

**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-13110, Water Right Application R-84344) PROPOSED FINAL
in the name of Rocky Ridge Ranch Inc.) ORDER

Permit Information

Application: R-84344
Permit: R-13110
Basin: Deschutes / Watermaster District 3
Date of Priority: February 18, 2000
Source of Water: Unnamed Stream, tributary of White River
Storage Facility: Reservoir 2, 3, 3a, 4, and 6
Purpose or Use of the Stored Water: Fish and Wildlife Use
Maximum Volume: 407.8 acre-feet (AF) per year, being 69.9 AF in Reservoir 2, 60.0 AF in Reservoir 3, 10.0 AF in Reservoir 3a, 70.9 AF in Reservoir 4, and 197.0 AF in Reservoir 6

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

In summary, the Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2016, to October 1, 2026.¹

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

Application – Application for Extension of Time
Department – Oregon Water Resources Department
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
AF – acre-feet
FOF – Finding of Fact

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) 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)** contains the factors that the Department must consider to make findings that support a “good cause” determination.

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 will not exceed five year periods.

FINDINGS OF FACT

1. On December 20, 2001, Permit R-13110 was issued by the Department. The permit authorizes the storage of up to 407.8 AF per year, being 69.9 AF in Reservoir 2, 60.0 AF in Reservoir 3, 10.0 AF in Reservoir 3a, 70.9 AF in Reservoir 4, and 197.0 AF in Reservoir 6 from an unnamed stream, tributary of White River, for fish and wildlife use. The permit specified the reservoirs shall be filled and complete application of the stored water the use was to be made on or before October 1, 2006.

2. Two prior permit extensions have been granted for R-13110. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2011, to October 1, 2016.
3. On December 30, 2016, David Ryan, owner of Rocky Ridge Ranch Inc, submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit R-13110 be extended from October 1, 2016, to October 1, 2026.
4. On January 10, 2017, notification of the Application for Permit R-13110 was published in the Department's Public Notice. No public comments were received.
5. On February 23, 2017, and April 21, 2017, the permit holder submitted additional information to supplement their Application. The additional information was to clarify the volume of water stored in each reservoir and identify actual construction accomplished during the most recent Extension of Time Period, being October 1, 2011 through October 1, 2016.

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)]

6. On December 30, 2016, the Department received a completed Application 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. Construction of the Reservoirs 3a, 4, and 6 began prior to October 1, 2006, as specified in the permit as being the date to apply water to full beneficial use. The permit holder states, construction began in 2006.
8. According to the Application for Extension of Time submitted to the Department March 21, 2006, construction of Reservoirs 3a, 4, and 6 were complete and storing 337.0 AF of water.

Based on Findings of Fact (FOF) 7 and 8, the Department has determined the permit holder has satisfied the condition requiring beginning of construction of the water works.

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 or previous extension.²

9. The Application states work was accomplished within the time allowed in previous extension, being October 1, 2011 through October 1, 2016, is as follows:
- installation of three concrete collars and embedded pipe on the dams for Reservoir 2 and 3; and
 - installation of keyways in the dams for both Reservoir 2 and 3.

Based on FOF 9, the Department has determined that work has been accomplished within the time allowed in the previous extension, which provides evidence of good cause and reasonable diligence from the appropriator towards the complete application of water to a beneficial use.

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

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

10. The Department has considered the permit holder’s compliance with conditions for Reservoirs 3a, 4, and 6, and did not identify any concerns.

Based on FOF 10, the Department has determined that the permit holder has demonstrated compliance with permit conditions for Reservoirs 3a, 4 and 6, as required by Permit R-13110.

² “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.

11. The Department has considered the permit holder's compliance with conditions for Reservoirs 2 and 3, and has identified the following concerns: (1) the record does not show that the Department has received written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications; and (2) a meter or other suitable measuring device has been installed. The Department recognizes that it is the intent of the permit holder to comply with all permit conditions at the time the conditions become applicable.

Based on FOF 11, the Department has determined that the permit holder has not demonstrated compliance with following permit conditions as required by Permit R-13110:

- "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
- "No water shall be stored until the Water resources Department receives written certification from the engineer of record that construction has been completed in accordance with approved plans and specifications."

Failure to comply with permit conditions constitutes illegal use of water. Beneficial use of water under this permit, therefore, has not yet been demonstrated. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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

The amount of beneficial use made of the water during the permit time limits.

12. The Application states a maximum volume of 277.9 AF of water, being 10.0 AF in Reservoir 3a, 70.9 AF in Reservoir 4 and 197.0 AF in Reservoir 6, has been stored from an unnamed stream, tributary of White River for fish and wildlife uses.

Based on FOF 10 and 12, the Department has determined that beneficial use of water stored in Reservoir 3a, 4 and 6 has been demonstrated under this permit, as all permit conditions were satisfied by October 1, 2016.

13. The Application states that no water has been stored in Reservoir 2 or Reservoir 3.
14. According to the permit holder delay of full beneficial use of water under Permit R-13110 was due, in part, to new owners acquiring the ranch in 2014 and becoming familiar with the operations.

Based on FOF 11 and 13 the Department has determined that beneficial use of water in Reservoir 2 and Reservoir 3 has not yet been demonstrated as construction of the dams is not complete, no storage of water has occurred and compliance with all conditions have not been met.

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

15. The Application states the permit holder has invested approximately \$494,000, which is about 35 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$900,000 investment is needed for the completion of this project.

Based on FOF 15, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions; a financial investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit R-13110.

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.*

The amount of water available to satisfy other affected water rights and scenic waterway flows [OAR 690-315-0040(4)(a)]

16. 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-13110;

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.

17. Current Water Availability Analysis for White River, (Tributary to Deschutes River) at the mouth (watershed ID 70088) show that water is available during the months of January through June at the 50% exceedance level.

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

18. The points of diversion are located on an unnamed stream, tributary of White River, and are not located within a Withdrawn Area.
19. White River is located above the Deschutes Scenic Water Way.
20. The points of diversion are not in a location listed by the Department of Environmental Quality as a water quality limited stream.

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(c)]

21. White River 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.

Economic interests dependent on completion of the project [OAR 690-315-0040(4)(d)]

22. The Application states an approximate total of \$494,000 has been invested in the project.

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

23. The Application states that there would be potential for economic impact to the fishing clubs who lease the right to the reservoirs.

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

24. 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)]

25. The Application states that the permit holder believes that they will realize a return on investment.

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

26. The Application did not identify any delay in the development of this project that was caused by any other governmental requirements.

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

27. The Application did not identify any unforeseen events.

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

28. The Application did not state if a denial of the extension would result in undue hardship.

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

29. The Department has found good faith of the appropriator under Permit R-13110.

Based on FOF 7, 8, 9, 10, 12, 15, 22 and 23, the Department has determined that the applicant has shown good faith and reasonable diligence.

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.

30. As of December 30, 2016, the permit holder states the remaining work to be completed consists of gaining final approval of plans and specifications for the dams for Reservoir 2 and Reservoir 3, completing construction and filling of Reservoir 2 and Reservoir 3; meeting all permit conditions and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2026, to accomplish the application of water to beneficial use under the terms and conditions of Permit R-13110 is both reasonable and necessary.

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 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).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(6) requires 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.

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 complied with construction timeline requirements to begin construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 7 through 29, full application of water to beneficial use can be accomplished by October 1, 2026³, as required by OAR 690-315-0040(1)(c).
4. The Applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to ensure diligence is exercised in the development and perfection of the water use permit. OAR 690-315-0050(6).
5. The Applicant has demonstrated good cause for the extension.

³Pursuant 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 to apply water to beneficial use under Permit R-13110 from October 1, 2016, to October 1, 2026.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

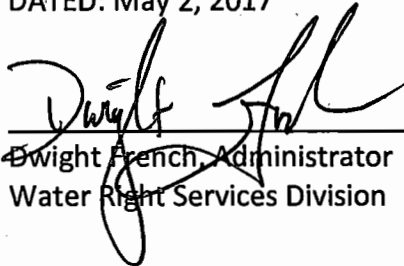
1. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2022**. *A form will be enclosed with your Final Order.*

(a) At each 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: May 2, 2017


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 **June 16, 2017**, 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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

