

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)	PROPOSED
for Permit G-8033, Water Right Application G-8668, in the)	FINAL
name of Avion Water Company, Inc)	ORDER

Permit Information

Application:	G-8668
Permit:	G-8033
Basin:	5 – Deschutes / Watermaster District 11
Date of Priority:	February 27, 1978
Source of Water:	one well
Purpose or Use:	irrigation, domestic use for 118 families, and fire protection
Maximum Rate:	0.56 cubic foot per second (cfs)

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

In Summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 2008, to October 1, 2031.
- Grant an extension of time to apply water to full beneficial use from October 1, 2008, to October 1, 2031¹.
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

¹Pursuant to ORS 537.630(5), 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 a new or revised claim of beneficial use as deemed appropriate by the Department.

ACRONYM QUICK REFERENCE

Agent – Trevor Grandy
Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
Well – DESC 3978
Replacement Well – DESC 58443
cfs - cubic foot per second

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works 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) 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) 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 therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

OAR 690-315-0050(6) requires 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

1. On May 11, 1978, Permit G-8033 was issued by the Department. The permit authorizes the use of up to 0.56 cfs of water from one well, for irrigation, domestic use for 118 families, and fire protection. The permit specified actual construction of the well to begin

- by May 11, 1979, construction of the water system was to be completed by October 1, 1979, and complete application of water was to be made on or October 1, 1980.
2. Seven prior permit extensions have been granted for Permit G-8033. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, October 1, 1993, to October 1, 2008.
 3. On September 14, 2021, an assignment by proof from SRH Water Company, to Avion Water Company was recorded in the records of the Water Resources Department.
 4. On December 10, 2021, the permit holder, Avion Water Company, Inc, submitted an "Application for Extension of Time" (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-8033 be extended from October 1, 2008, to October 1, 2026.
 5. On December 17, 2021, the Department requested clarification and amendments to the Application
 6. On December 21, 2021, notification of the Application for Permit G-8033 was published in the Department's Public Notice. No public comments were received regarding the Application.
 7. On January 10, 2022, Trevor Grandy, agent for the permit holder submitted an amendment to their Application. The amendment requested the extended time to complete construction of the water system be changed from October 1, 2026, to October 1, 2031, and the extended time to apply water to full beneficial use of the water system be changed from October 1, 2026, to October 1, 2031. The amendment also addressed the correct authorized well, the investment made in the development of the water system, and the estimated cost to complete development of the water system.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

8. On December 10, 2021, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

9. Actual construction of the well began prior to the May 11, 1979, deadline specified in the permit. Construction of DESC 3978 (Well) began March 24, 1978.

Based on Finding of Fact (FOF) 9, the Department has determined that the prosecution of the construction of the well began prior to May 11, 1979.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

Amount of Construction [OAR 690-315-0040(3)(a)]

The amount of construction completed within the time allowed in the previous extension.²

10. Construction of the well began prior to the May 11, 1979, deadline specified in the permit.
11. During the most recent extension period, being from October 1, October 1, 1993, to October 1, 2008, the following was accomplished:
 - establish connections to seven additional lots;
 - installed larger capacity mainlines; and
 - constructed DESC 58443 (Replacement Well).

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

The water right permit holder's conformance with the permit and previous extension conditions.

12. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

The Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-8033.

² "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

The amount of beneficial use made of the water during the permit time limits or previous extension conditions.

13. A maximum rate of 0.56 cfs of water has been appropriated from the Well for irrigation domestic use for 89 households, of the 92 possible buildable lots within the authorized place of use.
14. According to the Application submitted on December 10, 2021, 0.56 cfs of water has been appropriated from the Replacement Well.
15. Delay of full beneficial use of water under Permit G-8033 was due, in part, to the permit holder not owning the remaining lots that need to be developed.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2008.

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]

16. An approximate total of \$192,419 has been invested. The costs included items associated with construction of the Replacement Well, which is not authorized under this permit and therefore are not counted towards development. After deducting this costs, the approximate total investment for “actual construction” to date is approximately \$126,090 which is about 96 percent of the total projected cost for complete development of this project. An additional \$5,000 investment is needed to complete this project, which includes developing the remaining three buildable lots within the authorized place of use.

Based on FOF 16, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions, a financial investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-8033.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department’s determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- (a) *The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- (b) *Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);*
- (c) *The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- (d) *Economic investment in the project to date;*
- (e) *Other economic interests dependent on completion of the project; and*
- (f) *Other factors relevant to the determination of the market and present demands for water and power.*

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

17. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-8033; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.

OAR 690-315-0040(4)(b)

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

18. The point of appropriation for Permit G-8033, located within the Deschutes River Basin, is located within the Upper Deschutes Groundwater Mitigation Area
19. Deschutes River is located above the Deschutes Scenic Waterway.
20. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

21. Deschutes River is located within an area ranked “high” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

22. An approximate total of \$126,090 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

23. Other economic interests dependent on completion of the project include to owners of properties served by the water company.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

24. No other factors relevant to the determination of the market and present demand for water and power have been identified.
25. OAR 690-315-0080(5) allows for any condition necessary to ensure future diligence and to mitigate the effects of subsequent demand on the resource. A "Permit Amendment Condition" is specified under Item 1 of the "Limitations and Conditions" section of this PFO to address concerns of water use from an unauthorized well (DESC 58443).
26. OAR 690-315-0080(5) allows for any condition necessary to ensure future diligence and to mitigate the effects of subsequent demand on the resource. A "Last Extension Condition" is specified under Item 2 of the "Limitations and Conditions" section of this PFO to address concerns of the amount of time provided for development of the water use authorized under the permit.
27. OAR 690-315-0080(5) allows for any condition necessary to ensure future diligence and to mitigate the effects of subsequent demand on the resource. A "Development Limitation Condition" is specified under Item 3 of the "Limitations and Conditions" section of this PFO to limit development to the number of buildable lots within the original place of use authorized by the permit.
28. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 4 of the "Limitations and Conditions" section of this PFO to meet this condition.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

29. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

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

Unforeseen Events [OAR 690-315-0040(2)(h)]

31. Unforeseen events were identified that contributed to the extended the length of time needed to fully develop and perfect Permit G-8033, in that the permit holders are not the property owners of the lots remaining to be developed.

Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]

32. A denial of the extension would result in undue hardship, and that there are no other reasonable alternatives exist for meeting water use needs.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

33. The Application provides evidence of good faith of the appropriator under Permit G-8033.

Based on FOF 9, 10, 11, 12, 13, 16, and 22, the Department has determined that the applicant has shown good faith and reasonable diligence.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

34. As of December 10, 2021, the remaining work to be completed consists of establishing service to the remaining three buildable lots, meeting all permit conditions, and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2031, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-8033 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

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 fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which

the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 14, and 25, the Department determined the need to place a "Permit Amendment Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary because of the use of an unauthorized point of appropriation has occurred under this permit.
2. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on FOF 1, 2, and 26, the Department determined the need to place a "Last Extension Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 2 of the "Conditions" section of this PFO, was determined to be necessary due to amount of time allowed for complete development of the use authorized under this permit.
3. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on Findings of Facts 13, and 27, the Department determined the need to place a "Development Limitation Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 3 of the "Conditions" section of this PFO, was determined to be necessary because the number of buildable lots located within the authorized place of use is less than the number of households originally planned for the subdivision.
4. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 4 of the "Limitations and Conditions" section of this PFO to meet this condition.

CONCLUSIONS OF LAW

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).

2. The applicant has complied with the construction timeline requirements to begin actual construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 9, through 33, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2031, as required by OAR 690-315-0040(1)(c).
4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to ensure future diligence and/or mitigate the effects of the subsequent development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; OAR 690-315-0050(5).
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five year periods, as required by OAR 690-315-0050(6).

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-8033 from October 1, 2008, to October 1, 2031.

Extend the time to apply water to beneficial use under Permit G-8033 from October 1, 2008, to October 1, 2031.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. Permit Amendment Condition

The use of any water from DESC 58443 under Permit G-8033 is subject to this Condition.

No water may be used from DESC 58443, or any other well not authorized by the permit, prior to gaining approval of a Permit Amendment authorizing the well as a point of appropriation under the permit.

2. **Last Extension Condition**

This shall be the last extension of time granted for Permit G-8033. Any future extensions of time request will be denied.

3. **Development Limitation**

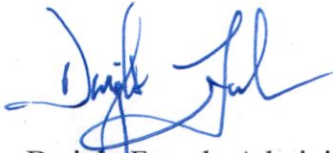
Development of the domestic use under this permit shall be limited to no more than 92 households located within the original authorized place of use.

4. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2027. A form will be enclosed with your Final Order.**

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: March 15, 2022



Dwight French, Administrator,
Water Right Services Division

*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 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 **April 29, 2022**, 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:

