

**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 G-16117, modified by Permit Amendment T-10451	)	PROPOSED
Water Right Application G-16471,	)	FINAL ORDER
in the name of the Running Y Resort, Inc.	)	

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**Permit Information**

**Application File G-16471 / Permit G-16117,**  
**modified by Permit Amendment T-10451**

Basin 14 – Klamath Basin / Watermaster District 17

Date of Priority: May 31, 2005

**Authorized Use of Water**

Source of Water:	RidgeWater Wells #1, #2, #3, #4, and Wells #1, #2 and #3, all within the Upper Klamath Lake Basin
Purpose or Use:	Quasi-Municipal
Maximum Rate:	4.46 Cubic Feet per Second (cfs)

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**This Extension of Time request is being processed in accordance with Oregon  
Administrative Rule Chapter 690, Division 315.**

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

*Please read this Proposed Final Order in its entirety as it contains  
additional conditions not included in the original permit.*

This Proposed Final Order applies only to Permit G-16117, modified by Permit Amendment T-10451, Water Right Application G-16471.

## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2011 to October 1, 2029.
- Grant an extension of time to apply water to full beneficial use from October 1, 2011 to October 1, 2029.
- Make the extension of time subject to certain conditions as set forth below.

### ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

PFO – Proposed Final Order

RidgeWater – Ridgewater Planned Unit Development

WMCP – Water Management and Conservation Plan

### Units of Measure

cfs – cubic feet per second

### AUTHORITY

**Generally, see ORS 537.630 and OAR Chapter 690 Division 315.**

**ORS 537.630(1)** provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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 690-315-0080** provides in pertinent part that the Department shall make findings to determine if an extension of time for quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

**OAR 690-315-0090(3)** requires the Department, under specific circumstances, to condition an extension of time for quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan

under OAR Chapter 690, Division 86.

## **FINDINGS OF FACT**

### **Background**

1. Permit G-16117 was granted by the Department on October 24, 2006. The permit originally authorized the use of up to 4.46 cfs of water from four wells, being RidgeWater Well #1, RidgeWater Well #2, RidgeWater Well #3, and RidgeWater Well #4, within the Upper Klamath Lake Basin, for quasi-municipal use. It specified construction of the water development project was to be completed by October 1, 2011, and complete application of water was to be made on or before October 1, 2011.
2. On May 28, 2008, the Department approved Permit Amendment T-10451 (Special Order Volume 74, Page 1027) authorizing (1) three additional wells to Permit G-16117, being Well #1, Well #2, and Well #3 (located on the Running Y Resort); and (2) a change in the place of use in order to authorize use of Permit G- 16117 at the Running Y Resort.
3. The permit holder submitted an “Application for Extension of Time” to the Department on October 3, 2011, requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-16117, modified by Permit Amentment T-10451 (hereafter referred to as simply Permit G-16117) be extended from October 1, 2011 to October 1, 2029. This is the first extension of time request for Permit G-16117.
4. Notification of the Application for Extension of Time for Permit G-16117 was published in the Department’s Public Notice dated November 1, 2011. No public comments were received regarding the extension application.

### **Review Criteria for Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]**

*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 690-315-0080. This determination shall consider the applicable requirements of ORS 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

### **Complete Extension of Time Application [OAR 690-315-0080(1)(a)]**

5. On October 3, 2011, the Department received an Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

### **Start of Construction [OAR 690-315-0080(1)(b)]**

6. Senate Bill 300 (1999 legislation) eliminated the requirement that holders of new surface

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

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

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.

**Duration of Extension [OAR 690-315-0080(1)(c) and (1)(d)]**

*Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for quasi-municipal 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. The remaining work to be accomplished under Permit G-16117 consists of drilling RidgeWater Wells #2, #3 and #4, making improvements to the water system, installing water connections as lots are developed; and completing construction and applying water to full beneficial use.
8. As of October 3, 2011, the permit holder has appropriated 2.13 cfs of the 4.46 cfs of water authorized under Permit G-16117 for quasi-municipal purposes.
9. Quasi-municipal water rights held by Running Y, Resort, Inc. total 7.46 cfs. In addition to the 4.46 cfs of water authorized under Permit G-16117, they hold a water right for 3.0 cfs of water from seven wells under Permit G-12296. Permits G-16117 and G-12296 were each modified by Permit Amendment T-10451 such that they now share the same seven wells, and same place of use. Although these permits authorize water for use at both the Running Y Resort and RidgeWater, the water systems are not currently physically interconnected.
10. The current demand of Running Y Resort is 3.12 cfs, and is met using 0.12 cfs of water authorized under Permit G-16117 and 3.0 cfs under Permit G-12296. The current demand of RidgeWater is 2.01 cfs and is met using water authorized under Permit G-16117. Under Permit G-16117, 2.33 cfs has not yet been put to beneficial use under the terms and conditions of the permit.
11. According to the Running Y Resort, Inc., the population of Running Y Resort was 1,332 in 2009, and the population within RidgeWater was 30 (12 dwelling units @ 2.5 persons per unit) in 2011.
12. According to Running Y Resort, Inc., they expect to utilize the full 4.46 cfs of water under Permit G-16117 to meet the future peak demand at RidgeWater when RidgeWater reaches their projected build-out population of 2,500 (1,010 dwelling units @ 2.5 persons per unit) in the year 2029.
13. According to the applicant, the future Running Y Resort peak demand deficit not met by G-12296 (3.0 cfs) could reach an additional 1.1 cfs by 2029. Therefore, although the permit holder expects to rely on demand solely from RidgeWater for full utilization of the 4.46 cfs under Permit G-16117 by the year 2029, in their estimation, if RidgeWater does not reach full build-out in 2029, then the 4.46 cfs would likely be fully beneficially used to meet future combined demands at Running Y Resort and RidgeWater.

14. Full development of Permit G-16117 is needed to meet the present and future water demands of RidgeWater and Running Y Resort.
15. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2029, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-16117 is both reasonable and necessary.

**Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)and (4)]**

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).*

**Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a),(3)(c) and (4)]**

*Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.*

16. Prior to the issuance of Permit G-16117, four wells were constructed and water meters were installed.
17. The following work was accomplished during the original development time frame under Permit G-16117:
  - Construction of a 500,000 gallon bolted steel reservoir;
  - Construction of Phase 1, Division 1 distribution system;
  - Construction of a 425 HP booster station;
  - Construction of Phase 1, Division 2 distribution system;
  - Received Department approval of a water level monitoring plan;
  - Received Department approval of Permit Amendment T-10451; and
  - Received Department approval of a WMCP.
18. As of October 3, 2011, the permit holder has invested \$4,335,000, which is about 63 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,500,000 investment is needed for the completion of this project.
19. Since the issuance of Permit G-16117 on October 24, 2006, approximately 2.13 cfs of the 4.46 cfs allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
20. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns.

**Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]**

21. As of October 3, 2011, the permit holder has invested \$4,335,000, which is about 63 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,500,000 investment is needed for the completion of this project.

**The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]**

*For quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).*

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 690-315-0080(5)(a-f)].

22. 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-16117; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of appropriation for Permit G-16117 are not located within a limited or critical ground water area. The points of appropriation for Permit G-16117, located within the Upper Klamath Lake Basin, are located above the Klamath Scenic Waterway. The points of appropriation are within areas ranked highest for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are 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 points of appropriation are in an area listed by the Department of Environmental Quality as a water quality limited stream.

**Economic investment in the project to date [OAR 690-315-0080(5)(d)].**

23. As of October 3, 2011, the permit holder has invested \$4,335,000, which is about 63 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$2,500,000 investment is needed for the completion of this project.

**Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].**

24. None have been identified.

**Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].**

25. As described in Findings 8 through 14 Running Y Resort, Inc. has indicated, and the Department finds that Running Y Resort, Inc. must rely on full development of Permit G-

16117 to meet future water demands of RidgeWater, and/or Running Y Resort.

26. Given the current water supply situation of Running Y Resort, Inc., including current and expected demands of Running Y Resort and RidgeWater, there is a market and present demand for the water to be supplied under Permit G-16117.
27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 2.13 cfs under Permit G-16117 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. A “Development Limitation” condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this requirement.

**Fair Return Upon Investment [OAR 690-315-0080(3)(e)]**

28. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

**Other Governmental Requirements [OAR 690-315-0080(3)(f)]**

29. Delays caused by any other governmental requirements in the development of this project have not been identified.

**Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]**

30. According to Running Y Resort, Inc., delay of development under Permit G-16117 was due, in part, to a recent economic downturn and slower than expected development of RidgeWater, and to the size and scope of the quasi-municipal water system, which was designed to be phased in over a period of years, and to the availability of funding to expand the water supply system.

**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 537.630(1).
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2029<sup>4</sup> pursuant to OAR 690-315-0080(1)(d).

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<sup>4</sup> Pursuant to ORS 537.630(4), 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

6. 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 the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As required by OAR 690-315-0090(3) and as described in Finding 27, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 2.13 cfs under Permit G-16117 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit.

### **Proposed Order**

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

extend the time to complete construction under Permit G-16117 from October 1, 2011 to October 1, 2029.

extend the time to apply the water to beneficial use under Permit G-16117 from October 1, 2011 to October 1, 2029.

Subject to the following conditions:

### **CONDITIONS**

#### **1. Development Limitations**

Appropriation of any water beyond 2.13 cfs under Permit G-16117 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit G-16117 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, Division 86 on file with the Department.

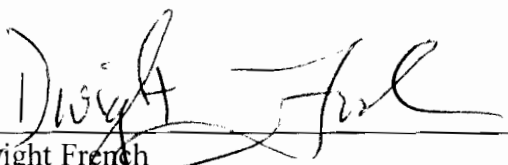
The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

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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 the claim of beneficial use.



DATED: October 8, 2013

  
Dwight French  
Water Right Services Division Administrator

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

### **Proposed Final Order Hearing Rights**

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **November 22, 2011**, 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.

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- If you have any questions about statements contained in this document, please contact Ann Reece at 503-986-0834.
  - 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  
Fax: 503-986-0901                              Salem, OR 97301-1266
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