

**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-11146, Water Right) PROPOSED FINAL ORDER
Application #G-12042)
(Aspen Lakes Utility Company, LLC))

Permit Information

Application File #G-12042 / Permit #G-11146

Basin: #5 - Deschutes Basin / Watermaster District: #11

Date of Priority: March 7, 1990

Authorized Use of Water

Source of Water: One Well in the Squaw Creek Basin
Purpose or Use: Quasi-Municipal Uses
Maximum Rate: 0.18 cubic foot 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-11146, water right Application #G-12042. A copy of Permit #G-11146 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, 1997, to October 1, 2025; and
- grant the extension for complete application of water from October 1, 1997, to October 1, 2025.

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-11146 was granted by the Water Resources Department (Department) on November 19, 1990. The permit authorizes the use of up to 0.18 cfs of water from one well in the Squaw Creek Basin, for quasi-municipal purposes. It specified that construction of the water development project should be completed by October 1, 1992, and that complete application of water was to be made on or before October 1, 1993.
2. One prior extension has been granted for Permit #G-11146 resulting in the construction and completion dates being extended to October 1, 1997.
3. The original permit holder submitted an "Application for Extension of Time" to the Department on December 8, 1997, requesting the times in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #G-11146 be extended from October 1, 1997, to October 1, 1999.
4. The original permit holder submitted an updated "Application for Extension of Time" to the Department on September 28, 1999, requesting the times in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #G-11146 be extended from October 1, 1997, to October 1, 2015.
5. On January 14, 2000, the Department sent a letter to the permit holder requesting that the pending extension application be resubmitted on a new extension application form consistent with new administrative rules adopted at that time.
6. The original permit holder submitted an updated "Application for Extension of Time" to the Department on February 7, 2000, requesting the times in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #G-11146 be extended from October 1, 1997, to October 1, 2015.
7. Due to additional 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.

8. 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).
9. The original permit holder submitted an updated "Application for Extension of Time" consistent with OAR 690-315-0070 to the Department on March 17, 2003, requesting the times in which to complete construction and accomplish beneficial use of water to the full extent under the terms of Permit #G-11146 be extended from October 1, 1997, to October 1, 2025.
10. On March 27, 2003, and January 4, 2005, the permit holder submitted additional information to supplement their Application for Extension of Time.
11. Notification of the permit holder's extension of time request for Permit #G-11146 was published on the Department's Public Notice dated April 1, 2003. No public comment on the extension application was received.
12. On October 28, 2003, Permit #G-11146 was assigned from KMB Enterprises to Aspen Lakes Utility Company, LLC (ALUC).

Review Criteria for Municipal and 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(1).

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

13. 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 [OAR 690-315-0080(1)(b)]

14. Construction of the well and water system began within the time specified in the permit, being November 19, 1991.

Duration of Extension [OAR 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.

15. The remaining work to be accomplished under Permit #G-11146 consists of complete construction of the system and complete application of water to beneficial use.
16. As of March 17, 2003, the permit holder has diverted 0.08 cfs of the 0.18 cfs of water allowed under Permit #G-11146 for quasi-municipal purposes.
17. Since the issuance of Permit #G-11146 on November 19, 1990, less than half of the permitted quantity of water has been utilized. Based upon this past rate of development, ALUC estimates that it may take an additional 20 years to reach full utilization of this permit.
18. Permit #G-11146 covers approximately 520 acres of a 1,080 acres parcel 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-11146 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.
19. As of March 17, 2003, 12 homes are served by this permit. Based on an average of two persons per home, the current population served by Permit #G-11146 is 24.
20. In addition to the 0.18 cfs of water allowed under Permit #G-11146, ALUC holds Permit #G-11576 for 800 gallons per minute (1.78 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.
21. 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, 2025, to complete construction of the water system and to complete the application of water to beneficial use under the terms of Permit #G-11146 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).

22. During the last extension period, being from October 1, 1992, to October 1, 1997, ALUC established several service connections.
23. As of March 17, 2003, the permit holder invested 32 percent of the total projected cost for complete development of this project, being an approximate total of \$120,000. An additional \$252,400 investment is anticipated for the completion of this project.
24. Since the issuance of Permit #G-11146 on November 19, 1990, approximately 0.08 cfs of the permitted 0.18 cfs of water has been diverted from the well for beneficial quasi-municipal purposes under the terms of the permit.
25. 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)]

26. As of March 17, 2003, the permit holder has invested an approximate total of \$120,000 into the project, consisting of drilling of the well and the installation of a pump station, reservoir, and 8-inch main lines. An additional \$250,000 investment is anticipated for the completion of this project.

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

27. As described in findings #16 through #19 above, the ALUC relies on water under Permit #G-11146 to meet current and future demands.

28. Given ALUC's current water supply situation and their current and expected demands, there is a market and present demand for the water to be supplied under Permit #G-11146.

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

29. 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)]

30. 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)]

31. Delay of development under Permit #G-11146 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, 2025¹, [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).
7. Considering that the population served under Permit #G-9283 is less than 1000 (as described in Finding #16 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-11146 from October 1, 1997, to October 1, 2025; and

Extend the time for complete application of water to beneficial use under Permit #G-11146 from October 1, 1997, to October 1, 2025.

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.*

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.

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:

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