



Water Right Application Initial Review

December 9, 2022

TWO BROTHERS RANCH LLC
ATTN: ANDREW CORNELL
61583 HOSMER LAKE DR
BEND OR 97702

Reference: Application R-89287

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information supplied, the Water Resources Department has made the following preliminary determinations:

Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)

1. The application proposes the diversion of 9.1 acre-feet (AF) of water from Marshall Creek, tributary to Mountain Creek, for storage in Keys Creek Reservoir, an enlargement of reservoir constructed under Permit R-89103, for fire protection, fish life, wildlife, and irrigation, January 1 through December 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Storage for fire protection, fish life, wildlife, and irrigation is allowable under the John Day Basin Program (OAR 690-506-0040(8)(b)).
4. 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 surface water is available during the period January 1 through June 30 of each year.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is located above the John Day Scenic Waterway, as designated under Oregon Revised Statute 390.826.

7. Documentation has been submitted acknowledging the land use information request was received by the local Planning Department.

Summary of Preliminary Determinations
The diversion of 9.1 acre-feet (AF) of water from Marshall Creek, tributary to Mountain Creek, for storage for fire protection, fish life, wildlife, and irrigation is allowable January 1 through April 14 of each year.

Public Comment & Further Review:

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

Division 33 Review – The Department’s Division 33 administrative rules (OAR 690-033) establish 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 (STE) fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will now undergo an additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be required to mitigate for potential impacts identified in the review.

Mitigation for impacts to STE Species – Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to STE fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$790 required with any mitigation proposal submitted.

At this time, you must decide whether to proceed or to withdraw the application.

- **To Proceed** - If you choose to proceed with the application you do not have to notify the Department. The application will be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.
- **To Withdraw** - You may withdraw the application and receive a refund (minus a \$310 processing fee per application). You must notify the Department **in writing** by **December 23, 2022**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If a permit is issued, it will likely include the following conditions:

1. 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. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. The permittee shall maintain the device in good working order.
 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. 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.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
3. Design work shall be completed by an Engineer registered in the State of Oregon. Written approval of the design, from the State Engineer, shall be obtained prior to the start of construction. No water shall be stored until the Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications.

Failure to comply with any portion of Oregon Revised Statute 540.443 through 540.491 and Oregon Administrative Rules Chapter 690 Division 20 may result in action including, but not limited to, restrictions on use, civil penalties, or cancellation of the permit.

4. Prior to commencing construction activity, all design reports, drawings of the dam and critical appurtenant structures, specifications, and plans for construction administration must be approved by the State Engineer as indicated by the State Engineer's stamp and a written letter of approval from the State Engineer.

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at <http://www.oregon.gov/ODA> to learn more about the plans and how they may affect the proposed water use.

For Further Information:

Feel free to contact me at Adam.M.Frederick@water.oregon.gov or 971-707-8400 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Adam Frederick, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

Adam Frederick

Adam Frederick
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
R-89287
WAB: 30620103
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: R-89287

Applicant: TWO BROTHERS RANCH LLC

County: WHEELER

Watermaster: ERIC JULSRUD, 4, NCR

Priority Date: October 26, 2022

Source: MARSHALL CREEK, TRIBUTARY TO MOUNTAIN CREEK

Purpose or Use of the stored water: FIRE PROTECTION, FISH LIFE, WILDLIFE, AND IRRIGATION

Storage Facility Name: KEYES CREEK RESERVOIR

MAXIMUM DAM HEIGHT: 18 FEET

Volume/ Rate: 9.1 ACRE-FEET

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Basin Name & Number: John Day, # 6

WAB: MOUNTAIN CR > ROCK CR - AT MOUTH

Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	22 E	WM	36	SE SE	330 FEET NORTH AND 940 FEET WEST FROM SE CORNER, SECTION 36

Dam Location:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height	Area Acres
KEYES CREEK RESERVOIR	11 S	22 E	WM	36	SE SE	330 FEET NORTH AND 940 FEET WEST FROM SE CORNER, SECTION 36	18	1.8

The Area to be submerged by the Reservoir:

Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	22 E	WM	36	SE SE	0.00

PUBLIC NOTICE DATE: December 13, 2022

14 DAY STOP PROCESSING DEADLINE DATE: December 23, 2022

30 DAY COMMENT DEADLINE DATE: January 12, 2023

APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our web site at: www.wrd.state.or.us

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0900.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- An incomplete application and fees are returned to the applicant.
- Only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing.

3. Initial Review (IR)

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.

4. Proposed Final Order (PFO)

- Caseworker evaluates application against required criteria and develops draft permit, if appropriate.
- PFO includes instructions for filing of protests.
- Caseworker considers public comments and mails PFO to Applicant.
- The PFO is included in Department's weekly Public Notice.
- Public protests to the PFO must be submitted within 45 days after the Public Notice.

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is issued.

Permit holder responsibilities

- Comply with all water use conditions of the permit.
- Advise Department of address change or assignment to new permit holder.
- If need arises, request extension of time or authorize cancellation of permit.
- Submit timely claim of beneficial use (COBU) to the Department.
- Most permits require COBU to be prepared by a Certified Water Right Examiner.
- Permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions.

STOP PROCESSING REQUEST FORM

FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **R-89287**.

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$310 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application.

Signature _____ Date _____

Signature _____ Date _____

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$310 processing fee) be returned.

- This notice must be received at Water Resources Department by:

December 23, 2022

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271
