

**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-12123, Water Right Application G-12759,) FINAL
in the name of the City of Junction City) ORDER

Permit Information

Application File G-12759 / Permit G-12123

Basin 2B – Middle Willamette Basin / Watermaster District 2

Date of Priority: January 17, 1992

Authorized Use of Water

Source of Water:	a well in the Ingram Slough Basin
Purpose or Use:	Municipal Use
Maximum Rate:	1.67 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 as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit G-12123, water right Application G-12759.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1997, to October 1, 2021.
- Grant an extension of time to apply water to full beneficial use from October 1, 1998, to October 1, 2021.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
City – City of Junction City
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(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) provides that the extension of time be conditioned to require the holder of a permit for municipal use to submit and obtain department approval of a water management and conservation plan.

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

1. On August 29, 1995, Permit G-12123 was issued by the Department. The permit authorizes the use of up to 1.67 cfs of water from a well in the Ingram Slough Basin within the Ingram Slough Basin, for municipal use. The permit specifies that construction of the water development project was to be completed by October 1, 1997, and that complete application of water was to be made on or before October 1, 1998.
2. The City of Junction City (City), submitted an “Application for Extension of Time” (Application) to the Department on March 22, 2019, requesting the time to complete construction be extended from October 1, 1997, to October 1, 2021, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12123 be extended from October 1, 1998, to October 1, 2021. This is the first extension request for Permit G-12123.
3. Notification of the City’s Application for Extension of Time for Permit G-12123 was published in the Department’s Public Notice dated March 22, 2019. 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 537.230¹, 537.630² and/or 539.010(5)³

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

4. On March 22, 2019, 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)]

5. Permit G-12123 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.⁴

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.

6. The Application asserts that development of water under Permit G-12123 is complete.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

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

7. As of June 29, 2005, the permit holder had appropriated the total 1.67 cfs of water authorized under Permit G-12123 for municipal use. There is no “undeveloped portion” of the Permit G-12123 as per ORS 537.630(1).
8. In addition to the 1.67 cfs of water authorized under Permit G-12123, the City holds the following rights:
 - Claim GR-3978 for 0.36 cfs of water from A well within the Willamette River Basin;
 - Claim GR-3979 for 0.36 cfs of water from a well within the Willamette River Basin;
 - Claim GR-3980 for 0.67 cfs of water from a well within the Willamette River Basin;
 - Claim GR-3981 for 0.78 cfs of water from a well within the Willamette River Basin;
 - Transfer T-12523 for 1.11 cfs of water from a well within the Willamette River Basin;
 - Certificate 46412 for 1.11 cfs of water from a well within the Willamette River Basin;
 - Certificate 65071 for 0.92 cfs of water from Well 5 in Willamette River Basin;
 - Certificate 93565 for 0.72 cfs of water from a well in Willamette River Basin;
 - Permit G-12121 for 2.23 cfs of water from a well in Willamette River Basin; and
 - Permit G-12057 for 2.23 cfs of water from a well in Willamette River Basin.

The City’s registrations, permits, certificates, and water right transfers total 12.16 cfs of ground water. The City has not yet made use of 1.46 cfs of water under Permit G-12121; and 0.63 cfs of water under Permit G-12057. The combined maximum rate currently being appropriated under GR-3978, GR-3979, GR-3980, GR-3981, and T-12523, is less than 1.78 cfs. Water is not currently being appropriated under Certificate 46412 as the well needs to be replaced.

9. The City’s peak water demand within its service area boundaries was reported to be 3.46 cfs in 2018.
10. According to the Application, in 2018, the population within the service boundary of the City was 6,206. Based on historic growth, the City estimates the population will increase at a growth rate of 1.9 percent per year, reaching an estimated population of 6,809 by the year 2023.
11. The City anticipates commercial and industrial growth to occur proportionally with the residential population growth.
12. The City’s peak day demand of is projected to be approximately 3.8 cfs of water by the year 2023.
13. The City is party to an intergovernmental agreement with Oregon Department of Corrections and Oregon Department of Human Services to provide water to the new state prison and hospital.
14. Full development of Permit G-12123 is needed to address the present and future water demand of the City, including system redundancy and emergency use.

15. Based on Findings of Fact 6, through 14, the Department has determined that the City's request for an extension of time until October 1, 2021, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-12123 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), (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. Prior to the issuance of Permit G-12123 on August 29, 1995, the City constructed LANE 6364.
17. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-12123.
18. According to the Application, as of March 22, 2019, the City has invested \$1,901,000, which is the total projected cost for complete development of this project.
19. As of June 29, 2005, all of the 1.67 cfs of water allowed has been appropriated from LANE 6364 for beneficial municipal purposes under the terms of this permit.
20. The Department has considered the City's compliance with conditions, and has identified the following concern; the record does not show that the required plan which indicates the steps the City intends to pursue to obtain a long-term water supply, was not submitted by October 1, 1998.

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

21. According to the Application, as of March 22, 2019, they have invested \$1,901,000, which the total projected 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 City has indicated, and the Department finds that the City must rely on its water right permits from ground water to meet future demand.

23. The City projects a population increase, on average, of 1.9 percent per year over a 5 year period, being 2018 through 2023. According to their April 2018 Water System Master Plan (Section 2, page 4), the City expects commercial and industrial growth to be proportionate to their residential growth.
24. 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-12123.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

25. The City employs generally accepted utility rate structure, which includes a base charge dependent on the size of the meter, and whether the water user is inside the city limits; and a consumption charge based on 100 cubic feet units.

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. According to the Application, delay of development under Permit G-12123 was due, in part, to the development of the required Water Management and Conservation Plan being more involved and difficult than anticipated, as well as the City concurrently developing other wells authorized by other permits.

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. Permit G-12123 is not subject to an evaluation regarding maintaining the persistence of listed fish species because there is no "undeveloped portion" of the Permit G-12123 as defined by ORS 537.630(1).

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(3).
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).

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. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-12123 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2021⁵ pursuant to OAR 690-315-0080(1)(d).
7. 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).
8. There is no undeveloped portion of the permit to be considered under OAR 360-315-0080(1)(f).
9. As required by ORS 537.630(3)(b), this extension of time is conditioned to require the water user submit and obtain Department approval of a Water Management and Conservations Plan.

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-12123 from October 1, 1997, to October 1, 2021.

Extend the time to apply the water to beneficial use under Permit G-12123 from October 1, 1998, to October 1, 2021.

⁵ Pursuant to ORS 537.230(5), 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 a new or revised claim of beneficial use as deemed appropriate by the Department.

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: August 27, 2019



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 **October 4, 2019**, 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 Servicemembers have a right to stay these 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 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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

Mailing List for Extension PFO Copies

PFO Date: August 27, 2019

**Application G-12759
Permit G-12123**

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

Original mailed to Applicant:

City of Junction City
Attn: Gary Kaping
PO Box 250
Junctin City, OR 97448

Copies sent to:

1. WRD - App. File G- 12759 / Permit G-12123
2. Agents &/or CWRE representing the Permit Holder

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving via e-mail (10 AM Tuesday of signature date)

4. WRD - Watermaster District 2 – Lanaya Blakely
5. WRD – ****If WMCP needed*** – Kerri Cope, Water Supply and Conservation Team (WMCP)
Done by _____ Date _____

CASEWORKER: JDP