## FINDINGS OF FACT

1. On October 10, 1996, Permit G-12868 was issued by the Department. The permit authorizes the use of up to 0.45 cfs of water from a well in Fivemile Creek Basin for industrial use for dust control and construction. The permit specified actual construction of the well to begin by October 10, 1997, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.
2. On August 4, 2003, an assignment from Sanifill, Inc d.b.a. Northern Wasco County Landfill, to Wasco County Landfill, Inc, a Delaware Corporation, was recorded in the records of the Water Resources Department.
3. One prior permit extensions have been granted for Permit G-12868. The most recent extension request resulted in a Final Order issued July 1, 2004, extending the completion dates for construction and full application of water from October 1, 1999, to October 1, 2014.

4. On December 26, 2023, the permit holder submitted an “Application for Extension of Time” (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-12868 be extended from October 1, 2014 to October 1, 2028.
5. On January 2, 2024, notification of the Application for Extension of Time for G-12868 was published in the Department’s Public Notice. No public comments were received regarding the extension application.

**Review Criteria [OAR 690-315-0040]**

*In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).*

**Complete Extension of Time Application [OAR 690-315-0040(1)(a)]**

6. On December 26, 2023, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]**

7. Construction of the well began prior to permit issuance.
8. According to the well log received by the Department on January 2, 1995, construction of WASC 2196 began September 8, 1994.

Based on Finding of Fact (FOF 8), the Department has determined that the prosecution of the construction of the well began prior to October 10, 1997.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

*In order to make a finding of “good cause” to approve the extension, the Department shall consider whether the applicant has demonstrated “reasonable diligence” in previous performance under the permit. OAR 690-315-0040(2)(a). In determining “reasonable diligence”, the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.*

**Amount of Construction OAR 690-315-0040(3)(a)**

*The amount of construction completed within the time allowed in the permit and previous*

extension.<sup>1</sup>

9. Construction of the well began prior to permit issuance.
10. The Application does not identify any work accomplished during the original development time provided by the permit.
11. The Application identifies relocation of water storage tanks in 2007, and replacement of tanks and lines in November 2011.
12. The Application does not identify any work accomplished since the end of the most recent extension of time period, being October 1, 2014.

The Department has considered the work accomplished prior to issuance of the permit, during the original development time allowed in the permit, during the most recent extension of time period, and in the years since the previous extension of time ended, and has determined that the permit holder has not demonstrated any work towards the development of the authorized use under the permit since the permit was issued. The work identified in the Application is considered maintenance of the water system, and is not considered work in the development of the authorized use.

**Compliance with Conditions /OAR 690-315-0040(3)(c)**

*The water right permit holder's conformance with the permit and previous extension conditions.*

13. The Department has considered the permit holder's compliance with conditions, and has identified the following concern, the required seven consecutive March static water level measurements have not been received by the Department. March static water level measurement have been received for years 1998, 1999, 2000, 2002, 2003, and 2004.

Based on FOF 13, the Department has determined that the permit holder has not demonstrated compliance with following permit condition as required by Permit G-12868:

- "To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted within 30 days of measurement....  
Measurements must be made according to the following schedule.  
Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared...."

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<sup>1</sup> "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

The requirement to submit seven consecutive static water level measurements in the Month of March remains, however, for the purposes of perfecting the permit, timely March measurements have been received and compliance with the condition, sufficient to make proof, has been demonstrated. The requirement to make seven consecutive static water level measurements will be included on any certificate.

**Beneficial Use of Water OAR [690-315-0040(3)(b)]**

*The amount of beneficial use made of the water during the permit or previous extension conditions.*

14. A maximum rate of 0.25 cfs of water has been appropriated from the Well for industrial use.
15. The Application identifies three changes of ownership as a reason full beneficial use has not been made. The Application for Extension of Time submitted July 25, 2003 also identifies three changes of ownership as a reason development was not completed.

The Department has determined beneficial use of 0.25 cfs has likely been demonstrated, however, not additional rate of beneficial use has been pursued during the most recent extension of time period or in the nearly ten years since.

**Financial Investments to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]**

16. An investment of approximately \$105,000, has been made in the construction of the well and water system. Maintenance costs totaling \$62,450, for moving tanks to new locations and replacing tanks and (water) have been made, however these are not investments towards the development of additional rate of beneficial use. The Application identifies the cost of a Permit Amendment to change the place of use and to prepare a Claim of Beneficial Use as approximately \$15,000.

The Department has determined that no investment towards the development of the authorized use has been made since prior to permit issuance when the Well was constructed. .

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

The Application does not provide evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions, and; beneficial use of water has been demonstrated. The Department has determined the applicant has not demonstrated reasonable diligence in previous performance under Permit G-12868.

**The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]**

*The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the*

*following factors when determining the market and the present demand for water or power to be supplied:*

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) 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);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

**OAR 690-315-0040(4)(a)**

The amount of water available to satisfy other affected water rights and scenic waterway flows.

17. A review of 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-12868; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.

**OAR 690-315-0040(4)(b)**

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).

18. The point of appropriation for Permit G-12868, is located within the Fifteen Mile Creek Basin, is located adjacent to The Dalles Critical Groundwater Area.
19. Fifteen Mile Creek is not located within or above any state or federal scenic waterway.
20. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

**OAR 690-315-0040(4)(c)**

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

21. Fifteen Mile Creek is located within an area ranked “moderate” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

**OAR 690-315-0040(4)(d)**

Economic interests dependent on completion of the project.

22. An approximate total of \$105,000 has been invested in the development of the authorized use for this project.

**OAR 690-315-0040(4)(e)**

Other economic interests dependent on completion of the project.

23. The Application identifies Wasco County and Oregon DEQ as additional economic interests because they receive fees for tonnages disposed of at the landfill.

**OAR 690-315-0040(4)(f)**

Other factors relevant to the determination of the market and present demand for water and power.

24. No other factors relevant to the determination of the market and present demand for water and power have been identified.

**Fair Return Upon Investment [OAR 690-315-0040(2)(f)]**

25. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

**Other Governmental Requirements [OAR 690-315-0040(2)(g)]**

26. Delay in the development of this project was caused by any other governmental requirements.

**Unforeseen Events [OAR 690-315-0040(2)(h)]**

27. Major repairs to the Well in 2011 and a new site development plan are identified as unforeseen events.

Though major well repair may be considered an unforeseen event, the actual repair of the well is considered a maintenance item. The development of a new site plan is not considered an unforeseen event, as it is a business decision made by the permit holder.

**Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]**

28. The Application asserts an undue hardship would result in a denial of the extension request. The Application states, "Any denial will result in undue hardship. We have expended significant funds in construction of the well and water system, and compliance with permit requirements. A modification to the place of use requires a permit amendment. Thus, the permit is nearly perfected, with minor adjustments that will be corrected. Although undue time has elapsed since the original date of completion, due

diligence towards completion of perfection is now being shown, and denial is not appropriate in this circumstance.”

Though the permit holder believes it is not appropriate to deny the extension request because diligence is now being demonstrated, the Department must consider what work has been accomplished towards the development of the permit, and the record does not show that diligence has been demonstrated in the development of the authorized use in more than two decades, and that there no evidence beyond the submittal of a Application for Extension of Time, that diligence is currently being demonstrated.

**Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]**

29. The Application does not provide evidence of good faith of the appropriator under Permit G-12868.

Based on Findings of Fact 10, 11, 12, 13, 14, 15, 16, and 28, above, the Department finds that the Applicant has not demonstrated good faith.

**Duration of Extension [OAR 690-315-0040(1)(c)]**

*Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

30. As of December 26, 2023, the Application identifies the need to submit a Permit Amendment, and is requesting five years to pursue the change in place of use.

The Department has determined that an extension of time to October 1, 2028, is not allowable because no work towards the development of the authorized use under the permit has occurred since the well was constructed prior to permit issuance. The permit holders request to extend the permit to October 1, 2028, is not reasonable as the permit was issued over two decades prior to the submittal of the second application for extension of time, and no diligence has been shown in the development of the authorized use.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

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 fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).



## CONCLUSIONS OF LAW

1. The permit holder has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The permit holder has complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. The Application established that there has been no construction, no financial investment or reasonable diligence toward developing the project during the most recent extension of time period, being October 1,1999, to October 1,2014, or since the end of the previous extension of time period. The permit holder has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

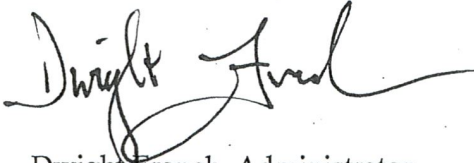
## PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny the time to complete construction of the water system under Permit G-12868 from October 1, 2014, to October 1, 2028.

Deny the time to apply water to beneficial use under Permit G-12868 from October 1, 2014, to October 1, 2028.

DATED: March 26, 2024



Dwight French, Administrator,  
Water Right Services Division

*If you have any questions,  
please check the information  
box on the last page for the  
appropriate names and  
phone numbers.*

### Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than **May 10, 2024**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Servicemembers:** Active-duty service members have a right to stay 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 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.



