

**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-16145, Water Right Application G-14972,            )  
in the name of the Sno-Cap Homeowners Association /            )  
Sno-Cap Water System    )

PROPOSED FINAL ORDER

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**Permit Information**

**Application File G-14972 / Permit G-16145**

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: April 14, 1999

**Authorized Use of Water**

Source of Water: Two Wells within the Whychus Creek Basin  
Purpose or Use: Quasi-Municipal  
Maximum Rate: 0.23 cfs, further limited to a maximum annual volume of  
12.8 AF, further limited by required incremental mitigation  
Cubic Feet per Second (cfs)

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**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-16145, water right Application G-14972.

## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2011 to October 1, 2031.
- Grant an extension of time to apply water to full beneficial use from October 1, 2011 to October 1, 2031.
- Make the extension of time subject to certain conditions as set forth below.

### ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources  
PFO – Proposed Final Order  
WMCP – Water Management and Conservation Plan

#### Units of Measure

cfs – cubic feet per second  
AF – Acre-Feet

### AUTHORITY

**Generally, see ORS 537.630 and OAR Chapter 690 Division 315.**

**ORS 537.630(1)** 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 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 quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

**OAR 690-315-0090(3)** requires the Department, under specific circumstances, to condition an extension of time for 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**

### **Background**

1. Permit G-16145 was granted by the Department on January 9, 2007. The permit authorizes the use of up to 0.23 cfs, further limited to a maximum annual volume of 12.8 Acre-Feet (AF), further limited by required incremental mitigation. The authorized sources of water are two wells within the Whychus Creek Basin, for quasi-municipal use. It specified construction of the water development project was to be completed by October 1, 2011, and complete application of water was to be made on or before October 1, 2011.
2. The permit holder submitted an “Application for Extension of Time” to the Department on September 30, 2011, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-16145 be extended from October 1, 2011 to October 1, 2031. This is the first extension of time request for Permit G-16145.
3. Notification of the Application for Extension of Time for Permit G-16145 was published in the Department’s Public Notice dated November 1, 2011. No public comments were received regarding the extension application.

### **Review Criteria for Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]**

*The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080. This determination shall consider the applicable requirements of ORS 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

4. On September 30, 2011, the Department received an 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. Actual construction of the wells began prior to the December 7, 2007 deadline specified in the permit.

### **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 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.*

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

6. The remaining work to be accomplished under Permit G-16145 consists of completing construction and applying water to full beneficial use after the remaining 8 lots are developed.
7. As of September 30, 2011, the water is pumped under Permit G-16145 from the two wells at a rate 0.07 cfs and stored in a reservoir prior to distribution. They have utilized a maximum volume of 9.1 AF.
8. Sno-Cap Homeowners Association / Sno-Cap Water System does not hold any water rights other than Permit G-16145.
9. Sno-Cap Homeowners Association / Sno-Cap Water System's (Association) peak water demand was 0.07 cfs and 9.1 AF in 2011.
10. According to the Association, in 2011, the population within their service boundary of Association was 59. They estimate the population to increase at an estimated growth rate of < 1 percent per year, reaching an estimated population of 95 by the year 2031.
11. According to the Association, their peak demand is projected to be approximately 0.07 cfs and 12.3 AF of water by the year 2031.
12. Further development of Permit G-16145 is needed to meet the present and future water demands of Sno-Cap Homeowners Association / Sno-Cap Water System after the 18 remaining properties are developed.
13. 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 complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16145 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 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.*

14. Actual construction of the two wells began prior to the December 7, 2007 deadline specified in the permit.
15. During the original development time frame under Permit G-16145, the Association has annually purchased 5.1 AF of Ground Water Mitigation Credits, installed a water meter at each well, and provided water to 40 developed lots.

16. As of September 30, 2011, the permit holder has invested \$16,775, which is about 68 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$8,000 investment is needed for the completion of this project.
17. Since the issuance of Permit G-16145 on January 9, 2007, 0.07 cfs and 9.1 AF have been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
18. The Department has considered the permit holder's compliance with conditions, including mitigation requirements, and has identified the following concerns:
  - a. The permit holder has not regularly submitted annual water use records as required by Permit G-16145.
  - b. The permit holder has not submitted a Water Management and Conservation Plan (consistent with OAR Chapter 690, Division 86), due within two year of issuance of Permit G-16145.

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

19. As of September 30, 2011, the permit holder has invested \$16,775, which is about 68 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$8,000 investment is needed for the completion of this project.

**The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]**

*For quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).*

The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0080(5)(a-f)].

20. 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-16145; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of appropriation for Permit G-16145 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16145, located within the Whychus Creek Basin, are located above the Deschutes Scenic Waterway. The points of appropriation are within areas ranked high for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and

Wildlife. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

21. As of September 30, 2011, the permit holder has invested \$16,775, which is about 68 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$8,000 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

22. None have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

23. As described in Findings 7 through 12, the Association has indicated, and the Department finds that they must rely on further development of Permit G-16145 to meet its present and future water demands.
24. Sno-Cap Homeowners Association / Sno-Cap Water System projects they will reach buildout as the remaining 8 addition lots are developed over a twenty year period, being 2011 to 2031.
25. Given the current water supply situation of Sno-Cap Homeowners Association / Sno-Cap Water System, including current and expected demands, there is a market and present demand for the water to be supplied under Permit G-16145.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.07 cfs and 9.1 AF under Permit G-16145 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7). "Development Limitation" condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

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

27. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

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

28. 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)]**

29. According to the Association, delay of development under Permit G-16145 was due, in part, to the unknown development timelines for the remaining privately owned

undeveloped lots, and to the size and scope of the quasi-municipal water system, which was designed to be phased in over a period of years, and to the availability of funding to expand the water supply system.

### **CONCLUSIONS OF LAW**

1. The applicant is entitled to apply for an extension of time to complete construction and completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. The applicant 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. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2031<sup>4</sup> pursuant to OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As required by OAR 690-315-0090(3) and as described in Finding 26, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 0.07 cfs and 9.1 AF under Permit G-16145 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

### **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-16145 from October 1, 2011 to October 1, 2031.

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<sup>4</sup> Pursuant to ORS 537.630(4), 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.

extend the time to apply the water to beneficial use under Permit G-16145 from October 1, 2011 to October 1, 2031.

Subject to the following conditions:

## CONDITIONS

### 1. Development Limitations

Appropriation of any water beyond 0.07 cfs and 9.1 AF under Permit G-16145 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit G-16145 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

DATED: October 29, 2013

  
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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(1) 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 **December 13, 2013**, 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