

**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-14306, Water Right Application R-86481) PROPOSED FINAL
in the name of River Loch Ranch, LLC) ORDER

Permit Information

Application:	R-86481
Permit:	R-14306
Basin:	Rogue / Watermaster District 13
Date of Priority:	January 17, 2006
Source of Water:	Rogue River, a tributary of Pacific Ocean
Storage Facility:	J Reservoir
Purpose of Use:	Multiple Purpose
Maximum Volume:	9.25 acre-feet (AF) each year

Please read this Proposed Final Order in its entirety.

In summary, the Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2010, to October 1, 2020.¹

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

¹ 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.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department

PFO – Proposed Final Order

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. On July 20, 2006, Permit R-14306 was issued by the Department. The permit authorizes the storage of up to 9.25 AF of water in J Reservoir from the Rogue River, a tributary of Pacific Ocean. The permit specified the reservoir was to be filled, and complete application of the stored water was to be made on or before October 1, 2010.
2. On July 12, 2016, the Department issued a letter by certified mail to the permit holder of record, requesting either a Claim of Beneficial Use or an extension of time be submitted, or cancellation proceedings for Permit R-14306 would begin.
3. On July 12, 2016, the Department issued a letter by certified mail to the landowner of record, requesting either a Claim of Beneficial Use or an extension of time be submitted, or cancellation proceedings for Permit R-14306 would begin.
4. On August 11, 2016, an assignment from Kimmel Family Foundation to River Loch Ranch, LLC was recorded in the records of the Water Resources Department.

5. On August 23, 2016, John Collins, Registered Agent for River Loch Ranch, LLC, submitted an "Application for Extension of Time" to the Department, requesting the time to apply water to full beneficial use under the terms of Permit R-14306 be extended from October 1, 2010, to October 1, 2020. This is the first permit extension requested for Permit R-14306.
6. Notification of the Application for Extension of Time for Permit R-14306 was published in the Department's Public Notice dated August 30, 2016. No public comments were received regarding the extension application.
7. On August 26, 2016, the permit holder submitted additional information to supplement their Application for an Extension of Time. The amendment indicated an approximate investment to date of \$100,000 in the construction of the reservoir.

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 537.230², 537.248³ and/or 539.010(5)⁴.

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

8. On August 23, 2016, 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)]

9. Construction of the reservoir began prior to October 1, 2010, as specified in the permit as being the date to apply water to full beneficial use. The permit holder states, construction began on or about June 29, 2005, but is unsure about the exact date. Satellite photographs submitted by the permit holder show the "substantial completion" of the reservoir on June 16, 2006.

The Department has determined the permit holder has satisfied the condition requiring beginning of construction of the water works.

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.

10. As of August 23, 2016, the permit holder states the remaining work to be completed consists of meeting all permit conditions which includes the installation of an outlet pipe or acquiring a pump to evacuate the reservoir; installation of a flow meter; and applying water to full beneficial use.

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to accomplish the application of water to beneficial use under the terms and conditions of Permit R-14306 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)]

11. Construction of the reservoir began prior to permit issuance. The permit holder states construction began around June 29, 2005. In the Application, it states that the reservoir and spillway were constructed, pipeline from the river pump to the reservoir was installed, and erosion protection rock was installed around edge of high water.
12. No other work was accomplished since permit issuance, as the majority of the construction was accomplished prior to permit issuance.

The Department has determined that work has been accomplished prior to and 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.

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

13. The Application states a maximum volume of 9.25 AF of water has been stored from the Rogue River, a tributary of Pacific Ocean in J Reservoir.
14. The Application states that the "reservoir capacity has recently been measured and stores approximately 38 acre feet. A permit application for the additional 29 +/- acre feet will be submitted."
15. Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2010.
16. According to the permit holder delay of full beneficial use of water under Permit R-14306 was due, in part, to having purchased the property in December of 2007 with an understanding that all permit conditions had been met. The permit holder was unaware that not all conditions have been met until the Department sent a certified letter informing them that the permit had not yet been completed. The permit holder

needs more time in which to install a flow meter and either install an outlet pipe or acquire a pump to evacuate the water.

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

17. 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 has identified the following concerns: (1) the record does not show that a meter or other suitable measuring device has been installed by October 1, 2010, and (2) the permit holder has not installed an outlet pipe or the provision of other means to evacuate water when determined necessary by the Water Resources Director.

Failure to comply with permit conditions constitutes illegal storage of water. In order to legally perfect the storage of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

The Department has determined that this extension will allow installation of a meter or other suitable measuring device and installation of an outlet pipe or the provision of other means to evacuate the water after October 1, 2010, in an effort to make proof of beneficial use of the water as required by Permit S-14306, to satisfy compliance of the conditions of:

- "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director"; and
- "The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate the water when determined necessary by the Water Resource Director."

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

18. The Applications states the permit holder has invested approximately \$100,000, which is about 94 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$6,000 investment is needed for the completion of this project.

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

19. The Department has found good faith of the appropriator under Permit R-14306.

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:

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)].

20. 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 R-14306; 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.
21. A current water availability analysis for the Rogue River, (tributary of Pacific Ocean) above Hog Creek (watershed ID 31530708) shows that no water is available during the months of June through November, at the 50% exceedance level.
 - A. The point of diversion is located on Rogue River and is not located within a Withdrawn Area.
 - B. The Rogue River is located above The Rogue Scenic Waterway.
 - C. The Rogue River, a tributary of Pacific Ocean 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.
 - D. The point of diversion is not in a location listed by the Department of Environmental Quality as a water quality limited stream.

Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].

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

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].

23. 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)]

24. 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)]

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

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 apply water to beneficial use under Permit R-14306 from October 1, 2010, to October 1, 2020.

DATED: October 11, 2016



Dwight 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 **November 25, 2016**, 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.

