

**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-12370, Water Right Application G-13249,        )        PROPOSED FINAL ORDER  
in the name of the Port of Morrow                                )

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**Permit Information**

**Application File G-13249/ Permit G-12370**

Basin 7 – Umatilla Basin / Watermaster District 21

Date of Priority: January 14, 1993

**Authorized Use of Water**

Source of Water:	Wells 6 and 7 in the Willow Creek Basin
Purpose or Use:	Municipal
Maximum Rate:	1.448 cubic feet per second (cfs)

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**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-12370, water right Application G-13249.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 2015 to October 1, 2040.
- Grant an extension of time to apply water to full beneficial use from October 1, 2015 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

City – 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

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 690-315-0090(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. Permit G-12370 was issued by the Department on April 11, 1996. The permit authorizes the use of up to 1.448 cfs of water from Wells 6 and 7 (Kinza Wells 6 and 7) in the Willow Creek Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. One prior permit extension has been granted for Permit G-12370. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2015.
3. The permit holder, the Port of Morrow, submitted an "Application for Extension of Time" to the Department on February 27, 2015, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-12370 be extended from October 1, 2015 to October 1, 2040.
4. Notification of the City's Application for Extension of Time for Permit G-12370 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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

5. 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)]

6. Permit G-12370 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.<sup>4</sup>

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

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

**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.*

7. The remaining work to be accomplished under Permit G-12370 consists of completing construction and applying water to full beneficial use.
8. According to the Port's 2007 Water Management and Conservation Plan (WMCP), The Port manages three industrial parks in Morrow County which includes both industrial and commercial users and a small domestic population. Permit G-12370 services the South Morrow Industrial Park, located near Heppner, Oregon. Since the water system for the South Morrow Industrial Park is an isolated satellite system dedicated to supplying water only to this park, this Extension of Time PFO will only consider the water supply and demands within the South Morrow Industrial Park.
9. Prior to October 1, 2015, the permit holder had appropriated .11 cfs of the 1.448 cfs of water authorized under Permit G-12370 for municipal purposes. There is an undeveloped portion of 1.338 cfs of water under Permit G-12370 as per OAR 690-315-0010(6)(g).
10. In addition to the 1.448 cfs of water authorized under Permit G-12370 (Kinzua Wells 6 and 7), the Port holds the following rights for use in the South Morrow Industrial Park:
  - Certificate 38590 for 0.23 cfs of water, being 0.09 cfs from Heppner Well 1 and 0.14 from Heppner Well 2, in the Willow Creek Basin; and
  - Certificate 83182 for 0.9 cfs of water, being 0.51 cfs from Kinzua Well 1 and 0.39 cfs from Kinzua Well 4, in the Willow Creek Basin;These water rights and permits total 2.578 of groundwater. The Port of Morrow has not yet made use of 1.338 cfs of water, under Permit G-12370.
11. According to the Port's 2007 WMCP (page 2-7), the Port has following wells available for water supply:
  - Kinzua Well 1 is for domestic use;
  - Kinzua Well 7 has not been developed;
  - Kinzua Well 6 services the power plant; and
  - Kinzua Well 4 and Heppner Well 2 are not in use.
12. According to the Port's 2007 WMCP (page 2-3), their current peak daily demand at South Morrow Industrial Park was estimated at 0.77 cfs. An existing cogeneration power plant is currently the largest customer, along with five other businesses currently housed at the site.

13. According to the Port's 2007 WMCP (page 2-2 and 5-2), The South Morrow Industrial Park in about 100 acres. An existing cogeneration power plant is currently the largest customer, along with five other businesses currently housed at the site. Water demand is almost entirely from the power plant (0.24 cfs). If the power plant were to expand, the water demand would double. There are three large industrial locations as well as the potential to add an additional 1.7 cfs of water. In addition, there is a potential to develop a relationship with the city of Heppner to provide either primary or backup water supply. The Port projects their peak water demand at South Morrow Industrial Park will be 1.448 cfs in 2040.
14. Full development of Permit G-12370 is needed to address the present and future water demand of the South Morrow Industrial Park.
15. The Port's request for an extension of time until October 1, 2040, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-12370 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. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-12370. Construction of Kinzua Well 6 (MORR 50383) began March 17, 1998 and was completed April 30, 1998.
17. During the last extension period, being October 1, 1999 to October 1, 2015, the Department approved the Ports 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 WMPC (Special Order Volume 74, page 69).
18. According to the Port, as of February 27, 2015, they have invested \$225,000, which is the total cost for complete development of this project.
19. According to the Final Order for the 2007 WMCP (Special Order Volume 74, page 69), 0.11 cfs of the 1.448 cfs is currently authorized for use under Permit G-12370.

20. The Department has considered the Port'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)]**

21. According to the Port, as of February 27, 2015, they have invested \$225,000, which is the total cost for complete development of this project.

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

22. As described in Findings 8 through 14 above, the Port has indicated, and the Department finds that the Port must rely on full development of their Permit G-12370 to meet current and expected demands at the South Morrow Industrial Park.
23. 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-12370.
24. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.11 cfs up to 1.448 cfs under Permit G-12370 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)]**

25. The Port expects to obtain a fair and reasonable return on investment by continuing development of Permit G-12370.

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

26. 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)]**

27. Delay of development under Permit G-12370 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.*

28. On August 10, 1993 the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-12370 does not have the potential for substantial interference with surface water.
29. 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).
30. Based upon the Department's determination described in Finding 28 and 29, the use of the undeveloped portion of Permit G-12370 does not have the potential for substantial interference with surface water, and therefore the persistence of listed fish species will be maintained.

### **CONCLUSIONS OF LAW**

1. The Port 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 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 complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2040<sup>5</sup> 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

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<sup>5</sup> Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a water right examiner to survey the appropriation. When in one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

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).

7. As required by OAR 690-315-0090(3) and as described in Finding 24, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 0.11 cfs up to 1.448 cfs under Permit G-12370 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).
8. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 28 and 30, above, the use of the undeveloped portion of the permit does not have the potential for substantial interference with surface water.
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).

**Continued on the following page**



## 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-12370 from October 1, 2015 to October 1, 2040.

Extend the time to apply the water to beneficial use under Permit G-12370 from October 1, 2015 to October 1, 2040.

Subject to the following conditions:

### CONDITIONS

1. **Development Limitations**

Appropriation of any water beyond 0.11 cfs up to 1.448 cfs under Permit G-12370 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-12370 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-12370 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: June 2, 2015

  
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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 **July 17, 2015**, 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 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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