

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time
for Permit R-14857, Water Right Application R-87497
in the name of Alton E. and Dixie G. Sullivan

) PROPOSED
) FINAL
) ORDER DENIAL

Permit Information

Application:	R-87497
Permit:	R-14857
Basin:	2B – Middle Willamette / Watermaster District 16
Date of Priority:	July 15, 2009
Source of Water:	Runoff, a tributary of Onehorse Slough
Purpose or Use:	Storage for Fish Life, Fire Protection and Wildlife
Storage Facilities:	Pond 1, Pond 2, and Pond 3
Maximum Rate:	97.5 acre-feet (AF), being 31.0 AF in Pond 1, 4.5 AF in Pond 2 and 62.0 AF in Pond 3

Please read this Proposed Final Order in its entirety.

In summary, the Department proposes to:

- Deny an extension of time to complete construction of the reservoirs from June 10, 2015, to October 1, 2028.
- Deny an extension of time to store the permitted volume of water from June 10, 2015, to October 1, 2028.
- Cancel Permit R-14857

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. The cancelation of the permit is being processed in accordance with Oregon Revised Statute 537.260.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department

PFO – Proposed Final Order

AF - acre-feet

AUTHORITY

Generally, see ORS 537.230, ORS 537.260 and OAR Chapter 690 Division 315.

ORS 537.230(2) 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) instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

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

ORS 537.260(1) provides that the Oregon Water Resources Department may cancel a permit after 60 days notice by registered mail or by certified mail with return receipt, when proof of completion has not been submitted.

FINDINGS OF FACT

1. On June 10, 2010, Permit R-14857 was issued by the Department. The permit authorizes the storage of up to 97.5 AF of water, being 31.0 AF in Pond 1, 4.5 Af in Pond 2 and 62.0 AF in Pond 3 from runoff, a tributary of Onehorse Slough, for fish life, fire protection and wildlife. The permit specified construction was to be completed, and the permitted volume of water was to be stored within five years of the date of permit issuance, being June 10, 2015.
2. On August 30, 2024 the Department sent by Certified Mail, notice to the permit holders of record, as required by Oregon Revised Statute 537.260, prior to the beginning of cancelation of the permit for failure to submit proof of completion of the appropriation as required by ORS 537.230.
3. On July 15, 2025, the permit holder, Alton E. and Dixie G. Sullivan, submitted an “Application for Extension of Time” to the Department, requesting the time to complete

construction of the water system extended from June 10, 2015, to October 1, 2028 and the time to apply water to full beneficial use under the terms of Permit R-14857 be extended from June 10, 2015, to October 1, 2028. This is the first permit extension requested for Permit R-14857.

4. Notification of the Application for Extension of Time for Permit R-14857 was published in the Department's Public Notice dated July 22, 2025. No public comments were received regarding the extension application.

Review Criteria [OAR 690-315-0040]

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

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

5. On July 15, 2025, 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. According to the Application, construction began June 2010 with the stripping of the dam footprint.
7. On December 20, 2021, a Claim of Beneficial Use (COBU) for Permit R-14785 was submitted to the Department. Permit R-14785 was issued October 9, 2009, authorizing the storage of up to 102.0 AF of water, being 23.0 AF in Pond 1, 14.0 AF in Pond 2, and 65.0 AF in Pond 3. The COBU identifies that construction began June 2010. The Claim of beneficial use also indicates that only Pond 3 was constructed under Permit R-14785. Certificate 97445 was issued by the Department on November 17, 2023, describing the perfection of the storage of 102.0 AF of water in Pond 3, developed under Permit R-14785.

The Department has determined that construction of Pond 3 did begin prior to June 10, 2015, however this construction was accomplished in the development of Pond 3 as described in the COBU submitted for Permit R-14785.

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

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

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

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors:

a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

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

The amount of construction completed within the time allowed in the permit.¹

8. Construction of Pond 3 began prior to the deadline specified in the permit, however as described in FOF 7 above, this construction was in the development of Pond 3 under Permit R-14785 and perfected under Certificate 97445.
9. The Application also identifies work accomplished between July 2010 through September 2010 for the completion of the dam for Pond 3, however as described in FOF 7 above, this construction was in the development of Pond 3 under Permit R-14785 and perfected under Certificate 97445.
10. The Application does not identify any additional work after September 2010.

The Application does not provide evidence of progress made towards construction of Pond 1, Pond 2 or Pond 3 as authorized under Permit R-14857 or progress towards the storage of water authorized under Permit R-14857 within the time period provided by the permit. Therefore, the Department cannot find good cause or reasonable diligence towards the complete application of water to beneficial use under work has been accomplished within the time allowed in Permit R-14857.

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

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

11. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; annual reports of the amount of water stored each month were not received by the Department by June 10, 2015.

The Application does not provide evidence toward perfecting the water right under the terms and conditions of the permit. Therefore, the Department has determined the permit holder has not

¹ "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A)and(B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

been diligent in developing or perfecting the water use permit, and has not complied with all terms and conditions, as required by Permit R-14857.

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

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

12. According to the Application, a maximum volume of 102.0 AF of water has been stored from the runoff, a tributary of Onehorse Slough. As described in FOF 7 above, this 102.0 AF of water stored in Pond 3 has already been developed under Permit R-14785, and perfected under Certificate 97445.

Based on FOF 6, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water has been stored in Pond 1, Pond 2, or Pond 3 as authorized by Permit R-14857.

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

13. According to the Application an investment of approximately \$329,400, has been made in the development of Pond 3, which is about 51 percent of the total projected cost for complete development of this project. An additional \$315,820 investment is anticipated for the completion of Pond 1 and Pond 2.

Though the Application identifies an investment towards the development of Pond 3, this investment occurred in the development of Pond 3 as authorized by Permit R-14785, and perfected under Certificate 97445. The Department has determined that an investment in the development of Pond 1, Pond 2, and Pond 3, as authorized under Permit R-14857, has not been made.

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

The application provides evidence that no work has been accomplished towards completion of the reservoirs as authorized under Permit R-14857; the permit holder has not demonstrated compliance with permit conditions, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has not demonstrated reasonable diligence in previous performance under Permit R-14857.

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

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

- (a) *The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- (b) *Special water use designations established since permit issuance, including but not*

limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);

- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

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

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

14. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-14857; 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.
15. Current Water Availability Analysis for the South Santiam River, (Tributary to Santiam River) at the mouth (watershed ID 30200601) show that no water is available during the months of July, August, September and October at the 50% exceedance level.

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

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

16. The reservoirs are located on a tributary of Onehorse Slough, and are not located within a Withdrawn Area.
17. Onehorse Slough is not located within or above a state or federal scenic waterway.
18. The reservoirs are not in a location listed by the Department of Environmental Quality as a water quality limited stream.

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

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

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

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

Economic interests dependent on completion of the project.

20. The Application identifies an approximate total of \$329,400 has been invested in the project.

The Department has determined that the investment was made in the development of Pond 3 as authorized under Permit R-14785. See FOF 7 above.

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

Other economic interests dependent on completion of the project.

21. No other economic interests dependent on completion of the project have been identified.

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

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

22. No other factors relevant to the determination of the market and present demand for water and power have been identified.

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

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

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

24. The Application states: "The applicant was getting push back from a forest service representative saying the ponds were not necessary; however, Lebanon Fire District is very much in favor of Ponds 1 and 2 and has provided a letter in support." The Application does not describe how this the "push back" is tied to any additional governmental requirements that were needed to be met to construct the reservoirs on the property owned by the applicant.

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

25. The Application states; "With pushback from the forest service and rising cost of constructing ponds, it was initially decided to delay this portion of the project to spread out the cost."

As described in FOF 24 above, the Application did not provide how the "push back" from the forest service resulted in a delay in the development. Additionally, the applicants decision to delay the project due to rising costs would not be considered an "unforeseen event" as it was a decision made by the permit holder not to pursue development due to financial considerations.

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

26. The Application states: “not having fire suppression water available for rural fires will be a hardship. This hardship has been seen in recent years by nearby areas with catastrophic consequences.”

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

27. The Application does not provide evidence of good faith of the appropriator under Permit. The Application only describes work accomplished to develop a reservoir as described by a different permit, for which a COBU has been submitted, and Certificate 97445 has been issued.

Based on Findings of Fact 7, 8, 9, 10, 11, and 12, above, the Department finds that the Applicant has not demonstrated good faith in the development of the authorized use under Permit R-14857.

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.

28. As of July 15, 2025, the permit holder states the remaining work to be completed consists of beginning construction of Pond 1 and Pond 2 and storing the authorized volume of water.

The Department has determined that the request extend the time to complete construction and store water under permit R-14857 is not reasonable because no work toward the development of the reservoirs, as authorized by permit R-14857, has occurred as the investment described in the Application was towards the development of a reservoir authorized under Permit R-14785. Additionally, the Application does not describe any additional work towards the development of the reservoirs since September 2010.

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

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

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant

has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

CONCLUSIONS OF LAW

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant begin construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. The application established that there has been no construction, no financial invest or reasonable diligence towards development of the reservoirs as authorized by Permit R-14857. The permit holder has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
4. The Department has provided notice pursuant ORS 537.260 to begin cancelation of the permit.

PROPOSED ORDER

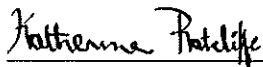
Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny an extension of time to complete construction of the reservoirs from June 10, 2015, to October 1, 2028.

Deny an extension of time to store the permitted volume of water from June 10, 2015, to October 1, 2028.

Cancel Permit R-14857.

DATED: January 13, 2026



Katherine Ratcliffe
Water Right Services Division Administrator, for
Ivan Gall, Director
Oregon Water Resources Department

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protests

Pursuant to OAR 690-315-0060(1), 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. Protests must be received by the Water Resources Department no later than February 27, 2026, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant'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
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$720 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$1,425 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative

may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

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

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- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at (503) 979-3213.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
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