

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON**

Water Right Application R-88691 in the	)	FINAL ORDER
name of ROBERT K. POND	)	APPROVING THE STORAGE OF
	)	SURFACE WATER

**Authority**

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.409, which establishes the process by which an application to store waters of the public may be submitted. This statute can be accessed here:

<https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>

The Water Resources Department's website can be accessed here:

<https://www.oregon.gov/OWRD>

In accordance with ORS 537.409, the Department shall conduct a public interest review of an application submitted to store water in a reservoir that has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height.

The review shall be limited to issues pertaining to:

- (a) Water availability;
- (b) Potential detrimental impact to existing fishery resources; and
- (c) Potential injury to existing water rights.

In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon's Scenic Waterway laws – to determine whether the use is prohibited.

Following this review, the Department shall issue a final order granting or denying the permit or granting the permit with conditions.

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is a final order in other than contested case. This final order is subject to judicial review under ORS 536.075 and ORS 183.484. Any petition for judicial review of the final order must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075, ORS 183.484, and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

**FINDINGS OF FACT**

1. On January 7, 2019, Robert K. Pond submitted an application for a permit to store water pursuant to ORS 537.409:

**Storage Volume:** 18.6 ACRE-FEET

**Dam Height:** 6.0 FEET

**Source:** RUNOFF, TRIBUTARY TO HAMMER CREEK

**County:** BENTON COUNTY

**Reservoir Location:** SECTION 26, TOWNSHIP 14 SOUTH, RANGE 6 WEST, W.M.

2. The required examination fees were paid, and the minimum application requirements were met.
3. On January 15, 2019, the Department provided public notice of the application in the Department's weekly public notice. A 60-day comment period followed.
4. The Department did not receive public comment related to the possible issuance of the attached draft permit.
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)(a). The assessment established that water is available November 1 through July 31 for the proposed use. The local watermaster review has further limited the water availability to November 1 through May 31 for the proposed use.
6. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.
7. The Department finds that the proposed use, as conditioned, will not injure other water rights.
8. The Department has determined that the proposed source has not been withdrawn from further appropriation under ORS 538.
9. The proposed reservoir is not prohibited under ORS 390.835.

**CONCLUSIONS OF LAW**

1. Application R-88691 contains the information required by ORS 537.409(1)-(3).
2. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.409.

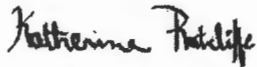
ORDER

Application R-88691 is approved. **Prior to the issuance of a permit, the Department must receive documentation that the proposed use complies with the local acknowledged comprehensive land-use plan. Please submit documentation from the relevant planning jurisdiction that either a) the proposed use is allowed outright, or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded.** Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

*If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.*

**MAR 31 2023**

Dated at Salem, Oregon on \_\_\_\_\_



Katherine Ratcliffe  
Water Rights Section Manager, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department

If you have questions about statements contained in this document, please contact Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF BENTON

DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROBERT K. POND  
PO BOX 219  
MONROE OR 97456

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

APPLICATION FILE NUMBER: R-88691

SOURCE OF WATER: RUNOFF, TRIBUTARY TO HAMMER CREEK

STORAGE FACILITY: A RESERVOIR

MAXIMUM DAM HEIGHT: 6.0 FEET

MAXIMUM VOLUME: 18.6 ACRE-FEET

PURPOSE OR USE OF THE STORED WATER: MULTIPURPOSE USE

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: NOVEMBER 1 THROUGH MAY 31

DATE OF PRIORITY: JANUARY 7, 2019

AUTHORIZED POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	6 W	WM	26	SE SE	240 FEET NORTH AND 110 FEET WEST FROM SE CORNER, SECTION 26

DAM LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	6 W	WM	26	SE SE	330 FEET NORTH AND 490 FEET WEST FROM SE CORNER, NESE, SECTION 26

THE AREA TO BE SUBMERGED BY THE RESERVOIR:

Twp	Rng	Mer	Sec	Q-Q
14 S	6 W	WM	26	NE SE

## PERMIT SPECIFIC CONDITIONS

1. 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.
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. 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.
4. The permittee shall pass all live flow outside the storage season described above.
5. The permittee may be required in the future to install, maintain, and operate fish screening and by-pass 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

1. 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.
2. 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.
3. 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.

## DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

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. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. 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.
3. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
4. The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir capacity is equal to or greater than 9.2 acre-feet.
5. If no secondary permit exists and the reservoir capacity is less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:
  - a. the dimensions of the reservoir;
  - b. the maximum capacity of the reservoir in acre-feet; and
  - c. a map identifying the location of the reservoir prepared in compliance with Water Resources Department standards.

Issued

### DRAFT – NOT A PERMIT

Katherine Ratcliffe  
Water Rights Section Manager, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department