

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application)
for an Extension of Time for)
Permit #G-9982, Water Right) **PROPOSED FINAL ORDER**
Application #G-10617)
(Avion Water Co., Inc))

Permit Information	
Application File #G-10617 / Permit #G-9982	
Basin: #05 - Deschutes Basin / Watermaster District: #11	
Date of Priority: December 29, 1981	
Authorized Use of Water	
Source of Water:	One Well within the Deschutes River Basin
Purpose or Use:	Group Domestic for 32 families including irrigation of lawns and gardens not to exceed one-half acre in area per family (Odin Falls)
Maximum Rate:	0.10 cubic foot per second (cfs)

This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 320.

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-9982, water right Application #G-10617. A copy of Permit #G-9982 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete application of water from October 1, 1998, to October 1, 2018;

AUTHORITY

ORS 537.230 and ORS 537.630(1) provide in pertinent part that the Water Resources Department shall, 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 ground water 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).

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 690-320-0010(6) provides in pertinent part that the Water Resources Department may extend the time limits to complete construction or to apply the water to a beneficial use upon showing of good cause for the untimely completion.

OAR 690-320-0010(10) allows 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

Background

1. Permit #G-9982 was granted by the Water Resources Department on March 18, 1983. The permit authorizes the use of up to 0.10 cfs of water from one well, within the Deschutes River Basin, for Group Domestic use for 32 families including irrigation of lawns and gardens not to exceed one-half acre in area per family (Odin Falls). It specified that construction of the water development project should be completed by October 1, 1984, and that complete application of water was to be made on or before October 1, 1985.
2. Three prior extensions have been granted for Permit #G-9982. The most recent extension request resulted in the construction and completion dates being extended to October 1, 1998.
3. The permit holder submitted an "Application for Extension of Time" to the Department on December 11, 1998, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-9982 be extended from October 1, 1998, to October 1, 2038. = x

Review Criteria [OAR 690-320-0010(6)]

As set forth under OAR 690-320-0010(6), the time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. The good cause determination shall consider the requirements of ORS 537.230, 537.248¹, 537.630 and 539.010(5).

Other Governmental Requirements [ORS 537.230(2)]

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

Start of Construction [ORS 537.630]

5. The applicant demonstrated that construction of the well and water system began within the time specified in the permit, being March 18, 1984.

Financial Investment [ORS 539.010(5)]

¹ ORS 537.248 applies to reservoir permits only.

6. As of December 11, 1998 (and supplemented on March 29, 1999), the permit holder had invested a total of \$100,600 into the project, consisting of complete construction of the well, installation of 12 service connections, installation of service lines and installation of distribution lines. No additional investment is anticipated for the completion of this project.

Reasonable Diligence and Good Faith of the Appropriator [ORS 537.230(1) and 539.010(5)]

Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension [ORS 537.260, OAR 690-320-010(9)].

7. On or prior to October 1, 1998, the following had occurred: construction of the of the well, installation of 12 service connections, installation of service lines and installation of distribution lines.
8. Since the issuance of Permit #G-9982 on March 18, 1983, a maximum volume of 334,764 cubic feet, being approximately 11 percent of water allowed under Permit #G-9982, has been appropriated from the well and used for group domestic purposes.
9. Delay of full beneficial use of water was due to the length of time necessary to sell all the lots in the subdivision and establish water service connections.

The Market and Present Demands for Water [ORS 539.010(5)]

10. The permit holder maintains several other water use permits and certificates in addition to Permit #G-9982. However, this permit is the sole source of water to meet current and future demands for the subject project.
11. The permit holder has established service connections to 12 out of 32 residential lots, being approximately 38 percent of the permitted lots. An extension of time is necessary to allow full build-out and complete development of the project under Permit #G-9982.
12. Permit #G-9982 was issued on March 18, 1983, and is not subject to regulation or mitigation for scenic waterway flows in the Deschutes Basin [ORS 390.835(9)].
13. Permit #G-9982 has a priority date of December 29, 1981, which predates instream water rights on the Deschutes River.

Fair Return Upon Investment [ORS 539.010(5)]

14. Income from the permitted water development already results in reasonable returns upon the investment made to date.

Duration of Extension [OAR 690-320-0010(7), ORS 539.010(5)]

As set forth under OAR 690-320-0010(7), time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.

15. As of December 11, 1998, the remaining work to be completed consists of complete application of water to beneficial use.
16. The scope and nature of the project extended the length of time needed to fully develop and perfect Permit #G-9982, caused by the need to sell the lots and establish water service connections.
17. Since the issuance of Permit #G-9982 on March 18, 1983, the permit holder has established service connections to 12 lots, which equates to approximately 0.9 lot connections each year through December 11, 1998. Based upon this past rate of growth, the complete development of the remaining 20 lots will likely be completed by the year 2018.
18. Considering the past rate of growth and the amount of development left to occur, the permittee's request to have until October 1, 2038, to complete the application of water to beneficial use under the terms of Permit #G-9982 is not reasonable.

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 537.230 and ORS 537.630.
2. The applicant has submitted an extension application form and the fee required by ORS 536.050(1)(k).
3. The applicant has pursued perfection of the right in good faith and prosecuted construction with reasonable diligence.
4. Permit #G-9982 is not subject to regulation or mitigation for scenic waterway

flows.

5. Permit #G-9982 is senior to instream water rights located on the Deschutes River.
6. Given the permit holder's current water supply situation and the anticipated demands for water, there is presently a demand and market for the use of water under Permit #G-9982.
7. The Department has considered the requirements of other governmental agencies, the financial investment made, the reasonable diligence and good faith of the appropriator, the market and present demands for water and the fair return upon the investment, and has determined that the applicant has shown good cause for the untimely completion of the water development project and complete application of water to full beneficial use pursuant to ORS 537.230(2) and ORS 537.630(1).
8. Given the permit holder's current water supply situation, their past rate of growth and the amount of development left to occur, the Department has determined that the permittee's request to have until October 1, 2038, to complete the application of water to beneficial use under the terms of Permit #G-9982 is not reasonable and should be limited to October 1, 2018.
9. In order to ensure future diligence is exercised in the development and perfection of Permit #G-9982, the Department shall establish progress checkpoints in accordance with OAR 690-320-0010(10). (See Item #1 of the "Conditions" section contained in this Proposed Final Order for an Extension of Time.)

Proposed Order

Based upon the foregoing findings of fact and conclusions of law, the Department proposes to issue an order to:

Extend the time for complete application of water to beneficial use under Permit #G-9982 from October 1, 1998, to October 1, 2018.

Subject to the following conditions:

CONDITIONS

1. **In accordance with OAR 690-320-0010(10), the permittee must submit a written progress report to the Department by October 1 of the years 2009 and 2014. The report must be received by the Department not sooner than 90 days prior to the due date. The permittee's report must describe in detail the**

work done each year since the last extension was granted or the last progress report submitted. The report shall include:

- a) The amount of construction completed;
- b) The amount of beneficial use of water being made, including the total volume of water used, water used relative to the specific authorizations (types of use, acres irrigated, etc.) contained in the permit, and the percent of the total allowable water use that this represents;
- c) A review of the permittee's compliance with terms and conditions of the permit and/or previous extension; and
- d) Financial investments made toward developing the beneficial water use. The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

The Department will review the progress report to determine whether the permittee is exercising diligence towards completion of the project and complying with the terms and conditions of the permit and extension.

Failure to submit a progress report by the due date above may jeopardize continued development under the permit.

The Department will take into consideration annual reports submitted under OAR Chapter 690, Division 86 or ORS 537.099, and any other report that demonstrates diligence.

Other reports, however, are not a substitute for the progress reports and anything submitted must clearly show that diligence towards perfecting the water right permit is being attempted.

If the Department finds that diligence is questionable, the Department may:

- a) request the permittee to submit additional information with which to evaluate diligence; or
- b) apply additional conditions and performance criteria for perfection of the right; or
- c) cancel the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410 to 537.450. The Department will grant the permittee a hearing on the cancellation, if one is requested.

In determining whether the permittee has been diligent, the Department will consider any information submitted to the Department by the permittee and any information submitted during the 30-day public comment period following public notice of submittal of the progress report.

If information is received through the public notice process indicating that the applicant has not been diligent toward completing the project, and if the director determines there are significant disputes related to the use of water, the Department will conduct a hearing.

DATED: May 25, 2004


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Comments

1. Under the provisions of OAR 690-320-0010(8), you have the right to protest this proposed final order. Your protest must be in writing and must include the following:
 - a. Your name, mailing address and telephone number;
 - b. Your interest in this proposed final order, and if you claim to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action in the proposed final order would impair or be detrimental to your 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 your protest, if known; and
 - f. The \$250 protest fee required under ORS 536.050(1).
2. Each person submitting a protest shall raise all reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the comment period.
3. The Water Resources Department must receive written protests or written comments no later than **Friday, July 9, 2004.**
4. After the close of the comment and protest period, the Director will either issue a final order, or schedule a contested case hearing if the Director finds there are significant disputes related to the use of water.

If you have other questions about the Department, or any of its programs, please contact our Water Rights Information Group at (503) 986-0801. Address all other correspondence to:

Water Rights Section

**Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, OR 97301-1271
Fax #: (503) 986-0901**

If you have any questions about statements contained in this document, please contact Lisa Juul at (503)986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her telephone number is (503)986-0824.

If you have other questions about the Department or any of its programs, please contact our Water Rights Information Group at (503)986-0900.

