

FINDINGS OF FACT

Application History

1. On August 22, 2023, Hans Hendgen filed a complete application for the following water use:

Source: RUNOFF, TRIBUTARY TO SOUTH YAMHILL RIVER

Use: STORAGE FOR AESTHETICS, FIRE SUPPRESSION, AND IRRIGATION

Rate/Volume: 5.9 ACRE-FEET (AF)

Period of Use: JANUARY 1 THROUGH DECEMBER 31

County: YAMHILL COUNTY

Place of Use: SECTION 7, TOWNSHIP 5 SOUTH, RANGE 4 WEST, W.M.

2. On September 29, 2023, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 5.9 AF of water from runoff, tributary to South Yamhill River, for storage for irrigation and fire suppression use in Hendgen Pond Reservoir from November 1 through June 30 of each year, may be allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On October 3, 2023, 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.
4. The Department's continuing evaluation reveals that the following corrections to the Initial Review are necessary to accurately reflect the application for a Permit. Preliminary Determination #4 has been corrected to the following:
 - a. Storage for aesthetic use is allowable under the Willamette Basin Program from November 1 through June 30 (OAR 690-502-0040(4)(a)).
5. On September 5, 2025, the Department sent the applicant correspondence outlining the requirements from the interagency review team to mitigate for the impacts to sensitive, threatened, or endangered fish species. The correspondence gave the applicant until September 19, 2025, to notify the Department of plans to pursue mitigation or place the application on administrative hold.
6. On September 17, 2025, the application was placed on a 180-day administrative hold. This administrative hold was ended by the applicant on October 2, 2025.
7. On October 2, 2025, the applicant amended the application by reducing the period of use to November 1 through May 31. This amendment addressed the concerns from the interagency review team.

Presumption Criterion (a) Consistency with Basin Program

8. Storage for aesthetics, fire protection, and irrigation is allowed under the Willamette Basin Program from November 1 through June 30 (OAR 690-502-0040(4)(a)). ORS 537.153(3)(b); OAR 690-310-0110(1)(a).

Presumption Criterion (b) Water Availability

9. 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). During the period of use requested, the assessment established that surface water is available from November 1 through May 31 of each year. ORS 537.153(3)(c); OAR 690-310-0150(2)(c).

Presumption Criterion (c) Injury Determination

10. The proposed use, if authorized, will not injure other water rights. ORS 537.153(3)(d); OAR 690-310-0150(2)(e).

Presumption Criterion (d) Whether the Use Complies with Rules of the Commission

11. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(3)(b); OAR 690-310-0150(2)(b).
12. The proposed use is in an area of the state in which OAR 690-033-0210 through -0230 and OAR 690-033-0310 through -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 690-033-0210 Lower Columbia Rules (Below Bonneville Dam)

- A. The proposed use of water is detrimental to the protection or recovery of a threatened or endangered species. OAR 690-033-0220(1).
- B. The proposed use can be conditioned or mitigated to avoid the detriment. OAR 690-033-0220(1).
- C. The application is not presumed to impair or be detrimental to the public interest under the OAR 690-033-0220 evaluation criteria.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs 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 OAR 690-033-0330(2)(a) and (b). As a result of this review, water may only be appropriated for storage from November 1

through May 31, and Permit Specific Conditions #2 through #6 have been included in the draft permit.

13. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826. OAR 690-310-0260.

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

14. No comments were received by the close of the comment period. OAR 690-310-0120(3).
15. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-310-0120(3)(a); OAR 690-310-0150(2)(i).

Other Criteria and Requirements

16. The amount of water requested, 5.9 AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d).
17. The applicant proposed measures to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 7 through 9 of the application. OAR 690-310-0150(2)(j).
18. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSIONS 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(3) 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-89394, as amended, and issuance of a permit consistent with the attached draft permit.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by the Department on or before April 10, 2026, and the Department does not withdraw this Proposed Final Order on or before May 13, 2026, this Proposed Final Order is a final order without any further action by the Department on May 13, 2026.

DATED February 24, 2026



Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

If no protest of this Proposed Final Order is received by April 10, 2026, this Proposed Final Order will become a final order on May 13, 2026, without any further action by the Department. ORS 536.077(4). However, no later than May 13, 2026, the Department may withdraw this Proposed Final Order for reconsideration and issuance of a superseding proposed final order. ORS 536.077(5).

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 537.153(6) and ORS 536.077(1) (for surface water) or ORS 537.621(6) and ORS 536.077(1) (for groundwater), any person may protest this Proposed Final Order. Protests must be mailed or hand delivered to the Oregon Water Resources Department at the following address: 725 Summer Street NE, Suite A, Salem, OR 97301. If you wish to submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline specified. Protests must be received by the Water Resources Department no later than **April 10, 2026**.

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, and telephone number;
- Include a description of the protestant's interest in the Proposed Final Order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonable available arguments that support the protestant's position, which may include arguments related to the public interest presumption factors under ORS 537.153(2) and the public interest factors under ORS 537.170(7);
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;
- If the protestant is the applicant, include a protest fee of \$720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of \$1,425 required by ORS 536.050.

If a timely protest is filed, after the protest period has ended, the Director will: (1) issue a final order if the applicant has not filed a protest and the Director finds that there are no significant issues related to the proposed use of water; (2) schedule a contested case hearing if a protest has been submitted; or (3) provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the case to the Office of Administrative Hearings for a contested case hearing.

Requests for Party Status: Under the provisions of ORS 537.153(6) and ORS 536.077(2) (for surface water) or ORS 537.621(6) and ORS 536.077(2) (for groundwater), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. Requests for party status must be mailed or hand delivered to the Oregon Water Resources Department at the following address: 725 Summer Street NE, Suite A, Salem, OR 97301. If you wish to submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline specified. Requests for party status must be received by the Water Resources Department no later than **May 11, 2026**.

Requests for party status must be in writing and include the following:

- Names and addresses of the requester and any organization the requester represents;
- Name and address of the requester's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requester seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requester's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requester seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requester's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requester seeks to represent; and
- The request for party status fee of \$1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 137-003-0535.

Additional Notices

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an “authorized representative” as defined at OAR 137-003-0555(1)(b) may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-453-1175, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Lucinda Vranizan at Lucinda.R.Vranizan@water.oregon.gov or 971-375-2256.
 - If you have questions about how to file a protest or a request for party status, or if you have previously filed a protest or a request for party status and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF YAMHILL

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

HANS HENDGEN
1271 NE HIGHWAY 99W PMB 418
MCMINNVILLE OR 97128

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

APPLICATION FILE NUMBER: R-89394

SOURCE OF WATER: RUNOFF, TRIBUTARY TO SOUTH YAMHILL RIVER

STORAGE FACILITY: HENDGEN POND

MAXIMUM DAM HEIGHT: 11.5 FEET

PURPOSE OR USE OF THE STORED WATER: STORAGE FOR AESTHETICS, FIRE PROTECTION, AND IRRIGATION

MAXIMUM VOLUME: 5.9 ACRE-FEET

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

DATE OF PRIORITY: AUGUST 22, 2023

DAM LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height (Feet)	Area (Acres)
5 S	4 W	WM	7	SE NW	1505 FEET SOUTH AND 1990 FEET EAST FROM NW CORNER, SECTION 7	11.5	1.1

THE AREA TO BE SUBMERGED BY THE RESERVOIR:

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

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 watermaster may determine an alternate measuring device is suitable. 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. **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.

4. **Fish Stocking:**

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

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. 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. Permittee is responsible for obtaining any necessary state and federal permits.

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 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.
4. 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.
5. 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 work must be supervised by the Engineer of Record for the project. 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, which includes a map and report, prepared by a Certified Water Rights Examiner.

ISSUED _____

DRAFT - THIS IS NOT A PERMIT

Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department