

**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-18186, Water Right Application G-14511, in)		PROPOSED
the name of Springwater Estate Home Owners Association,)		FINAL
Inc.)		ORDER

Permit Information

Application:	G-14511
Permit:	G-18186
Basin:	2C – Lower Willamette / Watermaster District 20
Date of Priority:	May 1, 1997
Source of Water:	three wells in Eagle Creek Basin
Purpose or Use:	domestic use for fifty-five households including irrigation of lawn or non-commercial garden not to exceed 1/2 acres in area for each
Maximum Rate:	0.28 cubic foot per second (cfs)

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 apply water to full beneficial use from October 1, 2021, to October 1, 2031¹.
- 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.

¹Pursuant 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 – CLAC 14617
Well 2 – CLAC 16967
Well 3 – CLAC 73101
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 31, 1999, Permit G-13630 was issued by the Department. The permit authorized the use of up to 0.28 cfs of water from two wells in Eagle Creek Basin for domestic use for fifty-five households including irrigation of lawn or non-commercial

garden not to exceed 1/2 acres in area for each. The permit specified actual construction of the well to begin by March 31, 2000, and complete application of water was to be made on or before October 1, 2002.

2. One prior permit extension has been granted for Permit G-13630. The Final Order approving the extension request, issued November 11, 2016, resulted in the completion dates for construction and full application of water being extended from October 1, 2002, to October 1, 2021.
3. On March 11, 2019, the Department approved Permit Amendment T-12747 (Special Order Volume 112, Page 706) authorizing an additional point of appropriation. Superseding Permit G-18186 was issued by the Department on March 11, 2019, to reflect the changes.
4. On September 6, 2024, Springwater Estate Home Owners Association, Inc., submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-18186 be extended from October 1, 2021, to October 1, 2031.
5. On September 17, 2024, notification of the Application for Permit G-18186 was published in the Department's Public Notice. No public comments were received regarding the Application.

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)]

6. On September 6, 2024, 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)]

7. According to the well log received by the Department on April 23, 1965, construction of CLAC 14617 (Well 1) began March 6, 1965.

Based on Finding of Fact (FOF) 7, the Department has determined that the prosecution of the construction of the well began prior to March 31, 2000.

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.²

8. Construction of Well 1 and CLAC 16967 (Well 2) were completed prior to permit issuance.
9. During the original development time frame, CLAC 73101 (Well 3) was completed, and 51 households were constructed.
10. During the most recent extension period, being from October 1, 2002, to October 1, 2021, a 4” distribution main and a meter were installed at Well 3. However, no additional work was accomplished after the Final Order on Extension of Time was issued November 11, 2016.
11. Since October 1, 2021, well tags have been installed on all three wells.

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.

12. The Department has considered the permit holder’s compliance with conditions, and did not identify any concerns.

The Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-18186.

² “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.

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

The amount of beneficial use made of the water during the permit time limits and previous extension.

13. A maximum rate of 0.28 cfs of water has been appropriated being 0.1 cfs from Well 1, 0.11 cfs from Well 2, and 0.07 cfs from Well 3 for domestic expanded purposes in 51 households. No additional households have been added to the system since 2002.
14. Delay of full beneficial use of water under Permit G-18186 was due, in part, to individual landowners within the Home Owners Association not developing their properties within the time allotted in the permit and previous extension.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2021.

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

15. The Applicant identifies an approximate total of \$124,000 has been invested. The costs included items associated with submittal of a Permit Amendment, and the submittal and withdrawal of an Application for a Permit to use Ground Water, which are not “construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$102,000 which is about 80 percent of the total projected cost for complete development of this project. An additional \$25,000 investment is needed to complete this project, which includes developing the remaining four households for domestic use.

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-18186.

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-18186; 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-18186, located within the Eagle Creek Basin, are not located within a limited or critical groundwater area.
18. Eagle Creek is located aboved the Clackamas 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.

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. Eagle Creek is located within an area ranked “highest” 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 \$102,000 has been invested in the project.

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

Other economic interests dependent on completion of the project.

22. The remaining four landowners who have not developed their properties have been determined to be other economic interests dependent on the completion of the project.

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 2 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 from the permitted water development will likely result in reasonable returns upon the investment made to date.

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

25. The Applicant identifies the time for the Department to review a new water right application submitted by the permit holder as an additional governmental requirement which delayed the completion of the development of the water use.

The Department has determined that no additional governmental requirements which delayed the complete development of the permit as the development authorized under this permit is not directly dependent on the status of the new water right application.

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

26. The Applicant identifies the time for the Department to review a new water right application submitted by the permit holder as an unforeseen event.

The Department has determined that no unforeseen events occurred which delayed the complete development of the permit as the development authorized under this permit is not directly dependent on the status of the new water right application.

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 that exist for meeting water use needs.

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-18186, minimal enough to allow for an extension which is conditioned to be the last one that will be authorized under the permit.

The Department has determined that the applicant has shown minimal good faith and 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 September 6, 2024, the remaining work to be completed consists of the four undeveloped properties being developed for the domestic use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2031, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-18186 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence. Based on FOF 13, 14, and 28, the Department determined the need to place a "Last Extension Condition" on this

extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 1 of the “Conditions” section of this PFO, was determined to be necessary due to no additional households being supplied water under this permit in over two decades.

2. 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 2 of the “Limitations and Conditions” section of this PFO to meet this condition.

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 7, through 28, application of water to beneficial use can be accomplished by October 1, 2031, 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, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; 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 year 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 apply water to beneficial use under Permit G-18186 from October 1, 2021, to October 1, 2031.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. Last Extension Condition

This may be the last extension of time granted for Permit G-18186. The permit holder is directed to contact all property owners who are or are to be served under this permit to inform them of the terms and conditions, and limitations under the permit, including the requirement that the domestic use must be developed by no later than October 1, 2031.

2. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2029**. *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.

DATED: December 17, 2024



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.*

Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than **January 31, 2025**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay 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 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

