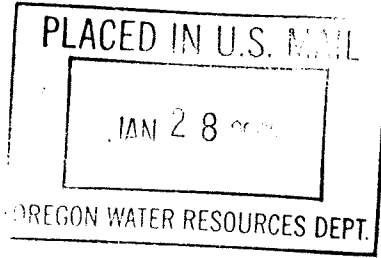


T-8868

Kelly Starnes



**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
 for an Extension of Time for)
 Permit #G-12315, Water Right) PROPOSED FINAL ORDER
 Application #G-12088)
 (Vineyard Mountain Water and)
 Improvement District))

Permit Information

Application File #G-12088 / Permit #G-12315

Basin: #02 - Willamette Basin / Watermaster District: #16
 Date of Priority: April 26, 1990

Authorized Use of Water

| | |
|------------------|---|
| Source of Water: | Three Wells within the Willamette River Basin |
| Purpose or Use: | Group Domestic for 130 homes |
| Maximum Rate: | 0.3 cubic foot per second (cfs), being 0.13 cfs from Well #1, 0.13 cfs from Well #2 and 0.04 cfs from Well #3 |

This Extension of Time request is being processed in accordance with Oregon Administrative Rule 690-315.

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-12315, water right Application #G-12088. A copy of Permit #G-12315 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1998, to October 1, 2018;
- grant the extension for complete application of water from October 1, 1999, to October 1, 2019; and
- make the extension subject to certain conditions set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Historical Background

1. Permit #G-12315 was granted by the Water Resources Department on March 15, 1996. The permit authorizes the use of up to 0.3 cfs of water from three wells, within the Willamette River Basin, for Group Domestic Use for 130 homes. The permit specified that construction of the water development project should be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. The permit holder submitted an "Application for Extension of Time" to the Department on July 30, 2001, requesting the time in which to complete construction of the water system be extended from October 1, 1998, to October 1, 2018, and the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-12315 be extended from October 1, 1999, to October 1, 2019. This is the first permit extension requested for Permit #G-12315.

Development Overview

3. Three wells were constructed between February of 1969 and April of 1972. Since then, pump stations, transmission lines and ancillary facilities have been installed, and service connections to 119 homes have been established.

4. Delivery of water from the three wells began in 1969. Since the issuance of Permit #G-12315 on March 15, 1996, a maximum cumulative total of 135.0 gpm (0.3 cfs) has been appropriated from all three wells. The yield from the wells, however, has decreased since then to approximately 72.0 gpm (0.16 cfs). Due to the decreased production of water from the wells, the Vineyard Mountain Water and Improvement District became unable to appropriate the full 0.3 cfs of water allowed under Permit #G-12315. In an effort to be able to appropriate the full permitted amount of water, the district filed a permit amendment (T-8868) on July 30, 2001, requesting the authorization of additional points of appropriation.

Review Criteria [OAR 690-315-0040(1)(2)]

5. As set forth under OAR 690-315-0040(1)(2), the time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the requirements of ORS 537.230, 537.248¹, 537.630 and 539.010(5).

Other Governmental Requirements [ORS 537.230(2)]

6. Based upon information provided by the permit holder, delay in the development of this project was not caused by any other governmental requirements.

Start of Construction [ORS 537.630]

7. The applicant demonstrated that construction of the wells and water system began within the time specified in the permit, being March 15, 1997. The work thus far consists of complete construction of three wells, installation of the pump stations, transmission lines and ancillary facilities, and service hook-ups to 119 homes, as evidenced by documentation of work contained in the file.

¹ ORS 537.248 applies to reservoir permits only.

Financial Investment [ORS 539.010(5)]

8. As of July 30, 2001, the permit holder had invested a total of \$275,000.00 into the project, consisting of construction of all three wells, installation of pump stations, transmission lines and ancillary facilities. An additional \$60,000.00 investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1), 537.630(1) and 539.010(5)]

9. Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [ORS 537.260, OAR 690-315-0040(3)].
10. In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:
 - a. The amount of construction completed within the time allowed in the permit or previous extension.
 - Construction of the wells and water system began within the time specified in the permit, being March 15, 1997. The work thus far consists of complete construction of three wells, installation of the pump stations, transmission lines and ancillary facilities, and service hook-ups to 119 homes, as evidenced by documentation of work contained in the file.
 - b. The amount of beneficial use made of the water during the permit or previous extension time limits.
 - Since the issuance of Permit #G-12315 on March 15, 1996, a maximum cumulative total of 0.3 cfs has been appropriated from all three wells. The yield from the wells, however, has decreased since then to approximately 0.16 cfs.
 - Delay of full beneficial use of water under Permit #G-12315 was due, in part, to the length of time necessary to complete development on all 130 lots and to a decrease in water production from the permitted wells necessitating the need for more time to construct additional points of appropriation to obtain the full quantity of water allowed under the permit.

- c. The water right permit holder's conformance with the permit or previous extension conditions.
 - The record does not raise concerns about the permit holder's compliance with conditions.
- d. Financial investments made toward developing the beneficial water use.
 - As of July 30, 2001, the permit holder had invested approximately 82 percent of the total projected cost for complete development of this project. A total of \$275,000.00 has been invested into the project, consisting of construction of all three wells, installation of pump stations, transmission lines and ancillary facilities. An additional \$60,000.00 investment is anticipated for the completion of this project.

The Market and Present Demands for Water *[ORS 539.010(5) and OAR 690-315-0040(4)]*

11. 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.
 - The Department determined on June 30, 1993, that this use of groundwater will not have the potential for substantial interference with the nearest surface water source. Because of this determination, this application does not raise concerns about surface water impact. Conditions were, however, placed upon Permit #G-12315 in order to avoid injury to existing rights or to the ground water resource.
 - The permitted points of appropriation (Wells #1, #2 and #3), authorized under Permit #G-12315, are not located within the boundaries of any designated ground water limited area.

- 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).
- None applicable.
- c. The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.
- The permitted wells are located within a designated sensitive, threatened or endangered species area for aquatic species utilizing surface water resources, as identified on the Division 33 map furnished by the Oregon Department of Fish and Wildlife. The Department determined on June 30, 1993, however, that this use of groundwater will not have the potential for substantial interference with the nearest surface water source. Because of this determination, this application does not raise concerns about surface water impacts.
- d. Economic investment in the project to date.
- As of July 30, 2001, the permit holder had invested approximately 82 percent of the total projected cost for complete development of this project. A total of \$275,000.00 has been invested into the project, consisting of construction of all three wells, installation of pump stations, transmission lines and ancillary facilities. An additional \$60,000.00 investment is anticipated for the completion of this project.
- e. Other economic interests dependent on completion of the project.
- None have been identified.
- f. Other factors relevant to the determination of the market and present demand for water and power.
- The only potential alternative source of water would be an extension of the main from the City of Corvallis. It is possible that Corvallis could and will supply water to development on the floor of Crescent Valley. However, it is unlikely that Corvallis could or would extend their lines beyond Crescent Valley to

supply water to the hill even further north where the district is located. As such, only additional alternative wells are likely to make up deficiencies in water supply for the district.

- A residential development similar in nature and adjacent to the Vineyard Mountain Water and Improvement District service area has water rights junior to the district. Other development in the area consists of a scattering of individual residential domestic wells.

Fair Return Upon Investment [ORS 539.010(5)]

12. Income from the permitted water development already results in reasonable returns upon the investment made to date. The District is a non-profit corporation and its charges and fees are designed to recover only the cost of maintenance, improvements and amortized debt. The District maintains a reserve account to fund routine operations and maintenance and scheduled replacement of capital equipment. In the event of major replacement or expansion, however, a bonded debt secured by the property within the District will become necessary.

Duration of Extension [OAR 690-315-0040(1)(c), ORS 539.010(5)]

13. As set forth under OAR 690-315-0040(1)(c), time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.
14. As of July 30, 2001, the remaining work to be completed consists of construction of replacement wells, completion of the water distribution system, and complete application of water to beneficial use.
15. The scope and nature of the project extended the length of time needed to fully develop and perfect the permit, caused mainly by the need to sell and complete development on all 130 lots. Additionally, an unforeseen decrease in water production from the permitted wells has caused a need for more time in which to construct additional points of appropriation to obtain the full quantity of water allowed under the permit.

16. Completion of construction can be accomplished by October 1, 2018, and full application of water to beneficial use can be completed by October 1, 2019.

Conclusions of Law

1. The applicant 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 537.230 and ORS 537.630.
2. The applicant has submitted a complete extension application form and the fee required by ORS 536.050(1)(k).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause exists for an extension to complete construction and apply water to full beneficial use pursuant to ORS 537.630(1).
5. Given the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2018, to complete construction of the water system and to have until October 1, 2019, to complete the application of water to beneficial use under the terms of Permit #G-12315 is both reasonable and necessary.
6. Pursuant to ORS 537.630(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within 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 permittee shall submit a map of the survey and the claim of beneficial use.

Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete construction of the water system under Permit #G-12315 from October 1, 1998, to October 1, 2018; and

Extend the time for complete application of water to beneficial use under Permit #G-12315 from October 1, 1999, to October 1, 2019.

Subject to the following conditions:

CONDITIONS

In accordance with OAR 690-315-0050(6), the permittee must submit a written progress report to the Department by October 1, of the years 2006, 2011 and 2016. The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the work done each year since the last extension was granted or the last progress report submitted. The report shall include:

- a) The amount of construction completed;
- b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
- d) Financial investments made toward developing the beneficial water use. The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR 690, Division 86 or ORS 537. 099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

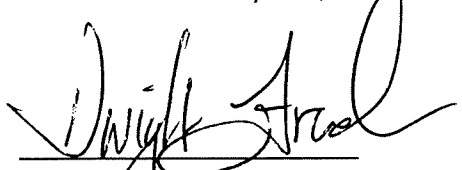
If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

DATED: January 22, 2002



Dwight French
Water Rights Section Manager

*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 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the

Water Resources Department no later than Friday, March 8, 2002, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.

2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the 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 final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the 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 petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The 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 request for contested case hearing has been submitted, and:
 - A. Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or
 - B. The applicant submitted a timely request for a contested case hearing.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503) 387-8455, extension 201.

Address all other correspondence to:

**Water Rights Section
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97301-4172
Fax #: (503) 378-2496**

This document was prepared by Lisa J. Juul. If you have any questions about any of the statements contained in this document, I am most likely the best person to answer your questions. You may contact me by telephone at (503) 378-8455, extension 272.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Dwight French. His extension number is 268.

If you have other questions about the Department or any of its programs, please contact our Water Rights Information Group at extension 201.