

**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-18326, Water Right Application G-12088, in )		PROPOSED
the name of Vineyard Mountain Water and Improvement )		FINAL
District		ORDER

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Permit Information

Application:	G-12088
Permit:	G-18326
Basin:	2B – Middle Willamette / Watermaster District 16
Date of Priority:	April 26, 1990
Source of Water:	four wells in the Willamette River Basin
Purpose or Use:	group domestic uses for 130 homes
Maximum Rate:	0.3 cubic foot per second (cfs) in any combination from the wells; further limited to 0.13 cfs from Well 2, 0.04 cfs from Well 3, 0.3 cfs from Well 4, and 0.13 cfs from Well 5

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***Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.***

*In Summary, the Department proposes to:*

- Grant an extension of time to complete construction of the water system from October 1, 2019, to October 1, 2096.
- Grant an extension of time to apply water to full beneficial use from October 1, 2019, to October 1, 2096<sup>1</sup>.
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

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<sup>1</sup>Pursuant to ORS 537.630(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.

## **ACRONYM QUICK REFERENCE**

Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well 1 – BENT 3295  
Well 2 – BENT 3296  
Well 3 – BENT 3243  
Well 4 – BENT 52225  
Well 5 – BENT 55615  
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.

**OAR 690-315-0050(5)** states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

**OAR 690-315-0050(6)** requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

## FINDINGS OF FACT

1. On March 15, 1996, Permit G-112315 was issued by the Department. The permit authorizes the use of up to 0.3 cfs of water from three wells in the Willamette River Basin, being 0.13 cfs from Well 1, 0.13 cfs from Well 2, and 0.04 cfs from Well 3 for group domestic uses for 130 homes. The permit specified actual construction of the well to begin by March 15, 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. One prior permit extension has been granted for Permit G-12315. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1999, to October 1, 2019.
3. On November 26, 2002, the Department approved Permit Amendment T-8868 (Special Order Volume 56, Page 2100) authorizing an additional point of appropriation under Permit G-12315 (modified by Permit Amendment T-8868) which is hereafter referred to simply as Permit G-12315.
4. On September 21, 2017, the Department approved Permit Amendment T-12684 (Special Order Volume 105, Page 810) authorizing an additional point of appropriation under Permit G-12315 (modified by Permit Amendment T-8868 and T-12684) which is hereafter referred to simply as Permit G-17846.
5. On October 21, 2019, Ray Topping, president of Vineyard Mountain Water and Improvement District (District), 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-18326 be extended from October 1, 2019, to October 1, 2096.
6. On October 29, 2019, notification of the Application for Permit G-18326 was published in the Department’s Public Notice. No public comments were received regarding the Application.
7. During the review of the Extension of Time Application, the Department discovered a scrivener in Permit G-17846. On December 3, 2019, the Department issued correcting Permit G-18326, to correctly describe the well names and associated rates. Permit G-18326 authorizes the use of up to 0.3 cfs of water from four wells in the Willamette River Basin, being 0.13 cfs from Well 2, 0.04 cfs from Well 3, 0.3 cfs from Well 4, and 0.13 cfs from Well 5, for group domestic uses for 130 homes.

### **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)]**

8. On October 21, 2019, 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)]**

9. According to the well log received by the Department on February 27, 1969, construction of BENT 3296 (Well 2) began November 18, 1968.

Based on Finding of Fact (FOF) 9, the Department has determined that the prosecution of the construction of the well began prior to March 15, 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 or previous extension.<sup>2</sup>*

10. Construction of the BENT 3295 (Well 1) and Well 2 began prior to permit issuance.
11. No additional work has been described as being accomplished during the original development time frame under Permit G-18326, being March 15, 1996, through October 1, 1999.
12. During the most recent extension period, being from October 1, 1999, to October 1, 2019, the following was accomplished:
  - construction of BENT 3243 (Well 3);

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<sup>2</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.

- construction of BENT 52225 (Well 4); and
- construction of BENT 55615 (Well 5)

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial 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 did not identify any concerns.

Based on FOF 13, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-18326.

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

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

14. A maximum rate of 0.03 cfs of water has been appropriated from the wells for group domestic uses for 121 homes.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2019.

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

15. An investment of approximately \$339,085, has been made which is about 100 percent of the total projected cost for complete development of this project. An additional \$0 investment is needed for the completion of this project.

Based on FOF 15, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions, a financial investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-18326.

**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.

16. 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-18326; 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).

17. The points of appropriation for Permit G-18326, located within the Willamette River Basin, are not located within a limited or critical groundwater area.
18. Willamette River is not located within or above any state or federal scenic waterway.
19. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

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**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.

20. Wilamette River 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.

21. An approximate total of \$339,085 has been invested in the project.

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

Other economic interests dependent on completion of the project.

22. Other economic interests dependent on completion of the project include individual land owners within the service area of the District.

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

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

23. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Limitations and Conditions” section of this PFO to meet this condition.

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

24. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date. The water system is rate funded, and the ability to supply water under this permit to all of the originally approved homes will provide a return on investment as well as generate funds for system maintenance and improvement.

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

25. Delay in the development of this project was not identified as being caused by any other governmental requirements.

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

26. The length of time needed to develop homes on each of the lots is out of the control of the District as it is the landowner’s decision as to when a home would be constructed.

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

27. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs. The remaining nine property owners would not be able to connect their homes to the District system, and there is no other source of water readily available to these land owners.

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

28. The Application provides evidence of good faith of the appropriator under Permit G-18326.

Based on FOF 9, through 15, and 21, the Department has determined that the applicant has shown good faith and reasonable diligence.

**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.*

29. As of October 21, 2019, the remaining work to be completed consists of completing construction of homes on the remaining nine lots; and applying water to full beneficial use.
30. The rate of development of the individual lots has averaged one home every 8.5 years since 2002. If this trend continues, it will take approximately 76.5 years to complete the development.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2096, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-18326 is both reasonable and necessary.

**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 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).



## **LIMITATIONS AND CONDITIONS**

1. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Limitations and Conditions” section of this PFO to meet this condition.
2. OAR 690-315-0050(5) allows the Department to place conditions on this extension of time, to ensure future diligence in the development of the water system. A “Last Extension Condition” is specified under Item 2 of the “Limitations and Conditions” section of this PFO. The condition was determined to be necessary due to the amount of time being allowed to complete the development of Permit G-18326.
3. OAR 690-315-0050(5) allows the Department to place conditions on this extension of time, to ensure future diligence in the development of the water system. A “Development Benchmark Condition” is specified under Item 3 of the “Limitations and Conditions” section of this PFO. The condition was determined to be necessary due to the amount of time being allowed to complete the development of Permit G-18326. This condition is intended to allow for the Department to request the submittal of a Claim of Beneficial Use (COBU) within one year from the submittal of a Progress Report, as required by Item 1 of the “Limitations and Conditions” section of this PFO, which demonstrates that 130 homes have been connected to the water system.

## **CONCLUSIONS OF LAW**

1. The applicant 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 applicant has complied with the construction timeline requirements to begin actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 9, through 28, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2096, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to ensure future diligence and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

## 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 of the water system under Permit G-18326 from October 1, 2019, to October 1, 2096.

Extend the time to apply water to beneficial use under Permit G-18326 from October 1, 2019, to October 1, 2096.

Subject to the following conditions:

### LIMITATIONS AND CONDITIONS

**1. Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2020, 2025, 2030, 2035, 2040, 2045, 2050, 2055, 2060, 2065, 2070, 2075, 2080, 2085, 2090, and 2095**. *A form will be enclosed with your Final Order.*

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

**2. Last Extension Condition**

This shall be the last extension of time granted for Permit G-18326. Any future extensions of time request will be denied.

**3. Development Benchmark Condition**

The permit holder is required to submit a Claim of Beneficial Use within one year of the submittal of a Progress Report, as described in Item 1 of this section, which demonstrates that 130 homes have been connected to the District water system, and full beneficial use of the water has been made. Upon determination by the Department, that the Progress Report submitted demonstrates full development of the permit, the Department may order the permit holder to submit a Claim of Beneficial Use within one year.

DATED: December 17, 2019



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.*

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 **January 31, 2020**, 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.

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- If you have 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 503-986-0900.
  - 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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