

**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.

---

**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

---

***\*\*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).

---

<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 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

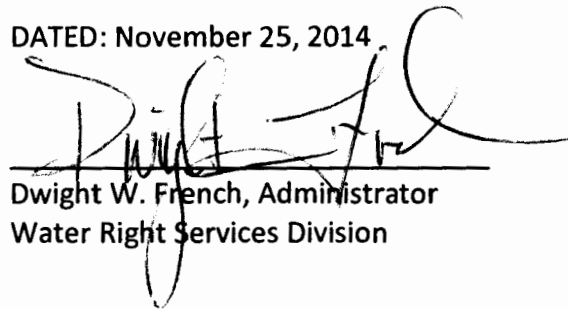
and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause does not exist for an extension of time to apply water to full beneficial use pursuant to OAR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

**Proposed Final Order Hearing Rights**

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