

**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-12941, modified by Permit Amendment) PROPOSED FINAL
T-11030 Water Right Application G-13716, in the name of) ORDER
MHC Mt Hood Village, LLC)

Permit Information

Application: G-13716
Permit: G-12941 modified by Permit Amendment T-11030
Basin: 3 – Sandy / Watermaster District 20
Date of Priority: June 16, 1994 for 0.163 cfs and April 13, 1995 for 0.015 cfs
Source of Water: Four Wells in Salmon River Basin
Purpose or Use: Human Consumption Only for 650 Households
Maximum Rate: 0.178 cubic feet per second (cfs) total, being 0.089 cfs from Well #1 and
0.089 cfs from Well #2

***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, 2017, to October 1, 2027.
- Grant an extension of time to apply water to full beneficial use from October 1, 2017, to October 1, 2027¹.
- 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

Department – Oregon Department of Water Resources

Application – Application for Extension of Time

FOF – Finding of Fact

PFO – Proposed Final Order

Village – Mount Hood Village

Well 1 – CLAC 7590

Well 2 – CLAC 7588

cfs – cubic feet 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(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 October 29, 1996, Permit G-12941 was issued by the Department. The permit authorizes the use of up to 0.178 cfs of water from two wells in Salmon River Basin for human consumption only for 650 households. The permit specified actual construction of the well to begin by October 29, 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. On July 6, 2006, an assignment by proof from Wonderland Preserve Inc. to MHC Mt. Hood Village, LLC, was recorded in the records of the Water Resources Department.
3. On December 17, 2010, the Department approved Permit Amendment T-11030 (Special Order Volume 83, Page 237) authorizing additional points of appropriation and a change in the place of use under Permit G-12941 (modified by Permit Amendment T-11030) which is hereafter referred to simply as Permit G-12941.
4. Two prior permit extensions have been granted for Permit G-12941. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2007, to October 1, 2017.
5. On December 5, 2017, Wyatt Rolfe, attorney representing MHC Mt. Hood Village, LLC, 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-12941 be extended from October 1, 2017, to October 1, 2027.
6. On December 12, 2017, notification of the Application for Permit G-12941 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)]

7. On December 5, 2017, 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)]

8. Actual construction of the well began prior to the October 29, 1997, deadline specified in the permit.
9. According to the well log received by the Department on December 10, 1986, construction of CLAC 7590 (Well 1) began October 21, 1986.

Based on Finding of Fact (FOF) 8 and 9, the Department has determined that the prosecution of the construction of the well began prior to October 29, 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 previous extension.²

10. During the most recent extension period, being from October 1, 2007, to October 1, 2017, the following was accomplished:
 - multi-pump equipment installed in each of the original wells; and
 - main-line and lateral lines installed to new service sites in the Alder Dell and Beaver Valley communities.

11. Since October 1, 2017, the new main-line was tied into the Mount Hood Village (Village) water system.

Based on FOF 10 and 11, the Department has determined that work has been accomplished during the last extension period, which provides evidence of good cause and reasonable diligence towards the 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 or previous extension conditions.

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

Based on FOF 12, the Department has determined that the permit holder has demonstrated compliance with all permit conditions as required by Permit G-12941.

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 or previous extension conditions.

13. A maximum rate of 0.178 cfs of water, being 0.089 from Well 1 and 0.089 from CLAC 7588 (Well 2), has been appropriated for human consumption in 449 households.
14. Delay of full beneficial use of water under Permit G-12941 was due, in part, to financing for new projects and expansion became problematic due to the dependence upon real estate investment trust funds and the financial downturn in 2007, which had a disproportional effect on the RV industry which did not begin to recover until 2015. Additionally, completion of construction of the expansion of the Village's water system into the Alder Dell and Beaver Creek developments was delayed by the 2017 wildfire evacuations. This paired with the size and scope of the project, the service connects will need to be phased in over time.

Based on FOF 12, 13, and 14, beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2017.

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

15. A total investment of approximately \$1,237,122, which is approximately 72 percent of the total projected cost for complete development of this project. An additional \$484,706 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-12941.

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-12941; 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-12941, located within the Salmon River Basin, are not located within a limited or critical groundwater area.
18. Salmon River is located above the Sandy River Scenic Waterway.
19. Salmon River is located within the Salmon Wild and Scenic River.
20. 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.

21. Salmon River is located within an area ranked “high” 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.

22. An approximate total of \$1,237,122 has been invested in the project.

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

Other economic interests dependent on completion of the project.

23. The Village continues to have an economic impact on the surrounding community by providing secondary accommodations for recreation area around Mount Hood and recreation facilities for members, and the Village employs between 10 and 15 individual throughout the year.

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

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

24. 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)]

25. The value of the property is largely influenced by the availability of water to support development, and a reasonable rate of return is dependent on expansion of the Village beyond the current two-thirds capacity.

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

26. The delay in the timely completion of the development of the project and timely application of water to full beneficial use was caused by additional government requirements. The Village is subject to a conditional use permit from Clackamas County, which restricts the type of structures which may be built; limiting the pool of potential customers.

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

27. The 2017 wildfire evacuations caused additional delays in the completion of the expansion of the water system into the Alder Dell and Beaver Creek developments beyond the September 2017 planned completion.

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

28. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs. A small privately-owned water utility does exist nearby; however there is uncertainty if the utility would have the capacity to serve an additional 150 connections.

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

29. The Application provides evidence of good faith of the appropriator under Permit G-12941.

Based on FOF 8 through 13, and 15, 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.

30. As of December 5, 2017, the remaining work to be completed consists of completing construction of the water system to serve an additional 201 connections in the Alder Dell, Beaver Valley, Goff's Landing, Hemlock Meadows, River Forrest and White Fir Bluff developments, continuing to meet all permit conditions, which include reporting annual water use and annual static water level measurements; and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2027, 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-12941 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 "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 8 through 29, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2027, 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. 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).
6. The applicant has demonstrated good cause for the extension.

continued on following page

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-12941 from October 1, 2017, to October 1, 2027.

Extend the time to apply water to beneficial use under Permit G-12941 from October 1, 2017, to October 1, 2027.

Subject to the following conditions:

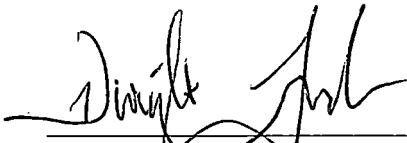
LIMITATIONS AND CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2023**. *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: January 16, 2018



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 **March 2, 2018**, 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 Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

