

**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-11576, Water Right) PROPOSED FINAL ORDER
Application #G-12419)
(Aspen Lakes Utility Company, LLC))

Permit Information

Application File #G-12419 / Permit #G-11576

Basin: #05 - Deschutes Basin / Watermaster District: #11

Date of Priority: February 20, 1991

Authorized Use of Water

Source of Water:	Four Wells in the Squaw Creek Basin
Purpose or Use:	Quasi-Municipal Purposes
Maximum Rate:	800 gallons per minute (gpm), or 1.78 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-11576, water right Application #G-12419. A copy of Permit #G-11576 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension for complete construction of the water system from October 1, 1999, to October 1, 2049; and
- grant the extension for complete application of water from October 1, 1999, to October 1, 2049.

AUTHORITY

ORS 537.630(1) provides 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 or the right perfected.

OAR 690-315-0080 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0090(3) allows the Department, under certain circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

OAR 690-315-0090(4) provides in pertinent part that municipal and quasi-municipal water use permit holders that serve a population of less than 1000 are not subject to OAR 690-315-0090(3) unless upon review of certain criteria the Department determines that compliance is necessary.

FINDINGS OF FACT

Background

1. Permit #G-11576 was granted by the Water Resources Department (Department) on July 20, 1992. The permit authorizes the use of up to 800 gpm (1.78 cfs) of water from four wells in the Squaw Creek Basin, for quasi-

municipal purposes. It specified that construction of the water development project should be completed by October 1, 1994, and that complete application of water was to be made on or before October 1, 1995.

2. One prior extension has been granted for Permit #G-11576 resulting in the completion dates for construction and full application of water being extended to October 1, 1999.
3. The permit holder submitted an "Application for Extension of Time" to the Department on September 28, 1999, requesting the time in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #G-11576 be extended to October 1, 2015.
4. Due to ongoing permit extension rulemaking, the Department placed all pending municipal and quasi-municipal permit extension of time requests on hold and did not require municipal and quasi-municipal water use permit holders to submit an extension application until the new rules were adopted.
5. Municipal and quasi-municipal water use permit extension rules were adopted by the Water Resources Commission and became effective on November 1, 2002 (OAR 690-315-0070 through 690-315-0100).
6. The permit holder submitted an updated "Application for Extension of Time" to the Department on March 17, 2003, requesting the time in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #G-11576 be extended to October 1, 2050.
7. Notification of Aspen Lakes Utility Company, LLC's (ALUC) extension of time request for Permit #G-11576 was published on the Department's Public Notice dated April 1, 2003. No public comment on the extension application was received.
8. On October 28, 2003, Permit #G-11576 was assigned from KMB Enterprises to ALUC.
9. On January 4, 2005, ALUC submitted additional information to supplement their Application for Extension of Time. In addition, the permit holder requested to modify the time in which to complete construction and accomplish beneficial use of water to October 1, 2049.

Review Criteria for Municipal and Quasi-Municipal Water Use Permits *IOAR 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(1).

Complete Extension of Time Application *IOAR 690-315-0080(1)(a)*

10. The Department received a completed extension of time application and the statutory fee specified in ORS 536.050 from the permit holder.

Start of Construction *IOAR 690-315-0080(1)(b)*

11. Construction of the wells and water system began within the time specified in the permit, being July 20, 1993.

Duration of Extension *IOAR 690-315-0080(1)(c)(d)*

Under OAR 690-315-0080(1)(c)(d), the Department shall find that the time requested is reasonable and the applicant can complete the project within the time requested.

12. The remaining work to be accomplished under Permit #G-11576 consists of complete construction of the system and complete application of water to beneficial use.
13. As of March 17, 2003, the permit holder has diverted 0.16 cfs of the 1.78 cfs of water allowed under Permit #G-11576 for municipal purposes.
14. The supplemental information provided on January 4, 2005, indicates 48 homes are being served by this permit. Based on an average of 3 persons per home, the current population served by Permit #G-11576 is 144. In addition, a commercial water service connection has been established to serve the Aspen Lakes Golf Course clubhouse and its guests.
15. Considering the ALUC's past rate of growth (being approximately 3 homes constructed per year) and an average consumption rate of 3 gpm per household, the permit holder estimates that it could take up to 90 years to fully utilize the 1.78 cfs of water under Permit #G-11576 for beneficial purposes. However, Permit #G-11576 covers approximately 1,100 acres of

land currently zoned RR-10 allowing a maximum of 144 homesites. In addition, there is a Destination Resort overlay zone on the property. Given this overlay zone, the developer of the property is currently working on an application that would convert all acres served under Permit #G-11576 into a Destination Resort. The potential Destination Resort would likely include an additional 300 homesites, a 150 room motel facility with restaurant, and another 100 units of detached overnight lodging. The permit holder therefore, anticipates full development of this permit will occur by October 1, 2049.

16. In addition to the 800 gallons per minute (1.78 cfs) of water allowed under Permit #G-11576, ALUC holds Permit #G-11146 for 0.18 cfs for Quasi-Municipal Use. In addition, ALUC holds Permit #G-11577 for 3.899 cfs of water for irrigation purposes. ALUC may also be able to access 3.4088 cfs of water for irrigation under Permit #G-11578 held by Wildhorse Meadows.
17. Given the amount of development left to occur, ALUC's projected land use change, and associated projected demands for water, the permittee's request to have until October 1, 2049, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #G-11576 is reasonable.

Good Cause [OAR 690-315-0080(1)(e) and (2)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(2).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(2)(a)(c) and (3)]

Reasonable diligence and good faith of the appropriator during the permit period constitutes a continuing test of whether and under what conditions to grant an extension. In determining the reasonable diligence and good faith of a municipal or 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(3).

18. During the last extension period under Permit #G-11576, being from October 1, 1994, to October 1, 1999, ALUC drilled two wells, constructed a pump station, and installed six service connections and 7000 feet of water mains.
19. Since, October 1, 1999, ALUC installed 11,000 feet of mainline and established an additional 43 service connections.

20. As of March 17, the permit holder has invested 46 percent of the total projected cost for complete development of this project, being an approximate total of \$450,000. An additional \$522,000 investment is anticipated for the completion of this project.
21. Since the issuance of Permit #G-11576 on July 20, 1992, approximately 0.16 cfs of the permitted 1.78 cfs has been appropriated for beneficial quasi-municipal use under the terms of the permit.
22. The record does not raise concerns about the permit holder's compliance with conditions.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose *[OAR 690-315-0080(2)(b)]*

23. As of March 17, 2003, the permit holder has invested an approximate total of \$450,000 into the project, consisting of the drilling of two wells, construction of a pump station and installation of a water distribution system. An additional \$522,000 investment is anticipated for the completion of this project.

The Market and Present Demands for Water *[OAR 690-315-0080(2)(d)]*

24. As described in findings #14 through #17 above, the ALUC relies on water under Permit #G-11576 to meet current and future demands.
25. Given ALUC's current water supply situation and current and expected demands, there is a market and present demand for the water to be supplied under Permit #G-11576.

Fair Return Upon Investment *[OAR 690-315-0080(2)(e)]*

26. Use and income from the permitted water development project already results in reasonable returns upon the investment made to date.

Other Governmental Requirements *[OAR 690-315-0080(2)(f)]*

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

Events which Delayed Development under the Permit /OAR 690-315-0080(2)(g)

28. Delay of development under Permit #G-11576 was due to additional time needed to fully develop home sites.

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.
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 demonstrated that actual construction on the project began within the time specified in the permit, 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, 2049¹, [OAR 690-315-0080(1)(d)].
6. After considering the reasonable diligence and good faith of the appropriator, the financial investment made, the market and present demands for water, the fair return upon the investment, the requirements of other governmental agencies and uncontrollable events which delayed development under the permit, the Department has determined that the applicant has shown good cause for an extension to complete construction and complete application of water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

¹ Pursuant to ORS 537.630(3), 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.

7. Considering that the population served under Permit #G-11576 is less than 1000 (as described in Finding #14 above), the Department has reviewed the permit record and determined, pursuant to OAR 690-315-0090(4), that submittal of a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86 is not necessary.

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 construction of the water system under Permit #G-11576 from October 1, 1999, to October 1, 2049; and

Extend the time for complete application of water to beneficial use under Permit #G-11576 from October 1, 1999, to October 1, 2049.

DATED: July 12, 2005


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.*

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 request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than ***Friday, August 26, 2005***, being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the 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 final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the 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 petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The 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 request for contested case hearing 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 submitted a timely request for a contested case hearing.

This document was prepared by Lisa J. Juul. If you have any questions about any of the statements contained in this document, I am most likely the best person to answer your questions. You may contact me by telephone 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 Mike Reynolds. His telephone number is (503)986-0820.

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