

**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  
for Permit G-12576, Water Right Application G-14194, ) FINAL  
in the name of the City of Mt. Vernon ) ORDER

---

**Permit Information**

**Application File G-14194 / Permit G-12576**

Basin 6 – John Day Basin / Watermaster District 4

Date of Priority: October 30, 1995

**Authorized Use of Water**

Source of Water: Three Wells in John Day Basin within the John Day River Basin  
Purpose or Use: Municipal  
Maximum Rate: 0.67 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.***

This Proposed Final Order applies only to Permit G-12576, water right Application G-14194.

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

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1998, to October 1, 2018.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2018.

## **ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources  
City – City of Mt. Vernon  
ODFW – Oregon Department of Fish and Wildlife  
PFO – Proposed Final Order  
WMCP – Water Management and Conservation Plan  
Well A – GRAN 50112  
Well B – GRAN 50098  
Well C – GRAN 50092

### **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(3)** 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 537.630(3)(b)** (Section 1, Chapter 704, Oregon Laws 2017), requires the Department, for extensions of time for Municipal water use to be conditioned to require that the permit holder submit, and obtain Department approval of, a water management and conservation plan (WMCP) under OAR Chapter 690, Division 86.

**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.

## FINDINGS OF FACT

1. On June 25, 1996, Permit G-12576 was issued by the Department. The permit authorizes the use of up to 0.67 cfs of water from three wells in John Day Basin, for municipal use. The permit 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. On September 14, 1998, the City of Mt. Vernon (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 be extended from October 1, 1998, to October 1, 2003. This is the first extension request for Permit G-12576.
3. Due to an ongoing permit extension rulemaking, in 1998, the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
4. On October 15, 2001, the City submitted a Claim of Beneficial Use (COBU) for Permit G-12576. The COBU was found to be premature as full beneficial use was made after October 1, 1999, and an Extension of Time had not yet been approved.
5. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
6. On September 14, 2008, the City of Mt. Vernon (City), submitted a new Application, consistent with the rules in OAR 690-315, to the Department requesting the time to complete construction be extended from October 1, 1998, to October 1, 2003, and to apply water to full beneficial use under the terms and conditions of Permit G-12576 be extended from October 1, 1999, to October 1, 2003.
7. On January 3, 2012, the City submitted an updated Application for Extension of Time to the Department requesting the time to complete construction be extended from October 1, 1998, to October 1, 2015, and to apply water to full beneficial use under the terms and conditions of Permit G-12576 be extended from October 1, 1999, to October 1, 2015.
8. Notification of the City's Application for Extension of Time for Permit G-12576 was published in the Department's Public Notice dated January 10, 2012. No public comments were received regarding the extension application.
9. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modified the definition of the undeveloped portion of a municipal water right permit for the purpose of (1) determining the amount of water that may be subject to fish persistence conditioning and (2) setting diversion limitations until approval for additional diversion is given through a Water Management and Conservation Plan (WMCP). The undeveloped portion

of a municipal permit is now defined as the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or in the last approved extension. HB 2099 also requires all extensions of time to be conditioned to require that the permit holder submit, and obtain approval of a WMCP.

10. On January 26, 2018, the City submitted an Extension of Time Update Form for their pending Application for Extension of Time. The Form requested the extended to date be changed from October 1, 2015, to October 1, 2018.

**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)]**

11. On September 14, 1998, the Department received a completed Application for Extension of Time consistent with the rules in OAR 690-320, and the fee specified in ORS 536.050 from the permit holder.

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

12. Permit G-12576 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.<sup>4</sup>

**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.*

13. No remaining work is to be accomplished under Permit G-12576 for completing construction and applying water to full beneficial use.
14. As of October 15, 2001, the permit holder had appropriated the full 0.67 cfs of water authorized under Permit G-12576, being 0.13 cfs of water from GRAN 50098 (Well B) and 0.54 cfs of water from GRAN 50092 (Well C), for municipal purposes. There is no “undeveloped portion” of the Permit G-12576 as per ORS 537.230(1)<sup>5</sup> and OAR 690-315-0010(6)(g).

---

<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).

<sup>5</sup> Effective August 15, 2017, Section 1, Chapter 704, Oregon Law 2017, 537.630(1) defines the “undeveloped portion” of a municipal permit as the difference between the maximum rate or duty specified in a water right permit and the maximum rate or duty of water diverted as the later of June 29, 2005, or date specified in the permit or last approved extension.

15. In addition to the 0.67 cfs of water authorized under Permit G-12576, the City holds the following water rights for municipal uses:
- Certificate 39749 for 0.38 cfs of water from Holmberg Well within the John Day River Basin;
  - Certificate 86686 for 0.14 cfs of water from Highlan Well within the John Day River Basin; and
  - Permit G-12560 for 0.557 cfs of water from well (Clark Springs Facility) within the Ingle Creek Basin;

The City's permit and water rights total 1.747 cfs of ground water.

16. The City's 2010 peak demand was 0.47 cfs of water. According to the City, due to production problems from Highland Well and Clark Springs Facility are not currently in operation. Holmberg Well is not currently in use as it is in direct connection with surface water and cannot be put to use without construction of a treatment facility.
17. According to the Application, in 2010, the population within the service boundary of the City was 527. The City population did not increase in the five years between 2010 and 2015.
18. The City's peak day demand is 0.47 cfs of water as of the year 2015.
19. Full development of Permit G-12576 is needed to address the present and future water demand of the City, including system redundancy and emergency use.

Based on Findings of Fact (FOF) 13 through 19, the Department has determined that the City's request for an extension of time until October 1, 2018, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-12576 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-g)]**

*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-12576 on June 25, 1996, the City conducted a water system improvement study.

21. Work was accomplished during the original development time frame under Permit G-12576, being June 25, 1996, through October 1, 1999. Work included construction of GRAN 50112 (Well A), Well B, and Well C; installation of disinfection facilities, transmission piping, monitoring equipment, and a 500,000 gallon reservoir; and submittal of a Permit Condition Groundwater Monitoring Plan.
22. Since the October 1, 1999, the City has installed water meters on Well A and Well B

Based on FOF 20 through 22, the Department has determined that work has been accomplished within the time allowed under Permit G-12576, which provides evidence of good cause and reasonable diligence in prior performance under the permit.

23. According to the COBU submitted to the Department on October 15, 2001, the City has appropriated 0.67 cfs of water, being 75 gpm (0.17 cfs) from Well B, and 300 gpm (0.67 cfs) from Well C. The City operates the wells based on the level of water in the reservoir system. At times, the City exceeds the authorized pumping rates to fill the reservoirs. No water has been appropriated from Well A.
24. The Department has considered the City's compliance with conditions, and did not identify any concerns.

Based on FOF 23 and 24, the Department has determined that the City has appropriated water and has demonstrated compliance with permit conditions, which provides evidence of good cause and reasonable diligence in prior performance under the permit.

**Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose**  
*[OAR 690-315-0080(3)(b)]*

25. According to the Application, as of January 3, 2012, the City has invested \$2,150,000, which is the total cost for complete development of this project.

Based on FOF 25, the Department has determined that the City has made an investment in the development of Permit G-12576.

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

26. As described in FOF 11 through 17 above, the City has indicated, and the Department finds that the City must rely almost exclusively on its water right Permit G-12576.
27. The City did not experience population growth during the years 2010 through 2015 and the City does not anticipate commercial or industrial.
28. 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-12576.

29. ORS 537.630(3)(b), requires the Department, for extensions of time for Municipal water use to be conditioned to require that the permit holder submit, and obtain Department approval of, a water management and conservation plan under OAR Chapter 690, Division 86.(Section 1, Chapter 704, Oregon Laws 2017) A “Municipal Use Extension 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)]**

30. The City expects to obtain a fair and reasonable return on investment in the completed development of Permit G-12576.

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

31. 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)]**

32. According to the Application, delay of development under Permit G-12576 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.*

33. Permit G-12576 is not subject to an evaluation regarding maintaining the persistence of listed fish species because there is no “undeveloped portion” of the Permit G-12576 as per ORS 537.630(1)<sup>6</sup> and OAR 690-315-0010(6)(g).

**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).

---

<sup>6</sup> Effective August 15, 2017, Section 1, Chapter 704, Oregon Law 2017, 537.630(1) defines the “undeveloped portion” of a municipal permit as the difference between the maximum rate or duty specified in a water right permit and the maximum rate or duty of water diverted as the later of June 29, 2005, or date specified in the permit or last approved extension.

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, 2018<sup>7</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 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. There is no undeveloped portion of the permit to be considered under ORS 537.630(1)<sup>8</sup> and OAR 690-315-0080(1)(f).
8. As required by Section 1, Chapter 704, Oregon Laws 2017, and as described in Finding 30, above, and specified under Item 1 of the “Conditions” section of this PFO, for extensions of time for Municipal water use to be conditioned to require that the permit holder submit, and obtain Department approval of, a water management and conservation plan under OAR Chapter 690, Division 86.

**continued on following page**

---

<sup>7</sup> Pursuant to ORS 537.630(5), upon completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after 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.

<sup>8</sup> Effective August 15, 2017, Section 1, Chapter 704, Oregon Law 2017, 537.630(1) defines the “undeveloped portion” of a municipal permit as the difference between the maximum rate or duty specified in a water right permit and the maximum rate or duty of water diverted as the later of June 29, 2005, or date specified in the permit or last approved extension.



## 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-12576 from October 1, 1998, to October 1, 2018.

extend the time to apply the water to beneficial use under Permit G-12576 from October 1, 1999, to October 1, 2018.

Subject to the following conditions:

### CONDITIONS

1. **Municipal Use Extension Condition**

A Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 shall be submitted to the Department within three years of issuance of this Final Order.

DATED: March 27, 2018

  
\_\_\_\_\_  
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 **May 24, 2018**, 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>

---

If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall 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

---