

[illegible]

## MCCARTY Patricia E \* WRD

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**From:** Nick Klingensmith <nickklingensmith@landuseoregon.com>  
**Sent:** Thursday, June 22, 2017 8:02 AM  
**To:** Sean Malone  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Sean, my clients agree to the restrictions outlined in your last email. Thanks for working with us on this.

If I understand correctly, our next step is to inform the WRD that the parties have agreed on terms that will make everybody happy if added to a final decision granting the extension. I don't think it's a "settlement agreement" in the strict sense of the word, because the application is procedurally in a status of having been withdrawn by the department for reconsideration. Regardless of what it's called, if we can ink a little memo of understanding, I suspect the WRD will incorporate these terms into the final order.

With your permission, I will reach out to Patricia McCarty and let her know we are ready to move forward.

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**From:** Sean Malone [mailto:[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)]  
**Sent:** Tuesday, June 13, 2017 3:41 PM  
**To:** Nick Klingensmith <nickklingensmith@landuseoregon.com>  
**Subject:** Re: Knapp Ranch R-12770 and S-53648 reconsideration

Nick,

See below for some revisions/additions to the proposed conditions that will hopefully address your concerns and get this resolved:

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.

As always, thank you for your patience,

Sean Malone  
Attorney at Law  
259 E. Fifth Ave.  
Suite 200-C  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Friday, May 26, 2017 3:29:37 PM  
**To:** Sean Malone  
**Subject:** Re: Knapp Ranch R-12770 and S-53648 reconsideration

No worries. Sometimes the gears turn slowly -- that's been true at times for my client as well.

NAK

Sent from my phone

On May 26, 2017, at 15:05, Sean Malone <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)> wrote:

Still waiting on 100% approval to send you proposed language.

Sean Malone  
Attorney at Law  
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Suite 200-C  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Monday, May 22, 2017 5:00:14 PM  
**To:** Sean Malone  
**Cc:** Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E; BAMBERGER Machel A  
([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)); WACKER Gregory J \* WRD; Chris Hood ([hoodc@stutzner.com](mailto:hoodc@stutzner.com));  
Ralph Dunham  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

That's fine. Thank you.

Nick Klingensmith

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e-mail: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]  
**Sent:** Monday, May 22, 2017 5:00 PM  
**To:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Cc:** Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A (<[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)> <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>; WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood (<[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)> <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham <[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>  
**Subject:** Re: Knapp Ranch R-12770 and S-53648 reconsideration

Nick, I'm waiting to hear back from my client on some additional proposed language. I'll get back to you as soon as I can.

Thanks

Sean



On May 16, 2017, at 11:45 AM, Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)> wrote:

Thank you Sean

Nick Klingensmith

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]

**Sent:** Tuesday, May 16, 2017 10:46 AM

**To:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machel A <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)> <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)> <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham <[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>

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

I think that's correct. Allow myself and ORCA to propose some additional language. I will get back to you on Monday.

Sean Malone  
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ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Tuesday, May 16, 2017 10:39:03 AM  
**To:** Sean Malone; Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E;  
BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)); Ralph Dunham  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hi everyone,

Where do we stand on this? If I recall correctly, we have the terms of the extension order all worked out, except that Sean and I are at loggerheads over a proposed condition that my clients view as too ambiguous. Is that a correct summary? If so, does anyone have an idea for how to move forward?

Thank you

Nick Klingensmith

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---

**From:** Nick Klingensmith  
**Sent:** Tuesday, April 18, 2017 11:22 AM  
**To:** 'Sean Malone' <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machelie A (<[machelie.a.bamberger@state.or.us](mailto:machelie.a.bamberger@state.or.us)> <[machelie.a.bamberger@state.or.us](mailto:machelie.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood (<[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)> <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham (<[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Sean, I've spoken with my clients, and the conditions you proposed don't work for us. At best, they are ambiguous and invite a future disagreement as to what they mean. At worst, they appear to impose greater restrictions than what we have agreed to.

The element in both of your conditions that trips us up is the part that says: "[...] golf course related facilities, such as potable water, domestic, municipal or quasi-municipal water uses."

We aren't sure exactly what you mean by that, but we don't think that potable water, domestic, municipal or quasi-municipal water uses are necessarily "golf course related facilities."

My clients have agreed to conditions that will keep the water "on ranch" and that will prohibit the use of the water for anything "golf course related." That should be good enough. I have advised them against agreeing to any conditions that we aren't able to understand.

On a separate subject, I spoke with Chris Hood, of Stuntzner Engineering, who has been in contact with Greg Wacker on the subject of perfecting the permit. Chris hadn't realized that we still needed everyone in this group to agree on the details of how we were going to demonstrate compliance with the permit conditions for measuring water stored and used. Chris and Greg traded emails on that topic last week. I have attached their brief exchange here.

Thanks to everyone for your continued efforts to find a way to wrap this up.

Nick Klingensmith

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]

**Sent:** Wednesday, April 12, 2017 2:57 PM

**To:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>;



MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machel A  
([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)) <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>  
Cc: WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood  
([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)) <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham  
<[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>  
**Subject:** Re: Knapp Ranch R-12770 and S-53648 reconsideration

Nick,

Regarding the "use" conditions language, it seems to my client that if the general language is non-exclusive, just as the language we proposed is non-exclusive. For my client, the previous language (also set forth below) addresses issues important to ORCA. If there is no intention to use or ranch water for anything other than ranch uses, then I'm not sure why ORCA's proposed language is problematic.

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-C  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Wednesday, February 8, 2017 9:31:33 PM  
**To:** Sean Malone; Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E;

BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us))  
Cc: WACKER Gregory J \* WRD; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)); Ralph Dunham  
Subject: RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hello all,

The Stuntzner Engineering firm out of Coos Bay will be putting specific details together in an effort to finalize the rough agreement we had all reached on the phone, regarding the measurement of water stored, water diverted, and water passed through the culvert. Generally, my understanding is this will involve a surface area calculation of the reservoir, such that changes in pool height on the staff gauge can be interpreted as changes in stored volume. It will also include the installation of a gate valve of some sort at the culvert that will allow water level in the pond to be manipulated, such that stored water can be passed through the reservoir during the summer, to replicate natural flows. It will also include the installation of a measuring weir (likely the V-notch variety) on the downstream side of the culvert to measure "bypass flow" into the stream during the summer. The totalizing flow meters on the pump are already in place. Chris and Ralph from Stuntzner will be working directly with the Watermaster to ensure that all of our proposals satisfy the Department's standards. I have copied Chris and Ralph here, and I'd like to keep them in the loop, as they will be implementing much of what we have talked about previously.

Finally, I had previously indicated to Sean that the general concept behind his proposed use restrictions was acceptable to us, but that my clients and I wanted them to be phrased in simpler terms. Below I have the following revisions to propose, which preserve the first half of Sean's original structure, but omit the non-exclusive list of examples from the previous version.

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

Looking forward to your feedback. Thanks,



Nick Klingensmith

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]  
**Sent:** Monday, December 12, 2016 9:46 AM  
**To:** Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)) <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto:seanmalone8@hotmail.com)

---

**From:** Lisa Brown <[lisa@waterwatch.org](mailto: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](mailto: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](mailto: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 Machele A ([machele.a.bamberger@state.or.us](mailto:machele.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

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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](mailto:Patricia.E.Mccarty@oregon.gov)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Sean Malone <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)) <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto: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 Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Monday the 12<sup>th</sup> 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 Machele A ([machele.a.bamberger@state.or.us](mailto:machele.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

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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](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD  
<[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; Nick Klingensmith  
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<[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machel A  
([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)) <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto:seanmalone8@hotmail.com)

---

**From:** Lisa Brown <[lisa@waterwatch.org](mailto: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](mailto:seanmalone8@hotmail.com); BAMBERGER Machel A  
([machelle.a.bamberger@state.or.us](mailto:machelle.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](mailto:Patricia.E.Mccarty@oregon.gov)>  
**Sent:** Monday, December 5, 2016 1:19:13 PM  
**To:** Nick Klingensmith; MCCARTY Patricia E; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); Lisa Brown; BAMBERGER Machel A ([machelle.a.bamberger@state.or.us](mailto:machelle.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 8<sup>th</sup>, 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](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org); BAMBERGER Machel A ([machelle.a.bamberger@state.or.us](mailto:machelle.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 8<sup>th</sup> sometime before noon, or anytime Monday the 12th? My schedule is very flexible for the entire week of the 12<sup>th</sup>, 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

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e-mail: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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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.

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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](mailto:patricia.e.mccarty@state.or.us)>; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org); BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us))  
<[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Lisa, Sean, Patricia and Machele,

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

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375 W. 4th Avenue, Suite 204

Eugene, OR 97401

Phone: (541) 912-5280

Fax: (541) 343-8702

e-mail: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://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](mailto:nickklingensmith@landuseoregon.com)>;  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org)  
**Cc:** MCCARTY Patricia E ([patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us))  
<[patricia.e.mccarty@state.or.us](mailto: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

---

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[nickklingsmith@landuseoregon.com](mailto:nickklingsmith@landuseoregon.com)

From: [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

*You received this message because the sender is on your allow list.*

## MCCARTY Patricia E \* WRD

---

**From:** Nick Klingensmith <nickklingensmith@landuseoregon.com>  
**Sent:** Tuesday, July 04, 2017 9:34 AM  
**To:** Sean Malone; Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E; BAMBERGER Machele A (machele.a.bamberger@state.or.us)  
**Cc:** WACKER Gregory J \* WRD; Chris Hood (hoodc@stuntzner.com); Ralph Dunham  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration  
**Attachments:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hi all,

I've been in contact with Sean, and we have reached an agreement that could be incorporated into the conditions of approval for the reconsidered final order on the extension applications. Please see the attached email string that includes the conditions.

Patricia, my understanding is that WRD can work these conditions into the FO, but please let me know if you need something more formal from the parties, such as a signed memorandum of understanding.

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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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---

**From:** Nick Klingensmith  
**Sent:** Tuesday, May 16, 2017 11:45 AM  
**To:** 'Sean Malone' <seanmalone8@hotmail.com>; Lisa Brown <lisa@waterwatch.org>; MCCARTY Patricia E \* WRD <Patricia.E.Mccarty@oregon.gov>; MCCARTY Patricia E <patricia.e.mccarty@state.or.us>; BAMBERGER Machele A (machele.a.bamberger@state.or.us) <machele.a.bamberger@state.or.us>  
**Cc:** WACKER Gregory J \* WRD <Gregory.J.Wacker@oregon.gov>; Chris Hood (hoodc@stuntzner.com) <hoodc@stuntzner.com>; Ralph Dunham <ralph@stuntzner.com>  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Thank you Sean

Nick Klingensmith  
Law Office of Bill Kloos, PC  
375 W. 4th Avenue, Suite 204  
Eugene, OR 97401



Phone: (541) 912-5280  
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e-mail: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]  
**Sent:** Tuesday, May 16, 2017 10:46 AM  
**To:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)) <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)) <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham <[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>  
**Subject:** Re: Knapp Ranch R-12770 and S-53648 reconsideration

I think that's correct. Allow myself and ORCA to propose some additional language. I will get back to you on Monday.

Sean Malone  
Attorney at Law  
259 E. Fifth Ave.  
Suite 200-C  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Tuesday, May 16, 2017 10:39:03 AM  
**To:** Sean Malone; Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)); Ralph Dunham  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hi everyone,

Where do we stand on this? If I recall correctly, we have the terms of the extension order all worked out, except that Sean and I are at loggerheads over a proposed condition that my clients view as too ambiguous. Is that a correct summary? If so, does anyone have an idea for how to move forward?

Thank you

Nick Klingensmith

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---

**From:** Nick Klingensmith

**Sent:** Tuesday, April 18, 2017 11:22 AM

**To:** 'Sean Malone' <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machelie A <[machelie.a.bamberger@state.or.us](mailto:machelie.a.bamberger@state.or.us)> <[machelie.a.bamberger@state.or.us](mailto:machelie.a.bamberger@state.or.us)>

**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)> <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham <[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>

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

Sean, I've spoken with my clients, and the conditions you proposed don't work for us. At best, they are ambiguous and invite a future disagreement as to what they mean. At worst, they appear to impose greater restrictions than what we have agreed to.

The element in both of your conditions that trips us up is the part that says: "[...] golf course related facilities, such as potable water, domestic, municipal or quasi-municipal water uses."

We aren't sure exactly what you mean by that, but we don't think that potable water, domestic, municipal or quasi-municipal water uses are necessarily "golf course related facilities."

My clients have agreed to conditions that will keep the water "on ranch" and that will prohibit the use of the water for anything "golf course related." That should be good enough. I have advised them against agreeing to any conditions that we aren't able to understand.

On a separate subject, I spoke with Chris Hood, of Stuntzner Engineering, who has been in contact with Greg Wacker on the subject of perfecting the permit. Chris hadn't realized that we still needed everyone in this group to agree on the details of how we were going to demonstrate compliance with the permit conditions for measuring water stored and used. Chris and Greg traded emails on that topic last week. I have attached their brief exchange here.

Thanks to everyone for your continued efforts to find a way to wrap this up.

Nick Klingensmith

Law Office of Bill Kloos, PC

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**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Wednesday, February 8, 2017 9:31:33 PM  
**To:** Sean Malone; Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E; BAMBERGER Machelie A ([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)); Ralph Dunham  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hello all,

The Stuntzner Engineering firm out of Coos Bay will be putting specific details together in an effort to finalize the rough agreement we had all reached on the phone, regarding the **measurement of water stored, water diverted, and water passed through the culvert**. Generally, my understanding is this will involve a surface area calculation of the reservoir, such that changes in pool height on the staff gauge can be interpreted as changes in stored volume. It will also include the installation of a **gate valve** of some sort at the culvert that will allow water level in the pond to be manipulated, such that stored water can be passed through the reservoir during the summer, to replicate natural flows. It will also include the installation of a **measuring weir** (likely the V-notch variety) on the downstream side of the culvert to measure "bypass flow" into the stream during the summer. The **totalizing flow meters** on the pump are already in place. Chris and Ralph from Stuntzner will be working directly with the Watermaster to ensure that all of our proposals satisfy the Department's standards. I have copied Chris and Ralph here, and I'd like to keep them in the loop, as they will be implementing much of what we have talked about previously.

Finally, I had previously indicated to Sean that the general concept behind his proposed use restrictions was acceptable to us, but that my clients and I wanted them to be phrased in simpler terms. Below I have the following revisions to propose, which preserve the first half of Sean's original structure, but omit the non-exclusive list of examples from the previous version.

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

Looking forward to your feedback. Thanks,



---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]

**Sent:** Wednesday, April 12, 2017 2:57 PM

**To:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)) <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>

**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto:Gregory.J.Wacker@oregon.gov)>; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)) <[hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)>; Ralph Dunham <[ralph@stuntzner.com](mailto:ralph@stuntzner.com)>

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

Nick,

Regarding the "use" conditions language, it seems to my client that if the general language is non-exclusive, just as the language we proposed is non-exclusive. For my client, the previous language (also set forth below) addresses issues important to ORCA. If there is no intention to use or ranch water for anything other than ranch uses, then I'm not sure why ORCA's proposed language is problematic.

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-C  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

Nick Klingensmith

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Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]

**Sent:** Monday, December 12, 2016 9:46 AM

**To:** Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A (<[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)> <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>

**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto:seanmalone8@hotmail.com)

---

**From:** Lisa Brown <[lisa@waterwatch.org](mailto: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](mailto: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

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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](mailto:Patricia.E.Mccarty@oregon.gov)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Sean Malone <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machel A ([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)) <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto: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](mailto:machelle.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Monday the 12<sup>th</sup> 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](mailto:machelle.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto: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](mailto: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](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://www.LandUseOregon.com)



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](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://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](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)) <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>

**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto:seanmalone8@hotmail.com)

---

**From:** Lisa Brown <[lisa@waterwatch.org](mailto: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](mailto:seanmalone8@hotmail.com); BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.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](mailto:Patricia.E.Mccarty@oregon.gov)>  
**Sent:** Monday, December 5, 2016 1:19:13 PM  
**To:** Nick Klingensmith; MCCARTY Patricia E; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); Lisa Brown; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.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 8<sup>th</sup>, 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](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org); BAMBERGER Machel A  
([machelle.a.bamberger@state.or.us](mailto:machelle.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 8<sup>th</sup> sometime before noon, or anytime Monday the 12<sup>th</sup>? My schedule is very flexible for the entire week of the 12<sup>th</sup>, 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](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://www.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](mailto:patricia.e.mccarty@state.or.us)>; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org);

BAMBERGER Machel A ([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)) <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>

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

Lisa, Sean, Patricia and Machel,

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](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://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](mailto:nickklingensmith@landuseoregon.com)>; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org)

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

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

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

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

## Water Right Services Division

Water Rights Application  
Number S-84101

### FINAL ORDER

Extension of Time for Permit Number S-53648  
Permit Holder: Knapp Ranches Inc.

---

#### Permit Information

Application:	S-84101
Permit:	S-53648
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	March 24, 1999
Source of Water:	A reservoir constructed under application R 84100, A tributary of Elk Creek
Purpose of Use:	Irrigation of 189.5 acres and mining
Maximum Volume:	100.0 acre-feet (AF) of stored water, being 60.0 AF for irrigation and 40.0 AF for mining

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**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 S-53648 was issued by the Department on January 31, 2000. The permit called for complete application of water to beneficial use by October 1, 2004. On April 18, 2014, Knapp Ranches Inc. submitted to the Department an Application for Extension of Time for Permit S-53648. In accordance with OAR 690-315-0050(2), on November 25, 2014, the Department issued a Proposed Final Order proposing to deny the time to apply water to full beneficial use

from October 1, 2004 to October 1, 2017. The protest period closed January 9, 2015, in accordance with OAR 690-315-0060(1). Knapp Ranches, Inc. filed a timely protest. On January 9, 2015, WaterWatch of Oregon and Oregon Coast Alliance filed requests for standing. On June 4, 2015, the permit holder requested an administrative hold for additional time for the purpose of pursuing settlement discussion. 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 S-83648:

1. The use of water for irrigation under Permit S-53648 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 findings of fact and conclusion of law of the Proposed Final Order are adopted and incorporated by reference as if set fully set out in this final order. Following the issuance of the Proposed Final Order, the applicant provided additional background information. The following Finding of Facts of the Proposed Final Order are corrected to reflect the new information (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

6. Actual construction of the water system did ~~not~~ begin prior to the December 15, 2000 deadline specified in the permit. According to the ~~application for extension of time the permit holder~~, construction of the water system began in the ~~spring of 2001~~ summer of 2000. ~~The permit holder stated in the application in question 1, "In the spring of 2001, the irrigation system was installed" and then again in question 3 Chart C it states "4/2001 installed 1000 feet of mainline."~~

According to the new information submitted to the Department January 9, 2015, actual construction began in the summer of 2000. The Department has determined the permit holder has satisfied the condition requiring beginning of construction of the water works.

8. The Department has determined that the permit holder's request to have until October 1, 2017, to accomplish the application of water to beneficial use under the terms and

~~conditions of Permit S-53648 must be denied, the permit holder is not able to comply with the terms and conditions of Permit S-53648. Construction of the water system did not begin prior to December 15, 2000; the permit cannot be extended per OAR 690-315-0040(b). is both reasonable and necessary.~~

9. Work was accomplished within the time allowed in the permit or previous extension as follows:

- a. Construction of the water system ~~did not~~ begin prior to the December 15, 2000 deadline specified in the permit. The permit holder began construction of the irrigation system on this permit in the ~~spring of 2001~~ summer of 2000. The irrigation systems consists of a 60 horse powered 600 gpm Berkeley pump with a 6 inch screened intake, and 1000 feet of mainline heading two directions, 400 feet East to the quarry, and 600 feet West North West to the pastures.

The Department has determined that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence from the appropriator towards the complete application of water to a beneficial use.

10. The following beneficial use was made of the water during the permit or previous extension time limits:

- ~~b. Since the issuance of Permit S-53648 on January 31, 2000, the permit holder has not applied any water to beneficial use as allowed in the Permit S-53648.~~

The permit holder states a maximum rate of 100.0 AF of water has been diverted from the reservoir for irrigation of 162.0 acres and mining.

Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by the October 1, 2004.

- 11.

- a. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) ~~actual construction under this permit did not begin prior to the December 15, 2000 deadline specified in the permit,~~ (2) annual reports of the amount of water used each month for irrigation have not been received by the Department annually.

13. The Department has found a ~~lack of~~ good faith of the appropriator under Permit S-53648. ~~Construction of the water system did not began prior to the deadline specified in the permit and reporting annual water use for irrigation has not~~

~~occured.~~

## **CONDITIONS**

**1. Last Extension Condition**

This is to be the last extension of time granted for Permit S-53648. Any future extensions of time requests will be denied.

**2. Permit Condition**

A. The use of water for irrigation under Permit S-53648 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**

1. The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).
2. The applicant did comply 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).
3. Complete application of the water to beneficial use under the terms and conditions of Permit S-53648 can be completed by October 1, 2017 as required by OAR 315-0040(1)(c)

**Continued on the following page**



## ORDER

The extension of time for Application S-53648, therefore, is approved subject to conditions contained herein. 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](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Wednesday, February 08, 2017 9:32 PM  
**To:** Sean Malone; Lisa Brown; MCCARTY Patricia E \* WRD; MCCARTY Patricia E; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD; Chris Hood ([hoodc@stuntzner.com](mailto:hoodc@stuntzner.com)); Ralph Dunham  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Hello all,

The Stuntzner Engineering firm out of Coos Bay will be putting specific details together in an effort to finalize the rough agreement we had all reached on the phone, regarding the measurement of water stored, water diverted, and water passed through the culvert. Generally, my understanding is this will involve a surface area calculation of the reservoir, such that changes in pool height on the staff gauge can be interpreted as changes in stored volume. It will also include the installation of a gate valve of some sort at the culvert that will allow water level in the pond to be manipulated, such that stored water can be passed through the reservoir during the summer, to replicate natural flows. It will also include the installation of a measuring weir (likely the V-notch variety) on the downstream side of the culvert to measure "bypass flow" into the stream during the summer. The totalizing flow meters on the pump are already in place. Chris and Ralph from Stuntzner will be working directly with the Watermaster to ensure that all of our proposals satisfy the Department's standards. I have copied Chris and Ralph here, and I'd like to keep them in the loop, as they will be implementing much of what we have talked about previously.

Finally, I had previously indicated to Sean that the general concept behind his proposed use restrictions was acceptable to us, but that my clients and I wanted them to be phrased in simpler terms. Below I have the following revisions to propose, which preserve the first half of Sean's original structure, but omit the non-exclusive list of examples from the previous version.

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

Looking forward to your feedback. 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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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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 Machel 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](mailto: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 (mabelle.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](mailto: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 Machele A ([machele.a.bamberger@state.or.us](mailto:machele.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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://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](mailto:Patricia.E.Mccarty@oregon.gov)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Sean Malone <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machel A ([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)) <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto: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](mailto:machelle.a.bamberger@state.or.us))  
**Cc:** WACKER Gregory J \* WRD  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Monday the 12<sup>th</sup> 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](mailto: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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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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:** Wednesday, December 7, 2016 11:07 AM  
**To:** Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>; MCCARTY Patricia E \* WRD <[Patricia.E.Mccarty@oregon.gov](mailto:Patricia.E.Mccarty@oregon.gov)>; Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)) <[machele.a.bamberger@state.or.us](mailto:machele.a.bamberger@state.or.us)>  
**Cc:** WACKER Gregory J \* WRD <[Gregory.J.Wacker@oregon.gov](mailto: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](mailto:seanmalone8@hotmail.com)

---

**From:** Lisa Brown <[lisa@waterwatch.org](mailto: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](mailto:seanmalone8@hotmail.com); BAMBERGER Machele A ([machele.a.bamberger@state.or.us](mailto:machele.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](mailto:Patricia.E.Mccarty@oregon.gov)>  
**Sent:** Monday, December 5, 2016 1:19:13 PM  
**To:** Nick Klingensmith; MCCARTY Patricia E; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); Lisa Brown; BAMBERGER Machele A

([machelle.a.bamberger@state.or.us](mailto:machelle.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 8<sup>th</sup>, 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](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org); BAMBERGER Machele A ([machelle.a.bamberger@state.or.us](mailto:machelle.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 8<sup>th</sup> sometime before noon, or anytime Monday the 12<sup>th</sup>? My schedule is very flexible for the entire week of the 12<sup>th</sup>, 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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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received this e-mail in error, please call immediately at the phone number above. Also, please notify me by e-mail. Thank you.

---

**From:** Nick Klingensmith  
**Sent:** Thursday, November 10, 2016 11:42 AM  
**To:** 'MCCARTY Patricia E' <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org);  
BAMBERGER Machel A ([machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)) <[machelle.a.bamberger@state.or.us](mailto:machelle.a.bamberger@state.or.us)>  
**Subject:** RE: Knapp Ranch R-12770 and S-53648 reconsideration

Lisa, Sean, Patricia and Machel,

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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://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](mailto:nickklingensmith@landuseoregon.com)>; [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org)  
**Cc:** MCCARTY Patricia E ([patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)) <[patricia.e.mccarty@state.or.us](mailto: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

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

WATER RESOURCES DEPT  
SALEM OREGON

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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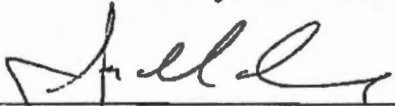
WATER RESOURCES DEPT  
SALEM, OREGON

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. 5<sup>th</sup> 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. 4<sup>th</sup> Ave Ste 204  
Eugene OR 97401  
Counsel for Applicant

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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](mailto:lisa@waterwatch.org)  
Of Attorneys for WaterWatch of Oregon

5 – PETITION FOR RECONSIDERATION

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JUN 14 2016

WATER RESOURCES DEPT  
SALEM OREGON

# INTEROFFICE MEMO

DATE: 6/27/16  
TO: Abby Hungate, FISCAL  
FROM: Extensions - Dwight French / Patricia McCarty  
RE: REQUEST FOR REFUND  
FILE: APP: S-84101/ PERMIT: S-53648

Please prepare a refund in the amount of \$200.00, receipt 114513, made payable to:

Name: Sean Malone for Oregon Coast Alliance

Address: 259 E. Fifth Ave., Suite 200-G  
City: Eugene, OR 97401

These funds are being paid as a result of:

- ☐ Application rejected/ withdrawn
- ☐ Excess fees collected for application
- ☐ File Closed
- ☐ Payment of Publication of Notice (PON)
- ☐ Protest Filing Fees
- ☒ Other: Standing fees

☒ The applicant has been notified and is expecting a refund check.

Please route the refund check and the file back to File location for further processing.

47235 0234 RW Ref Rpt# 114513 S-84101 S-53648

I have reviewed this distribution request and have determined the request to be justified as to the purpose indicated above. Fiscal Services is hereby authorized to process the requested distribution.

Authorized Signature: Dwight French Date: 7/1/16

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TO SIGN UP FOR DIRECT DEPOSIT PAYMENT SERVICE AND RECEIVE CONVENIENT, ELECTRONIC PAYMENTS, LOG IN TO [HTTP://WWW.OREGON.GOV/DAS/EGS/FBS/SFMS/PAGES/ACH.ASPX](http://www.oregon.gov/das/EGS/FBS/SFMS/PAGES/ACH.ASPX) ON THE INTERNET. CLICK ON FORMS AND BROCHURES. THEN SELECT DIRECT DEPOSIT (ACH) AUTHORIZATION FORM.

WARRANT NO.  
124405267

WATER RESOURCES DEPARTMENT

(503) 986-0924

INVOICE NO.	INVOICE DATE	INVOICE DESCRIPTION	AGY	DOCUMENT	AMOUNT
	070116	REV REF RCPT#114513 S-84101 S-53648	690	VP042894	\$200.00
<p>Records have been redacted or withheld pursuant to the exemption for financial transfer records specified in ORS 192.345(27).</p>					
VENDOR NAME			ISSUE DATE		WARRANT AMOUNT
SEAN MALONE FOR OREGON COAST ALLIANCE			07/01/16		\$200.00

FOLD ON PERFORATION LINE BELOW  BEFORE DETACHING.

STATE OF OREGON  
503-986-0924  
WATER RESOURCES DEPARTMENT  
725 SUMMER ST. NE, SUITE A  
SALEM OR 97301-1271

TO THE STATE TREASURER SALEM, OREGON  
PAYABLE THROUGH US BANK

96-10  
1232  
CHECK DATE  
07/01/16



WARRANT NO.  
124405267

PAY THIS AMOUNT  
\$200.00

TWO HUNDRED AND 00/100 DOLLARS

PAY TO THE ORDER OF:

VOID 2 YEARS AFTER DATE ISSUED

SEAN MALONE FOR OREGON COAST ALLIANCE  
259 E FIFTH AVE, STE 200-G  
EUGENE OR 97401

AUTHORIZED SIGNATURE

THE FACE OF THIS CHECK HAS A COLORED BACKGROUND - EXPLANATION OF ADDITIONAL SECURITY FEATURES INDICATED ON REVERSE SIDE

## INTEROFFICE MEMO

DATE: 6/27/16  
TO: Abby Hungate, FISCAL  
FROM: Extensions - Dwight French / Patricia McCarty  
RE: REQUEST FOR REFUND  
FILE: APP: S-84101/ PERMIT: S-53648

Please prepare a refund in the amount of \$200.00, receipt 114510, made payable to:

Name: WaterWatch of Oregon, Inc.

Address: 213 SW Ash St. STE 208  
City: Portland, OR 97204

These funds are being paid as a result of:

- ☐ Application rejected/ withdrawn
- ☐ Excess fees collected for application
- ☐ File Closed
- ☐ Payment of Publication of Notice (PON)
- ☐ Protest Filing Fees
- ☒ Other: Standing fees

☒ The applicant has been notified and is expecting a refund check.

Please route the refund check and the file back to File location for further processing.

47235 0234 Rev Ref Rept# 114510 S-84101 S-53648

I have reviewed this distribution request and have determined the request to be justified as to the purpose indicated above. Fiscal Services is hereby authorized to process the requested distribution.

Authorized Signature:  Date: 7/1/16

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WARRANT NO.  
124405268

WATER RESOURCES DEPARTMENT

(503) 986-0924

INVOICE NO.	INVOICE DATE	INVOICE DESCRIPTION	AGY	DOCUMENT	AMOUNT
	070116	REV REF RCPT#114510 S-84101 S-53648	690	VP042895	\$200.00

Records have been redacted or withheld pursuant to the exemption for financial transfer records specified in ORS 192.345(27).

VENDOR NAME

WATERWATCH OF OREGON INC

ISSUE DATE

07/01/16

WARRANT AMOUNT

\$200.00

FOLD ON PERFORATION LINE BELOW  BEFORE DETACHING.

STATE OF OREGON

503-986-0924

WATER RESOURCES DEPARTMENT

725 SUMMER ST. NE, SUITE A

SALEM

OR 97301-1271

TO THE STATE TREASURER SALEM, OREGON  
PAYABLE THROUGH US BANK

96-10

1232

CHECK DATE

07/01/16



WARRANT NO.

124405268

PAY THIS AMOUNT

\$200.00

TWO HUNDRED AND 00/100 DOLLARS

PAY TO THE ORDER OF:

VOID 2 YEARS AFTER DATE ISSUED

WATERWATCH OF OREGON INC  
213 SW ASH ST STE 208  
PORTLAND OR 97204

AUTHORIZED SIGNATURE

THE FACE OF THIS CHECK HAS A COLORED BACKGROUND \* EXPLANATION OF ADDITIONAL SECURITY FEATURES INDICATED ON REVERSE SIDE





# 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](http://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

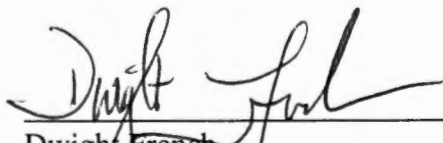
Lisa Brown  
WaterWatch of Oregon, Inc.  
213 SW Ash St. STE 208  
Portland, OR 97204

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](http://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



BEFORE THE  
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Proposed Final Order Approving    )  
the Application for an Extension of Time for        )  
Permit S-53648, Water Right Application S-84101,   )  
in the Name of Knapp Ranches Inc.                    )

Request for Standing

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Oregon Coast Alliance (ORCA) files this Request for Standing regarding the Proposed Final Order (PFO) proposing approval for application S-84101 (permit S-53648) in the name of Knapp Ranches Inc., along with the required \$200 standing statement fee. ORCA supports the PFO and would be harmed if the PFO were modified, as a result of which the PFO would no longer uphold Oregon water law and administrative rules.

**A. Name, mailing address and telephone number:**

Requester

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

Agent for Requester

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

**B. Statement of Support of the Proposed Final Order**

ORCA supports the PFO as issued because it will result in upholding Oregon water law and administrative rules, and not adversely affect fish.



**C. Statement of How Requesters Would Be Harmed If the Proposed Final Order is Modified**

In requesting standing for this matter, ORCA is representing the general public interest in instream values, water resources and associated fish and wildlife resources of this state and associated with the Elk River and Elk River tributaries, as well as the interest in maintaining and upholding Oregon water laws and rules. ORCA works throughout the Oregon coast and the applicable subbasin, to protect streamflows and the public interest in the development and implementation of water policy and statute at the state and federal level, and by protecting Oregon's waterways through legislation, land use challenges, and administrative and judicial proceedings. ORCA supports Oregon's Instream Water Rights Act, and, when applicable, will utilize and defend it. ORCA has expended resources to protect and restore the natural and ecological integrity of the Oregon coast. ORCA has members throughout the Pacific Northwest, including in the applicable subbasin specifically, who use and enjoy the waterways that would be affected by the use proposed in the application.

Furthermore, in this request for standing, ORCA represents its own interest as a nonprofit organization, and the interests of its members as well, in protecting coastal natural resources, including the surface waters of the applicable subbasin. All water, from all sources of supply within the state of Oregon, belongs to the public. *See Lane Electric Co-op v. Federated Rural Electric*, 114 Or App 156, 161 (1992) ("All waters within this state, which necessarily includes groundwater, 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). Because ORCA represents the public interest, modification of the PFO would harm ORCA and the public interest.

If the Oregon Water Resources Department (WRD) deletes or modifies the PFO in any manner that would allow an extension of time, ORCA reserves the right to raise all issues related to water use under the permit, the maintenance of Oregon's water laws and rules, and any matters that would adversely affect fish. Below, ORCA raises all reasonably ascertainable issues and submits all reasonably available arguments supporting ORCA. However, if the WRD changes the PFO in any way, ORCA reserves the right to address issues arising out of those changes and issues related to any use that would be allowed under this application. It is impossible to foresee all of the specific arguments that would



apply if WRD were to alter the PFO without knowing in advance what those changes would be.

1. If WRD modifies the PFO to otherwise adversely affect fish, ORCA's interest will be harmed because these conditions are necessary to prevent adverse impacts on streamflows and habitat needed for fish and other public uses of water.

ORCA would be harmed if the PFO is altered because any modification that would otherwise adversely affect fish would reduce protection for fish habitat, and threaten the habitat for listed species and other public uses of water. The PFO adequately protects public uses of the waters including fish, wildlife, and ecological values, and, if changed, would be detrimental to ORCA and the public interest.

Further decreases in streamflows, particularly at certain times of the year, would also likely violate the take prohibition of the federal Endangered Species Act (ESA), which prohibits all actions that cause a "take" of an endangered species. 16 U.S.C. § 1538(a)(1)(B). The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Section 3(19), 16 U.S.C. § 1532(19). Congress intended the term "take" to be defined in the "broadest possible manner to include every conceivable way" in which a person could harm or kill fish or wildlife. S. Rep. No. 307, 93<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 1, reprinted in 1973 U.S. Code Cong. & Admin. News 2989, 2995. The take prohibition applies to federally listed Coho salmon in the Elk River and its tributaries.

Further reductions in streamflow would harm ORCA's interest in the maintenance of adequate streamflows for aquatic species including fish, and for other instream values.

2. If WRD modifies the PFO to allow for the extension, ORCA would be harmed because ORCA members, staff and board regularly use and enjoy the waterways that would be affected by the proposed use.

ORCA staff, board, and members regularly use and enjoy waters downstream of the proposed use, including for fishing, wildlife watching, and other activities. ORCA would be harmed if WRD modifies the PFO, because state water law and administrative rules would not be upheld, and allowing an extension of time would adversely affect fish. Additionally, the absence of these protections would adversely affect fish and wildlife habitat, water quality, and recreational opportunities.

3. If WRD modifies the PFO, ORCA's interest and the public's interest in ensuring that Oregon's water laws are properly implemented and water resources allocated fairly

ORCA supports the fair allocation and proper implementation of Oregon's water laws. If the PFO is modified to a degree that impairs the fair allocation and proper implementation of Oregon's water laws, ORCA would be harmed.

4. If WRD deletes or modifies conditions to adversely affect fish, ORCA reserves the right to raise further issues.

As noted, it is impossible to ascertain all issues that would arise if WRD were to delete or modify conditions that would result in not appropriately upholding state water laws and administrative rules, and adversely affect fish. Thus, if WRD alters the PFO, ORCA reserves the right to raise issues including but not limited to efficiency, waste, conservation, instream flows, injury, water quality, the Endangered Species Act, the Clean Water Act, protection and restoration of fish species, beneficial use, and measurement and reporting.

**D. Standing Statement Fee:** The required standing statement fee of \$200 is included

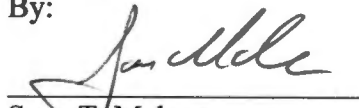
**E. Request for Party Status:** ORCA requests that WRD make ORCA a party to any proceeding regarding this PFO, whether or not a contested case is scheduled.

**F. Proof of Service:** Proof of certificate of service to the applicant is attached.

**G. Conclusion:** ORCA supports WRD's PFO for Application S-84101 (Permit S-53648), which will uphold and maintain Oregon water law and administrative rules, and would be harmed if the PFO were modified.

Dated: January 9, 2015.

By:



Sean T. Malone  
Attorney for ORCA  
259 E. 5<sup>th</sup> 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 January 9, 2015, a copy of the foregoing Request for Standing was served on the following by the method indicated:

Knapp Ranches, Inc.

PO Box 32

Port Orford OR 97465

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

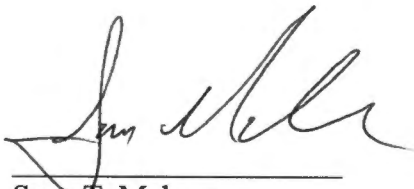
Water Rights Services Division

Oregon Water Resources Department

725 Summer St. NE, STE A

Salem OR 97301-1266

*By hand delivery*



Sean T. Malone

Attorney for ORCA

259 E. 5<sup>th</sup> Ave, Ste 200-G

Eugene, OR 97401

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 #

**114513**

INVOICE #

RECEIVED FROM:

Sean T. Malone  
Attorney at law

APPLICATION

S-84101

BY:

PERMIT

TRANSFER

CASH:

CHECK: #

OTHER: (IDENTIFY)

☐
☒

1086

☐

TOTAL REC'D

\$ 200.00

**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

\$

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

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0204

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0205

TRANSFER

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**WELL CONSTRUCTION**

**EXAM FEE**

0218

WELL DRILL CONSTRUCTOR

\$

0219

**LICENSE FEE**

\$

LANDOWNER'S PERMIT

0220

\$

0234

OTHER

(IDENTIFY)

Request for Standing \$ 200.00

**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:

**114513**

DATED:

01/09/15

BY:

Marin Arthur



BEFORE THE  
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Proposed Final Order Denying )	
the Application for an Extension of Time for )	Request for Standing
Permit S-53648, Water Right Application S-84101, )	
in the Name of Knapp Ranches Inc. )	

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WaterWatch of Oregon (WaterWatch) files this request for standing regarding the proposed final order (PFO) proposing denial of an extension for application S-84101 (permit S-53648) in the name of the Knapp Ranches, Inc., along with the required \$200 standing statement fee. WaterWatch supports denial of the extension and associated findings in the PFO.

**A. Name, mailing address and telephone number:**

Requester's name: Lisa Brown, [lisa@waterwatch.org](mailto:lisa@waterwatch.org)  
Requester's address and phone number: see organizational information below.  
Organization represented: WaterWatch of Oregon, Inc.  
213 SW Ash, Suite 208  
Portland, OR 97204  
PH: 503.295.4039  
FAX: 503.295.2791

**B. Statement of Support of the PFO**

WaterWatch supports the PFO as issued because it properly denies the extension and makes related findings and conclusions that WaterWatch supports.

**RECEIVED**  
**JAN 09 2015**  
**OWRD**

**C. Statement of How Requester Would Be Harmed If the PFO is Modified**

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 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 and its members have also invested significant time and resources in ensuring that Oregon's water laws and rules, and permit conditions added in accordance with these laws and rules, are fairly and correctly implemented.

WaterWatch also has invested time and money in ensuring fair water policy in which a beneficial use 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.

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 represents its organizational interest, the interests of its members and the public's interest in these protections 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 improving Oregon's water law system and ensuring that the water laws and rules are properly implemented so to achieve the sustainable and beneficial use of Oregon's waterways.

If the Oregon Water Resources Department (WRD) modifies the PFO to approve the extension, or modifies any of the findings from the PFO, WaterWatch reserves the right to raise any and all issues pertaining to the modified order. Below, WaterWatch raises all reasonably ascertainable issues and submits all reasonably available arguments supporting WaterWatch's position. However, if the WRD changes the order in any way, WaterWatch reserves the right to address issues arising out of those changes, including but not limited to related to compliance with applicable laws and rules, water use under the permit and compliance with permit conditions. It is impossible to foresee all of the specific arguments that would apply if WRD were to alter the order without knowing in advance what those changes would be.

1. If WRD modifies the order and/or its supporting findings and conclusions to approve the extension, such modification would adversely affect WaterWatch's interest and the public's interest in ensuring that Oregon's water laws, rules and permit conditions are correctly implemented; and that a beneficial use 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.

WRD's denial of the extension correctly implements applicable laws and rules and correctly addresses the ongoing lack of permit condition compliance. A WRD reversal of its decision would harm WaterWatch and the public's interests in ensuring that Oregon's water laws, rules and permit conditions are correctly implemented; and that a beneficial use 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. Specifically, issuance of the extension here where construction did not begin by the December 15, 2000 deadline would be contrary to Oregon law and rules. Modification of the PFO's findings/conclusions that: there is not good cause to issue the extension (Conclusion of Law #5); that construction did not begin prior to the December 15, 2000 deadline (Finding #6); and that there was a lack of good faith on the part of the appropriator (Finding #13), would harm WaterWatch and the public interest for the same reasons and because reversal of these findings and conclusion would not be supported by the evidence and would potentially allow water use to continue.

2. If WRD reverses the denial and instead issues the extension, WaterWatch would be harmed because WaterWatch members, staff and board use and enjoy the waterways that would be affected by the proposed use.

WaterWatch staff, board, and members regularly use and enjoy waters downstream of the proposed use, including for fishing, wildlife watching, and boating. WaterWatch would be harmed if WRD issues the extension because this would adversely affect fish and wildlife habitat, water quality, and recreational opportunities. Water use under the permit if extended would prevent water used under the permit from instead travelling to the Elk River and its estuary where it is needed to meet instream water rights, and support fish, the aquatic ecosystem and other public interests in the affected waterway.

3. If WRD deletes or modifies the PFO findings regarding the permit holder's non-compliance with permit conditions and its conclusion that beneficial use of water has not yet been demonstrated under the permit, WaterWatch's interest and the public's interest would be harmed because such modification would likely allow continued water use under the permit.

After finding that the permit holder failed to comply with various permit conditions (11(b)), the PFO concludes that "[f]ailure to comply with permit conditions constitutes

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illegal use of water. Beneficial use of water under this permit, therefore, has not yet been demonstrated.” (PFO, p. 4). If WRD modifies its finding regarding non-compliance with permit conditions or its conclusion that no beneficial use has occurred under the permit, WaterWatch’s interest and the public’s interest would be harmed because that would likely allow continued water use under the permit and any certificate secured for it. That would both incorrectly implement laws and rules, conflict with the evidence here, and have practical impacts to streamflows and fish—all harming WaterWatch and the public interest.

**D. Standing Statement Fee:** The required standing statement fee of \$200 is included with this document.

**E. Request for Party Status:** WaterWatch requests that WRD make WaterWatch a party to any proceeding regarding this PFO, whether or not a contested case is scheduled.

**Proof of Service:** Proof of service to the applicant is attached.

## CONCLUSION

WaterWatch supports the WRD's PFO denying the extension and finding that beneficial use under the permit has not yet been demonstrated.

Dated: January 9, 2015.

Sincerely,



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

RECEIVED  
JAN 09 2015  
OWRD

## Certificate of Service

I certify that on January 9, 2015, a copy of the foregoing Request for Standing was served on 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*

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

**RECEIVED**

**JAN 09 2015**

**OWRD**

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

RECEIPT #

114510

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

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

INVOICE #

RECEIVED FROM:

Waterwatch of  
Oregon, Inc.

BY:

APPLICATION

S-84101

PERMIT

TRANSFER

CASH:

CHECK:#

OTHER: (IDENTIFY)



3465



TOTAL REC'D

\$ 200.00

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

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0410 RESEARCH FEES

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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

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0219

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LANDOWNER'S PERMIT

0220

\$

0234 OTHER

(IDENTIFY)

Request for Stunding \$200.00

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

\$

RECEIPT:

114510

DATED:

01/09/15

BY:



**Oregon Water Resources Department**  
**Water Right Services Division**

**PROPOSED FINAL ORDER**

In the Matter of the Application for an Extension of Time for Permit S-53648, Water Right Application S-84101, in the name of Knapp Ranches Inc.

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**Permit Information**

Application:	S-84101
Permit:	S-53648
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	March 24, 1999
Source of Water:	A reservoir constructed under application R 84100, A tributary of Elk Creek
Purpose of Use:	Irrigation of 189.5 acres and mining
Maximum Rate/Volume:	100.0 acre-feet (AF) of stored water, being 60.0 AF for irrigation and 40.0 AF for mining

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***\*\*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:*

- Deny an extension of time to apply water to full beneficial use from October 1, 2004 to October 1, 2017.

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



## **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.

## **FINDINGS OF FACT**

### **Background**

1. Permit S-53648 was granted by the Department on January 31, 2000. The permit authorizes the use of up to 100.0 AF of stored water from the reservoir constructed under application R 84100, a tributary of Elk Creek, for irrigation of 189.5 acres and mining. The permit specified actual construction was to begin by December 15, 2000 and complete application of water 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 the time to apply water to full beneficial use under the terms of Permit S-53648 be extended from October 1, 2004 to October 1, 2017. This is the first permit extension requested for Permit S-53648.
3. Notification of the Application for Extension of Time for Permit S-53648 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 including; construction under this permit beginning after December 15, 2000; lack of due diligence; the application being incomplete; and an overstatement of the number of acres irrigated to date.

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 537.230<sup>1</sup>, 537.248<sup>2</sup> and/or 539.010(5)<sup>3</sup>.*

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 did not begin prior to the December 15, 2000 deadline specified in the permit. According to the application for extension of time the permit holder began construction of the water system in the spring of 2001. The permit holder stated in the application in question 1, "In the spring of 2001, the irrigation system was installed" and then again in question 3 Chart C it states " 4/2001 Installed 1000 feet of mainline."

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 reporting and submitting annual water usage to the Department, replacing a mainline and applying water to full beneficial use.
8. The Department has determined that the permit holder's request to have until October 1, 2017, to accomplish the application of water to beneficial use under the terms and conditions of Permit S-53648 must be denied, the permit holder is not able to comply with the terms and conditions of Permit S-53648. Construction of the water system did not begin prior to December 15, 2000; the permit cannot be extended per OAR 690-315-0040(b).

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<sup>1</sup>ORS 537.230 applies to surface water permits only.

<sup>2</sup>ORS 537.248 applies to reservoir permits only.

<sup>3</sup>ORS 539.010(5) applies to surface water and ground water permits.

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 did not begin prior to the December 15, 2000 deadline specified in the permit. The permit holder began construction of the irrigation system on this permit in the spring of 2001. The irrigation systems consists of a 60 horse powered 600 gpm Berkeley pump with a 6 inch screened intake, and 1000 feet of mainline heading two directions, 400 feet East to the quarry, and 600 feet West North West to the pastures.

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 S-53648 on January 31, 2000, the permit holder has not applied any water to beneficial use as allowed in the Permit S-53648.

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 at each diversion point, and (2) installed a fish screen on the pump intake and (3) annual reports of the amount of water used each month for ~~irrigation~~ <sup>mining</sup> have ~~not~~ been received by the Department.
- b. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) actual construction under this permit did not begin prior to the December 15, 2000 deadline specified in the permit, (2) annual reports of the amount of water used each month for irrigation have not been received by the Department annually.

**Failure to comply with permit conditions constitutes illegal use of water. Beneficial use of water under this permit, therefore, has not yet been demonstrated.**



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 \$13,000, which is about 72 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$5,000 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 a lack of good faith of the appropriator under Permit S-53648. Construction of the water system did not begin prior to the deadline specified in the permit and reporting annual water use for irrigation has not occurred.

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 S-53648; 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 a reservoir constructed under application R- 84100, a tributary of Elk Creek, and is not located within a Withdrawn Area. The reservoir 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 of water quality limited water bodies. 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.

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

17. 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)]

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

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

19. 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 did not comply 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. Complete application of the water to beneficial use under the terms and condition of Permit S-53648 cannot be completed by October 1, 2017 as required by OAR 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

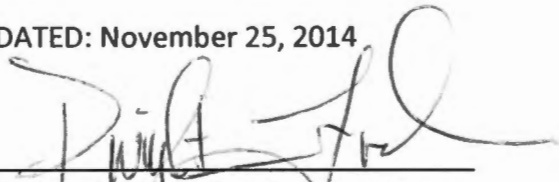
and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause does not exist for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

### PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny the time to apply water to beneficial use under Permit S-53648 from October 1, 2004 to October 1, 2017.

DATED: November 25, 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.*

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 9, 2015**, 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 Machel 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 25, 2014

Copies Mailed

Application: S-84101

Permit: S-53648

By: BIO  
On: 11/25/14

### Original mailed to Applicant:

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

### Copies sent to:

1. WRD - App. File S-84101/ Permit S-53648

### 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
4. WDR – Regional Manager Larry Menteer

CASEWORKER: MAB



## MCCARTY Patricia E

---

**From:** Nick Klingensmith <nickklingensmith@landuseoregon.com>  
**Sent:** Thursday, March 31, 2016 11:00 AM  
**To:** MCCARTY Patricia E  
**Cc:** Bill Kloos; Sean Malone; Lisa Brown  
**Subject:** RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648  
**Attachments:** Knapp Ranch - request to resume processing extension applications.pdf

Patricia,

Thank you for your time on the phone yesterday. As we discussed, I am filing a request to have the Department resume processing both extension applications, along with a proposal for a new condition. The attached letter provides more detail.

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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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---

**From:** Sean Malone [mailto:[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)]  
**Sent:** Thursday, March 31, 2016 9:33 AM  
**To:** Nick Klingensmith <nickklingensmith@landuseoregon.com>; Lisa Brown <lisa@waterwatch.org>  
**Cc:** Bill Kloos <billkloos@landuseoregon.com>; MCCARTY Patricia E <patricia.e.mccarty@state.or.us>  
**Subject:** Re: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Nick,

With regard to your proposed language below, we have some suggestions, as well as other comments.

"ORCA and WaterWatch and Knapp Ranches, Inc. and Elk River Property Development, LLC all agree that the Department should grant the requested extensions for both R-12770 and S-53648, on the condition that (1) the permit-holder must demonstrate compliance with all permit conditions, and (2) the water authorized to be used by these permits cannot be used in a manner related to or supporting golf course development."

\* We would add that we will be looking for a way to ensure ongoing permit compliance, not a one-time demonstration.

\*By golf course development, we intend also a prohibition on water use from these permits for any golf course related facilities.

\*An added condition of supporting issuance of the surface water extension is that the evidence would have to support WRD making a different finding on the commencement of construction issue.

I think that how you get at these concepts in a settlement package is something we would need to work out over discussions regarding specific mechanisms and language. For example, you suggest in your email that "That second condition can be placed on any certificate of water right that may be issued in the future." We would instead want to see conditions to that end added to the permit at the extension stage, which would then carry over to any certificates.

WaterWatch is on board with these concepts. Again, we are not interested in working out specific mechanisms or language over this email exchange. If we think we have enough agreement on the settlement concepts to move forward with more specific discussions, which I think is the case, those mechanisms and specifics should be worked out in future discussions.

Thanks,

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

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Monday, March 21, 2016 1:53 PM  
**To:** Sean Malone; Lisa Brown  
**Cc:** Bill Kloos; MCCARTY Patricia E  
**Subject:** RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Sean,

You are right that we would need the Department's support for granting both extensions. You raise a good question, as to the initial findings in the PFO that proposed denial of the extension for the surface water permit, based on failure to start construction within the first year. After that PFO was issued, we submitted additional testimony that showed the construction authorized by that permit actually had commenced within the first year. That issue was the Department's only basis for recommending denial. I believe that the Department can revisit its initial proposals, and I believe that, in light of the additional evidence we provided, the Department would now be likely to support granting the extension. Of course, we would need to get confirmation from the Department on that.

My last email triggered an auto-reply from Patricia indicating that she will be away until the 28<sup>th</sup>. That will push us up against the deadline for the end of the current "administrative hold." As soon as she gets back, I will ask for another extension. However, I understand that the Department does not want us to keep this on hold endlessly, and my clients feel the same way. I can request a couple more weeks, but I think we should do our best to get this wrapped up.

I have previously had some trouble with understanding what your position was on some of these issues, so let me summarize, and you can correct me if I don't have it exactly right. Assuming that the Department is willing to go along with this, here's what I understand we would be agreeing to:

ORCA and WaterWatch and Knapp Ranches, Inc. and Elk River Property Development, LLC all agree that the Department should grant the requested extensions for both R-12770 and S-53648, on the condition that (1) the permit-holder must demonstrate compliance with all permit conditions, and (2) the water authorized to be used by these permits cannot be used in a manner related to or supporting golf course development.

That second condition can be placed on any certificate of water right that may be issued in the future. The Department might have some specific instructions as to how the permit-holder should demonstrate compliance with permit conditions (such as the previous discussion about using a measuring staff instead of incoming and outgoing measuring weirs) and a time schedule for doing so.

Are we on the same page? Is WaterWatch OK with this approach?

Thank you

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]  
**Sent:** Friday, March 18, 2016 3:54 PM  
**To:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>; Lisa Brown <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>  
**Cc:** Bill Kloos <[billkloos@landuseoregon.com](mailto:billkloos@landuseoregon.com)>; MCCARTY Patricia E <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>  
**Subject:** Re: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Nick,

If it is possible to reach an agreement that would preclude use of the water from S-53648 and R-12770 for any golf course use or associated golf course use, then we may be able to reach an agreement. However, I understand the Department to have made a determination with regard to permit S-53648 and the failure to timely begin construction. Evidence would have to support WRD making a different finding on



commencement of actual construction. If we can work out language that is acceptable to ORCA and WaterWatch, then an additional extension may prove fruitful.

Thanks,

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

---

**From:** Sean Malone <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>  
**Sent:** Monday, March 7, 2016 5:20 PM  
**To:** Nick Klingensmith; Lisa Brown  
**Cc:** Bill Kloos; MCCARTY Patricia E  
**Subject:** Re: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Nick,

We will get back to you shortly on this.

Thank you,

Sean

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
**Sent:** Monday, March 7, 2016 2:13 PM  
**To:** Sean Malone; Lisa Brown  
**Cc:** Bill Kloos; MCCARTY Patricia E  
**Subject:** RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Hello Sean and Lisa,

I'm following up on my email from a couple weeks ago. Do you see any common ground here that would allow us to proceed with these discussions? I know my clients would be quite amenable to a settlement if we can find an approach that works for all of us. The "administrative hold" that the Department placed on these applications is set to expire on April 1, 2016. I am prepared to ask for another extension if you think there is still hope of reaching an agreement.

In particular, please note my suggestion in the email below that we would accept a restriction on both the R-permit and the S-permit that would prohibit use of water for any golf-related purposes.

Thank you for your attention to this matter,

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](mailto:nickklingensmith@landuseoregon.com)  
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**From:** Nick Klingensmith  
**Sent:** Friday, February 19, 2016 2:33 PM  
**To:** 'Sean Malone'; Lisa Brown  
**Cc:** Bill Kloos; MCCARTY Patricia E  
**Subject:** RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Sean, thanks for the clarification that you are only willing to discuss settlement of the reservoir extension. You are correct; I had not realized your suggested settlement terms were originally offered only in terms of Permit R-12770.

Given the interrelated nature of the reservoir permit and the permit authorizing use of water stored in the reservoir, we think it's appropriate to pursue a comprehensive settlement on both extension applications. It's not possible to discuss one without the other. In fact, your proposed settlement terms illustrate the interrelated nature of these two permits, by placing restrictions on water use on a permit that merely authorizes water storage.

In addition, your client and WaterWatch have requested party status in the Knapp Ranch's protest to the PFO recommending denial of the extension for permit S-53648. There is no point in us reaching a settlement with you regarding permit R-12770, only to turn around and have you oppose the extension request for permit S-53648. If these discussions are going to be productive, we have to attempt to reach a comprehensive settlement regarding the Knapp Ranch water rights.

As a more general observation, my clients have previously indicated they can accept a restriction that would prohibit the golf course from using any of the water authorized for the Knapp Ranch under permits R-12770 and S-53648. Your most recent email explains "Our concept would disallow use of the reservoir water for use on a golf course, whether within any current place of use, within ranch boundaries, or elsewhere." If I'm reading it correctly, that appears to be your core substantive demand. We can accept that. In principle, that is what we thought you proposed in your initial offer, to limit water use to "on ranch needs". For the sake of clarity and consistency, it would be ok to put this restriction on both permit extensions. No golf-related use for any of the Knapp's existing permits.

What we seek is an agreement that will make it possible for the Knapp Ranch to get extensions for both permits so the Knapps can keep moving forward and using these water rights in the same manner authorized before the golf course application. This is necessary for the Knapps to complete the final steps in perfecting their rights. We are comfortable with a condition on both permits that says none of the water can be used for golf-related purposes.

If you are not willing to discuss settlement terms that would encompass the extension applications for both permits, then we need to have Patricia refer both extension applications to contested case hearings.

Regards,

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](mailto:nickklingensmith@landuseoregon.com)

Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]

**Sent:** Tuesday, February 16, 2016 12:01 PM

**To:** Nick Klingensmith; Lisa Brown

**Cc:** Bill Kloos; MCCARTY Patricia E

**Subject:** Re: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Nick,

Thanks for your response of 2/3/16 to our 4/15/2015 proposed settlement framework regarding our protest to the extension PFO for R-12770. To make sure we are not getting wires crossed here, I think it's important at the outset to clarify that, as specified in our 4/15 email, our settlement concepts apply only to resolving our protest against the reservoir extension PFO. The extension PFO for the surface water permit S-53648, proposing to deny the extension, was protested by your clients and is not addressed in our concepts. In contrast, your email appears to encompass both permits which was not our intention.

Regarding our first settlement concept ("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"), you wrote that:

"The general principle behind your proposed condition #1 also strikes us as acceptable. If I understand correctly, this would prohibit a transfer of the currently authorized places of use to the area where the golf course will be developed, or to places of use outside of the ranch boundaries. I imagine this restriction would be included in the terms of the Department's final order approving the extension. Please clarify if my understanding is different than yours."

Your understanding does seem to differ from what we intended with this concept. To clarify, our concept is to limit use of the reservoir water (through any secondary permit) to on-ranch needs, by which we mean limiting water use to meet the ranching water needs of the ranch only (e.g. irrigation of cattle feed, stock watering, etc.) . Our concept would disallow use of the reservoir water for use on a golf course, whether within any current place of use, within ranch boundaries, or elsewhere.

We are interested in your thoughts on that concept. We suggest focusing on that term to start with before diving into the technical aspects of meeting the second concept ("Full compliance with all permit conditions"), some of which you have outlined in your email.

We look forward to hearing from you.

Sean

---

**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>

**Sent:** Thursday, January 21, 2016 2:56 PM

**To:** Sean Malone; Lisa Brown

Cc: Bill Kloos; MCCARTY Patricia E

Subject: RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Sean and Lisa,

I'm sorry to hear that your aren't interested in discussing the topic of the city wastewater. It seems like including that in the scope of the settlement discussion could lead to a real win/win. It has the support of the local watershed council. However, if you are clear that you do not want the settlement discussions for the Knapp Ranch water rights to include discussion of the of the city wastewater, I'd like to proceed with discussing the issues originally identified in Sean's email from April, 15 2015. The settlement terms Sean originally proposed were:

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.

Taking those in reverse order, I'd start off by saying we agree with condition #2. I imagine the Department also views it as a basic starting point for any extension application. Please be advised that we have located in our files the waiver granted by the watermaster for the measuring weirs, originally required as a standard condition in the permit for the reservoir. It's attached here. Given that the Knapp's "on channel" impoundment has multiple side channels that form multiple sources where water enters the pond, there's no effective way to measure incoming flow. Using a calibrated measuring staff may be a more accurate way to measure water coming into the pond. This technical detail can be worked out in due course, but for now, suffice it to say that the applicant is committed to meeting the spirit of the requirement to monitor pond volume, and the requirement for seasonal timing of filling the pond and diverting stored water.

The general principle behind your proposed condition #1 also strikes us as acceptable. If I understand correctly, this would prohibit a transfer of the currently authorized places of use to the area where the golf course will be developed, or to places of use outside of the ranch boundaries. I imagine this restriction would be included in the terms of the Department's final order approving the extension. Please clarify if my understanding is different than yours.

Thank you,

Nick Klingensmith  
Law Office of Bill Kloos, PC  
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Eugene, OR 97401  
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---

**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]

**Sent:** Wednesday, November 25, 2015 3:07 PM

**To:** Nick Klingensmith; Lisa Brown

**Cc:** Bill Kloos; MCCARTY Patricia E

**Subject:** RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648

Nick,

In rereading your email, ORCA and Waterwatch want to communicate that our interest is in pursuing settlement around the concepts outlined in Sean's earlier email. We think that is what you meant but want to be clear on expectations. While we recognize that there is an effort to secure effluent for a golf course, we would not be



interested in addressing that possibility as any part of settling the ranch's permit extension issues. Again, we are interested in pursuing settlement discussions around the concepts outlined in my earlier email and look forward to those discussions.

Sean Malone  
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259 E. Fifth Ave.  
Suite 200-G  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

---

From: [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)  
To: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com); [lisa@waterwatch.org](mailto:lisa@waterwatch.org)  
CC: [billkloos@landuseoregon.com](mailto:billkloos@landuseoregon.com); [patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)  
Subject: RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648  
Date: Tue, 24 Nov 2015 21:08:25 -0800  
ORCA does not object to an extension to April 1.

Sean Malone  
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Suite 200-G  
Eugene, OR 97401  
ph. 303.859.0403  
[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

> From: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)  
> To: [lisa@waterwatch.org](mailto:lisa@waterwatch.org)  
> CC: [seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com); [billkloos@landuseoregon.com](mailto:billkloos@landuseoregon.com); [patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)  
> Subject: RE: settlement proposal for Knapp Ranch permits R-12770 and S-53648  
> Date: Thu, 19 Nov 2015 18:47:59 +0000

>  
> Lisa, thank you. I realize now that my earlier email neglected to specify how much more time we thought would be needed. In the attached draft motion I requested that we keep the "administrative hold" in place until April 1, 2016 -- that's approximately four additional months from the current deadline of December 7, 2015. If you think more or less time would be appropriate, please let me know. If you think the draft motion looks good, I will sign it and submit it to the Department.

>  
> I appreciate your attention to this, and your willingness to talk about ways to resolve the underlying issues.  
>  
> 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](mailto:nickklingensmith@landuseoregon.com)

> Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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>

>

> -----Original Message-----

> From: Lisa Brown [<mailto:lisa@waterwatch.org>]

> Sent: Thursday, November 19, 2015 8:19 AM

> To: Nick Klingensmith

> Cc: Sean Malone ([seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)); Bill Kloos; MCCARTY Patricia E

> Subject: Re: settlement proposal for Knapp Ranch permits R-12770 and S-53648

>

> Hi Nick,

> I checked in with Sean on this and we agree with you that more time to pursue settlement is the right approach. We are working on a response to your earlier email as well.

>

> Thanks,

> Lisa

>

> Sent by mobile phone

>

> On Nov 18, 2015, at 4:20 PM, "Nick Klingensmith" <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)> wrote:

>

> > Hello Lisa and Sean,

> >

> > I'd like to ask the Department for more time before it resumes processing the extension applications and our respective protests against the Department's PFOs on those extension requests. I'm hoping that a longer timeout will give us the opportunity to resolve our dispute, at least in regard to the extension applications for the exiting permits issued to Knapp Ranches. My request to the department would state that this additional time would provide us the opportunity to engage in settlement discussions, and that the additional time is "reasonable and necessary," in the meaning of OAR 690-310-0270.

> >

> > Would you be opposed to me requesting this additional time?

> >

> > 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](mailto:nickklingensmith@landuseoregon.com)

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> >

> >

> > -----Original Message-----

> > From: Nick Klingensmith

> > Sent: Friday, November 06, 2015 4:16 PM

> > To: 'Lisa Brown'

> > Cc: Sean Malone ([seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)); Bill Kloos; MCCARTY

> > Patricia E

> > Subject: RE: settlement proposal for Knapp Ranch permits R-12770 and

> > S-53648

> >

> > Lisa, thank you. No worries on the response time. I had been ruminating on Sean's initial proposal since April, so I'm certainly in no position to make demands about anyone's response time. Given the circumstances with the county land use proceeding, we just weren't able to forge ahead with these settlement talks until now.

> >

> > If you think the basic concept here is worth talking about in more detail, we might be able to get the Department to give us some more time, rather than going back into the contested case track. The processing of the extension application was put on pause for 180 days, pursuant to OAR 690-310-0270(2). By my count, that six month period will expire December 7, 2015. That same rule allows the Department to grant a longer extension if it is "reasonable and necessary." If you and Sean are interested in exploring this conversation, I would be willing to request a longer extension from the Department. I suspect the Department would look favorably at that request if it held the potential to make the contested case go away.

> >

> > Looking forward to talking with you and Sean about this. 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) 343-3702

> > e-mail: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)

> > Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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> >

> > -----Original Message-----

> > From: Lisa Brown [<mailto:lisa@waterwatch.org>]

> > Sent: Friday, November 06, 2015 3:32 PM

> > To: Nick Klingensmith

> > Cc: Sean Malone ([seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)); Bill Kloos; MCCARTY  
> > Patricia E  
> > Subject: Re: settlement proposal for Knapp Ranch permits R-12770 and  
> > S-53648  
> >  
> > Nick,  
> > Thanks for this. Sorry for the slow response. This is a super busy time here but I will take a look and talk  
with Sean and we will back in touch with you.  
> >  
> > Have a great weekend,  
> > Lisa  
> >  
> > ----- Original Message -----  
> >> From: "Nick Klingensmith" <[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)>  
> >> To: "Sean Malone ([seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com))" <[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)>, "Lisa Brown  
([lisa@waterwatch.org](mailto:lisa@waterwatch.org))"  
> >> <[lisa@waterwatch.org](mailto:lisa@waterwatch.org)>  
> >> Cc: "Bill Kloos" <[billkloos@landuseoregon.com](mailto:billkloos@landuseoregon.com)>, "MCCARTY Patricia E"  
> >> <[patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)>  
> >> Sent: Tuesday, November 3, 2015 11:03:06 AM  
> >> Subject: settlement proposal for Knapp Ranch permits R-12770 and  
> >> S-53648  
> >>  
> >> Sean and Lisa,  
> >>  
> >> I'm hoping to strike up a conversation about possible settlement  
> >> options for the protests pending on the extension applications for  
> >> the Knapp Ranch's reservoir permit and irrigation/mining permit. I'm  
> >> sorry it has taken me so long to get this started, but my clients and  
> >> I have had a number of balls in the air that we needed to tend to first.  
> >>  
> >> As you are aware, Elk River Property Development, LLC has requested  
> >> that it be able to use the treated effluent from the city of Port  
> >> Orford for irrigation of the golf course. We think this will be a  
> >> good solution for all parties for the following reasons: it would  
> >> free up the Knapp Ranch's existing irrigation permit for continued  
> >> agricultural use; it would provide the water needed for the golf  
> >> course; it would provide the city of Port Orford with an alternative  
> >> to the existing ocean outfall pipe (which is vulnerable to ocean  
> >> storms), and; it would keep the treated effluent (along with its residual contaminants) out of the ocean.  
> >>  
> >> Our proposal would involve piping the recycled water from the sewage  
> >> treatment plant to a pond at the golf course, which would provide the  
> >> opportunity for additional water quality treatments and soil-filtration.  
> >> This approach would significantly reduce the environmental impacts  
> >> compared to the current practice of simply discharging it to the  
> >> ocean. As I'm sure you know, treated effluent can contain residual  
> >> contaminants, such as pharmaceutical compounds, which can be harmful



>>> to marine life. Additional water quality treatments and application  
>>> of this water to the soil would allow for dramatic improvements over  
>>> the status quo. My clients would be financially responsible for the  
>>> additional monitoring and water quality treatments to ensure that the water was suitable for agricultural  
use.

>>> Recycling Port Orford's waste-water is more than just a convenient  
>>> source of irrigation for the golf course - it is the right thing to  
>>> do for the environment as well.

>>>

>>> We believe this proposal could go a long way toward meeting all of  
>>> the parties' different needs. In fact, we are hopeful we might find  
>>> ourselves in the rare situation where a single solution is able to  
>>> fix the whole pickle. If you were willing to provide your support  
>>> for this proposal to divert the city's treated effluent from the  
>>> ocean to the golf course, we would welcome it.

>>>

>>> Returning to the subject of the protests filed against the extension  
>>> applications for the Knapp Ranch's reservoir permit and surface water  
>>> use permit, we'd like to discuss the settlement terms outlined in  
>>> Sean's email to Patricia McCarty, from April 15, 2015. That email  
>>> thread is attached to this email, but the substantive settlement terms proposed by Sean were:

>>>

>>> 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.

>>>

>>> Those settlement terms strike us as fair and workable. Both Elk  
>>> River Property Development and Knapp Ranches would accept those  
>>> terms, contingent on the city of Port Orford making its treated  
>>> effluent available for reuse on the golf course. Our conversations  
>>> with the city are ongoing, but they have been productive so far.

>>>

>>> Thank you for considering this approach. We hope it leads to a  
>>> fruitful conversation and agreement.

>>>

>>>

>>> 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](mailto:nickklingensmith@landuseoregon.com)<<mailto:nickklingensmith@landuseoregon.com>  
>>> g on.com> Web [www.LandUseOregon.com](http://www.LandUseOregon.com)<<http://www.LandUseOregon.com>>  
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> > immediately at the phone number above. Also, please notify me by e-mail. Thank you.  
> >  
> > --  
> > Lisa Brown  
> > Staff Attorney  
> > WaterWatch of Oregon  
> > 503.295.4039 x4  
> >

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

JEFF KNAPP

PO BOX 32

PORT ORFORD, OREGON 97465

(541) 332-3755

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

APPLICATION FILE NUMBER: S-84101

SOURCE OF WATER: A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A  
TRIBUTARY OF ELK RIVER

PURPOSE OR USE: IRRIGATION OF 189.5 ACRES AND MINING

MAXIMUM VOLUME ALLOWED: 100 ACRE-FEET PER YEAR OF STORED WATER ONLY,  
BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MINING

PERIOD OF USE: MAY 1 THROUGH OCTOBER 15 FOR IRRIGATION AND YEAR ROUND  
FOR MINING

DATE OF PRIORITY: MARCH 24, 1999

POINT OF DIVERSION 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 amount of water used for irrigation under this right, together  
with the amount secured under any other right existing for the same  
lands, is limited to a diversion of 2.5 acre-feet for each acre  
irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE 1/4 NE 1/4 1.2 ACRES  
NE 1/4 SE 1/4 38.8 ACRES  
SE 1/4 SE 1/4 37.0 ACRES  
SECTION 19

SE 1/4 NW 1/4 9.2 ACRES  
NE 1/4 SW 1/4 25.6 ACRES  
NW 1/4 SW 1/4 36.2 ACRES

SW 1/4 SW 1/4 11.4 ACRES  
SE 1/4 SW 1/4 3.1 ACRES  
SECTION 20

NE 1/4 NE 1/4 14.5 ACRES  
SE 1/4 NE 1/4 12.5 ACRES  
SECTION 30

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

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. 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.

The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water.

#### STANDARD CCNDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

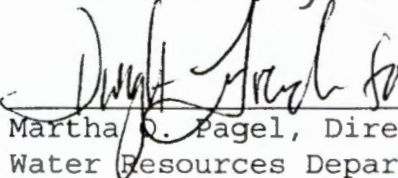
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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. Complete application of the 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:** 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



# 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](http://www.wrd.state.or.us)

VIA EMAIL ONLY

December 2, 2015

Knapp Ranches, Inc.

Nick Klingensmith

Law Office of Bill Kloos, PC

375 W. 4<sup>th</sup> Ave., Suite 204

Eugene, OR 97401

[nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)

WaterWatch of Oregon,  
Inc.

213 SW Ash Street,

Suite 208

Portland, OR 97204

[lisa@waterwatch.org](mailto:lisa@waterwatch.org)

Oregon Coast Alliance c/o

Sean T. Malone

259 E. 5<sup>th</sup> Ave. Ste. 200-G

Eugene, OR 97401

[seanmalone8@hotmail.com](mailto: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  
and Permit S-53648

In the name of  
Knapp Ranches, Inc.

)  
)  
)  
)  
)  
)  
)  
**PERMIT HOLDER'S  
REQUEST FOR ADDITIONAL  
TIME TO CONDUCT  
SETTLEMENT NEGOTIATIONS**

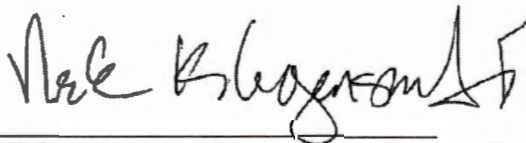
Pursuant to OAR 690-310-0270(2), Knapp Ranches, Inc., requests the Department of Water Resources to extend its "administrative hold" on processing the extension applications for the above-referenced permits. The permit holder has engaged in settlement negotiations with the opponents of the extension 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

## 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

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:** 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 (jimhaley@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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://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  
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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.LandUseOregon.com)

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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](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://www.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

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**From:** MCCARTY Patricia E  
**Sent:** Wednesday, April 15, 2015 1:40 PM  
**To:** 'Sean Malone'; [patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)  
**Cc:** Cameron La Follette; [lisa@waterwatch.org](mailto: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

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**From:** Sean Malone [<mailto:seanmalone8@hotmail.com>]  
**Sent:** Wednesday, April 15, 2015 1:24 PM  
**To:** [patricia.e.mccarty@state.or.us](mailto:patricia.e.mccarty@state.or.us)  
**Cc:** Cameron La Follette; [lisa@waterwatch.org](mailto: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](mailto:seanmalone8@hotmail.com)



## MCCARTY Patricia E

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**From:** Nick Klingensmith <[nickklingensmith@landuseoregon.com](mailto: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  
e-mail: [nickklingensmith@landuseoregon.com](mailto:nickklingensmith@landuseoregon.com)  
Web [www.LandUseOregon.com](http://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.

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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

Application # S-84101

Permit # S-53648

**Public Notice Route Slip ... New Application Extension of Time**

Per Division 315 Rules... (Extensions received on July 1, 2001 or after)

◆ **WRIG...**

Money Receipted 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 \_\_\_\_\_



## WATER RESOURCES DEPARTMENT

RECEIPT #

111787

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

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

INVOICE #

RECEIVED FROM:

Knapp Ranches Inc.

BY:

APPLICATION

S-84101

PERMIT

S-53648

TRANSFER

CASH:

CHECK:#

OTHER: (IDENTIFY)

☒ 1326

TOTAL REC'D

\$ 575.00

4-18-14

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 &amp; TAPE FEES

\$

0410

RESEARCH FEES

\$

0408

MISC REVENUE: (IDENTIFY)

\$

TC162

DEPOSIT LIAB. (IDENTIFY)

\$

0240

EXTENSION OF TIME

\$ 575.00

## WATER RIGHTS:

0201

SURFACE WATER

## EXAM FEE

\$

0202

\$

0203

GROUND WATER

\$

0204

\$

0205

TRANSFER

\$

## WELL CONSTRUCTION

0218

WELL DRILL CONSTRUCTOR

## EXAM FEE

\$

0219

## LICENSE FEE

\$

LANDOWNER'S PERMIT

0220

\$

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 (FW/WRD)

\$

0231

HYDRO LICENSE FEE (FW/WRD)

\$

HYDRO APPLICATION

\$

TREASURY

OTHER / RDX

FUND

TITLE

OBJ. CODE

VENDOR #

DESCRIPTION

\$

RECEIPT:

111787

DATED:

4-18-14

BY:



- ☐ 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:**

▪ <b>Ques. #1</b> - Information provided on beginning of construction ("A" Date) under the permit.	▪ <b>Ques. #5-C</b> - Well location information provided <u>and</u> whether a permit amendment is necessary.
▪ <b>Ques. #2</b> - Information provided on compliance with permit conditions.	▪ <b>Ques. #6</b> - Information provided on number of acres irrigated, if applicable.
▪ <b>Ques. #3</b> - Description provided of progress made in developing the permit.	▪ <b>Ques. #7</b> - Description provided of remaining work left to be accomplished to perfect the permit.
▪ <b>Ques. #4</b> - Monetary investment made in the project to date provided.	▪ <b>Ques. #8</b> - Description provided of estimated cost to complete the project associated with the permit.
▪ <b>Ques. #5-A</b> - Max amount of water beneficially used to date for a SW permit indicated.	▪ <b>Ques. #9</b> - Explanation provided of why the permit has not been fully developed/perfected.
▪ <b>Ques. #5-B</b> - Well construction information provided <u>and</u> max amount of water beneficially used to date for a GW permit indicated.	▪ <b>Ques. #10</b> - Justification provided of why the requested time is necessary to complete project.

**■ Municipal/Quasi-Municipal Permit Extension Applications:**

▪ <b>Ques. #2</b> - For Quasi-Municipal permits only, information provided on beginning of construction ("A" Date) under the permit.	▪ <b>Ques. #8</b> - Estimate provided of current peak water demand of the population served <u>and</u> the methodology used to make the estimate.
▪ <b>Ques. #3</b> - For Municipal permits issued on or after June 29, 2005, information provided on beginning of construction ("A" Date).	▪ <b>Ques. #9</b> - Explanation provided of why the permit has not been fully developed/perfected.
▪ <b>Ques. #4</b> - Description provided of progress made in developing the permit <u>and</u> financial expenditures made in the project to date.	▪ <b>Ques. #10-A</b> - 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.
▪ <b>Ques. #5-A &amp; #5-B</b> - Information provided on compliance (or non-compliance) with permit conditions.	▪ <b>Ques. #10-B</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.
▪ <b>Ques. #6-A</b> - Max amount of water beneficially used to date for a SW permit indicated.	▪ <b>Ques. #11</b> - Estimate of costs to complete the project and a summary of future schedule to complete construction / perfect the water right.
▪ <b>Ques. #6-B</b> - Well construction information provided <u>and</u> max amount of water beneficially used to date for a GW permit indicated.	▪ <b>Ques. #12</b> - Justification provided of why the requested time is necessary to complete project and/or apply water to full beneficial use.
▪ <b>Ques. #6-C</b> - Well location information provided <u>and</u> whether a permit amendment is necessary.	▪ <b>Ques. #14</b> - A copy of any agreements regarding use of the undeveloped portion of the permit and maintaining the persistence of fish, if applicable.
▪ <b>Ques. #7</b> - Estimate provided of current population served under the permit <u>and</u> the methodology used to make the estimate.	▪ <b>Attachment A</b> - A tabular inventory of the water supplier's water rights and any other water use authorizations.

- ☒ 8. Has the \$575 fee been paid? 111787  
**\*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: Steven Barnett Date: 4-21-14



## 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)? 2016/2017
  - 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.



# 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 #: S-84101 (Permit S-53648)**. 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](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](http://www.wrd.state.or.us).



# Extension PFO Checklist for Other than Muni or Quasi-Municipal

## Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: S- 84101 Permit: S- 53648 Permit Amendment? No ☒ Yes ☐ T-        ☐ pending ☐ approved

Permit Holder's Name: Knapp Ranches Inc

Permit Holder's Mailing Address: P.O. Box 32 Port Orford OR 97465 email bknapp22cj

Phone Number: 541-297-3755

POD Location: Township        Range        Section        1/4       

Drainage Basin: 17 County: curry Watermaster District: 19 Watermaster: Mitch Lewis

Date Permit was issued: 1/30/2000

Priority Date: 3/24/1999

Date of PN: 5/6/2014

Source: A reservoir constructed under R-84100 a trib of Elk Creek

Use: Irrigation of 189.5 A and mining

"Q": 100 AF per year of stored water only, being 60.0 AF for irrigation and 40.0 AF for minning

Orig "A" Date: 12/15/2000

Orig "B" Date: 10/1/      

Orig "C" Date: 10/1/2004

Extension  
request rec'd: 4/18/2014

Last Authorized  
"B" Date: 10/1/      

Last Authorized  
"C" Date: 10/1/      

Request Number (1, 2, 3...): 1

Proposed  
"B" Date: 10/1/      

Proposed  
C Date: 10/1/2017

### Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	before water use totalizing flow meter must be installed ( installed April 2001)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	keep record of water use and submit reports annually No water use for irrigation/ 8 years for mining
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>fish screening and by pass prior to diversion</u> <u>no inchannel</u> installed April 2001
<input type="checkbox"/>	<input checked="" type="checkbox"/>	A date: irrigation system was installed in April 2001 AFTER A DATE
<input type="checkbox"/>	<input type="checkbox"/>	

### 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: \$3,000 Estimated Remaining Cost: \$5,000

- ☒ ☐ 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. \_\_\_\_\_  
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](http://www.rivers.gov/wildriverslist.html)  
☒ ☐ within a sensitive, threatened or endangered species area Source: "/>

**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:**

**Extension "PFO" Dates**

**Mailing / Issuance Date:** \_\_\_\_\_ **Protest Deadline Date:** \_\_\_\_\_

**Reviewer's Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_





Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem Oregon 97301  
(503) 986-0900  
www.wrd.state.or.us

Application for  
**Extension of Time**  
**For a Water Right Permit**  
(Non-Municipal / Non-Quasi-municipal Water Use)

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

*A separate extension application must be submitted for each permit as per  
OAR 690-315-0020(2).*

*This application and a summary of review criteria and procedures that are generally applicable to this  
application are available at <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml>.*

**I, Knapp Ranches Inc.**

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

PO Box 32 Port Orford OR 97465  
ADDRESS CITY STATE ZIP  
541-297-3755 bknapp@2cj.com  
PHONE E-MAIL ADDRESS

the permit holder of: Application Number S-84101

Permit Number -53648  
[OAR 690-315-0020(3)(b)]

RECEIVED BY OWRD  
APR 18 2014  
SALEM, OR

do hereby request that the time in which to:

X complete construction (of diversion/appropriation works and/or purchase and installation of the  
equipment necessary to the use of water), which time now expires on October 1, 2004, be  
extended to October 1, 2016,

☐ N/A (Check this box if the permit does not specify a date by when construction must be completed.)

and/or the time in which to:

X apply water to full beneficial use under the terms and conditions of the permit, which time now  
expires on October 1, 2005, be extended to October 1, 2017.

**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**

RECEIVED BY OWRD

APR 18 2014

SALEM, OR



### **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 reservoir was constructed (improved) beginning in mid-August 2000. A small culvert under the existing service road was replaced with a 36" culvert, and the dip in the road was raised about 3', by shoving pit-run rock down the hill from the adjacent quarry. An area of about 2000 sq feet was deepened for the pump intake, and this material was used to 'coat' the South side of the new rock. A small pier was constructed, extending from near the road to the deepened portion, to anchor the intake pipe. A staff gauge was installed near the pier. In the spring of 2001, the irrigation system was installed. The irrigation system consists of a 60 Hp – 600 gpm Berkeley pump, with a 6" screened intake, and 1000' of mainline heading two directions, 400' East to the quarry, and 600' WNW to the pastures. Just after the mainline tee are 2 gate valves, and 2 totalling flow meters.



RECEIVED BY OWRD  
APR 18 2014  
SALEM, OR



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? **X** 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	4/2001	Totalizing flow meters installed.
B1	4/2001	Meters are accessible.
B2	4/2001	The 6" pump intake is screened.

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\*\* **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
B2	6/2014	Records 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.

\*\* **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.

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 old culvert with a 36" version.	<del>600</del>
9/2000	Raised the dip in the road about 36", using rock from the adjacent quarry. Excavated a deep portion of reservoir for the intake, and used the spoils to back fill at newly raised gravel dam portion.	<del>1400</del>
12/15/2000	Date the permit specified "Actual Construction Work" shall begin ("A-Date") -not all permits contain this date.	
9/2000	Constructed pier from near road, to newly deepened portion of reservoir, to anchor intake pipe. Installed staff gauge at pier.	<del>700</del>
4/2001	Installed conduit, 1000' of mainline, gate valves, McCrometer flow meters, 60 hp motor, and 600 gpm Berkeley pump.	<del>13000</del>
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" <u>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME:</u> 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.	COST*
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	APR 18 2014	

~~\$15,700~~

\* If exact cost is not known, you must provide your best estimate.

13,000

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SALEM, OR



- 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 <sup>st</sup> (or the most recent) Application for Extension of Time.	
10/1/	"Extended To" date for complete application of water resulting from the 1 <sup>st</sup> (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*
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: \$15,700  
(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.

SALEM, OR

APR 18 2014

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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 <u>this permit</u> 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	Raise pump station, replace adjacent sections of mainline.	5000
Year: 2015	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		\$5,000

8. Estimated remaining cost to complete the project: \$5,000  
(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.

\_\_\_\_\_

- 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, which would trigger an upgrade to the 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.

APR 18 2014

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[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.

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



APR 18 1994

SALEM, OR

STATE OF OREGON

COUNTY OF CURRY

## PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

JEFF KNAPP

PO BOX 32

(541) 332-3755

PORT ORFORD, OREGON 97465

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

APPLICATION FILE NUMBER: S-84101

SOURCE OF WATER: A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A  
TRIBUTARY OF ELK RIVER

PURPOSE OR USE: IRRIGATION OF 189.5 ACRES AND MINING

MAXIMUM VOLUME ALLOWED: 100 ACRE-FEET PER YEAR OF STORED WATER ONLY,  
BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MININGPERIOD OF USE: MAY 1 THROUGH OCTOBER 15 FOR IRRIGATION AND YEAR ROUND  
FOR MINING

DATE OF PRIORITY: MARCH 24, 1999

★ POINT OF DIVERSION 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 amount of water used for irrigation under this right, together  
with the amount secured under any other right existing for the same  
lands, is limited to a diversion of 2.5 acre-feet for each acre  
irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE 1/4 NE 1/4 1.2 ACRES

NE 1/4 SE 1/4 38.8 ACRES

SE 1/4 SE 1/4 37.0 ACRES

SECTION 19

SE 1/4 NW 1/4 9.2 ACRES

NE 1/4 SW 1/4 25.6 ACRES

NW 1/4 SW 1/4 36.2 ACRES

Application S-84101 Water Resources Department

PERMIT 53648

60



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APR 18 2014

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SW 1/4 SW 1/4 11.4 ACRES  
SE 1/4 SW 1/4 3.1 ACRES  
SECTION 20

NE 1/4 NE 1/4 14.5 ACRES  
SE 1/4 NE 1/4 12.5 ACRES  
SECTION 30

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

Measurement, recording and reporting conditions:

- A1 A. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. The permittee shall maintain the meter or measuring device in good working order, shall
- AZ { 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.
- B1 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.

B2 The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

61

practical technologies or conservation practices to achieve this end.

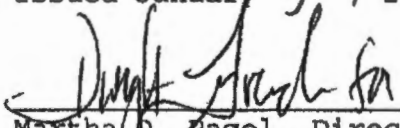
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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. Complete application of the 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 C. Pagel, Director  
Water Resources Department

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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 S-84101    Water Resources Department  
Basin 17                      Volume 3 ELK R & MISC

PERMIT 53648  
District 19

62

## 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.V. Russell*  
4/15/2014

**RECEIVED**

APR 15 2014

WATER RESOURCES DEPT  
SALEM, OREGON

# Water Right Services Division

Water Rights Application  
Number S-84101

## FINAL ORDER

Extension of Time for Permit Number S-53648  
Permit Holder: Knapp Ranches Inc.

---

### Permit Information

Application:	S-84101
Permit:	S-53648
Basin:	17 – South Coast / Watermaster District 19
Date of Priority:	March 24, 1999
Source of Water:	A reservoir constructed under application R 84100, A tributary of Elk Creek
Purpose of Use:	Irrigation of 189.5 acres and mining
Maximum Volume:	100.0 acre-feet (AF) of stored water, being 60.0 AF for irrigation and 40.0 AF for mining

---

**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 S-53648 was issued by the Department on January 31, 2000. The permit called for complete application of water to beneficial use by October 1, 2004. On April 18, 2014, Knapp Ranches Inc. submitted to the Department an Application for Extension of Time for Permit S-53648. In accordance with OAR 690-315-0050(2), on November 25, 2014, the Department issued a Proposed Final Order proposing to deny the time to apply water to full beneficial use



from October 1, 2004 to October 1, 2017. The protest period closed January 9, 2015, in accordance with OAR 690-315-0060(1). Knapp Ranches, Inc. filed a timely protest. On January 9, 2015, WaterWatch of Oregon and Oregon Coast Alliance filed requests for standing. On June 4, 2015, the permit holder requested an administrative hold for additional time for the purpose of pursuing settlement discussion. 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 S-83648:

1. The use of water for irrigation under Permit S-53648 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 findings of fact and conclusion of law of the Proposed Final Order are adopted and incorporated by reference as if set fully set out in this final order. Following the issuance of the Proposed Final Order, the applicant provided additional background information. The following Finding of Facts of the Proposed Final Order are corrected to reflect the new information (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

6. Actual construction of the water system did ~~not~~ begin prior to the December 15, 2000 deadline specified in the permit. According to the ~~application for extension of time~~ the permit holder, construction of the water system began in the ~~spring of 2001~~ summer of 2000. ~~The permit holder stated in the application in question 1, "In the spring of 2001, the irrigation system was installed" and then again in question 3 Chart C it states "4/2001 Installed 1000 feet of mainline."~~

According to the new information submitted to the Department January 9, 2015, actual construction began in the summer of 2000. The Department has determined the permit holder has satisfied the condition requiring beginning of construction of the water works.

8. The Department has determined that the permit holder's request to have until October 1, 2017, to accomplish the application of water to beneficial use under the terms and

~~conditions of Permit S-53648 must be denied, the permit holder is not able to comply with the terms and conditions of Permit S-53648. Construction of the water system did not begin prior to December 15, 2000; the permit cannot be extended per OAR 690-315-0040(b).~~ is both reasonable and necessary.

9. Work was accomplished within the time allowed in the permit or previous extension as follows:

- a. Construction of the water system ~~did not~~ begin prior to the December 15, 2000 deadline specified in the permit. The permit holder began construction of the irrigation system on this permit in the ~~spring of 2001~~ summer of 2000. The irrigation systems consists of a 60 horse powered 600 gpm Berkeley pump with a 6 inch screened intake, and 1000 feet of mainline heading two directions, 400 feet East to the quarry, and 600 feet West North West to the pastures.

The Department has determined that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence from the appropriator towards the complete application of water to a beneficial use.

10. The following beneficial use was made of the water during the permit or previous extension time limits:

- ~~b. Since the issuance of Permit S-53648 on January 31, 2000, the permit holder has not applied any water to beneficial use as allowed in the Permit S-53648.~~

The permit holder states a maximum rate of 100.0 AF of water has been diverted from the reservoir for irrigation of 162.0 acres and mining.

Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by the October 1, 2004.

- 11.

- a. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) ~~actual construction under this permit did not begin prior to the December 15, 2000 deadline specified in the permit,~~ (2) annual reports of the amount of water used each month for irrigation have not been received by the Department annually.

13. The Department has found ~~a lack of good faith of the appropriator under Permit S-53648. Construction of the water system did not began prior to the deadline specified in the permit and reporting annual water use for irrigation has not~~

~~occured.~~

## **CONDITIONS**

**1. Last Extension Condition**

This is to be the last extension of time granted for Permit S-53648. Any future extensions of time requests will be denied.

**2. Permit Condition**

- A. The use of water for irrigation under Permit S-53648 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**

- 1. The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).
- 2. The applicant did comply 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).
- 3. Complete application of the water to beneficial use under the terms and conditions of Permit S-53648 can be completed by October 1, 2017 as required by OAR 315-0040(1)(c)

**Continued on the following page**

## ORDER

The extension of time for Application S-53648, therefore, is approved subject to conditions contained herein. 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: S-84101

By: SP

Permit: S-53648

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 S-84101/ Permit S-53648
2. Nick Klingensmith  
Law Office of Bill Kloos, PC  
375 W 4<sup>th</sup> 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 5<sup>th</sup> 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

Final Order: Permit S-53648

Page 1 of 1

**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

January 8, 2015

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

**RECEIVED**  
**JAN 09 2015**  
**OWRD**

Re: Permit S-53648  
Permit holder's protest to Proposed Final Order that would deny an extension of  
time for Permit S-53648

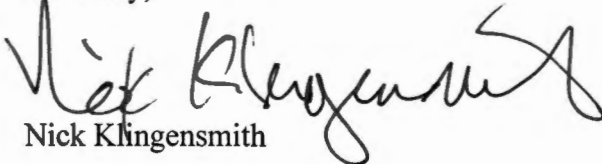
Dear Ms. McCarty,

This protest is submitted on behalf of Knapp Ranches, Inc., the permit holder and beneficial user of water for irrigation authorized by Permit S-53648. Included is a check for \$350 for the protest fee.

The Proposed Final Order in the Matter of the Application for an Extension of Time for Permit S-53648 makes findings that are based on erroneous facts and it should not become final as proposed. The application for extension of time should be granted, based on the additional facts and documentation submitted with the attached Protest to the Proposed Final Order.

If any further information is required for this Protest, please contact me directly.

Sincerely,

  
Nick Klingensmith

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Application for )  
an Extension of Time for Permit S-53648 )  
In the name of )  
Knapp Ranches, Inc. )  
\_\_\_\_\_ )

**PROTEST OF KNAPP  
RANCHES, INC. TO  
PROPOSED FINAL ORDER**

**RECEIVED**

**JAN 09 2015**

**OWRD**

This protest is submitted on Behalf of Knapp Ranches, Inc., the permit holder and beneficial user of water for irrigation authorized by Permit S-53648. The Proposed Final Order makes findings that are based on erroneous facts and it should not become final as proposed. The Extension Application as requested by the permit holder should be granted.

The permit holder and petitioner in this protest is:

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

**Proposed Action and Impact:** The action proposed by the Proposed Final Order (PFO), denial of the extension of time to apply water to beneficial use under Permit S-53648, would prevent the applicant/permit holder Knapp Ranches, Inc. from perfecting the water right and from continuing to use water for beneficial use under the water right. If the PFO becomes final, the permit holder would be deprived of the opportunity to perfect its water right, and would be deprived of the continued use of water authorized by this permit. Denying the extension, and thus the use of water, would significantly impact the permit holder's operations by preventing irrigation and mining use. The loss of this use of water would likely threaten the continued economic viability of the ranch.

**Protestant's interest:** the protestant is the permit holder and the applicant for the extension of time. The permit holder is entirely reliant on continued availability of water for the permitted irrigation and mining uses.

**PFO's Error and Correction Needed:** The PFO's denial of extension was based on an erroneous finding of fact that actual construction work on the water system had not begun prior to December 15, 2000, as required by Permit S-53648. The PFO's erroneous finding was due to a confusing statement in the Application for Extension, which implied that no work on the irrigation system began until the summer of 2001 (Finding of Fact #11). In fact, work on the water system (which was authorized to divert water for both irrigation and mining) began in the summer of 2000. In addition, work on the reservoir, which is an essential component of the water system for Permit S-53648, also occurred



prior to December 15, 2000 and should also be considered as "actual construction work" for the water system.

The Final Order should be issued for Permit S-53648, whereby the Department grants the extension of time to apply water to beneficial use under Permit S-53648 from October 1, 2004 to October 1, 2017.

The Findings of Fact should be corrected to indicate that actual construction work on the water system for Permit S-53648 was begun prior to December 15, 2000 and that the permit holder did comply with the permit condition regarding the beginning of construction (Findings #6, #8, #9, #11 and #13).

Based on the corrected Finding, the Department should correct its Conclusions of Law #3 to state the following: "The applicant did 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)." Conclusion of Law #4 should also be corrected to state that "Complete application of the water to the beneficial use under the terms and condition of Permit S-53648 can be completed by October 1, 2017 as required by OAR 690-315-0040(1)(c)." Conclusion of Law #5 should be corrected to reflect that good cause does exist to grant the requested extension of time.

## **1. FACTS IN SUPPORT of PROTEST**

**Summary:** 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 irrigation of 189.5 acres, and 40 AF for mining uses. The permit holder also received a permit to develop a source of groundwater for irrigation use (Permit G-13782) but it was only partially developed, and that permit was cancelled on August 1, 2014. 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. The water system for irrigation and mining necessarily includes the reservoir works as an integral part of the system.

**History:** In the past there was some unpermitted use of water on the ranch. Aerial photos from 1994 show a point of diversion on a small impoundment, in roughly the same location as the permitted point of diversion that was installed in 2000. (Exhibit A). An Aerial photo from 2000 shows that some improvements on the small earthen dam had already been completed, and that more water was impounded in the reservoir at that time, relative to the 1994 photo. (Exhibit B). 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 legitimize the use historic use of water, and to bring the ranch into full compliance with

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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.

As part of the standard conditions of approval, these permits required actual construction work to have begun by December 15, 2000, and they required complete application of water to the designated beneficial uses on or before October 1, 2004. As explained in more detail below, actual construction work on both the irrigation system and the reservoir was begun by December 15, 2000 (as required by Permit S-53648). Water was also put to the beneficial uses authorized by these permits before October 1, 2004. The permit holder concedes that it did not file a timely claim of beneficial use necessary to perfect these permits, as the permit holder mistakenly believed that it had completed everything that was necessary. These facts are supported by the Declaration of Jeff Knapp, attached hereto as Exhibit C. That Declaration incorporates by reference recent photos that show the current extent and condition of the reservoir and the water system that supplies both the irrigation and mining uses. These photos are compiled as Exhibit D. In addition, the permit holder has copies of cumulative receipts from Coos Curry Supply Co., detailing purchase records and dates of purchase for much of the hardware and supplies used in construction of the water system. These receipts are attached as Exhibit E.

**Recent developments; PFO at issue:** In early 2014, the permit holder realized that it had not, in fact, completed the perfection of its water rights under these two permits. On April 18, 2014, the permit-holder submitted an Extension Application for the permits, in order to complete the claim of beneficial use and perfect the water rights.

The Department issued a Proposed Final Order (PFO) for Permit S-53648 that proposes to deny the request for extension of time. This proposed denial for an extension is based on Conclusions of Law #3, which determined that “The applicant did not comply with begin [*sic*] actual construction timeline requirements... .” The conclusion was premised on Findings of Fact #6 that the “Actual construction of the water system did not begin prior to the December 15, 2000 deadline specified in the permit.” (see also Findings #9 and #11). Finding of Fact #11 also notes a second concern in regard to “Compliance with Conditions” in that “annual reports of the amount of water used each month for irrigation have not been received by the Department annually.”

The proposed denial of the extension rests on two relatively simple factual inaccuracies, and one larger conceptual issue. The two factual inaccuracies are: (1) the PFO’s findings that actual construction of the irrigation system had not begun prior to the permit’s deadline. As discussed in detail below, significant construction on the irrigation system actually had been initiated before that deadline, and; (2) based on the erroneous conclusion that actual construction work for the irrigation system had not begun prior to December 15, 2000, the proposed final order characterized any subsequent irrigation as “illegal use of water” (Findings #11). The PFO then found that where the use of water was illegal, the permit holder had not applied any water to beneficial use. However, because actual construction work on the water system (including the irrigation system)

*had begun* prior to December 15, 2000, the use of water was consistent with the permits and was legal, and water was beneficially used for irrigation and mining purposes prior to October 1, 2004. In other words, the PFO misunderstood the facts when it concluded that the “A-date” had not been met, and the attached evidence shows the “A-date” had actually been met.

On a conceptual level, the PFO’s Findings failed to consider that the reservoir permit and the irrigation permit are expressly interrelated and that the water system for Permit S-43648 necessarily includes the reservoir works. Permit R-12770 included the following purpose statement: “PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-84101 FOR IRRIGATION AND MINING.” The use of impounded water for irrigation and mining could not have begun until the reservoir was completed.

Both permits were issued in January 2000. Permit R-12770 authorized significant improvements to be made to the earth dam, in order to raise the dam’s elevation. This construction needed to be completed before permitted irrigation could occur. However, the proposed order ignores this context, and neglects the practical reality that the reservoir and irrigation system are interrelated components of the “water system.” Because of these facts, “actual construction work” on the reservoir itself should also be considered as construction work on the water system for Permit S-53648, and any work done on the reservoir before December 15, 2000 should be considered as meeting the permit condition that required that actual construction work begin prior to that date.

Regarding the good faith efforts and reasonable diligence of the permit holder, the PFO should take into account the fact that the permit holder diligently worked on constructing the reservoir in 2000, and in that same year it installed a new point of diversion, which consists of a pier that supports an intake pipe. Construction on this essential component of the irrigation system was completed in 2001, by installing new mainline and meters, and connecting the new mainline to preexisting mainline. The permits provided four years to finish development of the authorized works and put the water to beneficial use. The evidence provided below clearly demonstrates that the permit holder began actual construction of both the reservoir and the irrigation/mining works before the first deadline of December 15, 2000, and that it began diverting water and applying it to beneficial use during the following year.

**2. Actual Construction Work on the Irrigation System was Commenced before the December 15, 2000 deadline.**

**The key finding of fact leading to denial of the extension is erroneous.** Finding 6 in the PFO states that:

Actual construction of the water system did not begin prior to the December 15, 2000 deadline specified in the permit. According to the



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application for extension of time the permit holder began construction of the water system in the spring of 2001. The permit holder stated in the application in question 1, "In the spring of 2001, the irrigation system was installed" and then again in question 3 Chart C it states "4/2001 Installed 1000 feet of mainline."

This basic conclusion — that actual construction of the water system had not begun prior to the deadline — is reiterated in Finding 8, Finding 9.a, Finding 11.b, Finding 13, and Conclusion of Law 3. This conclusion appears to be the only reason that the Department is proposing to deny the extension. Unfortunately, the inartful choice of words in the Extension Application (cited above in Finding 6) caused the misconception that there was no work on the irrigation system until the spring of 2001. This conclusion involves a simple misunderstanding of the facts; actual construction of the water system authorized by the interrelated permits actually began in 2000.

The Application for Extension states:

"The reservoir was constructed (improved) beginning in mid-August 2000. A small culvert under the existing service road was replaced with a 36" culvert, and the dip in the road was raised about 3', by shoving pit-run rock down the hill from the adjacent quarry. An area of about 2000 sq feet was deepened for the pump intake, and this material was used to 'coat' the South side of the new rock. A small pier was constructed, extending from near the road to the deepened portion, to anchor the intake pipe. A staff gauge was installed near the pier. In the spring of 2001, the irrigation system was installed. The irrigation system consists of a 60 Hp – 600 gpm Berkeley pump, with a 6" screened intake, and 1000' of mainline heading two directions, 400' East to the quarry, and 600' WNW to the pastures. Just after the mainline tee are 2 gate valves, and 2 totalling flow meters."

The construction of the deep area for the pump intake and the construction of the pier that was designed to anchor the intake pipe constitute actual construction work of essential elements of the irrigation system, and they serve no independent function for the reservoir. In other words, the simple fact that the pump itself wasn't installed, and that mainline wasn't fully laid out until 2001 does not mean that other components of the irrigation system were not being developed before that time.

The term "actual construction," as it is used in the context of applying for an extension of a permit, is defined by 690-315-0020(d) to include:

Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:

(A) "Actual construction" means physical work performed towards

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completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence;

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.

In other words, it requires physical improvements to have been commenced, but it does not include intangible steps. The PFO appears to have placed all of its emphasis on the single line in the extension application that says "In the spring of 2001, the irrigation system was installed." The PFO obviously interpreted that statement to mean that *no construction* had been initiated for the irrigation system. The broad interpretation of that particular statement does not take into account that much of the actual construction work set forth in the Extension Application related directly to the irrigation system was done in 2000 — the deepening of the reservoir for the pump intake; the construction of the small pier to anchor the intake pipe; and the two flow meters on the irrigation mainline was all done in 2000.

The statement in the Extension Application notes that the pump and pipes were not operational in 2000, but that isn't the equivalent of saying that *nothing* had been done to physically develop the irrigation right. In hindsight, it is clear how this statement could have been misconstrued. The following information elaborates on exactly what construction was initiated on the irrigation permit (separate from the reservoir permit) before the end of 2000.

**3. Excavation of a deep point in the reservoir was an essential component of developing the irrigation permit.**

The Extension Application mentions that the reservoir was constructed with a deep point to accommodate an intake pipe. On one hand, this earth-moving could be viewed simply as part of the reservoir construction. But the permit holder had no reason to dig a deep point, aside from developing a point of diversion for the irrigation use. For example, if the permit holder had simply applied to develop a reservoir for wildlife use, and if it had not sought to divert stored water from the reservoir for any other use, the dam would simply have been erected without any extraneous work to deepen a specific point. In this light, the deep point set out in the Extension Application should be viewed as actual construction to develop a component of the irrigation permit, rather than simply as a component of building the reservoir. As stated by the Extension Application, this work was completed in 2000. Therefore, it was error for the PFO to conclude that "actual construction" of the irrigation permit did not commence within the first year's deadline.



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**4. Construction of the pier that now holds the intake pipe was an essential component of developing the irrigation permit.**

The Extension Application mentions that a pier was constructed for the purpose of supporting the intake pipe. This is clearly a component of the irrigation use, separate from simply storing water. The reservoir permit, viewed in isolation, only authorized the storage of water, but this pier for the intake pipe is for the separate use of diverting water for irrigation and mining use. As previously described, the permits issued in 2000 were intended to improve upon a rudimentary, preexisting point of diversion from this small pond, and the new mainline that was part of these improvements was not installed until 2001. But, as stated by the Extension Application, the construction of the pier on the newly-raised dam was completed in 2000. The pier is an essential component of the irrigation system, and it is otherwise extraneous to the reservoir. Therefore, it was error for the PFO to conclude that “actual construction” of the irrigation permit did not commence within the deadline of December 15, 2000.

As explained in part by the Extension Application, and as supported by additional evidence attached to this Protest, including the Declaration of Jeff Knapp and accompanying photos, the permit holder did begin actual construction of both the reservoir and the irrigation system within the initial one-year period.

**5. Construction Work on Reservoir Should be Considered as “Actual Construction Work” for Permit S-53648**

The reservoir is obviously an integral part of the water system that was being developed for irrigation and mining use under Permit S-53648. The Reservoir Permit even says that its purpose is to store water for the uses authorized under Permit S-53648. Even if the permit holder hadn’t started construction of irrigation-specific components, simply developing the reservoir that would provide the source of water for the irrigation and mining uses should be viewed as actual construction necessary for the irrigation and mining uses.

The reservoir for the water system was permitted under Permit R-12770 and was granted an extension of time in the PFO related to that permit, to complete construction of the water system by October 1, 2017 and to apply water to full beneficial use by October 1, 2017 (see PFO for Permit R-12770). Permit R-12770 was granted an extension of time based on the facts set forth in its Extension Application concerning “actual construction work” commencing on the reservoir before the same deadline of December 15, 2000.

Construction of the enlarged dike was commenced in 2000, and was largely completed during that same year. Exhibit B is an aerial from July 2000, which shows an area of recent, un-vegetated fill on the down-stream side of the dike. In addition to the irrigation-specific developments (deep spot and pier for intake pipe) discussed above, extensive work was done on other aspects of the water system. As demonstrated by

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Chart C of the Extension Application for Permit R-12770, in August of 2000, the small culvert that had been under the road in that location was replaced with a 36" culvert. In September of 2000, the dam was enlarged, and the existing road was raised in elevation, by filling the low point with several hundred yards of gravel from the adjacent gravel pit. In September of 2000, a staff gauge was mounted to the intake pier. The reservoir was largely completed during the dry season of 2000, and its newly-added capacity began to fill with fall runoff later in that same year.

The development of the reservoir and the irrigation and mining use are explicitly interrelated. The use of impounded water for irrigation and mining could not have begun until the reservoir was completed. Both permits were issued in January 2000, with a deadline to begin construction of the "water system" by December 15, 2000. The permit to impound water and the permit to divert the impounded water for use cannot be viewed in isolation of each other. The PFO, however, ignored the interrelated nature of the components of the water system and focused solely on the irrigation system.

Because of these facts and the clear relationship of the water system, "actual construction work" on the reservoir itself should also be considered as construction work on the water system for Permit S-53648. Actual construction work done on the reservoir before December 15, 2000, should also be considered as meeting the permit condition of Permit S-53648 that required actual construction work begin prior to that date.

The work on the reservoir was part of the water system and shows the good faith efforts and reasonable diligence of the permit holder to develop the water system.

## **6. Water Was Put to Designated Beneficial Uses before October 1, 2004**

This issue starts to crowd the territory of a claim of beneficial use (which the permit holder plans to file, should the Extension Application be granted), but it should be noted that the available evidence shows that water was put to the designated beneficial uses before October 1, 2004. In particular, all of the acreage that was authorized to be irrigated by Permit S-53648 was irrigated in 2001 and subsequent years, with the exception of 27.5 acres of pasture on a high bluff, which proved to be impractical to reach with mainline. The total acres irrigated by the permitted water thus totals 162 acres.

In addition, the Permit authorized use of 40 acre feet of water per year for mining use. The permit holder has been informed that the company that held the contract to perform mining activities on the Knapp Ranch has been in compliance with its obligations to submit water use records to the Department. Those reports should show that water use at the gravel pit has been variable from year to year, as it is customary for a gravel operator to produce a large amount of rock at one time, and to keep a "stockpile," rather than to produce small amounts at frequent intervals. The economic recession following 2008 reduced the demand for gravel and rock products, and this affected production at the



Knapp Ranch gravel pit as well, but the permit holder expects demand will pick up and that its mining use will rebound as well. The photos associated with the Declaration of Jeff Knapp show that the mining use has been fully developed in addition to the irrigation use.

Finding paragraph 10(a) of the PFO concludes the permit holder has not applied any water to beneficial use. This finding is based on the conclusion that actual construction work on the irrigation permit had not occurred before the first year's deadline of December 15, 2000. For the reasons explained above, that threshold conclusion is wrong, and it no longer supports the subsequent finding that any use of irrigation water was illegal and did not constitute beneficial use. As the supporting evidence shows, the irrigation system was largely completed within the first irrigation season that followed completion of the reservoir, and water has been applied to the entire designated place of use depicted in the map accompanying application S-84101, with the exception of roughly 27.5 acres on an upper bench that proved to be economically out of reach.

In addition, the Extension Application described 1000' feet of mainline. It said:

"The irrigation system consists of a 60 Hp – 600 gpm Berkeley pump, with a 6" screened intake, and 1000' of mainline heading two directions, 400' East to the quarry, and 600' WNW to the pastures. Just after the mainline tee are 2 gate valves, and 2 totalling flow meters."

In hindsight, the permit holder now recognizes this statement appears intended to measure the total amount of mainline connected to the reservoir point of diversion, but it does not. There currently is actually approximately 5000 feet of mainline associated with the irrigation use, as pictured in the photos associated with the Declaration from Jeff Knapp, attached hereto. In light of the fact that Permit S-53648 authorizes diversion of water from the reservoir for both an irrigation use and a mining use, and in light of the condition of approval that required each use to have its own totaling flow meter, the statement in the Extension Application was more focused on demonstrating compliance with this dual-metering condition. It was not intended to provide a description of the entire distribution system for irrigation water across the whole ranch.

#### **7. Construction of the Authorized Works was Pursued in Good Faith and with Reasonable Diligence.**

The permit holder substantially complied with all terms and conditions of permit S-53648. Condition A1 required totalizing flow meters: they were installed in April of 2001. Condition B1 required the meters to be accessible: that was accomplished in April of 2001. Condition B2 required the pump intake to be screened: it has been screened since it was installed in April of 2001. The permit holder then began using water as allowed by the permit, for both irrigation and mining.

The main requirement the permit holder has not complied with is the timeline for perfecting the permit by filing a claim of beneficial use; that was the purpose of the Extension Application. Besides the confusion as to whether actual construction work authorized by Permit S-53648 had commenced by December 15, 2000, there is no valid reason to deny the request for more time. Most fundamentally, in light of the fact that the reservoir needed to be completed before water could be appropriated from it, basic principles of fairness support granting the extension, as opposed to the draconian conclusion that actual construction had not commenced within the first year's timeline. Even if the Department maintains the binary position that construction activity on the reservoir should be viewed entirely separate from actual construction work on the irrigation system, the Department should still find actual construction work on the irrigation system was begun prior to December 15, 2000, based on the facts cited above.

That the permit holder has acted in good faith and with reasonable diligence is clear when one examines all the facts cited in this Protest. The application for an extension should be granted.

**8. Granting the extension of time would cause no injury and would be consistent with the public interest.**

As explained above, the irrigation and mining uses authorized by permit S-53648 were developed within the prescribed timelines, and water has been applied to beneficial use accordingly. Denying the Extension Application now would serve no purpose other than to injure the permit holder. The permit holder's ranch ends at the beach, and the unnamed tributary that provides the source of water has its confluence with the Elk River in the estuary. Hence, there are no downstream appropriators whose position would improve if the Extension Application is denied. However, the permit holder would face the substantial economic hardship if it had to cease irrigating while it pursues alternative sources of water. No public interest can be served by cancelling a permit that has been developed and used in substantial compliance with its terms and conditions. The permit holder merely asks for more time to continue doing what it has been doing, which is applying water to the uses designated by Permit S-53648, and to submit a claim of beneficial use.

**9. Additional standards governing extensions support granting one in this instance.**

In addition to the factual and legal analysis provided above, OAR 690-315-0040 provides all of standards that govern Extension Applications. Each of these standards is briefly addressed as follows:

**“OAR 690-315-0040**

**“Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits**



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**“(1) In order to approve an application for an extension of time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department shall find:**

**“(a) The applicant has submitted a completed application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;”**

In the PFO, the department found the extension application was complete. The applicant has provided additional information and clarification as part of this protest.

**“(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;”**

This standard has been the main focus of the preceding protest letter. The PFO found that actual construction of the works authorized by Permit S-53648 had not commenced prior to the deadline of January 15, 2000. However, as described above, that factual conclusion was in error, actual construction had commenced in the summer of 2000, and this basis for proposing to deny the extension should be corrected.

**“(c) The applicant can complete the project within the time period requested for the extension; and”**

As described above, the works authorized by both Permit R-12770 and S-53648 have largely been constructed and the water has been applied to the designated beneficial uses. There remains some minor work to complete, such as reporting on water use records, but the main uncompleted task is filing the claim of beneficial use. Because the permits have been substantially developed and put to use, the time requested should be ample to allow completion of the remaining tasks.

**“(d) There is good cause to approve the extension.”**

As described above, the permit holder has substantially complied with all major requirements of the Permits, and has been applying water to the designated beneficial uses within the prescribed timelines. The permit holder concedes that it did not timely file a claim of beneficial use following the “C-date,” but it is otherwise in substantial compliance with the permits.

**“(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:**

**“(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;”**

As described above, the permits gave the permit holder a deadline of October 1, 2004 by which it was required to complete application of the water to the designated beneficial use, and in this case, the permit holder completed the works authorized by the permits and began putting water to the designated irrigation and mining works by the middle of 2001. In light of the fact that the permits required significant earthmoving and construction of an expensive system of pumps, valves, meters and mainlines, the timely accomplishment of this work is no small accomplishment. Exhibit E contains records of supplies purchased in 2000 and 2001 that were necessary for construction of the irrigation and mining works. Although OAR 690-315-0020(d)(B) provides that purchasing but not installing equipment does not count as “actual construction,” this expense is surely relevant to matters of due diligence and good faith.

**“(b) The cost to appropriate and apply the water to a beneficial purpose;”**

The cost to develop the reservoir and irrigation and mining uses authorized by these permits has been substantial, but the permit holder bore this financial obligation successfully, and was able to completely develop the authorized uses of water, with the small exception of a remote field on an upper bench that was economically infeasible to reach with mainline.

**“(c) The good faith of the appropriator;”**

The permit holder’s good faith is self-evident. The permit holder conceded to a historical practice of unpermitted use of water on the ranch, and has explained that its main reason in seeking the permits at issue here were to bring the ranch’s water uses into compliance with relevant regulations. This effort was undertaken with diligence and was completed in a timely manner, absent the failure to timely file for the claim of beneficial use. Exhibit E contains records of supplies purchased in 2000 and 2001 that were necessary for construction of the irrigation and mining works. As explained above, even though OAR 690-315-0020(d)(B) provides that purchasing but not installing equipment does not count as “actual construction,” this expense amounts to a demonstration of due diligence and good faith by the permit holder.

**“(d) The market for water or power to be supplied;”**

This standard isn’t directly applicable to the current situation, aside from the obvious fact that the ranch depends on its irrigation and mining water to be able to be an effective and economical producer of hay, cattle, and aggregate products.

**“(e) The present demands for water or power to be supplied;”**



As described above, the permit holder is the owner of water, and there are no downstream appropriators before the "unnamed tributary of the Elk River" hits the estuary, thus there are no competing claims to use this water. The permit holder is sensitive to the fact that the water contributes to the overall environmental health of the lowest reaches of the Elk River, and, given the fact that the vast majority of the water used under Permit S-53648 returns to the "unnamed tributary" as return flow, the continued use of the water pursuant to this permit is meeting the demands for water in every sense of the term.

**"(f) The income or use that may be required to provide fair and reasonable returns on investment;**

**"(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;"**

These standards are not directly applicable to the current extension application, aside from the fact that the permit holder would be deprived of its most significant income stream if it could no longer irrigate its hay crop or its cattle pastures, and that it has invested a significant sum in the development of the reservoir and irrigation and mining systems on which it now depends.

**"(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;"**

The use of water has been almost completely developed, consistent with the permits. The obvious missing link is the failure to timely file a claim of beneficial use. Of course, the permit holder concedes it had control and responsibility for this, but this final requirement before the use of water could be perfected was neglected.

**"(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and**

**"(j) Any other factors relevant to a determination of good cause."**

Undue hardship would result if this extension is not granted. The permit holder invested significant resources into obtaining these permits and developing the beneficial use of water consistent with these permits. The permit holder has come to rely on the use of this water for both its farming and aggregate mining operations. The loss of this use of water would be a catastrophe for a ranch that is already in an exceptionally lean financial condition. The hardship of losing this use of water would be particularly undue in light of the fact that the permit holder has pursued the development and use of these permits with obvious due diligence and good faith.

**"(3) In determining reasonable diligence in subsection (2)(a), the Department shall consider, but is not limited to, the following factors:**

**“(a) The amount of construction completed within the time allowed in the permit or previous extension;**

**“(b) The amount of beneficial use made of the water during the permit or previous extension time limits;**

**“(c) Water right permit holder conformance with the permit or previous extension conditions; and**

**“(d) Financial investments made toward developing the beneficial water use.”**

As described above, the permit holder started actual construction within the first deadline of December 15, 2000, and it substantially completed *all of the required construction* before the second irrigating season has passed. The water diverted from the reservoir has only been applied to the designated beneficial uses of irrigation and mining. The permit holder has complied with the majority of the permit conditions, including the screening of the pump, the installation of meters on the mainline and the installation of a staff gauge on the reservoir. The permit holder understands that its recordkeeping and water use reporting obligations are not in perfect array, and it requests this extension in part to allow it the time to track down previous years' records that may have been misplaced. Finally, as described above, the permit holder has invested considerable financial resources into development of the works authorized by these permits, including a large pump, meters, valves and mainline.

**“(4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:**

**“[subsections (a) through (f) omitted]”**

The applicant has addressed the present demand for water or power above, but does not believe that this standard is directly applicable to this Extension Application, or that it played a direct role in the findings of the PFO that is the subject of this protest.

**“(5) If the extension is requested pursuant to ORS 537.230 or 537.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended and the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410.”**

As described above, the applicant began actual construction of both the reservoir and the irrigation and mining uses, authorized by Permits R-12770 and S-53648 before the



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deadline of December 15, 2000, established by condition of the Permits, and the permit holder also substantially completed development of the authorized works before October 1, 2004, established by the permits. Compliance with this schedule for beginning and completed construction is consistent with (and is, in fact, quicker than) the schedule established by ORS 537.230.

**“(6) The Department may request additional information necessary to evaluate an application.”**

The Department has not requested additional information of the permit holder, but the permit holder would happily provide the Department with any additional information that may be helpful. The permit holder has endeavored to provide additional information in this instance to help clear up the confusion that led to the incorrect findings in the PFO.

**10. Granting the extension would be consistent with the Attorney General’s opinion and with internal Department Guidance.**

In 2002 the Oregon Department of Justice provided a memo to the Department of Water Resources instructing the Department on how to handle Extension Applications that had complications, such as imperfect compliance with conditions. That memo is attached as Exhibit F. In very rough summary, the memo concludes that compliance with all conditions is required before the department may process a claim for beneficial use and award a certificate to an appropriator, *but* strict compliance with all conditions is not necessarily required when a permit holder is seeking an extension. In fact, the memo concludes that issuing an extension that requires compliance with conditions is the best way to bring the permit holder into compliance. Page 7 of this memo provides the following direction:

“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.”

This memo continues on page 9:

- “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.”

The Extension Application at issue in this protest fits squarely within this guidance – it is a situation where the permit holder has not met the required schedule for filing a claim of beneficial use, and providing reports of water use for the irrigation component of the Permit S-53648, but despite that “unfinished business,” the permit holder is basically in compliance with the permits and just needs more time to complete the final required steps.

This outcome is reflected in more detail in an internal Department guidance memo, attached here. On page 2, the Internal Guidance memo provides:

“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. [sic] In this manner, the public interest purposes that the condition was intended to address has been achieved with an equivalent result.”

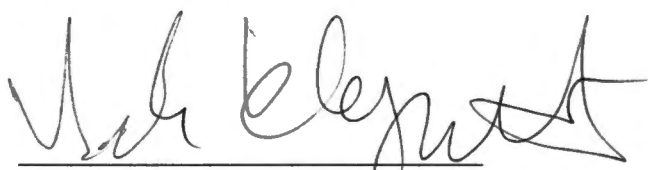
In the present situation, the permit holder believes that it will be able to track down many, if not all, of the records associated with previous year's water use. The meters were installed in 2001 and records were kept – the main challenge is simply finding them. This is exactly the type of situation that the Department of Justice memo and the Department of Water Resources' own internal guidance memo have contemplated and have concluded that an extension is the appropriate tool to cure any defects and ensure compliance. If it hadn't been for the mistaken factual conclusion in the PFO that actual construction hadn't begun on time, this Extension Application would have been (and still should be) an ideal candidate for an extension.

## 11. Conclusion

For the reasons stated above, the PFO is in error and should be corrected by including a finding that actual construction under Permit S-53648 did begin within the required deadline. In addition, the permit holder has provided explanations demonstrating that it has been acting in good faith, with reasonable due diligence, and that granting the extension of time would cause no injury and would be consistent with the public interest. The permit holder has demonstrated good cause for extending the permit. Accordingly, the requested extension should be granted. The permit holder has cited the applicable legal authorities above, and has included the required protest fee. The permit holder believes the simple factual inaccuracy that led to the erroneous finding can be corrected without a need for a contested case hearing. If a contested case hearing is requested by other parties, the permit holder reserves the right to participate therein.

Dated: January 8, 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: Aerial photo from 1994
- Exhibit B: Aerial photo from 2000
- Exhibit C: Declaration of Jeff Knapp
- Exhibit D: Photos of current reservoir, irrigation system and mining system
- Exhibit E: Receipt summaries for purchase of irrigation and mining supplies
- Exhibit F: Attorney General's memo advising WRD on extensions
- Exhibit G: WRD internal guidance memo on using extensions to ensure compliance with permit conditions



Exhibit A

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Image U.S. Geological Survey

Google earth

Tour Guide

1994

Imagery Date: 5/26/1994 42°47'02.13" N 124°30'46.80" W elev 15 ft eye alt 1422 ft





Exhibit B

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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

## BEFORE THE OREGON WATER RESOURCES DEPARTMENT

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1 In Re Proposed Final Order to Deny )  
 2 an application for extension of time )  
 3 for Permit S-53648 )

**DECLARATION OF**  
**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.



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- 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.

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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.

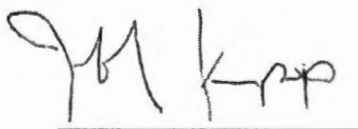
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9  
10 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
11 knowledge.

12  
13 Dated 1-6-15 .



14 Jeff Knapp  
15  
16





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# Coos Curry Supply Inc.

1009 Hwy. 101  
Port Orford, Ore. 97465  
Phone (541)332-1818  
Fax (541)332-3930  
[cooscurrys supply@gmail.com](mailto:cooscurrys supply@gmail.com)

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Re: Knapp Ranch purchased Aug. 2000

## Receipt copies

80 ft 8" cl 125 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.

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Phone (541)332-1818  
Fax (541)332-3930  
[cooscurrys supply@gmail.com](mailto:cooscurrys supply@gmail.com)

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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.

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Port Orford , Ore. 97465  
Phone (541)332-1818  
Fax (541)332-3930  
[cooscurrys supply@gmail.com](mailto:cooscurrys supply@gmail.com)

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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





DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

February 7, 2002

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Dwight French  
Water Rights Manager  
Water Resources Department  
158 12<sup>th</sup> 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.<sup>1</sup> 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

<sup>1</sup> 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.

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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.<sup>2</sup> 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).<sup>3</sup> 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

---

<sup>2</sup> 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.

<sup>3</sup> 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).<sup>4</sup> 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.

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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

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<sup>4</sup> 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.

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*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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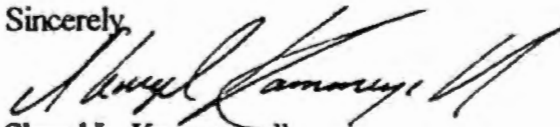
MAR 27 2002

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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

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## INTERNAL GUIDANCE

Non-Compliance of Time Sensitive Permit Conditions when reviewing Claims of Beneficial Use and Extensions of Time<sup>1</sup>

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.<sup>2</sup>

**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 subject<sup>3</sup>, 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.

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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.
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):**

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### **A. Dealing with an inadequate report.**

When, during the review of a CBU, it is determined that information relating to a performance<sup>4</sup> condition is missing the Department shall RETURN THE CBU with a letter that requests the CWRE to report on the subject condition<sup>5</sup>. 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.

<b>If the claim was submitted:</b>	<b>Return the CBU to:</b>
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.

<sup>4</sup> 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."

More than two years ago	confirm the ownership of the permitted lands first and then follow directions for “between one and two years” above.
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**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:

- 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.

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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”?<sup>6</sup>

**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

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<sup>6</sup> 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.<sup>7</sup>

If a meter was installed prior to beneficial use but is not functioning, 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.

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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

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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.

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 use<sup>8</sup> occurred before the C date (and after the installation of the screen).

4. **REFERENCE SWL MEASUREMENT<sup>9</sup>:** 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

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<sup>8</sup> "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.

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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.

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).

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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.

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# STATE OF OREGON WATER RESOURCES DEPARTMENT

RECEIPT #

114511

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

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

INVOICE #

RECEIVED FROM:

Knap Ranches Inc.

APPLICATION

S-84101

BY:

PERMIT

TRANSFER

CASH:

CHECK:#

OTHER: (IDENTIFY)

☐

☒ 1339

☐

TOTAL REC'D

\$ 350.00

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

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY)

\$

TC162 DEPOSIT LIAB. (IDENTIFY)

\$

0240 EXTENSION OF TIME

\$

WATER RIGHTS:

0201 SURFACE WATER

EXAM FEE

\$

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

EXAM FEE

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

0223 OTHER

(IDENTIFY)

Protest Fees

\$350.00

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:

114511

DATED:

01/09/15

BY:

**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

January 8, 2015

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**OWRD**

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

Re: Permit S-53648  
Elk River Property Development, LLC's protest to Proposed Final Order that  
would deny an extension of time for Permit S-53648

Dear Ms. McCarty,

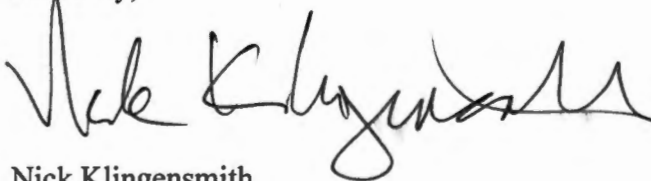
This protest is submitted on behalf of Elk River Property Development, LLC, hereinafter referred to as ERPD. Included is a check for \$700 for the protest fee.

ERPDP is a lessee of a portion of the Knapp Ranch near Port Orford. The designated places of use for irrigation and mining authorized by Permit S-53648 are located on the Knapp Ranch, nearby the portion of the ranch that ERPD has leased.

The Proposed Final Order in the Matter of the Application for an Extension of Time for Permit S-53648 makes findings that are based on erroneous facts and it should not become final as proposed. The application for extension of time should be granted, based on the additional facts and documentation submitted with the attached Protest to the Proposed Final Order.

If any further information is required for this Protest, please contact me directly.

Sincerely,



Nick Klingensmith



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BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Application for	)	
an Extension of Time for Permit S-53648	)	<b>PROTEST OF ELK RIVER</b>
	)	<b>PROPERTY DEVELOPMENT, LLC</b>
In the name of	)	<b>TO PROPOSED FINAL ORDER</b>
Knapp Ranches, Inc.	)	
_____	)	

This protest is submitted on Behalf of Elk River Property Development, LLC, hereinafter referred to as ERPD. The permit holder, Knapp Ranches, Inc., filed a request for extension of time to file a claim of beneficial use under Permit S-53648. The Proposed Final Order would deny that request. The PFO makes findings that are based on erroneous facts, and those erroneous facts lead to a faulty legal conclusion. The PFO should not become final as proposed. The Extension Application as requested by the permit holder should be granted.

The protestant in this protest is:

Elk River Property Development, LLC  
Attn: Jim Haley  
PO Box 790  
Port Orford, OR 97465  
(541) 297-1078

**Proposed Action and Impact:** The action proposed by the Proposed Final Order (PFO), denial of the extension of time to apply water to beneficial use under Permit S-53648, would prevent the applicant/permit holder Knapp Ranches, Inc. from perfecting the water right and from continuing to use water for beneficial use under the water right. If the PFO becomes final, the permit holder would be deprived of the opportunity to perfect its water right, and would be deprived of the continued use of water authorized by this permit. Denying the extension, and thus the use of water, would significantly impact the permit holder's operations by preventing irrigation and mining use. The loss of this use of water would likely threaten the continued economic viability of the ranch.

**Protestant's interest:** ERPD is a lessee of a portion of Knapp Ranch. ERPD has secured land use approval from Curry County to develop a golf course on this leased property. ERPD's development plans rely on the Knapp Ranch remaining a viable ranching and farming enterprise. If the PFO is not corrected, and if the ranch became unable to grow hay, irrigate pastures, or conduct its aggregate mining operations, its continued existence would be put in jeopardy. If the ranch goes out of business, ERPD's development plans would be threatened.



In addition to EPRD's crucial need for its lessor to remain a stable and viable operation, EPRD also hopes, at some point in the future, to transfer a portion of the water allowed for under the irrigation or mining uses authorized by permit S-53648. Before that transfer could happen, the permit holder would need to perfect its rights by filing a claim of beneficial use. The requested extension of time at issue here would to allow the permit holder to complete this process, which could potentially make a portion of its rights available to the golf course. If the requested extension is not granted, EPRD's interests will be injured, as it would diminish the supply of marketable water rights in the Elk River Basin, and would likely require EPRD to procure water from less convenient or more expensive sources.

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**PFO's Error and Correction Needed:** The PFO's denial of extension was based on an erroneous finding of fact that actual construction work on the water system had not begun prior to December 15, 2000, as required by Permit S-53648. The PFO's erroneous finding was due to a confusing statement in the Application for Extension, which implied that no work on the irrigation system began until the summer of 2001 (Finding of Fact #11). In fact, work on the water system (which was authorized to divert water for both irrigation and mining) began in the summer of 2000. In addition, work on the reservoir, which is an essential component of the water system for Permit S-53648, also occurred prior to December 15, 2000 and should also be considered as "actual construction work" for the water system.

The Final Order should be issued for Permit S-53648, whereby the Department grants the extension of time to apply water to beneficial use under Permit S-53648 from October 1, 2004 to October 1, 2017.

The Findings of Fact should be corrected to indicate that actual construction work on the water system for Permit S-53648 was begun prior to December 15, 2000 and that the permit holder did comply with the permit condition regarding the beginning of construction (Findings #6, #8, #9, #11 and #13).

Based on the corrected Finding, the Department should correct its Conclusions of Law #3 to state the following: "The applicant did 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)." Conclusion of Law #4 should also be corrected to state that "Complete application of the water to the beneficial use under the terms and condition of Permit S-53648 can be completed by October 1, 2017 as required by OAR 690-315-0040(1)(c)." Conclusion of Law #5 should be corrected to reflect that good cause does exist to grant the requested extension of time.

## **1. FACTS IN SUPPORT of PROTEST**

**Summary:** 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

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In addition to EPRD's crucial need for its lessor to remain a stable and viable operation, EPRD also hopes, at some point in the future, to transfer a portion of the water allowed for under the irrigation or mining uses authorized by permit S-53648. Before that transfer could happen, the permit holder would need to perfect its rights by filing a claim of beneficial use. The requested extension of time at issue here would allow the permit holder to complete this process, which could potentially make a portion of its rights available to the golf course. If the requested extension is not granted, EPRD's interests will be injured, as it would diminish the supply of marketable water rights in the Elk River Basin, and would likely require EPRD to procure water from less convenient or more expensive sources.

**PFO's Error and Correction Needed:** The PFO's denial of extension was based on an erroneous finding of fact that actual construction work on the water system had not begun prior to December 15, 2000, as required by Permit S-53648. The PFO's erroneous finding was due to a confusing statement in the Application for Extension, which implied that no work on the irrigation system began until the summer of 2001 (Finding of Fact #11). In fact, work on the water system (which was authorized to divert water for both irrigation and mining) began in the summer of 2000. In addition, work on the reservoir, which is an essential component of the water system for Permit S-53648, also occurred prior to December 15, 2000 and should also be considered as "actual construction work" for the water system.

The Final Order should be issued for Permit S-53648, whereby the Department grants the extension of time to apply water to beneficial use under Permit S-53648 from October 1, 2004 to October 1, 2017.

The Findings of Fact should be corrected to indicate that actual construction work on the water system for Permit S-53648 was begun prior to December 15, 2000 and that the permit holder did comply with the permit condition regarding the beginning of construction (Findings #6, #8, #9, #11 and #13).

Based on the corrected Finding, the Department should correct its Conclusions of Law #3 to state the following: "The applicant did comply 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)." Conclusion of Law #4 should also be corrected to state that "Complete application of the water to the beneficial use under the terms and condition of Permit S-53648 can be completed by October 1, 2017 as required by OAR 690-315-0040(1)(c)." Conclusion of Law #5 should be corrected to reflect that good cause does exist to grant the requested extension of time.

## **1. FACTS IN SUPPORT of PROTEST**

**Summary:** 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 irrigation of 189.5 acres, and 40 AF for mining uses. The permit holder also received a permit to develop a source of groundwater for irrigation use (Permit G-13782) but it was only partially developed, and that permit was cancelled on August 1, 2014. 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. The water system for irrigation and mining necessarily includes the reservoir works as an integral part of the system.

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**History:** ERPD understands that in the past there was some unpermitted use of water on the ranch. Aerial photos from 1994 show a point of diversion on a small impoundment, in roughly the same location as the permitted point of diversion that was installed in 2000. (Exhibit A). An aerial photo from 2000 shows that some improvements on the small earthen dam had already been completed, and that more water was impounded in the reservoir at that time, relative to the 1994 photo. (Exhibit B). ERPD further understands that 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 legitimize the use historic use of water, and to 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.

As part of the standard conditions of approval, these permits required actual construction work to have begun by December 15, 2000, and they required complete application of water to the designated beneficial uses on or before October 1, 2004. As explained in more detail below, actual construction work on both the irrigation system and the reservoir was begun by December 15, 2000 (as required by Permit S-53648). Water was also put to the beneficial uses authorized by these permits before October 1, 2004. The permit holder did not file a timely claim of beneficial use necessary to perfect these permits, as the permit holder mistakenly believed that it had completed everything that was necessary. These facts are supported by the evidence submitted along with the Protest of Knapp Ranches, Inc., including the Declaration of Jeff Knapp. That Declaration incorporates by reference recent photos that show the current extent and condition of the reservoir and the water system that supplies both the irrigation and mining uses.

**Recent developments; PFO at issue:** In early 2014, the permit holder realized that it had not, in fact, completed the perfection of its water rights under these two permits. On April 18, 2014, the permit-holder submitted an Extension Application for the permits, in order to complete the claim of beneficial use and perfect the water rights.

The Department issued a Proposed Final Order (PFO) for Permit S-53648 that proposes to deny the request for extension of time. This proposed denial for an extension is based on Conclusions of Law #3, which determined that "The applicant did not comply with begin [*sic*] actual construction timeline requirements..." The conclusion was premised



on Findings of Fact #6 that the "Actual construction of the water system did not begin prior to the December 15, 2000 deadline specified in the permit." (see also Findings #9 and #11). Finding of Fact #11 also notes a second concern in regard to "Compliance with Conditions" in that "annual reports of the amount of water used each month for irrigation have not been received by the Department annually."

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The proposed denial of the extension rests on two relatively simple factual inaccuracies, and one larger conceptual issue. The two factual inaccuracies are: (1) the PFO's findings that actual construction of the irrigation system had not begun prior to the permit's deadline. As discussed in detail below, significant construction on the irrigation system actually had been initiated before that deadline, and; (2) based on the erroneous conclusion that actual construction work for the irrigation system had not begun prior to December 15, 2000, the proposed final order characterized any subsequent irrigation as "illegal use of water" (Findings #11). The PFO then found that where the use of water was illegal, the permit holder had not applied any water to beneficial use. However, because actual construction work on the water system (including the irrigation system) *had begun* prior to December 15, 2000, the use of water was consistent with the permits and was legal, and water was beneficially used for irrigation and mining purposes prior to October 1, 2004. In other words, the PFO misunderstood the facts when it concluded that the "A-date" had not been met, and the attached evidence shows the "A-date" had actually been met.

On a conceptual level, the PFO's Findings failed to consider that the reservoir permit and the irrigation permit are expressly interrelated and that the water system for Permit S-43648 necessarily includes the reservoir works. Permit R-12770 included the following purpose statement: "PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-84101 FOR IRRIGATION AND MINING." The use of impounded water for irrigation and mining could not have begun until the reservoir was completed.

Both permits were issued in January 2000. Permit R-12770 authorized significant improvements to be made to the earth dam, in order to raise the dam's elevation. This construction needed to be completed before permitted irrigation could occur. However, the proposed order ignores this context, and neglects the practical reality that the reservoir and irrigation system are interrelated components of the "water system." Because of these facts, "actual construction work" on the reservoir itself should also be considered as construction work on the water system for Permit S-53648, and any work done on the reservoir before December 15, 2000 should be considered as meeting the permit condition that required that actual construction work begin prior to that date.

Regarding the good faith efforts and reasonable diligence of the permit holder, the PFO should take into account the fact that the permit holder diligently worked on constructing the reservoir in 2000, and in that same year it installed a new point of diversion, which consists of a pier that supports an intake pipe. Construction on this essential component of the irrigation system was completed in 2001, by installing new mainline and meters,

and connecting the new mainline to preexisting mainline. The permits provided four years to finish development of the authorized works and put the water to beneficial use. The evidence provided below clearly demonstrates that the permit holder began actual construction of both the reservoir and the irrigation/mining works before the first deadline of December 15, 2000, and that it began diverting water and applying it to beneficial use during the following year.

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**2. Actual Construction Work on the Irrigation System was Commenced before the December 15, 2000 deadline.**

**The key finding of fact leading to denial of the extension is erroneous.** Finding 6 in the PFO states that:

Actual construction of the water system did not begin prior to the December 15, 2000 deadline specified in the permit. According to the application for extension of time the permit holder began construction of the water system in the spring of 2001. The permit holder stated in the application in question 1, "In the spring of 2001, the irrigation system was installed" and then again in question 3 Chart C it states "4/2001 Installed 1000 feet of mainline."

This basic conclusion — that actual construction of the water system had not begun prior to the deadline — is reiterated in Finding 8, Finding 9.a, Finding 11.b, Finding 13, and Conclusion of Law 3. This conclusion appears to be the only reason that the Department is proposing to deny the extension. Unfortunately, the inartful choice of words in the Extension Application (cited above in Finding 6) caused the misconception that there was no work on the irrigation system until the spring of 2001. This conclusion involves a simple misunderstanding of the facts; actual construction of the water system authorized by the interrelated permits actually began in 2000.

The Application for Extension states:

"The reservoir was constructed (improved) beginning in mid-August 2000. A small culvert under the existing service road was replaced with a 36" culvert, and the dip in the road was raised about 3', by shoving pit-run rock down the hill from the adjacent quarry. An area of about 2000 sq feet was deepened for the pump intake, and this material was used to 'coat' the South side of the new rock. A small pier was constructed, extending from near the road to the deepened portion, to anchor the intake pipe. A staff gauge was installed near the pier. In the spring of 2001, the irrigation system was installed. The irrigation system consists of a 60 Hp – 600 gpm Berkeley pump, with a 6" screened intake, and 1000' of mainline heading two directions, 400' East to the quarry, and 600' WNW



to the pastures. Just after the mainline tee are 2 gate valves, and 2 totalling flow meters.”

The construction of the deep area for the pump intake and the construction of the pier that was designed to anchor the intake pipe constitute actual construction work of essential elements of the irrigation system, and they serve no independent function for the reservoir. In other words, the simple fact that the pump itself wasn't installed, and that new mainline wasn't fully laid out until 2001 does not mean that other components of the irrigation system were not being developed before that time.

The term “actual construction,” as it is used in the context of applying for an extension of a permit, is defined by 690-315-0020(d) to include:

Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:

(A) "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence;

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.

In other words, it requires physical improvements to have been commenced, but it does not include intangible steps. The PFO appears to have placed all of its emphasis on the single line in the extension application that says “In the spring of 2001, the irrigation system was installed.” The PFO obviously interpreted that statement to mean that prior to spring of 2001, *no construction* had been initiated for other essential parts of the irrigation system and mining system. The broad interpretation of that particular statement does not take into account that much of the actual construction work set forth in the Extension Application related directly to the irrigation and mining systems was done in 2000 — the deepening of the reservoir for the pump intake and the construction of the small pier to anchor the intake pipe.

The statement in the Extension Application notes that the pump and pipes were not operational in 2000, but that isn't the equivalent of saying that *nothing* had been done to physically develop the irrigation right. In hindsight, it is clear how this statement could have been misconstrued. The following information elaborates on exactly what construction was initiated on the irrigation permit (separate from the reservoir permit) before the end of 2000.



**3. Excavation of a deep point in the reservoir was an essential component of developing the irrigation permit.**

The Extension Application mentions that the reservoir was constructed with a deep point to accommodate an intake pipe. On one hand, this earth-moving could be viewed simply as part of the reservoir construction. But the permit holder had no reason to dig a deep point, aside from developing a point of diversion for the irrigation use. For example, if the permit holder had simply applied to develop a reservoir for wildlife use, and if it had not sought to divert stored water from the reservoir for any other use, the dam would simply have been erected without any extraneous work to deepen a specific point. In this light, the deep point set out in the Extension Application should be viewed as actual construction to develop a component of the irrigation permit, rather than simply as a component of building the reservoir. As stated by the Extension Application, this work was completed in 2000. Therefore, it was error for the PFO to conclude that “actual construction” of the irrigation permit did not commence within the first year’s deadline.

**4. Construction of the pier that now holds the intake pipe was an essential component of developing the irrigation permit.**

The Extension Application mentions that a pier was constructed for the purpose of supporting the intake pipe. This is clearly a component of the irrigation use, separate from simply storing water. The reservoir permit, viewed in isolation, only authorized the storage of water, but this pier for the intake pipe is for the separate use of diverting water for irrigation and mining use. As previously described, the permits issued in 2000 were intended to improve upon a rudimentary, preexisting point of diversion from this small pond, and the new mainline that was part of these improvements was not installed until 2001. But, as stated by the Extension Application, the construction of the pier on the newly-raised dam was completed in 2000. The pier is an essential component of the irrigation system, and it is otherwise extraneous to the reservoir. Therefore, it was error for the PFO to conclude that “actual construction” of the irrigation permit did not commence within the deadline of December 15, 2000.

As explained in part by the Extension Application, and as supported by additional evidence attached to this Protest, including the Declaration of Jeff Knapp and accompanying photos, the permit holder did begin actual construction of both the reservoir and the irrigation system within the initial one-year period.

**5. Construction Work on Reservoir Should be Considered as “Actual Construction Work” for Permit S-53648**

The reservoir is obviously an integral part of the water system that was being developed for irrigation and mining use under Permit S-53648. The Reservoir Permit even says that its purpose is to store water for the uses authorized under Permit S-53648. Even if the

permit holder hadn't started construction of irrigation-specific components, simply developing the reservoir that would provide the source of water for the irrigation and mining uses should be viewed as actual construction necessary for the irrigation and mining uses.

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The reservoir for the water system was permitted under Permit R-12770 and was granted an extension of time in the PFO related to that permit, to complete construction of the water system by October 1, 2017 and to apply water to full beneficial use by October 1, 2017 (see PFO for Permit R-12770). Permit R-12770 was granted an extension of time based on the facts set forth in its Extension Application concerning "actual construction work" commencing on the reservoir before the same deadline of December 15, 2000.

Construction of the enlarged dike was commenced in 2000, and was largely completed during that same year. Exhibit B is an aerial from July 2000, which shows an area of recent, un-vegetated fill on the down-stream side of the dike. In addition to the irrigation-specific developments (deep spot and pier for intake pipe) discussed above, extensive work was done on other aspects of the water system. As demonstrated by Chart C of the Extension Application for Permit R-12770, in August of 2000, the small culvert that had been under the road in that location was replaced with a 36" culvert. In September of 2000, the dam was enlarged, and the existing road was raised in elevation, by filling the low point with several hundred yards of gravel from the adjacent gravel pit. In September of 2000, a staff gauge was mounted to the intake pier. The reservoir was largely completed during the dry season of 2000, and its newly-added capacity began to fill with fall runoff later in that same year.

The development of the reservoir and the irrigation and mining use are explicitly interrelated. The use of impounded water for irrigation and mining could not have begun until the reservoir was completed. Both permits were issued in January 2000, with a deadline to begin construction of the "water system" by December 15, 2000. The permit to impound water and the permit to divert the impounded water for use cannot be viewed in isolation of each other. The PFO, however, ignored the interrelated nature of the components of the water system and focused solely on the irrigation system.

Because of these facts and the clear relationship of the water system, "actual construction work" on the reservoir itself should also be considered as construction work on the water system for Permit S-53648. Actual construction work done on the reservoir before December 15, 2000, should also be considered as meeting the permit condition of Permit S-53648 that required actual construction work begin prior to that date.

The work on the reservoir was part of the water system and shows the good faith efforts and reasonable diligence of the permit holder to develop the water system.

## **6. Water Was Put to Designated Beneficial Uses before October 1, 2004**



This issue starts to crowd the territory of a claim of beneficial use (which the permit holder plans to file, should the Extension Application be granted), but it should be noted that the available evidence shows that water was put to the designated beneficial uses before October 1, 2004. In particular, all of the acreage that was authorized to be irrigated by Permit S-53648 was irrigated in 2001 and subsequent years, with the exception of 27.5 acres of pasture on a high bluff, which proved to be impractical to reach with mainline. The total acres irrigated by the permitted water thus totals 162 acres.

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In addition, the Permit authorized use of 40 acre feet of water per year for mining use. ERPD has been informed that the company that held the contract to perform mining activities on the Knapp Ranch has been in compliance with its obligations to submit water use records to the Department. Those reports should show that water use at the gravel pit has been variable from year to year, as it is customary for a gravel operator to produce a large amount of rock at one time, and to keep a "stockpile," rather than to produce small amounts at frequent intervals. The economic recession following 2008 reduced the demand for gravel and rock products, and this affected production at the Knapp Ranch gravel pit as well, but the permit holder expects demand will pick up and that its mining use will rebound as well. The photos associated with the Declaration of Jeff Knapp (included as part of the protest filed by Knapp Ranch, Inc.) show that the mining use has been fully developed in addition to the irrigation use.

Finding paragraph 10(a) of the PFO concludes the permit holder has not applied any water to beneficial use. This finding is based on the conclusion that actual construction work on the irrigation permit had not occurred before the first year's deadline of December 15, 2000. For the reasons explained above, that threshold conclusion is wrong, and it no longer supports the subsequent finding that any use of irrigation water was illegal and did not constitute beneficial use. As the supporting evidence shows, the irrigation system was largely completed within the first irrigation season that followed completion of the reservoir, and water has been applied to the entire designated place of use depicted in the map accompanying application S-84101, with the exception of roughly 27.5 acres on an upper bench that proved to be economically out of reach.

In addition, the Extension Application described 1000' feet of mainline. It said:

"The irrigation system consists of a 60 Hp – 600 gpm Berkeley pump, with a 6" screened intake, and 1000' of mainline heading two directions, 400' East to the quarry, and 600' WNW to the pastures. Just after the mainline tee are 2 gate valves, and 2 totalling flow meters."

In hindsight, it is clear how this statement could be misunderstood. This statement appears as if it was intended to measure the total amount of mainline connected to the reservoir point of diversion, but it does not. There currently is actually approximately 5000 feet of mainline associated with the irrigation use, as pictured in the photos associated with the Declaration from Jeff Knapp, attached hereto. In light of the fact that



Permit S-53648 authorizes diversion of water from the reservoir for both an irrigation use and a mining use, and in light of the condition of approval that required each use to have its own totaling flow meter, the statement in the Extension Application was more focused on demonstrating compliance with this dual-metering condition. It was not intended to provide a description of the entire distribution system for irrigation water across the whole ranch.

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**7. Construction of the Authorized Works was Pursued in Good Faith and with Reasonable Diligence.**

The permit holder substantially complied with all terms and conditions of permit S-53648. Condition A1 required totalizing flow meters: they were installed in April of 2001. Condition B1 required the meters to be accessible: that was accomplished in April of 2001. Condition B2 required the pump intake to be screened: it has been screened since it was installed in April of 2001. The permit holder then began using water as allowed by the permit, for both irrigation and mining.

The main requirement the permit holder has not complied with is the timeline for perfecting the permit by filing a claim of beneficial use; that was the purpose of the Extension Application. Besides the confusion as to whether actual construction work authorized by Permit S-53648 had commenced by December 15, 2000, there is no valid reason to deny the request for more time. Most fundamentally, in light of the fact that the reservoir needed to be completed before water could be appropriated from it, basic principles of fairness support granting the extension, as opposed to the draconian conclusion that actual construction had not commenced within the first year's timeline. Even if the Department maintains the binary position that construction activity on the reservoir should be viewed entirely separate from actual construction work on the irrigation system, the Department should still find actual construction work on the irrigation system was begun prior to December 15, 2000, based on the facts cited above.

That the permit holder has acted in good faith and with reasonable diligence is clear when one examines all the facts cited in this Protest. The application for an extension should be granted.

**8. Granting the extension of time would cause no injury and would be consistent with the public interest.**

As explained above, the irrigation and mining uses authorized by permit S-53648 were developed within the prescribed timelines, and water has been applied to beneficial use accordingly. Denying the Extension Application now would serve no purpose other than to injure the permit holder. The permit holder's ranch ends at the beach, and the unnamed tributary that provides the source of water has its confluence with the Elk River in the estuary. Hence, there are no downstream appropriators whose position would

improve if the Extension Application is denied. However, the permit holder would face the substantial economic hardship if it had to cease irrigating while it pursues alternative sources of water. No public interest can be served by cancelling a permit that has been developed and used in substantial compliance with its terms and conditions. The permit holder merely asks for more time to continue doing what it has been doing, which is applying water to the uses designated by Permit S-53648, and to submit a claim of beneficial use.

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**9. Additional standards governing extensions support granting one in this instance.**

In addition to the factual and legal analysis provided above, OAR 690-315-0040 provides all of standards that govern Extension Applications. Each of these standards is briefly addressed as follows:

**“OAR 690-315-0040**

**“Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits**

**“(1) In order to approve an application for an extension of time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department shall find:**

**“(a) The applicant has submitted a completed application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;”**

In the PFO, the department found the extension application was complete. In addition, Knapp Ranches, Inc. has provided additional information and clarification as part of this protest.

**“(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;”**

This standard has been the main focus of the preceding protest letter. The PFO found that actual construction of the works authorized by Permit S-53648 had not commenced prior to the deadline of January 15, 2000. However, as described above, that factual conclusion was in error, actual construction had commenced in the summer of 2000, and this basis for proposing to deny the extension should be corrected.

**“(c) The applicant can complete the project within the time period requested for the extension; and”**



As described above, the works authorized by both Permit R-12770 and S-53648 have largely been constructed and the water has been applied to the designated beneficial uses. There remains some minor work to complete, such as reporting on water use records, but the main uncompleted task is filing the claim of beneficial use. Because the permits have been substantially developed and put to beneficial use, the time requested should be ample to allow completion of the remaining tasks.

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**“(d) There is good cause to approve the extension.”**

As described above, the permit holder has substantially complied with all major requirements of the Permits, and has been applying water to the designated beneficial uses within the prescribed timelines. The permit holder has conceded that it did not timely file a claim of beneficial use following the “C-date,” but it is otherwise in substantial compliance with the permits.

**“(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:**

**“(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;”**

As described above, the permits gave the permit holder a deadline of October 1, 2004 by which it was required to complete application of the water to the designated beneficial use, and in this case, the permit holder completed the works authorized by the permits and began putting water to the designated irrigation and mining works by the middle of 2001. In light of the fact that the permits required significant earthmoving and construction of an expensive system of pumps, valves, meters and mainlines, the timely accomplishment of this work is no small accomplishment. Exhibit E attached to the Protest of Knapp Ranches, Inc., contains records of supplies purchased in 2000 and 2001 that were necessary for construction of the irrigation and mining works. Although OAR 690-315-0020(d)(B) provides that purchasing but not installing equipment does not count as “actual construction,” this expense is surely relevant to matters of due diligence and good faith.

**“(b) The cost to appropriate and apply the water to a beneficial purpose;”**

The cost to develop the reservoir and irrigation and mining uses authorized by these permits has been substantial, but the permit holder bore this financial obligation successfully, and was able to completely develop the authorized uses of water, with the small exception of a remote field on an upper bench that was economically infeasible to reach with mainline.

**“(c) The good faith of the appropriator;”**



The permit holder's good faith is self-evident. The permit holder conceded to a historical practice of unpermitted use of water on the ranch, and has explained that its main reason in seeking the permits at issue here were to bring the ranch's water uses into compliance with relevant regulations. This effort was undertaken with diligence and was completed in a timely manner, absent the failure to timely file for the claim of beneficial use. As explained above, even though OAR 690-315-0020(d)(B) provides that purchasing but not installing equipment does not count as "actual construction," the records of supplies purchased in 2000 and 2001 that were necessary for construction of the irrigation and mining works amounts to a demonstration of due diligence and good faith by the permit holder.

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**“(d) The market for water or power to be supplied;”**

This standard isn't directly applicable to the current situation, aside from the obvious fact that the ranch depends on its irrigation and mining water to be able to be an effective and economical producer of hay, cattle, and aggregate products. ERPD, as a lessee of the permit holder and potential purchaser of a transfer of water from the permit holder, could be viewed as a potential market for the water to be supplied, but it is still somewhat hypothetical as to whether ERPD will pursue a transfer of water from the Knapp Ranch or if it will instead focus on obtaining groundwater or new surface water permits.

**“(e) The present demands for water or power to be supplied;”**

As described above, the permit holder is the owner of water, and there are no downstream appropriators before the “unnamed tributary of the Elk River” hits the estuary, thus there are no competing claims to use this water. The permit holder is sensitive to the fact that the water contributes to the overall environmental health of the lowest reaches of the Elk River, and, given the fact that the vast majority of the water used under Permit S-53648 returns to the “unnamed tributary” as return flow, the continued use of the water pursuant to this permit is meeting the demands for water in every sense of the term. If a future transfer of water from the ranch to ERPD's planned development were to occur, it would only involve a portion of the water currently being used on the ranch, and it too would predominantly return to the Elk River basin as return flow.

**“(f) The income or use that may be required to provide fair and reasonable returns on investment;**

**“(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;”**

These standards are not directly applicable to the current extension application, aside from the fact that the permit holder would be deprived of its most significant income stream if it could no longer irrigate its hay crop or its cattle pastures, and that it has invested a significant sum in the development of the reservoir and irrigation and mining

systems on which it now depends. As explained above, the continued economic viability of the ranch is crucial to ERPD, which is a lessee of the permit holder.

**“(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;”**

The use of water has been almost completely developed, consistent with the permits. The obvious missing link is the failure to timely file a claim of beneficial use. Of course, the permit holder concedes it had control and responsibility for this, but this final requirement before the use of water could be perfected was neglected.

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**“(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and**

**“(j) Any other factors relevant to a determination of good cause.”**

Undue hardship would result if this extension is not granted. The permit holder invested significant resources into obtaining these permits and developing the beneficial use of water consistent with these permits. The permit holder has come to rely on the use of this water for both its farming and aggregate mining operations. The loss of this use of water would be a catastrophe for a ranch that is already in an exceptionally lean financial condition. The hardship of losing this use of water would be particularly undue in light of the fact that the permit holder has pursued the development and use of these permits with obvious due diligence and good faith.

**“(3) In determining reasonable diligence in subsection (2)(a), the Department shall consider, but is not limited to, the following factors:**

**“(a) The amount of construction completed within the time allowed in the permit or previous extension;**

**“(b) The amount of beneficial use made of the water during the permit or previous extension time limits;**

**“(c) Water right permit holder conformance with the permit or previous extension conditions; and**

**“(d) Financial investments made toward developing the beneficial water use.”**

As described above, the permit holder started actual construction within the first deadline of December 15, 2000, and it substantially completed *all of the required construction* before the second irrigating season has passed. The water diverted from the reservoir has only been applied to the designated beneficial uses of irrigation and mining. The permit



holder has complied with the majority of the permit conditions, including the screening of the pump, the installation of meters on the mainline and the installation of a staff gauge on the reservoir. ERPD understands the permit holder's recordkeeping and water use reporting are not in perfect array, and this extension is being requested in part to allow it the time to track down previous years' records that may have been misplaced. Finally, as described above, the permit holder has invested considerable financial resources into development of the works authorized by these permits, including a large pump, meters, valves and mainline.

**“(4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:**

**“[subsections (a) through (f) omitted]”**

The present demand for water or power above has already been addressed above. It is not clear if this standard is directly applicable to this Extension Application, or that it played a direct role in the findings of the PFO that is the subject of this protest.

**“(5) If the extension is requested pursuant to ORS 537.230 or 537.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended and the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410.”**

As described above, the applicant began actual construction of both the reservoir and the irrigation and mining uses, authorized by Permits R-12770 and S-53648 before the deadline of December 15, 2000, established by condition of the Permits, and the permit holder also substantially completed development of the authorized works before October 1, 2004, established by the permits. Compliance with this schedule for beginning and completed construction is consistent with (and is, in fact, quicker than) the schedule established by ORS 537.230.

**“(6) The Department may request additional information necessary to evaluate an application.”**

The Department has not requested additional information of the permit holder, but ERPD understands the permit holder would happily provide the Department with any additional information that may be helpful. ERPD would provide any information it may have, if the Department so requests. Both ERPD and the permit holder have endeavored to provided additional information in this instance to help clear up the confusion that lead to the incorrect findings in the PFO.

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**10. Granting the extension would be consistent with the Attorney General's opinion and with internal Department Guidance.**

In 2002 the Oregon Department of Justice provided a memo to the Department of Water Resources instructing the Department on how to handle Extension Applications that had complications, such as imperfect compliance with conditions. That memo is attached as Exhibit F. In very rough summary, the memo concludes that compliance with all conditions is required before the department may process a claim for beneficial use and award a certificate to an appropriator, but strict compliance with all conditions is not necessarily required when a permit holder is seeking an extension. In fact, the memo concludes that issuing an extension that requires compliance with conditions is the best way to bring the permit holder into compliance. Page 7 of this memo provides the following direction:

“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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This memo continues on page 9:

- “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.”

The Extension Application at issue in this protest fits squarely within this guidance – it is a situation where the permit holder has not met the required schedule for filing a claim of beneficial use, and providing reports of water use for the irrigation component of the Permit S-53648, but despite that “unfinished business,” the permit holder is basically in

compliance with the permits and just needs more time to complete the final required steps.

This outcome is reflected in more detail in an internal Department guidance memo, attached here. On page 2, the Internal Guidance memo provides:

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“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. [sic] In this manner, the public interest purposes that the condition was intended to address has been achieved with an equivalent result.”

In the present situation, the permit holder should be able to track down many, if not all, of the records associated with previous year's water use. The meters were installed in 2001 and records were kept – the main challenge is simply finding them. This is exactly the type of situation that the Department of Justice memo and the Department of Water Resources' own internal guidance memo have contemplated and have concluded that an extension is the appropriate tool to cure any defects and ensure compliance. If it hadn't been for the mistaken factual conclusion in the PFO that actual construction hadn't begun on time, this Extension Application would have been (and still should be) an ideal candidate for an extension.

## 11. Conclusion

For the reasons stated above, the PFO is in error and should be corrected by including a finding that actual construction under Permit S-53648 did begin within the required deadline. In addition, the Protestant and the permit holder have provided explanations demonstrating that the permit holder has been acting in good faith, with reasonable due diligence, and that granting the extension of time would cause no injury and would be consistent with the public interest. The permit holder has demonstrated good cause for extending the permit. Accordingly, the requested extension should be granted. The Protestant has cited the applicable legal authorities above, and has included the required protest fee. The Protestant believes the simple factual inaccuracy that led to the erroneous finding can be corrected without a need for a contested case hearing. If a contested case hearing is requested by other parties, the Protestant reserves the right to participate therein.

///

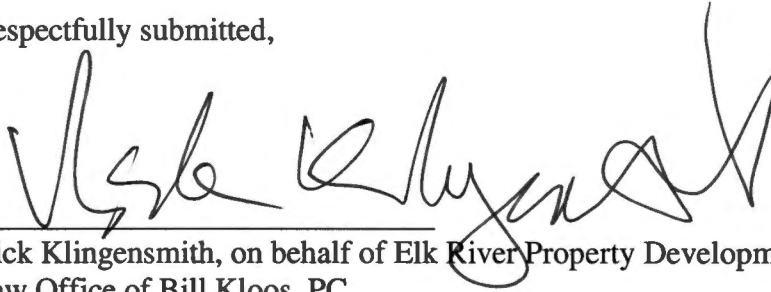
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Dated: January 8, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nick Klingensmith", written over a horizontal line.

Nick Klingensmith, on behalf of Elk River Property Development, LLC  
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: Aerial photo from 1994
- Exhibit B: Aerial photo from 2000
- Exhibit C: Declaration of Jeff Knapp
- Exhibit D: Photos of current reservoir, irrigation system and mining system
- Exhibit E: Receipt summaries for purchase of irrigation and mining supplies
- Exhibit F: Attorney General's memo advising WRD on extensions
- Exhibit G: WRD internal guidance memo on using extensions to ensure compliance with permit conditions



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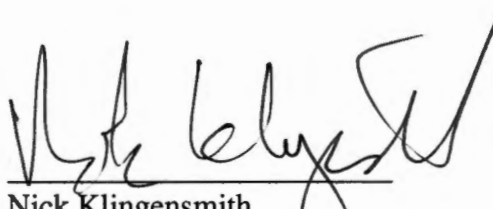
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CERTIFICATE OF SERVICE AND FILING

I certify that on January 9, 2015, I filed the original of this Protest with the Oregon Water Resources Department Water Right Services Division 725 Summer St NE, Suite A Salem, OR 97301-1266 by hand-delivery.

I further certify that on said date I served a true and correct copy of said document on the party or parties listed below, by causing the same to be deposited in the United States Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid, and addressed as follows:

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



Nick Klingensmith  
Of Attorneys for Protestants



5/26/1994

Exhibit A

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Image U.S. Geological Survey

Google earth

Tour Guide

1994

Imagery Date: 5/26/1994 42°47'02.13" N 124°30'46.80" W elev -15 ft eye alt 1422 ft



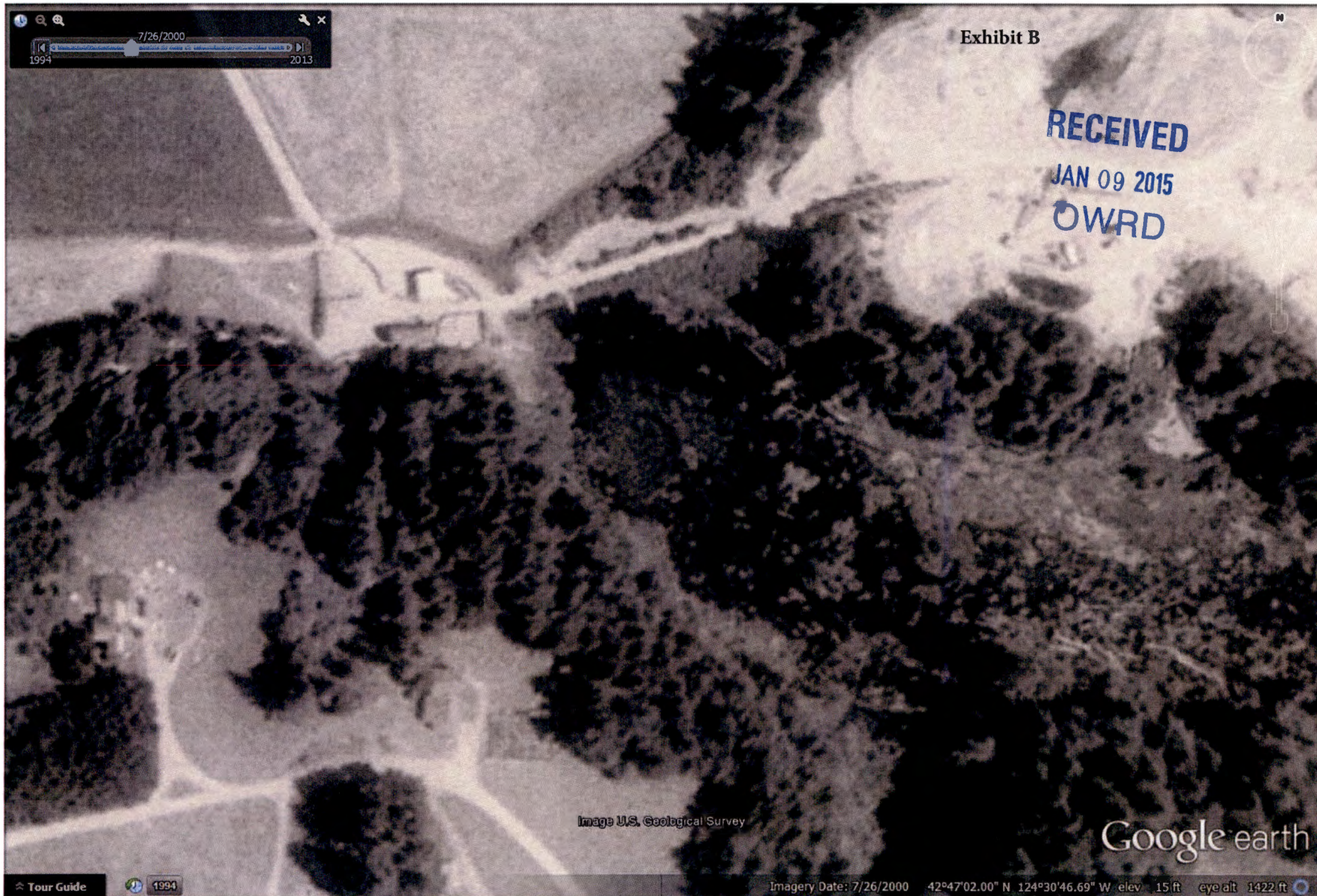


Exhibit B

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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



## BEFORE THE OREGON WATER RESOURCES DEPARTMENT

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

**DECLARATION OF**  
**Jeff Knapp**

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.

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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.

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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.

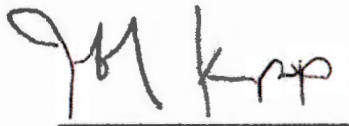


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1 15. It is also my belief that Knapp Ranches, Inc. pursued the task of developing the  
2 works authorized by Permit R-12770 and Permit S-53648 with adequate due  
3 diligence. We began construction within the first year, largely completed  
4 construction 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



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# Coos Curry Supply Inc.

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

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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  
[cooscurrys Supply@gmail.com](mailto:cooscurrys Supply@gmail.com)

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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



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

February 7, 2002

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Dwight French  
Water Rights Manager  
Water Resources Department  
158 12<sup>th</sup> 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.<sup>1</sup> 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

<sup>1</sup> 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.

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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.<sup>2</sup> 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).<sup>3</sup> 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

<sup>2</sup> 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.

<sup>3</sup> 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).<sup>4</sup> 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.

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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

<sup>4</sup> 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



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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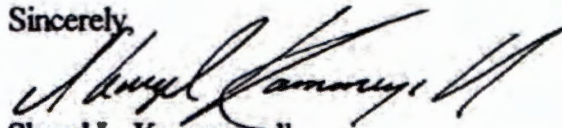
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- The Department may allow curing of an unmet time-sensitive condition, so long as the public interest purposes of the condition are met and an equivalent result is achieved.
- Where the Department determines that one or more permit conditions have 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* *D/B*  
Dwight French, Water Rights Section Manager

Dick Bailey, Water Rights and Adjudication Division Administrator

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## INTERNAL GUIDANCE

Non-Compliance of Time Sensitive Permit Conditions when reviewing Claims of Beneficial Use and Extensions of Time<sup>1</sup>

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.<sup>2</sup>

**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 subject<sup>3</sup>, 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.

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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.
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.

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## **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 performance<sup>4</sup> condition is missing the Department shall RETURN THE CBU with a letter that requests the CWRE to report on the subject condition<sup>5</sup>. 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.

<b>If the claim was submitted:</b>	<b>Return the CBU to:</b>
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.

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<sup>4</sup> 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."



More than two years ago

confirm the ownership of the permitted lands first and then follow directions for "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:

- 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.

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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"?<sup>6</sup>

**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

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<sup>6</sup> 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.<sup>7</sup>

If a meter was installed prior to beneficial use but is not functioning, 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 taken. 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

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<sup>7</sup>

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.

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 use<sup>8</sup> occurred before the C date (and after the installation of the screen).

4. **REFERENCE SWL MEASUREMENT<sup>9</sup>:** 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.

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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

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<sup>8</sup> "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.

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).

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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.

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**Permit: S 53648**

<b>Name First, Mi, Last</b>	Confer		Todd	<b>Received Date</b> 6/4/2014	<b>Time</b> 8:44 AM
<b>Company</b>	Oregon Department of Fish and Wildlife				
<b>Name Other</b>					
<b>Street</b>	PO Box 642				
<b>City</b>	Gold Beach	<b>State</b>	Oregon	<b>Zip</b>	97444
<b>Home Phone</b>		<b>Cell Phone</b>			
<b>Company Phone</b>	5412477605	<b>Fax Phone</b>	5412472321		
<b>Email Address</b>	todd.a.confer@state.or.us				

**Comments** ODFW submitted comments on the original application requesting a condition requiring the applicant to enroll the subject property in CREP as mitigation for potential fishery impacts. At the time of the application the landowner agreed to the proposed permit condition. That condition was not included in the subsequent permit. ODFW still believes that a permit condition requiring enrollment in CREP (or riparian enhancement that meets CREP requirements) is appropriate mitigation for potential fishery impacts caused by the diversion.



ORCA: Oregon Coast  
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*Protecting the Oregon Coast*

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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.

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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





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213 SW Ash St., STE 208  
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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](mailto: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.

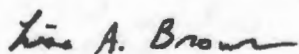
It appears this was an existing reservoir prior to issuance of the permit, as intimated in February 23, 1999 WRD Memorandum from Doug Woodcock explaining that “[u]se has apparently been unauthorized at this site for a number of years. This application is an attempt to get the Knapp Ranches operating 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

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*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](mailto: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 27<sup>th</sup>. 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.

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.

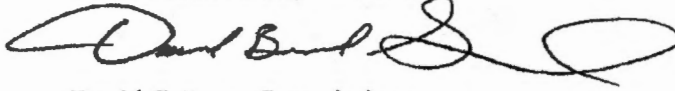
DATED this 27 day of May, 2014

BOARD OF CURRY COUNTY COMMISSIONERS

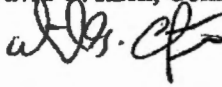
  
Susan Brown, Chair



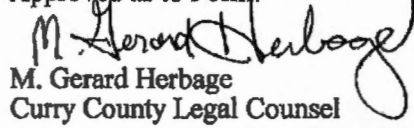
David Brock Smith, Vice Chair

A handwritten signature in black ink, appearing to read "David Brock Smith", with a large, stylized loop at the end.

David G. Itzen, Commissioner

A handwritten signature in black ink, appearing to read "David G. Itzen", with a stylized, cursive style.

Approved as to Form:

A handwritten signature in black ink, appearing to read "M. Gerard Herbage", with a large, stylized loop at the end.

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 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.**

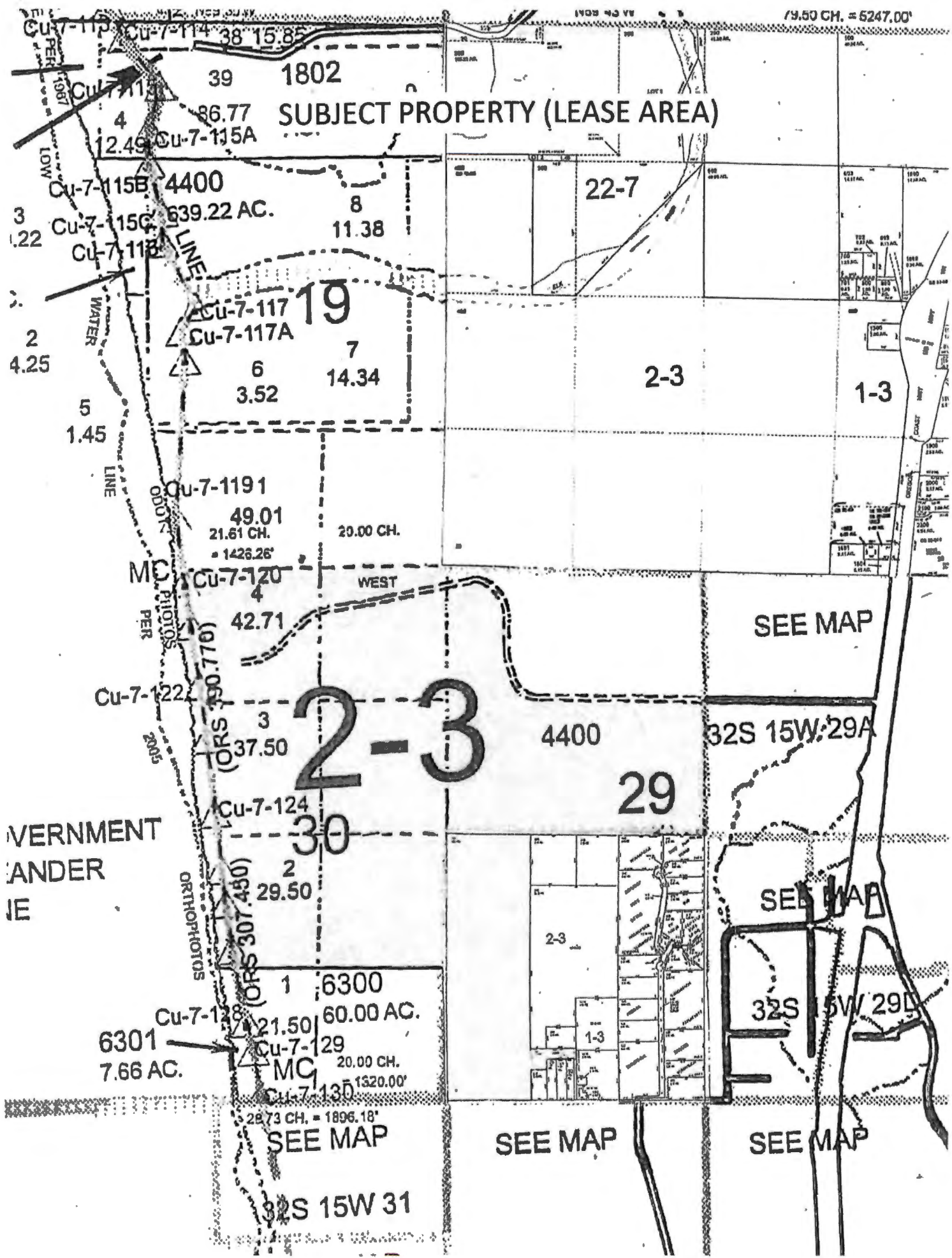
1. This conditional use permit approval is valid for one (1) year unless the Applicant, within one year of any appeals being exhausted, applies for and receives an extension of this approval.
2. The 18-hole golf course development site shall be restricted to a portion of the subject property, consisting 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.



1/9.50 CH. = 5247.00'

SUBJECT PROPERTY (LEASE AREA)

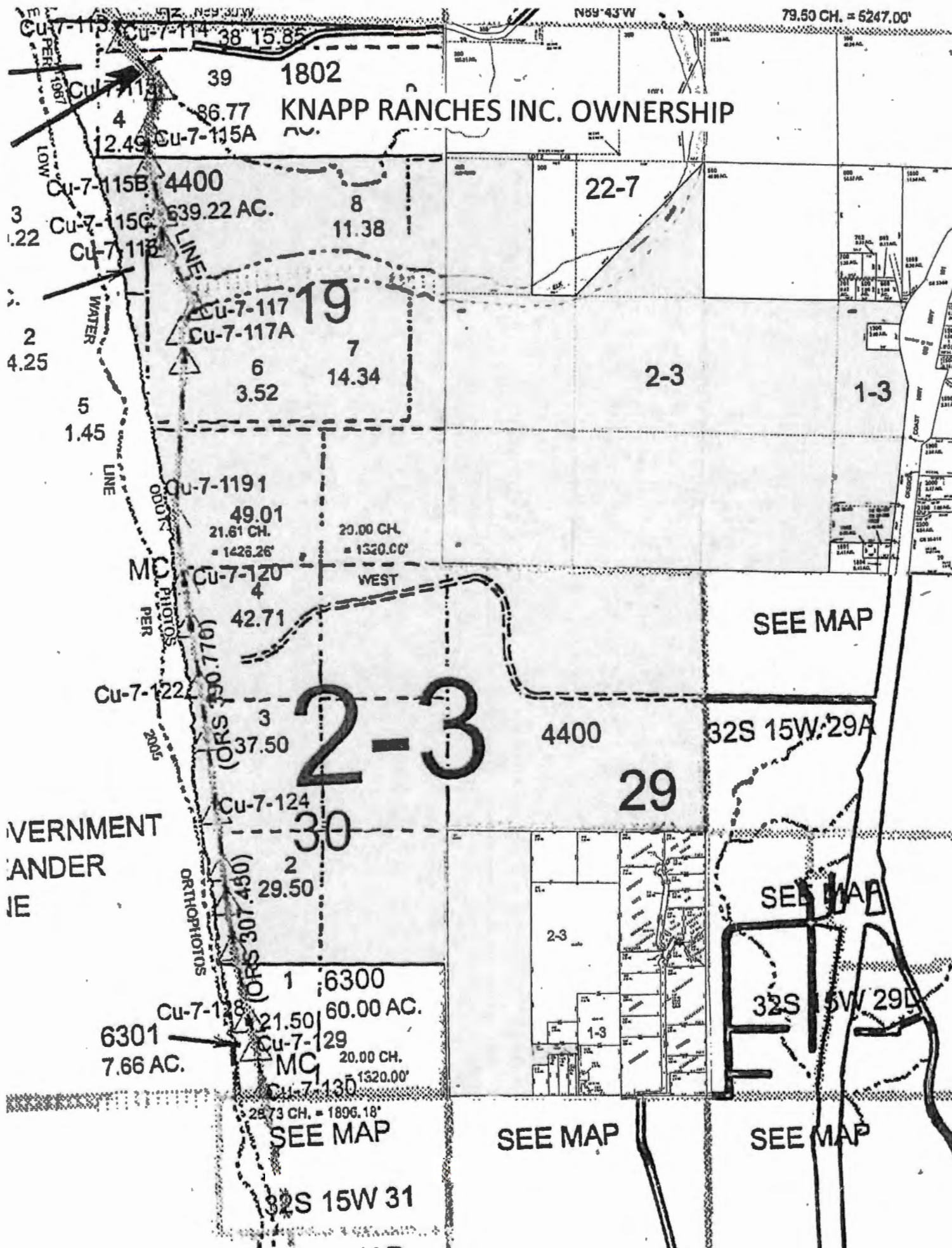
Cu-7-115A 38 15.85  
39 1802  
86.77  
12.49  
Cu-7-115B 4400  
Cu-7-115C 639.22 AC.  
Cu-7-117 19  
Cu-7-117A 7  
6 3.52  
14.34  
Cu-7-1191 49.01  
21.61 CH.  
= 1426.26'  
Cu-7-120 42.71  
Cu-7-122 37.50  
Cu-7-124 29.50  
Cu-7-128 21.50  
60.00 AC.  
Cu-7-129 20.00 CH.  
= 1320.00'  
Cu-7-130 29.73 CH. = 1896.18'  
6301 7.66 AC.  
GOVERNMENT LAND  
WATER LINE  
LOW  
HIGH  
ORTHOPHOTOS  
MC  
PILOTS  
PER  
2005  
32S 15W 29A  
32S 15W 31

SEE MAP

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KNAPP RANCHES INC. OWNERSHIP

SEE MAP

SEE MAP

SEE MAP

SEE MAP

GOVERNMENT  
LAND  
IE


SEE MAP



# HIGHLAND GOLF SERVICES LEASE 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 SURVEYING • FORESTRY  
PLANNING • DATA SERVICES**  
P.O. Box 100, St. Paul, OR 97131  
Phone: (503) 208-2000 Fax: (503) 208-4000  
Web Site: [www.stutzner.com](http://www.stutzner.com)

Job No. 2011-001  
Client: Highland Golf Services  
Project: Lease Exhibit Map

Job Name: Highland Golf Services  
Sheet: Lease Exhibit Map


Sheet 2 of 3



# 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



**Stuntzner Engineering  
& Forestry, LLC**

ENGINEERING • LAND SURVEYING • FORESTRY  
PLANNING • TREE CARE  
100 South 10th St.  
Bainbridge, Oregon 97006  
Phone: (503) 866-8888  
Fax: (503) 866-8888

Drawn by: Josh Stuntzner  
Checked by: JES  
Project No.

Job No. 2011  
Project No. 113-022 original  
Scale

Job Name: Highland Golf Services  
Sheet: Ownership Exhibit Map

Sheet 1 of 3



# 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.15W., 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

Q5



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



# 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

VIA EMAIL ONLY

January 12, 2015

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

Elk River Property Development, LLC  
Attn: Jim Haley  
P.O. Box 790  
Port Orford, OR 97465

Nick Klingensmith  
Law Office of Bill Kloos, PC  
375 W. 4<sup>th</sup> Ave., Suite 204  
Eugene, OR 97401

RE: Protests to Extension Proposed Final Order for Permit S-53648, Knapp Ranches Inc.

Dear Mr. Klingensmith,

The Department received the timely filed protests and fees on the proposed final order for permit S-53648 on January 9, 2015.

I will review the protests and will 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  
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

VIA EMAIL ONLY

January 12, 2015

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

RE: Standing Request on Extension Proposed Final Order for Permit S-53648, Knapp Ranches Inc.

Dear Ms. Brown,

The Department received the timely filed request for standing and fee on the Proposed Final Order for Permit S-53648 on January 9, 2015.

Sincerely,

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

Cc: Nick Klingensmith





**WATERWATCH**

PROTECTING NATURAL FLOWS IN OREGON RIVERS

213 SW ASH ST. ~ STE. 208 ~ PORTLAND, OR 97204

Hand Delivery

Water Rights Services Division  
OWRD

725 Summer St. NE, STE A  
Salem, OR 97301-1266

**RECEIVED**

**JAN 09 2015**

**OWRD**

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

JEFF KNAPP

PO BOX 32

PORT ORFORD, OREGON 97465

(541) 332-3755

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

APPLICATION FILE NUMBER: S-84101

SOURCE OF WATER: A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A  
TRIBUTARY OF ELK RIVER

PURPOSE OR USE: IRRIGATION OF 189.5 ACRES AND MINING

MAXIMUM VOLUME ALLOWED: 100 ACRE-FEET PER YEAR OF STORED WATER ONLY,  
BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MINING

PERIOD OF USE: MAY 1 THROUGH OCTOBER 15 FOR IRRIGATION AND YEAR ROUND  
FOR MINING

DATE OF PRIORITY: MARCH 24, 1999

POINT OF DIVERSION 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 amount of water used for irrigation under this right, together  
with the amount secured under any other right existing for the same  
lands, is limited to a diversion of 2.5 acre-feet for each acre  
irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE 1/4 NE 1/4 1.2 ACRES  
NE 1/4 SE 1/4 38.8 ACRES  
SE 1/4 SE 1/4 37.0 ACRES  
SECTION 19

SE 1/4 NW 1/4 9.2 ACRES  
NE 1/4 SW 1/4 25.6 ACRES  
NW 1/4 SW 1/4 36.2 ACRES

SW 1/4 SW 1/4 11.4 ACRES  
SE 1/4 SW 1/4 3.1 ACRES  
SECTION 20

NE 1/4 NE 1/4 14.5 ACRES  
SE 1/4 NE 1/4 12.5 ACRES  
SECTION 30

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

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. 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.

The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water.

**STANDARD CONDITIONS**

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

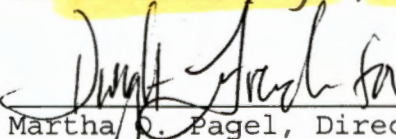
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

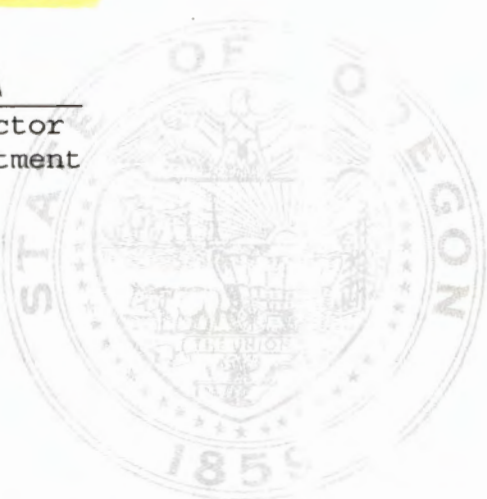
The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

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. Complete application of the 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.

**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. S-84101  
PO Box 32  
Port Orford, OR 97465

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*Barbara Knapp*☐ Agent☒ Addressee

B. Received by (Printed Name)

*Barbara Knapp*

C. Date of Delivery

*2/1/04*

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

Mail

☐ Express Mail

d

☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

*7012 2210 0052 6661 5119 WR*

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

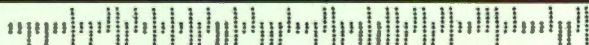
- Sender: Please print your name, address, and ZIP+4 in this box •

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](http://www.wrd.state.or.us)

**NOTE: For water rights information and useful forms, please see our web site at**  
**[www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)**

February 14, 2014

Certified mail number 7012 2210 0002 6661 5119

Return receipt requested

Knapp Ranches Inc.  
PO Box 32  
Port Orford, OR 97465

Reference: Application S-84101, Permit S-53648

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 S-84101  
OWRD Watermaster District 19



PERMIT STATUS REVIEW BY BW DATE 2/10/14 FILE # S-84101

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

S:\groups\wr\PERMIT C jd\c-date-checklist.doc

SEND LETTER  
JS 2/11/2014



RECEIVED

APR 15 2011

WATER RESOURCES DEPT  
SALEM, OR

2009

**Oregon Water Resources Department**  
**October through September**  
**Water Use Recording and Reporting Form**

2010

Consult the water right (permit, certificate, order) to determine applicable reporting conditions; the measurement, recording, and reporting conditions identified in a permitted or certified water right typically follow the place of use description. Use the columns below to document measurements for each authorized point of diversion/appropriation or reservoir. We ask that zeros be reported for any given month when water is not being used. Keep a copy of all measurement reports for your records. We encourage you to submit your water use data via our online utility when available, and to use the Monthly Water Use Forms for record keeping purposes. To lookup water rights, access the water use reporting webpage/online utility, or to obtain additional forms visit our web site: <http://www.wrd.state.or.us>

Knapp Ranches, Inc.  
 Water Right Holder's Name

Knapp Ranches, Inc.  
 Water Right Holder's Business Name or Entity Name

50021  
 USER ID#

\_\_\_\_\_  
 Water Right Holder's Email

P.O. Box 32, Port Orford, OR 97465  
 Water Right Holder's Complete Mailing Address

541-332-3755  
 Phone Number

Facility Report ID →	Application: - Permit: - Other: 51045 ✓	Application: - Permit: - Other: 51044 ✓	Application: - Permit: - Other: -	Application: - Permit: - Other: -
Describe the units of measurement as AF (acre-feet), G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), or MCF (million cubic feet)				
October - 2009				
November - 2009				
December - 2009				
January - 2010				
February - 2010				
March - 2010	36,250	0		
April - 2010	44,500			
May - 2010	42,250			
June - 2010				
July - 2010				
August - 2010				
September - 2010				
TOTAL *	123,000			
Unit of Measurement	<input checked="" type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF

Describe the method of measurement used: Water 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.

12-31-10 Barbara Knapp Barbara Knapp Bookkeeper Knapp Ranches, Inc. 541-332-3755  
 Date Signature Name and Title (print) Company Phone Number

Please complete and mail to: Oregon Water Resources Department; Water Use Reporting Program; 725 Summer Street NE, Suite A: Salem, OR 97301.



RECEIVED

APR 16 2011

WATER RESOURCES DEPT  
SALEM, OREGON

2008

**Oregon Water Resources Department**  
**October through September**  
**Water Use Recording and Reporting Form**

2009

Consult the water right (permit, certificate, order) to determine applicable reporting conditions; the measurement, recording, and reporting conditions identified in a permitted or certified water right typically follow the place of use description. Use the columns below to document measurements for each authorized point of diversion/appropriation or reservoir. We ask that zeros be reported for any given month when water is not being used. Keep a copy of all measurement reports for your records. We encourage you to submit your water use data via our online utility when available, and to use the Monthly Water Use Forms for record keeping purposes. To lookup water rights, access the water use reporting webpage/online utility, or to obtain additional forms visit our web site: <http://www.wrd.state.or.us>

Knapp Ranches, Inc.  
 Water Right Holder's Name

Knapp Ranches, Inc.  
 Water Right Holder's Business Name or Entity Name

50021  
 USER ID#

none  
 Water Right Holder's Email

P.O. Box 32, Port Orford, OR 97465  
 Water Right Holder's Complete Mailing Address

541-332-3755  
 Phone Number

Facility Report ID →	Application: - Permit: - Other: 51045 ✓	Application: - Permit: - Other: 51044 ✓	Application: - Permit: - Other: -	Application: - Permit: - Other: -
Describe the units of measurement as AF (acre-feet), G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), or MCF (million cubic feet)				
October - 2008				
November - 2008				
December - 2008				
January - 2009				
February - 2009				
March - 2009				
April - 2009		0		
May - 2009	54,850			
June - 2009	63,920			
July - 2009	42,780			
August - 2009	33,445			
September - 2009				
TOTAL *	195,025			
Unit of Measurement	<input checked="" type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF

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.

12-31-10 Barbara Knapp Barbara Knapp, Bookkeeper Knapp Ranches, Inc. 541-332-3755  
 Date Signature Name and Title (print) Company Phone Number

Please complete and mail to: Oregon Water Resources Department; Water Use Reporting Program; 725 Summer Street NE, Suite A: Salem, OR 97301.

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			

RECEIVED

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  
Signature

Sec.  
Title

Knapp Ranches, Inc  
Reporting Entity

12-14-08  
Date

David Knapp  
Name

P.O. Box 32, Port Orford, OR 97465  
Mailing Address

541-332-3755  
Phone Number

COPY





# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A

Salem, OR 97301-1271

Phone 503.986.0900  
Fax 503.986.0904

**COPY**

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](http://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*

Alyssa Mucken  
Water Measurement Specialist  
Oregon Water Resources Department  
Phone 503.986.0837 Fax 503.986.0902  
[alyssa.m.mucken@wrds.state.or.us](mailto:alyssa.m.mucken@wrds.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	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 *	1,913,371 G	0			

RECEIVED

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  
Signature

Sec.  
Title

Knapp Ranches, Inc.  
Reporting Entity

11-19-06  
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](http://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](mailto:Gary.L.BALL@ wrd.state.or.us)

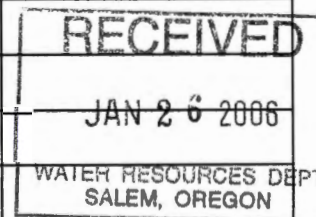
**2004**

Oregon Water Resources Department  
 October 2004 through September 2005  
 Annual Water Use - Monthly Quantities Form

USER-ID 50021**2005**

Apps R 84100  
 84101

Facility  POD-ID 	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			



\* 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 F. 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](http://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@wrdd.state.or.us](mailto:Gary.L.BALL@wrdd.state.or.us)

2003

Oregon Water Resources Department  
October 2003 through September 2004  
Annual Water Use - Monthly Quantities Form

USER-ID 50021

2004



Facility POD-ID	51045	51044			RECEIVED
October - 2003	148,927	0			JAN 28 2005
November - 2003	165	0			WATER RESOURCES DEPT
December - 2003	781	0			SALEM, OREGON
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.  
Book keeper  
Title

Knapp Ranches, Inc  
Reporting Entity

12-27-04  
Date

Please complete and mail to: Water Resources Department; Water Use Reporting Program;  
700 Commercial Street NE; Suite A, Salem, OR 97301-1271, or Fax 503-586-0902.





## 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

<http://www.wrd.state.or.us>

KNAPP RANCHES INC.

User-ID

50021

PO BOX 32

Password:

50021

PORT ORFORD

OR 97465

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

USER-ID

50021





2002

Oregon Water Resources Department  
October 2002 through September 2003  
Annual Water Use - Monthly Quantities Form

USER-ID 50021

2003



Facility  POD-ID 	51045	51044			
October - 2002	399,841	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			

RECEIVED

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 R. 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

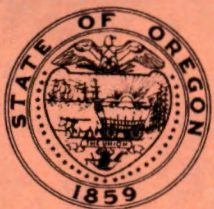
<http://stamp.wrd.state.or.us/apps/wr/wateruse/wateruse.php>

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

USER-ID 50021



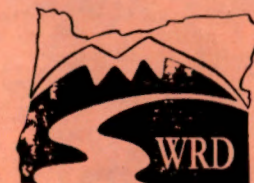


2000

R84100, S84101  
Oregon Water Resources Department  
October 2000 through September 2001  
Annual Water Use - Monthly Quantities Form

2001

USER-ID 50021



Facility  POD-ID	51044 ST	51045 IR/MI			
October - 2000					
November - 2000					
December - 2000					
January - 2001					
February - 2001					
March - 2001					
April - 2001					
May - 2001					
June - 2001					
July - 2001					
August - 2001					
September - 2001					
TOTAL *					

RECEIVED

FEB 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 F. Knapp  
Signature

Sec  
Title

Knapp Ranches, Inc  
Reporting Entity

1-28-02  
Date



# Mailing List for Permit Copies

Application#84101

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 # S-84101 ✓
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) ✓

Copies Mailed
By: <u>Cal</u>
(SUPPORT STAFF)
on: <u>2/10/00</u>
(DATE)

**COPIES TO Other Interested Persons**

7. DENNIS GOUDE, STUNTZNER ENGINEERING ✓

Caseworker:AMH

STATE OF OREGON

COUNTY OF CURRY

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

JEFF KNAPP

PO BOX 32

PORT ORFORD, OREGON 97465

(541) 332-3755

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

APPLICATION FILE NUMBER: S-84101

SOURCE OF WATER: A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A TRIBUTARY OF ELK RIVER

PURPOSE OR USE: IRRIGATION OF 189.5 ACRES AND MINING

MAXIMUM VOLUME ALLOWED: 100 ACRE-FEET PER YEAR OF STORED WATER ONLY, BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MINING

PERIOD OF USE: MAY 1 THROUGH OCTOBER 15 FOR IRRIGATION AND YEAR ROUND FOR MINING

DATE OF PRIORITY: MARCH 24, 1999

POINT OF DIVERSION 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 amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE 1/4 NE 1/4 1.2 ACRES  
NE 1/4 SE 1/4 38.8 ACRES  
SE 1/4 SE 1/4 37.0 ACRES  
SECTION 19

SE 1/4 NW 1/4 9.2 ACRES  
NE 1/4 SW 1/4 25.6 ACRES  
NW 1/4 SW 1/4 36.2 ACRES

SW 1/4 SW 1/4 11.4 ACRES  
SE 1/4 SW 1/4 3.1 ACRES  
SECTION 20

NE 1/4 NE 1/4 14.5 ACRES  
SE 1/4 NE 1/4 12.5 ACRES  
SECTION 30

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

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. 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.

The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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. Complete application of the 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

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-84101

**Final Order**

*Application History*

On March 24, 1999, KNAPP RANCHES INC.; JEFF KNAPP 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**

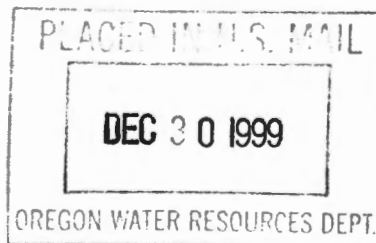
Upon payment of outstanding application examination fees and permit recording fees, Application S-84101 shall be approved as proposed by the Proposed Final Order, and as provided on the attached draft permit.

Application examination fees are required in the amount of \$340.00, and 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 fees within 60 days from the date of this Final Order may result in the proposed rejection of Application S-84101.

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 C. 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 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*



# FO CHECKLIST

FILE # 84101  
PFO WEEK # 211

PFO TO FO CONVERSION

REVIEW DATE: 12/7/99  
INITIALS: AA

In preparing to create the OF, 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 fees**. *Dennis Douda*  
*cwre*
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*)  
(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)

100 AF = 250  
+ 100  
+ 90  
440  
pd \$100 + 175 rec  
615

FO Type: (circle types)	DENIAL	<input checked="" type="radio"/> FO w/o PERMIT	FO & PERMIT	FOMOD
<i>needs \$515 - 340 exam 175 rec'd</i>				MGMT CODES

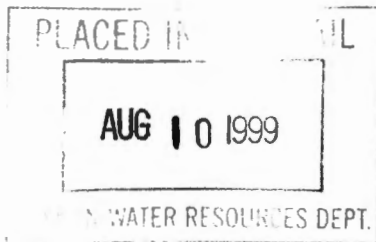
Once created, modify FO as needed to:

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\FO\WEEK 211 & 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 S-84101

**Proposed Final Order**

*Summary of Recommendation:* The Department recommends that the attached draft permit be issued with conditions.

*Application History*

On March 24, 1999, JEFF KNAPP, for KNAPP RANCHES INC., submitted an application to the Department for the following water use permit:

- Amount of Water: 100.0 ACRE-FEET(AF), BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MINING
- Use of Water: IRRIGATION OF 189.5 ACRES (PER MAP) AND MINING
- Source of Water: A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A TRIBUTARY OF ELK RIVER
- Area of Proposed Use: CURRY County within SECTION 19, SECTION 20, SECTION 30, TOWNSHIP 32 SOUTH, RANGE 15 WEST, W.M.

On 5/25/99, the Department mailed the applicant notice of its Initial Review, determining that "The use of 100.0 ACRE-FEET, BEING 60.0 AF FOR IRRIGATION OF 189.5 ACRES AND 40.0 AF FOR MINING from A RESERVOIR FILED UNDER APPLICATION R-84100, A TRIBUTARY OF ELK RIVER is allowable from May 1 through October 15, contingent upon the approval of application R-84100." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 6/8/99, 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 use proposed to be allowed should be modified from the Initial Review to allow mining use year round.

The South Coast Basin Program allows the following uses: IRRIGATION OF 189.5 ACRES AND MINING

Senior water rights exist on A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A TRIBUTARY OF ELK RIVER or on downstream waters.

A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, 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 an 80 percent exceedance probability) contingent on approval of application R-84100.

The Department finds that the amount of water requested, 100.0 ACRE-FEET, BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MINING, 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 permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The



required screen is to be in place and functional prior to diversion of any water.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

*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.

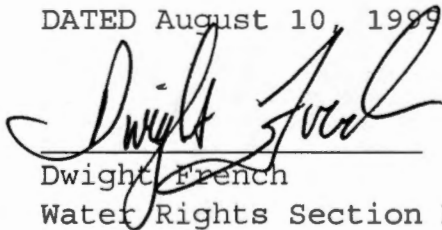
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount 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, 1989



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

RWK-WEEK 211

DRAFT

This is not a permit!!!  
STATE OF OREGON

DRAFT

COUNTY OF CURRY

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KNAPP RANCHES INC.

JEFF KNAPP

PO BOX 32

(541) 332-3755

PORT ORFORD, OREGON 97465

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

APPLICATION FILE NUMBER: S-84101

SOURCE OF WATER: A RESERVOIR CONSTRUCTED UNDER APPLICATION R-84100, A  
TRIBUTARY OF ELK RIVER

PURPOSE OR USE: IRRIGATION OF 189.5 ACRES AND MINING .

MAXIMUM VOLUME ALLOWED: 100 ACRE-FEET PER YEAR OF STORED WATER ONLY,  
BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR MINING

PERIOD OF USE: MAY 1 THROUGH OCTOBER 15 FOR IRRIGATION AND YEAR ROUND  
FOR MINING

DATE OF PRIORITY: MARCH 24, 1999

POINT OF DIVERSION 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 amount of water used for irrigation under this right, together with  
the amount secured under any other right existing for the same lands, is  
limited to a diversion of 2.5 acre-feet for each acre irrigated during  
the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE 1/4 NE 1/4 1.2 ACRES

NE 1/4 SE 1/4 38.8 ACRES

SE 1/4 SE 1/4 37.0 ACRES

SECTION 19

SE 1/4 NW 1/4 9.2 ACRES  
 NE 1/4 SW 1/4 25.6 ACRES  
 NW 1/4 SW 1/4 36.2 ACRES  
 SW 1/4 SW 1/4 11.4 ACRES  
 SE 1/4 SW 1/4 3.1 ACRES  
 SECTION 20

NE 1/4 NE 1/4 14.5 ACRES  
 SE 1/4 NE 1/4 12.5 ACRES  
 SECTION 30

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

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. 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.

The permittee shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water.

**STANDARD CONDITIONS**

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.



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. Complete application of the 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 #S-84101

PFO Date August 10, 1999

**Original mailed to:**

Applicant: KNAPP RANCHES INC.; KNAPP, JEFF, PO BOX 32, PORT ORFORD, OREGON 97465

Copies sent to:

1. WRD - File # S-84101

PFO, Map, and Fact Sheet Copies sent to:

2. WRD - Watermaster # District 19
3. WRD - Regional Manager: SWR
4. ODFW District Biologist: Todd Confer

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

5. Dennis Goude(CWRE)

CASEWORKER : RWK WEEK 211

<b>Copies Mailed</b>
By: <u>JE</u>
(SUPPORT STAFF)
on: <u>8/9/99</u>
(DATE)

**PFO CHECKLIST**

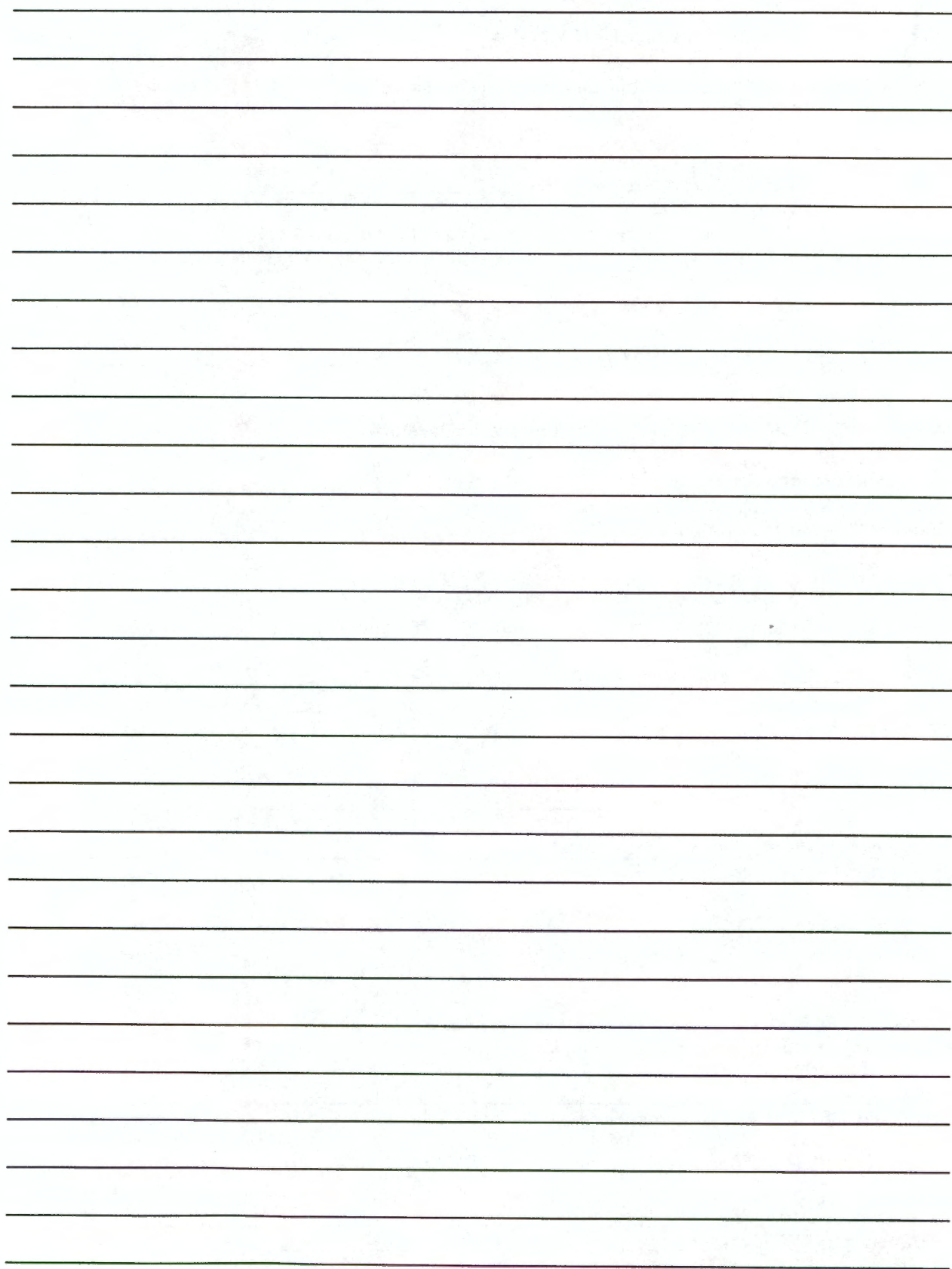
Application #: 5 84101

County Curry Basin: S Coast 17  
Township 32S 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) STORES H<sub>2</sub>O ONLY
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 1/80, 2.5 Irrigation Season \_\_\_\_\_
13. Period of Allowed Use 5 - 10/15
14. Allowed Rate 100 AF DEWING 60 FOR IRR & 40 FOR MOUND  
summary:
15. **Small** ( $\leq 0.1$  cfs,  $\leq 9.2$  AF), **Medium** ( $> 0.1$  or  $< 1.5$  cfs,  $> 9.2$  or  $< 100$  AF) or **Large** ( $\geq 1.5$  cfs,  $\geq 100$  AF)  
condition 71 and **municipal** use  $\leq 0.1$  cfs require the **Large** condition
16. Conditions FSH, B57  
New River Basin? Y / N / NA (see M:\groups\wr\pfo\findings & other lang)
17. IR Date 5/25/99 Public Notice Date 6/8/99 Comment Rec'd \_\_\_\_\_
18. CWRE, representatives or Property owners to notify? Y / N DENNIS CONNOR (CLARE)

Initials: RUK Date: 8/2/99





# IR CHECKLIST

Application # S-84101 Priority Date: 3/24/99  
 Basin: 17-50. COAST County: CLACK  
 Township 323 Range 15W Section 20 1/4 1/4 SWSW  
 WAB: \_\_\_\_\_ POU WAB: \_\_\_\_\_

- ☒ 1. Complete by Minimum Requirements checklist Y N Items still required: \_\_\_\_\_
- N/A 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 T1N 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 (690-577-001 (8))
- ☒ 8. Withdrawn Y N Season Allowed \_\_\_\_\_
- N/A 9. Water Availability 80% R-84100 50% \_\_\_\_\_ N/A
- ☒ 10. Use IRR, MI Period of allowed use 3/1-10/31 (IRR) 4R (MI)
- ☒ 11. Season requested by applicant 5/1-10/15
- ☒ 12. For Irrigation: Rate 180 Duty 2 1/2 Season 3/1-10/31
- N/A 13. For Nursery or Cranberry: Rate \_\_\_\_\_ Duty \_\_\_\_\_ Season \_\_\_\_\_
- ☒ 14. Allowable rate of use: IRR - 60AF, MI 40AF  
 Requested Rate: IRR 60AF, MI 40AF
- ☒ 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 # 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 9 SWR)
- ☒ 24. ODFW Biologist Confer
- ☒ 24. Letter will be: GOOD LIMITED BAD BAD W/IR SHORT BAD W/HC EXCEPT

Name: AD

Date: 5/2/99



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.

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: 5/25/99 14 Day Deadline: \_\_\_\_\_

Application # 5-84101 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? Coho Status S T 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" 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) fish - install, maintain, and operate fish screening.

657 - totalizing flow meter.

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: \_\_\_\_\_

ODFW Recommendation:

X Approval with fishery conditions See #3 Above

\_\_\_\_ Approval without fishery conditions

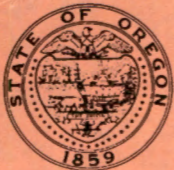
\_\_\_\_ Denial

ODFW Representative(s)

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Todd Cohen Date: 6/24/99 (M:\div.33\odfw chk lst i modified.6-25...





# 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

May 25, 1999

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

Reference: File S-84101

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 A RESERVOIR FILED UNDER APPLICATION R-84100, A TRIBUTARY OF ELK RIVER for IRRIGATION OF 189.5 ACRES AND MINING is **allowable** under OAR 690-517-001(8), the South Coast Basin Program.
3. Water in the amount of 100.0 ACRE-FEET, BEING 60.0 AF FOR IRRIGATION OF 189.5 ACRES AND 40.0 AF FOR MINING is **available** from May 1 through October 15, contingent upon approval of application R-84100.

#### Summary of Initial Determinations

**The use of 100.0 ACRE-FEET, BEING 60.0 AF FOR IRRIGATION OF 189.5 ACRES AND 40.0 AF FOR MINING from A RESERVOIR FILED UNDER APPLICATION R-84100, A TRIBUTARY OF ELK RIVER is allowable from May 1 through October 15, contingent upon the approval of application R-84100.**





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.

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.



# 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: S-84101

Applicant: KNAPP RANCHES INC.; KNAPP, JEFF

County: CURRY

Watermaster: District 19

Priority Date: March 24, 1999

Source: AN UNNAMED STREAM, A TRIBUTARY OF ELK RIVER

Use: IRRIGATION OF 189.5 ACRES AND MINING

Quantity: 100.0 ACRE-FEET, BEING 60.0 AF FOR IRRIGATION AND 40.0 AF FOR

MINING

Basin Name & Number: South Coast, #17

Stream Index Reference: Volume 3 ELK R & MISC

Point of Diversion Location: NWNE, SECTION 30, T32S, R15W, W.M.; 265 FEET SOUTH &  
1765 FEET WEST FROM NE CORNER, SECTION 30 SWSW, SECTION 20, T32S, R15W,  
W.M.; 314 FEET NORTH & 496 FEET EAST FROM SW CORNER, SECTION 20

Place of Use: SENE SENE 1.2 ACRES NESE 38.8 ACRES NESE SESE 37.0 ACRES SESE,  
SECTION 19 SENW SENW 9.2 ACRES NESW NESW 25.6 ACRES NWSW NWSW 36.2  
ACRES SWSW SWSW 11.4 ACRES SESW 3.1 ACRES SESW, SECTION 20 NENE NENE  
14.5 ACRES SENE 12.5 ACRES SENE, SECTION 30, 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



4. The priority date for this application is March 24, 1999.

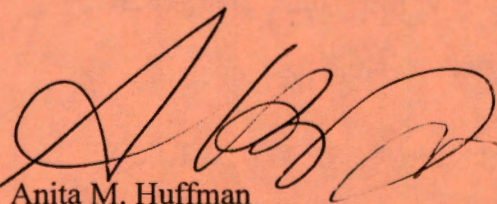
WARNING: This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews public comments and prepares a proposed final order. You should be aware that, if significant public 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,



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

S-84101  
wab 17-2300  
pou 17-2300  
gw





**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

March 18, 1999

Knapp Ranches, Inc.  
Jeff Knapp  
PO Box 32  
Port Orford, OR 97465

REFERENCE FILE: H-1064

Dear Mr. Knapp:

I have received the above listed application for a Permit to Use Water and have assigned it the temporary file number referenced above. Please refer to that number when corresponding with the Department.

The application is being held pending further information prior to being accepted for filing. Please provide the following:

- ▶ You have submitted two separate checks, one for \$740 and one for \$250 as examination fees for a Groundwater, a Surface Water, and a Reservoir applications. Based upon the amount of water proposed to be used for each application I have calculated the fees to total \$1280. The total submitted so far is \$990, which leave a balance of \$290 for examination fees.

I've enclosed a fee worksheet showing how the fees were calculated.

Please submit the requested information by April 1, 1999 or the application and supporting documents will be returned, and any fees paid will be returned.

I've corresponded with Dennis Goude about the applications, however I don't think I was clear on the fees required when I notified him. I'm sorry if there's been any confusion, but I will begin processing your applications immediately upon receipt of the additional fees. If you have any questions, please call me at (503)378-8455 ext. 229, or toll-free in Oregon at 1-800-624-3199 extension 229.

Sincerely,

Anita M. Huffman  
Water Rights Examiner

**Application No.** 8-84601  
**Permit No.**

cc: FILE



Oregon Water Resources Department

RECEIVED

JAN 13 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

FORM R  
FOR WATER USED FOR MINING PURPOSES

1. What type of mining operation is planned?

- ☒ Aggregate ☐ Industrial Minerals ☐ Placer  
☐ Metal (flotation processing) ☐ Metal (chemical processing - heap leach)  
☐ Other (Specify) \_\_\_\_\_

2. What are the proposed uses of water?

- ☒ Gravel washing ☐ Dewatering ☐ Make-up for milling operation  
☐ Heap leach ☐ Dust control ☐ Domestic  
☐ Other (Specify) \_\_\_\_\_

3. Does the mine operation require dewatering?

- ☒ No (Skip to question no. 5) ☐ Yes

At what rate will the water be produced? \_\_\_\_\_ ☐ gpm ☐ cfs

How will the water be discharged? ☐ Recirculated ☐ Off-site

4. Will ponds or dams be constructed?

- ☒ No (Skip to question no. 6) ☐ Yes

Approximate pond depth: \_\_\_\_\_ Depth to groundwater: \_\_\_\_\_ Amount stored: \_\_\_\_\_

5. Will a pond (or ponds) be left after reclamation has been completed?

- ☒ No (Skip to question no. 7) ☐ Yes List information for each pond.

Source: \_\_\_\_\_ Use: \_\_\_\_\_ Size: \_\_\_\_\_ Depth: \_\_\_\_\_

Use the reverse side of this form for additional ponds.

RECEIVED

FEB 04 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

6. Will monitoring or observation wells be constructed on site?

- ☒ No (Skip to question no. 8) ☐ Yes How many? \_\_\_\_\_

Label these well locations on your permit application map.

7. Attach a copy of the map submitted to the Department Of Geology And Mineral Industries showing locations of all intermittent water courses, perennial streams, springs, wetlands, wells.

Application No. 8-84601

Permit No.



TELEPHONE (541) 267-2872

FAX (541) 267-0588

dennisgoude@stuntzner.com

705 SO. 4<sup>TH</sup>, P.O. BOX 118

COOS BAY, OREGON 97420

COOS BAY - BROOKINGS - WILSONVILLE

**RECEIVED****FEB 26 1999****WATER RESOURCES DEPT.  
SALEM, OREGON**

February 24, 1999

Anita M. Huffman  
Water Resources Department  
Commerce Building  
158 12<sup>th</sup> Street NE  
Salem, Oregon 97310-0210

Re: Water Rights File H-1062 Knapp Ranches

Dear Anita:

Attached is an updated page 3 & 4 of Knapp Ranches water use and water management for their application. As per Jerre Woody's (Coos County Watermaster's Office) instructions I have listed the uses in cubic feet per second. Also a check in the amount of \$250 is being sent under separate cover from Knapp Ranches Inc. I would like to apologize for the trouble and time consumed on this project. If you have any questions, please call me at (541) 267-2872.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Goude".  
Dennis Goude**Application No. S-84101****Permit No.**



RECEIVED

JAN 13 1999  
WATER RESOURCES DEPT.  
SALEM, OREGON

061-2 PAGE 122

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, saving and excepting that certain tract containing 2 acres, situated in the same, which was conveyed to Gordon, his wife, by a deed of conveyance dated March 9, 1939 and recorded on March 9, 1939 at page 257-8 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.

RECEIVED

FEB 04 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

*James L. [Signature]*



RECEIVED

JAN 13 1999

RECEIVED

FEB 04 1999

WATER RESOURCES  
SALEM, OREGON

2R VOL 2 PAGE 623

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 12/19/70

Notary Public for Oregon  
My commission expires 12/19/70  
April 13, 1967  
11-70  
623-623  
Louis L. Knapp



Application No 3-24101  
Permit No

BOOK OF RECORDS

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WATER RESOURCES DEPT.  
SALEM, OREGON

Application No. S-84101  
Permit No. -

EXHIBIT "A"

That certain tract of land lying in the Southeast Quarter of the Southeast Quarter (SE 1/4) of Section 20, Township 32 South, Range 15 West, Willamette Meridian, T32S, R15W, Oregon, described as follows:

Beginning at an iron pipe driven in a point on the east line of the Southeast Quarter of the Southeast Quarter (SE 1/4) of Section 20, North 0° 47' 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' East 300.0 feet to an iron pipe; thence parallel with the south boundary of said Section 20 North 0° 47' East 300.0 feet, more or less, to the westerly boundary of the relocated Oregon Coast Highway; thence along the westerly boundary of the relocated Oregon Coast Highway North 32° 00' 00" East 100.0 feet to an iron pipe; thence parallel with the south boundary of said Section 20, North 0° 47' East 300.0 feet to the point of beginning.



*Noted in Records*

State of Oregon  
County of Curry

I hereby certify that the within instrument was  
filed for record *May 21, 1972*

*3:46* *May 21, 1972*  
Book of Records Vol. 23 Page 624-625

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S.R. VOL 2 PAGE 431 INDEX

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, does hereby bargain, 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-Fremery 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 northeast quarter of Section Twenty (20) in Township 32 South, Range 15 West of the Willamette Meridian, thence running north 1320 feet to the point of beginning, containing 26.59 acres of land.

Application No S-84101  
Permit No

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## Oregon Water Resources Department

# Application for a Permit to Use Surface Water

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WATER RESOURCES DEPT.  
SALEM, OREGON

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instruction booklet when completing your application. Thank you.

### 1. Applicant Information

#### A. Individuals

(If more than one person is applying, please attach a sheet providing the information below for each person applying.)

Name: \_\_\_\_\_  
Last First MI

Mailing address: \_\_\_\_\_

City State Zip

Phone: \_\_\_\_\_  
Home Work Other

\*Fax: \_\_\_\_\_ \*E-Mail address: \_\_\_\_\_

#### B. Organizations

(Corporations, associations, firms, partnerships, joint stock companies, cooperatives, public and municipal corporations)

Name of organization: Knapp Ranches Inc.

Name and title of person applying: Jeff Knapp

Mailing address of organization: PO Box 32

Port Orford OR 97465  
City State Zip

Phone: 541-332-3755 541-348-2902  
Day Evening

\*Fax: \_\_\_\_\_ \*E-Mail address: \_\_\_\_\_

\*Optional information

For Department Use

App. No. S-84101 Permit No. \_\_\_\_\_ Date 3/24/99

## 2. Location and Source

The Department cannot process your application without accurate information showing the source of water and location of water use. You must attach a map to this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed points of diversion and place of use. The map must provide tax lot numbers. See page 3 in the instruction booklet for detailed map specifications. In addition, please provide the following information:

### A. County

In what county is the use proposed? Curry

In what county is the diversion proposed? Curry

### B. River Basin

(see instruction booklet page 3 for list): Southcoast (17)

### C. The Proposed Source of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so:

Source 1: Storage Tributary to: \_\_\_\_\_

Source 2: \_\_\_\_\_ Tributary to: \_\_\_\_\_

Source 3: \_\_\_\_\_ Tributary to: \_\_\_\_\_

Source 4: \_\_\_\_\_ Tributary to: \_\_\_\_\_

### D. Property Ownership

Do you own all the land where you propose to divert, transport and use water?

☒ Yes (Skip to section no. 3 "Water Use")

☐ No Please check the appropriate box below, and on a separate sheet of paper list the names and addresses of all affected landowners.\*\*

*Cy does not have to be enclosed but would help*

☐ I have a recorded easement or written authorization permitting access.

☐ I do not currently have written authorization or easement permitting access.

\*\*If more than 25 landowners are involved, a list is not required. See page 4 in the instruction booklet for more details.



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### 3. Water Use

Please read the instruction booklet for more details on "type of use" definitions, how to express the amount of water you need and how to identify the water source you propose to use. You must fill out a supplemental form for some uses as they require specific information for that type of use.

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#### A. Type(s) of Use(s)

(See page 3 in the instruction booklet for a list of Beneficial Uses.)

*1st of MAY*

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**Industrial (Mining), Agricultural & Livestock (600Hd)**

- If your proposed use is domestic, indicate the number of households to be supplied with water: \_\_\_\_\_
- If your proposed use is irrigation, please attach Form I
- If your proposed use is mining, attach Form R
- If your proposed use is municipal, attach Form M
- If your proposed use is commercial/industrial or quasi-municipal, attach Form Q

#### B. Amount of Water

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):

Source	Use	Amount	
Storage	Industrial (Mining)	200	<input type="checkbox"/> cfs <input checked="" type="checkbox"/> gpm <input type="checkbox"/> af
"	Agricultural	<i>1077.19</i> 2.4	<input checked="" type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
"	Livestock	3.4	<input type="checkbox"/> cfs <input checked="" type="checkbox"/> gpm <input type="checkbox"/> af
"		<i>1280.99</i> 2.85 af	<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input checked="" type="checkbox"/> af

(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

#### C. Season of Use

Indicate the time of year you propose to use the water (for seasonal uses such as irrigation, give dates when water use would begin and end):

May 1st to Oct. 15th

#### D. Acreage

If you will be applying water to land, indicate the total number of acres where water will be applied or used:

192 Acres

#### 4. Water Management

##### A. Diversion

What method will you use to divert water from the source?

- ☐ Pump (give horsepower and pump type) 10 HP Electric Pump
- ☐ Head-gate (give dimensions) \_\_\_\_\_
- ☐ Other means (describe) \_\_\_\_\_

##### B. Monitoring

How will you monitor your diversion to be sure you are within the limits of your water right (allowed rate and duty) and you are not wasting water?

- ☐ Weir                      ☐ Meter                      ☐ Periodic Sampling
- ☐ Other (describe) Staff Gauge

##### C. Transport

How will you transport water to your place of use?

- ☐ Ditch, canal (give average width and depth):  
Width \_\_\_\_\_ Depth \_\_\_\_\_
- Is the ditch or canal to be lined? ☐ Yes ☐ No
- ☒ Pipe (give diameter and total length)  
Diameter(s) 4" & 2" Length 4000+' 1500+'
- Other (describe) \_\_\_\_\_

##### D. Application/Distribution Method

What equipment will you use to apply water to your place of use?

Irrigation or land application method (check all that apply):

- ☐ Flood                      ☐ High-pressure sprinkler   ☒ Low pressure sprinkler
- ☐ Drip                      ☐ Water cannons           ☐ Center pivot system
- ☐ Hand lines              ☐ Wheel lines
- ☐ Siphon tubes or gated pipe with furrows
- ☐ Other, describe \_\_\_\_\_

Distribution method

- ☒ In-line storage (tank or pond)   ☐ Direct pipe from source   ☐ Open canal



Application No. 5-84101  
Permit No.

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SALEM, OREGON

3. Water Use

Please read the instruction booklet for more details on "type of use" definitions, how to express the amount of water you need and how to identify the water source you propose to use. You must fill out a supplemental form for some uses as they require specific information for that type of use.

A. Type(s) of Use(s)

(See page 3 in the instruction booklet for a list of Beneficial Uses.)

Sec.

Industrial (Gravel Mining), <sup>IRRIGATION</sup> Agricultural & Livestock (600 Hd)

(NO AGRICULTURE PER DENNIS GOODE)

- If your proposed use is domestic, indicate the number of households to be supplied with water: \_\_\_\_\_
- If your proposed use is irrigation, please attach Form I
- If your proposed use is mining, attach Form R
- If your proposed use is municipal, attach Form M
- If your proposed use is commercial/industrial or quasi-municipal, attach Form Q

B. Amount of Water

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):

Source	Use	Amount
Storage	<sup>40</sup> <del>Industrial (Mining)</del>	0.45 <input checked="" type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
"	<sup>IRRIGATION</sup> <del>Agricultural</del> <sup>860 AF</sup>	2.4 <input checked="" type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
"	<sup>OMIT PER DENNIS GOODE</sup> <del>Livestock</del> <sup>41 AF</sup>	0.01 <input checked="" type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
		<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

C. Season of Use

Indicate the time of year you propose to use the water (for seasonal uses such as irrigation, give dates when water use would begin and end):

May 1<sup>st</sup> to Oct. 15<sup>th</sup>

D. Acreage

If you will be applying water to land, indicate the total number of acres where water will be applied or used:

192 Acres



#### 4. Water Management

##### A. Diversion

What method will you use to divert water from the source?

- ☐ Pump (give horsepower and pump type) 10 HP Electric Pump
- ☐ Head-gate (give dimensions) \_\_\_\_\_
- ☐ Other means (describe) \_\_\_\_\_

##### B. Monitoring

How will you monitor your diversion to be sure you are within the limits of your water right (allowed rate and duty) and you are not wasting water?

- ☐ Weir
- ☐ Meter
- ☐ Periodic Sampling
- ☐ Other (describe) Staff Gauge

##### C. Transport

How will you transport water to your place of use?

- ☐ Ditch, canal (give average width and depth):  
Width \_\_\_\_\_ Depth \_\_\_\_\_  
Is the ditch or canal to be lined? ☐ Yes ☐ No
- ☐ Pipe (give diameter and total length)  
Diameter(s) 4" & 2" Length 4000±' 1500±'
- Other (describe) \_\_\_\_\_

##### D. Application/Distribution Method

What equipment will you use to apply water to your place of use?

Irrigation or land application method (check all that apply):

- ☐ Flood
- ☐ High-pressure sprinkler
- ☒ Low pressure sprinkler
- ☐ Drip
- ☐ Water cannons
- ☐ Center pivot system
- ☐ Hand lines
- ☐ Wheel lines
- ☐ Siphon tubes or gated pipe with furrows
- ☐ Other, describe \_\_\_\_\_

Distribution method

- ☒ In-line storage (tank or pond)
- ☐ Direct pipe from source
- ☐ Open canal

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**E. Conservation**

What methods will you use to conserve water? Why did you choose this distribution or application method? Have you considered other methods to transport, apply, distribute or use water? For example, if you are using sprinkler irrigation rather than drip irrigation, explain.

Rotational Field Method-Most efficient method for field irrigation.

**5. Resource Protection**

**Protection Practices**

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See Appendix A in the instruction booklet for a list of possible permit requirements from other agencies. Please indicate any of the following practices you plan to undertake to protect water resources:

☒ Diversion will be screened to prevent uptake of fish and other aquatic life.

Describe planned actions: \_\_\_\_\_

☒ Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas. Describe planned actions: Use excavator to deepen existing reservoir.

☐ Operating equipment in a water body will be managed and timed to prevent damage to aquatic life. Describe: \_\_\_\_\_

☐ Water quality will be protected by preventing erosion and runoff of waste or chemical products. Describe: \_\_\_\_\_

☐ Other: \_\_\_\_\_

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**6. Project Schedule**

Proposed date construction will begin April 1999

Proposed date construction will be completed April 2000

Proposed date beneficial water use will begin April 2001



## 7. Remarks

*If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.*

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## Signature

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I receive a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all statements made and information provided in this application are true and correct to the best of my knowledge.

Knappe Ranches Inc

Signature of Applicant

1-14-99

Date

Jeff Knappe

Signature of Co-applicant

1-14-99

Date

Before submitting this application, have you:

- Answered every question?
- Included a Land Use Information Form or receipt stub signed by a local official?
- Attached a legible map that meets all the necessary criteria?
- Included a check made out to WRD for at least the amount of the application fee?

Last revision: October 31, 1996





Oregon Water Resources Department

FORM I

FOR IRRIGATION WATER USE

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WATER RESOURCES DEPT.  
SALEM, OREGON

1. Please indicate whether you are requesting a primary or supplemental irrigation water right.

☒ Primary ☒ Supplemental

If supplemental, please indicate the number of acres that will be irrigated for each type of use.

Primary: 100 Acres

Secondary: 92 Acres

List the permit or certificate number of the primary water right:

no. \_\_\_\_\_

2. Please list the anticipated crops you will grow and whether you will be irrigating them for a full or partial season:

- |               |                                      |  |
|---------------|--------------------------------------|--|
| 1. <u>Hay</u> | <input type="checkbox"/> Full season | <input checked="" type="checkbox"/> Partial season (from: <u>5/1</u> to <u>10/15</u> ) |
| 2. _____      | <input type="checkbox"/> Full season | <input type="checkbox"/> Partial season (from: _____ to _____)                         |
| 3. _____      | <input type="checkbox"/> Full season | <input type="checkbox"/> Partial season (from: _____ to _____)                         |
| 4. _____      | <input type="checkbox"/> Full season | <input type="checkbox"/> Partial season (from: _____ to _____)                         |

3. Indicate the maximum total number of acre-feet you expect to use in an irrigation season:

856 Acre-ft. \_\_\_\_\_ acre-feet

(1 acre-foot equals 12 inches of water spread over one acre, or 43,560 cubic feet, or 325,851 gallons.)

4. How will you schedule your applications of water? Will you be applying water in the evenings, twice a week, daily?

☐ Daily during daytime hours

☐ Daily during nighttime hours

☒ Two or three times weekly during daytime

☐ Two or three times weekly during nighttime

☐ Weekly, during daytime hours

☐ Weekly, during nighttime hours

☐ Other, explain: \_\_\_\_\_

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SALEM, OREGON



Application No. 5-84101

Permit No. Oregon Water Resources Department

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WATER RESOURCES DEPT.  
SALEM, OREGON

# FORM I

## FOR IRRIGATION WATER USE

1. Please indicate whether you are requesting a primary or supplemental irrigation water right.

☒ Primary ☒ Supplemental

If supplemental, please indicate the number of acres that will be irrigated for each type of use.

Primary: 92 Acres

Secondary: 100 Acres

List the permit or certificate number of the primary water right:

no. \_\_\_\_\_

2. Please list the anticipated crops you will grow and whether you will be irrigating them for a full or partial season:

- |               |   |   |
|---------------|---|---|
| 1. <u>Hay</u> | <input checked="" type="checkbox"/> Full season | <input type="checkbox"/> Partial season (from: <u>5/1</u> to <u>10/15</u> ) |
| 2. _____      | <input type="checkbox"/> Full season            | <input type="checkbox"/> Partial season (from: _____ to _____)              |
| 3. _____      | <input type="checkbox"/> Full season            | <input type="checkbox"/> Partial season (from: _____ to _____)              |
| 4. _____      | <input type="checkbox"/> Full season            | <input type="checkbox"/> Partial season (from: _____ to _____)              |

3. Indicate the maximum total number of acre-feet you expect to use in an irrigation season:

856 AcFt. acre-feet

(1 acre-foot equals 12 inches of water spread over one acre, or 43,560 cubic feet, or 325,851 gallons.)

4. How will you schedule your applications of water? Will you be applying water in the evenings, twice a week, daily?

☐ Daily during daytime hours

☐ Daily during nighttime hours

☒ Two or three times weekly during daytime

☐ Two or three times weekly during nighttime

☐ Weekly, during daytime hours

☐ Weekly, during nighttime hours

☐ Other, explain: \_\_\_\_\_

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## Oregon Water Resources Department Land Use Information Form

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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 S-84101Address: 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 ofgrass 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**RECEIVED**

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### 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 7011 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.)



MARY M. BARTZ

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 MAP A PART HEREOF.

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WATER RESOURCES DEPT.  
SALEM, OREGON

Application No. S-84101

Permit No.

and covenant(s) that grantor is the owner of the above described property free of all encumbrances except

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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~~  
STATE OF 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, Keith B. 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  
property remains subject or which the purchaser agrees to pay or assume

of consideration includes other property or value, and the following. However, the actual consideration  
consists of or includes other property, or value given or promised which is part of the whole  
consideration (state value)

WARRANTY DEED (INDIVIDUAL)

TO

After Recording Return to  
KNAPP RANCHES, INC.  
Langlois, Oregon

County of

I certify that the within instrument was recorded for record  
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 of \_\_\_\_\_

Title



**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

RECEIPT # **28509**

158 12TH ST. N.E.  
SALEM, OR 97310-0210  
378-8455 / 378-8130 (FAX)

INVOICE # \_\_\_\_\_

RECEIVED FROM: Knapp Ranches Inc  
BY: \_\_\_\_\_

APPLICATION	5-84101
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 196-2030 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**

**MISCELLANEOUS**

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY) \_\_\_\_\_

\$

(ew) TC162 DEPOSIT LIAB. (IDENTIFY) \_\_\_\_\_

\$

**WATER RIGHTS:**

0201 SURFACE WATER

**EXAM FEE**

\$ 100.00

0202

**RECORD FEE**

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

0206

\$

**WELL CONSTRUCTION**

**EXAM FEE**

0218 WELL DRILL CONSTRUCTOR

\$

0219

**LICENSE FEE**

\$

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

\$

**0467 HYDRO ACTIVITY**

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HRDRO APPLICATION

\$

RECEIPT # **28509**

DATED: 3-24-99 BY: Roger Wright

Distribution: White Copy: Customer Yellow Copy: Fiscal Blue Copy: File Buff Copy: Fiscal

FILE#: S 84101

KNAPP RANCHES INC.; KNAPP, JEFF  
PO BOX 32  
PORT ORFORD, OR 97465

FILE#: S 84101

KNAPP RANCHES INC.; KNAPP, JEFF  
PO BOX 32  
PORT ORFORD, OR 97465



RECEIVED

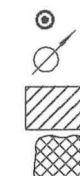
JAN 13 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

Prepared For: Knapp Ranches, INC.  
Prepared By: Dennis Goude  
Surveyed: December 3, 1998

Application No. S-84101  
Permit No. 53648

LEGEND  
P.O.B.  
P.O.D.  
IRRIGATED  
AREA  
QUARRY



IRRIGATED ACREAGE			
SE 1/4 NE 1/4	SEC. 19		1.2 ac.
NE 1/4 SE 1/4	SEC. 19		38.8 ac.
SE 1/4 SE 1/4	SEC. 19		37.0 ac.
NW 1/4 SW 1/4	SEC. 20		36.2 ac.
SW 1/4 SW 1/4	SEC. 20		11.4 ac.
SE 1/4 SW 1/4	SEC. 20		3.1 ac.
NE 1/4 SW 1/4	SEC. 20		25.6 ac.
SE 1/4 NW 1/4	SEC. 20		9.2 ac.
NE 1/4 NE 1/4	SEC. 30		14.5 ac.
SE 1/4 NE 1/4	SEC. 30		12.5 ac.

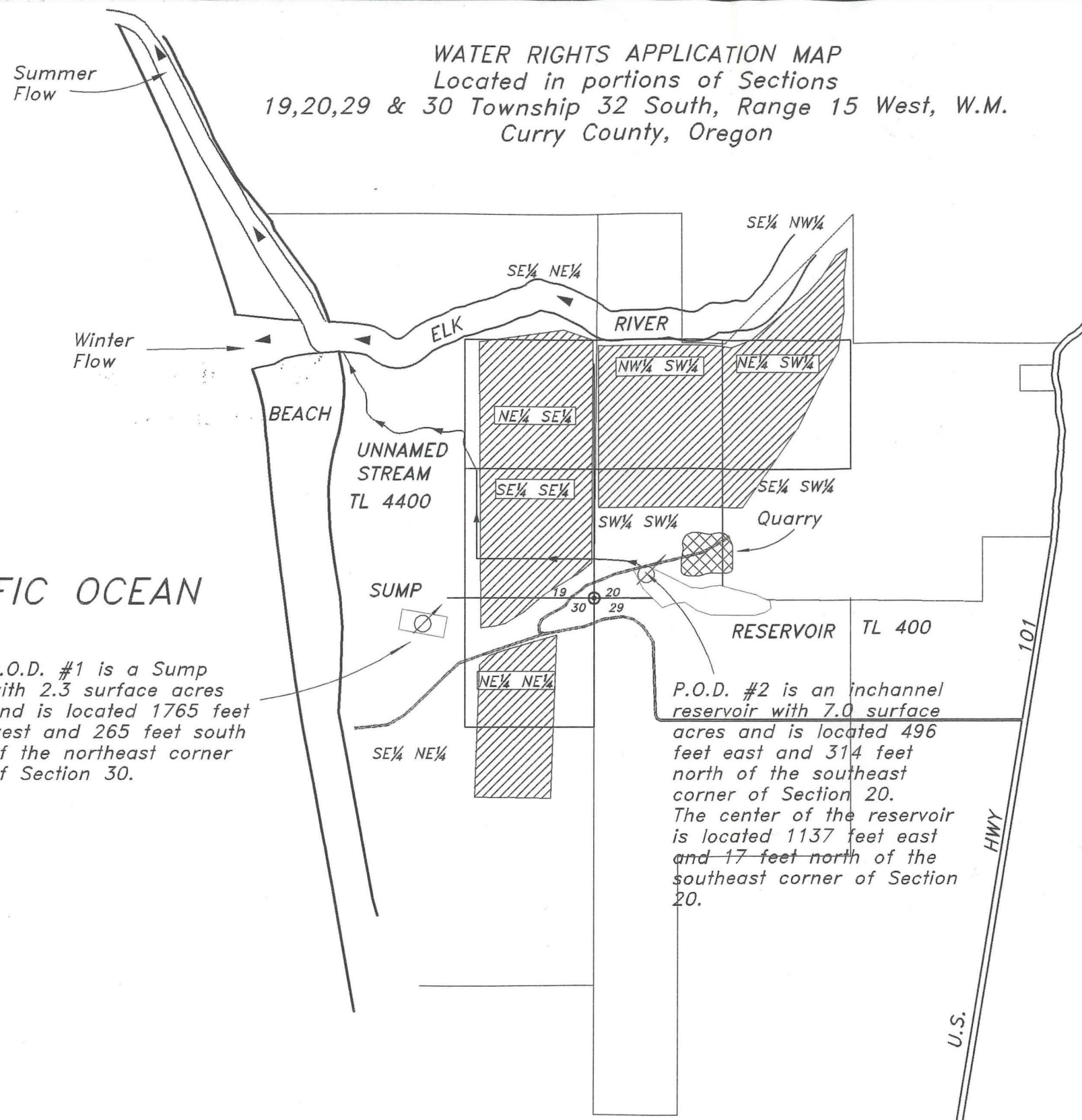
189.5

RECEIVED

FEB 04 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

# WATER RIGHTS APPLICATION MAP Located in portions of Sections 19, 20, 29 & 30 Township 32 South, Range 15 West, W.M. Curry County, Oregon



PACIFIC OCEAN

P.O.D. #1 is a Sump  
with 2.3 surface acres  
and is located 1765 feet  
west and 265 feet south  
of the northeast corner  
of Section 30.

P.O.D. #2 is an inchannel  
reservoir with 7.0 surface  
acres and is located 496  
feet east and 314 feet  
north of the southeast  
corner of Section 20.  
The center of the reservoir  
is located 1137 feet east  
and 17 feet north of the  
southeast corner of Section  
20.

## EXAMINERS DISCLAIMER STATEMENT

The preparation of this map was for the purpose of  
identifying the location of the Water Right only and  
has no intent to provide dimensions or location of  
property ownership lines.

Stuntzner Engineering

& Forestry, LLC

ENGINEERING \* LAND SURVEYING \* FORESTRY  
PLANNING \* WATER RIGHTS

705 South 4th St.  
Post Office Box 118  
Coos Bay, Oregon 97420

Phone (541) 267-2872  
Fax (541) 267-0588

RECEIVED

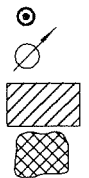
JAN 13 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

Prepared For: Knapp Ranches, INC.  
Prepared By: Dennis Goude  
Surveyed: December 3, 1998

Application No. **R-84101**  
Permit No. **R-12770**

LEGEND  
P.O.B.  
P.O.D.  
IRRIGATED  
AREA  
QUARRY



IRRIGATED ACREAGE			
SE 1/4 NE 1/4	SEC. 19		1.2 ac.
NE 1/4 SE 1/4	SEC. 19		38.8 ac.
SE 1/4 SE 1/4	SEC. 19		37.0 ac.
NW 1/4 SW 1/4	SEC. 20		36.2 ac.
SW 1/4 SW 1/4	SEC. 20		11.4 ac.
SE 1/4 SW 1/4	SEC. 20		3.1 ac.
NE 1/4 SW 1/4	SEC. 20		25.6 ac.
SE 1/4 NW 1/4	SEC. 20		9.2 ac.
NE 1/4 NE 1/4	SEC. 30		14.5 ac.
SE 1/4 NE 1/4	SEC. 30		12.5 ac.

189.5

RECEIVED

FEB 04 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

WATER RIGHTS APPLICATION MAP  
Located in portions of Sections  
19, 20, 29 & 30 Township 32 South, Range 15 West, W.M.  
Curry County, Oregon

1" = 1320'

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