

Mailing List for Extension Withdraw Copies

Date: Copies Mailed

Application: R-84100
Permit: R-12770

By: KMWF
On: MAY 12 2023

Original mailed to permit holder

Knapp Ranches Inc.
P.O. Box 32
Port Orford OR 97465

Copies sent to:

1. WRD - App. File R-84100/ Permit R-12770
2. Bill Kloos
Law Office of Bill Kloos, PC
375 W 4th Ave., Suite 204
Eugene, OR 97401
3. WaterWatch of Oregon, Inc.
213 SW Ash Street, Suite 208
Portland, OR 97204
lisa@waterwatch.org
4. Oregon Coast Alliance
C/O Sean T. Malone
259 E 5th Ave, Suite 200-G
Eugene, OR 97401
Seanmalone8@hotmail.com

Receiving notification via e-mail FO available in WRIS for review
(DONE BY EXTENSION SPECIALIST)

5. WRD - Watermaster District 14, Scott Ceciliani

CASEWORKER: JDP

Oregon Water Resources Department

Water Right Services Division

ORDER WITHDRAWING ORDER ON RECONSIDERATION IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME, PERMIT R-12770, WATER RIGHT APPLICATION R-84100, IN THE NAME OF KNAPP RANCHES

Permit Information

Application: R-84100
Permit: R-12770
Basin: 17 – South Coast / Watermaster District 14
Date of Priority: February 4, 1999
Source of Water: An unnamed stream, a tributary of Elk River
Purpose of Use: Stored water to be appropriated under application S-84101 for irrigation and mining use
Maximum Volume: 100.0 (AF) each year from November 1 through April 30

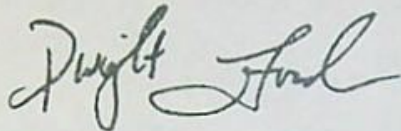
Background

1. On April 15, 2016, the Department issued a Final Order approving an extension of time to develop Permit R-12770 from October 1, 2004, to October 1, 2017.
2. On June 14, 2016, WaterWatch of Oregon and Oregon Coastal Alliance filed a Petition for Reconsideration of the Final Order issued April 15, 2016.
3. On June 27, 2016, the Department notified the applicant and the petitioners that it was reconsidering the Final Order.
4. Following discussions between the Department, the applicant and the petitioners, the applicant agreed to additional and amended condition language to allow for the Extension of Time.
5. On March 30, 2023, the Department issued an Order on Reconsideration in the Matter of an Extension of Time for Permit R-12770 (Special Order Volume 127, Pages 1103-1105). The Order on Reconsideration contained incomplete language in the agreed upon conditions between the applicant and the petitioners.
6. Upon review, the Department has determined the Order on Reconsideration must be withdrawn.

Order

The Order on Reconsideration in the Matter of an Application for Extension of Time for Permit R-12770 is withdrawn and of no further force or effect.

DATED: **MAY 12 2023**

A handwritten signature in cursive script, appearing to read "Dwight French".

Dwight French, Water Right Services Division Administrator for
Douglas Woodcock, Acting Director

Mailing List for Extension FO Copies

FO Date: March 31, 2023

Copies Mailed

Application: R-84100

By: KMWF

Permit: R-12770

On: ~~MAR 31~~ 2023

Original mailed to permit holder

Knapp Ranches Inc.
P.O. Box 32
Port Orford OR 97465

Copies sent to:

1. WRD - App. File R-84100/ Permit R-12770
2. Nick Klingensmith
Law Office of Bill Kloos, PC
375 W 4th Ave., Suite 204
Eugene, OR 97401

Fee paid as specified under ORS 536.050 to receive copy:

3. WaterWatch of Oregon, Inc.
213 SW Ash Street, Suite 208
Portland, OR 97204
4. Oregon Coast Alliance
C/O Sean T. Malone
259 E 5th Ave, Suite 200-G
Eugene, OR 97401

Receiving notification via e-mail FO available in WRIS for review
(DONE BY EXTENSION SPECIALIST)

5. WRD - Watermaster District 14, Scott Cecilliani

6. Vault

CASEWORKER: JDP

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Application for Extension of Time) ORDER ON RECONSIDERATION
for Permit R-12770 in the Name of Knapp Ranches)
Inc., Applicant,)
and)
Oregon Coast Alliance and WaterWatch of Oregon)
Inc.,)
Petitioners)

This order is a final order other than contested case subject to judicial review under ORS 183.484. A petition for judicial review of this order must be filed within the time specified by ORS 183.484(2).

The Oregon Water Resources Department issues its order on reconsideration, addressing issues raised by the Petitioners. This order amends the Final Order extending the time to complete development of Permit R-12770 with additional conditions as agreed to by the applicant and petitioners.

I. BACKGROUND

1. On April 15, 2016, the Department issued a Final Order approving an extension of time to develop Permit R-12770 from October 1, 2004 to October 1, 2017.
2. On June 14, 2016, the above petitioners filed a Petition for Reconsideration of the Final Order issued April 15, 2016.
3. On June 27, 2016, the Department notified the applicant and the petitioners that it was reconsidering the Final Order.
4. Following discussions between the Department, the applicant and the petitioners, the applicant has agreed to additional and amended condition language which is reflected in the conditions set out below.

II. FINDINGS OF FACT

1. Except as expressly stated herein, the findings of fact in the Final Order issued April 15, 2016 are adopted and incorporated herein by reference.
2. Permit R-12770 contains the following condition:

"Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other

Page 1 – ORDER ON RECONSIDERATION (Application for Extension of Time for Permit R-12770)

suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

3. A staff gage and a weir have been installed and inspected as of April 26, 2018. Compliance with the installation of the measurement devices was confirmed by the district watermaster as of that date.

The Final Order issued April 15, 2016, contained two permit conditions and a last extension condition. By agreement of the applicant, the petitioners and the department, the permit extension conditions are stricken and replaced with the following conditions.

PERMIT CONDITIONS

1. The water right will not be used for any golf course or golf course facility related use.
2. The water right will be used for ranch related uses only.
3. The water right will not be transferred for non-ranch related uses.

LAST EXTENSION CONDITION

This is the last extension of time granted for Permit R-12770. Any future extension of time requests will be denied.

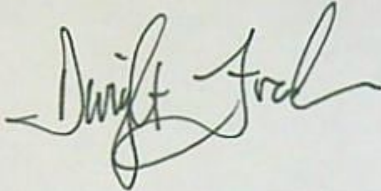
III. CONCLUSIONS OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

IV. ORDER

The extension of time for Application R-84100, Permit R-12770, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2004 to October 1, 2019. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2004 to October 1, 2019.

Dated in Salem, Oregon *March 30, 2023.*

A handwritten signature in black ink, appearing to read "Dwight French". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the left.

Dwight French,
Water Right Services Administrator, for
Douglas Woodcock, Acting Director
Oregon Water Resources Department

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number R-84100

FINAL ORDER

Extension of Time for Permit Number R-12770
Permit Holder: Knapp Ranches Inc.

	Permit Information
Application:	R-84100
Permit:	R-12770
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	February 4, 1999
Source of Water:	An unnamed stream, a tributary of Elk River
Purpose of Use:	Stored water to be appropriated under application S-84101 for irrigation and mining use
Maximum Volume:	100.0 (AF) each year from November 1 through April 30

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either file for judicial review, or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

Permit R-12770 was issued by the Department on January 31, 2000. The permit called for actual construction to begin by December 15, 2000, the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004. On April

18, 2014, Knapp Ranches Inc. submitted to the Department an Application for Extension of Time for Permit R-12770. In accordance with OAR 690-315-0050(2), on November 18, 2014, the Department issued a Proposed Final Order proposing to extend the time to complete construction from October 1, 2004 to October 1, 2017 and the time to apply water to full beneficial use from October 1, 2004 to October 1, 2017. The protest period closed January 2, 2015, in accordance with OAR 690-315-0060(1). On January 2, 2015, WaterWatch of Oregon and Oregon Coast Alliance filed protests against the PFO. The Department received the permit holder's response to the protests on January 28, 2015. On June 4, 2015, the permit holder requested an administrative hold for additional time for the purpose of pursuing settlement discussion with the protestants. On November 25, 2015 the Department received the request for a second administrative hold. On March 31, 2016 the Department received a request from the permit holder to resume processing the application for an extension of time, with additional voluntary conditions from the permit holder. The permit holder requested the following language be added to permit R-12770:

1. The use of water for irrigation under Permit R-12770 is further limited to on ranch irrigation and shall not include irrigation for, related to, or supporting of golf course use or development.
2. The permittee shall demonstrate compliance with all permit conditions.

FINDINGS OF FACT

Except as expressly stated herein, The Department adopts and incorporates by reference the findings in the Proposed Final Order dated November 18, 2014.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. **Last Extension Condition**
This is to be the last extension of time granted for Permit R-12770. Any future extensions of time requests will be denied.
2. **Permit Condition**
 - A. The use of water for irrigation under Permit G-12770 is further limited to on ranch irrigation and shall not include irrigation for, related to, or supporting of golf course use or development.
 - B. The permittee shall demonstrate compliance with all permit conditions.

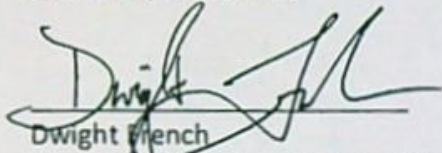
CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

ORDER

The extension of time for Application R-84100, Permit R-12770, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2004 to October 1, 2017. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2004 to October 1, 2017.

DATED: April 15, 2016



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

-
- If you have any questions about statements contained in this document, please contact Permit Extension Specialist at (503) 986-0802.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
-

MCCARTY Patricia E * WRD

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Monday, December 12, 2016 1:16 PM
To: Sean Malone; Lisa Brown; MCCARTY Patricia E * WRD; MCCARTY Patricia E * WRD;
BAMBERGER Mabelle A * WRD
Cc: WACKER Gregory J * WRD
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Thanks Sean and Lisa for your suggestions. Looking forward to talking with you in a few minutes.

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com
Web www.LandUseOregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at the phone number above. Also, please notify me by e-mail. Thank you.

From: Sean Malone [mailto:seanmalone8@hotmail.com]
Sent: Monday, December 12, 2016 9:46 AM
To: Lisa Brown <lisa@waterwatch.org>; Nick Klingensmith <nickklingensmith@landuseoregon.com>; MCCARTY Patricia E * WRD <Patricia.E.Mccarty@oregon.gov>; MCCARTY Patricia E <patricia.e.mccarty@state.or.us>; BAMBERGER Mabelle A (mabelle.a.bamberger@state.or.us) <mabelle.a.bamberger@state.or.us>
Cc: WACKER Gregory J * WRD <Gregory.J.Wacker@oregon.gov>
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

Here is the proposed language for the remaining conditions:

1. The water right will not be used for any golf course related use, including but not limited to uses for golf course irrigation, or golf course related facilities, such as potable water, domestic, municipal or quasi-municipal water uses.
2. The water right will not be transferred for non-ranch related uses, including but not limited to uses for golf course irrigation, or golf course related facilities, such as potable water, domestic, municipal or quasi-municipal water uses.

Thanks,

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-G
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

From: Lisa Brown <lisa@waterwatch.org>
Sent: Monday, December 12, 2016 8:35:35 AM
To: Nick Klingensmith; MCCARTY Patricia E * WRD; Sean Malone; MCCARTY Patricia E; BAMBERGER Machel A (machelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

Hi Nick and others,

For the permit compliance condition, I suggest something along these lines:

If measurement devices [which we can define here based on discussions I understand are ongoing with the water master] are not installed and operational by date certain [proposed: six months from extension issuance], water use under the permits [insert numbers here] shall be prohibited until such time as measurement devices are operational.

It sounds like there is effort to address the measurement device issue now, but I am not certain of the status. Obviously if devices are installed and operational before the extension is issued, we can adjust.

thanks,

Lisa

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Saturday, December 10, 2016 5:54:41 PM
To: Lisa Brown; MCCARTY Patricia E * WRD; Sean Malone; MCCARTY Patricia E; BAMBERGER Machel A (machelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hi all,

I had understood that WaterWatch and/or ORCA was going to propose revised conditions of approval in advance of Monday's conference call. Is that no longer the plan?

I won't be in the office tomorrow, and even if you get me your newest proposed revisions tonight, I will have limited opportunity to go over them with my clients before the call.

Are you still planning on proceeding with the call, even without your proposed revisions?

thanks

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com
Web www.LandUseOregon.com

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From: Lisa Brown [<mailto:lisa@waterwatch.org>]
Sent: Wednesday, December 7, 2016 11:41 AM
To: MCCARTY Patricia E * WRD <Patricia.E.Mccarty@oregon.gov>; Nick Klingensmith <nickklingensmith@landuseoregon.com>; Sean Malone <seanmalone8@hotmail.com>; MCCARTY Patricia E <patricia.e.mccarty@state.or.us>; BAMBERGER Machel A (machelle.a.bamberger@state.or.us) <machelle.a.bamberger@state.or.us>
Cc: WACKER Gregory J * WRD <Gregory.J.Wacker@oregon.gov>
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

Monday at 1:30 works for me.

From: MCCARTY Patricia E * WRD <Patricia.E.Mccarty@oregon.gov>
Sent: Wednesday, December 7, 2016 11:39:58 AM
To: Nick Klingensmith; Sean Malone; Lisa Brown; MCCARTY Patricia E; BAMBERGER Machel A (machelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Monday the 12th at 1:30 is fine. We can all call in to the following number: 712-432-3900; access code is 638593#.

Patricia McCarty

From: Nick Klingensmith [<mailto:nickklingensmith@landuseoregon.com>]
Sent: Wednesday, December 07, 2016 11:30 AM
To: Sean Malone; Lisa Brown; MCCARTY Patricia E * WRD; MCCARTY Patricia E; BAMBERGER Machel A (machelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

It sounds like either Monday afternoon or Tuesday morning could work for all of us.

How about Monday at 1:30? I have no preference, but figured I'd throw something out there.

Thanks to everyone for accommodating my need to change the original schedule.

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com
Web www.LandUseOregon.com

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From: Sean Malone [<mailto:seanmalone8@hotmail.com>]
Sent: Wednesday, December 7, 2016 11:07 AM
To: Lisa Brown <lisa@waterwatch.org>; MCCARTY Patricia E * WRD <Patricia.E.Mccarty@oregon.gov>; Nick Klingensmith <nickklingensmith@landuseoregon.com>; MCCARTY Patricia E <patricia.e.mccarty@state.or.us>; BAMBERGER Machel A (machelle.a.bamberger@state.or.us) <machelle.a.bamberger@state.or.us>
Cc: WACKER Gregory J * WRD <Gregory.J.Wacker@oregon.gov>
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

On Monday the 12th, I'm available after 1pm. Also available Tuesday but only before 230pm.

Nick, ORCA does not oppose the additional time requested but that is obviously contingent upon agreement regarding the conditions. We will get you that language shortly.

Thanks,

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-G
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

From: Lisa Brown <lisa@waterwatch.org>
Sent: Monday, December 5, 2016 1:23:53 PM
To: MCCARTY Patricia E * WRD; Nick Klingensmith; MCCARTY Patricia E; seanmalone8@hotmail.com; BAMBERGER Mabelle A (mabelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

No problem rescheduling the call. Anytime on Monday the 12th or Tuesday the 13th would work for me. We will get language out re: the conditions in the meanwhile.

From: MCCARTY Patricia E * WRD <Patricia.E.Mccarty@oregon.gov>
Sent: Monday, December 5, 2016 1:19:13 PM
To: Nick Klingensmith; MCCARTY Patricia E; seanmalone8@hotmail.com; Lisa Brown; BAMBERGER Mabelle A (mabelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Rescheduling the call is OK with WRD; I am available on the 8th, and the next week.

Patricia McCarty

From: Nick Klingensmith [<mailto:nickklingensmith@landuseoregon.com>]
Sent: Monday, December 05, 2016 12:26 PM
To: MCCARTY Patricia E; seanmalone8@hotmail.com; lisa@waterwatch.org; BAMBERGER Mabelle A (mabelle.a.bamberger@state.or.us)
Cc: WACKER Gregory J * WRD
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hello all,

First, I just discovered I have a conflict that will prevent me from participating on a phone call this Friday. I am sorry for the inconvenience, but can we reschedule to Thursday the 8th sometime before noon, or anytime Monday the 12th? My schedule is very flexible for the entire week of the 12th, if there's a better time for you all.

Second, I had proposed during our conference call last month that a staff gauge would be a suitable substitute for the permit condition that had required measuring weirs on the reservoir. At that time, Patricia had suggested that I should double check with the watermaster to make sure that any strategy I came up with for measuring volume of stored water would be adequate from the department's perspective. I spoke with Greg Wacker, the watermaster for the region, and he said that not only would a staff gauge be sufficient, but, in his view, it should have been required from the outset and should have already been installed. I told him that I would instruct my clients to order an official USGS staff gauge as

soon as possible, and I will encourage them to invite Greg to the property when the gauge is being installed, to make sure it goes in correctly. Greg is now copied on this email chain.

Third, during our last call, Sean had indicated that he needed to check with his client before he could agree to extending the permits to the end of 2019. Do we know if ORCA is able to agree to that?

Finally, I understood that Lisa was going to suggest revisions to the permit condition that would prohibit the surface water use permit from going to anything related to the golf course. If possible, I think it would be most productive if we could all see the proposed revisions prior to reconvening by phone.

Thank you to all, and again, my apologies for needing to reschedule the upcoming call.

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com
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From: Nick Klingensmith
Sent: Thursday, November 10, 2016 11:42 AM
To: 'MCCARTY Patricia E' <patricia.e.mccarty@state.or.us>; seanmalone8@hotmail.com; lisa@waterwatch.org; BAMBERGER Mabelle A (mabelle.a.bamberger@state.or.us) <mabelle.a.bamberger@state.or.us>
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Lisa, Sean, Patricia and Mabelle,

Thanks for the productive call today. I've attached an email that includes the waiver from the watermaster, as promised. The body of that email also contains my original suggestion for using a measuring staff for measuring the reservoir volume, given that a measuring weir won't work in that location, at least for water coming into the reservoir.

I heard Patricia say that the Department has other tricks up its sleeve for measuring flows coming into a reservoir in situations, and I look forward to learning more about those.

I'll talk to you soon. Thanks again,

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280

Fax: (541) 343-8702

e-mail: nickklingensmith@landuseoregon.com

Web www.LandUseOregon.com

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From: MCCARTY Patricia E [<mailto:patricia.e.mccarty@state.or.us>]

Sent: Thursday, October 27, 2016 10:21 AM

To: Nick Klingensmith <nickklingensmith@landuseoregon.com>; seanmalone8@hotmail.com; lisa@waterwatch.org

Cc: MCCARTY Patricia E (patricia.e.mccarty@state.or.us) <patricia.e.mccarty@state.or.us>

Subject: Knapp Ranch R-12770 and S-53648 reconsideration

Dear Mr. Klingensmith, Mr. Malone, and Ms. Brown,

OWRD would like to schedule a conference call on the petition for reconsideration by OCA and WW. The Department will be issuing an order on reconsideration and would like to hear further from the parties before it does so.

Please let me know if you have an interest in an in-person meeting, or would prefer a conference call. Also, please indicate a couple of blocks of time within the next 3 weeks that you are available.

Sincerely,

Patricia McCarty

Protest Program Coordinator

Oregon Water Resources Department

(503) 986-0820

MCCARTY Patricia E

From: MCCARTY Patricia E <patricia.e.mccarty@state.or.us>
Sent: Thursday, October 27, 2016 10:21 AM
To: Nick Klingensmith (nickklingensmith@landuseoregon.com); seanmalone8@hotmail.com;
lisa@waterwatch.org
Cc: MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Subject: Knapp Ranch R-12770 and S-53648 reconsideration
Attachments: Knapp Petition for Reconsideration 6-14-2016.pdf

Dear Mr. Klingensmith, Mr. Malone, and Ms. Brown,
OWRD would like to schedule a conference call on the petition for reconsideration by OCA and WW. The Department will be issuing an order on reconsideration and would like to hear further from the parties before it does so.

Please let me know if you have an interest in an in-person meeting, or would prefer a conference call. Also, please indicate a couple of blocks of time within the next 3 weeks that you are available.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

Sean Malone
303 859 0403

MCCARTY Patricia E

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Tuesday, November 01, 2016 11:19 AM
To: Sean Malone
Cc: Lisa Brown; MCCARTY Patricia E
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

Confirming 10:30 on the 10th. Thank you.

Sent from my phone

On Nov 1, 2016, at 10:27 AM, Sean Malone <seanmalone8@hotmail.com> wrote:

1030 on the 10th works for me.

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-G
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

From: Lisa Brown <lisa@waterwatch.org>
Sent: Tuesday, November 1, 2016 10:18:01 AM
To: MCCARTY Patricia E
Cc: Nick Klingensmith; MCCARTY Patricia E; seanmalone8@hotmail.com
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

10:30 on 10th works for me.

Sent by mobile phone

On Nov 1, 2016, at 10:14 AM, "MCCARTY Patricia E" <patricia.e.mccarty@state.or.us> wrote:

Can you confirm for 10:30 on the 10th and call into 503-986-0830?

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: Lisa Brown [<mailto:lisa@waterwatch.org>]
Sent: Tuesday, November 01, 2016 10:06 AM
To: Nick Klingensmith

Cc: MCCARTY Patricia E; seanmalone8@hotmail.com
Subject: Re: Knapp Ranch R-12770 and S-53648 reconsideration

Sean and I can make the 10th work also.

Sent by mobile phone

On Nov 1, 2016, at 9:28 AM, "Nick Klingensmith"
<nickklingensmith@landuseoregon.com> wrote:

The 10th is good for me. Thanks,

NAK

Sent from my phone

On Nov 1, 2016, at 9:08 AM, MCCARTY Patricia E
<patricia.e.mccarty@state.or.us> wrote:

Lisa, WRD will be at the Water Law conference on the
16th. The 10th is fine.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

503 295 4039 x4

From: Lisa Brown [<mailto:lisa@waterwatch.org>]
Sent: Tuesday, November 01, 2016 8:58 AM
To: Nick Klingensmith
Cc: MCCARTY Patricia E; seanmalone8@hotmail.com
Subject: Re: Knapp Ranch R-12770 and S-53648
reconsideration

We agree that a call to try to resolve the issues is a good
idea. The week of the 7th is pretty packed - would the
16th work instead? That works best for Sean and me. If
that doesn't work for others, we may be able to make
the 10th work.

Thanks.

Lisa

Sent by mobile phone

On Oct 31, 2016, at 9:45 PM, "Nick Klingensmith"
<nickklingensmith@landuseoregon.com> wrote:

Patricia, Sean and Lisa,

Slow response on my part, sorry. I was away from email all of last week – something I should do more often.

My clients support the idea that we could all try one last stab at resolving the few outstanding issues that haven't yet been agreed on.

I currently have a very flexible calendar the week of Nov. 7. Chances are good that any time that week will work for me to join on a conference call.

Thank you

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail:
nickklingensmith@landuseoregon.com
Web www.LandUseOregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at the phone number above. Also, please notify me by e-mail. Thank you.

From: MCCARTY Patricia E
[\[mailto:patricia.e.mccarty@state.or.us\]](mailto:patricia.e.mccarty@state.or.us)
Sent: Thursday, October 27, 2016 10:21 AM
To: Nick Klingensmith
<nickklingensmith@landuseoregon.com>; seanmalone8@hotmail.com;
lisa@waterwatch.org
Cc: MCCARTY Patricia E
(patricia.e.mccarty@state.or.us)
<patricia.e.mccarty@state.or.us>
Subject: Knapp Ranch R-12770 and S-53648 reconsideration

Dear Mr. Klingensmith, Mr. Malone,
and Ms. Brown,
OWRD would like to schedule a
conference call on the petition for
reconsideration by OCA and WW. The
Department will be issuing an order on
reconsideration and would like to hear
further from the parties before it does
so.

Please let me know if you have an
interest in an in-person meeting, or
would prefer a conference call. Also,
please indicate a couple of blocks of
time within the next 3 weeks that you
are available.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number R-84100

FINAL ORDER

Extension of Time for Permit Number R-12770
Permit Holder: Knapp Ranches Inc.

Permit Information

Application:	R-84100
Permit:	R-12770
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	February 4, 1999
Source of Water:	An unnamed stream, a tributary of Elk River
Purpose of Use:	Stored water to be appropriated under application S-84101 for irrigation and mining use
Maximum Volume:	100.0 (AF) each year from November 1 through April 30

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either file for judicial review, or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

Permit R-12770 was issued by the Department on January 31, 2000. The permit called for actual construction to begin by December 15, 2000, the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004. On April

18, 2014, Knapp Ranches Inc. submitted to the Department an Application for Extension of Time for Permit R-12770. In accordance with OAR 690-315-0050(2), on November 18, 2014, the Department issued a Proposed Final Order proposing to extend the time to complete construction from October 1, 2004 to October 1, 2017 and the time to apply water to full beneficial use from October 1, 2004 to October 1, 2017. The protest period closed January 2, 2015, in accordance with OAR 690-315-0060(1). On January 2, 2015, WaterWatch of Oregon and Oregon Coast Alliance filed protests against the PFO. The Department received the permit holder's response to the protests on January 28, 2015. On June 4, 2015, the permit holder requested an administrative hold for additional time for the purpose of pursuing settlement discussion with the protestants. On November 25, 2015 the Department received the request for a second administrative hold. On March 31, 2016 the Department received a request from the permit holder to resume processing the application for an extension of time, with additional voluntary conditions from the permit holder. The permit holder requested the following language be added to permit R-12770:

1. The use of water for irrigation under Permit R-12770 is further limited to on ranch irrigation and shall not include irrigation for, related to, or supporting of golf course use or development.
2. The permittee shall demonstrate compliance with all permit conditions.

FINDINGS OF FACT

Except as expressly stated herein, The Department adopts and incorporates by reference the findings in the Proposed Final Order dated November 18, 2014.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. **Last Extension Condition**
This is to be the last extension of time granted for Permit R-12770. Any future extensions of time requests will be denied.
2. **Permit Condition**
 - A. The use of water for irrigation under Permit G-12770 is further limited to on ranch irrigation and shall not include irrigation for, related to, or supporting of golf course use or development.
 - B. The permittee shall demonstrate compliance with all permit conditions.

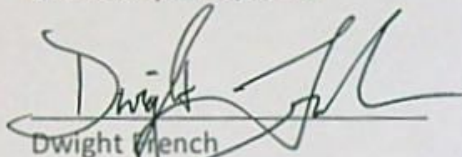
CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

ORDER

The extension of time for Application R-84100, Permit R-12770, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2004 to October 1, 2017. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2004 to October 1, 2017.

DATED: April 15, 2016



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

-
- If you have any questions about statements contained in this document, please contact Permit Extension Specialist at (503) 986-0802.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
-

Mailing List for Extension FO Copies

FO Date: April 15, 2016

Copies Mailed

Application: R-84100

By: SP

Permit: R-12770

On: 4-15-16

Original mailed to permit holder

Knapp Ranches Inc.
P.O. Box 32
Port Orford OR 97465

Copies sent to:

1. WRD - App. File R-84100/ Permit R-12770
2. Nick Klingensmith
Law Office of Bill Kloos, PC
375 W 4th Ave., Suite 204
Eugene, OR 97401

Fee paid as specified under ORS 536.050 to receive copy:

3. WaterWatch of Oregon, Inc.
213 SW Ash Street, Suite 208
Portland, OR 97204
4. Oregon Coast Alliance
C/O Sean T. Malone
259 E 5th Ave, Suite 200-G
Eugene, OR 97401

Receiving notification via e-mail FO available in WRIS for review
(DONE BY EXTENSION SPECIALIST)

5. WRD - Watermaster District 19, Greg Wacker

CASEWORKER: MAB

BEFORE THE
OREGON WATER RESOURCES DEPARTMENT

In the Matters of Water Rights)	
Permit R-12770 (Application R-84100) and)	PETITION FOR
Permit S-53648 (Application S-84101) in)	RECONSIDERATION
the name of Knapp Ranches Inc.)	
)	
OREGON COAST ALLIANCE and)	
WATERWATCH OF OREGON)	
)	
<i>Petitioners,</i>)	
)	

This is a Petition for Reconsideration filed pursuant to OAR 137-004-0080 and ORS 183.484(2) regarding issuance by the Oregon Water Resources Department (OWRD), on April 15, 2016, of Final Orders for Extensions of Time for Permit R-12770 (Application R-84100) and Permit S-53648 (Application S-84101).

Pursuant to OAR 137-004-0080 and ORS 183.484, Oregon Coast Alliance and WaterWatch of Oregon (Petitioners) timely file this petition for reconsideration of the above-mentioned final orders. Petitioners respectfully request that OWRD reconsider final orders for the above-mentioned extensions of time and reverse its decisions for the reasons discussed below. Petitioners incorporate by reference all materials previously submitted in relation to the above-mentioned permits.

I. BACKGROUND

OWRD approved the applicant's uncontested request for a processing hold for the protests through April 1, 2016. In a letter dated March 31, 2016, the applicant unilaterally requested that OWRD "act on the extension applications, rather than continue to spend time and effort on fruitless settlement discussions." The applicant further requested that OWRD "prepare

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JUN 14 2016

the Final Orders that would grant the requested extensions.” Petitioners never consented to the applicant’s proposed conditions, which do not capture what Petitioners sought through the settlement. In addition, Petitioners do not believe that the proposed conditions set forth by the applicant are responsive to all issues raised by Petitioners in their respective protests and requests for standing. On April 15, 2016, OWRD issued the above-mentioned final orders.

Simply preparing a final order does not adequately dispose of the disputes raised in Petitioners’ protests and standing statements, and it was plain error for OWRD to issue final orders while significant disputes were pending, as explained below.

II. SPECIFIC GROUNDS FOR RECONSIDERATION AND ARGUMENT

A. Under ORS 537.153(8), significant disputes exist regarding the proposed use of water

ORS 537.153(8) provides that the Department will continue to contested case if the Director finds “that there are significant disputes related to the proposed use of water.” *See also Lentz v. State Water Resources Dept.*, 154 Or App 217 (1998) (“At this point in the process, the director of the department must determine whether to hold a hearing. ORS 537.153(8) requires a hearing if a protest has been filed *and* either the director finds there are significant disputes or the applicant requests a hearing”). Petitioners filed protests to the proposed order for the extension of time for Permit R-12770 and request for standing for the proposed final order for extension of time for Permit S-53648. Petitioners raised numerous, specific issues for the extensions of time for Permit R-12770 and Permit S-53648 in their respective protests and request for standing that relate to the proposed use of water. *See* ORCA Protest Paragraphs IV, 1-20; ORCA Request for Standing; WaterWatch of Oregon protest and request for standing (all of which are in the record and were timely filed with OWRD with the required fees). For the extension for permit S-53648, OWRD issued a proposed final order to deny the extension, but reversed course and issued a

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final order to issue the extension. Petitioners dispute that the issues raised in their protests and request for standing have been resolved by the final orders or by the applicant's proposed conditions that are reflected in those orders. Furthermore, the final orders do not contain any findings as to why the disputes contained in Petitioners' protests and requests for standing have allegedly been resolved. The final orders also fail to contain any findings that would demonstrate that there are no significant disputes remaining that were raised in the protests or the requests for standing. In the absence of such findings and in the absence of the correct procedure mandated by statute, the final orders issued by OWRD violate ORS 537.153(8), and the provisions identified in the protests. These violations have deprived Petitioners of resolving the disputes through a contested case hearing, which Petitioners specifically requested, (or, in the alternative, through a settlement agreement). Petitioners also note that it was likely a settlement could have been reached if not for the unilateral actions of the applicant to suspend negotiations and direct OWRD to issue final orders.

Request for Relief

For the reasons described above, Petitioners respectfully request that OWRD reconsider and withdraw its final orders approving the time extensions for Permit R-12770 (Application R-84100) and Permit S-53648 (Application S-84101).

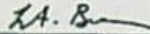
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JUN 14 2016

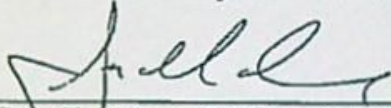
WATER RESOURCES DEPT
SALEM, OREGON

Dated: June 14, 2016

Respectfully submitted,



Lisa A. Brown, OSB No. 025240
WaterWatch of Oregon
213 SW Ash St. STE 208
Portland, OR 97204
Phone: 503.295.4039 x4
Email: lisa@waterwatch.org
Of Attorneys for WaterWatch of Oregon



Sean T. Malone, OSB No. 084060
Attorney at Law
259 E. 5th Ave, Suite 200-G
Eugene OR 97405
Phone: (303) 859-0403
Email: seanmalone8@hotmail.com
Attorney for ORCA

CERTIFICATE OF FILING AND SERVICE

I certify that on this day I filed the foregoing PETITION FOR RECONSIDERATION on
the following by FAX:

Oregon Water Resources Department
725 Summer St. NE, STE A
Salem OR 97301

I further certify that I served the foregoing on PETITION FOR RECONSIDERATION
on the following by first class mail:

Nick Klingensmith
Law Office of Bill Kloos
375 W. 4th Ave Ste 204
Eugene OR 97401
Counsel for Applicant

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JUN 14 2016

WATER RESOURCES DEPT
SALEM, OREGON

Dated: June 14, 2016

L.A. Brown

Lisa A. Brown, OSB No. 025240
WaterWatch of Oregon
213 SW Ash St. STE 208
Portland, OR 97204
Phone: 503.295.4039 x4
Email: lisa@waterwatch.org
Of Attorneys for WaterWatch of Oregon

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JUN 14 2016

WATER RESOURCES DEPT
SALEM OREGON



Oregon

Kate Brown, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

June 27, 2016

Nick Klingensmith, on behalf of Knapp Ranches, Inc.
Law Office of Bill Kloos, PC
375 W. 4th Ave, suite 204
Eugene OR, 97401

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-G
Eugene, OR 97401

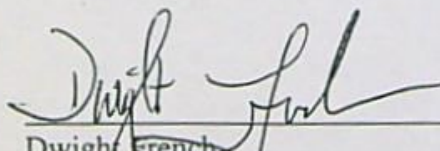
Lisa Brown
WaterWatch of Oregon, Inc.
213 SW Ash St. STE 208
Portland, OR 97204

Re: Requests for Standing on Extension Proposed Final Order S-53648, Knapp Ranches, Inc.

Dear Mr. Klingensmith, Ms. Brown, and Mr. Malone,

WaterWatch of Oregon, Inc. and Oregon Coast Alliance each filed a request for standing on the Proposed Final Order on S-53648 on January 9, 2015. The right to standing is conferred by statute. Requests for standing are not authorized by the terms of the statute for permit extensions. The Department erred in accepting the requests for standing and the fees filed with the requests. Refunds will be processed and mailed to each organization.

Sincerely,



Dwight French
Water Right Services Division Administrator





Oregon

Kate Brown, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

June 27, 2016

Nick Klingensmith, on behalf of Knapp Ranches, Inc.
Law Office of Bill Kloos, PC
375 W. 4th Ave, suite 204
Eugene OR, 97401

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-G
Eugene, OR 97401

Lisa Brown
WaterWatch of Oregon, Inc.
213 SW Ash St. STE 208
Portland, OR 97204

Re: Petition for Reconsideration on Extension of Time Permits R-12770 and S-53648, Knapp Ranches, Inc.

Dear Mr. Klingensmith, Ms. Brown, and Mr. Malone,

A Petition for Reconsideration of the Final Orders extending Permits R-12770 and S-53648, filed by WaterWatch of Oregon, Inc. and Oregon Coast Alliance, was received on June 15, 2016. The Department is reconsidering the Final Orders. Pursuant to OAR 137-004-0080(7) the final orders remain in effect during reconsideration.

Sincerely,

Dwight French,
Water Right Services Division Administrator



LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH AVE, SUITE 204
EUGENE, OR 97401
TEL: (541) 912-5280
FAX: (541) 343-8702
E-MAIL: NKLINGENSMITH@LANDUSEOREGON.COM

March 31, 2016

Oregon Water Resources Department
Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266

Sent via email to Patricia McCarty: patricia.e.mccarty@state.or.us

Re: Permit S-53648 and R-12770
Permit holder's request to resume processing applications for extensions

Dear Ms. McCarty,

On behalf of my clients, Knapp Ranches, Inc. and Elk River Property Development, LLC, I would like to request the Department to resume processing the applications for extensions of the permits referenced above.

Since early 2015, my clients have attempted to engage our opponents in settlement discussions; those discussions have progressed in fits and spurts, characterized by long delays in communication from our opponents. At this point, my clients would prefer to have the Department act on the extension applications, rather than continue to spend time and effort on fruitless settlement discussions.

Based on my phone conversations with you, I understand the Department is supportive of issuing the extension requests for both permits, in light of my clients' prior testimony that shows actual construction of the works authorized by both permits had commenced within the required one-year time period. Accordingly, please prepare the Final Orders that would grant the requested extensions.

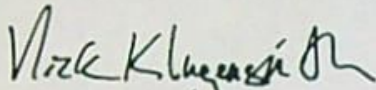
In addition, I understand that the Department may use this opportunity to revise the conditions attached to the permits. My clients have instructed me that they would like to have a condition added to both permits that would prohibit the water authorized to be used by these permits from being used in a manner related to or supporting golf course development. This idea was originally proposed by our opponents. My clients have previously indicated they are willing to accept this restriction, but our opponents have not yet confirmed that my clients have agreed to their demands. My clients believe they have led the proverbial horse to water, but that horse just won't drink. Hopefully, if the Department imposes this condition, it will allow this process to move forward. My clients expect that this restriction will be perpetual, and that it will carry over to any Certificates of Water Right the Department may issue in the future.

In addition, we understand the extension of these permits will be premised on a continuing obligation to comply with other permit conditions. The original permits contained a requirement for measuring weirs for the reservoir. As discussed in previous correspondence, this standard condition is inapplicable to these specific circumstances, given that the reservoir is fed from

multiple side channels, such that a measuring weir cannot provide an accurate measurement of water flowing into the reservoir. My clients have previously suggested that a staff gauge may be a more effective method to determine water flowing into the reservoir. However, the regional Watermaster has also issued a waiver to the permit's standard condition requiring measuring weirs. For the time being, unless the Department revokes the Watermaster's waiver, my clients intend to continue to rely on it. You should have a copy of that waiver in your records, but I can provide it again if needed.

Thank you for your patience while we have tried in vain to get all parties on the same page. Please let me know if I can provide any additional information that might be helpful as you prepare the Final Orders.

Best regards,

A handwritten signature in black ink, appearing to read "Nick Klingensmith". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping tail.

Nick Klingensmith



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

VIA EMAIL ONLY

December 2, 2015

Knapp Ranches, Inc.
Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Ave., Suite 204
Eugene, OR 97401
nickklingensmith@landuseoregon.com

WaterWatch of Oregon,
Inc.
213 SW Ash Street,
Suite 208
Portland, OR 97204
lisa@waterwatch.org

Oregon Coast Alliance c/o
Sean T. Malone
259 E. 5th Ave. Ste. 200-G
Eugene, OR 97401
seanmalone8@hotmail.com

RE: Request for administrative hold; Permits R-12770 and S-53648, Knapp Ranches Inc.

Dear Mr. Klingensmith,

The Department received the request for a second administrative hold on processing the extension applications for the above permits on November 25, 2015.

The Department will take no further action on the applications until after April 1, 2016. The applicant may request in writing that processing resume at any time prior to that date.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Right Services Division
503-986-0820



BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Applications for)	
Extensions of Time for Permit R-12770)	PERMIT HOLDER'S
and Permit S-53648)	REQUEST FOR ADDITIONAL
)	TIME TO CONDUCT
In the name of)	SETTLEMENT NEGOTIATIONS
Knapp Ranches, Inc.)	
_____)	

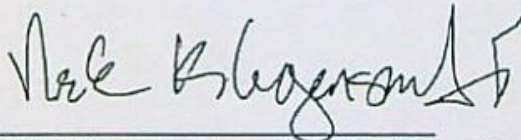
Pursuant to OAR 690-310-0270(2), Knapp Ranches, Inc., requests the Department of Water Resources to extend its "administrative hold" on processing the extension applications for the above-referenced permits. The permit holder has engaged in settlement negotiations with the opponents of the extension requests, and additional time is reasonable and necessary for those negotiations to proceed. If those negotiations result in a settlement, it could eliminate the need for slow, costly, and inconvenient contested case proceedings.

Attorneys for all parties have conferred, and all agree that requesting this additional time is "the right approach."

Accordingly, the applicant requests the "administrative hold" period for both Permit R-12770 and Permit S-53648 be extended until April 1, 2016. This would add approximately four months to the current "administrative hold," which is currently set to expire on December 7, 2015. If the parties are unable to reach a settlement by April 1, 2016, the Department can resume its process for referring the parties' protests to contested case hearings.

Dated: November 26, 2015

Respectfully submitted,



Nick Klingensmith, on behalf of Knapp Ranches, Inc.
Law Office of Bill Kloos, PC
375 W. 4th Ave, suite 204
Eugene OR, 97401
(541) 912-5280
nickklingensmith@landuseoregon.com

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OREGON 97465

(541)332-3755

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

APPLICATION FILE NUMBER: R-84100

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER
APPLICATION S-84101 FOR IRRIGATION AND MINING

MAXIMUM VOLUME: 100 ACRE-FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH APRIL 30

DATE OF PRIORITY: FEBRUARY 4, 1999

The area submerged by the reservoir, when full, will be 7.0 acres and the maximum depth of water will be 20.0 feet. The maximum height of the dam shall not exceed 9.5 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4
SE 1/4 SW 1/4
SECTION 20
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SECTION 29

TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, a staff gage

Application R-84100 Water Resources Department

PERMIT R-12770

that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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.

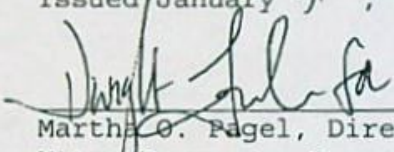
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin by December 15, 2000. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued January 31, 2000


Martha O. Pagel, Director
Water Resources Department

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

MCCARTY Patricia E

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Thursday, June 04, 2015 11:50 AM
To: MCCARTY Patricia E; seanmalone8@hotmail.com; lisa@waterwatch.org
Cc: Bill Kloos; Jim Haley (jmhaley@aol.com); bknapp@2cj.com
Subject: RE: Knapp Ranch extension applications R-84100 & S-84101

Thank you Patricia.

Sean and Lisa: first, thanks for your settlement offer from April 15. I have cut and pasted your proposal as follows:

Hi Patricia,

As we discussed, I am sending you a couple of settlement concepts on the Knapp Ranch Reservoir time extension PFO (R-12770). Here are the settlement concepts Oregon Coast Alliance and WaterWatch would agree to in order to settle this protest. The exact wording would be worked out later if these settlement concepts are agreeable to all parties.

- 1. Limit use of the water under the permit(s) to on-ranch needs, and water not to be used for golf course or other development; and*
- 2. Full compliance with all permit conditions.*

Thanks, we look forward to discussions.

Sincerely,

Sean Malone

My clients appreciate that you are open to settlement discussions. We have considered different scenarios in which we would be willing to accept your straightforward settlement terms. We have also been thinking about alternative approaches that might go even farther, and provide for a commitment to transfer a portion of the water currently authorized for the Knapp Ranch's irrigation and mining uses to be dedicated in-stream, especially during times of the year when that would be most beneficial for the unnamed tributary and the Elk River estuary.

The general goal of our settlement brainstorming exercise has been to identify options that would provide some water for the ranch, some water for the golf course, some water for in-stream use, all while looking for conservation measures and compliance with the original conditions of the Knapp Ranch permits. Excuse the pun, but we are currently down in the weeds, looking at the specific details of how we might craft these proposals. We hope to share specific proposals with you very soon. We are optimistic about finding an approach that would work for all parties.

Thank you.

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204

Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingsmith@landuseoregon.com
Web www.LandUseOregon.com

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From: MCCARTY Patricia E [<mailto:patricia.e.mccarty@state.or.us>]
Sent: Thursday, June 04, 2015 11:26 AM
To: Nick Klingensmith; MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Cc: Bill Kloos; Jim Haley (jmhaley@aol.com); bknapp@2cj.com; seanmalone8@hotmail.com; lisa@waterwatch.org
Subject: Knapp Ranch extension applications R-84100 & S-84101

Dear Mr. Klingensmith, Mr. Malone and Ms. Brown,
Knapp Ranch has requested that WRD stop processing the extension applications for six months for the purpose of pursuing settlement discussions with the protestants. WRD will resume processing the applications no later than December 7, 2015. If the parties are able to reach agreement, please forward the terms of the agreement to me for development of settlement documents. If the parties are not able to reach agreement, the applicant may request that WRD resume processing the applications before December 7.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E

From: MCCARTY Patricia E
Sent: Wednesday, December 02, 2015 10:32 AM
To: Nick Klingensmith (nickklingensmith@landuseoregon.com); seanmalone8@hotmail.com; lisa@waterwatch.org
Subject: Knapp Ranches permit extension hold
Attachments: Knapp Ranches R-12770 S-53648 2nd admin hold.pdf

Mr. Klingensmith, Ms. Brown and Mr. Malone,

Attached is a letter approving a processing hold on extension applications for Permits R-12770 and S-53648 through April 1, 2016.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Thursday, June 04, 2015 11:50 AM
To: MCCARTY Patricia E; seanmalone8@hotmail.com; lisa@waterwatch.org
Cc: Bill Kloos; Jim Haley (jmhaley@aol.com); bknapp@2cj.com
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From: MCCARTY Patricia E [<mailto:patricia.e.mccarty@state.or.us>]
Sent: Thursday, June 04, 2015 11:26 AM
To: Nick Klingensmith; MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Cc: Bill Kloos; Jim Haley (jmhaley@aol.com); bknapp@2cj.com; seanmalone8@hotmail.com; lisa@waterwatch.org
Subject: Knapp Ranch extension applications R-84100 & S-84101

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Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E

From: MCCARTY Patricia E <patricia.e.mccarty@state.or.us>
Sent: Thursday, June 04, 2015 11:26 AM
To: Nick Klingensmith; MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Cc: Bill Kloos; Jim Haley (jmhaley@aol.com); bknapp@2cj.com; seanmalone8@hotmail.com; lisa@waterwatch.org
Subject: Knapp Ranch extension applications R-84100 & S-84101

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Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Thursday, June 04, 2015 10:18 AM
To: MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Cc: Bill Kloos; Jim Haley (jmhaley@aol.com); bknapp@2cj.com
Subject: RE: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Patricia, thanks for taking my call on Tuesday. Below is the email I sent a couple of weeks ago summarizing the outcome of the LUBA decision. My clients' land use application is returning to Curry County for remand proceedings on a narrow issue.

Meanwhile, in regard to the Knapp Ranch's extension applications for permits R-12770 and S-53648, my clients continue to diligently research possible settlement options. We appreciate your patience as we work through this process. At this point, we request the Department to temporarily cease processing the extension requests for both of these permits for six months, in order to free up time for settlement discussions. You are welcome to share this development with the other parties in these proceedings. We plan on reaching out to them soon in order to share a range of ideas that might turn into a mutually agreeable settlement. If settlement discussions are not productive, we will request the Department to move ahead with contested case hearings.

Please confirm that you have received this email, and that the Department can grant the request for a six month "time out" in processing the extension applications.

Thank you very much for your assistance.

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com
Web www.LandUseOregon.com

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From: Nick Klingensmith
Sent: Friday, May 15, 2015 1:00 PM
To: 'MCCARTY Patricia E'
Cc: Bill Kloos (billkloos@landuseoregon.com)
Subject: RE: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Hello Patricia,

This is an update on the land use appeal that we have been waiting to resolve before pushing ahead with the contested case hearings on the extension requests for the Knapp Ranch permits. LUBA has remanded the decision for further county proceedings on a single issue regarding the size of the proposed clubhouse. We are satisfied with this outcome,

as it creates a clear path for approval and construction of the golf course. Unfortunately, it will take a couple of months to complete the county remand process.

While we were waiting for the LUBA decision, my clients performed some due diligence on the possibility of developing alternative sources of water for the golf course, such that a permit amendment of the Knapp Ranch's water rights might not be necessary. With these new potential sources in mind, we will be circulating some additional settlement proposals shortly. They include a range of concessions we might offer the opponents, including dedication of a portion of the existing Knapp Ranch water rights to in-stream use. We are hopeful that a comprehensive agreement could be reached that provides for construction of the golf course, extension of the existing Knapp Ranch permits, and that also returns water to instream flow during periods of the year when it would be most helpful to the river ecosystem.

Thank you for your continued attention and patience with this process. We look forward to sharing our additional settlement proposals soon, and hopefully engaging in direct talks with our opposition.

Nick Klingensmith
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375 W. 4th Avenue, Suite 204
Eugene, OR 97401
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From: MCCARTY Patricia E [<mailto:patricia.e.mccarty@state.or.us>]
Sent: Wednesday, April 15, 2015 2:41 PM
To: Nick Klingensmith
Subject: RE: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Friday will be fine, at least after noon.
Patricia

From: Nick Klingensmith [<mailto:nickklingensmith@landuseoregon.com>]
Sent: Wednesday, April 15, 2015 1:51 PM
To: MCCARTY Patricia E
Subject: RE: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Thank Patricia. Would you have time for a call on Friday? Tomorrow is the date for oral argument in the land use appeal, in which the county attorney and I are defending the county's approval of a conditional use permit that would authorize a golf course on the Knapp Ranch. I will let you know how that goes.

I'd be happy to discuss the proposed settlement terms with both of my clients (the ranch and the golf course developer) but I think the restriction against using water for the golf course would be a non-starter, as the Knapp family sees the golf course as essential to their continued operation of the ranch on the remaining 700-odd acres that aren't subject to the golf course proposal.

Nick Klingensmith

Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com
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From: MCCARTY Patricia E [<mailto:patricia.e.mccarty@state.or.us>]
Sent: Wednesday, April 15, 2015 1:42 PM
To: Nick Klingensmith
Subject: FW: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Mr. Klingensmith,

I received the email below today. I'd like to discuss the potential for settlement with you at your convenience. Please let me know when you are available for a call.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: MCCARTY Patricia E
Sent: Wednesday, April 15, 2015 1:40 PM
To: 'Sean Malone'; patricia.e.mccarty@state.or.us
Cc: Cameron La Follette; lisa@waterwatch.org
Subject: RE: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Sean, thank you for sending this along. I'll have a conversation with the applicant's attorney soon and get back to you.

Patricia

From: Sean Malone [<mailto:seanmalone8@hotmail.com>]
Sent: Wednesday, April 15, 2015 1:24 PM
To: patricia.e.mccarty@state.or.us
Cc: Cameron La Follette; lisa@waterwatch.org
Subject: Knapp Ranch Reservoir, R-12770 - Settlement Concepts

Hi Patricia,

As we discussed, I am sending you a couple of settlement concepts on the Knapp Ranch Reservoir time extension PFO (R-12770). Here are the settlement concepts Oregon Coast Alliance and WaterWatch would agree to in order to settle this protest. The exact wording would be worked out later if these settlement concepts are agreeable to all parties.

1. Limit use of the water under the permit(s) to on-ranch needs, and water not to be used for golf course or other development; and
2. Full compliance with all permit conditions.

Thanks, we look forward to discussions.

Sincerely,

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-G
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

MCCARTY Patricia E

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Sent: Tuesday, March 03, 2015 10:28 AM
To: MCCARTY Patricia E
Subject: RE: Knapp Ranches R-84100 S-84101

Patricia, thank you for your time on the phone yesterday. I have relayed our conversation to my clients, and we would like to move forward with the contested cases. In addition, if settlement negotiations look promising to you, we remain open to that possibility as well.

Thank you,

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
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From: MCCARTY Patricia E [<mailto:patricia.e.mccarty@state.or.us>]
Sent: Friday, February 27, 2015 3:53 PM
To: Nick Klingensmith
Subject: Knapp Ranches R-84100 S-84101

Mr. Klingensmith,
WRD is preparing the file for DOJ to review and prepare for referral to hearing. I would like to speak to you directly to discuss WRD's decision on the surface water extension. If you have time this afternoon, give me a call. If not, I will try to reach you next week.

If you have an update from your clients on options for settlement please let me know. Both protestants have stated their willingness to meet to discuss settlement.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

BEFORE THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Proposed Final Order Approving)
the Application for an Extension of Time for) Protest to Proposed Final
Permit R-12770, Water Right Application R-84100) Order
in the Name of Knapp Ranches Inc.)

I. Name, Address and Telephone Number of Protestant

Oregon Coast Alliance
PO Box 857
Astoria OR 97103
Phone: (503) 391-0210
cameron@oregoncoastalliance.org
Contact: Cameron La Follette

Name, Address, and Telephone Number of Agent for Protestant

Sean T. Malone
Attorney at Law
259 E. 5th Ave, Ste 200-G
Eugene OR 97401
Phone: (303) 859-0403
Fax: (650) 471-7366
seanmalone8@hotmail.com

II. Interests of Protestant

Protestant Oregon Coast Alliance (ORCA) has invested time and money protecting and restoring in-stream flows and surface waters on the Oregon Coast, including areas that would be affected by the Proposed Final Order ("PFO"). ORCA has also invested time and money on land use proceedings occurring on the subject property. ORCA has also invested time and money on protecting instream flows to benefit salmon on tributaries to the Pacific Ocean, such as the Elk River and its tributaries. ORCA has members that regularly use and enjoy the Elk River and its tributaries, and ORCA and its members have invested time and money promoting sound water policy and protecting and restoring coastal and marine natural resources.

ORCA represents the public's interest in protecting Oregon's waterways from exploitation and waste, investing its time and resources to ensure the highest beneficial use is realized from the public waterways. ORCA does this by participating in various water permitting processes on the Oregon coast, including by reviewing and filing protests, as appropriate, to water permitting decisions and working in the Oregon legislature with the goal of ensuring that the water laws are properly implemented so as to achieve the sustainable and beneficial use of Oregon's coastal waterways.

For all of these reasons, ORCA and its members will be affected, adversely affected and aggrieved, and practically affected by the PFO.

III. The PFO Would Impair And Be Detrimental To Protestant's Interests

A. The proposed water use would harm populations of coho salmon that are present in Elk River and its tributaries, and an extension that is contrary to law would allow the proposed water use to harm populations of coho salmon.

B. Granting the extension consistent with the PFO would impair and be detrimental to ORCA's interest in protecting the public's use of the Elk River and its Tributaries for beneficial uses, including instream and fish uses. ORCA's other interests include, but are not limited to the following: an interest in ensuring the availability of streamflows and the protection of water quality needed for fish, wildlife, and recreational resources; an interest that appropriations do not diminish streamflows needed to support instream uses; an interest in ensuring that WRD does not exacerbate the over-allocation of waters; an interest in ensuring that uses are efficient and not wasteful or uneconomical; an interest in ensuring that agencies have the appropriate tools and mechanisms in place to manage and regulate water use, including the tools to monitor mitigation effectiveness in order to protect instream uses and fishery resources;

an interest in ensuring that the agency implements water laws and policies in a manner that manages and allocates the water resources in order to maintain ecological integrity of the waters at issue.

C. The extension would impair and be detrimental to ORCA's interest and the public's interest in ensuring that the State not grant unwarranted extensions that are contrary to good faith and due diligence, statute, and rule.

D. Issuance of the permit would impair and be detrimental to ORCA's interest and the public's interest in ensuring that Oregon's water laws are properly implemented and that Oregon water resources are allocated fairly.

IV. How The PFO Is In Error And Deficient And How To Correct The Errors And Deficiencies

A. The PFO is in error and deficient for reasons including the following:

1. Under ORS 537.230(1), the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work with reasonable diligence and complete the construction within a reasonable time not to exceed five years from the date of approval. Here the applicant exceeded requirement to complete construction by more than 10 years, an unreasonable amount of time.

2. ORS 537.230(3) requires that WRD, for good cause shown, order an extension of time within which irrigation or other works shall be completed or right perfected. Here, the applicant has not shown good cause, considering the factors described in ORS 539.010(5) and whether governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right. Here, as explained below, the applicant has not demonstrated good cause to grant the extension.

3. Under ORS 539.010(5), WRD may extend the time within which the full amount of the water appropriated shall be applied to beneficial use, considering 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

The Applicant was required to begin construction almost 15 years ago, and the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004. Though this is the first permit extension requested, this request occurs more than 10 years after the date by which the reservoir was to be filled and water to be put to use, an unreasonable amount of time that indicates abandonment.

4. The PFO should have proposed to cancel the permit due to inaction pursuant to ORS 537.410(1) and because the permit is detrimental to the public interest and not consistent with public interest conditions. WRD's public interest determination was inadequate. The conditions imposed were to protect the public interest, and those conditions were not satisfied. Because the public interest purposes of the condition have not been satisfied, WRD erred in granting the extension. Plaintiffs incorporate by reference the issues raised in and implicated by the February 7, 2002, Department of Justice memorandum, "Complying with Permit Conditions," from Sharyl L. Kammerzell to Dwight French; and the October 15, 2002, WRD Internal Guidance Memorandum for reviewing Claims of Beneficial Use and Extension of Time.

5. The permit is for a limited season of use, but by not having measuring devices in place, not supplying monitoring reports, or building the gated weir, there has been no

showing that water is not being drawn in the off-season (i.e., in summer months). The applicant was required to put in place measures to ensure that the outflow was going through in the summer when the permit holder may not store additional water. This is a public interest condition that cannot be cured at a later time.

6. WRD granted an extension to construct the water system and apply water to beneficial use until October 1, 2017. WRD should have only granted the applicant an extension until October 1, 2015.

7. The applicant failed to enroll in the USDA CREP, and there is no apparent way in which to cure this failure because almost 15 years have passed without CREP protections necessary to mitigate water use under this permit and from R-12770.

8. The PFO provides that “[a]ctual construction of the water system began prior to the December 15, 2000 deadline.” ORCA disputes this finding because the minimal work occurring over the past 14 years is insufficient. Given the bare minimum of construction and the failure to perform any other construction, the applicant has not demonstrated “good faith” or the shown an “intention to complete the project with reasonable diligence,” pursuant to OAR 690-315-0020(3)(d)(A).

9. Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits, WRD must find that the time requested is reasonable and the applicant can complete the project within the time requested. Here, the amount of time is unreasonable because the applicant should be required to complete the work in a lesser time (e.g., October 1, 2015) given the applicant’s failure to satisfy the requirements over the past 15 years.

10. The amount of construction pursuant to OAR 690-315-0040(3)(a) is inadequate to support an extension. WRD cites only that rock was placed, a culvert was placed,

Not
In
Permit

and an area deepened, but this does not demonstrate reasonable diligence over the course of 14 years. Instead, it demonstrates abandonment. When compared to the amount of work yet to be accomplished, the amount of construction is minimal at best.

11. The applicant failed to comply with all conditions pursuant to OAR 690-315-0040(3)(c). The number of conditions not satisfied far outweighs the number of conditions allegedly satisfied. As noted by WRD, failure to comply with permit conditions constitutes illegal storage of water. Therefore, the extension should not have been granted.

12. The financial investment is insufficient to justify an extension pursuant to OAR 690-315-0040(2)(b), (3)(d), (4)(d). Over the course of 14 years, the applicant has incurred only 12 percent (or \$2,700) of the total projected cost of the development. This amount of money over the course of 14 years is insufficient to justify an extension.

13. The applicant has not demonstrated good faith pursuant to OAR 690-315-0040(2)(c). As cited above, the applicant's failure to perform more than 12 percent of the total costs in 14 years does not demonstrate good faith.

14. The tributary of Elk River is located within an area ranked "moderate" for stream flow restoration needs as determined by WWRD in consultation with ODFW, is located within a Sensitive, Threatened, or Endangered Fish Species Area as identified by WRD in consultation with ODFW, and the lower Elk River has been added to the state DEQ's 303(d) list. ODFW has flagged the Elk River's fall chinook run as "non-viable." These special water use designations militate towards not granting an extension.

15. The amount expended thus far is minimal, and, therefore, whether fair return upon investment pursuant to OAR 690-315-0040(2)(f) is not a reason grant the extension.

16. The extension fails to condition the permit under other statutes and rules to protect fish, wildlife, recreation, scenic and water quality values, and, therefore, is detrimental to ORCA's interests and the public interest in ensuring that these resources and values are not harmed by new water withdrawals.

17. The extension fails to include findings or conclusions of law demonstrating that WRD evaluated the impacts of climate change on the resource at risk from additional water withdrawals. This legal duty comes, in part, from the State's obligation to protect existing claims and rights to use water from the impacts of future development. The State also has a statutory mandate of formulating "an integrated, coordinated program for the use and control of all the water resources of this state" (ORS 536.300(2)) and must also act to protect water quality in the basin's rivers, streams, lakes and ground water, as well as fish listed under the state and federal Endangered Species Acts. Furthermore, protection of wildlife and fish, because of their historical, cultural, biological and economic significance, is necessary to protect the public interest.

18. The extension is contrary to the public interest. All water, from all sources of supply within the state of Oregon, belongs to the public. See, also, Lane Electric Coop. v. Federated Rural Electric, 114 Or. App. 156, 161 ("All waters within this state, which necessarily includes ground water, belongs to the public."). Water is a publicly owned resource. ORS 537.110; 537.334(2); 536.310(1); 537.525. The policy of the State of Oregon is to guarantee instream flows, protect and restore native fish populations, protect wildlife, and preserve the public interest. OAR 690-410-0030(1) ("Benefits are provided by water remaining where it naturally occurs. Protecting streamflows which are needed to support public uses is a high priority for the state."); ORS 496.435 ("...it is declared to be a goal of the people of the

State of Oregon to restore native stocks of salmon and trout to their historic levels of abundance
“); ORS 536.310(4) (“The fishery resource of this state is an important economic and
recreational asset”); OAR 690-400-0000(4) (When formulating basin programs and other
directives the Commission has the duty to consider protection of wildlife, recreation, watershed
management and other priorities outlined by the legislature); ORS 536.300(1) (recognizing
wildlife as a beneficial use of water).

It is the policy of the State of Oregon that:

“The waters of the state shall be allocated within the capacity of the resource and
consistent with the principle that water belongs to the public to be used beneficially
without waste. Water shall be allocated among a broad range of beneficial uses to
provide environmental, economic, and social benefits. The waters of the state shall be
protected from over-appropriation by new out-of-stream uses of surface water or new
uses of groundwater.”

OAR 690-410-0070(1). To achieve this policy, OAR 690-410-0070(2)(h) provides that “[w]hen
instream flow needs are not protected by instream water rights, new out-of-stream allocations
may be limited or conditioned to protect public uses.”

19. The extension fails to address the impacts of the extension and further
withdrawal on Clean Water Act and Endangered Species Act impairments to the Elk River and
its tributaries.

20. ORCA reserves the right to raise other errors and deficiencies that may
become apparent through discover and further analysis.

B. The errors and deficiencies should be corrected as follows:

1. The errors and deficiencies should be corrected by issuing a Final Order
denying the request for extension of time.

V. Citation Of Legal Authority

Legal authority, where known, has been cited throughout the protest.

VI. Protest Fee

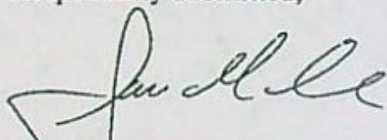
The required fee of \$700.00 is included with this protest.

VII. Request For Hearing

Protestant requests a contested case hearing.

Dated: January 2, 2015

Respectfully submitted,



Sean T. Malone
Attorney for ORCA
259 E. 5th Ave, Ste 200-G
Eugene, OR 97401
Ph: (303) 859-0403
Fax: (650) 471-7366
seanmalone8@hotmail.com

Certificate of Service

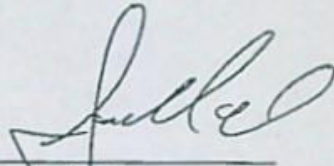
I certify that on this date, a copy of the foregoing protest was served on each of the following by the method indicated:

Knapp Ranches, Inc.
PO Box 32
Port Orford 97465

By placing in the US Postal Mail, certified first class postage prepaid, return receipt requested from Eugene, Oregon

Water Rights Services Division
Oregon Water Resources Department
725 Summer St. NE, STE A
Salem, OR 97301-1266
By hand delivery

Dated: January 2, 2015



Sean T. Malone
Attorney for ORCA
259 E. 5th Ave, Ste 200-G
Eugene, OR 97204
Ph: (303) 859-0403
Fax: (650) 471-7366
seanmalone8@hotmail.com

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Application for)
an Extension of Time for Permit R-12770)
In the name of)
Knapp Ranches, Inc.)
_____)

**PERMIT HOLDER'S
RESPONSE TO PROTEST
OF OREGON COAST
ALLIANCE**

This response is submitted on Behalf of Knapp Ranches, Inc., the permit holder and beneficial user of water authorized to be stored by Permit R-12770. The Proposed Final Order makes findings that are factually correct and consistent with applicable approval standards for extensions. The PFO correctly proposes to grant the Extension Application, and it should be made final.

The permit holder and petitioner in this protest is:

Knapp Ranches, Inc.
P.O. Box 32
Port Orford, OR 97465

I. Statement of facts:

There have been two Protests filed against the Department's PFO that would grant the requested extension – one Protest was filed by an entity called "WaterWatch," and one Protest was filed by an entity called "Oregon Coast Alliance," which refers to itself as "ORCA." The permit holder has already filed a response to the Protest of WaterWatch, which includes a detailed statement of facts. The statement of facts provided in the response to the WaterWatch Protest is incorporated by reference into this response to the ORCA Protest.

II. Response to Protestant's specific claims

1. An extension is appropriate for curing un-met conditions

Paragraph IV.A.1 of the Protest asserts that ORS 537.230(1) requires the permit holder to have prosecuted construction with reasonable diligence and to have completed construction in a time not to exceed five years. That is correct. As stated in the extension application, and as explained in more detail by the statement of facts, the construction of the reservoir was commenced within one year and was largely completed within that first year following the issuance of the permit. Certain conditions have not yet been met, such as installation of an operable gate valve and submission of annual reports of the amount

In re: Permit R-12770
Response to Protest of ORCA
Page 1

of water stored in the reservoir. The permit holder now seeks an extension of time to allow it to complete these last steps and prepare a claim of beneficial use. However, the Protestant seems to believe that, because the permit holder missed the original deadline for completion, the extension can't be approved. Protestant fails to understand that is exactly what extensions are for – to provide additional time to ensure compliance with all applicable conditions.

2. The permit holder has shown good cause to issue the extension

Paragraph IV.A.2 of the Protest asserts that the permit holder has not shown good cause for the extension to be granted, but Protestant does not provide any explanation for its assertion. The statement of facts and the permit holder's response to Waterwatch demonstrate good cause for granting the extension.

3. Water has been put to the designated beneficial use

Paragraph IV.A.3 of the Protest paraphrases the standards that the Department is to consider when reviewing applications for extensions, and then asserts

“The Applicant was required to begin construction almost 15 years ago, and the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004.”

This is an accurate statement, and it is exactly what happened. The beneficial use of water that was authorized by Permit R-12770 is storage. (The beneficial use of diverting that stored water for irrigation and mining was authorized by the separate “sister” permit S-53648. That also happened on time.) Construction of the dam in 2000 had the result of storing water, which is the beneficial use authorized by this permit.

4. The Protestant misunderstands the guidance memos on extensions

Paragraph IV.A.4 of the Protest states that, because certain permit conditions have not yet been met, the Department erred in granting the extension. Protestant follows this assertion with citation to two guidance memos that explore the role permit extensions play in bringing permits into compliance with conditions of approval. Protestant does not provide any deeper analysis of these memos.

These guidance memos actually stand for the opposite proposition – that the extension process is the appropriate mechanism by which to cure unmet conditions. The permit holder has excerpted relevant portions of these memos and has attached copies of these memos to its response to the Protest of Water Watch. The permit holder hereby incorporates that analysis here.

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Oregon Water Resources Department
Water Rights Division

In the Matter of the Application for an Extension of Time for Permit R-12770, Water Right Application R-84100, in the name of the Knapp Ranches, Inc.))))))))	PROTEST TO PROPOSED FINAL ORDER
--	--------------------------------------	------------------------------------

I. Name, Address and Telephone Number of Protestant

WaterWatch of Oregon, Inc.
213 SW Ash Street, Suite 208
Portland, OR 97204
Phone: 503.295.4039
Fax: 503.295.2791
Contact: Lisa Brown

II. Interests of Protestant

Protestant WaterWatch of Oregon ("WaterWatch") has invested time and money protecting and restoring in-stream flows and surface waters in Oregon, including many south coast rivers and areas that would be affected by the Proposed Final Order ("PFO"). WaterWatch also has members who regularly use and enjoy surface waters that would be affected by the PFO.

WaterWatch and its members have invested time and money promoting sound water policy, including water policy that allows a public interest analysis of water use at a time reasonably close to the time of the actual water use.

WaterWatch also has invested time and money in ensuring fair water policy in which a beneficial user of water does not lose priority to a later user simply on grounds that the later user applied for and obtained a permit that was not developed with reasonable diligence within the statutory time required by law.

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WaterWatch also represents the public's interest in protecting Oregon's waterways from exploitation and waste, investing its time and resources to ensure the highest beneficial use is realized from the public waterways. WaterWatch does this by participating in the water permitting process, including by reviewing and filing protests, as appropriate, to water permitting decisions; participating in the public review process for Water Management and Conservation Plans; and working in the Oregon legislature and on rules advisory committees, all with the goal of ensuring that the water laws are properly implemented so to achieve the sustainable and beneficial use of Oregon's waterways.

III. The PFO Would Impair And Be Detrimental To Protestant's Interests

1. Issuance of the extension would impair and be detrimental to WaterWatch's interests and the public's interest in protecting and restoring streamflows and instream uses in the Elk River.

2. Issuance of the extension would impair and be detrimental to WaterWatch's interests and the public's interest in ensuring that the state not perpetuate speculative water rights and water rights that are not developed in accordance with required permit conditions.

3. Issuance of the extension would impair and be detrimental to WaterWatch's interest and the public's interest in ensuring that Oregon's water laws are properly implemented, that Oregon water resources are allocated fairly, and that water

permit conditions added to ensure a water use is in the public interest are actually complied with.

4. Issuance of the extension would impair and be detrimental to WaterWatch's interest and the public's interest in ensuring that the public interest standard for issuance of new permits is implemented in a meaningful way through the extension process.

For all of these reasons, WaterWatch, its members, and the public interest will be affected, adversely affected and aggrieved, and practically affected by the PFO.

IV. How The PFO Is In Error And Deficient And How To Correct The Errors And Deficiencies

A. The PFO is in error and deficient for reasons including the following:

1. The permit only allows storage from November 1 through April 30. This condition was added to the permit to ensure that the water use is in the public interest. ORS 537.153, ORS 537.170(8). Because the reservoir is on-channel, this condition required the permit holder to measure and pass all inflow entering the reservoir outside of the allowed storage season. However, the permit holder did not install measuring devices upstream and downstream of the reservoir nor did the permit holder install a gated valve outlet (PFO at p. 5). Thus the permit holder had no way to comply with this public interest condition.¹ Water use under the permit was subject to these conditions, and was

¹ Although Knapp Ranches, Inc. reports it stored 0 acre-feet in the reservoir, it also reports water use up to 1,913,371 gallons/year through 2007 under permit S-53648 (application S-84101) (as reported in the OWRD Water Use Reporting system), for which the only permitted point of diversion is this reservoir. Knapp Ranches, Inc. reports that water use under S-53648 was measured using "meter on water line." Therefore, it Knapp Ranches, Inc.'s report of storing 0 acre-feet in the reservoir appears incorrect.

specifically not to begin prior to installation of the measurement devices (and a staff gage that was also not installed)—in other words, water use was not to occur in the absence of compliance with these conditions. Violation of these conditions cannot be cured through later compliance because the damage to the public interest cannot be undone. *See* Oregon Department of Justice advice to Dwight French, DOJ File No. 690-303-GN0023-98 (February 7, 2002); and Memorandum to Water Resources Staff from Dwight French and Dick Bailey, “Internal Guidance Non-Compliance of Time Sensitive Permit Conditions when reviewing Claims of Beneficial Use and Extensions of Time” (October 15, 2002). Additionally, even if the permit holder could secure some kind of waiver from the watermaster could not cure 15 years of non-compliance with these public interest conditions (and any waiver would have to include a way to ensure that inflow is being passed through outside of the storage season—and it does not appear possible to do that in the absence of measurement devices above and below the reservoir). Due to these defects, the permit holder will be unable to later certificate the permit. The extension must be denied.

2. The public interest review of this permit application also included a Division 33 review. As part of that review, Oregon Department of Fish and Wildlife (“ODFW”) found that enrollment in CREP of the Knapp Ranch, Inc. property fronting the Elk River would be “considered by ODFW as adequate mitigation for the proposed appropriations (both the groundwater and reservoir applications (POD #2)).” Letter from Todd Confer to Doug Woodcock, (April 5, 1999). The CREP condition was formally added to the groundwater permit (G-13782) but was never complied with. Absence of

that compliance also means that impacts of this reservoir permit was not properly mitigate for under the public interest standard.

3. Because there is not good cause to issue the extension, it should be denied.

There is not good cause for reasons including but not limited to the following:

a) Because the applicant has not shown reasonable diligence in construction this project nor in using the water, granting an extension is unlawful. ORS 537.230(3); OAR 690-315-0040(2)-(3). Considering the factors listed in OAR 690-315-0040(3)--and any other reasonable factors—there has not been a showing of diligence under this permit over the 15 years since its issuance. Claimed “construction” consisted of the permit holder dumping rock on a road to raise its elevation (which apparently serves as the “dam” here) but did not include installing the required measuring devices, gated valve outlet, or the USGS staff gage—all required before water was stored by the applicant. The permit holder also did not raise the dam to 9.5 feet (or apparently build any sort of dam, instead using an existing road to block the flow of the stream); conform with the permit or previous extensions; and did not make reasonable financial investments toward developing the permit

b) The extension should be denied because the permit holder has not shown good faith in performance under this permit, including but not limited to the fact that the permit holder violated essentially every permit condition it was required to comply with *before* storing water under the permit. ORS 539.010(5); OAR 690-315-0040(c). Compounding this failure to comply with the permit conditions is the fact that this permit (along with G-13782 and S-53648) were apparently issued to bring illegal (unpermitted) water use into compliance with the laws and rules governing water use in

Oregon. Particularly in light of that, the permit holder's failure to comply with the permit conditions should not be tolerated and the extension should be denied.

In addition, the permit holder failed to demonstrate good faith by waiting ten years after its development deadlines expired before applying for an extension.

c) The cost remaining on the project is excessive compared to the previous expenditure over the 15 year life of the permit. OAR 690-315-0040(2)(b).

d) Pursuant to OAR 690-315-0040(2)(j) the Department should consider the fact that this permit was apparently issued to bring an ongoing illegal use into compliance with the law but that even after the permit was issued—giving the permit holder an opportunity to comply with the law—the permit holder continued to violate the law by failing to comply with essential terms of the permit for the entire 15 years since permit issuance. An extension under this circumstance is not appropriate.

5. Actual construction of the project did not begin prior to the December 15, 2000 as required by the permit and thus the extension must be denied. OAR 690-315-0040(5). First, there is not sufficient evidence to show that anything happened by this deadline. Second, even if pit run rock was dumped on a road by the deadline, as claimed, this does not constitute construction under the permit. Nothing in the permit refers to dumping rock on a road. Rather a dam with an elevation up to 9.5 feet was to be constructed (presumably not on top of the road). Further, even if dumping rock on the road was "construction" under the permit, it was illegal construction because the permit holder failed to comply with the various permit conditions (discussed above) required as a prerequisite to storage of water under the permit. Just as failure to comply with permit conditions constitutes illegal storage of water, construction implemented out of

compliance with permit conditions is illegal construction that cannot fulfill the requirement that construction begin by the permit deadline. The extension must be denied.

6. The PFO is deficient because it fails to implement OAR 690-315-0040(4) for reasons including but not limited to the following:

a) The Department was required to consider the habitat needs of sensitive, threatened and endangered species, in consultation with ODFW, in determining the market and present demand for the water. OAR 690-315-0040(5)(c). The Department was required to consult with ODFW on the market and present demand for the water, but failed to do so. The PFO's Finding 14(a) is devoid of any substance that could comply with this requirement.

b) The Department failed to adequately consider special water use designations, which here include the Elk River's 303(d) listing by Oregon Department of Environmental Quality. OAR 690-315-0040(4)(b). The rule does not require the POD to be *on* the 303(d) stream as the PFO implies. Rather, the Department must consider the market and present demand for the water in light of the 303(d) listed stream (Elk River) affected by the water use.

c) OAR 690-315-004(4)(a) requires the Department to take a fresh look at the water available to satisfy other affected water rights, including the instream water rights of Elk River, when considering the extension request. The PFO's statement in Finding 14(a) that water availability was considered when a new application for a water right is submitted misapplies this rule. The PFO is deficient for not considering the effects of the extension on affected water rights, including instream water rights.

7. WaterWatch reserves the right to raise other errors and deficiencies that may become apparent through discovery and provision of additional information from the state.

B. The errors and deficiencies should be corrected as follows:

The errors and deficiencies should be corrected by issuing a Final Order denying the extension.

V. Citation Of Legal Authority

Where known, legal authorities are cited above.

VI. Protest Fee

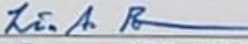
The required fee of \$700.00 is included with this protest.

VII. Request For Hearing

Protestant requests a contested case hearing.

Dated: January 2, 2015.

Respectfully submitted,



Lisa Brown, OSB #025240
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204
Ph: 503.295.4039 x4
Fax: 503.295.2791
lisa@waterwatch.org

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JAN 02 2015

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Certificate of Service

I certify that on this date, a copy of the foregoing protest was served on each of the following by the method indicated:

Knapp Ranches, Inc.

PO Box 32

Port Orford, OR 97465

By placing in the US Postal Mail, first class postage prepaid, from Portland, Oregon

Water Rights Services Division

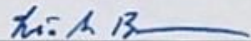
Oregon Water Resources Department

725 Summer St. NE, STE A

Salem, OR 97301-1266

By hand delivery

Dated: January 2, 2015.



Lisa Brown

WaterWatch of Oregon

213 SW Ash St., STE 208

Portland, OR 97204

Ph: 503.295.4039 x2

Fax: 503.295.2791

lisa@waterwatch.org

STATE OF OREGON
WATER RESOURCES DEPARTMENT

725 Summer St. N.E. Ste. A
 SALEM, OR 97301-4172
 (503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **114476**

INVOICE # _____

RECEIVED FROM: Waterwatch of Oregon, Inc.
 BY: _____

APPLICATION	<u>R-84100</u>
PERMIT	_____
TRANSFER	_____

CASH: CHECK # 3464 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 700.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ _____
 OTHER: (IDENTIFY) \$ _____

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES 47235 \$ _____
 0410 RESEARCH FEES \$ _____
 0408 MISC REVENUE: (IDENTIFY) _____ \$ _____
 TC162 DEPOSIT LIAB. (IDENTIFY) _____ \$ _____
 0240 EXTENSION OF TIME \$ _____

WATER RIGHTS:

0201 SURFACE WATER	EXAM FEE	0202	RECORD FEE
0203 GROUND WATER	\$ _____	0204	\$ _____
0205 TRANSFER	\$ _____		

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR	EXAM FEE	0219	LICENSE FEE
LANDOWNER'S PERMIT	\$ _____	0220	\$ _____

0223 OTHER (IDENTIFY) Protest Non - Applicant \$700.00

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE	\$ _____	CARD #	_____
0210 MONITORING WELLS	\$ _____	CARD #	_____
OTHER (IDENTIFY)	_____		

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FWWRD)	_____	\$ _____
0231 HYDRO LICENSE FEE (FWWRD)	_____	\$ _____
HYDRO APPLICATION	_____	\$ _____

TREASURY OTHER / RDX

FUND _____ TITLE _____
 OBJ. CODE _____ VENDOR # _____
 DESCRIPTION _____

**RECEIVED
 OVER THE COUNTER**

RECEIPT: **114476**

DATED: 01/02/15 BY: _____

5. The Protestant is incorrect that imperfect monitoring and reporting cannot be cured at a later time.

The Protestant correctly notes that the permit allows storage of winter flows, and that natural summer flows are to be "passed through" the reservoir. The permit holder has focused on maintaining records of water actually used, via totalizing flow meters at the point of diversion, and did not initially appreciate the significance of keeping record of the volume of water stored in the reservoir. The Watermaster waived the requirement for measuring weirs, as the topography and seasonal nature of winter precipitation and diffuse surface water runoff into the reservoir made measurement of flows impractical. (See permit holder's more detailed explanation of these circumstances in the response to the Protest of ORCA.)

As a practical matter, it has been the permit holder's experience that the volume of the reservoir is sufficiently large, and the irrigation and mining diversions sufficiently small, the reservoir effectively buffers any summer withdrawal, and summer outflows from the culvert have not been interrupted or appreciably diminished, even during periods of active pumping. In other words, because summer flows have been passing through the reservoir uninterrupted, the public interest that was at the heart of this condition has effectively been protected. Section 3 of the DOJ guidance memo is directly on point. See also the summary bullet point at page 8 of that memo, providing: "The Department may allow curing of an unmet time-sensitive condition, so long as the public interest purposes of the condition are met and an equivalent result is achieved."

6. The amount of time granted for the extension is reasonable and necessary.

Paragraph IV.A.6 of the protest argues that WRD should only grant an extension until October 1, 2015. Although the permit holder is relieved to hear that Protestant would support granting a shorter extension, the permit holder believes the originally requested time period is reasonable and necessary. The gate valve for the 36" culvert will likely need to be custom fabricated, and it likely will not be possible to install it until summer flows are at their lowest. If the gate valve were to be installed in August or September, Protestant's suggested schedule would require the certified water rights examiner to complete the claim for beneficial use in a month's time.

7. The permit holder is not required to enroll in CREP

Paragraph IV.A.7 of the protest argues that the applicant failed to enroll in USDA CREP, and that there is no way to cure that. However, as explained in the response to the Waterwatch protest, there is no condition associated with Permit R-12770 that would require enrolling in CREP.

8. Actual construction and substantial completion of the reservoir occurred on time.

Paragraph IV.A.8 of the protest argues there was “minimal work occurring over the past 14 years” and that this somehow amounts to a failure to have begun actual construction before the first year’s deadline. However, as explained in the extension application and the statement of facts, construction of the reservoir was begun and largely completed before the end of the first year following issuance of the permit. Indeed, the estimated costs associated with completing the reservoir are anticipated to be high (as both a gate valve and the services of a CWRE come with big price tags) but the Protestant’s assertion that actual construction didn’t commence on time is willfully misinformed of the facts.

9. The amount of time granted for the extension is reasonable and necessary.

Paragraph IV.A.9 of the protest reiterates Protestant’s argument from paragraph 6 that WRD should only grant an extension until October 1, 2015. For the reasons explained above, the extension that was requested is reasonable and necessary.

10. Placing rock fill, installing a culvert, and deepening an intake point is how a reservoir is built.

Paragraph IV.A.10 of the protest takes the position that the construction that occurred in 2000, which included placement of hundreds of yards of rock fill, installation of a large culvert, and deepening an area that would accommodate an intake pipe for diversions, didn’t add up to a reasonably diligent pursuit of the work authorized by the permit. At the risk of stating the obvious, that is how reservoirs are built. Protestant’s statement that completion of this work in the first year following the issuance of the permit “demonstrates abandonment,” is conclusory and baseless.

11. The applicant is in substantial compliance with the conditions

Paragraph IV.A.11 of the protest argues that “The number of conditions not satisfied far outweighs the number of conditions allegedly satisfied.” This is not correct. The permit holder still needs to install a gate valve and to report on annual volume of winter water stored in the reservoir before it can file its claim of beneficial use. The reservoir is otherwise in compliance with the permit. The Protestant also states that failure to comply with all conditions amounts to illegal storage of water, which should have led to the extension not being granted. This circular logic misses the point that the extension process exists as a mechanism to bring permits into compliance with the conditions; if a permit holder was able to achieve full compliance with all conditions within the timelines set by the original permit, there would never be a need to apply for an extension. The permit holder would simply file the claim of beneficial use.

12. The financial investment has been significant.

Paragraph IV.A.12 of the protest argues that the remaining costs of completing the reservoir are too high, relative to the costs that have already gone into it. The permit holder was fortunate to have its own rock quarry and its own heavy equipment when it built the dam. This allowed the permit holder to economize when it was doing the earthmoving that created the actual reservoir. If the permit holder had needed to purchase rock from an offsite quarry and have it trucked in, the costs would have been far higher. The remaining work that needs to be completed (primarily the installation of a gate valve and the hiring of a CWRE to prepare the claim of beneficial use) are items that the permit holder is not able to economize by performing "in-house." Given the lean financial resources available to the permit holder, it has accomplished the vast majority of the work authorized by the permit on a modest budget.

13. The financial investment has been significant.

Paragraph IV.A.13 repeats the key assertion from paragraph 12 that the permit holder hasn't spent enough money on the reservoir. The permit holder responded above.

14. The extension will not impact the Elk River.

Paragraph IV.A.14 notes the special use designations of the Elk River, but makes no reference to how that information is relevant to an approval standard that would apply to a request for an extension. Presumably, the Protestant has OAR 690-315-0040(4)(b) in mind. The Department found in the PFO that "The point of diversion is not in a location listed by the [DEQ] as a water quality limited stream." Protestant's statement fails to explain how that finding is incorrect. Regardless, extension of the permit merely allows water to continue to be stored in the reservoir, but with the expectation that, going forward, the permit holder will need to meet any unmet conditions – namely installation of a gate valve and monitoring and reporting of amounts of water stored.

15. The financial investment has been significant.

Paragraph IV.A.15 repeats the key assertion from paragraph 12 and 13 that the permit holder hasn't spent enough money on the reservoir. The permit holder responded above.

16. There is no requirement for the extension process to add more conditions.

Paragraph IV.A.16 states that the "The extension fails to condition the permit under other statutes and rules to protect fish, wildlife, recreation, scenic and water quality values [...]" OAR 690-315-0050(2) authorizes the Department to add conditions to a permit during the extension process in order to ensure that the public interest considerations are met. However, as long as the approval can be issued in a way that protects the public interest considerations, there is no affirmative obligation for the Department to pile on with additional conditions. As explained in the DOJ guidance memo, that authority to

add conditions in an extension process is limited to ensuring that the public interest concerns that underpinned the original permit are protected, and does not allow new public interest concerns to be shoehorned in. See DOJ memo at page 5-6:

“Determining whether a time sensitive condition can be satisfied does not mean that the Department can waive the condition, impose an alternate condition or otherwise effect a permit amendment. See ORS 537.211 (setting out the process and the extent of permissible permit amendments). The Department is not granted the authority to reassess the public interest that underlies the condition in this manner. Rather, the Department is limited to determining whether the existing condition can be satisfied, that is whether the purpose and result of the condition can be achieved. Because permit conditions arise out of public interest consideration, the determination of whether a particular condition has been, or can be met, should be guided by the public interest considerations that prompted imposition of the condition in the permit.”

In its vague reference to every other law out there, Protestant is essentially asking the Department to use the extension process as a means to amend the original permit and to completely recalculate the original public interest considerations.

17. There is no requirement to consider climate change when reviewing extension applications.

Paragraph IV.A.17 finds fault in the PFO for failing to evaluate the impact of climate change on the resource at risk from additional water withdrawals. As a threshold matter, this statement reveals a misunderstanding of the permit being extended – it does not involve “additional water withdrawals.” It involves an extension of a permit that allows storage of water in a reservoir. More to the point, the Department reviews extension applications according to a preexisting set of approval criteria (see, e.g. OAR 690-315-0040) and those criteria do not invite the Department to approve or deny extension applications on the basis of existential risks associated with climate change.

18. The extension is consistent with the public interest.

Paragraph IV.A.18 of the protests claims the extension is contrary to the public interest. As explained in the guidance memos, the extension process is the mechanism by which unmet conditions can be met; additional conditions can be imposed if they are necessary to implement the public interest considerations made during the initial permit review; the extension process is not an opportunity for the Department or opponents to completely rewrite the permit’s public interest considerations.

Paragraph 18 also cites a litany of statutory and rule authorities that are not relevant to the standards governing the current extension application. The citation to OAR 690-410-0070(2)(h) illustrates the depth of Protestant’s confusion, as that rule is relevant to “new

out-of-stream allocations,” whereas the application at issue here involves a use that is neither new, or out-of-stream.

19. The extension will not impact the Elk River.

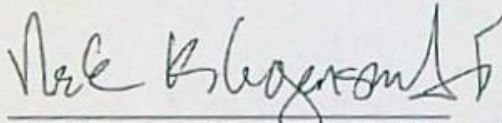
Paragraph IV.A.19 merely repeats the assertions of paragraph 14. It was addressed above.

III. Conclusion

For the reasons stated above, the PFO is correct and should be issued as a Final Order. Protestant has provided no colorable basis by which to grant its request for a contested case hearing. Pursuant to OAR 690-315-0060(3)(b)(A), a contested case hearing is appropriate only when there are “significant disputes related to the proposed agency action.” Protestant’s legal theories are facially inadequate or simply not relevant to approval criteria for extensions. Therefore, there is nothing in the Protest that would rise to the level of a “significant dispute.”

Dated: February 3, 2015

Respectfully submitted,



Nick Klingensmith, on behalf of Knapp Ranches, Inc.
Law Office of Bill Kloos, PC
375 W. 4th Ave, suite 204
Eugene OR, 97401
(541) 912-5280
nickklingensmith@landuseoregon.com

2-3-15 Call to Sean Malone ORCA R-94100
(363) 859-0403 LM Protest

Call to Cameron no position on
Mtg

Call to Nick Kingsmith ✓

walk
oppose hearing

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Application for)
an Extension of Time for Permit R-12770) **PERMIT HOLDER'S**
) **RESPONSE TO PROTEST**
In the name of) **OF WATERWATCH**
Knapp Ranches, Inc.)
_____)

This response is submitted on Behalf of Knapp Ranches, Inc., the permit holder and beneficial user of water authorized to be stored by Permit R-12770. The Proposed Final Order makes findings that are factually correct and consistent with applicable approval standards for extensions. The PFO correctly proposes to grant the Extension Application, and it should be made final.

The permit holder and petitioner in this protest is:

Knapp Ranches, Inc.
P.O. Box 32
Port Orford, OR 97465

I. Background facts:

The permit holder applied for an Extension of Time on April 18, 2014. On November 18, 2014, the Water Resources Department (hereinafter "the Department," or "WRD") issued a PFO that would approve the requested extension, moving the deadline for completion of the water system and application of water to beneficial use to October 1, 2017. On January 2, 2015, WaterWatch filed a Protest to this PFO, arguing the extension should be denied. The permit holder now responds to the issues presented in the Protest of WaterWatch, and provides an explanation of why the PFO is correct and should be made final.

The permit holder operates a cattle operation on a roughly 1000-acre ranch, and it also operates a small gravel quarry on the same property. On January 31, 2000, the Department issued two interrelated permits to Knapp Ranches, Inc. Permit R-12770 authorized the storage of up to 100 AF in a reservoir to be built on a tributary of the Elk River, and Permit S-53648 authorized the annual use of 100 AF of water stored in that reservoir in the split amount of 60 AF for summer irrigation of 189.5 acres, and 40 AF for year-round mining uses. The water system for irrigation and mining necessarily includes the reservoir works as an integral part of the system.

The permit holder also received a permit to develop a groundwater source for irrigation use (Permit G-13782) but that point of diversion proved to be impracticable, and it was

only partially developed. The permit holder abandoned its efforts to complete this permit, and it was cancelled on August 1, 2014.

Historically, there was unpermitted use of water on the ranch. The ranch had gradually acquired irrigation equipment over the years, and it had roughly 4,000 feet of functioning mainline in place, prior to the issuance of the 2000 permits. The permits issued in 2000 were sought to obtain permits for the historic use of water and bring the ranch into full compliance with applicable regulations. This effort to come into compliance was pursued in good faith, and the vast majority of the authorized work was completed within the first year following issuance of the permits.

The source of water that fills the reservoir originates on the permit holder's property. Surface runoff from winter precipitation is the predominant source of water, in addition to surface flows coming from an intermittent groundwater seep that originates a short distance uphill (west) of the reservoir. The reservoir drains into a poorly-defined channel that crosses the permit holder's pastures, before draining into the lower estuary of the Elk River. The entire length of the "unnamed tributary" is less than two miles. The tidal exchange, both in the lowest reaches of "unnamed tributary" and in the Elk River estuary, is the primary mechanism responsible for controlling the water temperature downstream of the reservoir.

The permit that authorized construction of the reservoir required that actual construction must have commenced by December 15, 2000, and it required that complete application of the water to the designated beneficial use (storage) must have been made by October 1, 2004.

The reservoir was constructed in the summer of 2000 by placing a 36" culvert on an existing roadway and then filling the roadway, essentially raising it, with rock from an adjacent quarry. The rock fill under the roadway comprises the dam. A deep point was excavated in the reservoir to accommodate an intake pipe for a pump, and spoils from this excavation were also added to the downhill side of the roadway fill. The pier that would hold the intake pipe was constructed in 2000, and a graduated staff gauge was affixed to this pier. This measuring device has remained in good working order. This history of construction is explained by the Declaration of Jeff Knapp, attached hereto as Exhibit A.

At this point, the large culvert should be modified to include a gated valve so that the amount of water stored in the reservoir could be more easily controlled. The current condition of the reservoir is shown in the photos attached hereto as Exhibit B. These photos show the permit holder has: (1) put water to the designated beneficial use of storage; (2) maintained the reservoir and its associated surface water uses (irrigation and mining) in good repair and working order; (3) endeavored to meet its monitoring and reporting obligations, and (4) substantially complied with the permit's conditions of approval.

The permit holder recognizes it has not yet achieved 100% compliance with all of the conditions of the permit, but it has consistently shown good faith and due diligence in developing the use allowed by the permit. The largest requirement that is still unfinished is the filing of the claim of beneficial use to perfect this claim. The permit holder's explanation for failing to timely do so is simply due to confusion on the permit holder's part - it should be obvious that the permit holder would not have put so much time, effort and expense into developing the permitted use, only to abandon the permit in the very final chapter before perfection. That is why the permit holder sought this extension - to wrap up the last stages of work necessary to fully comply with conditions and to file the claim of beneficial use.

The permit holder also acknowledges that its reporting has been spotty. There has been considerable confusion amongst members of the permit holder's family-held corporation and the contractor that operated the adjacent gravel quarry (which has been using water pursuant to Permit S-53468). The Oregon Water Use reporting program shows only partial reports of water used (diverted from the reservoir) and only for some years. The reports shown online reflect the readings from the totalizing flow meter associated with the mining component of the surface water use.¹ In addition to the mining use that has been reported, the applicant has recently located amongst its files a notebook of water use figures, attached hereto as Exhibit C. These figures reflect the reading from the totalizing flow meter for the irrigation side of the surface water use allowed by Permit S-53468.

The permit holder understands that these cumulative use figures are more relevant to demonstrating compliance with Permit S-53468 than they are to demonstrating compliance with Permit R-12770. Nonetheless, these records are general evidence of the permit holder's good faith effort to comply with the terms and conditions of the permits.

II. Response to Protestant's specific claims

I. Season of storage; measuring "pass through" flows

Paragraph IV.A.1 of the Protest asserts that the permit only allows storage from November 1 through April 30. This is correct. The concept of impounding winter flows and drawing down this stored water in the summer is intended to ensure that the natural summer flow regime is not interrupted or diminished. The standard condition on the permit that requires upstream and downstream weirs or other mechanism for measuring summer flows on both ends of the reservoir is intended to ensure that the correct amount of summer flows are "passed through" the impoundment. However, in the current situation, the natural summer flows have always been negligible, and the upper

¹ There has been some confusion as to whether all of the reports for water used in the gravel operation have been submitted via the online water use reporting system, as multiple individuals have been responsible for operating this facility. It remains possible that additional records of water used for the gravel pit may be encountered.

headwaters of this "unnamed tributary," where the impoundment is located, are largely fed by surface runoff of winter precipitation. The small amount of water that seeps through the marshy ground upstream of the reservoir is diffuse and would be very difficult to measure. In other words, when it isn't raining, there simply isn't much water coming into the reservoir. On top of that, when it is raining, runoff enters the reservoir from multiple depressions and forks in the valley. It is therefore impractical to measure the summer flows coming into the reservoir. This should be obvious by reviewing the satellite imagery (attached as Exhibit D) which shows the reservoir perched up in the top of the small watershed of the "unnamed tributary." It was on this basis that the Watermaster informed the permit holder that he would waive the requirement for instream and downstream measuring devices.

The Watermaster's waiver is in writing. Initially, the Watermaster issued the waiver orally, and the permit holder relied on that statement. Later, the Watermaster reduced this waiver to writing. Currently, the permit holder cannot find its copy, but multiple members of the permit holder's corporation have reported seeing it recently. The Watermaster who issued the waiver, Mitch Lewis, has recently retired, and has proven very difficult to locate. The permit holder is hopeful that a copy of this waiver will surface soon.

A. The Protestant takes issue with the Watermaster's waiver, but that is not relevant to whether the permit holder qualifies for an extension.

The Protestant has complaints with how the Watermaster reached his decision that the condition requiring measuring weirs could be waived. The protestant should direct its criticism toward the Watermaster's decision, not to the permit holder. This boils down to a basic fairness issue – the permit holder should not be punished for merely following the Watermaster's instructions that it would be acceptable if measuring weirs were not installed.

B. The Protest misrepresents the guidance memos from DOJ and WRD.

The purpose for applying for this extension was to provide the permit holder with the opportunity to achieve full compliance with permit conditions and to file a claim of beneficial use. Protestant cites two guidance memos from DOJ and WRD that explore the question of how extensions can be used to cure imperfect compliance with permit conditions. Without quotation or analysis, Protestant characterizes these memos as requiring permit cancellation whenever a condition has been missed. The essence of Protestant's argument is that once a condition is not met, the public interest considerations that supported the imposition of the condition in the first place can never be achieved. (See Protest at pg. 4: "[T]he damage to the public interest cannot be undone.")

However, the memos stand for the *opposite* proposition than has been represented by Protestant. These memos are attached as Exhibits E and F. Both of these memos are

explicit that that the types of conditions at issue here *can be* cured through the extension process, and that the extension process is the appropriate mechanism for achieving compliance with conditions. (The inverse is equally true: a permit holder who was in perfect compliance with all conditions would *never* have any need to request an extension – they would simply file the claim of beneficial use.)

The DOJ memo explains that extensions exist for the very purpose of ensuring full compliance with conditions. On pg. 6 it refers to extensions as the method “[T]o complete development and satisfy an un-met condition...” and on pg. 7 it states that a “[T]ool for insuring compliance with permit conditions is the permit extension process.” The DOJ memo treats the extension process as the “process for cure,” and it provides on pg 6 the following illustration:

“One example of where failure to meet a time sensitive condition could be cured at a later day is in the case of a meter installation condition that requires installation of a meter before water use begins.”

On page 8 the DOJ memo explains:

“Where the Department determines that one or more permit conditions have not been met at the certificate stage, the process for cure is through the permit extension process. In the permit extension proceeding, compliance with permit conditions is a factor to be evaluated in the good cause review but is not determinative of the outcome.”

An additional guidance memo, produced “in house” by WRD, provides further analysis of this issue, and reaches conclusions consistent with the DOJ memo. The WRD memo states at page 2:

“4. If at the certificate stage the Department discovers that a condition has not been met, the permit holder may seek an extension to cure the un-met condition, prior to certification of the permit.”

Applying these memos to the current scenario, the permit holder is largely compliant with all conditions of the permit, with the exceptions of the condition requiring a functioning conduit/gate on the 36” culvert and the condition requiring monthly recording of the amount of water impounded in the reservoir. The missing gate in the culvert could be installed now, and this would provide a method by which to raise and lower the level of the reservoir. Until this point, water has been flowing into the reservoir and allowed to passively spill out the other end, and no injury to the public interest has occurred. As a practical matter, the volume of the reservoir is sufficiently large, and the irrigation and mining diversions sufficiently small, the reservoir effectively buffers any summer withdrawal, and summer outflows from the culvert are not interrupted or even appreciably diminished, even during active pumping.

By the same token, the permit holder installed the required staff gauge, but has been admittedly disorganized in keeping the necessary records of reservoir volume. The permit holder has focused on keeping record of the cumulative water diverted from the reservoir, via totaling flow meters.

In its discussion of the guidance memos, Protestant misses the fundamental point that the extension was requested *for the purpose* of coming into compliance with all conditions. As explained in these memos, that is exactly the mechanism that the extension process is intended to provide.

2. ODFW Division 33 review

In paragraph IV.A.2, Protestant asserts that, as part of ODFW's review of the original permit application, ODFW concluded that the property should enroll in an NRCS program called CREP. The Department followed this recommendation, and added the condition to Permit G-13782. That particular permit authorized development of a groundwater source for irrigation uses, and, as described above, that permit was never fully developed and has been cancelled, with the consent of the permit holder. The condition was never added to Permit R-12770.

The protestant now takes the position that this condition requiring enrolment in the CREP program *should have* been added to Permit R-12770 as well. The Protestant seems to believe that the Department's issuance of Permit R-12770 without this condition is somehow relevant to whether the extension for the reservoir permit should be granted.

At this point, we have no reason to doubt that the Department intentionally omitted the CREP condition from Permits R-12770 and S-53648. However, assuming that the Department did originally intend to add the CREP condition when the permits were issued in 1999, Protestant's complaint now is a collateral attack outside of the extension process. If Protestant thought that Permit R-12770 was deficient because it was missing a condition when it was issued in 1999, the appropriate time to object to that omission would have been when public notice was given of the permits that were being proposed in 1999. Quite simply, the CREP condition was never associated with the permit that is now subject to the extension application, and Protestant should not be allowed to ambush the permit holder fifteen years later for failing to comply with a condition that never existed for this permit.

3. Good cause exists to issue the extension

Paragraph IV.A.3.a asserts that the permit holder has not shown reasonable diligence in constructing the project or in using the water. This statement is without any relevant basis and ignores the clear statements provided in the Extension Application.

Protestant argues that an earthen structure that impounds water can't be called a dam if it has road on top. Under this binary approach, Hoover Dam would not be a dam, because it has a road on top. This argument merits very little discussion; it is incorrect for apparent reasons.

The photos provided in Exhibit B provide an illustration of what was described in the original Extension Application – the dam was raised in 2000, a large culvert was installed in 2000, the pier for the intake was installed in 2000, and the measuring staff was installed in 2000. The upstream and downstream measuring weirs were not installed because the Watermaster waived that requirement.

In addition, the Protestants would find fault with the fact that the dam wasn't raised high enough, to the full 9.5 feet allowed by the permit. The permit provided *maximum* dimensions: 7.0 acres of surface area, 20 feet maximum depth, and a dam that was up to 9.5 feet high. Rough estimates from Google Earth show that the surface area of the completed reservoir, as it was built in 2000 and as it exists today, is just under 7.0 acres. Given the topography of this small canyon, if the dam were any higher, the reservoir would exceed the maximum surface area. The Protestant is now arguing that the permit holder should have built the highest possible dam, which would have led to an illegally large impoundment.

Finally, without any explanation, the Protestant suggests that the financial investments in building the dam were not reasonably large to constitute reasonable diligence in constructing the dam. Operating a ranch in remote southern Oregon is not a venture awash in disposable cash. If a permit holder is authorized to create a reservoir in a small valley, and if the permit holder also has a gravel pit on a ridge overlooking that valley, the reasonable approach to minimize expense and hassle would involve using the locally available rock. The expense estimates in the original Extension Application, supported by the invoice summaries from Coos Curry Supply Co. for the surface water diversion, (attached hereto as Exhibit G) illustrate that irrigating a ranch is no casual undertaking.

Paragraph IV.A.3.b asserts without any attempt to explain, that “the permit holder violated essentially every permit condition it was required to comply with.” As explained in the factual summary above, the permit holder is in substantial compliance with the permit. The permit holder was required to have begun actual construction within a year of the permit issuance; in this case, the permit holder had *largely completed* the required construction within that first year. Indeed, as conceded above, the reporting has been spotty, but the permit holder expects it will be able to locate many, if not all, of the missing records of water diverted. The lack of upstream and downstream measuring weirs that would ensure the reservoir was “passing through” summer flows cannot be characterized as a “violation” on the permit holder’s part, when there is an express waiver from the Watermaster on this point.

Paragraph IV.A.3.c asserts that the cost remaining on the project is excessive. The cost to develop the project, up to this point, has been considerable, as stated in the extension

application. The cost to complete it primarily involves hiring the CWRE to help prepare the claim of beneficial use. Additional anticipated costs involve modification of the culvert to include an adjustable gate that would allow the permit holder to exercise more control over the volume of water retained.

Paragraph IV.A.3.d is overly dramatic. The fact that in 1999 the permit holder discontinued its historic unpermitted use of water and actively sought to come into compliance speaks volumes. The permit holder met the core substantive requirements of these permits in a remarkably short time, both in terms of construction of the reservoir and surface water infrastructure, and in putting water to beneficial use. The claim of beneficial use necessary to perfect this use was not filed on time because the permit holder was under the mistaken impression that it had fully performed all that was required of it.

Paragraph IV.A.4. appears to have been skipped in Protestant's numbering scheme. The permit holder is following that same convention, in order to keep the corresponding numbering for the response paragraphs.

5. Actual Construction began and was largely completed on time

In Paragraph IV.A.5, Protestant claims that actual construction did not commence within the required timeline. It seems possible that Protestant might be using a standard template for its Protest, without regard for the actual facts here. As stated in the Extension Application, the dike was built, the culvert was installed, the pier and intake pipe were constructed, and the staff gauge was installed, all in the summer and early fall of 2000. In addition, the attached aerial from 2000 (Exhibit H) shows a field of fresh, un-vegetated fill on the downstream side of the dam. The Protestant returns to its theory that a road can't form a dam, and *vice versa*. As discussed above, that theory is entirely devoid of merit. The Protestant also reiterates its previous theory that the dam should have been built to the full height of 9.5 feet. For the same reasons discussed above, the permit authorized a dam *up to* 9.5 feet, and if the permit holder had built a larger dam than what it currently has, it would have made the reservoir exceed the maximum 7.0 acres of surface area.

In summary, the permit holder would ask this of the Protestant: if filling one end of a small valley with quarry rock, and placing a culvert in the fill, and impounding water behind that fill, does not constitute actual construction of a dam, *then what does?* How does Protestant build its dams?

6. The PFO is sufficient

Paragraph IV.A.6.a of the Protest focuses on OAR 690-315-0040(4), which lists factors that the Department is to consider when it determines the "market and the present

demand for water or power,” before issuing an extension. The Protestant starts off with an argument that OAR 690-315-0040(5)(c) requires the Department to consider the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife. There is no administrative rule by this citation; presumably the Protestant meant OAR 690-315-0040(4)(c).

Finding 14(a) of the PFO demonstrates that the Department did, in fact, consider these issues, including specific reference to the stream flow restoration needs determined by ODFW and the location of the source of water within a sensitive, threatened or endangered fish species area, as identified by ODFW. The analysis provided by the PFO is adequate to meet this requirement that habitat needs be considered.

In Paragraph IV.A.6.b, the Protest states that the PFO failed to consider special water use designations established since permit issuance, such as 303(d) designations, as required by OAR 690-315-0040(4)(b). The PFO finds that “The point of diversion is not in a location listed by the [DEQ] as a water quality limited stream.” This is true. A determination that the source of water is not on a list of special use designations satisfies this requirement to consider special use designations.

If, however, the Department were to broaden its inquiry beyond the source of water and look to the special use designations for additional waters downstream of the unnamed tributary, the Department would find that the Elk River has a 303(d) designation for water temperature. The Department would further find that there is no TMDL for this limiting factor. The facts would show that the “unnamed tributary” has a negligible and immeasurable influence on water temperature within the Elk River, as the unnamed tributary flows into the Elk River at the lower estuary, and the temperature for that reach of river is controlled by tidal exchange. If the unnamed tributary had any bearing on temperature of the Elk River estuary, the storage of winter flows in the deep and largely shaded reservoir, and the diversion and subsequent partial return flows of that stored water during irrigation practices, would surely have a net cooling influence on surface waters temperatures, at least in the unnamed tributary itself. This cooling influence would likely be unmeasurable in the Elk River estuary. However, the rule doesn’t require the Department to go to that length of analysis in reaching its determinations of market and present demand for water or power.

In Paragraph IV.A.6.c, the Protest states that the PFO fails to take a fresh look at water available to satisfy other affected water rights, including the instream water rights. The extension rules do not require an extension applicant to meet all the standards that apply when a new permit is applied for, but that appears to be Protestant’s argument – essentially that WRD should do a review as if no permit exists, and only issue the extension if there is surplus water available for a new permit. However, WRD correctly considered information from ODFW and WRD’s own review from the time when the application was considered and a permit granted. Given that the permit holder has developed its reservoir and has also been putting the water to the beneficial uses allowed by the associated Permit S-53648, the current situation is not as if the permit holder is

suddenly proposing to commence a use that had previously been approved but had never been developed. In other words, other users of waters downstream of the current appropriation will see no measureable change from granting the extension.

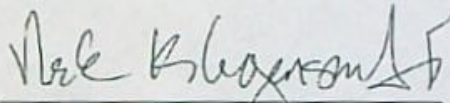
This is also a novel situation in that there are zero permits or certificates downstream of the contested reservoir that authorize the diversion of water. The only other water right between this reservoir and the Pacific Ocean is a reserved instream right held by WRD. See Certificate 59869. Because this reach of the river is so heavily influenced by tidal exchange, the outcome of this extension request would lead to no appreciable difference in the amount of water available for the reserved instream use.

III. Conclusion

For the reasons stated above, the PFO is correct and should be issued as an FO. Protestant has provided no colorable basis by which to grant its request for a contested case hearing. Pursuant to OAR 690-315-0060(3)(b)(A), a contested case hearing is appropriate only when there are "significant disputes related to the proposed agency action." All of Protestant's theories are so completely specious (*e.g.*, Protestant's misrepresentation of DOJ and WRD guidance memos, Protestant's argument that a dam isn't a dam if it has a road on it, Protestant's argument that the permit holder should have been required to build a dam up to the maximum 9.5 feet, etc.) there is nothing in the Protest that would rise to the level of a "significant dispute."

Dated: January 27, 2015

Respectfully submitted,



Nick Klingensmith, on behalf of Knapp Ranches, Inc.
Law Office of Bill Kloos, PC
375 W. 4th Ave, suite 204
Eugene OR, 97401
(541) 912-5280
nickklingensmith@landuseoregon.com

List of Exhibits:

- Exhibit A: Declaration of Jeff Knap
- Exhibit B: Photos of current reservoir, irrigation system and mining system
- Exhibit C: Record log book of irrigation meter
- Exhibit D: Recent Google Earth satellite image
- Exhibit E: Attorney General's memo advising WRD on extensions Receipt
- Exhibit F: WRD internal guidance memo on using extensions to ensure compliance with permit conditions
- Exhibit G: Invoice summaries for purchase of irrigation and water system supplies
- Exhibit H: Aerial photo from summer 2000

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09-03 35258200

10-03 38214700

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05-04 38244700

06-04 39570600

07-04 41259900**08-04 44025300**

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10-06 73048300

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6-07 73601100

7-07 74988700

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5-08	83051200
6-08	84737400
7-08	86690800
8-08	89233700
9-08	92291500
10-08	92770100

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06-09	92770100
07-09	95083600
08-09	977713000
09-09	100746800
10-09	102459500

No. 302

02-10 112457500

07-10 113422000

08-10 113467100

09-10 113473700

10-10 113483600

No 302

06-11 112838600

07-11 115671300

08-11 119099200

09-11 123101900

10-11 124047700

No. 502

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08-12	129059500
09-12	132954600
10-12	134010800

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Oregon Water Resources Department
Water Right Services Division

PROPOSED FINAL ORDER

In the Matter of the Application for an Extension of Time for Permit R-12770, Water Right Application R-84100, in the name of Knapp Ranches Inc.

	Permit Information
Application:	R-84100
Permit:	R-12770
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	February 4, 1999
Source of Water:	An unnamed stream, a tributary of Elk River
Purpose of Use:	Stored water to be appropriated under application S-84101 for irrigation and mining use
Maximum Volume:	100.0 (AF) each year from November 1 through April 30

*****Please read this Proposed Final Order in its entirety as it may contain 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, 2004 to October 1, 2017.
- Grant an extension of time to apply water to full beneficial use from October 1, 2004 to October 1, 2017.¹
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

¹ Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department

PFO – Proposed Final Order

cfs – cubic feet per second

gpm – gallons per minute

AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order 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) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

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.

FINDINGS OF FACT

Background

1. Permit R-12770 was granted by the Department on January 31, 2000. The permit authorizes the storage of up to 100.0 AF of water each year from November 1 through April 30 of water in an unnamed reservoir diverted from an unnamed stream, a tributary of Elk River, to be appropriated under application S-84101 for irrigation and mining use. The permit specified actual construction was to begin by December 15, 2000, and the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004.

2. The permit holder, Knapp Ranches Inc. submitted an "Application for Extension of Time" to the Department on April 18, 2014, requesting both the time to complete construction of the water system be extended from October 1, 2004 to October 1, 2017 and the time to apply water to full beneficial use under the terms of Permit R-12770 be extended from October 1, 2004 to October 1, 2017. This is the first permit extension requested for Permit R-12770.
3. Notification of the Application for Extension of Time for Permit R-12770 was published in the Department's Public Notice dated May 6, 2014. Four comments were received during this comment period.
4. In summary, three commenters raised concerns about compliance with permit conditions, the application being incomplete, and discrepancy in water use reporting.

Review Criteria [OAR 690-315-0040]

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 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230², 537.248³ and/or 539.010(5)⁴.

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

5. On April 18, 2014, the Department received a completed Application for Extension of Time 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)]

6. Actual construction of the water system began prior to the December 15, 2000 deadline specified in the permit. The location of the reservoir is a small canyon. In August of 2000 the reservoir was created by raising the elevation of a dip in the existing road a few feet with rock, replacing a culvert, and deepening an area for the pump intake.

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.

7. As of April 18, 2014, the remaining work to be completed consists of installing a fully functional conduit/gate assembly, submitting annual reports of the amount of water stored, obtaining a written waiver from the local Watermaster waiving the installation of a weir upstream and downstream of the reservoir, raising the elevation of the dam to 9 feet, storing water and applying water to full beneficial use.
8. Given the amount of development left to occur, the Department has determined that

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

the permit holder's request to have until October 1, 2017, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit R-12770 is both reasonable and necessary.

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

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

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

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

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

9. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the water system began prior to the December 15, 2000 deadline specified in the permit. In August of 2000 the reservoir was created by raising the elevation of a dip in the existing road a few feet with rock, replacing a culvert, and deepening an area for the pump intake.
 - b. Work was completed during the original development time frame under Permit R-12770. In September of 2000, the permit holder constructed a small pier, extending from the road to the new deepened portion to mount the intake pipe, and mounted a staff gauge to the intake pier.

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

10. The following beneficial use was made of the water during the permit or previous extension time limits:
 - a. Since the issuance of Permit R-12770 on January 31, 2000, the permit holder has reported using less than 100 AF stored to date, but water usage reports for mining submitted to the Department from 2001-2013 (minus no reporting for 2007 and 2001) reports 0 AF of water stored in the reservoir. The permit holder states in question 9-B "with limited resources available at the time, we installed a system that functions."

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

11. The water right permit holder's conformance with the permit or previous extension conditions.
 - a. The Department has found the following conditions were met: (1) a totalizing flow meter was installed, and (2) installed a staff gage.

The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the permit holder has not yet installed weirs or other suitable measuring devices upstream and downstream of the reservoir or obtained written documentation from the local Watermaster waiving a weir condition, (2) a gated valve outlet has not yet been installed, (3) annual reports of the amount of water used for irrigation each month have not been received by the Department.

- b. **Failure to comply with permit conditions constitutes illegal storage of water. In order to legally perfect the storage of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.**

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

12. As of April 18, 2014, the permit holder has invested approximately \$2,700, which is about 12 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$19,000 investment is needed for the completion of this project.

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

13. The Department has found good faith of the appropriator under Permit R-12770.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

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:

14. The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].
 - a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit R-12770; 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. The point of diversion is located on an unnamed stream, a tributary of Elk River, and is not located within a Withdrawn Area. The an unnamed stream, a tributary of Elk River is not located within or above a state or federal scenic waterway, however, it is located within an area ranked "moderate" 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. The point of diversion is not in a location listed by the Department of Environmental Quality as a water quality limited stream.

15. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
 - a. None have been identified.
16. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
 - a. According to comments received, since permit issuance the lower Elk River has been added to the state DEQ's 303(d) list. The Oregon Department of Fish and Wildlife (ODFW) 2014 Coastal Multispecies Management Plan has red flagged Elk River's fall chinook run as "non-viable". The Elk River supports federally listed Coho salmon.
17. 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. 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 1 of the "Conditions" section of this PFO, was determined to be necessary due to no additional work having been accomplished since October 1, 2000.

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

18. 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)]

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

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

20. None have been identified.

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 537.230(3).
2. 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).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Completion of construction and full application of water to beneficial use can be accomplished by October 1, 2017⁵, as required by OAR 690-315-0040(1)(c).
5. 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 17, above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-12770.

Continued on the following page

⁵Pursuant to ORS 537.230(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 a new or revised claim of beneficial use as deemed appropriate by the Department.

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 R-12770 from October 1, 2004 to October 1, 2017.

Extend the time to apply water to beneficial use under Permit R-12770 from October 1, 2004 to October 1, 2017.

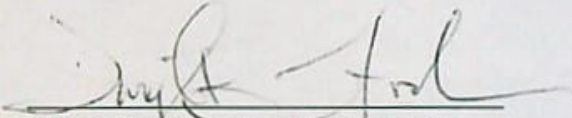
Subject to the following conditions:

CONDITIONS

1. **Last Extension Condition**

This is to be the last extension of time granted for Permit G-12770. Any future extensions of time requests will be denied.

DATED: November 18, 2014



Dwight W. 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(1) 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 January 2, 2014, 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:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed 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 proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed 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 protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant 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 protest 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 submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

-
- If you have any questions about statements contained in this document, please contact Mabelle Bamberger at (503) 986-0802.
 - 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 Patricia McCarty at 503-986-0820.
 - If you have any 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 Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
-

Mailing List for Extension PFO Copies

PFO Date: November 18, 2014

Copies Mailed

Application: R-84100

Permit: R-12770

By: BAJ
On: 11/18/14

Original mailed to Applicant:

Knapp Ranches Inc.
P.O. Box 32
Port Orford OR 97465

Copies sent to:

1. WRD - App. File R-84100/ Permit R-12770

Fee paid as specified under ORS 536.050 to receive copy:

2. None

Receiving via e-mail (10 AM Tuesday of signature date)
(DONE BY EXTENSION SPECIALIST)

3. WRD - Watermaster District 19, Mitch Lewis

CASEWORKER: MAB

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

1 In Re Proposed Final Order to Deny)
 2 an application for extension of time) **DECLARATION OF**
 3 for Permit S-53648) **Jeff Knapp**
 4)
 5 Knapp Ranches, Inc.)
 6 Permit holder)
 7 _____)

8
 9
 10 I, Jeff Knapp, hereby declare as follows:

- 11 1. I make this Declaration in connection with the protest that is being filed against the
 12 Department's proposed final order.
- 13 2. I am one of the owners and managers of the Knapp Ranches, Inc., which is the permit
 14 holder for Permit R-12770 and Permit S-53648. Permit R-12770 authorizes the
 15 impoundment of 100 acre-feet of water, and Permit S-53648 authorizes the use of 60
 16 acre-feet of water stored in that reservoir for irrigation and, in addition to use of 40
 17 acre-feet of stored water for mining uses.
- 18 3. The small reservoir is in the channel of an unnamed tributary of the Elk River; the
 19 tributary originates on the property owned by Knapp Ranches, Inc.
- 20 4. In summer 2000 (approximately July or August, if I recollect correctly) I started
 21 construction on dike improvements, as authorized by the Permits. There already was
 22 a road that crossed a small creek and that road caused a small amount of water to be
 23 impounded upstream of the road. The Permits authorized the placement of fill and a
 24 higher culvert in the road, with the result that the road was raised in elevation,
 25 forming a larger dam.

- 1 5. A 36" culvert was installed under the roadway, and a low point in the existing
2 roadway was raised by approximately 36" of rock from the adjacent quarry. The
3 raised road and higher culvert caused more water to be impounded.
- 4 6. In addition to installing the culvert and placing fill on the road, I oversaw an
5 excavation that created a deep point in the yet-to-be filled reservoir. This deep point
6 was intended to accommodate an intake pipe for a pump that would allow diversion
7 of water for the irrigation and mining uses that were authorized by Permit S-53648.
8 Spoils from the excavation of the deep point were utilized as part of the fill on the
9 down-stream side of the road. Additional fill was sourced from the adjacent gravel
10 quarry, which is very short distance to the northeast of the reservoir.
- 11 7. The majority of the work involved in raising the road and excavating the deep point
12 was accomplished during the summer of 2000, and was completed before fall rains
13 started.
- 14 8. In addition to improving the dike and digging the deep point for the irrigation intake
15 point, a pier was constructed on the dike in September 2000. This pier held the intake
16 pipe that was designed to lead directly to the pump. This pier replaced a smaller pre-
17 existing pier. A staff gauge was installed when the new pier was built.
- 18 9. In April of 2001, the irrigation system was finished by installing a 60 hp, 600 gpm
19 pump, valves, flow meters and approximately 1000 feet of mainline. The ranch was
20 already in possession of approximately 4000 additional feet of irrigation piping.
21 After the pump, gate valves and a "T" in the pipe allow water to be directed to the
22 northeast (to the gravel pit), or the west and south (to the pastures). Each direction of
23 pipe has a dedicated totaling flow meter, which shows the cumulative amount of
24 water used by each use authorized by Permit S-53648.

- 1 10. The works authorized by Permit R-12770 were begun and substantially completed in
2 2000. Construction of the works authorized by Permit S-53648 were begun in 2000
3 and were substantially completed in 2001. Application of water to both the mining
4 and irrigation uses authorized by this permit began in 2001.
- 5 11. In the following three years, but prior to October 1, 2004, the entire area designated
6 by Permit S-53648 as the "place of use" for the irrigation component of that permit
7 had been placed under irrigation, with the exception of a roughly 27.5 acre area on a
8 high bench that is to the south of the main pastures. The cost of piping water to this
9 marginally-productive upper field prevented development of that component of the
10 irrigation system.
- 11 12. It is my understanding that the mining company that has the contract to operate the
12 gravel pit has been returning records of water used to the Water Resources
13 Department. Use of water for this portion of the Permit has been sporadic, as it is
14 industry practice to process and wash a large amount of rock at one time, in order to
15 make a "stockpile."
- 16 13. Over the years, different family members and operators of Knapp Ranches, Inc., have
17 been responsible for record keeping of water used for the irrigation use. It is my
18 belief that, for the vast majority of years following the installation of meters in 2001,
19 records have indeed been kept showing use of water. However, locating those
20 records may be a significant challenge.
- 21 14. The attached photos, labeled "Exhibit A" show the current condition of the reservoir,
22 the pump, the gate valves and "T" and also the gravel washing station and irrigation
23 mainline. It is my belief that the current reservoir, irrigation use and mining use are
24 in substantial compliance with the permits that authorized development of these uses.

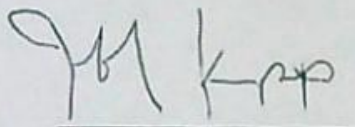
1 15. It is also my belief that Knapp Ranches, Inc. pursued the task of developing the
2 works authorized by Permit R-12770 and Permit S-53648 with adequate due
3 diligence. We began construction within the first year, largely completed
4 construction by the end of the second year, and began operating both mining and
5 irrigation uses by the end of the second year. I now appreciate that we neglected to
6 file our "claim of beneficial use" to perfect these rights on time, but there is no doubt
7 in my mind that we showed adequate hustle in developing the Permits from the
8 outset.

9

10 I declare under penalty of perjury that the foregoing is true and correct to the best of my
11 knowledge.

12

13 Dated 1-6-15 .



14 Jeff Knapp
15
16



Image U.S. Geological Survey

Google earth

Tour Guide 1994

Imagery Date: 7/26/2000 42°47'02.00" N 124°30'46.69" W elev 15 ft eye alt 1422 ft



Knapp Ranch Irrigation Reservoir

Looking East, towards the gravel pit, from the corral. The rusty culvert in the foreground was installed in 2000, in order to raise the road, and create the reservoir. Note the pump, and the intake pipe, which is attached to the pier.



The Knapp Ranch reservoir, and corral, looking West. The gravel pit is further up the hill to the East. The irrigation mainline runs along the left hand side of the road for the aggregate wash plant, and through the right side of the corral for the pastures.



The aggregate wash plant at Knapp Ranch, which is a few hundred feet to the East of the irrigation reservoir.



The Knapp Ranch reservoir, and irrigation pump, looking ESE. The pier, and intake pipe (up to the gray flange fitting), were installed in the fall of 2000.



Knapp ranch irrigation system, looking WSW. Note valves in the foreground, the nearest controls water to the gravel wash plant and the other to the pastures.



The arrow indicates the irrigation mainline route to the Knapp Ranch pastures, looking WNW.



The access road to the Elk River, looking North, from the West side of the corral. The right hand arrow points to the pasture irrigation water meter. The other two arrows are irrigation valves, and the connecting points where the 2001 mainline installation connected to the previously existing mainlines.

The pasture irrigation water meter at Knapp Ranch installed in the spring of 2001.
The meter location is noted in the previous slide.



Blue arrows mark the location of riser valves for buried mainline. The ranch had acquired mainline prior to and after 2000, and currently has approximately 5000 feet of mainline.



This irrigation valve is the furthest from the Knapp Ranch irrigation pump, nearly 3000' away. Note the Elk River in the background.





1994

© 2015 Google

Google earth

Imagery Date: 5/3/2013 42°47'06.60" N 124°30'43.09" W elev 18 ft eye alt 6742 ft

2001

Met

May

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June

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August

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6-02 13490600

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9-02 24189100

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9-01 11067500

10-01 13092200

FAX 302

05-03 26314300

06-03 26861100

07-03 28726300

08-03 31715500

09-03 35258200

10-03 38274700

05-04 38244700

06-04 39570600

07-04 41251900

08-04 44025300

09-04 48073900

10-04 49614700

Ms. 302

05-05	41614700
06-05	
07-05	52662900
08-05	55845700
09-05	60832000
10-05	61726500

110 300

5-06 61726600

6-06 62559200

7-06 64924300

8-06 67936600

10-06 73048300

016 303

5-07	73048300
6-07	73601100
7-07	74988700
8-07	77742800

No. 302

5-08	83051200
6-08	84737400
7-08	86690800
8-08	89233700
9-08	92291500
10-08	92770100

PA 302

06-09	92770100
07-09	95083600
08-09	97273600
09-09	100746800
10-09	103459500

Ms. 302

06-10 112459500

07-10 112412000

08-10 112467100

09-10 112472000

10-10 112438600

No. 302

06-4 112838600

07-11 115671300

08-11 119099200

09-11 123101900

10-11 124047700

Mo. 302

05-12	124047700
06-12	125471500
07-12	127014300
08-12	129059500
09-12	132954600
10-12	134010800

No. 302

05-13	124047700
06-13	125471500
07-13	127014300
08-13	129057500
09-13	132954600
10-13	134010800

NO. 302

05-14

006902571

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007488941

09-14

006682741



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 7, 2002

Dwight French
Water Rights Manager
Water Resources Department
158 12th St. NE
Salem, OR 97310

Re. Compliance With Permit Conditions
DOJ File No. 690-303-GN0023-98

Dear Mr. French

Permits allowing the use of water generally include conditions on the use of that water, some of which are standard conditions on all water rights of that type and some of which are specific to the permitted use. You have asked several questions about the relationship between compliance with those conditions and the Water Resources Department's (Department) decision whether to issue a certificate for a water right use.¹ Although you raise several related sub-issues, the central question is whether the Department may issue a certificate for a water right permit in the absence of compliance with the conditions of the permit. We conclude that the Department may not issue a certificate for a permit unless the conditions of the permit have been complied with.

DISCUSSION

1. The Department may not issue a certificate for a water use absent compliance with the conditions of the permit authorizing that water use.

The waters of the state "may be appropriated for beneficial use, as provided in the Water Rights Act and not otherwise * * *." ORS 537.120. With narrow exceptions, a person may not divert, pump or otherwise take control over surface or ground water without a permit from the Department. ORS 537.130, 537.535. The decision to issue a permit for surface water is made in the first instance following a determination by the Department that the proposed use of water will not impair and is not detrimental to the public interest factors set forth in ORS 537.153 and 537.170(8). In tandem with the public interest standard governing the decision to approve the

¹ The Department makes the decision on water right applications unless exceptions to the Department's decisions are filed with the Water Resources Commission. ORS 537.140 et seq, ORS 537.173. Our references to the Department include the Commission, as appropriate.

RECEIVED

MAR 27 2002

WATER RESOURCES DEP

proposed use, the Department is granted broad authority to impose conditions to ensure that the public interest is not impaired. A final order approving a proposed use of water "may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project * * * to protect the public interest." ORS 537.170(5). The Department "may approve an application for less water than applied for, or upon terms, limitations and conditions necessary for the protection of the public interest * * *." ORS 537.190(1). Finally, the permit "shall specify the details of the authorized use and shall set forth any terms, limitations and conditions as the Department considers appropriate * * *." ORS 537.211.² The conditions authorized by these statutes are often central to the Department's decision that the proposed use will not impair or be detrimental to the public interest. In many cases the Department *could not make* that decision but for the conditions. It is against that background that we examine whether the Department may certificate a water use absent compliance with the permit conditions.

Once a water use has been fully developed under a permit, the permit holder must apply to the Department for a certificate of water right. The certificate constitutes "conclusive" evidence of the priority and extent of the appropriation. ORS 537.270. It represents a vested right to the use of water described in the certificate. *Green v. Wheeler*, 254 Or 424 (1969); see also Letter of Advice to William R. Blosser, Chairperson, Water Resources Commission from Melinda Bruce, Assistant Attorney General, March 18, 1988 (advising that the commission may not reassess whether a previously certificated right is consistent with the public interest). To obtain a water right certificate a permit holder must, under ORS 537.230(1), begin construction and continue that work with reasonable diligence to completion, which may not exceed five years. "[U]pon completion of beneficial use," the permit holder must hire a certified water right examiner ("CWRE") to survey the appropriation. ORS 537.230(3). Once the survey has been completed, the permit holder must submit a map of the survey, with a request for a water right certificate, to the Department. ORS 537.230(3).³ The Department must decide whether or not to issue a certificate in accordance with ORS 537.250(1). That statute provides in part:

After the [Department] has received a request for issuance of a water right certificate accompanied by the survey required under ORS 537.230(3) that shows, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the department shall

² Groundwater permits are issued pursuant to ORS 537.535 et seq. Like the surface water statutes, the groundwater statutes allow for conditions and require a similar public interest review. See e.g. ORS 537.621, 537.620, 537.625, and 537.628.

³ ORS 537.230(3) provides in part:

Except as provided in ORS 537.409, upon completion of beneficial use as required under subsection (1) of this section, the permittee shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after application of water to a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map of the survey as required by the [department], which shall accompany the request for a water right certificate submitted to the department under ORS 537.250.

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issue to the applicant a certificate of the same character as that described in ORS 539.140.

Perfection of the water right under this statute clearly requires construction of the physical means of water delivery, and application of water for the use specified in the permit, before certificate issuance. *Green v. Wheeler, supra*. The statute does not, however, specifically refer to compliance with permit conditions as a requirement for certification. The question is whether compliance with all conditions of the permit is required for perfection in accordance with the Water Rights Act. We are persuaded that the Department must require that compliance before a certificate may issue.

Issuance of a permit authorizes the holder to "proceed with the construction of the necessary works," to "take all action required to apply the water to the designated beneficial use and to perfect the proposed appropriation." ORS 537.211(1). That provision suggests three steps: construction of the works, initial application of water to beneficial use, and perfection of the appropriation. The statute does not define "perfection of the appropriation." But the phrase clearly means something in addition to construction of the project and initial application of water to beneficial use. *Green v. Wheeler, supra*, at 430 (application of water not sufficient to establish entitlement to certificate; fulfillment of other conditions also is required). That meaning may be found in ORS 537.250(1), which provides that the Department must issue a certificate if the final proof survey shows, "to the satisfaction of the department, that an appropriation *has been perfected in accordance with the provisions of the Water Rights Act * * **" *Id.*

The Water Rights Act is defined under ORS 537.010 to include ORS 537.140 to 537.252. As defined, the Water Rights Act includes the statutes discussed above that require the Department to make a public interest determination for a water right application, and to impose conditions on the use to protect the public interest. The Water Rights Act also includes other development requirements, such as pursuing completion of perfection with reasonable diligence, and hiring a CWRE to conduct a final survey proof survey upon "completion of beneficial use." ORS 537.230. These requirements must be met for a water right to be considered developed. Taken together, these statutes suggest that perfection of an appropriation is intended to encompass all of the water right development requirements in the Water Rights Act including construction of any necessary works, completion of application of water to beneficial use, compliance with the conditions of the permit, prosecuting construction with reasonable diligence and submitting final proof completed by a CWRE. It follows that the Department may not issue a certificate unless it determines that the use has been developed in compliance with the conditions of the permit, because until the conditions of a permit have been met, the appropriation has not been perfected.

This conclusion is reinforced by the central role that permit conditions play in the permitting decision. The conditions placed in a permit by the Department set out the parameters for developing the water right. Conditions ensure that a proposed water use will meet the legislative standard for water use, i.e. that the use will not impair or be detrimental to the public interest. It would be anomalous for the legislature to impose a public interest standard and to authorize the Department to impose conditions to achieve that standard, only to allow the

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Department to recognize a vested right to that water use, by issuing a certificate without finding compliance with the conditions. Likewise, it would be anomalous for the legislature to authorize cancellation of permits for willful violation of any permit provision and then allow for issuance of a certificate without requiring compliance with permit conditions. See ORS 537.720 (authorizing cancellation for willful violations). Moreover, the legislature has authorized the Department to institute cancellation proceedings if it determines that an appropriation has not been perfected because of a permit holder's failure to comply with permit conditions. ORS 537.260(1).⁴ The central role of permit conditions in the water right permitting process together with the text and context of the water rights statutes, leads to the conclusion that permit conditions must be met before a certificate may issue.

Although the text and context of the Water Rights Act strongly support the conclusion that permit conditions must be met as a condition of certification, it should be noted that there is no express statutory text requiring compliance with permit conditions as a condition of certification. The lack of an express statement may be used to support an argument that the Department does not have the authority to withhold certification for failure to comply with permit conditions. The problem with this argument is that it fails to consider the specific authority to impose conditions, the central role that conditions play in the scheme of the Water Rights Act, and the discretion granted to the Director in ORS 537.250 to review a final proof survey for compliance with the provisions of the Water Rights Act. For these reasons, the better argument is that permit conditions must be satisfied before a water right certificate may issue.

2. The final proof survey must provide information about compliance with every permit condition that affects perfection of the appropriation.

Permits often impose "continuing" requirements, such as a requirement that the permit holder comply with state and federal water quality standards over the life of the water use. Permits also include "warning" conditions, such as a reminder that the water use is subject to the rights of senior water right holders. You ask whether the Department may tailor the final proof survey requirements so that the survey need not address these continuous or warning conditions.

The final proof survey is vehicle by which a permit holder demonstrates the extent of the appropriation, and by which the Department makes the required determinations about the perfection of the water right. ORS 537.250(1). Under ORS 537.230(3), the final proof survey is prepared by a CWRE hired by the permit holder. The function of the final proof survey is to detail the perfection of the appropriation. Provided that central function is met, the Department and the Commission may tailor the requirements of the final proof survey to maximize its usefulness.

To that end, the commission has adopted rules that guide preparation of final proof surveys. Under OAR 690-14-100(1), the CWRE must report on "the status of conditions and limitation in permits." The rule lists the types of conditions on which a CWRE must report and includes a catch-all for "any other conditions or limitations." This rule clearly requires the

⁴ ORS 537.260(1) authorizes cancellation if the permit holder fails to submit timely "proof of the appropriation as required ORS 537.230 and 537.250."

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CWRE to report on compliance with permit conditions. That requirement is consistent with the statutory direction that the final proof survey is to demonstrate the extent of perfection of the appropriation. ORS 537.250(1). We do not believe the Department is authorized either under ORS 537.250 or OAR 690-14-100(1) to exempt from the reporting requirement conditions that affect the perfection of the appropriation. Compliance with continuous requirements at the time of the final proof survey is relevant to perfection of the appropriation, even though the requirements continue in effect after certificate issuance.

In contrast, the "warning" condition described above – the reminder that the water use is subject to the rights of senior water right holders – does not fall within the category of a condition that affects the perfection of the appropriation. It is not a condition that requires performance by the permit holder. The condition is imposed by operation of the law of prior appropriation, independently of any activity of the permit holder. Given that, there is nothing on which the CWRE would be required to report. The Department lawfully may design a final proof survey form that does not require reporting on this type of warning condition.

3. *The Department may allow a permit holder to cure a failure to comply with time-sensitive permit conditions if measures are available to serve the public interest purposes that the condition was intended to address and achieve an equivalent result.*

You also have asked whether any remedy is available to a permit holder who has not complied with a time sensitive permit condition in a timely manner. Examples include permits that require particular action by the permit holder before actual diversion of water, such as installation of a water meter, and permits that require particular action by a date certain, such as submission of a water conservation and management plan within one year of permit issuance. If the permit holder begins water use without installing a water meter, or does not submit the water management plan by the date set forth in the permit, then the permit holder has not strictly complied with the permit conditions. You ask whether and in what circumstances the Department could issue a certificate for such a use, in spite of the non-compliance. In other words, may the Department allow the permit holder to "cure" the failure to comply with the permit conditions? The answer is a qualified "yes." We believe that if steps are available that allow a permit holder to cure non-compliance in a way that serves the interests the condition was designed to protect and reaches an equivalent result, the Department may allow that remedial activity as a means of compliance with permit conditions before certification.

By requiring proof "to the satisfaction of the department," ORS 537.250(1) confers on the Department discretion to determine whether and under what terms to issue a certificate. The Department must determine the extent of the appropriation, and whether the appropriation has been perfected in accordance with the Water Rights Act, including compliance with the terms and conditions of the permit. If a condition has not been met, the discretion granted to the Department in ORS 537.250(1) authorizes the Department to determine whether the appropriation can be brought into compliance with the Act, that is whether the condition can be satisfied.

Determining whether a time sensitive condition can be satisfied does not mean that the Department can waive the condition, impose an alternate condition or otherwise effect a permit

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amendment. See ORS 537.211 (setting out the process and the extent of permissible permit amendments). The Department is not granted the authority to reassess the public interest that underlies the condition in this manner. Rather, the Department is limited to determining whether the existing condition can be satisfied, that is whether the purpose and result of the condition can be achieved. Because permit conditions arise out of public interest consideration, the determination of whether a particular condition has been, or can be met, should be guided by the public interest considerations that prompted imposition of the condition in the permit.

One example of where failure to meet a time sensitive condition could be cured at a later day is in the case of a meter installation condition that requires installation of a meter before water use begins. The purpose of this condition is to allow the Department staff to be able to know the measure of a permittee's water use at any given time. Because the meter is for a real time purpose, rather than for a cumulative measurement purpose, the interest in having a meter can be served by installation of a meter at the time the absence of one is discovered.

In sum, permit holders may be able to cure unmet time sensitive conditions at the certification stage. Whether a condition is subject to cure will depend on the purpose for which it is imposed and whether that purpose may be met.

4. If at the certificate stage the Department discovers that a condition has not been met, the permit holder may seek a permit extension to cure the un-met condition, prior to certification of the permit.

The statutes that address certification of a water right give the Department considerable discretion when reviewing a final proof survey. As discussed above, ORS 537.250 vests in the Department the discretion to determine whether a water right has been perfected in accordance with the Water Rights Act, which requires consideration of whether permit conditions have been satisfied. If permit conditions have not been met, ORS 537.260 authorizes, but does not require, the Department to cancel a permit for failure to submit proof of completion of an appropriation as required by ORS 537.230 and 537.250. Neither of these statutes mandate a result where the final proof is not in compliance with the Water Rights Act. In fact, ORS 537.260, by not requiring cancellation, implicitly recognizes that the Department may proceed in a manner other than cancellation where inadequate proof of perfection has been submitted. The question is in what manner should the Department proceed.

Assuming that the development period under the permit has expired, the answer to what process applies to curing an unmet condition may be found within the extension provision in ORS 537.230(2) and the Department's extension rules in OAR chapter 690 divisions 315 and 320. ORS 537.230(2) allows the Department, for good cause shown, to order an extension of time for the period "within which irrigation or works shall be completed or the right perfected." As discussed above in section one, perfection of the right includes satisfaction of all of the water right development requirements under the Water Rights Act, including permit conditions. Thus, the statutory framework contemplates issuance of an extension where a water right has not been fully perfected at the close of the development period. The process for obtaining an extension to complete development and satisfy an un-met condition is provided in the Department's extension rules at OAR chapter 690, divisions 315 and 320.

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Based on the above statutes, the Department may allow a permittee, whose development period has ended and who has submitted final proof but has failed to comply with a permit condition, to withdraw the final proof and request for a certificate and apply instead for an extension to complete perfection of the appropriation. Where an extension is necessary and no request is made the Department may proceed to cancel the permit under ORS 537.260 for failure to submit proof of appropriation as required by ORS 537.230 and 537.250.

5. Permit conditions may be monitored and enforced through regulation and through the extension process.

Prior to the certificate stage the Department may have occasion to review compliance with permit conditions either through regulation or through the extension process. Either or both of these situations offer additional methods for monitoring and enforcing compliance with permit conditions.

The Department may enforce permit conditions through regulation by the watermaster and through imposition of civil penalties. Under ORS 540.045(1)(a), watermasters are charged with regulating the distribution of water among users "in accordance with the users' existing water rights of record in the Water Resources Department." Users' water rights of record include permits. ORS 540.045(4). Permit conditions are an integral part of the permit and describe how development and water use may occur under the permit. The watermaster is charged with insuring that water is used lawfully, which includes insuring compliance with permit conditions. In addition to regulation by the watermaster, the Department may impose civil penalties for "[v]iolations of any of the terms or condition of a permit[.]" ORS 536.900(1)(a), OAR chapter 690 division 260. In addition, for groundwater permits, willful violations of any provision of a permit subjects the permit to cancellation or suspension or imposition of conditions for future use to prevent further violations. ORS 537.720.

Another, although less direct, tool for insuring compliance with permit conditions is the permit extension process. As discussed above, a permit extension would be necessary in order to cure a failure to meet a permit condition at the certificate stage where the development period has ended. It follows from that conclusion that permit conditions do not necessarily have to be complied with to obtain a permit extension. However, under the current and future extension rules, compliance with permit conditions is a permissible factor to consider in the good cause evaluation and specifically is listed as a factor for consideration in OAR 690-315-040(3)(c).

CONCLUSION

The guidance that this advice provides for the administration of permit conditions may be summarized as follow:

- The Department may not issue a water right certificate without finding satisfaction of the permit conditions.
- The final proof survey must report on all conditions that affect perfection of the appropriation.

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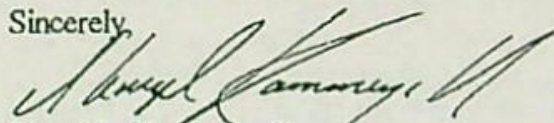
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- The Department may allow curing of an unmet time-sensitive condition, so long as the public interest purposes of the condition are met and an equivalent result is achieved.
- Where the Department determines that one or more permit conditions have not been met at the certificate stage, the process for cure is through the permit extension process. In the permit extension proceeding, compliance with permit conditions is a factor to be evaluated in the good cause review but is not determinative of the outcome.
- In addition to reviewing permit conditions in the extension process, the Department may review compliance with and enforce permit conditions through watermaster regulation and through imposition of civil penalties.

Please note that this advice necessarily is generalized to respond to the broad questions that were asked, please feel free to contact me if you have additional questions or questions regarding a specific case.

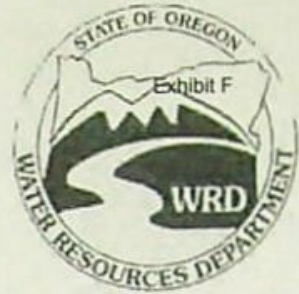
Sincerely,



Sharyl L. Kammerzell
Assistant Attorney General
Natural Resources Section

SLK:slk/GENA1304

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MEMORANDUM

To: Water Resources Department Staff

October 15, 2002

DWF *DB*
Dwight French, Water Rights Section Manager
Dick Bailey, Water Rights and Adjudication Division Administrator

INTERNAL GUIDANCE

Non-Compliance of Time Sensitive Permit Conditions when reviewing Claims of Beneficial Use and Extensions of Time¹

This memo supercedes the memo of February 14, 2002, on the same subject. Changes were made regarding reference levels and annual static water level measurements. In addition, the examples that begin on page three were re-ordered.

- Purpose:** The purpose of this memo is to give guidance to Department staff on how to process claims of beneficial use when performance condition compliance is lacking.²
- Problem:** At present, the Department has a backlog of several thousand permits awaiting certificate issuance. The majority of this workload is in the form of final proof surveys that need to be reviewed by the Department. Many of the permits issued since 1990 contain several specific performance related permit conditions. As the Department steps up its efforts to review final proof claims and contemplates certificate issuance, we must determine what constitutes compliance and actions to take when certain performance related permit conditions have not been satisfied.
- Discussion:** The Attorney General's Advice on this subject³, concluded the following:
- 1 The Department may not issue a certificate for a water use absent compliance with the conditions of the permit authorizing that water use.

This memo is not intended to address claims of beneficial use submitted by permit holders themselves pursuant to ORS 537.409 (10).

- ² All situations need to be handled on a case-by-case basis. There are many fact situations that have not yet been encountered. Therefore, rigid instructions are not possible nor appropriate. This memorandum will be modified and updated as the Department's position on various permit conditions is determined.
- ³ Dated February 7, 2002. DOJ File No. 690-303-GN0023-98. Prepared by Sharyl L. Kammerzell.

2. The final proof survey must provide information about compliance with every permit condition that affects perfection of the appropriation.
3. The Department may allow a permit holder to cure a failure to comply with time-sensitive permit conditions if measures are available to serve the public interest purposes that the condition was intended to address and achieve an equivalent result. ^{Exhibit F}
4. If at the certificate stage the Department discovers that a condition has not been met, the permit holder may seek an extension to cure the un-met condition, prior to certification of the permit.
5. Permit conditions may be monitored and enforced through regulation and through the extension process.

Reviewing Final Proof Surveys and Claims of Beneficial Use (CBU):

A. Dealing with an inadequate report.

When, during the review of a CBU, it is determined that information relating to a performance⁴ condition is missing the Department shall RETURN THE CBU with a letter that requests the CWRE to report on the subject condition⁵. The letter must inform the recipient that:

- a certificate cannot be issued unless every performance related condition is satisfied;
- 2. if an extension is approved it will allow an opportunity for the permit holder to properly perfect the use if the extension is approved; and,
- 3. use without compliance with permit conditions is an illegal use.

If the claim was submitted:	Return the CBU to:
Within the past year	the CWRE with a copy to the permit holder.
Between one and two years ago	applicant and a copy to the CWRE. Keep the original in the file until or unless the applicant or CWRE requests it be returned.

⁴ A performance condition is a condition which requires some type of action on the part of the permit holder. Examples include: installation of a meter; water use reporting; submittal of a Water Management and Conservation Plan; installation of a fish screen and/or bypass devices. Non-performance conditions are often called "notice" or "standard" conditions. Examples of notice conditions include: "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" and "The use of water shall be limited when it interferes with any prior surface or ground water rights."

As required by OAR 690-014-0100 (h).

More than two years ago

confirm the ownership of the permitted lands first and then follow directions for ~~between~~ "between one and two years" above.

B. Deciding that a condition has not been satisfied.

For conditions that are to be satisfied before water use begins, the development is deemed satisfactory if all of the following tests are satisfied:

1. The condition was satisfied prior to the development deadline date.
2. Beneficial use was made after the condition was satisfied.
3. Beneficial use was made prior to the C date.

In cases where the condition was satisfied after water use begins but before the applicable development deadline date, the water use before the condition was satisfied was illegal use. If legal-beneficial use can be made before the development deadline, it is determined that proof is made to the satisfaction of the Department.

Each permit and final proof must be read individually. Before deciding that a permittee has failed to make proof, the permit condition(s) must be read with both a critical eye and the mind set of a permittee. For example, was a "totalizing flow meter" required, or just a "meter"?⁶

C. After a failure has been discovered.

If the CBU indicates that one or more conditions have not been satisfied, the following scenarios provide examples of what the result will be based on the AG's advice. One basic idea applies to all situations:

If compliance with the condition was not obtained before the development deadline, the permit holder did not make proof and cannot get a certificate without first obtaining an extension of time.

EXAMPLES

The following examples assume that the development period has passed and are generally ordered from the most fatal to the easiest to correct.

1. **METER:** If the CBU indicates that no meter has been installed, the permit

⁶ When the use is limited to supplemental irrigation only, it is possible that proof can be made without diversion of any water. If no use of water has been made, then conditions such as installing a meter or fish screen before water use begins cannot cause a problem for the permit holder.

holder's only option to maintain the permit is to apply for an extension.⁷

If a meter was installed prior to beneficial use but is not functioning, ^{Exhibit F} proof has been made. A memo should be forwarded to the Field Services Division alerting them of potential illegal water use due to the broken meter. Field Services will consider whether enforcement is appropriate.

If the condition is not specific about what type of meter needs to be installed, any meter that can be used, in whole or in part, to measure water use will suffice. However, the situation should be referred to the Field Services Division who may require that a "totalizing flow meter" be installed.

If an extension can be granted, the meter can be installed and water use resumed in an effort to make proof. In this manner, the public interest purposes that the condition was intended to address can be achieved with an equivalent result.

2. **WATER USE REPORTING:** If the CBU and Department files indicate that the Department has not received at least the use reporting (showing water used each month) for the final year before the completion date, the permit holder's only option to maintain the permit is to apply for an extension.

If an extension can be granted, water use can resume and the information for at least future years can be submitted in an effort to make proof. The extension must at least cover the year in which measurements will be take. In this manner, the public interest purposes that the condition was intended to address has been achieved with an equivalent result.

3. **FISH SCREEN:** Failure to install a fish screen or fish by-pass device can not be cured unless a letter from ODFW has been received that indicates that the fish screen condition was included on the permit by mistake and that no fish screen is needed on the subject diversion point(s).

Fish may have been killed or harmed because of the failure to install a fish screen in a timely manner. The Department determined, prior to permit issuance, that there was a need for a fish screen.

If ODFW was to inspect and approve the fish screen "before water use begins," and the permittee chose not to install a fish screen or contact ODFW because they felt a fish screen was not necessary, ODFW can determine the fish screen was not necessary and thus satisfy the condition at any time. A letter or email from an

⁷ If the permit holder waters his entire acreage in year one then installs the meter prior to using water on the entire acreage in year two, the permit holder has satisfied the requirement to install the meter before use begins. The water use in year one was illegal.

ODFW staff person will be required. This will keep us from cancelling permits for failure to install a fish screen when, in ODFW's satisfaction, no fish screen was necessary. Exhibit F

If "self certification" of the fish screen was an option that was not exercised by the permit holder, the self certification form may be submitted at any time along with a statement by the permit holder that the fish screen was installed on before the required development deadline date (whichever is appropriate) and that beneficial use⁸ occurred before the C date (and after the installation of the screen).

4. **REFERENCE SWL MEASUREMENT⁹:** If the permittee has not taken a static water level measurement in the correct month and year to establish the reference level an extension of time will need to be filed if the permit holder wishes to continue use under the permit.

If an extension is filed, the ground water section will attempt to establish a reference level for the permittee. Using whatever data are available, the ground water section will attempt to determine what the static water level would have been in the correct month and year. If this can be accomplished, the ground water section staff will staple a memo identifying the appropriate reference level to the extension review materials and recommend a condition specifying the reference level to insert the into the permit via the extension proposed and final order.

If the ground water section is not able to re-create the reference level, a memo will be stapled to the extension review materials indicating that no reference level was measured by the permittee and that no reference level can be determined by staff. The Department will propose denial of the extension for failure to comply with permit conditions.

Some permit holders who have submitted timely measurements have been regulated off because of dropping water levels. The Department may not issue a certificate for a water use absent compliance with the conditions of the permit authorizing that water use.

5. **ANNUAL SWL'S:** Failure to submit any annual static water level measurements

⁸ "Beneficial Use" as used in this paragraph would need to equal the amount of use claimed in the CBU. A standard self certification form and statement should be developed to aid the permittee in collecting this information.

Special care must be take before deciding that permit holder has failed to timely submit an initial SWL measurement. There are many variations of the conditions that require an initial SWL measurement. Some conditions provide some flexibility in when the measurement can be take and/or submitted while others are very specific.

can be cured with an extension.

One static water level measurement under the terms of the permit or extension will be acceptable evidence of compliance. Exhibit F

When an extension is filed, the Department will review, among other things, the groundwater level changes in the area to determine if there is good cause to grant an extension. If regulation of the well would have been likely had measurements been submitted in a timely manner, the chances for obtaining an extension are poor. An extension long enough to gather one measurement will be necessary.

It is possible that the information, had it been submitted, would have resulted in regulation by the Department. The information, even when it shows that regulation is not necessary, is valuable information for the Department and the public to use when doing any groundwater supply planning.

6. **WATER CONSERVATION AND MANAGEMENT PLANS (OAR 690-86):** If the CBU and Department files indicate that a required Water Conservation and Management Plan was not submitted within the time specified in the permit, the permit holder's only option to maintain the permit is to apply for an extension. The plan does not need to be approved before the deadline identified in the condition. The Division 86 includes a process for revisions and adjustments. This allows for modifications to the plan after the deadline specified in the permit.

Exception: The Department will honor commitments that were made by Salem Department staff, prior to January 2001, that allow additional time to submit a plan.

This condition is routinely added to certain permits to attempt to increase the efficiency of the water use of the permit holder and to cause the water provider to do long range water supply planning.

Applications for an Extension when permit conditions have not been complied with:

If, after reviewing an applicant for an extension and the related application file it is determined that the applicant has not complied with one or more time sensitive permit conditions the Department will proceed with one of the following options:

1. Propose to deny the application for extension.

Failure to meet a time sensitive condition contributes to a denial of extension through a negative implication regarding the "good faith of the appropriator" OAR 690-315-0040 (2)(c) and "whether the applicant has demonstrated reasonable diligence in previous performance under the permit" (2)(a).

2. Propose to issue an extension with conditions.

Condition the extension to require the condition to be satisfied before water use resumes but no later than an appropriate date certain. Condition the extension further to require evidence that the condition has been satisfied before water use resumes.

Indicate that the Department will proceed with permit cancellation in under ORS 537.410 if the condition is not satisfied before water use restarts or by a date certain. This option can be used only when measures are available to serve the public interest purposes that the condition was intended to address and achieve an equivalent result.

The Department will not issue an extension if it is known that the Department will not be able to issue the certificate after the C date has passed. Future extensions should be conditioned so the permit holder knows that the certificate will not be issued if the Department determines at a later date that all permit conditions have not been satisfied.

Coos Curry Supply Inc.

1009 Hwy. 101
Port Orford, Ore. 97465
Phone (541)332-1818
Fax (541)332-3930
cooscurrysupply@gmail.com

Re: Knapp Ranch purchased Aug. 2000

Receipt copies

80 ft 8" cl125 pvc pipe	\$2.95ft.	\$ 236.00
2 ea 406-080 8 sch 40 elbow	\$39.65	\$79.28
3ea 417-080 8 sch 40 45 ell	\$36.99	\$110.97
3 ea 854-080 8 vanstone fl	\$30.35	\$91.11
1 ea 08fvs 8 screen	\$47.49	\$47.49
1 ea 08 sr staff rod	\$52.99	\$52.99
Total		\$617.84

Coos Curry Supply Inc.

1009 Hwy. 101
Port Orford, Ore. 97465
Phone (541)332-1818
Fax (541)332-3930
cooscurrysupply@gmail.com

Re: Knapp Ranch purchased Mar. 2001

Receipt copies

600 ft 04 sch40 pipe	\$2.69	\$1614.00
3 ea 401-040 4 tee	\$10.37	\$31.12
4 ea 417-040 4 45	\$9.56	\$38.25
3 ea 402-040 4 sst	\$9.25	\$27.75
3 ea 439-420 4x2 txt	\$17.93	\$53.80
2 ea 447-040 4 cap	\$4.37	\$8.74
1 ea mo304 4 meter	\$885.98	\$885.98
1 ea 6858617 valv box	\$17.99	\$17.99
1000 ft 18tffn wire	\$.13	\$130.00
2 ea mw bolt pack	\$24.00	\$48.00
1 ea pvc11g-040 glue	\$89.20	\$89.20
1 ea pvc68p-040 prime	\$61.85	\$61.85
10 ea 80 rete	\$4.69	\$46.90
Total		\$3,053.58

Coos Curry Supply Inc.

1009 Hwy. 101
Port Orford, Ore. 97465
Phone (541)332-1818
Fax (541)332-3930
cooscurrysupply@gmail.com

Re: Knapp Ranch purchased Mar. 2001

Receipt copies

400 ft 06 sch 40 pvc pipe	\$4.69	\$1876.00
6 ea 854 -060 6 van stone fl	\$26.93	\$161.58
2 ea 429-060 6 cplr	\$10.15	\$20.30
4 ea 437-532 4x3 bush	\$10.51	\$42.04
3 ea 401-060 6 tee	\$34.93	\$104.29
6 ea 417-060 6 45 ell	\$22.50	\$134.98
2 ea 406-060 6 90 ell	\$22.78	\$45.54
2 ea b0600l 6 butterfly	\$219.20	\$438.40
Total		\$2,823.13

NOTE: For water rights information and useful forms, please see our web site at www.oregon.gov/OWRD

November 10, 2014

Certified mail number 7012 2210 0002 6661 8608
Return receipt requested

Knapp Ranches Inc.
PO Box 85
Langlois, OR 97450

Reference: Application G-13263, Permit G-13025

Dear Permit Holder:

This letter is in regard to your water use permit as referenced above. Your permit required you to complete the development of your water use by October 1, 2010.

In order for the Department to consider issuance of a certificate of water right, you are required by law to hire a certified water right examiner to prepare and submit a claim of beneficial use that includes a final proof survey map of the development. The map and claim of beneficial use were to have been submitted to our Department within one year of October 1, 2010. The fee for submitting a claim of beneficial use is \$175.00. Please see the enclosed 'Resource Sheet' for our current database of CWRE's.

If you are not finished with the development of your permit, you need to file an application for an extension of time to complete your development. The fee for filing an extension of time is \$575.00. Please see the enclosed 'Resource Sheet' to access the extension of time form.

In the event that you are no longer using water as allowed by this permit, you should cancel it so that we may clear our records. Please see the enclosed 'Resource Sheet' to access the cancellation form, if you are interested in this option.

If you have not submitted either a Claim of Beneficial Use or a request for an extension of time for your permit within 60 days of the date of this letter (January 9, 2015) the Department may issue a Final Order to cancel your permit without further notice. If the Department issues a Final Order to cancel your permit, and you request reconsideration of the final order and reinstatement of your permit, there is a \$450.00 reinstatement fee that is charged in addition to the claim of beneficial use or extension of time fee.

Should you have any questions, you may contact me at the address above or by telephone at 503-986-0817.

Sincerely,

Jerry Sauter
Water Rights Program Analyst

Enclosures (1)

cc: File G-13263
OWRD Watermaster District 19

NOTE: For water rights information and useful forms, please see our web site at www.oregon.gov/OWRD

November 10, 2014

Certified mail number 7012 2210 0002 6661 8615
Return receipt requested

Knapp Ranches Inc.
PO Box 85
Langlois, OR 97450

Reference: Application R-73183, Permit R-12107

Dear Permit Holder:

This letter is in regard to your water use permit as referenced above. Your permit required you to complete the development of your water use by October 1, 2010.

In order for the Department to consider issuance of a certificate of water right, you are required by law to hire a certified water right examiner to prepare and submit a claim of beneficial use that includes a final proof survey map of the development. The map and claim of beneficial use were to have been submitted to our Department within one year of October 1, 2010. The fee for submitting a claim of beneficial use is \$175.00. Please see the enclosed 'Resource Sheet' for our current database of CWRE's.

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In the event that you are no longer using water as allowed by this permit, you should cancel it so that we may clear our records. Please see the enclosed 'Resource Sheet' to access the cancellation form, if you are interested in this option.

If you have not submitted either a Claim of Beneficial Use or a request for an extension of time for your permit within 60 days of the date of this letter (January 9, 2015) the Department may issue a Final Order to cancel your permit without further notice. If the Department issues a Final Order to cancel your permit, and you request reconsideration of the final order and reinstatement of your permit, there is a \$450.00 reinstatement fee that is charged in addition to the claim of beneficial use or extension of time fee.

Should you have any questions, you may contact me at the address above or by telephone at 503-986-0817.

Sincerely,

Jerry Sauter
Water Rights Program Analyst

Enclosures (1)

cc: File R-73183
OWRD Watermaster District 19

NOTE: For water rights information and useful forms, please see our web site at www.oregon.gov/OWRD

November 10, 2014

Certified mail number 7012 2210 0002 6661 8622
Return receipt requested

Knapp Ranches Inc.
PO Box 85
Langlois, OR 97450

Reference: Application S-73184, Permit S-53002

Dear Permit Holder:

This letter is in regard to your water use permit as referenced above. Your permit required you to complete the development of your water use by October 1, 2010.

In order for the Department to consider issuance of a certificate of water right, you are required by law to hire a certified water right examiner to prepare and submit a claim of beneficial use that includes a final proof survey map of the development. The map and claim of beneficial use were to have been submitted to our Department within one year of October 1, 2010. The fee for submitting a claim of beneficial use is \$175.00. Please see the enclosed 'Resource Sheet' for our current database of CWRE's.

If you are not finished with the development of your permit, you need to file an application for an extension of time to complete your development. The fee for filing an extension of time is \$575.00. Please see the enclosed 'Resource Sheet' to access the extension of time form.

In the event that you are no longer using water as allowed by this permit, you should cancel it so that we may clear our records. Please see the enclosed 'Resource Sheet' to access the cancellation form, if you are interested in this option.

If you have not submitted either a Claim of Beneficial Use or a request for an extension of time for your permit within 60 days of the date of this letter (January 9, 2015) the Department may issue a Final Order to cancel your permit without further notice. If the Department issues a Final Order to cancel your permit, and you request reconsideration of the final order and reinstatement of your permit, there is a \$450.00 reinstatement fee that is charged in addition to the claim of beneficial use or extension of time fee.

Should you have any questions, you may contact me at the address above or by telephone at 503-986-0817.

Sincerely,

Jerry Sauter
Water Rights Program Analyst

Enclosures (1)

cc: File S-73184
OWRD Watermaster District 19



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

January 5, 2015

file copy

Knapp Ranches, Inc.
P.O. Box 32
Port Orford, OR 97465

RE: Protests to Extension Proposed Final Order for Permit R-12770, Knapp Ranches Inc.

Dear Knapp Ranches,

The Department received the enclosed timely filed protests on January 2, 2015.

I will review the protests and will contact you to discuss whether informal resolution is possible. In the meantime, if I can answer any questions, please call my direct line at the number below.

Sincerely,

Patricia McCarty

Patricia McCarty
Protest Program Coordinator
Water Right Services Division
503-986-0820



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

January 5, 2015

file copy

WaterWatch of Oregon, Inc.
213 SW Ash Street, Suite 208
Portland, OR 97204

RE: Protest to Extension Proposed Final Order for Permit R-12770, Knapp Ranches Inc.

Dear Ms. Brown,

The Department received the timely filed protest and fee on the proposed final order for permit R-12770 on January 2, 2015. Enclosed is receipt #114476 for check number 3464 in the amount of \$700.00.

I will review the protest and may contact you to discuss resolution. In the meantime, if I can answer any questions, please call my direct line at the number below.

Sincerely,

Patricia McCarty

Patricia McCarty
Protest Program Coordinator
Water Right Services Division
503-986-0820



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

January 5, 2015

*file copy
sent via email only*

Oregon Coast Alliance
P.O. Box 857
Astoria, OR 97103

Sean T. Malone
259 E. 5th Ave. Ste. 200-G
Eugene, OR 97401

RE: Protest to Extension Proposed Final Order for Permit R-12770, Knapp Ranches Inc.

Dear Mr. Malone,

The Department received the timely filed protest from Oregon Coast Alliance and fee on the proposed final order for permit R-12770 on January 2, 2015.

I will review the protest and may contact you to discuss resolution. In the meantime, if I can answer any questions, please call my direct line at the number below.

Sincerely,

Patricia McCarty

Patricia McCarty
Protest Program Coordinator
Water Right Services Division
503-986-0820

BEFORE THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Proposed Final Order Approving)
the Application for an Extension of Time for)
Permit R-12770, Water Right Application R-84100)
in the Name of Knapp Ranches Inc.)

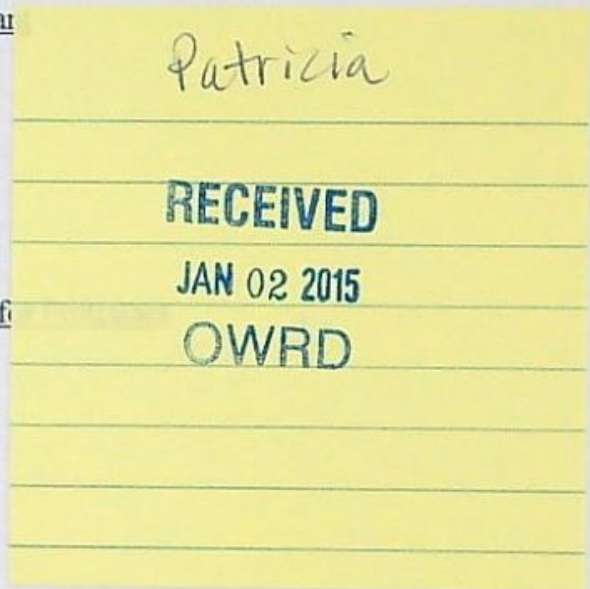
Protest to Proposed Final
Order

I. Name, Address and Telephone Number of Protestant

Oregon Coast Alliance
PO Box 857
Astoria OR 97103
Phone: (503) 391-0210
cameron@oregoncoastalliance.org
Contact: Cameron La Follette

Name, Address, and Telephone Number of Agent for

Sean T. Malone
Attorney at Law
259 E. 5th Ave, Ste 200-G
Eugene OR 97401
Phone: (303) 859-0403
Fax: (650) 471-7366
seanmalone8@hotmail.com



II. Interests of Protestant

Protestant Oregon Coast Alliance (ORCA) has invested time and money protecting and restoring in-stream flows and surface waters on the Oregon Coast, including areas that would be affected by the Proposed Final Order ("PFO"). ORCA has also invested time and money on land use proceedings occurring on the subject property. ORCA has also invested time and money on protecting instream flows to benefit salmon on tributaries to the Pacific Ocean, such as the Elk River and its tributaries. ORCA has members that regularly use and enjoy the Elk River and its tributaries, and ORCA and its members have invested time and money promoting sound water policy and protecting and restoring coastal and marine natural resources.

ORCA represents the public's interest in protecting Oregon's waterways from exploitation and waste, investing its time and resources to ensure the highest beneficial use is realized from the public waterways. ORCA does this by participating in various water permitting processes on the Oregon coast, including by reviewing and filing protests, as appropriate, to water permitting decisions and working in the Oregon legislature with the goal of ensuring that the water laws are properly implemented so as to achieve the sustainable and beneficial use of Oregon's coastal waterways.

For all of these reasons, ORCA and its members will be affected, adversely affected and aggrieved, and practically affected by the PFO.

III. The PFO Would Impair And Be Detrimental To Protestant's Interests

A. The proposed water use would harm populations of coho salmon that are present in Elk River and its tributaries, and an extension that is contrary to law would allow the proposed water use to harm populations of coho salmon.

B. Granting the extension consistent with the PFO would impair and be detrimental to ORCA's interest in protecting the public's use of the Elk River and its Tributaries for beneficial uses, including instream and fish uses. ORCA's other interests include, but are not limited to the following: an interest in ensuring the availability of streamflows and the protection of water quality needed for fish, wildlife, and recreational resources; an interest that appropriations do not diminish streamflows needed to support instream uses; an interest in ensuring that WRD does not exacerbate the over-allocation of waters; an interest in ensuring that uses are efficient and not wasteful or uneconomical; an interest in ensuring that agencies have the appropriate tools and mechanisms in place to manage and regulate water use, including the tools to monitor mitigation effectiveness in order to protect instream uses and fishery resources;

an interest in ensuring that the agency implements water laws and policies in a manner that manages and allocates the water resources in order to maintain ecological integrity of the waters at issue.

C. The extension would impair and be detrimental to ORCA's interest and the public's interest in ensuring that the State not grant unwarranted extensions that are contrary to good faith and due diligence, statute, and rule.

D. Issuance of the permit would impair and be detrimental to ORCA's interest and the public's interest in ensuring that Oregon's water laws are properly implemented and that Oregon water resources are allocated fairly.

IV. How The PFO Is In Error And Deficient And How To Correct The Errors And Deficiencies

A. The PFO is in error and deficient for reasons including the following:

1. Under ORS 537.230(1), the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work with reasonable diligence and complete the construction within a reasonable time not to exceed five years from the date of approval. Here the applicant exceeded requirement to complete construction by more than 10 years, an unreasonable amount of time.

2. ORS 537.230(3) requires that WRD, for good cause shown, order an extension of time within which irrigation or other works shall be completed or right perfected. Here, the applicant has not shown good cause, considering the factors described in ORS 539.010(5) and whether governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right. Here, as explained below, the applicant has not demonstrated good cause to grant the extension.

3. Under ORS 539.010(5), WRD may extend the time within which the full amount of the water appropriated shall be applied to beneficial use, considering 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

The Applicant was required to begin construction almost 15 years ago, and the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004. Though this is the first permit extension requested, this request occurs more than 10 years after the date by which the reservoir was to be filled and water to be put to use, an unreasonable amount of time that indicates abandonment.

4. The PFO should have proposed to cancel the permit due to inaction pursuant to ORS 537.410(1) and because the permit is detrimental to the public interest and not consistent with public interest conditions. WRD's public interest determination was inadequate. The conditions imposed were to protect the public interest, and those conditions were not satisfied. Because the public interest purposes of the condition have not been satisfied, WRD erred in granting the extension. Plaintiffs incorporate by reference the issues raised in and implicated by the February 7, 2002, Department of Justice memorandum, "Complying with Permit Conditions," from Sharyl L. Kammerzell to Dwight French; and the October 15, 2002, WRD Internal Guidance Memorandum for reviewing Claims of Beneficial Use and Extension of Time.

5. The permit is for a limited season of use, but by not having measuring devices in place, not supplying monitoring reports, or building the gated weir, there has been no

showing that water is not being drawn in the off-season (i.e., in summer months). The applicant was required to put in place measures to ensure that the outflow was going through in the summer when the permit holder may not store additional water. This is a public interest condition that cannot be cured at a later time.

6. WRD granted an extension to construct the water system and apply water to beneficial use until October 1, 2017. WRD should have only granted the applicant an extension until October 1, 2015.

7. The applicant failed to enroll in the USDA CREP, and there is no apparent way in which to cure this failure because almost 15 years have passed without CREP protections necessary to mitigate water use under this permit and from R-12770.

8. The PFO provides that “[a]ctual construction of the water system began prior to the December 15, 2000 deadline.” ORCA disputes this finding because the minimal work occurring over the past 14 years is insufficient. Given the bare minimum of construction and the failure to perform any other construction, the applicant has not demonstrated “good faith” or the shown an “intention to complete the project with reasonable diligence,” pursuant to OAR 690-315-0020(3)(d)(A).

9. Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits, WRD must find that the time requested is reasonable and the applicant can complete the project within the time requested. Here, the amount of time is unreasonable because the applicant should be required to complete the work in a lesser time (e.g., October 1, 2015) given the applicant’s failure to satisfy the requirements over the past 15 years.

10. The amount of construction pursuant to OAR 690-315-0040(3)(a) is inadequate to support an extension. WRD cites only that rock was placed, a culvert was placed,

and an area deepened, but this does not demonstrate reasonable diligence over the course of 14 years. Instead, it demonstrates abandonment. When compared to the amount of work yet to be accomplished, the amount of construction is minimal at best.

11. The applicant failed to comply with all conditions pursuant to OAR 690-315-0040(3)(c). The number of conditions not satisfied far outweighs the number of conditions allegedly satisfied. As noted by WRD, failure to comply with permit conditions constitutes illegal storage of water. Therefore, the extension should not have been granted.

12. The financial investment is insufficient to justify an extension pursuant to OAR 690-315-0040(2)(b), (3)(d), (4)(d). Over the course of 14 years, the applicant has incurred only 12 percent (or \$2,700) of the total projected cost of the development. This amount of money of the course of 14 years is insufficient to justify an extension.

13. The applicant has not demonstrated good faith pursuant to OAR 690-315-0040(2)(c). As cited above, the applicant's failure to perform more than 12 percent of the total costs in 14 years does not demonstrate good faith.

14. The tributary of Elk River is located within an area ranked "moderate" for stream flow restoration needs as determined by WWRD in consultation with ODFW, is located within a Sensitive, Threatened, or Endangered Fish Species Area as identified by WRD in consultation with ODFW, and the lower Elk River has been added to the state DEQ's 303(d) list. ODFW has flagged the Elk River's fall chinook run as "non-viable." These special water use designations militate towards not granting an extension.

15. The amount expended thus far is minimal, and, therefore, whether fair return upon investment pursuant to OAR 690-315-0040(2)(f) is not a reason grant the extension.

16. The extension fails to condition the permit under other statutes and rules to protect fish, wildlife, recreation, scenic and water quality values, and, therefore, is detrimental to ORCA's interests and the public interest in ensuring that these resources and values are not harmed by new water withdrawals.

17. The extension fails to include findings or conclusions of law demonstrating that WRD evaluated the impacts of climate change on the resource at risk from additional water withdrawals. This legal duty comes, in part, from the State's obligation to protect existing claims and rights to use water from the impacts of future development. The State also has a statutory mandate of formulating "an integrated, coordinated program for the use and control of all the water resources of this state" (ORS 536.300(2)) and must also act to protect water quality in the basin's rivers, streams, lakes and ground water, as well as fish listed under the state and federal Endangered Species Acts. Furthermore, protection of wildlife and fish, because of their historical, cultural, biological and economic significance, is necessary to protect the public interest.

18. The extension is contrary to the public interest. All water, from all sources of supply within the state of Oregon, belongs to the public. See, also, Lane Electric Coop. v. Federated Rural Electric, 114 Or. App. 156, 161 ("All waters within this state, which necessarily includes ground water, belongs to the public."). Water is a publicly owned resource. ORS 537.110; 537.334(2); 536.310(1); 537.525. The policy of the State of Oregon is to guarantee instream flows, protect and restore native fish populations, protect wildlife, and preserve the public interest. OAR 690-410-0030(1) ("Benefits are provided by water remaining where it naturally occurs. Protecting streamflows which are needed to support public uses is a high priority for the state."); ORS 496.435 ("...it is declared to be a goal of the people of the

State of Oregon to restore native stocks of salmon and trout to their historic levels of abundance
“); ORS 536.310(4) (“The fishery resource of this state is an important economic and
recreational asset”); OAR 690-400-0000(4) (When formulating basin programs and other
directives the Commission has the duty to consider protection of wildlife, recreation, watershed
management and other priorities outlined by the legislature); ORS 536.300(1) (recognizing
wildlife as a beneficial use of water).

It is the policy of the State of Oregon that:

“The waters of the state shall be allocated within the capacity of the resource and
consistent with the principle that water belongs to the public to be used beneficially
without waste. Water shall be allocated among a broad range of beneficial uses to
provide environmental, economic, and social benefits. The waters of the state shall be
protected from over-appropriation by new out-of-stream uses of surface water or new
uses of groundwater.”

OAR 690-410-0070(1). To achieve this policy, OAR 690-410-0070(2)(h) provides that “[w]hen
instream flow needs are not protected by instream water rights, new out-of-stream allocations
may be limited or conditioned to protect public uses.”

19. The extension fails to address the impacts of the extension and further
withdrawal on Clean Water Act and Endangered Species Act impairments to the Elk River and
its tributaries.

20. ORCA reserves the right to raise other errors and deficiencies that may
become apparent through discover and further analysis.

B. The errors and deficiencies should be corrected as follows:

1. The errors and deficiencies should be corrected by issuing a Final Order
denying the request for extension of time.

V. Citation Of Legal Authority

Legal authority, where known, has been cited throughout the protest.

VI. Protest Fee

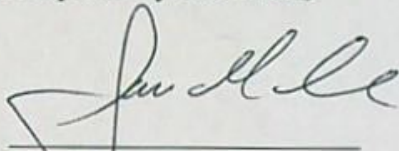
The required fee of \$700.00 is included with this protest.

VII. Request For Hearing

Protestant requests a contested case hearing.

Dated: January 2, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean T. Malone", written over a horizontal line.

Sean T. Malone
Attorney for ORCA
259 E. 5th Ave, Ste 200-G
Eugene, OR 97401
Ph: (303) 859-0403
Fax: (650) 471-7366
seanmalone8@hotmail.com

Certificate of Service

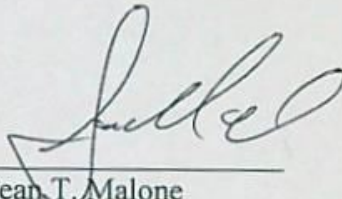
I certify that on this date, a copy of the foregoing protest was served on each of the following by the method indicated:

Knapp Ranches, Inc.
PO Box 32
Port Orford 97465

By placing in the US Postal Mail, certified first class postage prepaid, return receipt requested from Eugene, Oregon

Water Rights Services Division
Oregon Water Resources Department
725 Summer St. NE, STE A
Salem, OR 97301-1266
By hand delivery

Dated: January 2, 2015



Sean T. Malone
Attorney for ORCA
259 E. 5th Ave, Ste 200-G
Eugene, OR 97204
Ph: (303) 859-0403
Fax: (650) 471-7366
seanmalone8@hotmail.com

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **114462**

INVOICE # _____

RECEIVED FROM: Sean Malone
BY: Attorney at Law

APPLICATION	R-84100
PERMIT	
TRANSFER	

CASH: CHECK # 1052 OTHER: (IDENTIFY)

TOTAL REC'D \$ 700.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$
OTHER: (IDENTIFY) \$
0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS **47235**

0407 COPY & TAPE FEES \$
0410 RESEARCH FEES \$
0408 MISC REVENUE: (IDENTIFY) \$
TC162 DEPOSIT LIAB. (IDENTIFY) \$
0240 EXTENSION OF TIME \$

WATER RIGHTS:		EXAM FEE	RECORD FEE
0201	SURFACE WATER	\$	0202 \$
0203	GROUND WATER	\$	0204 \$
0205	TRANSFER	\$	
WELL CONSTRUCTION		EXAM FEE	LICENSE FEE
0218	WELL DRILL CONSTRUCTOR	\$	0219 \$
	LANDOWNER'S PERMIT		0220 \$

0223 OTHER (IDENTIFY) Protest Fee \$700.00

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ CARD # _____
0210 MONITORING WELLS \$ CARD # _____
OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD) \$
0231 HYDRO LICENSE FEE (FW/WRD) \$
HYDRO APPLICATION \$

TREASURY OTHER / RDX

FUND _____ TITLE _____
OBJ. CODE _____ VENDOR # _____
DESCRIPTION _____ \$ _____

**RECEIVED
OVER THE COUNTER**

RECEIPT: **114462**

DATED: 1/2/15 BY: Erin Little Lopez

Oregon Water Resources Department
Water Right Services Division

PROPOSED FINAL ORDER

In the Matter of the Application for an Extension of Time for Permit R-12770, Water Right Application R-84100, in the name of Knapp Ranches Inc.

	Permit Information
Application:	R-84100
Permit:	R-12770
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	February 4, 1999
Source of Water:	An unnamed stream, a tributary of Elk River
Purpose of Use:	Stored water to be appropriated under application S-84101 for irrigation and mining use
Maximum Volume:	100.0 (AF) each year from November 1 through April 30

*****Please read this Proposed Final Order in its entirety as it may contain 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, 2004 to October 1, 2017.
- Grant an extension of time to apply water to full beneficial use from October 1, 2004 to October 1, 2017.¹
- Make the extension subject to certain conditions set forth below.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

¹ Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
PFO – Proposed Final Order
cfs – cubic feet per second
gpm – gallons per minute
AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order 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) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

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.

FINDINGS OF FACT

Background

1. Permit R-12770 was granted by the Department on January 31, 2000. The permit authorizes the storage of up to 100.0 AF of water each year from November 1 through April 30 of water in an unnamed reservoir diverted from an unnamed stream, a tributary of Elk River, to be appropriated under application S-84101 for irrigation and mining use. The permit specified actual construction was to begin by December 15, 2000, and the reservoir was to be filled and complete application of the stored water to use was to be made on or before October 1, 2004.

2. The permit holder, Knapp Ranches Inc. submitted an "Application for Extension of Time" to the Department on April 18, 2014, requesting both the time to complete construction of the water system be extended from October 1, 2004 to October 1, 2017 and the time to apply water to full beneficial use under the terms of Permit R-12770 be extended from October 1, 2004 to October 1, 2017. This is the first permit extension requested for Permit R-12770.
3. Notification of the Application for Extension of Time for Permit R-12770 was published in the Department's Public Notice dated May 6, 2014. Four comments were received during this comment period.
4. In summary, three commenters raised concerns about compliance with permit conditions, the application being incomplete, and discrepancy in water use reporting.

Review Criteria [OAR 690-315-0040]

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 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230², 537.248³ and/or 539.010(5)⁴.

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

5. On April 18, 2014, the Department received a completed Application for Extension of Time 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)]

6. Actual construction of the water system began prior to the December 15, 2000 deadline specified in the permit. The location of the reservoir is a small canyon. In August of 2000 the reservoir was created by raising the elevation of a dip in the existing road a few feet with rock, replacing a culvert, and deepening an area for the pump intake.

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.

7. As of April 18, 2014, the remaining work to be completed consists of installing a fully functional conduit/gate assembly, submitting annual reports of the amount of water stored, obtaining a written waiver from the local Watermaster waiving the installation of a weir upstream and downstream of the reservoir, raising the elevation of the dam to 9 feet, storing water and applying water to full beneficial use.
8. Given the amount of development left to occur, the Department has determined that

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

the permit holder's request to have until October 1, 2017, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit R-12770 is both reasonable and necessary.

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

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

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

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

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

9. Work was accomplished within the time allowed in the permit or previous extension as follows:
 - a. Construction of the water system began prior to the December 15, 2000 deadline specified in the permit. In August of 2000 the reservoir was created by raising the elevation of a dip in the existing road a few feet with rock, replacing a culvert, and deepening an area for the pump intake.
 - b. Work was completed during the original development time frame under Permit R-12770. In September of 2000, the permit holder constructed a small pier, extending from the road to the new deepened portion to mount the intake pipe, and mounted a staff gauge to the intake pier.

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

10. The following beneficial use was made of the water during the permit or previous extension time limits:
 - a. Since the issuance of Permit R-12770 on January 31, 2000, the permit holder has reported using less than 100 AF stored to date, but water usage reports for mining submitted to the Department from 2001-2013 (minus no reporting for 2007 and 2001) reports 0 AF of water stored in the reservoir. The permit holder states in question 9-B "with limited resources available at the time, we installed a system that functions."

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

11. The water right permit holder's conformance with the permit or previous extension conditions.
 - a. The Department has found the following conditions were met: (1) a totalizing flow meter was installed, and (2) installed a staff gage.

The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the permit holder has not yet installed weirs or other suitable measuring devices upstream and downstream of the reservoir or obtained written documentation from the local Watermaster waiving a weir condition, (2) a gated valve outlet has not yet been installed, (3) annual reports of the amount of water used for irrigation each month have not been received by the Department.

- b. **Failure to comply with permit conditions constitutes illegal storage of water. In order to legally perfect the storage of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.**

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

12. As of April 18, 2014, the permit holder has invested approximately \$2,700, which is about 12 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$19,000 investment is needed for the completion of this project.

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

13. The Department has found good faith of the appropriator under Permit R-12770.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

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:

14. The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].
 - a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit R-12770; 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. The point of diversion is located on an unnamed stream, a tributary of Elk River, and is not located within a Withdrawn Area. The an unnamed stream, a tributary of Elk River is not located within or above a state or federal scenic waterway, however, it is located within an area ranked "moderate" 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. The point of diversion is not in a location listed by the Department of Environmental Quality as a water quality limited stream.

15. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
 - a. None have been identified.
16. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
 - a. According to comments received, since permit issuance the lower Elk River has been added to the state DEQ's 303(d) list. The Oregon Department of Fish and Wildlife (ODFW) 2014 Coastal Multispecies Management Plan has red flagged Elk River's fall chinook run as "non-viable". The Elk River supports federally listed Coho salmon.
17. 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. 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 1 of the "Conditions" section of this PFO, was determined to be necessary due to no additional work having been accomplished since October 1, 2000.

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

18. 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)]

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

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

20. None have been identified.

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 537.230(3).
2. 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).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Completion of construction and full application of water to beneficial use can be accomplished by October 1, 2017⁵, as required by OAR 690-315-0040(1)(c).
5. 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 17, above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a "Last Extension Condition" in order to ensure future diligence is exercised in the development and perfection of Permit G-12770.

Continued on the following page

⁵Pursuant to ORS 537.230(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 a new or revised claim of beneficial use as deemed appropriate by the Department.

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 R-12770 from October 1, 2004 to October 1, 2017.

Extend the time to apply water to beneficial use under Permit R-12770 from October 1, 2004 to October 1, 2017.

Subject to the following conditions:

CONDITIONS

1. **Last Extension Condition**

This is to be the last extension of time granted for Permit G-12770. Any future extensions of time requests will be denied.

DATED: November 18, 2014

Dwight W. 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(1) 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 January 2, 2014, 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:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed 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 proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed 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 protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant 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 protest 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 submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

-
- If you have any questions about statements contained in this document, please contact Mabelle Bamberger at (503) 986-0802.
 - 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 Patricia McCarty at 503-986-0820.
 - If you have any 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 Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
-

Mailing List for Extension PFO Copies

PFO Date: November 18, 2014

Copies Mailed

Application: R-84100

By: _____

Permit: R-12770

On: _____

Original mailed to Applicant:

Knapp Ranches Inc.
P.O. Box 32
Port Orford OR 97465

Copies sent to:

1. WRD - App. File R-84100/ Permit R-12770

Fee paid as specified under ORS 536.050 to receive copy:

2. None

Receiving via e-mail (10 AM Tuesday of signature date)
(DONE BY EXTENSION SPECIALIST)

3. WRD - Watermaster District 19, Mitch Lewis

CASEWORKER: MAB

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WATER

WaterWatch also represents the public's interest in protecting Oregon's waterways from exploitation and waste, investing its time and resources to ensure the highest beneficial use is realized from the public waterways. WaterWatch does this by participating in the water permitting process, including by reviewing and filing protests, as appropriate, to water permitting decisions; participating in the public review process for Water Management and Conservation Plans; and working in the Oregon legislature and on rules advisory committees, all with the goal of ensuring that the water laws are properly implemented so to achieve the sustainable and beneficial use of Oregon's waterways.

III. The PFO Would Impair And Be Detrimental To Protestant's Interests

1. Issuance of the extension would impair and be detrimental to WaterWatch's interests and the public's interest in protecting and restoring streamflows and instream uses in the Elk River.

2. Issuance of the extension would impair and be detrimental to WaterWatch's interests and the public's interest in ensuring that the state not perpetuate speculative water rights and water rights that are not developed in accordance with required permit conditions.

3. Issuance of the extension would impair and be detrimental to WaterWatch's interest and the public's interest in ensuring that Oregon's water laws are properly implemented, that Oregon water resources are allocated fairly, and that water

permit conditions added to ensure a water use is in the public interest are actually complied with.

4. Issuance of the extension would impair and be detrimental to WaterWatch's interest and the public's interest in ensuring that the public interest standard for issuance of new permits is implemented in a meaningful way through the extension process.

For all of these reasons, WaterWatch, its members, and the public interest will be affected, adversely affected and aggrieved, and practically affected by the PFO.

IV. How The PFO Is In Error And Deficient And How To Correct The Errors And Deficiencies

A. The PFO is in error and deficient for reasons including the following:

1. The permit only allows storage from November 1 through April 30. This condition was added to the permit to ensure that the water use is in the public interest. ORS 537.153, ORS 537.170(8). Because the reservoir is on-channel, this condition required the permit holder to measure and pass all inflow entering the reservoir outside of the allowed storage season. However, the permit holder did not install measuring devices upstream and downstream of the reservoir nor did the permit holder install a gated valve outlet ((PFO at p. 5). Thus the permit holder had no way to comply with this public interest condition.¹ Water use under the permit was subject to these conditions, and was

*IF
Statement
in Permit
NO in
channel*

¹ Although Knapp Ranches, Inc. reports it stored 0 acre-feet in the reservoir, it also reports water use up to 1,913,371 gallons/year through 2007 under permit S-53648 (application S-84101) (as reported in the OWRD Water Use Reporting system), for which the only permitted point of diversion is this reservoir. Knapp Ranches, Inc. reports that water use under S-53648 was measured using "meter on water line." Therefore, it Knapp Ranches, Inc.'s report of storing 0 acre-feet in the reservoir appears incorrect.

specifically not to begin prior to installation of the measurement devices (and a staff gage that was also not installed)—in other words, water use was not to occur in the absence of compliance with these conditions. Violation of these conditions cannot be cured through later compliance because the damage to the public interest cannot be undone. See Oregon Department of Justice advice to Dwight French, DOJ File No. 690-303-GN0023-98 (February 7, 2002); and Memorandum to Water Resources Staff from Dwight French and Dick Bailey, "Internal Guidance Non-Compliance of Time Sensitive Permit Conditions when reviewing Claims of Beneficial Use and Extensions of Time" (October 15, 2002). Additionally, even if the permit holder could secure some kind of waiver from the watermaster could not cure 15 years of non-compliance with these public interest conditions (and any waiver would have to include a way to ensure that inflow is being passed through outside of the storage season—and it does not appear possible to do that in the absence of measurement devices above and below the reservoir). Due to these defects, the permit holder will be unable to later certificate the permit. The extension must be denied.

Staff
gage was
installed

2. The public interest review of this permit application also included a Division 33 review. As part of that review, Oregon Department of Fish and Wildlife ("ODFW") found that enrollment in CREP of the Knapp Ranch, Inc. property fronting the Elk River would be "considered by ODFW as adequate mitigation for the proposed appropriations (both the groundwater and reservoir applications (POD #2))." Letter from Todd Confer to Doug Woodcock, (April 5, 1999). The CREP condition was formally added to the groundwater permit (G-13782) but was never complied with. Absence of

Not
in
Permit

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that compliance also means that impacts of this reservoir permit was not properly mitigate for under the public interest standard.

3. Because there is not good cause to issue the extension, it should be denied.

There is not good cause for reasons including but not limited to the following:

a) Because the applicant has not shown reasonable diligence in construction this project nor in using the water, granting an extension is unlawful. ORS 537.230(3); OAR 690-315-0040(2)-(3). Considering the factors listed in OAR 690-315-0040(3)--and any other reasonable factors—there has not been a showing of diligence under this permit over the 15 years since its issuance. Claimed “construction” consisted of the permit holder dumping rock on a road to raise its elevation (which apparently serves as the “dam” here) but did not include installing the required measuring devices, gated valve outlet, or the USGS staff gage—all required before water was stored by the applicant. The permit holder also did not raise the dam to 9.5 feet (or apparently build any sort of dam, instead using an existing road to block the flow of the stream); conform with the permit or previous extensions; and did not make reasonable financial investments toward developing the permit

Permit states maximum height shall not exceed 9.5 feet

b) The extension should be denied because the permit holder has not shown good faith in performance under this permit, including but not limited to the fact that the permit holder violated essentially every permit condition it was required to comply with *before* storing water under the permit. ORS 539.010(5); OAR 690-315-0040(c). Compounding this failure to comply with the permit conditions is the fact that this permit (along with G-13782 and S-53648) were apparently issued to bring illegal (unpermitted) water use into compliance with the laws and rules governing water use in

Oregon. Particularly in light of that, the permit holder's failure to comply with the permit conditions should not be tolerated and the extension should be denied.

In addition, the permit holder failed to demonstrate good faith by waiting ten years after its development deadlines expired before applying for an extension.

c) The cost remaining on the project is excessive compared to the previous expenditure over the 15 year life of the permit. OAR 690-315-0040(2)(b).

d) Pursuant to OAR 690-315-0040(2)(j) the Department should consider the fact that this permit was apparently issued to bring an ongoing illegal use into compliance with the law but that even after the permit was issued—giving the permit holder an opportunity to comply with the law—the permit holder continued to violate the law by failing to comply with essential terms of the permit for the entire 15 years since permit issuance. An extension under this circumstance is not appropriate.

5. Actual construction of the project did not begin prior to the December 15, 2000 as required by the permit and thus the extension must be denied. OAR 690-315-0040(5). First, there is not sufficient evidence to show that anything happened by this deadline. Second, even if pit run rock was dumped on a road by the deadline, as claimed, this does not constitute construction under the permit. Nothing in the permit refers to dumping rock on a road. Rather a dam with an elevation up to 9.5 feet was to be constructed (presumably not on top of the road). Further, even if dumping rock on the road was "construction" under the permit, it was illegal construction because the permit holder failed to comply with the various permit conditions (discussed above) required as a prerequisite to storage of water under the permit. Just as failure to comply with permit conditions constitutes illegal storage of water, construction implemented out of

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compliance with permit conditions is illegal construction that cannot fulfill the requirement that construction begin by the permit deadline. The extension must be denied.

6. The PFO is deficient because it fails to implement OAR 690-315-0040(4) for reasons including but not limited to the following:

a) The Department was required to consider the habitat needs of sensitive, threatened and endangered species, in consultation with ODFW, in determining the market and present demand for the water. OAR 690-315-0040(5)(c). The Department was required to consult with ODFW on the market and present demand for the water, but failed to do so. The PFO's Finding 14(a) is devoid of any substance that could comply with this requirement.

b) The Department failed to adequately consider special water use designations, which here include the Elk River's 303(d) listing by Oregon Department of Environmental Quality. OAR 690-315-0040(4)(b). The rule does not require the POD to be *on* the 303(d) stream as the PFO implies. Rather, the Department must consider the market and present demand for the water in light of the 303(d) listed stream (Elk River) affected by the water use.

c) OAR 690-315-004(4)(a) requires the Department to take a fresh look at the water available to satisfy other affected water rights, including the instream water rights of Elk River, when considering the extension request. The PFO's statement in Finding 14(a) that water availability was considered when a new application for a water right is submitted misapplies this rule. The PFO is deficient for not considering the effects of the extension on affected water rights, including instream water rights.

7. WaterWatch reserves the right to raise other errors and deficiencies that may become apparent through discovery and provision of additional information from the state.

B. The errors and deficiencies should be corrected as follows:

The errors and deficiencies should be corrected by issuing a Final Order denying the extension.

V. Citation Of Legal Authority

Where known, legal authorities are cited above.

VI. Protest Fee

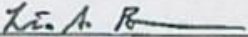
The required fee of \$700.00 is included with this protest.

VII. Request For Hearing

Protestant requests a contested case hearing.

Dated: January 2, 2015.

Respectfully submitted,


Lisa Brown, OSB #025240
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204
Ph: 503.295.4039 x4
Fax: 503.295.2791
lisa@waterwatch.org

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Certificate of Service

I certify that on this date, a copy of the foregoing protest was served on each of the following by the method indicated:

Knapp Ranches, Inc.

PO Box 32

Port Orford, OR 97465

By placing in the US Postal Mail, first class postage prepaid, from Portland, Oregon

Water Rights Services Division

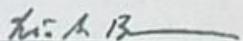
Oregon Water Resources Department

725 Summer St. NE, STE A

Salem, OR 97301-1266

By hand delivery

Dated: January 2, 2015.



Lisa Brown

WaterWatch of Oregon

213 SW Ash St., STE 208

Portland, OR 97204

Ph: 503.295.4039 x2

Fax: 503.295.2791

lisa@waterwatch.org

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OREGON 97465

(541) 332-3755

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

APPLICATION FILE NUMBER: R-84100

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER
APPLICATION S-84101 FOR IRRIGATION AND MINING

MAXIMUM VOLUME: 100 ACRE-FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH APRIL 30

DATE OF PRIORITY: FEBRUARY 4, 1999

The area submerged by the reservoir, when full, will be 7.0 acres and the maximum depth of water will be 20.0 feet. The maximum height of the dam shall not exceed 9.5 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4

SE 1/4 SW 1/4

SECTION 20

NE 1/4 NW 1/4

NW 1/4 NW 1/4

SECTION 29

TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, a staff gage

Application R-84100 Water Resources Department

PERMIT R-12770

IF that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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.

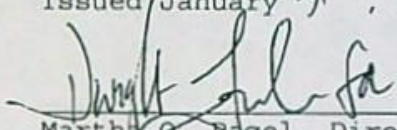
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin by December 15, 2000. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued January 31, 2000


Martha O. Pagel, Director
Water Resources Department

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

PARRETT Steve W

From: PARRETT Steve W
Sent: Wednesday, June 04, 2014 9:35 AM
To: 'Ann Vileisis'
Subject: RE: Comments regarding WRD permit time extensions: R-12770 and S-53648

SentFromSession: ONION.parretsw.6/4/2014 7:58:54 AM

Ann,

I have received, opened and printed your comments for the files.

Thank you for providing this important information for the Department's consideration of the permit extension applications.

Steve

From: Ann Vileisis [<mailto:annvil@earthlink.net>]
Sent: Wednesday, June 04, 2014 9:22 AM
To: PARRETT Steve W
Subject: Comments regarding WRD permit time extensions: R-12770 and S-53648

Dear Steve,

Here attached are comments from Kalmiopsis Audubon Society regarding two WRD permit time extensions (R-12770 and S-53648) for withdrawals from an unnamed tributary in lower Elk River.

Would you please confirm that you have received and can open the comments?

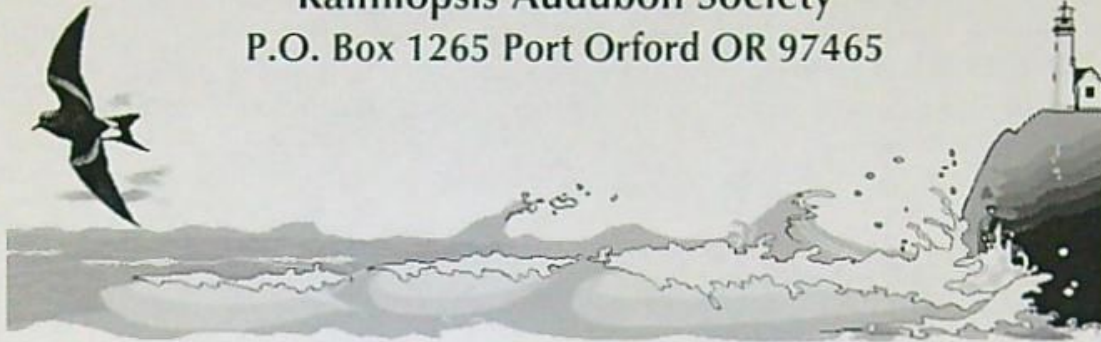
Thank you for helping me to understanding the public process for comments to Water Resources Department regarding time extensions.

Best,
Ann

Ann Vileisis
President
Kalmiopsis Audubon Society
P.O. Box 1265
Port Orford, OR 97465

541-332-0261
www.kalmiopsisaudubon.org

Kalmiopsis Audubon Society
P.O. Box 1265 Port Orford OR 97465



June 4, 2014

To: Steve Parrett, Water Resources Department
From: Ann Vileisis, President, Kalmiopsis Audubon Society
Re: Water permit extensions on Elk River R-12770 and S-53648

Dear Mr. Parrett:

I am writing on behalf of Kalmiopsis Audubon Society. Our group has more than 200 members in Curry County who are concerned about habitat for birds, fish, and wildlife. We have served as stakeholders on several public processes related to fish management and habitat restoration in Elk River, and we have many members who live on Elk River, who fish Elk River and who enjoy other public values of this special waterway. For these reasons, we have knowledge and interest in the river and concerns about two time-extensions requested for permits to withdraw water from an unnamed tributary that flows into the Elk River's estuary:

- Application Number: R-84100, Permit Number: R-12770
- Application Number: S-84101, Permit Number: S-53648

These permits were originally granted in 2000 to withdraw and store water for purposes of agriculture and aggregate mining, but the applicants did not meet the required conditions and did not prove out their permits within the necessary time frame.

Now, in 2014, the applicants are asking for an extension; however, this time the purpose will be to irrigate pasture and to develop a golf course with a different footprint from the original area designated for irrigation. This change is not mentioned in the extension applications.

Regardless of that omission, we are concerned about these permits primarily because water withdrawals from the unnamed tributary have the potential to impact estuarine habitat for salmon and also because circumstances in the lower Elk River have changed in the 14 years since the permits were originally granted.

The lower Elk River has been added to the state DEQ's 303 d list and database owing to the impairment of elevated temperature.¹ And more recently, ODFW in its 2014 Coastal Multispecies Management Plan has red flagged Elk River's fall Chinook run as "non viable"—with a high probability of going extinct in the next 100 years. One of the key limiting factors identified is lack of habitat in the lower river where juvenile Chinook need to rear.²

These two circumstances are closely related because water in the Elk River estuary routinely exceeds the temperature known to be lethal for salmon during the late summer months, precisely when juvenile Chinook need to rear in the estuary. In other words—habitat is not only a place—but it also has a temperature and temporal component. This circumstance makes the influx of cool water—even a small pocket at the mouth of the unnamed tributary—a significant habitat component during low flow times of the year—the same time when irrigation water is most likely to be in highest demand.

We are concerned that the water withdrawals ascribed in the permits now under consideration—which have likely not been fully used before—will exacerbate the high temperature conditions in the Elk River estuary during the low flow times of the year and cause further harm to the at-risk fall Chinook run—a clear detriment to the public interest.

In addition, Elk River and the unnamed tributary to be developed for irrigation in its estuary are critical habitat for SONCC coho, a salmonid listed as “threatened” under the Endangered Species Act. Coho may use estuarine habitat in the unnamed tributary during both winter and summer months if they are washed downstream from rearing habitat upstream. In 2012, the National Marine Fisheries Service drafted a SONCC coho recovery plan that identified “water diversion” as one of several agricultural practices that rank as the highest threat to coho.³

We believe these circumstances—especially those that have changed since the permit was initially granted—need to be fully considered and addressed by meaningful mitigating conditions in order to protect important public fishery values.

For this reason, we strongly urge the Oregon Water Resources Department to send these permit applications back through a Division 33 process that will allow for input from the state natural resource agencies, including ODFW and DEQ, in order to consider the issues of water quality and fisheries and to recommend proper conditions to address these concerns.

Conditions that could help mitigate thermal loading exacerbated by lower flows and offset degradation of estuarine habitat for juvenile Chinook include fencing, shading, and improvement of fish passage in the unnamed tributary.

Other possible mitigations could include the development of a water conservation plan that would include the strategy of capturing and storing water during high flow times so that water would not be withdrawn during the critical low flow period. Such a plan could include the designation of instream flows.

The Water Resources Department should also know that conditions intended to mitigate habitat degradation in the Elk River estuary were actually attached to a different but associated water permit (G-13782). The conditions for that permit—to fence and plant riparian vegetation through the CRP program—were never met either. Although that permit is not officially under consideration for extension here at this time, we urge the Department to regard all the permits for the small unnamed tributary to Elk River together so that circumstances and conditions can be considered and coordinated in an integrated manner. The Department should not grant permits if applicants have neglected to honor fundamental conditions required for lawful water use.

For further context, the Elk River upstream of the unnamed tributary has been designated as both an Oregon State Scenic Waterway and a National Wild and Scenic River, owing, in part, to its high fishery values. Significant public investments in habitat conservation and restoration have already been made in this watershed. However, the problems that I have described with water quality, Chinook, and SONCC coho remain as key limiting factors in the entire Elk River watershed system—factors that could be compounded by poorly timed, poorly planned water withdrawals for irrigation.

Finally, we believe that the scenario of changing hydrologic regimes associated with climate change, including the high potential for more frequent drought and lower summer flows, demands that Water Resources Department take a more conservative and precautionary approach to allotting water.

Thank you for considering this information and our perspective as concerned local citizens.

Sincerely,

Isi Ann Vileisis

President,
Kalmiopsis Audubon

¹ Oregon Department of Environmental Quality (ODEQ), Oregon's Water Quality Limited Streams, 303(d) List (1998), p. 192; ODEQ, Water Quality Assessment, Integrated Report Database (2004/2006) <http://www.deq.state.or.us/wq/assessment/rpt0406/results.asp>

² Oregon Department of Fish and Wildlife, Coastal Multispecies Management Plan, June 2014, 35, 162.
http://www.dfw.state.or.us/fish/CRP/docs/coastal_multispecies/CMP%20Final%20Draft%20Main.pdf

³ National Marine Fisheries Service. 2012. Public Draft Recovery Plan for Southern Oregon/Northern California Coast Coho Salmon (*Oncorhynchus kisutch*). Vol. 2, 7-9.
http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/southern_oregon_northern_california/soncc_plan_draft_2012_entire.pdf



ORCA: Oregon Coast
Alliance

P.O. Box 857, Astoria OR 97103
(503) 391-0210
<http://www.oregoncoastalliance.org>

Protecting the Oregon Coast

June 5, 2014

Steve Parrett
Oregon Water Resources Dept.
725 Summer St. NE, Suite A
Salem, OR 97301

**RE: Comments on extension applications for Knapp Ranch applications/permits
G-14920/G-13782; S-84101/S-53648; and R-84100/R-12770**

SENT VIA email to Steve Parrett, steve.w.parrett@state.or.us

General Comments Applicable to Extension Application for Each Permit

1. Omitted from the extension applications is the fact that the three permits (G-13782, S-53648 and R-12770) are part of a land use application for a golf course on the Knapp Ranch property, which received the approval of the Curry County Board of Commissioners on May 27th. The golf course is proposed to overlap the place of use for G-13782 and S-53648 (whose source is R-12770). Curiously, none of the three time extension applications mention the golf course proposal, which is a centerpiece of Knapp Ranch's current activity. Development of the permits under a golf course scenario would likely differ from what is contemplated in the applications.

2. In the golf course land use proceeding the applicant has represented, based on a letter from WRD's District 19 Watermaster (attached), and the findings accompanying Curry County's Final Order state, that the permits do not authorize water use on those acres of the place of use of G-13782 and S-53648 coinciding with the proposed golf course, because those acres were not irrigated by January, 2005 (being one year after expiration of the "C" date).

The Curry County Findings for Knapp Ranch (attached) state, "Accordingly, when January 2005 came along, the permit no longer authorized any use of water for those portions of the ranch that had not yet been irrigated. Therefore, when the June 2007 date from the statute [ORS 195.300] came to pass, the 27 acres on the upper field that

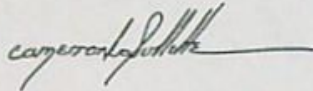
had been included in the original permit were no longer "within the place of use" of a permit authorizing irrigation." (Knapp Ranch Board of Commissioners' Findings, p. 6).

This is obviously wrong and it is apparently based on the letter from the Watermaster. WRD does not delete acres from an authorized place of use or cancel a permit automatically if those acres are not irrigated by the "C" date. There is clearly no cancellation order or amendment to the place of use on any of the Knapp permits.

Because this misunderstanding apparently stems from the Watermaster's letter, we are requesting that WRD formally clarify the status of these permits, including whether the place of use has been modified, so that a misapprehension of the water permits process does not happen in future land use proceedings.

Conclusion

Thank you for considering these comments. Please place them in the file for all three time extension applications of Knapp Ranches LLC.



Cameron La Follette
Land Use Director
Oregon Coast Alliance

Attachments to these Comments

1. Curry County Board of Commissioners Findings on AD-1316/A-1401, Knapp Ranch golf course proposal, dated May 27, 2014.
2. Letter from District 19 Watermaster to Chris Hood, Stuntzner Engineering, dated Feb. 6, 2014, re Knapp Ranches LLC Water right permit S-53648.
3. Aerial Photos of Knapp Ranch ownership and proposed golf course lease area.
4. Tax Lot Maps of Knapp Ranch ownership and golf course lease area.



ORCA: Oregon Coast
Alliance
Protecting the Oregon Coast

Cameron La Follette
Land Use Director
Oregon Coast Alliance
P.O. Box 857
Astoria, OR 97103

Lisa Brown
Staff Attorney
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204

June 5, 2014

Steve Parrett
Oregon Water Resources Dept.
725 Summer St. NE, Suite A
Salem, OR 97301

RE: Comments on extension applications for Knapp Ranch applications/permits G-14920/G-13782; S-84101/S-53648; and R-84100/R-12770

SENT VIA email to Steve Parrett, steve.w.parrett@state.or.us

Dear Mr. Parrett:

Thank you for the opportunity to comment on permit extension applications filed by Knapp Ranches, Inc. WaterWatch and Oregon Coast Alliance submit the following comments on extension applications for three permits: G-13782, S-53648, and R-12770. We offer some comments here on the extension application for the groundwater permit, though while filed with WRD, it has not been noticed for public comment yet. We intend to submit additional comments at such time as it is noticed.

Comments on Extension Application for G-13782

WRD should deny the extension for this permit because the permit holder has failed to comply with multiple permit conditions, some of which appear to be compliance failures that cannot be cured at this late date. Because in this case, the permit holder will be unable to certificate this permit, the proper course is to deny the extension and begin cancellation proceedings.

As noted above, this extension application was filed with the other two, but has not yet come up for public notice. We are commenting on it in addition because all three were submitted together and cover the same acreage at Knapp Ranch, but will likely submit additional comments at such time as it is noticed.

1. The permit holder failed to comply with condition requiring enrollment in the USDA Conservation Riparian Enhancement Program (CREP).

This permit includes a permit condition requiring enrollment in CREP which specifies that the "enrollment contract shall include the entire length of the Elk River river front property east of the foredune." Permit G-13782 at p. 3. The permit was issued January 31, 2000 – almost 15 years ago – but the permit holder has yet to comply with the condition.

The condition was identified by Oregon Department of Fish and Wildlife (ODFW) as mitigation both for this groundwater permit and for the use of "POD 2," which is permit R-12770. See April 5, 1999 letter from ODFW's Todd Confer to Doug Woodcock regarding the permit application (available in the WRD file). The history of the condition is further discussed in a February 23, 1999 WRD Memorandum from Doug Woodcock that also explains that "[u]se has apparently been unauthorized at this site for a number of years. This application is an attempt to get the Knapp Ranches operating under a legal water permit." (Also available in the WRD file).

However, this condition was never complied with. The extension application states "Knapp Ranch did not enroll in USDA CREP, but did perform extensive riparian plantings along the banks of the Elk River, cooperating with the Watershed in a 1998 and 199[9]. Enrollment in the USDA CREP is a contractual process, and that process will start this spring." P. 4.

There appears to be no way for the permit holder to cure its failure to enroll the property in CREP because nearly 15 years have passed with that property lacking the CREP protections that were required to mitigate water use under this permit and from R-12770. See DOJ Advice re: Compliance with Permit Conditions, DOJ File No. 690-303-GN0023-98 (February 7, 2002); and WRD Internal Guidance re: Non-Compliance of Time Sensitive Permit Conditions when Reviewing Claims of Beneficial Use and Extensions of Time (October 15, 2002). WRD should deny the extension.

Further, we are not aware of any evidence that the Knapps did "extensive riparian plantings" (or any other type of restoration) along the Elk River. Certainly there was nothing in the WRD file to that effect.

2. The permit holder failed to comply with the condition requiring a monitoring plan to be submitted within one year of permit issuance (by January 31, 2001) and failed to provide a reference level necessary to comply with the condition protecting water levels.

The permit includes a detailed condition requiring a plan to monitor and report the impact of water use on water levels within the aquifer providing water to the well(s). P. 2. The condition further required the permit holder to stipulate a reference water level and specified that if certain static water-level declines are seen, the permit holder shall discontinue use or reduce the rate of pumping. However, apparently none of this was ever done and “the plan fell through the cracks.” Extension Application, p. 4. The WRD Internal Guidance re: Non-Compliance of Time Sensitive Permit Conditions when Reviewing Claims of Beneficial Use and Extensions of Time (October 15, 2002) describes a process in this situation where groundwater staff attempts to re-create the reference level, but notes that WRD may not certificate a water use absent compliance with the conditions of the permit. P. 5.

3. The permit holder did not comply with the measurement condition.

Permit holder was required to “install a meter or other suitable measure device as approved by the Director” *before* water began under the permit. Permit G-13782, p. 2. However, the extension application states that “[a]pproximate flow volume was recorded using rated gpm of pump (no meter).” P. 4. That does not comply with the permit condition.

4. The extension application is incomplete.

Applicant has not filled out section 5-B (Chart E). Applicant has not provided a maximum instantaneous rate of use under the permit.

Comments on Extension Application for S-53648

1. The extension application is incomplete.

The extension application does not provide the maximum rate of water use under the permit. The permit allows 60 acre-feet for irrigation (May 1 through October 15) and 40 acre-feet for mining (year-round). The extension application reports only that 454 acre-feet has been stored to date (p. 7).

2. The extension application’s claim that 160 acres is being irrigated from 1000’ of mainline (400’ of which goes to the quarry) seems implausible.

The extension application claims 160 acres have been irrigated to date. P. 8. It also explains that the irrigation system consists of a pump and an intake and “1000’ feet of mainline heading two directions, 400’ East to the quarry, and 600’ WNW to the pastures.” P. 3. It is unclear how 160 acres, much of which would be upslope from the terminus of the mainline to the pastures, could be irrigated from such a system. Further, we are not aware of additional irrigation infrastructure from viewing aerial images. We urge the WRD to ensure that all information is accurate.

3. Permit holder has either not complied with the reporting condition or no water has been used under the permit for irrigation.

The permit includes a measurement and reporting condition. Water use reports were submitted to WRD for this permit for years 2000 through 2008 by David Knapp, Secretary of Knapp Ranches, Inc. (2004 – 2005 was also signed by Barbara Knapp, bookkeeper). Each of those reports show zero acres of land irrigated under the permit (and a very small amount of water being used annually). None of the reports state that the water use is being reported for only part of the Knapp Ranch, Inc. operations. The extension application claims that “[r]ecords were kept, but not submitted. These readings were kept by a different party than the mining use, and that party is currently out of the area.” P. 4. How could this be the case, that another party has disappeared with the irrigation water use records for Knapp Ranches, Inc.’s water permit, whose place of use is Knapp Ranches, Inc.? Where are these missing records, or are the submitted reports accurately portraying that no acres were irrigated from 2000-2008 under the surface water permit? Also, where are the reports for the last five years, which the permit holder was required to file?

4. Construction did not begin within one-year of permit issuance.

The permit was issued January 31, 2000 but construction of the works to deliver the surface water did not begin until more than a year later in April, 2001. Extension Application, p. 5. The earlier construction listed on the application appears to all be related to the reservoir permit, not the surface water permit.

5. Lack of diligence.

The extension application leaves blank the chart showing work accomplished after the C-Date, because none was completed during those years – apparently none since 2001. The only work proposed to be accomplished is to raise the pump station and “replace adjacent sections of mainline,” which is very minimal. Under OAR 690-315-0040 (2)(a), it is highly questionable whether the applicant has “demonstrated reasonable diligence in previous performance under the permit” for the Department to make a finding of good cause.

6. WRD should add additional resource protection conditions.

Very little of the water under this permit has been used (maximum annual use of 1,913,371 gallons in 2006 (5.87 acre-feet) according to the water use reports). OAR 690-315-0040(4)(c) requires the Department to consider among other things, “[t]he habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Dept. of Fish and Wildlife.” The Elk River supports Federally listed coho salmon and a Chinook run identified by ODFW as a “non-viable run” due to elevated risk of extinction over the next 100 years. Both are exceedingly important to the sport and commercial fishery in the Port Orford area. One of the key problems is estuarine habitat, including adequate cold water summer flows, for summer rearing of juveniles – an estuary that the

Knapp Ranches, Inc. hugely impacts. If WRD grants an extension, it should work with ODFW to identify additional resource protection conditions.

Comments on extension application for R-12770

1. The permit includes a measurement and reporting condition and the water use reports filed for this permit for 2000-2008 show only zeroes.

Water use reports were submitted to WRD for this permit for years 2000 through 2008 by David Knapp, Secretary of Knapp Ranches, Inc. (2004 – 2005 was also signed by Barbara Knapp, bookkeeper). For each year, zeroes are shown for every month for this permit. There appears to be some confusion as the permit holder claims the reservoir was constructed starting in 2000 and a review of current aerial photo shows a large reservoir at this location. The extension application states that “[t]he local watermaster waived the requirement” for Condition A2 (p. 4), but it is unclear what exactly the applicant claims has been waived. The permit requires that any waiver be provided in writing; we did not see any waiver in the file. Our reading of permit is that the water master could waive the weir requirement only but not the measurement requirement. However, no water use has apparently been reported for this permit (other than the zeroes on the submitted forms).

2. Permit holder has not installed the required “fully functional conduit/gate assemble having a minimum diameter of 8 inches” (permit at p. 2)

The extension application states that permit holder “[r]aised the elevation of a dip in the existing road a few feet, to form a dam for reservoir by shoving several hundred yards of pit run down from the gravel pit.” P. 5. This does not appear compliant with the permit’s construction requirements. The extension application identifies installing an outlet with a gate valve as a Summer 2014/2015 project. P. 8. Permit holder has not complied with permit conditions.

3. The extension application is incomplete.

It cannot be determined from the extension application how much water is being stored in this reservoir or if the reservoir size is limited to the allowed 7.0 acres. The application states that 454 acre-feet have been stored to date. P. 7. This is either some kind of cumulative tally, or the use is illegal as the permit allows only the storage of 100 AF of winter water (November 1 through April 30).

It also cannot be determined whether storage is occurring in the allowed season water (November 1 through April 30). Permit holder has not installed a gate or conduit and it is unclear whether or how permit holder is complying with the season of use requirement, which is a critical condition for protecting summer and early fall flows in the Elk River.

4. The project has not been developed in accordance with the permit, demonstrating a lack of due diligence and a lack of permit condition compliance.

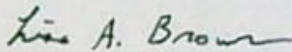
It appears this was an existing reservoir prior to issuance of the permit, as intimated in February 23, 1999 WRD Memorandum from Doug Woodcock explaining that “[u]se has apparently been unauthorized at this site for a number of years. This application is an attempt to get the Knapp Ranches operating under a legal water permit.” Though Mr. Woodcock’s memo pertained to the groundwater permit, that permit application included this reservoir as a “POD 2”. Thus Mr. Woodcock’s comments appear to relate to this reservoir in addition to the sump.

It appears the permit was granted with requirements that the Knapps upgrade the dam to include the gate, etc., but this has not happened. The extension application explains that “[t]he planned construction work on improving the reservoir dam was never completed, due to the expense involved, and the irrigation system functioned without it.” P. 4.

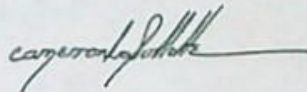
Conclusion

Thank you for considering these comments. Please place them in the file for all three time extension applications of Knapp Ranches LLC.

Sincerely,



Lisa Brown
Staff Attorney
WaterWatch of Oregon



Cameron La Follette
Land Use Director
Oregon Coast Alliance



ORCA: Oregon Coast
Alliance
Protecting the Oregon Coast

Lisa Brown
Staff Attorney
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204

Cameron La Follette
Land Use Director
Oregon Coast Alliance
P.O. Box 857
Astoria, OR 97103

February 4, 2014

Dwight French
Oregon Water Resources Department
725 Summer St. NE, Ste. A
Salem, OR 97301

Re: Permits G-13782, R-12770, and S-53648

Dear Mr. French:

We have reviewed the permit files for G-13782, R-12770, and S-53648, permits in the Elk River watershed owned by Knapp Ranches, Inc. The permits were issued in 1999 and the "C" date deadlines expired in 2004. No extension applications or claims of beneficial use have been filed.

ORS § 537.620 provides for the cancellation of permits for failure of proof of completion or appropriation:

Whenever the time within which any appropriation under a permit should have been perfected has expired and the owner of the permit fails or refuses within three months thereafter to submit to the Water Resources Department proof of completion of the appropriation as required by ORS § 537.230 and § 537.250, the department may, after 60 days notice by registered mail or by certified mail with return receipt, order the cancellation of the permit.

Given the status of the permits, we request that OWRD begin cancellation proceedings for each of them.

RECEIVED BY OWRD

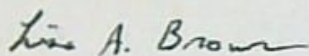
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SALEM, OR

In addition, G-13782 is conditioned upon the landowner's enrollment in the USDA Conservation Riparian Enhancement Program (CREP), with "the enrollment contract [including] the entire length of the Elk River river front property east of the foredune." We are concerned because it appears that this permit condition, added to mitigate impacts of the permit and the associated reservoir permit, has not been met.

Thank you for your consideration. We look forward to hearing from you.

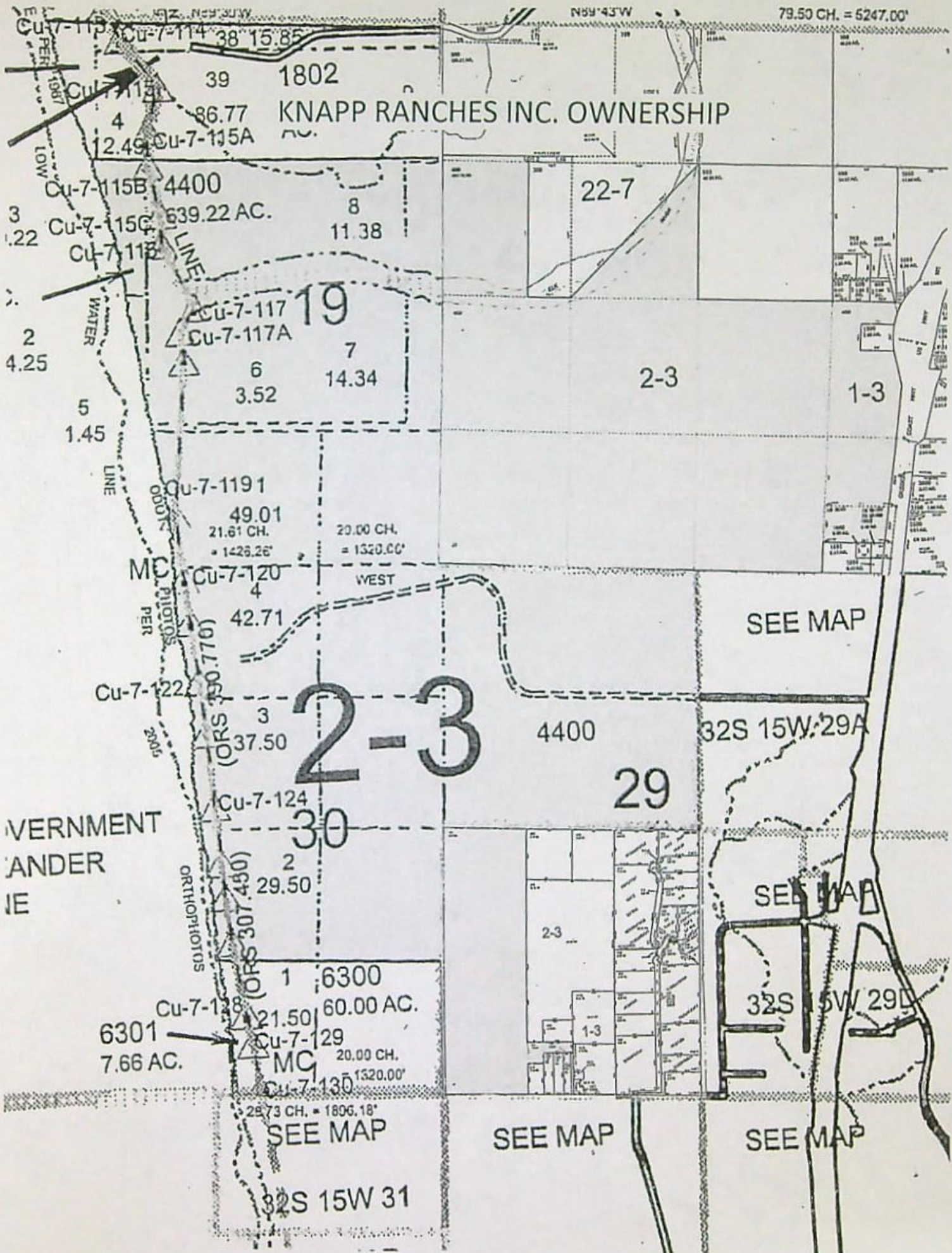
Sincerely,



Lisa Brown
Staff Attorney
WaterWatch of Oregon



Cameron La Follette
Land Use Director
Oregon Coast Alliance



2-3

30

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SEE MAP

SEE MAP

SEE MAP

SEE MAP

SEE MAP

GOVERNMENT
LAND
SEE

32S 15W 31

32S 15W 29A

32S 15W 29D

WEST

MC

MC

6301

7.66 AC.

Cu-7-128

21.50

60.00 AC.

Cu-7-129

20.00 CH.

1320.00'

Cu-7-130

29.73 CH. = 1806.18'

SEE MAP

ORTHOPHOTOS

PILOT POINT

PER

MC

2005

Cu-7-122

42.71

Cu-7-120

4

21.61 CH.

1426.26'

Cu-7-1191

49.01

20.00 CH.

1320.00'

Cu-7-117A

7

14.34

Cu-7-117

19

3.52

6

11.38

Cu-7-115C

639.22 AC.

Cu-7-115B

4400

86.77

Cu-7-115A

12.49

Cu-7-115

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39

1802

Cu-7-114

38 15.85

Cu-7-113

79.50 CH. = 5247.00'

N69°43'W

N72°30'W

WATER LINE

LOW

PER

1.45

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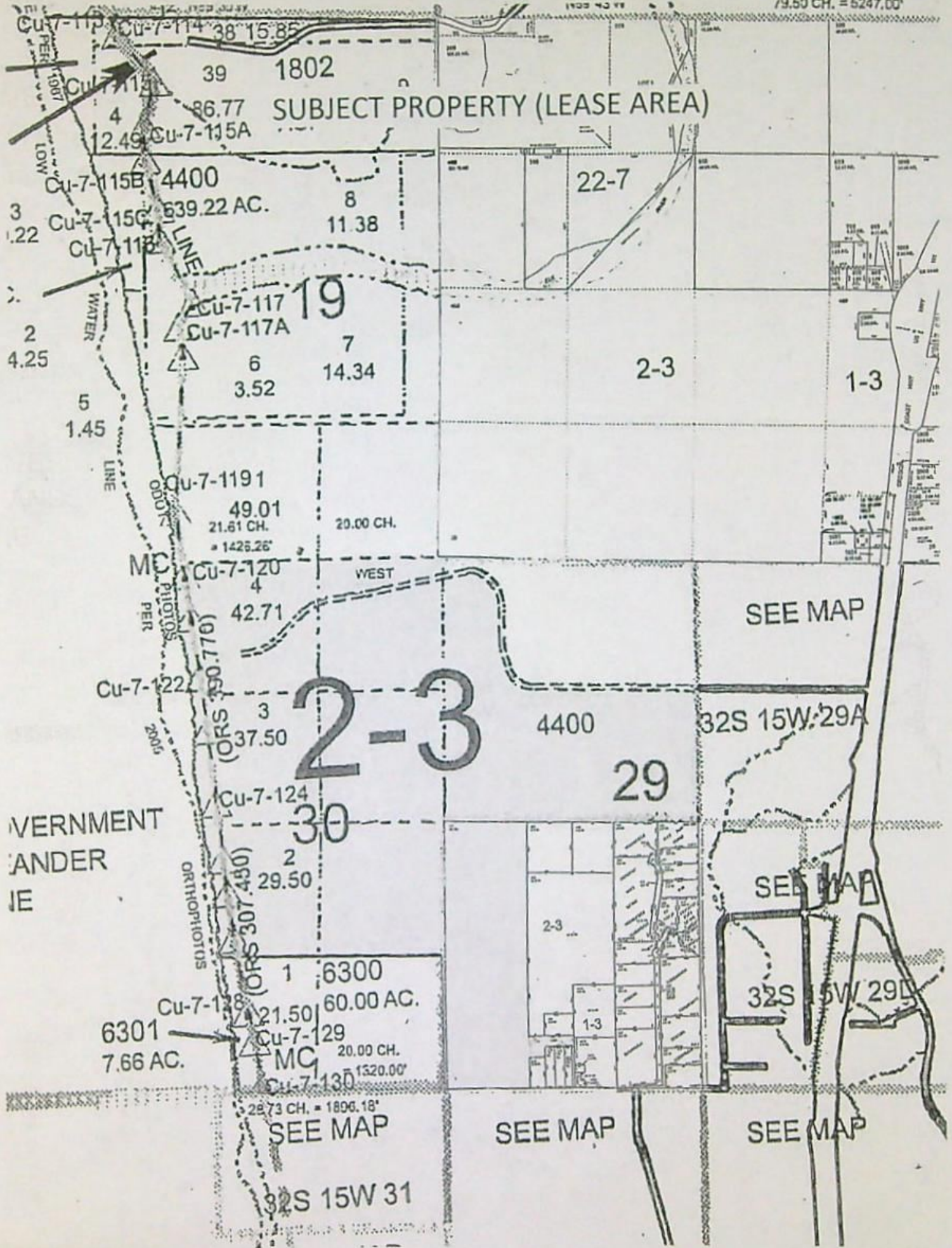
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99

100

79.50 CH. = 5247.00'



SUBJECT PROPERTY (LEASE AREA)

Cu-7-114 38 15.85
 39 1802
 4 86.77
 12.49 Cu-7-115A
 Cu-7-115B 4400
 Cu-7-115C 639.22 AC.
 Cu-7-116 11.38

Cu-7-117 19
 Cu-7-117A 7
 6 3.52
 7 14.34

Cu-7-1191 49.01
 21.61 CH.
 = 1425.26'
 20.00 CH.

Cu-7-120 42.71
 WEST

Cu-7-122 37.50
 (ORS 390.770)

Cu-7-124 29.50
 2

Cu-7-128 21.50 60.00 AC.
 6301 7.66 AC.
 Cu-7-129 20.00 CH.
 1320.00'
 Cu-7-130 28.73 CH. = 1896.18'
 SEE MAP

GOVERNMENT LAND

SEE MAP

2-3

29

SEE MAP

SEE MAP

SEE MAP

32S 15W 31

32S 15W 29A

32S 15W 29B

HIGHLAND GOLF SERVICES OWNERSHIP EXHIBIT

LOCATED IN
PORTIONS OF SEC. 19, 20, 29 & 30,
T.32S., R.15W., W.M., CURRY COUNTY, OR

SCALE 1" = 1000 FT.



2011 NAIP AERIAL



**Stutzner Engineering
& Forestry, LLC**

ENGINEERING • LAND MANAGEMENT • FORESTRY
PLANNING • TREE CARE

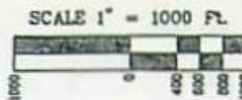
1000 N. 1st St.
Medford, OR 97504
Phone: 541-753-2222
Fax: 541-753-2223

Job Name: Highland Golf Services
Sheet: Ownership Exhibit Map

Sheet 1 of 3

HIGHLAND GOLF SERVICES LEASE EXHIBIT

LOCATED IN
PORTIONS OF SEC. 19, 20, 29 & 30,
T.32S., R.15W., W.M., CURRY COUNTY, OR



2011 NAIP AERIAL



**Stutzner Engineering
& Forestry, LLC**

ENGINEERING • LAND ACQUISITION • FORESTRY
PLANNING • SURVEY SERVICES

Project: Highland Golf Services
Date: 11/15/11
Scale: 1" = 1000 FT.

Job Name: Highland Golf Services
Sheet: Lease Exhibit Map



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
District #19 Watermaster Office
Coos County Courthouse
Coquille, Oregon 97423
541-396-1905
Fax: 541-396-1906

February 6, 2014

Stuntzner Engineering
Chris Hood
PO Box 118
Coos Bay, OR 97423

Re: Water right permit S-53648

Dear Chris,

As we discussed, water right permit S-53648 calls for the irrigation of 189.5 acres. Completion date for this permit was October 1, 2004. At that time, all of the acres to be developed under this permit should have been irrigated. If there were portions of the permitted place of use that were never developed, the permit authorizing use of those areas expired.

The permit included the irrigation of 14.5 acres in the NE NE, and 12.5 acres in the SE NE of Section 30, T.32S, R.15 W., W.M. It appears those acres were never developed. If water use on those acres never occurred, that portion of the permit became invalid as of October 1, 2004.

The remaining portion of this permit is due for perfection. The only acres that may be perfected are those that have had irrigation applied to them, within the terms, limits and conditions of the permit. When perfection of the permit occurs, it will exclude those acres not developed, and the final certificate will reflect the developed permit.

Since the completion date for this permit has expired, and development on the indicated acres did not take place, no water right ever existed for this location.

As we discussed, the loss of 27.0 acres should still leave the landowner with sufficient water/acres for the proposed project.

Feel free to call or stop by the office if I may be of further assistance.

Sincerely,

Mitchell E. Lewis
Watermaster District 19
Oregon Water Resources Department

95

February 6, 2014

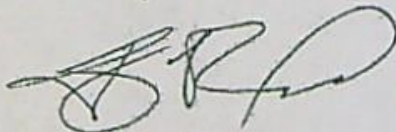
Stuntzner Engineering
Chris Hood
PO Box 118
Coos Bay, OR

Re: Water Right Permit S-53648

Dear Chris

In multiple conversations with the Knapp family over the past 15 years, the topic of diversifying their cattle ranch operation has been discussed several times. There remains evidence of a failed Christmas tree production area, on the south side of Knapp Road, as you enter the property. In the late 1990's, the Knapp's toyed with the idea of getting into cranberry production, and they even applied for a water right permit to develop cranberry bogs on a portion of what is now leased to Elk River Property Development. The cranberry market took a steep dive at the beginning of this decade, and the Knapp's have never again considered that type of farming. According to the Knapp's, the 27 acre area that had been considered for cranberry bogs, has never been irrigated.

Sincerely,



Troy Russell

Pacific Gales
Project Manager

an

BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON

In the matter of Planning Commission file AD-1316 for conditional use approval to develop an 18-hole golf course with accessory uses on a portion of property having a zoning designation of Exclusive Farm Use (EFU) and identified on the Curry County Assessor's Map No. 32-15-00, Tax Lot 04400 and Map No. 32-15-29C, Tax Lot 00300 filed by Chris Hood, Stuntzner Engineering & Forestry, LLC, on behalf of Elk River Property Development LLC and Knapp Ranches, Inc.

ORDER No. 20013

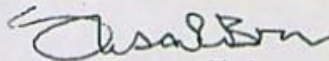
This matter came before the County on an application by Elk River Property Development, LLC and Knapp Ranches, Inc., seeking approval of a Conditional Use Permit to develop an 18-hole golf course, together with accessory uses, on a property with zoning designation of Exclusive Farm Use (EFU), identified as Curry County Assessor's Map No. 32-15-00; Tax Lot 04400 and Assessor's Map No. 32-15-29C, Tax Lot 00300. The applicant was represented by Stuntzner Engineering & Forestry, LLC and the Law Office of Bill Kloos, PC.

Following procedures as required by law, the Planning Commission approved the application on February 27, 2014, and on March 10, 2014, a Notice of Appeal was filed by Sean Malone, Attorney at Law, on behalf of Oregon Coast Alliance ("ORCA"). Thereafter, the matter was taken up on appeal by the Board of Curry County Commissioners. Following appropriate notice as required by law, the Board held a *de novo* hearing on April 17, 2014, and provided additional opportunities for parties to submit testimony to the record. On May 15, 2014, the Board orally approved the application and continued the matter until May 27, 2014, for adoption of a final written order.

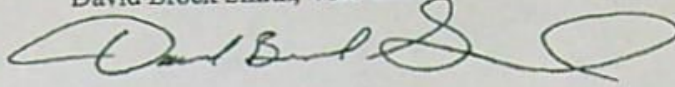
NOW, THEREFORE, THE BOARD OF CURRY COUNTY COMMISSIONERS HEREBY ORDERS that Application File No. AD-1316 is approved, and the appeal in File No. A-1401 is denied, based on the findings outlined in Exhibit "A" and the conditions outlined in Exhibit "B" that are attached hereto and incorporated by reference.

DATED this 27 day of May, 2014

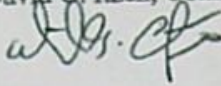
BOARD OF CURRY COUNTY COMMISSIONERS


Susan Brown, Chair

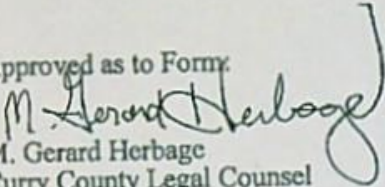
David Brock Smith, Vice Chair



David G. Itzen, Commissioner



Approved as to Form:



M. Gerard Herbage
Curry County Legal Counsel

EXHIBIT A

CURRY COUNTY BOARD OF COMMISSIONERS FINDINGS OF FACT AND CONCLUSIONS

AD-1316: REQUEST FOR A CONDITIONAL USE PERMIT TO DEVELOP 18-HOLE GOLF COURSE TOGETHER WITH ACCESSORY USES ON A PORTION OF THE PROPERTY WITH ZONING DESIGNATION OF EXCLUSIVE FARM USE.

I. INTRODUCTION

This document supports the decision of the Curry County Board of Commissioners in File Nos. A-1401 and AD-1316, approving the Conditional Use Permit for an 18-hole golf course on EFU-zoned land.

The Board finds that the proposed golf course will enhance and diversify the outdoor recreational activities offered in the County, on one of Southern Oregon's most scenic locations. It will create numerous employment opportunities and will contribute to the economic growth in the region. The Board further finds that the golf course will be a leader in environmental sustainability and will not have adverse impacts on farming, forestry practices or on environmental and natural resources in the area. In order to ensure compliance with applicable approval criteria, the Board utilizes conditions of approval, where appropriate.

Except for instances where this decision modifies or conflicts with the findings, analysis and conditions of approval contained in the decision of the Planning Commission, the staff report, and the applicant's submittals, those documents are hereby adopted as supporting findings, and are incorporated into this decision by reference.

II. APPLICANT.

The Applicant is Elk River Property Development, LLC. The subject property is owned by Knapp Ranches, Inc.

III. DESCRIPTION OF SITE AND PROPOSAL

The subject property consists of approximately 354 acres of a 1,008 acre tract of land owned by Knapp Ranches, Inc. which is located between US Hwy 101 to the east and the Pacific Ocean to the west and Port Orford Urban Growth Boundary to the south. The Applicant is requesting conditional use approval to allow the development of an 18-hole golf course on an approximately 220 acre portion of the subject property. The proposed development area has an EFU zoning designation. In addition to the golf course, the development will include a clubhouse, equipment storage and office facility, restaurant, lounge, parking lots, and water improvements (irrigation).

The subject property is identified as Curry County Assessor's Map No. 32-15-00; Tax Lot 04400 and Assessor's Map No. 32-15-29C; Tax Lots 00300 and 500. Although Assessor's Map No. 32-15-29C; Tax lot 00500 is part of the subject property, it is not within the proposed golf course

development area. This parcel consists of approximately 1.52 acres; is zoned Residential Two (R-2); and is located within the Port Orford Urban Growth Boundary.

The subject property abuts the City of Port Orford Urban Growth Boundary along its south and east boundaries, the Pacific Ocean along its west boundary and the remainder of the Knapp ownership along its north boundary.

The subject property is situated on a bench that is elevated approximately 100 feet above the adjacent resource land to the north, the Pacific Ocean to the west and a forested area to the south.

The northeasterly portion of the subject property contains approximately 111 acres of pasture and forest land that are relatively flat with a south/southeast slope of less than one percent. There is a sand dune formation approximately 500 feet in width that extends north and south along the westerly portion of the subject property. The dune formation ascends from the pasture to the west for approximately 50 feet at an average slope of 50 percent and then descends westerly as a partially solidified rolling formation with an overall average slope of 12 to 15 percent. The southerly area was historically forestland that was logged approximately 6 years ago.

IV. COUNTY PROCEDURES

The application for Conditional Use approval was filed pursuant to Curry County Zoning Ordinance ("CCZO") Section 3.072(25) governing golf courses on EFU-zoned land. This application initially came before the Curry County Planning Commission as an application for a conditional use approval in accordance with CCZO Section 2.060(2) (c).

On January 23, 2014, a public hearing was held before the Planning Commission as a matter duly set upon the agenda of its regular meeting after giving public notice to affected property owners and publication in the local newspaper.

After receiving public testimony on January 23, 2014, the hearing portion of the proceedings was closed and the Planning Commission voted to reconvene on February 27, 2014, for deliberation only. The written record was left open until 5:00 pm on February 6, 2014, for submission of new testimony/material; until 5:00 pm, February 13, 2014, for rebuttal testimony from anyone on material submitted that was submitted in the prior two week period; and until February 20, 2014, for submission of final arguments by the Applicant.

On February 27, 2014, after consideration and discussion of the evidence and testimony, the Planning Commission voted to approve the request. The Final Order of the Planning Commission, which was based on decision criteria, findings of fact and conclusions of law, was signed on February 27, 2014.

On March 10, 2014, a Notice of Appeal of the Planning Commission decision was filed by Sean Malone, Attorney at Law, on behalf of Oregon Coast Alliance ("ORCA"). Pursuant to CCZO 2.170, the matter was taken up on appeal by the Board of Curry County Commissioners. Following appropriate notice as required by law, the Board held a *de novo* hearing on April 17, 2014 and provided additional opportunities for parties to submit testimony to the record. On May 15, 2014, the Board orally approved the application and continued the matter until May 27, 2014, for adoption of a final written order.

V. APPLICABLE STANDARDS AND CRITERIA

This application involves siting and development of a golf course on EFU-zoned property.

Under Oregon's land use statutes and goals, the application must be found to comply with Curry County land use standards and criteria, including the following:

STATUTES

ORS 215.283 - Uses permitted in exclusive farm use zones in nonmarginal lands; rules.

ORS 215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.

OREGON ADMINISTRATIVE RULES (OAR)

OAR 660-033-0120

OAR 660-033-0130

Curry County Comprehensive Plan

Section 6.4.1 Existing Disposal Sites (Solid Waste)

Section 6.6 Plan Policies for Air, Land, Water Resource Quality

Curry County Zoning Ordinance

Section 1.030(58) Definitions-Golf Course

Section 3.070 Exclusive Farm Use Zone (EFU).

Section 3.072 Conditional Uses Subject to Administrative Approval by the Director

Section 3.073 High-Value Farm Land.

Section 3.252 Development in Areas of Geologic Hazards

Section 7.040 Standards Governing Conditional Uses

Section 7.050 Time Limit on a Permit for Conditional Uses

Additional applicable standards may have previously been addressed in this proceeding. In that instance, the Board adopts the findings, analysis and conditions of approval contained in the decision of the Planning Commission, the staff report, and the applicant's submittals.

VI. ANALYSIS OF APPLICABLE STANDARDS AND CRITERIA AND FINDINGS OF COMPLIANCE

1. STATUTES

ORS 215.283 - Uses permitted in exclusive farm use zones in nonmarginal lands; rules.

(2) The following non-farm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

FINDING: This statute applies because Curry County is a non-marginal lands county and the subject property is zoned EFU. ORS 195.300 defines high-value farmland as including, in relevant part:

"Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:

"(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;"

Opponents of the proposed golf course testified that the application could not be approved because a portion of the development site had previously been within the place of use for an irrigation permit. The Applicant and the representative from the Oregon Department of Water Resources testified that, for the portion of the irrigation permit in question that applied to the proposed golf course development area, the permit to develop the irrigation right had lapsed prior to the statutory date of June 28, 2007, by virtue of the permit-holder failing to have begun development of the beneficial use of water in that area. The Board specifically agrees with the analysis provided in the Applicant's final argument before the Planning Commission, which stated, in relevant part:

"The permit-holder (Knapp Ranches) partially complied with the permit's requirement to apply the water to the designated irrigation use within a set deadline, but only for a portion of the ranch.

"The irrigation on the lower pastures is now overdue for certification (a process in which the permit holder "proves up" on the fact that it has complied with the terms of the permit) but the irrigation in that lower area has, in fact, been developed. There's a very different situation on the upper field, where the golf course is proposed. In that area, the permit-holder never attempted to irrigate. No pipes were run up the hill; no pump was installed. The permit was issued in January of 2000, and it required the irrigation use to be developed within five years. Accordingly, when January 2005 came along, the permit no longer authorized any use of water for those portions of the ranch that had not yet been irrigated. Therefore, when the June 2007 date from the statute came to pass, the 27 acres on the upper field that had been included in the original permit were no longer "within the place of use" of a permit authorizing irrigation. Because this statutory definition does not apply to the upper field, it is not a basis to deny the application."

Accordingly, because the Board finds that the portion of the ranch that is now within the proposed development area was not within the place of use for a permit for irrigation on June 28, 2007, that area is not "high-value farmland," as defined by ORS 195.300. Therefore, this application can be approved, pursuant to ORS 215.283(2)(f).

ORS 215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.

(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

FINDING: Pursuant to ORS 215.283(1)(2)(F), a golf course is a permitted use in the exclusive farm use zone on land determined not to be high-value farmland, as defined in ORS 195.300, subject the standards found at ORS 215.296. The provisions of ORS 215.296 are implemented by CCZO 7.040(16), and are therefore addressed under that section below.

2. OREGON ADMINISTRATIVE RULES

OAR 660-033-0120 - Uses Authorized on Agricultural Lands

As explained in the staff report and applicant's submittals, OAR 660-033-0120 separates uses allowed on high-value farmland (HV farmland) and those lands determined not to be high-value farmland (All Others). Because the subject property is not high-value farmland, a golf course is authorized after notice and the opportunity for a hearing, and after demonstrating compliance with the provisions of 660-033-0130 (2), (5) and (20) addressed below.

FINDING: The Board finds that, pursuant to administrative rule, the proposed golf course is not on high-value farmland, and can therefore be approved pursuant to the procedural requirements and the minimum standards found at OAR 660-033-0130.

660-033-0130 - Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

FINDING: opponents of the proposed golf course have argued that the buildings would be larger than allowed under this Rule, arguing that it prohibits a building, or a collection of buildings, that have a design capacity greater than 100 people. Opponents have argued that a building that could conceivably contain more than 100 people exceed this Rule's limitation.

The Board finds that the term "design capacity," as it is used in the context of this Administrative Rule, is not the equivalent of the Fire Marshall's Maximum Occupancy. In the appeal letter to the Board, the Appellant conflated maximum occupancy with design capacity when it stated that the applicant had failed to provide evidence that the buildings "[...] would have a design capacity or maximum occupancy of less than 100 people."

The Board disagrees with the Appellants' assertion that "design capacity" has the same meaning as "maximum occupancy." The board agrees with the applicant's analysis that "design capacity"

is a concept that must consider the *use and purpose for which the buildings are designed*. This requires the decision maker to look at the larger operational context and to account for how the buildings are designed to suit the proposed use, not simply the maximum number of people who could theoretically fit into the space. The Applicant's original narrative explains in great detail that the design of the buildings, the number of players that can be accommodated at any given time on the course, and the number of players transiting through the buildings before and after playing a game of golf, will not involve numbers of more than 100 people in the buildings.

The Appellant's appeal letter included a list of all buildings, which it argued would cumulatively have a design capacity of more than 100 people. In this list, the Appellant included spaces such as equipment storage, office facility, mechanic's shop and maintenance facility. The Board finds that these spaces would likely be able to accommodate many people, if they were filled to their theoretical maximum occupancy. But that is not how those spaces are intended to be occupied. According to the design and the proposed operations plan, it is likely that many of these spaces (a maintenance shed, for example) will rarely be occupied by more than one or two employees of the golf course. For this reason, the Board declines to adopt the Appellant's view that "design capacity" means the maximum number of people that could theoretically fit in a building.

The Board further finds that the final architectural details of the proposed structure are not yet finalized, and that compliance with this rule can be ensured via imposition of a condition of approval that restricts the issuance of building permits to buildings with a design capacity of no greater than 100 people.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

FINDING: The Board finds that the proposed golf course is consistent with the standards found in this Administrative Rule. Specifically, the Board finds that the description of an 18-hole golf course found at OAR 660-033-0130(20)(a) is illustrative of a typically-sized regulation golf course, and does not establish a strict maximum size limit. The approximate description contained in this rule is flexible enough to include the natural "links style" course that has been proposed here.

Further, the Board finds that the accessory uses proposed are consistent with this rule. As the Applicant has stated, accessory commercial uses are allowed, so long as they provide goods or services customarily provided to golfers, and that they do not serve the non-golfing public. Food and beverage service is included in the Rule as an example of this type of permitted use. The Rule also specifically provides that "Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse." (emphasis added). Therefore, the small refreshments stand is an accessory use that is allowed outright.

3. CURRY COUNTY COMPREHENSIVE PLAN

The Applicant submitted findings regarding conformance with the Curry County Comprehensive Plan – Section 6.4.1 Existing Disposal Sites (Solid Waste) and Section 6.6 Plan Policies for Air, Land, Water Resource Quality

FINDING: According to the Applicant, a portion of the subject property (Tax Lot 300 Section 29C) is encumbered by the groundwater area potentially affected by the Port Orford Landfill Site. No development is proposed within the Port Orford groundwater area. A map is attached to the Applicant's supplemental exhibits showing that the boundary of the golf course development area is located approximately 600 feet north of the Groundwater Area Boundary. Therefore, The Curry County Comprehensive Plan Ground Water Hazard Policies do not apply to the golf course development area.

4. CURRY COUNTY ZONING ORDINANCE

Section 3.070. Exclusive Farm Use Zone (EFU).

Purpose of Classification: The purpose of the zone is to encourage the preservation of farm use lands in the county where the land owner desires the protection of Exclusive Farm Use Zoning under the provisions of ORS 215.203. The intent of this zone is to implement the requirements of the Curry County Comprehensive Plan and Statewide Planning Goal 3 with respect to agricultural lands in the county.

FINDING: The relevant approval criteria implementing this purpose statement are addressed below.

Section 3.072 Conditional Uses Subject to Administrative Approval by the Director

25. Golf Courses except on high-value farm land (16a,b)

FINDING: As explained above in context of ORS 215.283 and ORS 195.300, the subject property does not include high-value farmland. A golf course may therefore be approved on EFU lands if the application demonstrates compliance with the standards for Conditional Uses.

Section 3.252 Development in Areas of Geologic Hazards

Those areas identified as geologic hazard areas shall be subject to the following requirements at such time as a development activity application is submitted to the Director.

- 1. The applicant shall present a geologic hazard assessment prepared by a geologist at the applicant's expense that identifies site specific geologic hazards, associated levels of risk and the suitability of the site for the development activity in view of such hazards. The geologic hazard assessment shall include an analysis of the risk of geologic hazards on the subject property, on contiguous and adjacent property and on upslope and downslope properties that may be at risk from, or pose a risk to, the development activity. The geologic hazard assessment shall also assess erosion and any increase in storm water runoff and any diversion or alteration of natural storm water runoff patterns resulting from the*

development activity. The geologic hazard assessment shall include one of the following:

- a) *A certification that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property or to adjacent properties resulting from the proposed development activity.*
 - b) *A statement that there is an elevated risk posed to the subject property or to adjacent properties by geologic hazards that requires mitigation measures in order for the development activity to be undertaken safely and within the purposes of Section 3.250.*
2. *If the assessment provides a certification pursuant to Section 3.252 (1) (a), the development activity may proceed without further requirements of this Section*
 3. *If the assessment provides a statement pursuant to Section 3.252 (1) (b), the applicant must apply for and receive an Administrative Decision prior to any disturbance of the soils or construction.*

FINDINGS: The Applicant commissioned A "Geologic Hazard Assessment Letter Report." As a threshold matter, the Board finds that the Applicant may have gone beyond what was required of it in this instance, as these standards apply to "areas identified as geologic hazard areas," and the subject property is not identified as a natural hazard area by the Curry County Comprehensive Plan. In addition, assuming that these standards might apply to the current application, the geologic hazard assessment report states that the subject property "is suitable for the proposed development activity and that development can be accomplished without measures to mitigate or control the risk of geologic hazards to the subject property or to adjacent properties." The report includes detailed geologic investigation, which constitutes substantial evidence. The Board relies on this evidence and the report's conclusion. Accordingly, the proposed development complies with CCZO 3.252(1)(a), in that it has been certified that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property or to adjacent properties resulting from the proposed development activity.

Opponents of the proposed golf course have argued that the best practices outlined in the report (such as monitoring irrigation, ground saturation, and prohibiting golfers from approaching the cliff's edge) must be viewed as "mitigation measures," in the meaning of CCZO 3.352(1)(b), and that the very presence of "mitigation measures" establishes that the geologic hazard assessment report inherently includes a "statement that there is an elevated risk posed to the subject property or to adjacent properties." However, the Board does not interpret its code in the manner proposed by opponents. There is no statement in the geologic hazard assessment report that the proposal would lead to an elevated risk, and including a description of best practices as part of a thorough geologic hazards report is not the equivalent of a statement that there is an elevated

risk.

Finally, the Board expressly adopts the Applicant's analysis of this issue:

"[The] geologic report considered the current situation (actively eroding sea cliff, embayments, erosion-aggravating invasive gorse plants, etc.) and considered the management strategies that were proposed for the golf course (re-vegetation with native plants, installation of bioswale to detain surface runoff and discharge it in a controlled, non-erosive manner, careful monitoring of irrigation, etc.) and concluded that the geologic risk associated with the proposal is less than the geologic risk associated with the pre-development *status quo*."

Section 7.040 - Standards Governing Conditional Uses

In addition to the standards of the zone in which the conditional use is located and the other standards in this ordinance, conditional uses must meet the following standards:

1. *Conditional Uses Generally*

- a) *The County may require property line set-backs or building height restrictions other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land use.*

FINDINGS: The Board finds that all structural development that is subject to setbacks will exceed the requirements of the Curry County Zoning Ordinance and Comprehensive Plan. The primary structure/clubhouse will be located approximately 400 feet from shoreline of the Pacific Ocean. None of the other proposed structures will be adjacent to property boundaries, natural features or uses that will require setbacks to achieve compatibility. The setbacks associated with Riparian Vegetation in CCZO 4.011 do not apply to non-riparian, isolated wetlands.

- b) *The County may require access to the property, off-street parking, additional lot area, or buffering requirements other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land uses.*

FINDINGS: The Board finds that sufficient parking for the proposed golf course will be located centrally on the subject property at the entrance to the course. The parking area will not be located near other non-compatible uses on adjacent lands.

- c) *The County may require that the development be constructed to standards more restrictive than the Uniform Building Code or the general codes in order to comply with the specific standards established and conditions imposed in granting the conditional use permit for the proposed use.*

FINDINGS: The proposed structures are necessary for the successful management of the golf course. The structures and the proposed uses contained within those structures are described throughout the application. All structures will be designed and engineered as needed to meet uniform standards for public health and safety.

- d) *If the proposed conditional use involves development that will use utility services; the applicant shall provide statements from the affected utilities that they have reviewed the applicant's proposed plans. These statements shall explicitly set forth the utilities' requirements, terms and conditions providing or expanding service to the proposed development and shall be adopted by the Commission or Director as part of the conditional use permit.*

FINDINGS: According to the Applicant, the proposed conditional use does not involve development that will use utility services other than Coos-Curry Electric Cooperative, Inc. which already serves the subject property. The required site evaluation permit from the Curry County Sanitarian has been submitted along with letters from Coos-Curry Electric Cooperative, the Oregon Department of Transportation and the Curry County Road Department. Therefore, this standard is satisfied.

- e) *If the proposed conditional use involves the development or expansion of a community or non-community public water system, the applicant shall submit a water right permit(s) or documentation that a permit is not required from the Oregon Water Resources Department which indicates that the applicant has the right to divert a sufficient quantity of water from the proposed source to meet the projected need for the proposed use for next twenty year planning period.*

FINDINGS: There are no proposals for the expansion of a community water system. It is proposed that irrigation for the golf course will occur from existing water rights appurtenant to the subject property. The record contains a letter from the regional representative of the Oregon Water Resources Department stating that the existing irrigation rights on the lower portion of the ranch can be utilized for golf course purposes.

- f) *If the proposed conditional use involves the development or expansion of a community or non-community public water system, the applicant shall install a raw water supply flow monitoring device (flow meter) on the water system and shall record the quantity of water used in the system on a monthly basis. The monthly record of water usage shall be reported to the Curry County Department of Public Services-Planning Division and Health Department Sanitarian on an annual basis.*

FINDINGS: There are no proposals for the creation or expansion of a community or non-

community public water system.

- g) *If the proposed conditional use included the development or expansion of a community or non-community public water system and the use is located within the service area of a city or special district water system the applicant shall utilize the city or special district water system rather than developing an independent public water system. An independent community or non-community public water system can be developed for the use if the applicant can prove that it would be physically or economically not feasible to connect to the city or special district water system. The city or special district must concur in the conclusion that connection of the proposed use is not feasible.*

FINDINGS: The proposed development of the subject property for an 18 hole golf course does not involve the development or expansion of a community or non-community public water system.

5. Section 7.040 (16) Uses on resource land.

- a) *The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest land.*

FINDINGS: The subject property located south and east of the proposed golf course is adjacent to the Urban Growth boundary for the City of Port Orford. Farm and forest uses in that district are not a consideration. West of the proposed golf course is the Pacific Ocean, which is also exempt with regard to farm and forest uses.

The land to the North is zoned Exclusive Farm Use and is currently in farm production. That farm land to the north is owned in common with the land upon which the golf course is proposed. The owner currently utilizes the land north of the golf course for hay production and cattle grazing.

The area proposed for the golf course sits atop a bench that is elevated approximately 100 feet above the farm land to the north. The farmland contains approximately 650 acres and abuts Elk River to the north, the Pacific Ocean to the west and a 50% slope descending from the bench to the South. There is an operational rock quarry located centrally within the bottomland pasture and continuing farmland stretching easterly through the Elk River valley.

Because the proposed golf course will be elevated a considerable distance above the existing farm use, that natural buffer will separate the two uses and eliminate conflicts associated with direct contact. The activities associated with a golf course such as mowing, watering, vehicular and pedestrian traffic and golfing in general will not inhibit standard farm practices such as irrigating, mowing, baling, fencing and grazing cattle. The natural separation will also assure that the farm use will not conflict with the use of the golf course.

Opponents of the golf course argued that the use would need to transfer existing water rights from the lower Knapp Ranch in order to irrigate the golf course place of use. Opponents believed this demonstrated a *per se* change to farm use, as a portion of the water right previously use on the ranch would no longer be available for ranching. The Board finds that argument overly speculative, as it seems quite likely that, as part of an administrative transfer application subject to the jurisdiction of Oregon Water Resources Department, adequate water rights for irrigating the golf course could be transferred from the existing impoundment near the Knapp Ranch headquarters, potentially decreasing the amount of water available for the existing gravel quarry, without necessarily having any impact on the amount of water available for farming practices. Similarly, even if some of the water rights the Knapp Ranch currently has designated for irrigation purposes are transferred to a place of use on the upper bench for irrigating the golf course, there has been no evidence submitted suggesting that transfer would result in "a significant change in, or significantly increase the cost" of farming practices. In summary, the Board finds that the physical separation between the proposed golf course and the adjacent lands devoted to farm practices, as well as the apparent availability of transferable water from non-farming uses, demonstrates that the proposed use complies with this standard, and that opponents' testimony to the contrary is overly speculative.

Further, as there are no commercial forest uses occurring on adjacent lands, there will be no forest related impacts associated with the golf course. Therefore, this standard is satisfied.

- b) *The proposed use will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.*

FINDINGS: The application describes a Scottish style golf course, consisting of land that is contoured and seeded with various grasses that are maintained at various lengths. The property will be easily accessible and will be fully equipped with an underground irrigation system. Because the course is irrigated through the summer months, there will be no dry grass to fuel a potential fire. There will be an irrigation pond with direct access that can be utilized to assist with fire suppression within the subject property or on adjacent lands. There is currently a gorse infestation on portions of the property and gorse is known to be a fire threat. Upon completion of the golf course, the gorse will have either been completely eradicated or isolated and controlled in small quantities. The Applicant's *Management Plan for Water, Nutrients and Pesticides* will include gorse management. The conditions of approval include a fire safety protection plan. With consideration given to the fact that the golf course will provide a fuel-free fire break, access to water, and potential fire access to adjacent land, the Board concludes that there will be no increase to fire suppression costs or risks to fire suppression personnel.

- c) A written statement be recorded with the deed or written contract with the county or its equivalent shall be obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules for uses authorized in Section 3.042(8), (12), (13), (14), (15), (16), (21) and Section

3.052 (8), (12), (13), (14), (16), (17), (22).

FINDINGS: The Applicant has agreed to record the applicable Curry County Waiver of Right to object to standard farm and forest practices, although it is not specifically referenced above.

6. Section 7.050 (4) Time Limit on a Permit for Conditional Uses

1. *Authorization of a conditional use, in general, shall become null and void after one year unless substantial construction has taken place or an extension has been granted under Section 7.050 (4). Substantial construction in this case means obtaining all necessary permits required by governmental agencies to commence construction of any structures or to commence the principal activity permitted by the conditional use permit.*

FINDINGS: the Applicant must establish the approved use within one year of the date of this approval unless the Property Owner/Applicant applies for and receives an extension of this approval. Therefore, as a condition of approval, the conditional use permit approval is valid for one (1) year unless the Applicant, within one year of any appeals being exhausted, applies for and receives an extension of this approval.

VII. ISSUES RAISED IN OPPOSITION TESTIMONY

The following is a summary of issues based on written and oral comments opposing the application that were addressed during the public hearing process. In addition, the Board notes the majority of comments received were in favor of the proposed development. Further, the Board notes that the primary opponent of the proposal and the appellant of the Planning Commission decision provided voluminous testimony and evidence, some of which had only questionable relevance to the proposal or the relevant approval criteria. This was burdensome for all parties, and is difficult to respond to.

1. Impacts to the Elk River and Unnamed Tributary

The Board reviewed testimony that was concerned with possible impacts the proposed golf course could have on the nearby Elk River watershed. The Board notes that the Elk River and the Unnamed Tributary are outside of the area of the Knapp Ranch that the Applicant has leased, and are outside of the applicant's control. The Board is also unaware of any approval standards that could justify a condition that the Applicant make improvements on private land, outside of the proposed development area. However, the Board further notes that the Applicant has voluntarily accepted many of the conditions that have been proposed in earlier phases of the proceeding, and has also indicated an intent to engage in conservation works in the vicinity near the proposed development site. The Applicant's proposal to remove invasive, fire- and erosion-prone gorse and to utilize a variety of native grasses and plants in its landscaping is emblematic of this approach. Therefore, the Board remains hopeful that the Applicant, adjacent landowners, and other

concerned parties might enter into a voluntary program for habitat enhancement and protections of the Elk River and its tributaries.

2. Impacts to water quality

The Board reviewed testimony that raised concerns with water quality, nutrient loading, and infiltration into groundwater. The Board notes that the Applicant's proposal includes bioswale catch-basins, which are intended to detain stormwater (thereby reducing erosion) and to allow for sediment collection and bio-filtration of pollutants (thereby reducing discharge of pollutants). The Board further notes that the Applicant has committed to follow its *Management Plan for Water, Nutrients and Pesticides*, which calls for a natural landscape, use of native, drought-hardy grasses, and minimal applications of pesticides and fertilizers. The Board further notes that current agricultural practices are likely to involve the application of fertilizer and other agrichemicals, raising the risk of nutrient-loading and other water quality issues, without the benefit of a comprehensive stormwater systems utilizing bio-swales. For these reasons, the Board finds that the proposed golf course will be compatible with surrounding uses, and will have minimal impacts in regard to water quality.

3. Wildlife impacts

The Board believes that the wildlife concerns raised in the letter from Kalmiopsis Audubon Society, dated January 23, 2014, submitted to the Planning Commission, have largely been addressed, primarily through the voluntary actions of the Applicant. The Applicant agreed to the use of "dark sky" lighting systems, and has agreed to amend its *Management Plan* to include rodent- and bear-, and wind-proof trash containers, and to generally include methods to avoid animal disturbance and fugitive trash.

EXHIBIT B

CONDITIONS OF APPROVAL APPROVED BY THE CURRY COUNTY BOARD OF COMMISSIONERS.

1. This conditional use permit approval is valid for one (1) year unless the Applicant, within one year of any appeals being exhausted, applies for and receives an extension of this approval.
2. The 18-hole golf course development site shall be restricted to a portion of the subject property, consisting of approximately 220 acres, within the EFU zone portion of the property; outside of the County "Ground Water Monitoring Area;" and on the top of the bluff along the west and north boundaries of the subject property.
3. No enclosed structure with a design capacity of greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the proposed golf course unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.
4. The proposed development shall comply with the development standards in OAR 660-033-0130 (20) as a condition of approval.
5. The area along the bluff shall be vegetated with native plants for golf course purposes and shall not be developed with structures.
6. The applicant shall implement a native vegetative erosion control measures along ephemeral drainages where possible and practical.
7. There shall be no playable golf surface developed within a minimum of 25 feet of the bluff edge or the edge of ephemeral drainages.
8. Areas of potential instability shall be monitored by a professional geologist prior to and during construction. The geologist shall assist in developing a bluff monitoring procedure and training guide.
9. Areas of potential instability shall be regularly monitored by a trained golf course attendant weekly and after high surf or high precipitation events. Training shall be in accordance with a bluff monitoring procedure and training guide developed by a professional geologist.
10. Irrigation along bluff edges shall be closely monitored to prevent excessive absorption

and weakening of the hardpan layer along the bluff per the monitoring procedure and training guide.

11. Geotechnical analysis shall be conducted in conjunction with all structural development on the subject property.
12. An onsite inspection by a qualified wetland consultant shall be conducted prior to site development to determine if the proposed project may impact wetlands; if wetlands are present, a wetland delineation shall be conducted to determine precise wetland boundaries.
13. The wetland delineation report shall be submitted to Department of State Lands (DSL) for review and approval.
14. The services of a professional archaeologist shall be engaged to conduct an archaeological survey of the property.
15. The archaeologist shall consult with the affected tribes (Coquille, Siletz) to decide the appropriate archaeological investigation to determine site boundaries and characterization.
16. A meaningful archaeological mitigation and monitoring plan that satisfies all affected parties shall be developed.
17. The principles and practices of operation as set forth in the *Management Plan for Water, Nutrients, and Pesticides* shall be followed and include:
 - a) guidelines for management of gorse in the long term; and
 - b) twice-per-year water quality monitoring in spring and fall to assure that goals are actually met.
18. A bioswale shall be added to southwestern portion of the site to detain and filter runoff. A culvert at the outlet of this bioswale shall be used, if necessary to ensure that the discharge does not occur on the most erosion-prone portions of the slope.
19. The *Management Plan* shall be amended to specify principles for careful trash management, which should include the commitment to keep trash stored in rodent- and bear-, and wind- proof containers, and provisions for strict maintenance to avoid the problems of animal disturbance or trash blowing in the wind.
20. Dark Sky lighting standards shall be met.
21. In areas that will be re-vegetated following gorse removal, the Applicant shall emphasize the planting of a diverse population of native grasses.

22. A preliminary fire safety protection plan that, at a minimum, includes the following:

- a. Proposed fire prevention measures;
- b. Preliminary location of fire safe area(s) in which golfers and their guests can gather in the event of a fire, and proposed measures to maintain such areas;
- c. A fire evacuation plan; and
- d. Proposed on-site pre-suppression and suppression measures, which must include a provision for trained personnel capable of operating all fire suppression equipment during designated periods of fire danger. This requirement may be waived if the golf course is within a fire district that provides structural fire protection and the fire district indicates in writing that on-site fire suppression is not needed.

Extension PFO Checklist for Other than Muni or Quasi-Municipal

Water Use Permits
(OAR 690-315-0010 through OAR 690-315-0060)

Application: R- 84100 Permit: R- 12770 Permit Amendment? No Yes T- _____ pending approved

Permit Holder's Name: Knapp Ranches Inc

Permit Holder's Mailing Address: PO Box 32 Port Orford, OR 97465 email bknapp@2cj.com

Phone Number: 541-297-3755

POD Location: Township 32S Range 15W Section 20 $\frac{1}{4}$ SWSW

Drainage Basin: 17 County: Curry Watermaster District: 19 Watermaster: Mitch Lewis

Date Permit was issued: 1/31/2000 Priority Date: 2/4/1999 Date of PN: 5/6/2014

Source: An unnamed stream, a tributary of Elk River

Use: To be appropriated under app S-84101 for irrigation and mining

"Q": 100 AF each year

Orig "A" Date: 12/15/2000

Orig "B" Date: 10/1/

Orig "C" Date: 10/1/2004 *store water by 2004*

Extension request rec'd: 4/18/2014

Last Authorized "B" Date: 10/1/

Last Authorized "C" Date: 10/1/2004

Request Number (1, 2, 3...): 1

Proposed "B" Date: 10/1/2016

Proposed C Date: 10/1/2017

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Staff gage before water use begins that measures entire pool range
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	If in channel, then weirs or other meas device before water use <i>9/2006</i>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Shall keep monthly water use records and submit annually <i>none 2005, 2006, 2007, 2008, 2009, 2010, 2011</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	actual construction begin by 12/15/2000
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	gated valve outlet installed <i>meter 9/2000</i>

Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]:

- Yes No
- Work was accomplished within the time allowed in the permit or previous extension
 - Water right permit holder conformed with the permit or previous extension conditions
 - Financial investments were made toward developing the beneficial water use.
 - Amount Invested to date: \$2,700 Estimated Remaining Cost: \$19,000
 - Beneficial use made of the water during the permit or previous extension time limits
 - Permit holder has beneficially used 454 cfs gpm af of the total permitted quantity of water on 160 acres

GW REVIEW: Y N

MITIGATION REVIEW: Y N

Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes No

Determination of the market and the present demand for water or power to be supplied:

Identify the closest surface water or localized water basin. Elk River

Ground Water Permits: Is the POA located...

Surface Water Permits: Is the POD located...

Yes No

- above a state scenic waterway? Name _____ Source: OWRD "Areas Above State Scenic Waterways" Map
- within a stream segment designated as a federal wild and scenic river? Source: www.rivers.gov/wildriverslist.html
- within a sensitive, threatened or endangered species area Source: [/gisdata/dev/projects/salmon/div33map.html](http://gisdata/dev/projects/salmon/div33map.html)
- within a critical or limited Ground Water Area? Name of area _____
- within a Withdrawn Area? Name of area _____
- in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____
- within an area ranking low / moderate / high / highest for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. Approval of Extension Request

No ... "Good Cause" cannot be found. Denial of Extension Request

Conditions to be included in Extension PFO (if applicable)? Yes No

(NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)

5-year Progress Report Checkpoints (Years: _____)

Other: _____

Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987

"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."

COBU Requirement - Surface Water - post July 9, 1987

"Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

COBU Requirement - Ground Water - post July 9, 1987

"Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder 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 permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Proposed B date extension but no B date on permit, just extend C date
need documentation that watermaster waived req for weirs and meas devices
May not have met all permit conditions yet
They plan to install fish ladder, outlet with gate valve, and raise dam 9 feet

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: Steven Barnett Date: 4-30-14

BAMBERGER Machelles A

From: Barbara Knapp <bknapp@2cj.com>
Sent: Friday, October 31, 2014 1:40 PM
To: mabelle.a.bamberger@state.or.us
Subject: RE: Water Resources Department Permit R-12770 response needed

OK. It's me again. I keep getting more little bits of information form phone calls and e-mails.

The reservoir remains unfinished, and is presently about 3.5 acres, and is permitted up to 7 acres. Upon completion, the reservoir will hold about 20 million gallons of water.

The best I can come up with on the average annual amount of usage would definitely be less than 100AF.

Barbara Knapp

>>> "BAMBERGER Machelles A" <mabelle.a.bamberger@state.or.us> 10/31/14 1:18 PM >>>

Barbara, Thank you for this information, since 454 AF you put on the application for Question 5, what should the AF be for the year (average)>

Machelle

Machelle A Bamberger | Extension Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0802 | Fax: 503 986-0901

Email: Machelle.A.Bamberger@ wrd.state.or.us | Web: <http://www.wrd.state.or.us>



From: Barbara Knapp [mailto:bknapp@2cj.com]
Sent: Friday, October 31, 2014 1:14 PM
To: mabelle.a.bamberger@state.or.us
Subject: RE: Water Resources Department Permit R-12770 response needed

Machelle,

There is an error in the application. The 454 AF is the total amount of usage over the entire 14 or so years the permit has been active. It is not last year's usage. I am not sure at this point exactly where the error was made.

Barbara Knapp

>>> "BAMBERGER Machelles A" <mabelle.a.bamberger@state.or.us> 10/31/14 11:46 AM >>>

Thank you for responding Barbara,

I will look forward to Troy Russell's response today.

Machelle

Machelle A Bamberger | Extension Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0802 | Fax: 503 986-0901

Email: Machelle.A.Bamberger@wrд.state.or.us | Web: <http://www.wrd.state.or.us>



From: Barbara Knapp [<mailto:bknapp@2cj.com>]

Sent: Friday, October 31, 2014 11:44 AM

To: machelle.a.bamberger@state.or.us

Subject: Re: Water Resources Department Permit R-12770 response needed

Machelle,

I just now received your e-mail dated Oct 29. I only have internet access at work and was not here yesterday. I have forwarded your message to Troy Russell who should be able to get back to you before the end of the day today as I am unable to leave work and do not have that information with me.

Barbara Knapp

>>> "BAMBERGER Machelle A" <machelle.a.bamberger@state.or.us> 10/29/14 3:39 PM >>>
Knapp Ranches Inc.,

My name is Machelle A Bamberger, I am processing your application for an extension of time had have a few questions. Please respond by the close of business October 31, 2014.

Questions:

Your application states that you have beneficially used 454 AF of water, but your permit states that you are allowed 100 AF per year. Is 454 AF a mistake?

How big is the reservoir? How much does it hold when full?

Thank you for your time, if you have any question please feel free to contact me.

Machelle

Machelle A Bamberger | Extension Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0802 | Fax: 503 986-0901

Email: Machelle.A.Bamberger@wrд.state.or.us | Web: <http://www.wrd.state.or.us>

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OREGON 97465

(541)332-3755

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

APPLICATION FILE NUMBER: R-84100

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-84101 FOR IRRIGATION AND MINING

MAXIMUM VOLUME: 100 ACRE-FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH APRIL 30

DATE OF PRIORITY: FEBRUARY 4, 1999

The area submerged by the reservoir, when full, will be 7.0 acres and the maximum depth of water will be 20.0 feet. The maximum height of the dam shall not exceed 9.5 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4

SE 1/4 SW 1/4

SECTION 20

NE 1/4 NW 1/4

NW 1/4 NW 1/4

SECTION 29

TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, a staff gage

Application R-84100 Water Resources Department

PERMIT R-12770

RECEIVED BY OWRD

APR 18 2014

SALEM, OR

63

APR 18 2014

SALEM, OR

A1

A2

A5

Staff gauge installed

A3

A4

that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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.

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.


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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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin by December 15, 2000. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued January 31, 2000


Martha O. Pagel, Director
Water Resources Department

RECEIVED BY OWRD
APR 18 2014
SALEM, OR

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

Application R-84100
Basin 17

Water Resources Department
Volume 3 ELK R & MISC

PERMIT R-12770
District 19

65

Application # R-84100

Permit # R-12770

Public Notice Route Slip ... New Application Extension of Time
Per Division 315 Rules... (Extensions received on July 1, 2001 or after)

◆ WRIG...

Money Received on: 4-18-14

◆ Extension Specialist ...

Added to tracking spreadsheet

After fee is receipted and app info is added to spreadsheet, route to...

◆ Codi Holmes...

Publish on Public Notice (initial 30-day comment): Date of notice 5/6/14

Update WRIS Database

In the "PNotice Date" field... Enter the date the Extension Application was published on the Public Notice.

In the "Ext Filed" field... Enter the date the Extension Application was received.

Yes or No: Return file to Extension Specialist after PN SNP

Yes or No: Return file to Extension Specialist after PN _____

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **111785**

INVOICE # _____

RECEIVED FROM: Knapp Ranches Inc.
BY: _____

APPLICATION	R-84100
PERMIT	R-12770
TRANSFER	

CASH: CHECK: # 1327 OTHER: (IDENTIFY)

TOTAL REC'D \$ 575.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ _____
OTHER: (IDENTIFY) \$ _____
0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$ 14 (Handwritten: 46111 4-18-14)

0410 RESEARCH FEES \$ _____

0408 MISC REVENUE: (IDENTIFY) \$ _____

TC162 DEPOSIT LIAB. (IDENTIFY) \$ _____

0240 EXTENSION OF TIME \$ 575.00

WATER RIGHTS:

EXAM FEE		
\$ _____	0202	RECORD FEE
\$ _____	0204	\$ _____
\$ _____		

WELL CONSTRUCTION

EXAM FEE		
\$ _____	0219	LICENSE FEE
	0220	\$ _____
		\$ _____

0201 SURFACE WATER

0203 GROUND WATER

0205 TRANSFER

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ _____ CARD # _____

0210 MONITORING WELLS \$ _____ CARD # _____

OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FWWRD) \$ _____

0231 HYDRO LICENSE FEE (FWWRD) \$ _____

HYDRO APPLICATION \$ _____

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ \$ _____

RECEIPT: **111785**

DATED: 4-18-14 BY: _____

Completeness Checklist for Permit Extension of Time Application

Minimum completeness criteria for Extension of Time Applications are set forth in OAR 690-086-0020(3) for NON-Municipal or NON-Quasi-Municipal permits and in OAR 690-086-0070(3) for Municipal or Quasi-Municipal permits.

1. Pull the permit file. If a copy of the permit is not in the file, pull up an image of the permit in WRIS.
2. Is the permit to be extended Non-Cancelled according to WRIS and the permit file? Yes
If the permit has been cancelled, the Extension Application cannot be accepted.
3. Is the extension applicant's name and mailing address supplied? _____

If yes, is the applicant a permit holder of record (i.e., permit issued or assigned to them)? _____

If the extension applicant is **NOT** a permit holder of record, a "Request for Assignment" must be accepted and processed before the Extension Application can be processed.

If an Assignment has **not** yet occurred, and is **not** submitted with the Extension of Time Application, the application cannot be accepted.

*** NOTE:** The applicant **may** submit a complete "Request for Assignment," at the same time, which **must** include the statutory fee of \$85 for the assignment, required proof of ownership, or signature of previous permit holder, in addition to all necessary items required for the Extension of Time Application so that **both applications can be accepted**.

4. Is the appropriate Extension of Time Application used? _____
If the wrong application form is used, the Extension Application cannot be accepted.
- If a Municipal or Quasi-Municipal permit, use: "Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits."
 - If a NON-Municipal or NON-Quasi-Municipal permit, use: "Application for Extension of Time for a Water Right Permit (Non-Municipal / Non-Quasi-municipal Water Use)."

5. Are the requested date(s) for extension identified (Page 1)? 16/17
• Check the permit to see if it includes a "B-Date" and/or a "C-Date."
"B-Date" = date by which construction of the water delivery system for the permit is to be completed.
"C-Date" = date by which full beneficial use of water under the permit is to be accomplished.

NOTE: For permits with **both** a "B-Date" and a "C-Date," the applicant will likely request an extension of both dates (i.e., to complete construction of the water delivery/distribution system and to apply water to full beneficial use). Unless, of course, construction of the water delivery system is complete. In which case, the applicant would likely only request an extension of the "C-Date" (i.e., to apply water to full beneficial use).

For permits with only a "C-Date," the applicant will only be requesting an extension of the date in which to apply water to full beneficial use.

6. Is the Extension Application signed (with an original signature) by permit holder(s) of record or an authorized agent? _____
(If signed by agent, documentation from the permit holder(s) granting authorization for the agent to sign on their behalf must be provided or be present and current in the permit file.)

If **not** signed by a permit holder of record or authorized agent, the Extension Application cannot be accepted.

NOTE: If the permit covers land that has been subdivided and assigned to different, individual parties... we only need signatures of the permit holder(s) of record for the portion of the permit involved in the Extension of Time Application.

7. Are all questions on the application answered? _____
 (NOTE: Supporting documentation such as: copies of the permit, well log(s), annual water use reports, static water level measurement reports, evidence demonstrating construction/work/water use accomplished, etc. may be included.)

The tables below are informational only. No need to check off.

■ NON-Municipal or NON-Quasi-Municipal Permit Extension Applications:

• Ques. #1 - Information provided on beginning of construction ("A" Date) under the permit.	• Ques. #5-C - Well location information provided <u>and</u> whether a permit amendment is necessary.
• Ques. #2 - Information provided on compliance with permit conditions.	• Ques. #6 - Information provided on number of acres irrigated, if applicable.
• Ques. #3 - Description provided of progress made in developing the permit.	• Ques. #7 - Description provided of remaining work left to be accomplished to perfect the permit.
• Ques. #4 - Monetary investment made in the project to date provided.	• Ques. #8 - Description provided of estimated cost to complete the project associated with the permit.
• Ques. #5-A - Max amount of water beneficially used to date for a SW permit indicated.	• Ques. #9 - Explanation provided of why the permit has not been fully developed/perfected.
• Ques. #5-B - Well construction information provided <u>and</u> max amount of water beneficially used to date for a GW permit indicated.	• Ques. #10 - Justification provided of why the requested time is necessary to complete project.

■ Municipal/Quasi-Municipal Permit Extension Applications:

• Ques. #2 - For Quasi-Municipal permits only, information provided on beginning of construction ("A" Date) under the permit.	• Ques. #8 - Estimate provided of current peak water demand of the population served <u>and</u> the methodology used to make the estimate.
• Ques. #3 - For Municipal permits issued on or after June 29, 2005, information provided on beginning of construction ("A" Date).	• Ques. #9 - Explanation provided of why the permit has not been fully developed/perfected.
• Ques. #4 - Description provided of progress made in developing the permit <u>and</u> financial expenditures made in the project to date.	• Ques. #10-A - Estimate provided of demand projection for the permit, the methodology used to make the estimate <u>and</u> anticipated date for full beneficial use of the permit.
• Ques. #5-A & #5-B - Information provided on compliance (or non-compliance) with permit conditions.	• Ques. #10-B - For extension requests greater than 50 years, documentation provided that the demand projection is consistent with the lands and uses proposed to be served by the permit holder.
• Ques. #6-A - Max amount of water beneficially used to date for a SW permit indicated.	• Ques. #11 - Estimate of costs to complete the project and a summary of future schedule to complete construction / perfect the water right.
• Ques. #6-B - Well construction information provided <u>and</u> max amount of water beneficially used to date for a GW permit indicated.	• Ques. #12 - Justification provided of why the requested time is necessary to complete project <u>and/or</u> apply water to full beneficial use.
• Ques. #6-C - Well location information provided <u>and</u> whether a permit amendment is necessary.	• Ques. #14 - A copy of any agreements regarding use of the undeveloped portion of the permit and maintaining the persistence of fish, if applicable.
• Ques. #7 - Estimate provided of current population served under the permit <u>and</u> the methodology used to make the estimate.	• Attachment A - A tabular inventory of the water supplier's water rights and any other water use authorizations.

8. Has the \$575 fee been paid? 111785
 *If applicable, has the \$85 fee for the Assignment been paid? _____
 (As of July 1, 2013, the Extension of Time fee is \$575, and Request for Assignment fee is \$85)

If the fee has NOT been paid, the application cannot be accepted.

**NOTE: If the fee is the only item missing, contact the applicant to see if they can submit the fee with the next few days. If the applicant commits to submitting the fee within one week, hold the Extension Application, and explain to them that if it is not received the application will be returned (as we are required to keep any application, regardless of how complete, if retained by the Department as long as two weeks).

9. If after completing this checklist, it is not clear whether the application can be accepted, please route both the money slip and Extension Application to **Extension Specialist**, or **Anne Reece** for municipal and quasi-municipal applications. One will either: 1) accept the application; 2) return the application; or 3) prepare a deficiency letter.

Reviewed by: Gfeven Barnett

Date: 4-21-14



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

April 30, 2014

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Right Services Division has received your application for an extension of time for **APPLICATION FILE #: R-84100 (Permit R-12770)**. Your application will be reviewed in the future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

If you are interested in having your application reviewed sooner, you may pay to have your file processed immediately, using the Reimbursement Authority program, which is described at: http://www.wrd.state.or.us/OWRD/mgmt_reimbursement_authority.shtml

You may continue the use of water under your water right until the Water Resources Department formally takes action on your extension application. If your permit includes conditions, water use reporting, water level measurement reporting, etc., you are required to comply with the conditions.

Any additional development that occurs after the expired completion date, identified on the permit or an extension order, can only be claimed upon an approved extension application.

If you have questions concerning your extension of time application, please contact Steve Parrett at (503) 986-0825. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's website at: www.wrd.state.or.us.

Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$575.
- Signature page (last page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION

along with the

\$575 STATUTORY FEE TO:

**Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301**

SALEM, OR

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GENERAL TIPS:

- Permit holders of **municipal or quasi-municipal water use permits DO NOT use this form.** The correct form is *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, available at the following link:
<http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml#other>
- Request the reasonable amount of time necessary to fully complete construction of the water project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet, Instructions for Completing an Application for Extension of Time for a Water Right Permit (attached), provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at: <http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.

- You may provide OWRD with any additional information or evidence that will aid us in making our decision. Please note that OWRD may require other information that is necessary to evaluate the application. OAR 315-0020(3)(n).
- After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights Services Division.
- Once an Application for an Extension of Time is received by OWRD it will be reviewed for completeness. OWRD will return any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- **The water right permit.** If needed, a copy of the water right permit can be downloaded from the Department's Website at <http://www.wrd.state.or.us> (using the link to the Water Rights Information System (WRIS)). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- **Documentation which demonstrates compliance with permit conditions** (for example, well construction logs; static water level measurement reports; annual water use reports; ODFW fish screen certification; a plan to monitor the effect of water use on ground water aquifers utilized under the permit; etc.).

Answer the Following Questions to Complete this Application for Extension of Time

- [OAR 690-315-0020(3)(d)]
1. Did the actual construction of the water system/well drilling begin within the time specified in the permit? X Yes No



TIP: Not all permits specify a date by which construction was to begin.

Date construction began is: August 15, 2000

Details of construction: The location for the reservoir is essentially a small canyon, with embankments on the West and East side, and drains out to the NNW, towards the Elk River. The reservoir was created by raising the elevation of a dip in the existing road a few feet, with a few hundred yards of rock from the adjacent quarry. Prior to raising the road, an existing culvert was replaced with a 36", and an area of a few thousand square feet was deepened for the pump intake.

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2. Permits typically contain standard or special conditions that must be satisfied to lawfully develop and use permitted water. In the development of this water right, have you satisfied the conditions contained in your permit? Yes No

2-A) Describe how you have complied with each condition contained in the original permit [and, if applicable, each condition contained in any order approving a permit amendment and/or a final order approving a prior extension of time]. Include the date when the condition was satisfied.



TIP: The instruction sheet for the Application for Extension of Time provides an explanation of the typical conditions that must be addressed in this question.

CHART-A

Condition No.**	Date Satisfied	Describe How Permit Condition Has Been Satisfied
A1	9/2000	A staff gauge was installed near the constructed pier for the intake pipe.
A4	9/2000	Two flow meters, one for each direction of the irrigation mainline were installed
A2		The local watermaster waived the requirement
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		SALEM, OR

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, any permit amendment and/or prior extension). Include a copy of your hand-numbered permit with the application.

2-B) If you have NOT complied with all applicable conditions, explain the reasons why and indicate with a date certain (in the near future) when compliance will occur.

CHART-B

Condition No.**	Date Will Comply	Explain Why Each Permit Condition Has NOT Been Satisfied
A3	9/2016	The planned construction work on improving the reservoir dam was never completed, due to the expense involved, and the irrigation system functioned without it.
A5	6/2014	The records for agricultural use were recorded by a different family member than the mining use, and were never turned in.

*** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, any permit amendment and/or prior extension. Include a copy of your hand-numbered permit with the application.*

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* If exact cost is not known, you must provide your best estimate.

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3. Provide evidence of physical progress made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-C); and if applicable, within the time period of the most recent extension granted (CHART-D).

3-A) CHART-C (below) must be completed for all Application for Extension of Time requests. Use chronological order.

CHART-C

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED <i>and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER</i> <i>List work/actions done during the permitted time period.</i>	COST*
1-31-2000	Date the permit was signed - find date above signature on last page of permit.	
8/2000	Replaced existing small culvert with a 36" culvert.	600
8/2000	Deepened an area of a few thousand square feet, for the pump intake.	500
12-15-2000	Date the permit specified "Actual Construction Work" shall begin ("A-Date") -not all permits contain this date.	
9/2000	Raised the elevation of a dip in existing road a few feet, to form a dam for reservoir by shoving several hundred yards of pit run down from the gravel pit.	900
9/2000	Constructed a small pier, extending from road to the new deeper portion to mount the intake pipe.	600
9/2000	Mounted a staff gauge to the intake pier.	100
10/1/2004	Date the permit specified complete application of water to the use shall be made ("C-Date") - all permits contain this date.	

CHART-C (continued)

DATE	WORK ACCOMPLISHED AFTER "C-DATE" <i>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME: List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
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APR 18 2014		
SALEM, OR		
Total Cost for Chart-C		2700

3-B) If this is not your 1st Application for Extension of Time request, fill out CHART-D below in addition to CHART-C above. Use chronological order.

CHART-D

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
10/1/	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
10/1/	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

CHART-D (Continued)

DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED <i>List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
RECEIVED BY OWRD APR 18 2014 SALEM, OR		
Total Cost of Chart-D		

* If exact cost is not known, you must provide your best estimate.

[OAR 690-315-0020(3)(f)]

4. **Cost of project to date: \$2700**
(The total combined cost from CHART-C and CHART-D)

5. Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit and/or prior extensions of time (if any) made to date.



TIP: Report the rate used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

5-A) For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX):



TIP: Report the rate in the same units of measurement as specified in the permit.

Maximum rate used to date = _____ cfs (cubic feet per second) or,

Maximum rate used to date = _____ gpm (gallons per minute) or,

Acre-feet stored to date = 454 AF

5-B) For Ground Water Permit Extensions (e.g. G-XXXX):



TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

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CHART-E

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED					
			Well Log Number e.g. MORR 50473	Well Tag Number e.g. # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See 5-C below)	Maximum instantaneous rate used from this well -- under this permit only (CFS or GPM)	Is this well authorized or utilized under any OTHER water rights?	If yes, provide the Permit, Certificate, or Transfer No.
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
Total instantaneous rate from all wells utilized under this permit								

5-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a Permit Amendment Application been/be filed? Yes No

If a Permit Amendment Application has been filed: Transfer No. T-_____

Well # _____: Actual location: _____

Well # _____: Actual location: _____

6. Provide the total number of acres irrigated to date under this permit (if applicable).

Total acres irrigated to date: 160

Ground Water Permits: Please specify which wells are being utilized for this irrigation.

Well # _____ Acres _____ Well # _____ Acres _____

Well # _____ Acres _____ Well # _____ Acres _____

7. Provide a summary of your future plans and schedule to complete the construction of the water system, and/or apply water to full beneficial use under the terms and conditions of the permit.

CHART-F

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
Summer 2014/15	Install a fish ladder	6000
Summer 2014/15	Install an outlet with gate valve	4000
Summer 2014/15	Raise the elevation of the dam to 9 feet	9000
Year: 2015	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
	Total Cost	\$19000

8. Estimated remaining cost to complete the project: **\$19000**
(The total cost from CHART-F)

9. List the reasons why the project was not constructed, and/or water was not beneficially used within permit time limits. Provide supporting information for the reason(s) that best fits your circumstances (A, B, C or D).

9-A) The project is of a size and scope that was originally planned to be phased in over a time frame longer than the one allowed in the permit.

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- 9-B) The financial resources needed to develop the project precluded completion of the project within authorized time frames.

With the limited resources available at the time, we installed a system that functions. It has always been our intent to upgrade the reservoir and irrigation system, and bring them into compliance, but economic hardship has prevented us from performing the needed work.

- 9-C) Good faith attempts to comply with permit conditions and/or acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

- 9-D) Acts of God or other unforeseen events delayed full development of the water system and use of water within the authorized time frames.

[OAR 690-315-0020(3)(k)]

10. Justify the time requested to complete the project and/or apply the water to full beneficial use. Your justification should combine information from your answers from Questions 2-B, 7, 8, and 9 of this Application for Extension of Time, and should also include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

The economic outlook for the ranch seems to be improving, and we would like to upgrade our reservoir and irrigation system, and bring them into full compliance. We hope to perform the work this spring and summer, but may need a part of next year, as this represents a large investment for the ranch.

11. Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

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I am the permit holder, or have written authorization from the permit holder (attached to this Application for Extension of Time), to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.

Barbara Knapp, Sec.
Signature

4-15-14
Date

SAUTER Jerry K

From: Troy Russell <troyerussell@gmail.com>
Sent: Tuesday, April 15, 2014 4:08 PM
To: SAUTER Jerry K
Subject: Knapp Ranch Water Right extensions
Attachments: Knapp Water Right extension - reservoir irrigation 53648.doc; Knapp Water Right extension - reservoir R12770.doc; Knapp Water Right extension - sump well G13782.doc; Knapp WRD checks.pdf

Mr Sauter,

The attached applications were mailed today.

Thank you,
Troy Russell

O.K. J.M.
4/15/2014

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APR 15 2014

WATER RESOURCES DEPT
SALEM, OREGON

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Knapp Ranches Inc. R-84100
 PO Box 32
 Port Orford, OR 97465

2. Article Number

(Transfer from service label)

7012 2210 0002 66661 5102 WR

PS Form 3811, February 2004

Domestic Return Receipt

BUDJES

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Barbara Knapp

 Agent Addressee

B. Received by (Printed Name)

Barbara Knapp

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below:

 No

3

Mail

 Express Mail

or

 Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

Oregon Water Resources Department
Attention: Bethanie Williamson
725 Summer St. NE, Suite A
Salem, OR 97301

RECEIVED

FEB 24 2014

OWRD





Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone 503-986-0900
FAX 503-986-0904
www.wrd.state.or.us

NOTE: For water rights information and useful forms, please see our web site at www.oregon.gov/OWRD

February 14, 2014

Certified mail number 7012 2210 0002 6661 5102

Return receipt requested

Knapp Ranches Inc.
PO Box 32
Port Orford, OR 97465

Reference: Application R-84100, Permit R-12770

Dear Permit Holder:

This letter is in regard to your water use permit as referenced above. Your permit required you to complete the development of your water use by October 1, 2004.

In order for the Department to consider issuance of a certificate of water right, you are required by law to hire a certified water right examiner to prepare and submit a claim of beneficial use that includes a final proof survey map of the development. The map and claim of beneficial use were to have been submitted to our Department within one year of October 1, 2004. The fee for submitting a claim of beneficial use is \$175.00. Please see the enclosed 'Resource Sheet' for our current database of CWRE's.

If you are not finished with the development of your permit, you need to file an application for an extension of time to complete your development. The fee for filing an extension of time is \$575.00. Please see the enclosed 'Resource Sheet' to access the extension of time form.

In the event that you are no longer using water as allowed by this permit, you should cancel it so that we may clear our records. Please see the enclosed 'Resource Sheet' to access the cancellation form, if you are interested in this option.

If you have not submitted either a Claim of Beneficial Use or a request for an extension of time for your permit within 60 days of the date of this letter (April 15, 2014) the Department may issue a Final Order to cancel your permit without further notice. If the Department issues a Final Order to cancel your permit, and you request reconsideration of the final order and reinstatement of your permit, there is a \$450.00 reinstatement fee that is charged in addition to the claim of beneficial use or extension of time fee.

Should you have any questions, you may contact me at the address above or by telephone at 503-986-0817.

Sincerely,

Jerry Sauter
Water Rights Program Analyst

Enclosures (1)

cc: File R-84100
OWRD Watermaster District 19

PERMIT STATUS REVIEW BY BW DATE 2/10/14 FILE # R-84100

1. Per Dwight French, do not send "C" DATE NOTICE PACKET if: update appropriate db

no Extension pending _____

no Assignment is pending _____

no Cancellation has been requested _____

no Dept. has already sent a certified 60-Day Compliance letter (date _____, # _____)

Was 60 days notice allowed? Y N If No, How Much Time? _____

Was mail deliverable as addressed? Y N date _____

If mail returned, online/www check? Y N date _____ successful? Y N

Re-send Cert. Letter? Y N date _____

Send cancellation order Y N

no Claim of beneficial use and final proof map (COBU) have been received by Department
Date information received _____

2. IF NONE OF THE ABOVE APPLY

YES Send certified "C" date notice packet to permit holder.
"C" DATE 10/1/2004 BASIN NUMBER 17 WM # 19

CWRE or AGENT Dennis Goude

SEND LETTER
KS 2/11/14

app R - 04100 (permit R - 12770)
 app S - 04101 (permit S - 53440)

USER-ID 50021

2007

Oregon Water Resources Department
 October 2007 through September 2008
 Annual Water Use - Monthly Quantities Form

2008

Facility → Report ID →	51045	51044			
October - 2007	0	0			
November - 2007	0	0			
December - 2007	0	0			
January - 2008	0	0			
February - 2008	0	0			
March - 2008	0	0			
April - 2008	0	0			
May - 2008	0	0			
June - 2008	96,342	0			
July - 2008	146,807	0			
August - 2008	132,914	0			
September - 2008	87,667	0			
Total *	463,730 G	0			

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 FEB 18 2009
 WATER RESOURCES DEPT
 SALEM, OREGON

* Describe the units of measurement as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)
 Describe the method of measurement used: meter on water line If used for irrigation, total number of acres irrigated:
 I certify this information is true and accurate to the best of my knowledge.

David Knapp Title Sec. Reporting Entity Knapp Ranches, Inc Date 12-14-08
 Signature
David Knapp Mailing Address P.O. Box 32, Port Orford, OR 97465 Phone Number 541-332-3755

Please complete and mail to: Oregon Water Resources Department; Water Use Reporting Program;
 725 Summer Street NE, Suite A; Salem, OR 97301-1266.



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

October 6, 2008

JEFF KNAPP
KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OR 97465

REFERENCE: User Id and Password **50021**

Dear Water User,

You are receiving this letter as a reminder of a water use reporting requirement listed on a water right. Online reporting is available at our web site (www.wrd.state.or.us). To begin, locate the *Water Use Reporting* link under *Featured Links*. By clicking this link, your browser will open a new page where you will be able to log in with your User Id and Password (above). Once you are logged in, the *Select* link will allow you to add data for a particular diversion. Please remember to report zeros for any given month when water was not used. Online reporting will be available through March 31, 2009. If the internet is not accessible, you may use the form provided on the back of this letter to submit your monthly water use data.

Although much effort has been done to add new permits to the Water Use Reporting database, there still may be diversions not included on the web site. Please be aware that most Transfer orders approved within the last few years will not likely appear online. If you notice a diversion not listed that should be, you can either use the form provided to report water use or let me know and we will add it to the database as soon as possible. Additionally, if you would like to designate a facility name for a diversion, please feel free to contact me.

For water rights authorizing less than 0.1 cubic foot per second (CFS) or 9.2 acre-feet, you may assume the maximum quantity allowed under the right and report that volume. For reporting purposes, please convert cubic feet per second to acre feet, using $(1.98)(\text{CFS})(\# \text{ of days used per month})$.

The time and effort of both recording and reporting your water use is greatly appreciated. If you have any questions or need additional time, please let me know.

Sincerely,

Alyssa Mucken
Water Measurement Specialist
Oregon Water Resources Department
Phone 503.986.0837 Fax 503.986.0902
alyssa.m.mucken@wrdd.state.or.us

2005

Oregon Water Resources Department
 October 2005 through September 2006
 Annual Water Use - Monthly Quantities Form

USER-ID 50021

2006



Facility # POD-ID	APP-5-84101	APP-R-84100			
	51045	51044			
October - 2005	298,117	0			
November - 2005	127,461	0			
December - 2005	0	0			
January - 2006	0	0			
February - 2006	0	0			
March - 2006	0	0			
April - 2006	0	0			
May - 2006	0	0			
June - 2006	142,803	0			
July - 2006	398,534	0			
August - 2006	351,704	0			
September - 2006	594,752	0			
TOTAL *	1,913,371G	0			

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 NOV 27 2006
 WATER RESOURCES DEPT
 SALEM, OREGON

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: meter on water line If use is irrigation, total number acres irrigated

I certify this information is true and accurate to the best of my knowledge.

David L. Knapp Sec. Knapp Ranches, Inc. 11-19-06
 Signature Title Reporting Entity Date

David L. Knapp
 Name - Please Print

Please complete and mail to: Water Resources Department, Water Use Reporting Program,
 725 Summer Street NE, Suite A, Salem, OR 97301-1266.



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

October 30, 2006

JEFF KNAPP,
KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OR 97465

REFERENCE: USER_ID 50021

Dear Water User:

We appreciate your continued cooperation with the Water Use Reporting program. We again request that you report your water use online. If you need to report on a new water right not in the reporting database, you will need to submit a hard copy form. A 2006 monthly quantities form is printed on the reverse.

To report monthly quantities data online, go to our web page at www.wrd.state.or.us and click on the link 'Water Use Reporting' under 'current topics'. Then, click on 'Submit your water use report data' on the Water Use Reporting page. Your USER_ID number is both your Username and your Password to log in. To submit data for a point of diversion, scroll down to the point of diversion and click on 'Insert' to add data for that diversion. Enter the data for one point of diversion at a time. Be sure to be careful to choose the correct units, enter the monthly amounts diverted, and then click the 'Update' button. You will then be given the opportunity to review the data for that diversion to make sure it is correct. Please do so, as once data has been submitted by clicking the 'Submit' button, you cannot edit it. Also, please remember to enter a zero if you did not use a diversion during a month. At present, the system can receive data only for the 2006 water year (October 2005 – September 2006). If you wish to submit data for another year, you will need to submit a hard copy.

Finally, if you use small water right (less than 0.1 CFS or 9.2 AF) and do not measure monthly quantities, you may report the maximum volume allowed under the right. For rates in CFS,

$$AF = 1.98 * CFS * (\# \text{ of days in the month})$$

Thank you in advance. The data you provide is valuable for water management in Oregon.

Yours truly,

Gary L. Ball, PE, PLS
Hydrographics/Measurement & Reporting Manager
Voice: 503-986-0831, Fax: 503-986-0902
Gary.L.BALL@ wrd.state.or.us

Apps R 84100
84101



2004

Oregon Water Resources Department
October 2004 through September 2005
Annual Water Use - Monthly Quantities Form

USER-ID 50021

2005



Facility <input type="checkbox"/>					
POD-ID <input type="checkbox"/>	51045	51044			
October - 2004	139,942	0			
November - 2004	1208	0			
December - 2004	1900	0			
January - 2005	10,100	0			
February - 2005	0	0			
March - 2005	0	0			
April - 2005	0	0			
May - 2005	0	0			
June - 2005	52,683	0			
July - 2005	153,735	0			
August - 2005	206,259	0			
September - 2005	59,742	0			
TOTAL *	625,569 G.	0			

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JAN 26 2006
WATER RESOURCES DEPT
SALEM, OREGON

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: meter on water line. If use is irrigation, total number acres irrigated _____

I certify this information is true and accurate to the best of my knowledge.

David L Knapp
Signature

Sec.
Title

Knapp Ranches, Inc.
Reporting Entity

12-28-05
Date

David L. Knapp
Name - Please Print

Please complete and mail to: Water Resources Department; Water Use Reporting Program;
725 Summer Street NE; Suite A, Salem, OR 97301-1271, or Fax 503-986-0902.



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

October 18, 2005

JEFF KNAPP,
KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OR 97465

REFERENCE: USER_ID 50021

Dear Water User:

We have appreciated your cooperation with the Water Use Reporting program in the past. And now, with the loss of the water use coordinator position through budget reductions, we hope you can help us even more. We are requesting all who need to report monthly quantities and have Internet access to report those quantities online through our website. For the time being, the water use reporting database will not be updated with new water right information. If you need to report on a new water right not in the reporting database, you will need to submit a hard copy form. A 2005 monthly quantities form is printed on the reverse you can copy for your use.

To report monthly quantities data online, go to our web page at www.wrd.state.or.us and click on the link 'Water Use Reporting' under 'current topics'. Then, click on 'Submit your water use report data' on the Water Use Reporting page. A logon screen then appears and you use your USER_ID for both the Username and Password. To submit data for a point of diversion, scroll down to the point of diversion and click on 'Insert' to add data for that diversion. Be sure to be careful to choose the correct units, enter the monthly amounts diverted, and then click the 'Update' button. You will then be given the opportunity to review the data for that diversion to make sure it is correct. Please do so, as once data has been submitted by clicking the 'Submit' button, you cannot edit it. Also, please remember to enter zeros if you did not use a diversion. At present, the system can receive data only for the 2005 water year (October 2004 – September 2005). If you wish to submit data for another year, you will need to submit a hard copy. Thank you in advance for your cooperation. The data you provide is valuable for water management in Oregon.

Finally, if you have small water rights (less than 0.1 cfs or 9.2 AF) and do not report monthly quantities for them, we will assume that you have used water according to those rights.

Yours truly,

Gary L. Ball, PE, PLS
Hydrographics/Measurement & Reporting Manager
Voice: 503-986-0831, Fax: 503-986-0902
Gary.L.BALL@ wrd.state.or.us

2003

Oregon Water Resources Department
 October 2003 through September 2004
 Annual Water Use - Monthly Quantities Form

USEF-ID 50021

2004



Facility <input type="checkbox"/> POD-ID <input type="checkbox"/>	51045	51044			
October - 2003	148,927	0			RECEIVED JAN 28 2005 WATER RESOURCES DEPT SALEM, OREGON
November - 2003	165	0			
December - 2003	781	0			
January - 2004	0	0			
February - 2004	0	0			
March - 2004	0	0			
April - 2004	0	0			
May - 2004	0	0			
June - 2004	43,607	0			
July - 2004	187,215	0			
August - 2004	223,259	0			
September - 2004	167,609	0			
TOTAL *		0			

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: meter on water line If use is irrigation, total number acres irrigated _____

I certify this information is true and accurate to the best of my knowledge.

Barbara Knapp
 Signature
David L. Knapp
 Name - Please Print

Sec. Bookkeeper
 Title

Knapp Ranches, Inc
 Reporting Entity

12-27-04
 Date



OREGON WATER RESOURCES DEPARTMENT SUMMARY OF WATER RIGHTS FOR WATER USE REPORT



Dear Water User: Water year 2004 has ended! All water use reports for October 2003 to September 2004 are requested to be submitted. During the past year we transferred our data to a new computer system, and have developed a website from which you may submit your data, if you so choose. In some cases the references numbers for points of diversion may have been changed. If this creates a problem for you, please contact me. If you would like to use the new site go to the web address listed below. You will not need to mail in this completed form. This information is important for water management in Oregon. Please, complete the form on the reverse side for the water rights listed below by December 31, 2004. If you have questions, or need more time please, contact me at 503-986-0833. Thank you for your attention to this matter. Mary Grainey

JEFF KNAPP
 KNAPP RANCHES INC.
 PO BOX 32
 PORT ORFORD OR 97465

<http://www.wrd.state.or.us>

User-ID 50021
 Password: 50021

POD-ID	FACILITY	CERT	PERMIT	APPL	PRIORITY	USE	L/S	TWP	RANGE	SEC	Q/Q	RATE	SOURCE	TRIBUTARY TO
51044		0 R	12770 R	84100	2/4/1999	ST	L	32 S	15 W	20	SWSW	100 A P	UNN STR/RES	ELK R
51045		0 S	53648 S	84101	3/24/1999	MI	L	32 S	15 W	20	SWSW	40 A P	RES	ELK R
51045		0 S	53648 S	84101	3/24/1999	IR	L	32 S	15 W	20	SWSW	60 A P	RES	ELK R

App R 84100

USER-ID 50021

2002

Oregon Water Resources Department
October 2002 through September 2003
Annual Water Use - Monthly Quantities Form

2003



Facility <input type="checkbox"/>	51045	51044			
POD-ID <input type="checkbox"/>					
October - 2002	9,841	0			
November - 2002	0	0			
December - 2002	0				
January - 2003	0				
February - 2003	0				
March - 2003	0				
April - 2003	0				
May - 2003	66,032				
June - 2003	68,968				
July - 2003	311,475				
August - 2003	574,800				
September - 2003	472,038				
TOTAL *	1,503,154G	0			

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FEB 9 2004

WATER RESOURCES DEPT
SALEM, OREGON

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: Meter on main line. If use is irrigation, total number acres irrigated 0

I certify this information is true and accurate to the best of my knowledge.

David P. Knapp
Signature

Sec
Title

Knapp Ranches, Inc.
Reporting Entity

2-18-04
Date

David Knapp
Name - Please Print

Please complete and mail to: Water Resources Department; Water Use Reporting Program;
725 Summer Street NE, Suite A; Salem, OR 97301-1271



OREGON WATER RESOURCES DEPARTMENT SUMMARY OF WATER RIGHTS FOR WATER USE REPORT

Dear Water User: Water year 2003 has ended! All water use reports for October 2002 to September 2003 are requested to be submitted. We are a little late this year due to our efforts to develop a website from which you may submit your data, if you so choose. If you would like to test the new site go to the web address listed below. You will not need to mail in this completed form. This information is important for water management in Oregon. Please, complete the form on the reverse side for the water rights listed below by March 1, 2004. If you have questions, or need more time please, contact me at 503-986-0833. Thank you for your attention to this matter.
Mary Grainey



JEFF KNAPP
KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD OR 97465

<http://stamp.wrd.state.or.us/apps/wr/wateruse/wateruse.php>

User-ID 50021
Password: 50021

51044	0 R 12770 R 84100	2/4/1999	ST L	32 S	15 W	20 SWSW	100 A P UNN STR/RES	ELK R
51045	0 S 53648 S 84101	3/24/1999	IR L	32 S	15 W	20 SWSW	60 A P RES	ELK R
51045	0 S 53648 S 84101	3/24/1999	MI L	32 S	15 W	20 SWSW	40 A P RES	ELK R



R84100, 584101

USER-ID 50021

2000

Oregon Water Resources Department
October 2000 through September 2001
Annual Water Use - Monthly Quantities Form

2001



Facility <input type="checkbox"/> POD-ID <input type="checkbox"/>	51044 ST	51045 IR/MI			
October - 2000	0	0	0		
November - 2000	0				
December - 2000	0				
January - 2001	0				
February - 2001	0				
March - 2001	0				
April - 2001	0				
May - 2001	0				
June - 2001	0				
July - 2001	0				
August - 2001	0				
September - 2001	0				
TOTAL *	0	0	0		

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FFR 04 2002
WATER RESOURCES DEPT.
SALEM, OREGON

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: _____ . If use is irrigation, total number acres irrigated, _____

I certify this information is true and accurate to the best of my knowledge.

David P. Knapp
Signature

Sec
Title

Knapp Ranches, Inc
Reporting Entity

1-28-02
Date

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OREGON 97465

(541) 332-3755

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

APPLICATION FILE NUMBER: R-84100

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER
APPLICATION S-84101 FOR IRRIGATION AND MINING

MAXIMUM VOLUME: 100 ACRE-FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH APRIL 30

DATE OF PRIORITY: FEBRUARY 4, 1999

The area submerged by the reservoir, when full, will be 7.0 acres and the maximum depth of water will be 20.0 feet. The maximum height of the dam shall not exceed 9.5 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4

SE 1/4 SW 1/4

SECTION 20

NE 1/4 NW 1/4

NW 1/4 NW 1/4

SECTION 29

TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, a staff gage

Application R-84100 Water Resources Department

PERMIT R-12770

that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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.

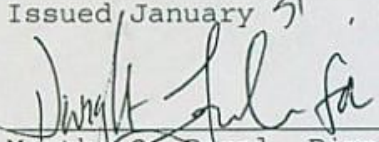
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin by December 15, 2000. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued January 31, 2000


Martha O. Pagel, Director
Water Resources Department



NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

STATE OF OREGON

COUNTY OF CURRY

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

PO BOX 32

PORT ORFORD, OREGON 97465

(541)332-3755

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

APPLICATION FILE NUMBER: R-84100

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-84101 FOR IRRIGATION AND MINING

MAXIMUM VOLUME: 100 ACRE-FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH APRIL 30

DATE OF PRIORITY: FEBRUARY 4, 1999

The area submerged by the reservoir, when full, will be 7.0 acres and the maximum depth of water will be 20.0 feet. The maximum height of the dam shall not exceed 9.5 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4

SE 1/4 SW 1/4

SECTION 20

NE 1/4 NW 1/4

NW 1/4 NW 1/4

SECTION 29

TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, a staff gage

Application R-84100 Water Resources Department

PERMIT DRAFT

that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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.

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.

filed during the protest period, the final order is not subject to judicial review.

This document was prepared by Anita Huffman. If you have any questions about any of the statements contained in this document I am the most likely the best person to answer your questions. You can reach me toll free within Oregon at 1-800-624-3199 extension 229. Outside of Oregon you can dial 1-503-378-8455.

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 Adam Sussman. His extension number is 262.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 499. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97310, Fax: (503)378-2496

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-84100

Final Order

Application History

On February 4, 1999, KNAPP RANCHES INC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on August 10, 1999. The protest period closed September 24, 1999, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest.

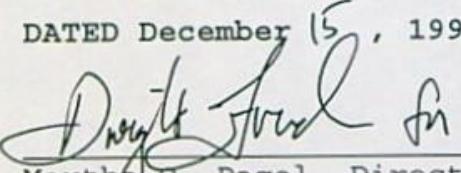
Order

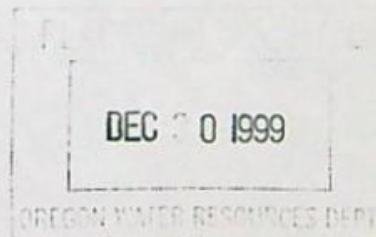
Upon payment of outstanding permit recording fees, Application R-84100 shall be approved as proposed by the Proposed Final Order and as provided on the attached draft permit.

Permit recording fees are required in the amount of \$175.00. Said fees are due and payable no later than 60 days from the date of this Final Order. Failure to pay the required permit recording fees within 60 days from the date of this Final Order may result in the proposed rejection of Application R-84100.

If you need to request additional time to submit the required fees, the written request should be received in the Salem office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED December 15, 1999


Martha O. Pagel, Director



Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of this order must be filed within the 60 day time period specified by ORS 183.484(2).

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from issuance of the final order approving the use. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____, 199_

DRAFT - THIS IS NOT A PERMIT

Martha O. Pagel, Director
Water Resources Department

Mailing List for Permit Copies

Application#R-84100

Mailing List Print Date January 20, 2000

Original mailed to(when permit issued, include copy of permit map):

Applicant: KNAPP RANCHES INC., PO BOX 32, PORT ORFORD, OREGON 97465

For Permit only - Permit Copies sent to

1. WRD - File # R-84100 ✓
2. WRD - Ken Stahr ✓
3. WRD - Data Center ✓
4. WRD - NWR ✓
5. WRD - Watermaster District #: 19(w/copy of permit map) ✓
6. WRD - Regional Manager: AL COOK, SWR (w/copy of permit map) ✓
7. WRD - John Falk (for reservoir permits only) ✓

Copies Mailed By: <u>Col</u> (SUPPORT STAFF) on: <u>2/9/00</u> (DATE)

COPIES TO Other Interested Persons

8. DENNIS GOUDE, STUNTZNER ENGINEERING _____

Caseworker:AMH

Mailing List for FO Copies

Application # R-84100

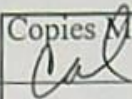
Mailing List Print Date

December 7, 1999

Original mailed to (when permit issued, include copy of permit map):

Applicant:

KNAPP RANCHES INC. PO BOX 32 PORT ORFORD,
OREGON 97465

By:  Copies Mailed

on: 12/29/99 (SUPPORT STAFF)
(DATE)

For FO w/Draft Permit - Copies sent to:

1. WRD - File #
2. WRD - John Falk (for reservoir applications only) ✓

For FO w/ Draft Permit - FO and Map Copies sent to:

3. WRD - Watermaster District #: 19 ✓
4. WRD - Regional Manager: AL COOK, SWR ✓
5. ODFW District Biologist: Todd Confer ✓

Copies Sent to Other Interested Persons (CWRE. Agent, Well Driller, Commenter, etc.)

6. Dennis Goude (CWRE) Stuntzner Engineering

CASEWORKER: AMH

FO CHECKLIST

FILE # R84100
PFO WEEK # 211

PFO TO FO CONVERSION

REVIEW DATE: 12/7/99
INITIALS: AV

In preparing to create the FO, you should check the following:

1. Y N Were comments or protests received? If so, **from whom** and **when**?
2. On the PFO CC list, verify names and mailing addresses of **ALL** commentors (regardless of comment date, **affected landowners**, and **those who paid the \$10 feet**).
3. Y / N / NA Have affected land owners been notified?
4. Y / N Is the file lacking a signed oath of accuracy for the application?
5. Y / N / NA Has ODFW asked for self certification of screening condition?
If so, write "ODFW CERT" in the permit block on the front of the file.
6. Y / N Is water use prohibited for one or more months of the normal use period?
7. Y / N If #6 = "Y", is short season letter on file? Note: If short season letter is lacking, see item #10 below.
Give applicant 60 days to submit required information.
8. Verify Payment of recording fees (*circle the appropriate option*)

$$\begin{array}{r}
 100 AF = 250 \\
 + 190 \\
 \hline
 440 \\
 \text{pd} \rightarrow \\
 \text{owes } \$175
 \end{array}$$

 - (1) Issue FO w/permit if fees are paid — Prepare refund request for excess fees, **including standing fees if no protest is filed and no modifications are being made to the PFO.**
 - (2) Issue FO w/o permit if fees are lacking.
9. Y / N Is further processing possible? If not state reason: _____
10. Notify applicant of additional information or fees required prior to permit issuance. (**SEND CERTIFIED LETTER** & use standard wording from M:\...\FO\TOOLS if possible)
11. _____ Assign permit numbers to files with oaths, fees, and no protests or other issues.
12. Y / N Do the PFO conclusions require modification? Why? _____
(If YES, circle FOMOD and one other type below)

FO Type: (circle types)	DENIAL	<input checked="" type="radio"/> FO w/o PERMIT	FO & PERMIT	FOMOD MGMT CODES
owes \$175-				

Once created, modify FO as needed to:

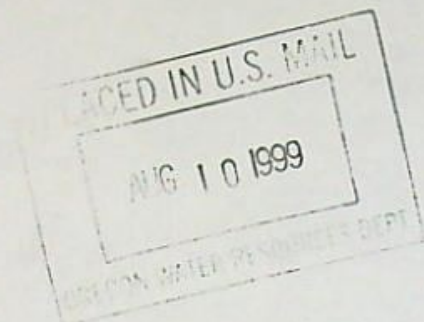
13. Respond to significant comments, issues, or disputes related to the proposed use of water (see notes, if any, listed above)
14. Include or exclude permit conditions and management codes.
15. Correct PFO errors (such as POD or POU location (verify from map), Permit format)

Once FO document is completed:

16. _____ Save WordPerfect document in M:\GROUPS\WR\FOWEEK220 & delete duplicates.
17. _____ Print final draft of document and submit to team leader for review
18. Y / N Team leader review completed m:\groups\wr\fo\forms\FO Check List.wpd

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-84100



Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On February 4, 1999, KNAPP RANCHES INC. submitted an application to the Department for the following water use permit:

- Amount of Water: 100.0 ACRE-FEET
- Use of Water: MINING AND IRRIGATION
- Source of Water: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER
- Area of Proposed Use: CURRY County within SECTION 20, SECTION 29, TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

On 6/1/99, the Department mailed the applicant notice of its Initial Review, determining that "The use of 100.0 ACRE-FEET from AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER for STORAGE FOR MINING AND IRRIGATION is allowable from December 1 through April 30 of each year." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 6/15/99, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available

- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

Findings of Fact

The South Coast Basin Program allows the following uses: MINING AND IRRIGATION

Senior water rights exist on AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER or on downstream waters.

AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER is not within or above a State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumption portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation (at a 50 percent exceedance probability) for the period NOVEMBER 1 THROUGH APRIL 30.

The Department finds that the amount of water requested, 100.0 ACRE-FEET, is allowable.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

The period of use has been limited to November 1 through April 30, the period that water is found to be available.

Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use

may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the South Coast Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

- (B) Specifically how the identified public interest would be impaired or detrimentally affected.

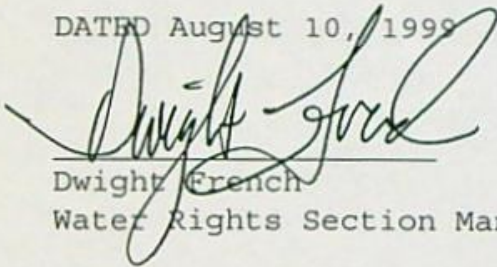
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount of water necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED August 10, 1999



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.*

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must 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 this 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; and
- If you are not the applicant, the \$200 protest fee 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. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.
- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.

Requests for Standing

Under the provisions of 537.153(5), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$150.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **September 24, 1999**.

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 if

- 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.

This document was prepared by Russell W. Klassen. 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 can reach me toll free within Oregon at 1-800-624-3199 extension 266. Outside of Oregon you can dial 1-503-378-8455.

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 Adam Sussman. His extension number is 262.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 499.

Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97310
Fax: (503)378-2496 .

100AF = 250
10x10 = 100
90x1 = 90
190
DRAFT 250
440

DRAFT

This is not a permit!!!
STATE OF OREGON

DRAFT

COUNTY OF CURRY

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

PO BOX 32

(541)332-3755

PORT ORFORD, OREGON 97465

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

APPLICATION FILE NUMBER: R-84100

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-84101 FOR IRRIGATION AND MINING

MAXIMUM VOLUME: 100 ACRE-FEET EACH YEAR ✓

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH APRIL 30 ✓

DATE OF PRIORITY: FEBRUARY 4, 1999 ✓

The area submerged by the reservoir, when full, will be 7.0 acres and the maximum depth of water will be 20.0 feet. The maximum height of the dam shall not exceed 9.5 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20 *all*

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4

SE 1/4 SW 1/4

SECTION 20

NE 1/4 NW 1/4

NW 1/4 NW 1/4

SECTION 29

TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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.

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.

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from issuance of the final order approving the use. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2003. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____, 199_

DRAFT - THIS IS NOT A PERMIT

Martha O. Pagel, Director
Water Resources Department

Mailing List for PFO Copies

Application #R-84100

PFO Date: August 10, 1999

Original mailed to:

Applicant: KNAPP RANCHES INC, PO BOX 32, PORT ORFORD, OREGON 97465

Copies sent to:

1. WRD - File # R-84100
2. WRD - Water Availability: Ken Stahr

PFO, Map, and Fact Sheet Copies sent to:

3. WRD - Watermaster # District 19
4. WRD - Regional Manager: SWR
5. ODFW District Biologist: Todd Confer

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

6. Dennis Goude(CWRE)

CASEWORKER : RWK - WEEK 211

Copies Mailed
By: <u>JE</u>
(SUPPORT STAFF)
on: <u>8/9/99</u>
(DATE)

PFO CHECKLIST

Application #: P 84100

County Curry Basin: 5 Cont 17
Township 325 Range 15W Section 1/4 1/4

- 1. Complete by Minimum Requirements Checklist? Y / N
- 2. Shortcomings (items needed before a permit and/or FO can be issued) Y / N Should process continue Y / N
- 3. Groundwater Review A B C D River/Stream Name _____
 - a. Groundwater Availability A B C
 - b. Is second groundwater review complete Y / N necessary? (comments) Y / N
 - c. Is the well located in a GWLA or CA? (If applicable, include map with POD) Y / N within area
- 4. Is use from BOR / Doug Co. project? Y / N Contract in file? Y / N Contract # _____
- 5. Is the use allowed by the Basin Program? Y / N Limited? Y / N _____
- 6. Water Availability Data OK / REDONE / NA (80% live flow & 50% storage) 11-4/30
(THE IR INCORRECTLY IDENTIFIED AS 12-4/30)
- 7. Is the source withdrawn or limited by statute or Department order? Y / N
- 8. Is the Proposed Use located in or above a SWW? Y / N
- 9. Division 33: Y / N / NA Above Bonn (after July 17, 1992) Y / N
Below Bonn (after April 8, 1994; June 3, 1994) Y / N
Statewide - (in shaded areas on T, E, and S Map - after June 3, 1994) Y / N
- 10. IR identifies as on DEQ 303d List? Y / N / NA Comments received? Y / N
- 11. Have conflicts been addressed? Y / N / NA
- 12. Duty _____ Irrigation Season _____
- 13. Period of Allowed Use 12-4/30
- 14. Allowed Rate 100 AF

summary:

- 15. Small (≤ 0.1 cfs, ≤ 9.2 AF), Medium (> 0.1 or < 1.5 cfs, > 9.2 or < 100 AF) or Large (≥ 1.5 cfs, ≥ 100 AF) condition 7I and municipal use ≤ 0.1 cfs require the Large condition
- 16. Conditions 12-4/30
RSIA & RSR
New River Basin? Y / N / NA (see M:\groups\wr\pof\findings & other lang)
- 17. IR Date 6/1/99 Public Notice Date 6/15/99 Comment Rec'd _____
- 18. CWRE, representatives or Property owners to notify? Y / N Dennis Gaudin (CWRE)

Initials: Ruk Date: 8/2/99



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

June 1, 1999

KNAPP RANCHES INC
PO BOX 32
PORT ORFORD, OREGON 97465

Reference: File R-84100

Dear Applicant:

**THIS IS NOT A PERMIT AND IS
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the favorable preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The proposed use is not prohibited by law or rule.
2. The use of water from AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER for STORAGE FOR MINING AND IRRIGATION is **allowable** under OAR 690-517-001(8), the South Coast Basin Program.
3. Water in the amount of 100.0 ACRE-FEET for STORAGE FOR MINING AND IRRIGATION is **available** December 1 through April 30.

Summary of Initial Determinations

The use of 100.0 ACRE-FEET from AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER for STORAGE FOR MINING AND IRRIGATION is allowable from December 1 through April 30 of each year.

Because of these favorable determinations, the Department can now move your application to the



next phase of the water rights application review process. This phase is where public interest factors will be evaluated.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a proposed final order.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$50 processing charge per application.) To accomplish this you must notify the Department in writing by **Tuesday, June 15, 1999**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Additional Information Required:

Please submit preliminary plans and specifications relating to the proposed dam. The information must include dam height, width, crest width, and surface area. This information must be submitted no later than July 22, 1999 or the Department may propose to reject your application at the next phase of processing. **NOTE: Approved final plans and specifications must be obtained prior to the issuance of a permit, however at this time only preliminary plans are required.**

If you are unable to submit the above listed information, you may request a "time out from processing" for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If a time out is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter

or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use 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.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
2. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.
 3. You will be required to comply with state and federal water quality standards.
 4. The priority date for this application is February 4, 1999.

WARNING: This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews public comments and prepares a proposed final order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

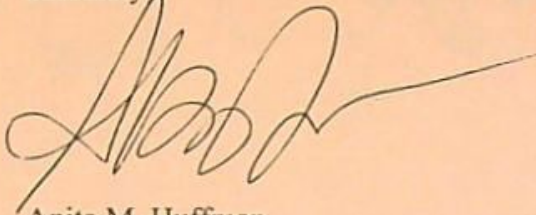
Information obtained from the Department of Environmental Quality (DEQ) indicates that the source of water identified in your application is "Water Quality Limited". That means that there are water quality concerns. DEQ will be looking at information from your application to see if additional conditions or restrictions are needed to protect the water quality situation. One possible outcome is that the Water Resources Department will propose in the proposed final order that your application be denied. You are encouraged to contact Tom Rosetta, (503) 229-5053 at DEQ to discuss the specifics of your application. Often, this information exchange can allow the water use to occur and at the same time keep the water quality situation from worsening.

If you have any questions:

Questions about the status of your application, processing timelines, or your upcoming Proposed Final Order should be directed to our Water Right Information Group at (800) 624-3199 or (503) 378-8455 extension 499. Feel free to call me at (800) 624-3199 or (503) 378-8455 extension 229 if you have any questions regarding the contents of this letter. Please have your application number available if you call. Address all other correspondence to: Water Rights Section, Oregon

Water Resources Department, 158 12th ST. NE Salem, OR 97310, Fax: (503)378-2496

Sincerely,

A handwritten signature in black ink, appearing to read 'AMH', with a long horizontal flourish extending to the right.

Anita M. Huffman
Water Rights Specialist

cc: Regional Manager, Watermaster District 19, Water Availability Section
enclosures: Flow Chart of Water Right Process
Stop Processing Form

R-84100
wab 17-2300
pou 17-2300
gw

APPLICATION FACT SHEET

Mail to: Applicant, Watermaster, District Biologist (ODFW)
If necessary, also mail to : Regional Water quality manager (DEQ), and DOA

Application File Number: R-84100

Applicant: KNAPP RANCHES INC

County: CURRY

Watermaster: District 19

Priority Date: February 4, 1999

Source: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

Use: MINING AND IRRIGATION

Quantity: 100.0 ACRE-FEET

Basin Name & Number: South Coast, #17

Stream Index Reference: Volume 3 ELK R & MISC

Point of Diversion Location: SWSW, SECTION 20, T32S, R15W, W.M.; 314 FEET NORTH &
496 FEET EAST FROM SW CORNER, SECTION 20

Place of Use: SWSW SWSW SWSW SWSW SWSW SESW SESW SESW SESW SESW,
SECTION 20 NENW NENW NENW NENW NENW NWNW NWNW NWNW NWNW
NWNW , SECTION 29, TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Tuesday, June 15, 1999

PUBLIC NOTICE DATE: Tuesday, June 22, 1999

30 DAY COMMENT DEADLINE DATE: Thursday, July 22, 1999

IR CHECKLIST

Application # R-84100 Priority Date: 3/24/99
Basin: 17-5. color County: CYREN
Township 32S Range 15W Section 20 1/4 1/4 SWSW
WAB: 2300 POU WAB: _____

- 1. Complete by Minimum Requirements checklist Y N Items still required: _____
- 2. Groundwater Review A B C D River/Stream Name _____
Conditions _____ Water Availability A B C _____
- 3. Is the well located in a groundwater limited area? Y N Name _____
- 4. Is the well located in TIN R3E SEC 20, 21, 28, 29 Y N _____
- 5. Within or above a Scenic Waterway Y N Conditions/Restrictions Y N _____
- 6. Basin Maps have been checked Y N Elk R.
- 7. Allowed under Basin Program Y N Limitations Y N 690-517-001(8)
- 8. Withdrawn Y N Season Allowed _____
- 9. Water Availability 80% 1 50% Dec - April N/A
- 10. Use IRR, MI STURABE Period of allowed use _____
- 11. Season requested by applicant YR (Winter flow)
- 12. For Irrigation: Rate _____ Duty _____ Season _____
- 13. For Nursery or Cranberry: Rate _____ Duty _____ Season _____
- 14. Allowable rate of use: 100.0 AF
Requested Rate: 100.0 AF
- 15. BOR project Y N Contract # _____
- 16. Subject to Division 33: Y N N/A Above Bonneville _____ TES Y N
Below Bonneville _____ TES Y N TES only Y N
- 17. Conflict Y N See M-14920 for report.
- 18. Conditions? (BOR, GW, other) Y N _____
- 19. Measuring condition Small _____ Medium _____ Large _____
- 20. Within Dept. Of Agriculture Water Quality Management Area Y N N/A
TUALATIN _____ BEAR CREEK(ROGUE) _____
- 21. On DEQ 303d list Y N N/A
- 22. Land use approval OK'd Needs Approval County Notified N/A
- 23. Watermaster Dist: (1 2 16 18 20 NWR) (3 4 5 NCR) (6 8 9 10 ER)
(11 12 17 SCR) (13 14 15 19 SWR)
- 24. ODFW Biologist Confer
- 24. Letter will be: GOOD LIMITED BAD BAD W/IR SHORT BAD W/HC EXCEPT

Name: [Signature] Date: 5/12/99

Division 33 Application Review Sheet for Use by ODFW Staff
Recommendations for Water Right Applications that may affect the Habitat of
Sensitive, Threatened or Endangered Fish Species OAR 690-33-310 through 340
 Date: 6/1/99 14 Day Deadline: _____

Application # R-84100 Name: Knapp Ranches

1) Will the proposed use occur in an area that may affect the essential habitat of sensitive, threatened or endangered fish species? [690-33-330(1)]
 No / Yes Species? Whe Status S E

If Yes, continue, if NO go to Public Interest Review Sheet (BACK PAGE)

What stage or value is at risk: Spawning; Incubation; Rearing; Passage; Habitat Value

2) Will the proposed use result in a loss in the essential habitat of threatened or endangered species or a net loss in the habitat of sensitive species? No Yes

- A) Standard of "net loss" applies to sensitive species statewide [690-33-330(2)(a)]
- B) Standard of "loss" of applies to T or E species outside the Columbia Basin [690-33-330(2)(b)]

3) Can conditions be applied to mitigate the impact to the essential habitat of STE species?

No Yes [690-33-330(3)] Yes or no, which conditions are recommended? (Try to select those from the menu) bSIA - Period of use limited to December 1 - April 30.
bSF - Staff gage - Todd Canell
By phone:
was limiting to H₂O availability period which was indirectly identified as 12-4/30; should have been 11-4/30

4) If conditions cannot be identified to offset impacts to the essential habitat of STE fish species, would the proposed use harm the species? [690-33-330(4)] No / Yes If yes, explain

WRD Contact: _____ Title: _____

Date: _____

Comments: The existing dam and culvert provide partial fish passage. Passage will be addressed at such time as culvert replacement is necessary by requiring placement that meets passage criteria.

ODFW Recommendation:

- Approval with fishery conditions See #3 Above
- ____ Approval without fishery conditions
- ____ Denial

ODFW Representative(s)

Name: _____ Date: _____

Name: Gold Coker Date: 6/21/99 (M:\div.33\odfw chk lst i modified.6-25...

Mailing List for IR Copies

Application #R-84100

IR Date: June 1, 1999

Original mailed to:

Applicant: KNAPP RANCHES INC, PO BOX 32, PORT ORFORD, OREGON 97465

Copies sent to:

1. WRD - File # R-84100
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Watermaster # District 19
4. WRD - Regional Manager (not Bob Main):SWR
5. ODFW District Biologist: (CURRY County)Todd Confer
6. DEQ (Portland): Tom Rosetta
7. DOA (Salem): Steve Applegate

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

8. Stuntzner Engineering Dennis Goode PO Box 118, Coos Bay 97420__

9. _____

10. _____

11. _____

12. _____

13. _____

14. _____

ID# AMH

Copies Mailed

By: JF
(SUPPORT STAFF)
on: 5-27-99
(DATE)

Div. 33 Statewide Rules
USE SALMON PAPER

WATER AVAILABILITY TABLE

Basin: SOUTH COAST Exceedance Level: 50
 Water Availability Subbasin: 2300000000000000 (and Nested Subbasins)
 Time: 09:44 Date: 05/12/1999

Item #	W.A. Subbasin	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	2300000000000000	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES

STREAM NAMES

Basin: SOUTH COAST
 Water Availability Subbasin: 2300000000000000 (and Nested Subbasins)
 Time: 09:44 Date: 05/12/1999

WAB #	Stream Name	Tributary to
2300000000000000	ELK R @ mouth	PACIFIC OCEAN

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 2300000000000000
 Basin: SOUTH COAST Exceedance Level: 50
 Time: 09:44 Date: 05/12/1999

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	2300000000000000	ELK R @ mouth	YES	487.0
2	2300000000000000	ELK R @ mouth	YES	573.0
3	2300000000000000	ELK R @ mouth	YES	483.0
4	2300000000000000	ELK R @ mouth	YES	131.0
5	2300000000000000	ELK R @ mouth	NO	-1.2
6	2300000000000000	ELK R @ mouth	NO	-4.2
7	2300000000000000	ELK R @ mouth	NO	-7.7
8	2300000000000000	ELK R @ mouth	NO	-4.9
9	2300000000000000	ELK R @ mouth	NO	-2.2
10	2300000000000000	ELK R @ mouth	NO	-71.6
11	2300000000000000	ELK R @ mouth	YES	109.0
12	2300000000000000	ELK R @ mouth	YES	617.0
Stor	2300000000000000	ELK R @ mouth	YES	144000.0

DETAILED REPORT ON WATER AVAILABILITY

Basin: SOUTH COAST Exceedance Level: 50
 Stream: ELK R @ mouth
 Water Availability Subbasin: 2300000000000000 ID Number: 70895
 Time: 09:44 Date: 05/12/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	870.00	.08	870.00	2.51	867.00	380.00	487.00
2	956.00	.08	956.00	2.56	953.00	380.00	573.00
3	866.00	.08	866.00	2.51	863.00	380.00	483.00
4	511.00	.25	511.00	.47	511.00	380.00	131.00
5	262.00	1.27	261.00	.16	260.84	262.00	-1.16
6	157.00	3.59	153.00	.16	152.84	157.00	-4.16
7	92.90	5.68	87.20	2.03	85.17	92.90	-7.73
8	59.80	4.67	55.10	.16	54.94	59.80	-4.86
9	51.20	2.01	49.20	.16	49.04	51.20	-2.16
10	78.80	.25	78.60	.16	78.40	150.00	-71.60
11	489.00	.08	489.00	.46	489.00	380.00	109.00
12	1000.00	.08	1000.00	2.58	997.00	380.00	617.00
Stor	323000	1080	322000	833	321000	183000	144000

DETAILED REPORT OF ISWRs

Basin: SOUTH COAST
 Stream: ELK R @ mouth
 Water Availability Subbasin: 2300000000000000
 Time: 09:44 Date: 05/12/1999

-----ISWRs-----						
APP #	393A	70895A	0	0	0	RESULTANT
STATUS	Cert.	PFO				
1	300.00	380.00	.00	.00	.00	380.000
2	300.00	380.00	.00	.00	.00	380.000
3	225.00	380.00	.00	.00	.00	380.000
4	225.00	380.00	.00	.00	.00	380.000
5	225.00	262.00	.00	.00	.00	262.000
6	80.00	157.00	.00	.00	.00	157.000
7	45.00	92.90	.00	.00	.00	92.900
8	45.00	59.80	.00	.00	.00	59.800
9	45.00	51.20	.00	.00	.00	51.200
10	150.00	78.80	.00	.00	.00	150.00C
11	300.00	380.00	.00	.00	.00	380.000
12	300.00	380.00	.00	.00	.00	380.000

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WATER RESOURCES DEPT.
SALEM, OREGON

Application No. R-84100

State of Oregon
WATER RESOURCES DEPARTMENT

Application for a Permit to Construct a Reservoir

Applicant(s) Knapp Ranches Inc.
(Please print or type - use dark ink)

Mailing Address: PO Box 32
Port Orford, OR 97465
City State Zip Daytime Phone No.

I (We) make application for a permit to construct One reservoir and store the following described waters of the State of Oregon:

1. SOURCE OF WATER for the proposed use: Unnamed Stream, a tributary of Elk River at the Ocean.
If not in channel of a stream, state how it is to be filled: _____

2. THE DAM: The maximum height of the structure will be 9.5 feet above stream bed or ground surface at the centerline.
The dam will be (check one) earthfill, _____ concrete, _____ flashboard, _____ other.
If "other" give description: _____

Give the location, description, and dimensions of the outlet conduit: Outlet conduit is in the center of the stream channel. 12" in diameter.

NOTE: All dams across natural stream channels must be provided with an outlet conduit, minimum diameter of 8", or be of such capacity and location as to pass the normal flow of the stream at any time.

3. THE USE(s) of the impounded water will be: Livestock, Agricultural
Industrial.

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SALEM, OREGON

4. THE AMOUNT OF WATER to be stored is: 100 acre-feet.
The area submerged by the reservoir, when filled, will be 7 acres,
and the maximum depth of water will be 20 feet.

5. SPILLWAY DESCRIPTION (location and dimensions). State whether over or around the dam. The spillway will be located in the top center of the dam and will be concrete.

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6. PROJECT SCHEDULE: (List month and year)

Proposed date construction work will begin Existing

Proposed date construction work will be completed "

Proposed date water use will be completed "

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

7. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

Applicant CWRE Other (Identify in REMARKS section)

b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

Applicant CWRE Other (Identify in REMARKS section)

I/We certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge:

Signature

Knapp Landers Inc

Date

2-1-99

Signature

Jeff Knapp

Date

2-1-99

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SALEM, OREGON

8. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? Yes. If not, list in the REMARKS section of an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

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SALEM, OREGON

REMARKS: We understand that changing the reservoir and live flow usage may be restricted to winter flow. We also understand that we will have to allow continuous stream flow through in the amount suggested by Ivan Gall and John Drolet.

NOTE: The permit, when issued, is for the beneficial use of water without waste. 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. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Knappp Ranches Inc
Signature of Applicant

1-14-99
Date

Jeff Knappp
Signature of Co-Applicant, if any

1-14-99
Date

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WATER RESOURCES DEPT.
SALEM, OREGON

FILE#: R 84100

KNAPP RANCHES INC.
PO BOX 32
PORT ORFORD, OR

97465

OREGON WATER RESOURCES DEPARTMENT
ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 517
SOUTH COAST BASIN PROGRAM

Classifications

690-517-001

- (1) Ground water resources in sections or the portions of Sections 13, 14, 22, 23, 26, 27, 32, 33 and 34 of Township 23 South, Range 13 West; 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 27, 28, 29, 31, 32, 33 and 34 of Township 24 South, Range 13 West; and 3, 4, 5 and 6 of Township 25 South, Range 13 West, bounded on the north by Tenmile Creek, on the west by the Pacific Ocean, on the south by Coos Bay and on the east by Highway 101 are hereby classified for single or group domestic, livestock, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and any single industrial or commercial use not exceeding 5,000 gallons per day.
- (2) The waters of the following lakes are classified only for domestic, livestock, municipal, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife. The Director of the Water Resources Department may place specific limits on municipal appropriations from the lakes or require outlet control structures to protect recreation, fish life and wildlife uses:
 - (a) Bradley Lake
 - (b) Eel Lake
 - (c) Garrison Lake
- (3) All other natural lakes are classified only for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife.
- (4) Waters of the following streams and all tributaries are classified only for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, fire control and instream use for recreation, fish life and wildlife.
 - (a) Glenn Creek (tributary to the East Fork Millicoma River)
 - (b) Brush Creek
- (5) The waters of the Middle Fork of the Coquille River and tributaries upstream from the confluence with Holmes Creek are classified only for domestic, livestock and irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife during the period from July 1 to September 30 of every year. Water stored between October 1 and June 30 may be used at any time for purposes specified in section (8).
- (6) The waters of the West Fork Millicoma River and tributaries above Stall Falls are classified for municipal, domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife.

- (7) The waters of Pony Creek above lower Pony Creek Dam and Ferry and Geiger Creeks above the Ferry Creek - Geiger Creek confluence are classified for municipal use.
- (8) All other surface and ground water resources are hereby classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife and fish life uses.
- (9) Applications for the use of water for any purposes contrary to classifications specified in the basin program shall not be accepted or granted except as provided by law. The Director shall notify the Board and other interested individuals or agencies of the intent to accept an application for use in conflict with the adopted program in accordance with ORS 536.380 if the proposed use will not have a significant impact on any other water use as provided in sections (1) through (8) of OAR 690-517-001 and in 690-517-002 through 690-517-003.
- (10) The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including but not restricted to the recommendation of the multiple-purpose concept.

Reservations

690-517-002

Water in the amounts specified is reserved in the following streams for municipal use:

- (1) Chetco River - three cfs, downstream from the confluence with the North Fork Chetco River
- (2) Winchuck River - one cfs, downstream from the confluence with Bear Creek

Minimum Perennial Streamflows

690-517-003

- (1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses and irrigation of noncommercial gardens not exceeding one-half acre in area shall be allowed for the waters of the streams and tributaries listed in Table 1 when flows are below the specified levels.
- (2) The Water Policy Review Board requests the opportunity to review applications for an allowed beneficial use that has traditionally been identified as nonconsumptive or take-and-put, such as fish hatcheries, hydroelectric facilities, municipal or water process industries that could potentially impact, in an adverse way, the Board's minimum flow regime or the public interest. The Water Policy Review Board intends to continue to protect, in its entirety, that portion of the stream system on which any minimum streamflow has been established. Permitting procedures and water use regulation should reflect that objective as far as possible under the law. The Board solicits the advice or complaints of any party who is aware that the objectives are not being met.
- (3) Minimum flows established in the Water Resource Program for the South Coast Basin dated May 22, 1964 (Table 3), shall remain in full force and effect except as follows:
 - (a) The minimum perennial streamflow for the Elk River above U.S. Highway 101 crossing (45 cfs) is rescinded.



Oregon Water Resources Department Land Use Information Form

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JAN 13 1999

WATER RESOURCES DEPT.
SALEM, OREGON

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. **DO NOT** fill out this form if water is to be diverted, conveyed, or used only on federal lands.

To Be Completed By Applicant

The following section includes information about proposed water use. This section must be completed by the individual or group that is filing an application for a water right with the Water Resources Department.

A. Applicant

Name: KNAPP RANCHES INC. Application No. 84100

Address: P.O. BOX 32 Permit No. _____

City: PORT ORFORD State: OR Zip: 97465 Day Phone: 332-3755

B. Land and Location

Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot I.D.	Plan Designation (e.g. Rural Residential/RR-5)	Water to be: (check all that apply)		
32S 15W 19 TL 4400		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
32S 15W 29B TL 4400		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
32S 15W 30 TL 4400		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
32S 15W 20 TL 400		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used

List counties and cities where water is proposed to be diverted, conveyed, or used. CURRY

C. Description of Water Use

Indicate what the water will be used for. Include the beneficial use (found in the instruction booklet for your water right application) and use the space below to describe the key characteristics of the project.

Beneficial Use(s): STOCK WATER, IRRIGATION, GRAVEL MINING & CRANBERRIES

Briefly describe: _____

Stock watering for 300 ± head of cattle & 300 ± head of sheep; Irrigation of 192 acres of grass and hay; Cleaning and dust control in gravel mining operation and Cranberry use for 10 acres of cranberries.

D. Source

Indicate the source for the proposed water use:

Reservoir/Pond Ground Water Surface Water UNNAMED STREAM
(source)

E. Quantity

Indicate the estimated quantity of water the use will require:

3.0 CFS GPM Acre-Feet

Receipt for Request for Land Use Information

State of Oregon
Water Resources Department
Commerce Bldg.
158 12th St. NE
Salem, OR 97310-0210
(503)378-8455

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DEC 17 1998
PUBLIC SERVICES

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed or feel free to copy.

A. Allowed Use

Check the appropriate box below and provide requested information.

- Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s); 3.070/3.071. Go to section B "Approval" below
- Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below.

Type of Land Use Approval Needed (e.g. plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Check the item that applies: Land Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued

Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus accompanying findings is sufficient.)

B. Approval

Please provide printed name and written signature.

Name: Jodi Hatfield Date: 12-23-98
 Title: Planner Phone: 541 247-7811 x285
 Signature: Jodi Hatfield

C. Additional Comments

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Note: If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD will presume the land use associated with the proposed water right is compatible with local comprehensive plans. (See attached letter.)

Receipt for Request for Land Use Information

Name of water right applicant: KNAPP RANCHES INC.

This receipt must be signed by a local government representative and returned to the applicant at the time they present this form. This receipt must be included in the application for a water right permit if the local government cannot provide the requested land use information while the applicant waits.

City or County: _____

Staff contact: _____ Phone: _____

Signature: _____ Date: _____

FOR WATER RESOURCES DEPARTMENT USE ONLY

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JAN 13 1999

WATER RESOURCES DEPT.
SALEM, OREGON

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

WITNESS my hand this _____ day of _____, 19____.

Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 24th day of March, 1999, at 8 o'clock, A M.

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WATER RESOURCES DEPT.
SALEM, OREGON

APPLICATION NO: R-84100

MARY M. BARTZ

hereinafter referred to as the grantor, KNATT RANCHES, INC.

INCORPORATED, an Oregon corporation

all that real property situated in the County

of Curry, State of Oregon, described as

REAL PROPERTY AS DESCRIBED IN EXHIBIT "A"
ATTACHED HERETO AND MADE A PART HEREOF.

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Application No 84100

JAN 13 1999

Permit No.

WATER RESOURCES DEPT.
SALEM, OREGON

and covenant(s) that grantor is the owner of the above described property free of all encumbrances except

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and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer is \$ 6,000.00

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WATER RESOURCES DEPT.
SALEM, OREGON

Dated this 29 day of FEB 1972

Mary M. Bartz
Mary M Bartz

STATE OF ~~OREGON~~ CALIFORNIA, County of RIVERSIDE

FEB. 29

1972 personally appeared the above named
and acknowledged the foregoing

Mary M. Bartz
her voluntary act and deed



Before me, KB King
Keith B. King
Notary Public for Oregon
My commission expires: APR. 14, 1972

The dollar amount should include cash plus all encumbrances existing against the property to which the
priority remains subject or which the purchaser agrees to pay or assume
if consideration includes other property or value, add the following. However, the actual consideration
consists of or includes other property or value given or promised which is part of the the whole
withhold or state as follows:

WARRANTY DEED (INDIVIDUAL)

County of _____
I certify that the within instrument was recorded on the _____ day of _____ 19____
at _____ o'clock _____ M. and recorded in book _____
on page _____ Records of Deeds of said County
Witness my hand and seal of County aforesaid

One Copy Return to
KNATT RANCHES, INC.
Laneville, Oregon

Title

BOOK OF KEYS

23197

84100

BOOK OF RECORDS

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WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT "A"

That certain tract of land, to-wit: the Southeast Quarter of the Southeast Quarter (SE 1/4) of Section 20, Township 32 South, Range 15 West, Willamette Meridian, T32S, R15W, Oregon, is described as follows:

Beginning at an iron pipe placed at a water on the south side of the Southeast Quarter of the Southeast Quarter (SE 1/4) of said Section 20, North 0° 47' 00" East, 300.0 feet from the Southwest Corner of the SE 1/4; thence following the east boundary of the Southeast Quarter of the Southeast Quarter (SE 1/4) of said Section 20 North 0° 47' 00" East, 324.0 feet to a point of beginning; thence parallel with the east boundary of said Section 20 North 0° 47' 00" East, 200.0 feet, more or less, to the westerly boundary of the relocated Oregon Coast Highway; thence following the westerly boundary of the relocated Oregon Coast Highway, 300.0 feet to an iron pipe; thence parallel with the south boundary of said Section 20, North 0° 47' 00" East, 300.0 feet, to the point of beginning.



Indigal in Deeds
State of Oregon
County of Curry

I hereby certify that the within instrument was filed for record *March 21, 1972*
at *3:46* o'clock *P.M.* and recorded
in Book of Records No. *23* Page *624-625*

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WATER RESOURCES DEPT.
SALEM, OREGON

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JAN 13 1999

WATER RESOURCES DEPT.
SALEM, OREGON

EX-105-2 PAGE 4/1

INB

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS that LOUIS L. KNAPP, sometimes known as Louis Laurier Knapp, a single man, in consideration of \$10 and other good and valuable consideration, to him paid by KNAPP RANCHES, INC., an Oregon corporation, have bargained, sell and convey unto said Knapp Ranches, Inc., its successors and assigns, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Curry and State of Oregon, bounded and described as follows, to wit:

PARCEL 1: The following-described land situated in Township 32 South, Range 15 West, W.M., Curry County, State of Oregon, containing in all 922.21 acres, to wit:

All of the Herman S. De-Premery Donation Land Claim numbered Forty (40) containing one hundred fifty-nine and fifty-six hundredths (159.56) acres.

The southeast quarter of the southeast quarter, and the Lots numbered One, Two, Five, Six, Seven, Eight and Nine all in Section Nineteen (19). The southwest quarter of Section Twenty (20); also the southwest quarter of the southeast quarter, and Lot numbered Two (2) of said Section Twenty (20).

The northwest quarter of Section Twenty-nine (29); the east half of the northeast quarter, the northeast quarter of the southeast quarter, and Lots numbered Two, Three and Four of Section Thirty (30).

Also a parcel of land commencing at a point 2640 feet north of the corner to Sections 19, 20, 29 and 30 in Township 32 South, Range 15 West of the Willamette Meridian, thence running east 877.50 feet, thence north 1320 feet; thence west 877.50 feet; thence south 1320 feet to the point of beginning, containing 26.59 acres of land.

Also a parcel of land commencing at the southwest corner of the southeast quarter of the northwest quarter of Section Twenty-nine (29); thence running north 1320 feet to the point of beginning, containing 26.59 acres of land.

Application No. 84100
District 112

RECEIVED

FEB 04 1999

WATER RESOURCES DEPT.
SALEM, OREGON

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JAN 13 1999

WATER RESOURCES DEPT.
SALEM, OREGON

PARCEL II: All that portion of the north half of the southeast quarter of Section Twenty (20) in Township 32 South, Range 15 West of the Willamette Meridian which lies west of the right of way of the Oregon Coast Highway, and in addition that certain land owned by John Sornan, his wife, by a deed of March 9, 1939 and recorded on March 9, 1939 at page 257-3 of Volume 25 of the Record of Deeds of the official records of Curry County, Oregon.

EXCEPTING THEREFROM that certain property lying west of relocated Oregon State Highway No. 101 as described in that certain deed to the State of Oregon by and through the State Highway Commission dated March 15, 1967.

PARCEL III: That certain tract of land lying in the Southeast quarter (SE $\frac{1}{4}$) of Section Twenty (20), Township Thirty-two (32) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon, described as follows:

Commencing at a point 660 feet North of the Southwest corner of the Southeast Quarter (SE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20); thence North 660 feet; thence East 815.0 feet more or less to the West boundary line of the Right of Way of the Oregon Coast Highway 101; thence Southwesterly along said Right of Way 662.75 feet; thence West 755 feet more or less to the point of beginning.

EXCEPTING THEREFROM that certain property lying west of relocated Oregon State Highway No. 101 as described in that certain deed to the State of Oregon by and through the State Highway Commission dated March 15, 1967.

PARCEL IV: The West one-third of the Southwest quarter (SW $\frac{1}{4}$) of Section Twenty-nine (29), Township Thirty-two (32) South, Range Fifteen (15) West of the Willamette Meridian, Curry County, Oregon.

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FEB 04 1999

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON }
COUNTY OF Coos } SS

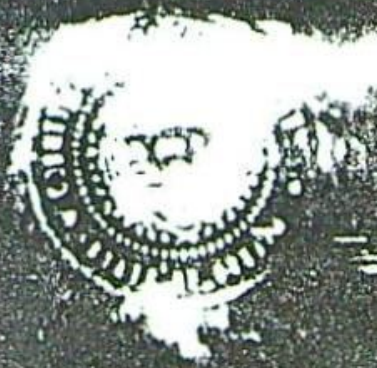
On this 7th day of April, 1967, before me, a notary public for said county and state, appeared the within named LOUIS L. KNAPP, to me known to be the identical person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein stated.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal the date first hereinabove written.



NOTARY PUBLIC FOR OREGON
My commission expires April 1970

Notary Public for Oregon
My commission expires April 1970
Book of Records
Page 621-623
Notary Public



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JAN 13 1999

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FEB 04 1999

WATER RESOURCES
SALEM, OREGON

00178

Applicable

PRE-IR APPLICATION PROCESSING OUTLINE

Application File # R-84100

MINIMUM REQUIREMENTS TO FILE

OAR 690-310-040

DATE

INITIAL

3/24/99

ASH

SURFACE AND GROUNDWATER APPLICATIONS

Name and mailing address of applicant
Source of water
Quantity of water
Map meeting requirements of OAR
690-310-050
Nature of proposed use
Names and addresses of legal owners
Easement/authorization statement
Legal description of POD/POU
Description of works and conveyance
Information on waste/measurement, etc
Land use approved pending
Signature/title of applicant
Oath
Estimated capacity of pump
Primary permit or certificate number
(if application is for supplemental)
Form M Q N/A STORAGE
Examination fee Recording
CWRE map for dam >10ft AND storage >9.2 AF
(For standard reservoirs only)

ADDITIONAL FOR GROUNDWATER APPLICATIONS

Copy of well log (for existing wells)
Groundwater development
Well Characteristics
Rate of flow if no pumping required

HB 2376 Expedited Review Reservoir

Completed Application
Land use approved pending
Map showing Township, Range, Section,
quarter-quarter section and tax lot info
HB 2376 exam fee \$10 per acre-foot

SUPPORT SERVICES

Stamp contents with application number
Place label on file and calendar card
Acknowledgment post card to applicant
Route to Initial Review

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **27943**

158 12TH ST. N.E.
SALEM, OR 97310-0210
378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Krupp Ranches Inc.
BY: _____

APPLICATION	<u>H-1064</u>
PERMIT	
TRANSFER	

CASH: CHECK: # 296 OTHER: (IDENTIFY)

TOTAL REC'D \$ 250.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS	\$
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY)	\$
OTHER: (IDENTIFY)	\$

REDUCTION OF EXPENSE

CASH ACCT. \$
VOUCHER #

PCA AND OBJECT CLASS

0427 WRD OPERATING ACCT

0407	MISCELLANEOUS		\$
0410	COPY & TAPE FEES		\$
0408	RESEARCH FEES		\$
(New) TC165	MISC REVENUE: (IDENTIFY)		\$
(Existing) TC168	DEPOSIT LIAB. (IDENTIFY)		\$

PLAT # 66111

WATER RIGHTS:

0201	SURFACE WATER	EXAM FEE \$ <u>250.00</u>	0202	RECORD FEE	\$
0203	GROUND WATER	\$	0204	RECORD FEE	\$
0205	TRANSFER	\$	0206	RECORD FEE	\$
	WELL CONSTRUCTION	EXAM FEE		LICENSE FEE	
0218	WELL DRILL CONSTRUCTOR	\$	0219	LICENSE FEE	\$
	LANDOWNER'S PERMIT		0220	LICENSE FEE	\$

OTHER (IDENTIFY)

0437 WELL CONST. START FEE

0211	WELL CONST START FEE	\$	CARD #	
0210	MONITORING WELLS	\$	CARD #	
	OTHER (IDENTIFY)			

0539 LOTTERY PROCEEDS

1302	LOTTERY PROCEEDS	\$
------	------------------	----

0467 HYDRO ACTIVITY

0233	POWER LICENSE FEE (FW/WRD)	LIC NUMBER	\$
0231	HYDRO LICENSE FEE (FW/WRD)		\$
	HRDRO APPLICATION		\$

RECEIPT # **27943**

DATED: 2-24-99

BY: Roger Wright

STATE OF OREGON
 WATER RESOURCES DEPARTMENT

RECEIPT # **28479**

156 12TH ST. N.E.
 SALEM, OR 97310-0210
 378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Knapp Ranches Inc.
 BY: _____

APPLICATION	R-84100
PERMIT	
TRANSFER	

CASH: CHECK: # 96-7030 OTHER: (IDENTIFY)

TOTAL REC'D \$ 290.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

- 0407 MISCELLANEOUS
 0410 COPY & TAPE FEES
 0410 RESEARCH FEES
 0408 MISC REVENUE: (IDENTIFY)
 (New) TC162 DEPOSIT LIAB. (IDENTIFY)

*PO#66111
 Ref. #28509*

\$
 \$
 \$
 \$

WATER RIGHTS:

- 0201 SURFACE WATER
 0203 GROUND WATER
 0205 TRANSFER

EXAM FEE
\$ <u>190.00</u>
\$
\$
EXAM FEE
\$

- 0202
 0204
 0206
 0219
 0220

RECORD FEE
\$
\$
\$
LICENSE FEE
\$
\$

OTHER (IDENTIFY)

0437 WELL CONST. START FEE

- 0211 WELL CONST START FEE
 0210 MONITORING WELLS

\$
\$

CARD #
CARD #

OTHER (IDENTIFY)

0539 LOTTERY PROCEEDS

- 1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

- 0233 POWER LICENSE FEE (FW/WRD)
 0231 HYDRO LICENSE FEE (FW/WRD)

LIC NUMBER

\$
 \$
 \$

HRDRO APPLICATION

RECEIPT # **28479**

DATED: 3-24-99 BY: Roger Whight

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **35362**

158 12TH ST. N.E.
SALEM, OR 97310-0210
378-8455 / 378-8130 (FAX)

INVOICE # _____

R-84160, S-84101

RECEIVED FROM: Knapp Ranches Inc

APPLICATION	G-14920
PERMIT	
TRANSFER	

BY: _____

CASH: CHECK: # 967030 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 865.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS	\$
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY) _____	\$
OTHER: (IDENTIFY) _____	\$

REDUCTION OF EXPENSE

CASH ACCT.	\$
VOUCHER #	

0427 WRD OPERATING ACCT

PCA #66111

MISCELLANEOUS	
0407 COPY & TAPE FEES	\$
0410 RESEARCH FEES	\$
0408 MISC REVENUE: (IDENTIFY) _____	\$
(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____	\$

WATER RIGHTS:	EXAM FEE		RECORD FEE
0201 SURFACE WATER	\$	0202	\$
0203 GROUND WATER	\$ <u>340.00</u>	0204	\$ <u>525.00</u>
0205 TRANSFER	\$	0206	\$
WELL CONSTRUCTION	EXAM FEE		LICENSE FEE
0218 WELL DRILL CONSTRUCTOR	\$	0219	\$
LANDOWNER'S PERMIT		0220	\$
OTHER (IDENTIFY) _____			

0437 WELL CONST. START FEE

0211 WELL CONST START FEE	\$	CARD #	
0210 MONITORING WELLS	\$	CARD #	
OTHER (IDENTIFY) _____			

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS	\$
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0467 HYDRO ACTIVITY

	LIC NUMBER	
0233 POWER LICENSE FEE (FW/WRD)		\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HRDRO APPLICATION		\$

RECEIPT # **35362**

DATED: 1-11-00 BY: Jacobson

NEW APPLICATION ROUTE SLIP

RECEIPTING 3-25-99 NW

DATA CENTER 4-2-99 JL

GROUNDWATER YES NO

HANNAH (Powerbuilder) 4/6/99 HW

FILES _____