



## **FINDINGS OF FACT**

### **Application History**

1. On May 26, 2020, White River Ranch LLC filed a complete application for the following water use:
  - Source:** RUNOFF, TRIBUTARY TO ROCK CREEK
  - Use:** STORAGE FOR LIVESTOCK, RECREATION, WILDLIFE, AND FISH LIFE
  - Volume:** 6.0 ACRE-FEET (AF)
  - County:** WASCO COUNTY
  - Place of Use:** SECTIONS 27 & 28, TOWNSHIP 4 SOUTH, RANGE 12 EAST, W.M.
2. On June 12, 2020, the Department mailed the applicant notice of its Initial Review, determining that the storage of 6.0 AF of water from runoff, tributary to Rock Creek, in New Reservoir, for livestock use, recreation, wildlife, and fish life is allowable January 1 through April 14 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On June 16, 2020, the Department provided notice of the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

### **Presumption Criteria (a) Consistency with Basin Program**

4. Storage for livestock, recreation, wildlife, and fish life is allowed under the Deschutes Basin Program (OAR 690-505-0020(1)(a)). ORS 537.153(2); OAR 690-310-0110(1)(a)

### **Presumption Criteria (b) Water Availability**

5. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established that surface water is available January 1 through June 30 of each year. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

### **Presumption Criteria (c) Injury Determination**

6. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

### **Presumption Criteria (d) Whether the Use Complies with Rules of the Commission**

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded. ORS 537.153(2)(b); OAR 690-310-0150(2)(b)
8. The proposed use is in an area of the state in which OAR 690-033-0115 thru -0140 and OAR 690-033-0310 thru -0340 apply. These rules establish definitions, additional procedures, and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

**OAR 690-033-0115 Upper Columbia Rules (Above Bonneville Dam)**

- A. The proposed use is consistent with the Fish and Wildlife Program (Program).
- B. The application is presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)
- C. The application shall comply with the following standard:
  - a. The proposed use shall not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140. OAR 690-003-0120(1)(a)

**OAR 690-033-0310 Statewide Rules**

- A. The proposed use occurs occur in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
- D. The interagency review team was convened to review the application and recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). ODFW requires mitigation for any water use during the month of January. The draft permit has been limited to a period of use of February 1 through April 14 and also contains conditions numbered 2-4 that require fish screening, passage, and the protection of riparian habitat.

**Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest**

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

**Further Evaluation of the Proposed Use**

- 9. No comments were received by the close of the comment period. OAR 690-310-0120(3)
- 10. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

**Other Criteria and Requirements**

- 11. The proposed use is located above the Deschutes Scenic Waterway, as designated under ORS 390.826.
- 12. The amount requested, 6.0 AF, is necessary for the proposed use.

13. The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream, or to prevent damage to public uses of any affected surface waters. These measures are adequate at this time.  
OAR 690-310-0150(2)(j)
14. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

**CONCLUSION OF LAW**

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project.

**PROPOSED ORDER**

The Department recommends approval of Application R-88830 and issuance of a permit consistent with the attached draft permit.

DATED November 24, 2020

**Alyssa Mucken** Digitally signed by Alyssa Mucken  
Date: 2020.11.13 14:50:40 -08'00'

Alyssa Mucken  
Water Rights Section Manager, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

## Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received by the Water Resources Department no later than **January 8, 2021**.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest, ORS 537.153(6) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170 (8) would be impaired or be adversely affected;
- If you are the applicant, a protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

## Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **January 8, 2021**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;



**DRAFT**

**This is not a permit.**

**DRAFT**

STATE OF OREGON

COUNTY OF WASCO

**DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS**

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WHITE RIVER RANCH LLC  
56100 SMOCK RD  
WAMIC OR 97063

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-88830

SOURCE OF WATER: RUNOFF, TRIBUTARY TO ROCK CREEK

STORAGE FACILITY: NEW RESERVOIR

THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 9.8 FEET

PURPOSE OR USE OF THE STORED WATER: LIVESTOCK USE, RECREATION, WILDLIFE,  
AND FISH LIFE

MAXIMUM VOLUME: 6.0 ACRE-FEET

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: FEBRUARY 1  
THROUGH APRIL 14

DATE OF PRIORITY: MAY 26, 2020

AUTHORIZED POINT OF DIVERSION/DAM LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	12 E	WM	27	SW NW	200 FEET NORTH AND 540 FEET EAST FROM W1/4 CORNER, SECTION 27

THE AREA TO BE SUBMERGED BY THE RESERVOIR:

Twp	Rng	Mer	Sec	Q-Q
4 S	12 E	WM	27	SW NW
4 S	12 E	WM	28	SE NE

**1. Water Use Measurement, Recording, and Reporting Condition:**

- A. The Director may require the permittee to install a staff gage that measures the entire range and stage between full reservoir level and dead-pool level in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. If the Director notifies the permittee to install a staff gage, the permittee shall install such device within the period stated in the

notice. Once installed, the permittee shall maintain the device in good working order and shall allow the watermaster access to the device.

B. The Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.

C. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

2. The permittee shall install a lockable headgate to keep water out of the reservoir while water is going downstream to satisfy senior storage rights.
3. Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the work period of July 1 through October 31.

### **RESERVOIR CONDITIONS**

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
2. The permittee shall pass all live flow outside the storage season described above.
3. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
4. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
5. The permittee may be required in the future to install, maintain, and operate fish screening and bypass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
6. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.



## STANDARD CONDITIONS

7. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
8. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
9. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
10. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.
11. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
12. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
13. Within one year after storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued \_\_\_\_\_

### **DRAFT - THIS IS NOT A PERMIT**

Dwight French  
Water Right Services Division Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

# Mailing List for PFO/Draft Permit Copies

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Application R-88830

PFO Date Novemer 24, 2020

**Original mailed via CERTIFIED MAIL to applicant:**

WHITE RIVER RANCH LLC  
ATTN: JACK STEVENS  
56100 SMOCK RD  
WAMIC OR 97063

Copies Mailed

By: \_\_\_\_\_  
(SUPPORT STAFF)

on: \_\_\_\_\_  
(DATE)

**Sent via auto email:**

1. Agent – Larry Toll - ltoll@tennesoneng.com
1. WRD – Watermaster District #3, Robert L. Wood
2. WRD - Chris Kowitz NCR
3. WRD – SW Section

**Copies sent to:**

1. WRD – File # R-88830
2. DSL – Wetlands Specialist

Application Specialist: Kim French