

**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-12330, Water Right) **PROPOSED FINAL ORDER**
Application #G-12757)
(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 in the Deschutes River Basin
Purpose or Use: Quasi-Municipal Use
Maximum Rate: 0.457 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-12330, water right Application #G-12757. A copy of Permit #G-12330 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant the extension to complete construction of the water system from October 1, 1998, to October 1, 2008;
- grant the extension for complete application of water from October 1, 1999, to October 1, 2013.

AUTHORITY

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 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-12330 was granted by the Water Resources Department (Department) on March 18, 1996. The permit authorizes the use of up to 0.457 cfs of water from one well in the Deschutes River Basin for quasi-municipal purposes. It specified that construction of the water system was to be completed by October 1, 1998, and that the application of water was to be made on or before October 1, 1999.
2. Avion Water Company, Inc. (Avion) submitted an "Application for Extension of Time" to the Department on November 15, 1999, requesting the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-12330 be extended from October 1, 1999, to October 1, 2004. This is the first extension of time request for Permit #G-12330.
3. 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.
4. 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).
5. Avion submitted an amended "Application for Extension of Time" to the Department on March 17, 2003, requesting the time in which to complete construction of the water system be extended from October 1, 1998, to October 1, 2008, and the time in which to accomplish beneficial use of water to the full extent under the terms of Permit #G-12330 be extended from October 1, 1999, to October 1, 2013.
6. Notification of Avion's extension of time request for Permit #G-12330 was published on the Department's Public Notice dated March 25, 2003. No public comment on the extension application was received.
7. On November 17, 2004, Avion provided additional information to supplemental their extension of time application for Permit #G-12330.

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)]

8. 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)]

9. Construction of the well and water system began within the time specified in the permit, being March 18, 1997.

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.

10. The remaining work to be accomplished under Permit #G-12330 consists of completion of construction and complete application of water to beneficial use.
11. As of March 17, 2003, the permit holder has appropriated 0.2 cfs of the 0.457 cfs of water allowed under Permit #G-12330 for quasi-municipal purposes on 39 of the 56 lots.
12. Based on an estimated 2.3 people per household or lot, Avion's 39 developed lots equal a current service population of approximately 90.
13. In addition to the 0.457 cfs of water allowed under Permit #G-12330, Avion holds Permit #G-9982 which covers some of the same area as that covered by Permit #G-12330. Both permits utilize the same well, however, Permit #G-9982 is limited to 0.1 cfs of water for group domestic expanded purposes for 32 families.
14. Avion relies exclusively upon a single well to meet the water demands of the 56 lots under Permit #G-12330 and the 32 lots under Permit #G-9982.

15. The draft Deschutes County Population Forecast for Unincorporated Areas (July 2004) expects growth in rural areas to occur at an annual rate of approximately 2.2 percent.
16. Based on a projected annual growth rate of 2.2 percent and considering the number of connections Avion has established in previous years, full development of the remaining portion of Permit #G-12330 could occur by October 1, 2013.
17. Given the amount of development left to occur under this permit, Avion's expected rate of growth and the associated demands for water, and considering Avion's current water supply situation, the permittee's request to have until October 1, 2008, to complete construction of the water system and to have until October 1, 2013, to complete the application of water to beneficial use under the terms of Permit #G-12330 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 original development time frame specified in Permit #G-12330, being March 18, 1996, through October 1, 1999, the following had occurred: Avion constructed the well, installed a pump and meter, installed distribution pipeline and service lines to all lots, constructed a 20,000 gallon reservoir and established service connections to 17 lots.
19. Since October 1, 1999, Avion established 22 additional service connections for a total of 39 hook-ups. The 17 remaining lots (households), however, still need to be hooked into Avion's water delivery system.

20. As of March 17, 2003, the permit holder has invested 100 percent of the total projected cost for complete development of this project, being an approximate total of \$300,000. No additional investment is anticipated for the completion of this project.
21. Since the issuance of Permit #G-12330 on March 18, 1996, the permit holder has appropriated 0.2 cfs of water from the well for beneficial quasi-municipal purposes to 39 lots 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 \$300,000 into the project consisting of construction of the well, installation of a pump and meter, installation of 3 miles of pipeline, construction of a 20,000 gallon reservoir, and establishing service connections to 39 lots. No additional 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 #13 and #14 above, Avion relies exclusively upon a single well to meet the water demands of Permits #G-12330 and #G-9982.
25. As described in findings #15 and #16, Avion expects the demand for water under Permit #G-12330 to increase as the development continues to grow.
26. Given Avion's current water supply situation for the development under this permit, as well as current and expected water demands, there is a market and present demand for the water to be supplied under Permit #G-12330.

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

27. 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)]

28. 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)]

29. Delay of development under Permit #G-12330 was due, in part, to the project being located in a rural area of Deschutes County which has been slow to fill in. Development under this permit has also been delayed by the expensive price being commanded for the remaining undeveloped lots due to their proximity to the Deschutes River.

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 can be accomplished by October 1, 2008, and full application of water to beneficial use can be completed by October 1, 2013¹, [OAR 690-315-0080(1)(d)].

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.

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 of the water system and to complete the 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 #12 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 to complete construction of the water system under Permit #G-12330 from October 1, 1998, to October 1, 2008.

Extend the time for complete application of water to beneficial use under Permit #G-12330 from October 1, 1999, to October 1, 2013.

DATED: April 26, 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, June 10, 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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