

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

Water Right Application R-89184 in the)	FINAL ORDER
name of TIM KINKADE)	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In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon's Scenic Waterway laws – to determine whether the use is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 November 18, 2021, Tim Kinkade submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Volume: 1.0 ACRE-FOOT

Dam Height: 2.0 FEET

Source: RUNOFF, TRIBUTARY TO HOESKSTRE SLOUGH

County: POLK COUNTY

Reservoir Location: SECTIONS 4 & 5, TOWNSHIP 7 SOUTH, RANGE 5 WEST, W.M.

2. The required examination fees were paid, and the minimum application requirements were met.
3. The Department provided public notice of the application in the Department's weekly public notice on December 7, 2021. 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 June 30 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, if limited to November 1 through May 31, and 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

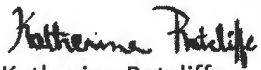
1. Application R-89184 contains the information required by ORS 537.409(1)-(3).
2. The proposed use would impair or be detrimental to the public interest as described in ORS 537.409.

ORDER

Application R-89184 is approved. **Upon payment of the permit recording fee of \$610, a permit shall be issued authorizing the proposed water use.** 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.

Dated at Salem, Oregon on APR 28 2023



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 POLK

DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

TIM KINKADE
13945 HWY 22
DALLAS OR 97338

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

APPLICATION FILE NUMBER: R-89184

SOURCE OF WATER: RUNOFF, TRIBUTARY TO HOESKSTRE SLOUGH

STORAGE FACILITY: BARN POND

MAXIMUM DAM HEIGHT: 2.0 FEET

MAXIMUM VOLUME: 1.0 ACRE-FOOT

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: NOVEMBER 18, 2021

DAM LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	5 W	WM	5	SE SE	1185 FEET NORTH AND 25 FEET EAST FROM SE CORNER, SECTION 5

THE AREA TO BE SUBMERGED BY THE RESERVOIR:

Twp	Rng	Mer	Sec	Q-Q
7 S	5 W	WM	4	SW SW
7 S	5 W	WM	5	SE 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. 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.

3. **Agricultural Water Quality Management Area Rules:**

The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.

4. **Fish Stocking:**

Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon shall have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit issued by ODFW. As part of the permitting process, the permittee shall also screen the inlet and outlet of their pond to ensure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.

5. **In-Water Work:**

Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 15 through September 30, unless an alternate time period is approved by Oregon Department of Fish and Wildlife.

6. Off-Channel Stored Water Releases:

The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.

7. Live Flow:

Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.

8. Water Quality:

All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.

9. 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.

10. The permittee shall pass all live flow outside the storage season described above.

11. 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.

12. 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.

13. 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