

FINDINGS OF FACT

Application History

1. On December 9, 2019, White River Ranch, LLC filed a complete application for the following water use:

Source: ROCK CREEK AND THREEMILE CREEK, TRIBUTARIES TO WHITE RIVER; AND NORTH FORK GATE CREEK, TRIBUTARY TO ROCK CREEK

Use: STORAGE FOR LIVESTOCK USE, RECREATION, WILDLIFE, AND FISH LIFE

Rate/Volume: 61.1 ACRE-FEET (AF), BEING 35.0 AF IN CAMPBELL RESERVOIR, 13.5 AF IN WADE 3 RESERVOIR, 6.0 AF IN 20 ACRES RESERVOIR, AND 6.6 AF IN PINK PALACE RESERVOIR

Period of Use: JANUARY 1 THROUGH DECEMBER 31

County: WASCO COUNTY

Place of Use: SECTIONS 17, 20, 21 AND 27, TOWNSHIP 4 SOUTH, RANGE 12 EAST, W.M.
2. On February 26, 2021, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 61.1 acre-feet (AF) of water from Rock Creek and Threemile Creek, tributaries to White River, and North Fork Gate Creek, tributary to Rock Creek, for storage, being 35.0 AF in Campbell Reservoir, 13.5 AF in Wade 3 Reservoir, 6.0 AF in 20 Acres Reservoir, and 6.6 AF in Pink Palace Reservoir, for livestock use, recreation, wildlife, and fish life is allowable January 1 through April 14 of each year, contingent upon the submittal of additional required information. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On March 2, 2021, the Department provided notice of the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. On April 5, 2021, the applicant submitted documentation acknowledging the land use information request was received by the local Planning Department.
5. On June 10, 2022, the applicant amended the application, removing North Fork Gate Creek and Threemile Creek as proposed sources of diversion to avoid mitigation requirements.
6. On May 9, 2023, the Department sent a letter by certified mail to the applicant requesting (1) evidence of a right of way permit, easement, or written authorization permitting access to all lands not owned by the applicant and associated with the project from which water is to be diverted, conveyed, and used, and (2) documentation from the relevant land-use planning jurisdiction that either a) the proposed use is allowed outright or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded.
7. On May 22, 2023, the Department received evidence of written authorization permitting access to lands not owned by the applicant.
8. On May 24, 2023, the Department received documentation from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Presumption Criterion (a) Consistency with Basin Program

9. Livestock, recreation, wildlife, and fish life uses are allowed under the Deschutes Basin Program (OAR 690-505-0020(1)(a)). ORS 537.153(3)(b); OAR 690-310-0110(1)(a)

Presumption Criterion (b) Water Availability

10. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established that surface water is available January 1 through June 30 of each year. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criterion (c) Injury Determination

11. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

Presumption Criterion (d) Whether the Use Complies with Rules of the Commission

12. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(3)(b); OAR 690-310-0150(2)(b)
13. The proposed use is in an area of the state in which OAR 690-033-0115 through -0140 and OAR 690-033-0310 through -0340 apply. These rules establish definitions, additional procedures, and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

OAR 690-033-0115 Upper Columbia Rules (Above Bonneville Dam)

- A. The Oregon Department of Fish and Wildlife and Oregon Department of Environmental Quality determined that threatened or endangered fish will not be impacted by the proposed use. Therefore, by default, the proposed use is consistent with the Fish and Wildlife Program (Program) for the purposes of OAR 690-033-0120(1).
- B. The application is not presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
- D. The interagency review team was convened to review the application and recommended conditions as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). As a result of this review, water may only be appropriated for storage February 1 through

April 14, and Permit Specific Conditions #6 through #10 have been included in the draft permit.

14. The proposed use is located above the Deschutes State Scenic Waterway, as designated under ORS 390.826.

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

15. No comments were received by the close of the comment period. OAR 690-310-0120(3)
16. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-310-0120(3)(a); OAR 690-310-0150(2)(i)

Other Criteria and Requirements

17. The amount requested, 61.1 AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
18. The applicant proposed measures to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 7 through 9 of the application. OAR 690-310-0150(2)(j)
19. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project.

PROPOSED ORDER

The Department recommends approval of Application R-88784, as amended, and issuance of a permit consistent with the attached draft permit.

DATED August 1, 2023

Katherine Ratcliffe

Katherine Ratcliffe
Water Rights Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. If you wish to submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline specified. Protests must be received by the Water Resources Department no later than **September 15, 2023**.

Protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To effect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest, ORS 537.153(6) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public interest under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public interest under ORS 537.170(8) would be impaired or be detrimentally affected;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **September 15, 2023**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and

- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not timely file a protest or timely request a hearing, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default. OAR 137-003-0670.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or toll-free at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF WASCO

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WHITE RIVER RANCH, LLC
56100 SMOCK RD
WAMIC OR 97063

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-88784

SOURCE OF WATER: ROCK CREEK, TRIBUTARY TO WHITE RIVER

Reservoir Name	Maximum Volume (Acre-Feet)	Dam Height (Feet)	Area Acres
Campbell Reservoir	35.0	9.0	9.6
Wade 3 Reservoir	13.5	7.0	4.5
20 Acres Reservoir	6.0	6.0	1.5
Pink Palace Reservoir	6.6	6.0	2.2
Maximum Volume	61.1		

PURPOSE OR USE OF THE STORED WATER: LIVESTOCK, RECREATION, WILDLIFE, AND FISH LIFE USE

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: FEBRUARY 1 THROUGH APRIL 14

DATE OF PRIORITY: DECEMBER 9, 2019

AUTHORIZED POINT OF DIVERSION:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
ROCK CREEK	4 S	11 E	WM	14	SW SE	1000 FEET NORTH AND 1200 FEET EAST FROM S1/4 CORNER, SECTION 14

DAM LOCATIONS:

Reservoir Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
CAMPBELL RESERVOIR	4 S	12 E	WM	17	SE SW	270 FEET NORTH AND 415 FEET WEST FROM S1/4 CORNER, SECTION 17
WADE 3 RESERVOIR	4 S	12 E	WM	21	SW NW	390 FEET NORTH AND 990 FEET EAST FROM W1/4 CORNER, SECTION 21
20 ACRES RESERVOIR	4 S	12 E	WM	27	SW NW	1205 FEET NORTH AND 760 FEET EAST FROM W1/4 CORNER, SECTION 27
PINK PALACE RESERVOIR	4 S	12 E	WM	27	SE NE	105 FEET SOUTH AND 380 FEET WEST FROM E1/4 CORNER, SECTION 27

THE AREA TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
4 S	12 E	WM	17	SE SW
4 S	12 E	WM	20	NE NW
4 S	12 E	WM	21	SW NW
4 S	12 E	WM	27	SE NE
4 S	12 E	WM	27	NW NW
4 S	12 E	WM	27	SW NW

PERMIT SPECIFIC CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. The watermaster may determine an alternate measuring device is suitable. The permittee shall maintain the device in good working order.
 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The permittee shall keep a complete record of the volume of water stored each month and shall submit a report which includes water-storage measurements to the Department annually (or more frequently as may be required by the Director). Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
3. The applicant shall install and maintain an authorized form of measurement to measure flow into and out of each reservoir authorized under this permit. The form of measurement shall be approved prior to installation by the local watermaster.
4. The permittee shall install a lockable headgate to keep water out of the reservoirs while water is going downstream to satisfy senior storage rights.

5. During the approved season of use, the permittee shall be responsible for weekly measurements and reporting of Rock Creek flow upstream of Rock Creek Reservoir. Data shall be reported on a weekly basis to the local watermaster.

6. Riparian Area Restoration:

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

7. Maintain Passage:

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).

8. In-Water Work:

Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 1 through October 31, unless an alternate time period is approved by Oregon Department of Fish and Wildlife.

9. Fish Stocking:

Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon shall have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit issued by ODFW. As part of the permitting process, the permittee shall also screen the inlet and outlet of their pond to ensure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.

10. Off-Channel Stored Water Releases:

The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.

11. Scenic Waterway Flows:

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

Deschutes River Scenic Waterway	
Month	Minimum Flow (CFS)
February	4500
March 1-15	4500
March 16-31	4000
April	4000

DAM CONDITIONS

1. Routine maintenance or repair of the dam, its spillway, and all appurtenant structures shall be performed to include, but not be limited to, removal of woody or high vegetation from the embankment, abutments and spillway; removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.
2. Repair or replacement of defective or worn out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe. If the dam is enlarged, modified, or otherwise altered, this work must be based on design plans and specifications prepared by a Registered Professional Engineer licensed in Oregon. These plans must be submitted to and approved by the State Engineer prior to such alterations of the dam, its spillway, or any appurtenant structure(s). No water shall be stored until the Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications.
3. No valve shall be installed at the downstream end of the low level conduit, and the low level conduit shall not be operated in a pressurized condition unless the dam has been designed for pressurized operation by the design engineer. There must be an operations manual for the dam that describes pressurized operation, and necessary inspections of pressurized conduits for the dam.
4. If used, flashboards shall be maintained in good condition, replaced as needed, and removed as necessary prior to potential winter storms, or unusual rainfall or snowmelt events at any time of the year.
5. Failure to comply with any portion of Oregon Revised Statue 540.443 through 540.491 and Oregon Administrative Rules Chapter 690 Division 20 may result in action including, but not limited to, restrictions on use, civil penalties, or cancellation of the permit.

RESERVOIR CONDITIONS

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
2. The permittee shall pass all live flow outside the storage season described above.
3. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
4. The permittee may be required in the future to install, maintain, and operate fish screening and bypass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
5. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

STANDARD CONDITIONS

1. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
2. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
3. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. Construction work must be supervised by the Engineer of Record for the project. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.

2. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
3. Within one year after storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

ISSUED _____

DRAFT - THIS IS NOT A PERMIT

Katherine Ratcliffe
Water Rights Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department