

**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-13630, Water Right Application G-14511, in the)
name of Springwater Estates Homeowners Association, Inc.) **PROPOSED FINAL ORDER**

Permit Information

Application:	G-14511
Permit:	G-13630
Basin:	2 – Lower Willamette / Watermaster District 20
Date of Priority:	May 1, 1997
Source of Water:	Two 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 ½ acre 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, 2002 to October 1, 2021¹.
- 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(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 a new or revised claim of beneficial use as deemed appropriate by the Department.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

Application – Application for Extension of Time

PFO – Proposed Final Order

cfs – cubic feet per second

gpm – gallons per minute

COBU – Claim of Beneficial Use

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 may, for good cause shown, order an extension of time within which: irrigation or other works shall be completed; the well or other means of developing and securing groundwater 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) 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 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

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.

FINDINGS OF FACT

Background

1. Permit G-13630 was issued by the Department on March 31, 1999. The permit authorizes 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 ½ acre in area for each. The permit specified actual construction of the well was to begin within one year of permit issuance, being March 31, 2000, and complete application of water was to be made on or before October 1, 2002.
2. On October 1, 1999, a Claim of Beneficial Use (COBU) was submitted to the Department for review. On October 7, 1999, a mylar map was submitted followed by an additional copy of the Claim on August 9, 2000.
3. On June 13, 2016, Thomas B. Glover, Chairman of Springwater Estates Homeowners Association, Inc. on behalf of the permit holder, submitted an "Application for Extension of Time" to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-13630 be extended from October 1, 2002 to October 1, 2021. This is the first permit extension requested for Permit G-13630.
4. Notification of the Application for Extension of Time for Permit G-13630 was published in the Department's Public Notice dated June 21, 2016. No public comments were received regarding the extension application.
5. On July 6, 2016, Amy Kim, Watermaster submitted additional information on behalf of Springwater Estates Homeowners Association, Inc., to supplement their Application for Extension of Time. The well log for the construction of a third well, unauthorized Well 32-01 (L-33712) was received by the Department. This well is currently unauthorized under Permit G-13630. The Application states Springwater Estates Homeowners Association, Inc. will "obtain a Permit Amendment to add Well 3 and change the place of use."
6. On August 4, 2016, Amy Kim, Watermaster submitted additional information on behalf of Springwater Estates Homeowners Association, Inc., to supplement their Application for Extension of Time. A map identifying the location of unauthorized Well 32-01 (L-33712) was received by the Department.
7. On September 1, 2016, the Department received a letter from Springwater Estates Homeowners Association, Inc. requesting the COBU that was submitted October 1, 1999, be withdrawn.

Review Criteria [OAR 690-315-0040]

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 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230², 537.248³, 537.630⁴ and/or 539.010(5)⁵.

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

8. On June 13, 2016, 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 690-315-0040(1)(b) and 690-315-0040(5)]

9. Actual construction of the well began prior to the March 31, 2000 deadline specified in the permit. According to the permit holder, construction of the well began April 1, 1999.

According to the well log received by the Department on April 23, 1966, Well 1 (CLAC 014617) construction began March 6, 1965. The Department has determined that the prosecution of the construction of the well began prior to March 31, 2000.

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.

10. As of June 13, 2016, the Application states the remaining work to be completed consists of gaining approval for a Permit Amendment to add an additional point of appropriation for unauthorized Well 32-01 (L-33712), and change the place of use, and applying water to full beneficial use to all 55 households.

Given the amount of development left to occur, the Department has determined that Springwater Estates Homeowners Association, Inc.'s request to have until October 1, 2021, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-13630 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

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

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 537.630 applies to groundwater permits only.

⁵ORS 539.010(5) applies to surface water and groundwater permits.

the permit:

Amount of Construction [OAR 690-315-0040(3)(a)]

11. The Application states, work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Actual construction of the well began prior to permit issuance. Construction of Well 1 (CLAC 014617) began March 6, 1965 and was completed March 20, 1965. Well 2 (CLAC 16967) construction began December 20, 1982 and was completed January 7, 1983.
 - b. Work was completed during the original development time frame under Permit G-13630, being from March 31, 1999 through October 1, 2002. The permit holder installed meters on Well 1 (CLAC 014617) and Well 2 (CLAC 16967).
 - c. According to the well log received by the Department on July 6, 2016, construction of a third well, unauthorized Well 32-01(L-33712) began October 8, 2001, and was completed November 4, 2001. Springwater Estates Homeowners Association, Inc. has identified unauthorized Well 32-01 (L-33712) as Well 3. Here forward, unauthorized Well 32-01 (L-33712) will simply be referred to as Well 3 (L-33712).

The Department has determined that work has been accomplished prior to permit issuance and within the time allowed in the permit, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

12. The Application states a maximum rate of 95 gallons per minute (gpm) (0.21 cfs) of water, being 45 gpm (0.1 cfs) from Well 1 (CLAC 014617) and 50 gpm (0.11 cfs) from Well 2 (CLAC 16967) has been appropriated for 51 households and irrigation of 24.5 acres.
13. Beneficial use of water has been demonstrated under this permit because all permit conditions were satisfied by October 1, 2002.
14. No water use has occurred from unauthorized Well 3 (L-33712). Beneficial use of water from Well 3 (L-33712) has not been demonstrated as the well is not authorized under Permit G-13630.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

15. The Department has considered Springwater Estates Homeowners Association, Inc.'s compliance with conditions, and has identified the following concerns: (1) Well 3 (L-

33712) is an unauthorized Point of Appropriation. A Permit Amendment will need to be approved to authorize Well 3 (L-33712); (2) the record does not show that a meter or other suitable measuring device has been installed on unauthorized Well 3 (L-33712). The Department recognizes that it is the intent of the permit holder to comply with all permit conditions at the time the conditions become applicable.

16. The Application states meters were installed on Well 1 (CLAC 014617) and Well 2 (CLAC 16967) on April 2, 1999.

The Department has determined that this extension will allow Springwater Estates Homeowners Association, Inc. to seek authorization of Well 3 (L-33712), and a meter to be installed on unauthorized Well 3 (L-33712) after October 1, 2002, to satisfy compliance of the condition of, "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director," in an effort to make proof of beneficial use of the water as required by Permit G-13630.

The Department has also determined that this extension will allow Springwater Estates Homeowners Association, Inc. to obtain the full rate of water allowed under the permit and or to apply the water to full beneficial use to the 4 households that remain to be developed.

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

17. The Application states Springwater Estates Homeowners Association, Inc. has invested about \$35,012, which is approximately 63 percent of the total projected cost for complete development of this project. Springwater Estates Homeowners Association, Inc. anticipates an additional \$21,000 investment is needed for the completion of this project.

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

18. The Department has found good faith of the appropriator under Permit G-13630.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

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:

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 690-315-0040(4)(a-c)].

19. 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-13630; 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.
 - a. The points of appropriation for Permit G-13630, located within the Clear Creek Basin, are not located within a limited or critical groundwater area.
 - b. Clear Creek is above and within the Clackamas Scenic Waterway.
 - c. Clear 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.
 - d. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].

20. No other economic interests have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].

21. The Application states there are still undeveloped lots in the subdivision that will need access to the water system when developed.
22. 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, and/or mitigate the effects of the subsequent development on competing demands on the resource. The Department determined a need to condition any use of Well 3 (L-33712) with a "Permit Amendment." This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary due to the addition of an unauthorized well under Permit G-13630. This condition requires the permit holder to apply for a Permit Amendment by October 1, 2017 to add Well 3 (L-33712) as an authorized well under Permit G-13630.

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

23. Use and income 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)]

24. Delay in the development of this project was not caused by any other governmental requirements.

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

25. No unforeseen events have been identified.

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

26. The application did not state if a denial of the extension would result in undue hardship.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).
2. 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).
3. The applicant complied with begin construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Based on Finding of Facts 9 through 18, full application of water to beneficial use can be accomplished by October 1, 2021, as required by OAR 690-315-0040(1)(c).
5. 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).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 22 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a Permit Amendment condition that applies to any use of Well 3 (L-33712) under Permit G-13630 in order to ensure future diligence and mitigate water from the effects of the subsequent development on competing demands on the resource.

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-13630 from October 1, 2002 to October 1, 2021.

Subject to the following conditions:

CONDITIONS

1. **Permit Amendment Condition**

The use of water from Well 3 (L-33712) under Permit G-13630 is subject to this Permit Amendment Condition.

The permit holder shall apply for a Permit Amendment by October 1, 2017 to add Well 3 (L-33712) under Permit G-13630.

DATED: September 20, 2016



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(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 **November 4, 2016**, 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;

