

**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-9283, Water Right Application G-10207,                )  
in the name of the Avion Water Company Inc.                         )        PROPOSED FINAL ORDER

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**Permit Information**

**Application File G-10207 / Permit G-9283**

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: March 11, 1981

**Authorized Use of Water**

Source of Water: Two Wells  
Purpose or Use: Quasi-Municipal  
Maximum Rate: 250.0 gallons per minute (gpm), being 125 gpm from each well

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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.***

This Proposed Final Order applies only to Permit G-9283, water right Application G-10207.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 2012 to October 1, 2027.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012 to October 1, 2027.

## **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

gpm – gallons per minute

## **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(4-5)** provides in pertinent part that quasi-municipal water use permit holders that serve a population of less than 1000 and/or can reasonably demonstrate that fewer than five years is necessary to complete construction and apply the water to beneficial use are not subject to OAR 690-315-0090(3) unless on review of the certain criteria the Department determines that compliance is necessary.

## **FINDINGS OF FACT**

### **Background**

1. Permit G-9283 was granted by the Department on May 18, 1981. The permit authorizes the use of up to 250.0 gpm of water, being 125 gpm each from two wells in the

Deschutes River Basin for quasi-municipal use. It specified actual construction was to begin by May 15, 1982, construction of the water development project was to be completed by October 1, 1982, and complete application of water was to be made on or before October 1, 1983.

2. Five prior permit extensions have been granted for Permit G-9283. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2012.
3. The permit holder submitted an "Application for Extension of Time" to the Department on December 17, 2012, requesting both the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-9283 be extended from October 1, 2012 to October 1, 2027.
4. Notification of the Application for Extension of Time for Permit G-9283 was published in the Department's Public Notice dated December 24, 2012. 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)]**

5. On December 17, 2012, 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)]**

6. Actual construction of the wells began prior to the May 18, 1982 deadline specified in the permit. Construction of Well 1 began November 12, 1972.

**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.*

7. The remaining work to be accomplished under Permit G-9283 consists of completing

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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.

construction including replacing the pumping systems in the wells, improving the distribution system, and completing the final hookup to the remaining 3 lots; and applying water to full beneficial use.

8. As of October 1, 2012, the permit holder had appropriated 220.0 gpm, being 110 gpm from each well, of the 250.0 gpm of water authorized under Permit G-9283 for quasi-municipal purposes.
9. According to Avion Water Company, the Cinder Butte water system is one of Avion's isolated satellite systems dedicated to supplying water only to the Cinder Butte Development. Permit G-9283 is the sole source of water to meet the current and future demands associated with the 48 lots within the Cinder Butte Development.  
  
Avion Water Company Inc. has not yet made beneficial use of 30 gpm of water out of the 250 gpm authorized under this permit.
10. Avion Water Company Inc.'s peak water demand within the Cinder Butte Development was 200 gpm in 2012.
11. According to the Avion Water Company Inc., in 2012, the number of homes served in Cinder Butte Development was 45 homes. Avion Water Company Inc. estimates the number of homes served under this permit to increase to a maximum of 48 homes the year 2027.
12. According to the Avion Water Company Inc., their peak demand is projected to be approximately 250 gpm of water within the Cinder Butte Development, the area served under this permit, by the year 2027.
13. Full development of Permit G-9283 is needed to meet the present and future water demands of the Cinder Butte Development.
14. 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 and to accomplish the application of water to beneficial use under the terms of Permit G-9283 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.*

15. Actual construction of the well and water system began prior to the May 18, 1982 deadline specified in the permit.
16. Work was accomplished during the original development time frame under Permit G-9283.
17. During the most recent extension period under Permit G-9283, being from October 1, 2002 to October 1, 2012, the following work was completed:
  - a new electrical building for a well was constructed;
  - the reservoir roof was repaired; and
  - new fencing around the reservoir was installed.
18. As of December 17, 2012, the permit holder invested \$25,000, which is 44 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$32,000 investment is needed for the completion of this project.
19. As of October 1, 2012, 220.0 gpm of the 250.0 gpm allowed has been appropriated for quasi-municipal purposes under the terms and conditions of this permit.
20. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

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

21. As of December 17, 2012, the permit holder invested \$25,000, which is 44 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$32,000 investment is needed for the completion of this project.

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

22. As described in Findings 8 through 13 above, Avion Water Company Inc. has indicated, and the Department finds that Avion Water Company Inc. relies exclusively on water supplied under G-9283 to meet demands of Cinder Butte Development.
23. Avion Water Company Inc. projects their current service of 45 lots will increase to a maximum of 48 lots by the year 2027.
24. Given the current water supply situation of Cinder Butte Development, as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-9283.

25. The Department has determined that the permit holder of Permit G-16175 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86 as per OAR 690-315-0090(4); a population less than 1000 is served by an isolated satellite system dedicated to supply water only to Cinder Butte Development with 48 lots.

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

26. 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)]**

27. 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)]**

28. According to Avion Water Company Inc., delay of development under Permit G-9283 was due, in part, to the project being located in a rural area of Deschutes County, which has been slow to fill in and the remaining 3 lots to be served are located on steeper slopes and/or have septic permit issues. In addition, the current production rate for the system has decreased since being initially installed.

**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, 2027<sup>4</sup> pursuant to OAR 690-315-0080(1)(d).

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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.

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. In accordance with OAR 690-315-0090(4-5), and as described in Finding 25, above, the Department has determined that the permit holder of Permit G-9283 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.

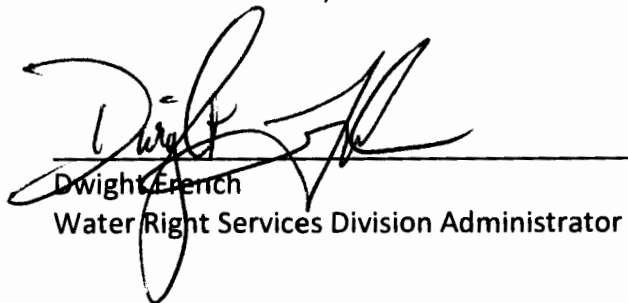
**Proposed Order**

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-9283 from October 1, 2012 to October 1, 2027.

extend the time to apply the water to beneficial use under Permit G-9283 from October 1, 2012 to October 1, 2027.

DATED: December 2, 2014

  
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.*

