

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

Water Right Application R-89291 in the )  
name of D & G RHODYS NURSERY, LLC )  
)

FINAL ORDER  
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In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon's Scenic Waterway laws – to determine whether the use is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 7, 2022, D & G Rhodys Nursery, LLC submitted an application for a permit to store water pursuant to ORS 537.409.

**Storage Volume:** 10.0 ACRE-FEET

**Dam Height:** 3.0 FEET

**Source:** RUNOFF, TRIBUTARY TO WILLAMETTE RIVER

**County:** POLK COUNTY

**Reservoir Location:** SECTION 29, TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.

2. The required examination fees were paid, and the minimum application requirements were met.
3. On November 15, 2022, 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 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 January 1 through December 31 of each year 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 March 31, and as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.
7. The Department has determined 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 Chapter 538.
9. The proposed reservoir is not prohibited under ORS 390.835.

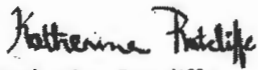
**CONCLUSIONS OF LAW**

1. Application R-89291 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-89291 is approved and Permit R-15566 is issued as limited by the conditions contained therein.

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.