

**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-13006, Water Right Application R-84324 ) PROPOSED FINAL ORDER  
in the name of Lloyd and Lois Piercy. )

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**Permit Information**

**Application File R-84324 Permit R-13006**

Basin: 7 – Umatilla / Watermaster District 5

Date of Priority: December 28, 1999

**Authorized Use of Water**

Source of Water: Umatilla River, a tributary of Columbia River  
within the Umatilla Basin  
Purpose of Use: Stored water to be appropriated under Application S-84325  
(Permit 53733) for Supplemental Irrigation  
Maximum Rate: 2.67 Cubic Feet per Second (cfs)  
Maximum Volume: 105.0 Acre-feet (AF)

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

*Please read this Proposed Final Order in its entirety.*

This Proposed Final Order applies only to Permit R-13006, water right Application R-84324.  
A copy of Permit R-13006 is enclosed as Attachment 1.

## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2010 to October 1, 2018.
- Make the extension subject to certain conditions set forth below.

### ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department

PFO – Proposed Final Order

### Units of Measure

cfs – cubic feet per second

gpm – gallons per minute

AF – acre-feet

## AUTHORITY

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

**ORS 537.230(3)** provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

**ORS 539.010(5)** provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

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

**OAR 690-301-0050 (5)** states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

**OAR 690-315-0050(6)** requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints shall not exceed five year periods.

## FINDINGS OF FACT

### Background

1. Permit R-13006 was granted by the Department on July 27, 2001. The permit authorizes the diversion of up to 2.67 cfs of water for storage during the period January 1 through April 14 of each year from the Umatilla River, a tributary of Columbia River within the Umatilla Basin, to be appropriated under Application S-84325 (Permit 53733) for Supplemental Irrigation. The permit specified that the reservoir was to be filled and complete application of water was to be made on or before October 1, 2005.
2. On October 30, 2009, the Department approved Permit Amendment T-10945 (Special Order Volume 79, Pages 134 to 136) authorizing a change in the place of use (area submerged by the reservoir) under Permit R-13006

**from:**

STORAGE						
Township		Range		Meridian	Sec	¼ ¼
3	N	29	E	W.M.	28	SW NE
3	N	29	E	W.M.	28	SE NE

**to:**

STORAGE						
Township		Range		Meridian	Sec	¼ ¼
3	N	29	E	W.M.	28	SE NE
3	N	29	E	W.M.	28	NE SE
3	N	29	E	W.M.	28	SE SE

3. A prior permit extension has been granted for Permit R-13006. The most recent extension resulted in the completion dates for completion of construction and full application of water being extended to October 1, 2010.
4. The permit holder submitted an “Application for Extension of Time” to the Department on February 22, 2013 requesting the time to complete construction of the water system and to apply water to full beneficial use under the terms of Permit R-13006 be extended from October 1, 2010 to October 1, 2018. This is the second permit extension requested for Permit R-13006.
5. Notification of the Application for Extension of Time for Permit R-13006 was published in the Department’s Public Notice dated March 5, 2013. No public comments were received regarding the extension application.

### 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>.*

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<sup>1</sup>ORS 537.230 applies to surface water permits only.  
Proposed Final Order: Permit R-13006

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

6. On February 22, 2013, 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)]**

7. Senate Bill 300 (1999 legislation) eliminated the requirement that holders of new surface water and ground water permits start construction on water projects within one year after the Department issues the permit. Senate Bill 300 applies to any application for a permit filed after October 23, 1999, including this application.

**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.*

8. As of February 22, 2013, the remaining work to be completed consists of completing construction of the water system and applying water to full beneficial use.
9. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2018, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit R-13006 is both reasonable and necessary.

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

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

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

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

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

10. Work was accomplished within the time allowed in the permit or previous extension as follows:
  - a. Construction of the water system began prior to October 1, 2005.
  - b. Work was completed (specified in the Application for an Extension of Time) during the original development time frame under Permit R-13006. The permit holder purchased equipment for the project, and spent time, labor, and fuel clearing the reservoir site.
  - c. During the most recent extension period, being from October 1, 2005 to October 1, 2010, the following was accomplished:

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<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.

- Plans and execution of excavations for reservoir dam location verifications, reservoir bottom bedrock assessments, and related dam construction evaluations;
- Cost does not include use of heavy machinery and operator supplied by land owner; and
- All work was supervised by an Oregon PE.

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

11. The following beneficial use was made of the water during the permit or previous extension time limits:
  - a. Since the issuance of Permit R-13006 on July 27, 2001, no water has been diverted from the Umatilla River, a tributary of Columbia River within the Umatilla Basin for storage as the reservoir is not yet constructed.

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

12. The water right permit holder's conformance with the permit or previous extension conditions.
  - a. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

**Financial Investments [OAR 690-315-0040(3)(d)], 690-315-0040(4)(d)**

13. Financial investments made toward developing the beneficial water use.
  - a. As of February 22, 2013, the permit holder has invested approximately \$114,943, which is approximately 74 percent of the total projected cost for complete development of this project.

**Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)]**

14. The permit holder anticipates an additional \$40,000 investment is needed for the completion of this project.

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

15. The Department has found good faith of the appropriator under Permit R-13006.

**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:*

16. The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water

management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].

- a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit R-13006; furthermore, water availability for new 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 Umatilla River, a tributary of Columbia River within the Umatilla Basin, and is not located within a Withdrawn Area. Umatilla River, a tributary of Columbia River within the Umatilla Basin is not located within or above any state or federal scenic waterway, however it is located within an area ranked “highest” 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. Umatilla River, a tributary of Columbia River within the Umatilla Basin is not listed by the Department of Environmental Quality as a water quality limited stream.
17. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
    - a. None have been identified.
  18. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
    - a. None have been identified.
  19. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this condition.

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

20. 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)]**

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

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

22. Unforeseen events extended the length of time needed to fully develop and perfect Permit R-13006, in that a 2009 excavation evaluation indicated that the reservoir could not be constructed as planned and a different approach was needed. The permit holders are currently evaluating a different method of storage and are anticipating preparing a permit modification application.

## **CONCLUSIONS OF LAW**

1. The applicant is entitled to apply for an extension of time to complete construction and completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Completion of construction and full application of water to beneficial use can be accomplished by October 1, 2018<sup>4</sup>, as required by OAR 690-315-0040(1)(c).
5. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As required by OAR 690-315-0050(6) and as described in Finding 19 above, the Department has established, as specified in the “Conditions” section of this PFO (Item 1), a progress checkpoint in order to ensure future diligence is exercised in the development and perfection of Permit R-13006.

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<sup>4</sup>Pursuant to ORS 537.230(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

## Proposed Order

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

Extend the time for complete construction of the water system and to apply water to beneficial use under Permit R-13006 from October 1, 2010 to October 1, 2018.

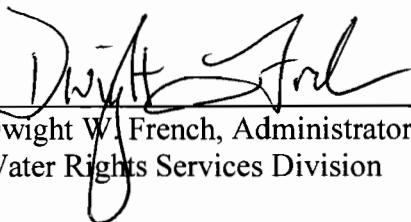
## CONDITIONS

### 1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2016**. *A form will be enclosed with your Final Order.*

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

DATED: August 6, 2013

  
Dwight W. French, Administrator  
Water Rights Services Division

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



