

**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-12330, Water Right Application G-12757,) PROPOSED FINAL ORDER
in the name of the Avion Water Company Inc.)

Permit Information

Application File G-12757 / Permit G-12330
Basin 5 – Deschutes Basin / Watermaster District 11
Date of Priority: January 15, 1992

Authorized Use of Water

Source of Water: One Well within the Deschutes River Basin
Purpose or Use: Quasi-Municipal
Maximum Rate: 0.457 Cubic Feet per Second (cfs)

**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-12330, water right Application G-12757.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2013 to October 1, 2023.
- Grant an extension of time to apply water to full beneficial use from October 1, 2013 to October 1, 2023.

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-12330 was granted by the Department on March 18, 1996. The permit authorizes the use of up to 0.457 cfs of water, from one well within the Deschutes River

Basin for quasi-municipal use. It specified actual construction to begin by March 18, 1997, construction of the water development project was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.

2. One prior permit extensions have been granted for Permit G-12330. The extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2013.
3. The permit holder submitted an "Application for Extension of Time" to the Department on July 28, 2014, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-12330 be extended from October 1, 2013 to October 1, 2023. This is the first extension of time request for Permit G-12330.
4. Notification of the Application for Extension of Time for Permit G-12330 was published in the Department's Public Notice dated August 5, 2014. 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 537.230¹, 537.630² and/or 539.010(5)³

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

5. On July 28, 2014, 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 well began prior to the March 18, 1997 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.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

7. The remaining work to be accomplished under Permit G-12330 consists of completing construction and applying water to full beneficial use.
8. As of October 1, 2013, the permit holder had appropriated 0.22 cfs of the 0.457 cfs of water authorized under Permit G-12330 for quasi-municipal purposes.
9. In addition to the 0.457 cfs of water authorized under Permit G-12330, Avion Water Company Inc. holds the following rights:
 - Permit 0 for 0.1 cfs of water from one well for quasi-municipal use.Avion Water Company Inc.'s permits 0.557 cfs of ground water. Avion Water Company Inc. has not yet made beneficial use of 0.234 cfs of water under Permit G-12330.
10. Avion Water Company Inc.'s peak water demand within its service area boundaries was 0.22 cfs in 2013.
11. According to the Avion Water Company Inc., in 2013, the number of homes served under this permit was 56 homes. Avion Water Company Inc. estimates the number of homes served under this permit to increase to a maximum of 68 to 73 homes by the year 2023.
12. According to the Avion Water Company Inc., their peak demand is projected to be approximately 0.42 cfs of water by the year 2023.
13. Full development of Permit G-12330 is needed to meet the present and future water demands of the 68 to 73 homes served under this permit.
14. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2023, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-12330 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 March 18, 1997

deadline specified in the permit.

16. Work was accomplished during the original development time frame under Permit G-12330.
17. During the most recent extension period under Permit G-12330, being from October 1, 1999 to October 1, 2013, the following work was completed by the City:
 - 39 additional metered service connections were added.
18. As of July 28, 2014, the permit holder invested \$300,000, which is total projected cost for complete development of this project.
19. As of October 1, 2013, 0.22 cfs of the 0.457 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms 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 July 28, 2014, the permit holder invested \$300,000, which is 100 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$0 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. must rely almost exclusively on its water right permits on the place of use described in this permit.
23. Avion Water Company Inc. projects their current service of 56 homes will reach a maximum of 68 to 73 homes under this permit by 2023.
24. Given the current water supply situation of Avion Water Company Inc., as well as current and expected demands there is a market and present demand for the water to be supplied to 68 to 73 homes under Permit G-12330.
25. The Department has determined per OAR 690-315-0090(4) based on the Department's review of the file that the permit holder of Permit G-12330 is not required to submit a WMCP consistent with OAR Chapter 690, Division 86, because it serves a population less than 1000 is served under this permit.

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

26. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-12330.

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-12330 was due, in part, to the recent recession the sale and building is slow.

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, 2023⁴ 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

⁴ 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.

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-12330 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-12330 from October 1, 2013 to October 1, 2023.

extend the time to apply the water to beneficial use under Permit G-12330 from October 1, 2013 to October 1, 2023.

DATED: December 9, 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.

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 **January 23, 2015**, 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

- e. how to correct the alleged error or deficiency;
 - f. Any citation of legal authority supporting the petitioner, if known;
 - g. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - h. 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.

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- If you have any questions about statements contained in this document, please contact Machel A Bamberger at 503-986-0802.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
- Fax: 503-986-0901
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