

Exclude livestock from the reservoir; and
Carefully read and follow label directions when using aquatic herbicides.

Additional Findings of Fact

13. All criteria for establishing the presumption have been satisfied. Information available in department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use will impair or be detrimental to the public interest under ORS 537.153.
14. On December 27, 2016, the Department issued a Proposed Final Order recommending denial of the application.
15. The Proposed Final Order was posted in the department's weekly Public Notice on December 27, 2016.
16. Waibel Ranches LLC filed a timely protest on February 10, 2017.
17. WaterWatch of Oregon, Inc. filed a timely standing request on February 10, 2017.
18. The applicant has provided the preliminary plans and specifications for the dam enlargement to the department.
19. ORS 537.400(4) authorizes issuance of a final order approving a reservoir application if a dam safety review is required under ORS 540.350 on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission's approval of final plans, specifications and supporting information under 540.350 before the permit is issued. The proposed dam in Application R-88155 requires a dam safety review under ORS 540.350.
20. 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.
21. The proposed dam is over 25 feet high and will be located at a site where there is an average annual flow exceeding 2 cubic feet per second.
22. Final plans, specifications, and features for the dam must demonstrate that the dam complies with the requirements of ORS 540.350(2) or (3) relating to adaptability for power generation.
23. The permit recording fee has not yet been received from the applicant.
24. A Settlement Agreement, which included a draft Final Order Incorporating Settlement Agreement, and a draft Permit, was signed by Waibel Ranches LLC and the Department as

of November 27, 2017. The terms of the Settlement Agreement are incorporated into this Final Order and draft permit, and a copy of the Settlement Agreement is attached.

CONCLUSIONS OF LAW

The conclusions of law in the Proposed Final Order issued December 27, 2016 are incorporated herein with the following changes and additions:

Conclusion of Law #1 is stricken in its entirety.

Conclusion of Law #3 is modified to read as follows:

The interagency reviews and the Department's analysis determined, per OAR 690-033, that the proposed use, as conditioned, would not impair or be detrimental to the public interest with regard to sensitive, endangered, or threatened fish species.

Conclusion of Law #7 is modified to read as follows:

For these reasons, the required presumption has been established.

Conclusion of Law #8 is modified to read as follows:

The Department therefore concludes that the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

Additional Conclusions of Law

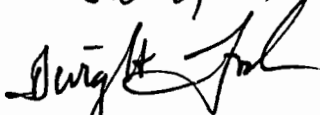
9. Pursuant to ORS 537.400(4) and Findings of Fact #18 through #22, a final order approving the application may be issued. A permit consistent with the attached draft permit may be issued after the State Engineer provides written letter of approval of the final dam plans and specifications in accordance with ORS 540.350.
10. Pursuant to ORS 537.150 and ORS 536.050 regarding required fees, a permit consistent with the attached draft permit may be issued only after payment of a permit recording fee.
11. The applicant filed a protest to the proposed final order, no hearing was held, and this order modifies the proposed final order. ORS 537.170(7)(b) limits the opportunity to appeal the provisions of this order in the manner established in ORS Chapter 183 for appeal of order in other than contested case to the applicant or a protestant.

When issuing permits, ORS 537.170(6) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public interest. The Permit R-XXXXX is conditioned accordingly.

ORDER

Application R-88155 is approved and Permit R-XXXXXX will be issued upon payment of permit recording fees and the issuance of a State Engineer's written letter of approval of the final dam plans and specifications in accordance with ORS 540.350.

DATED *Dec 19*, 2017



Dwight French, Administrator
Water Right Services Division
for Thomas M. Byler, Director
Oregon Water Resources Department

Applicant Contested Case Hearing Opportunity

Under the provisions of ORS 537.170(7)(a) (for surface water) or ORS 537.625(2) (for groundwater), the applicant may request and the department shall schedule a contested case hearing as provided under ORS 537.170(3) (for surface water) or ORS 537.622(3) (for groundwater), by submitting the information required for a protest under ORS 537.153(6) (or, under ORS 537.621(7)) within 14 days after the issuance of this order. A request for a hearing must be received in the Water Resources Department no later than **January 11, 2018**.

STATE OF OREGON

COUNTY OF CROOK

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC
WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WAIBEL RANCHES LLC
3672 SW JUNIPER CANYON RD
PRINEVILLE, OR 97754

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

APPLICATION FILE NUMBER: R-88155

SOURCE OF WATER: SARVIS CREEK, TRIBUTARY OF CROOKED RIVER

STORAGE FACILITY: SARVIS CREEK RESERVOIR, ENLARGEMENT OF PERMIT
R-5534

PURPOSE OR USE OF THE STORED WATER: IRRIGATION, LIVESTOCK,
RECREATION, AND WILDLIFE

MAXIMUM VOLUME: 108.0 ACRE FEET

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: MARCH 1
THROUGH APRIL 14

DATE OF PRIORITY: DECEMBER 7, 2015

DAM LOCATION: NE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 9, T17S, R21E, W.M.; 90 FEET SOUTH
AND 1620 FEET EAST FROM W $\frac{1}{4}$ CORNER, SECTION 9

The area submerged by the reservoir, when full, will be 14.8
acres and the maximum height of the dam shall not exceed 46.0
feet.

POINT OF DIVERSION: NESW SECTION 9, T17S, R21E, W.M.; 90 FEET
SOUTH AND 1620 FEET EAST FROM W $\frac{1}{4}$ CORNER, SECTION 9

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE $\frac{1}{4}$ NW $\frac{1}{4}$

NE $\frac{1}{4}$ SW $\frac{1}{4}$

NW $\frac{1}{4}$ SW $\frac{1}{4}$

SECTION 9

TOWNSHIP 17 SOUTH, RANGE 21 EAST, W.M.

Measurement Devices and Recording/Reporting of Annual Water Storage Conditions:

- 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 permittee shall keep a complete record of the volume of water stored each month, and shall submit a report which includes water-storage measurements to the Department annually (or more frequently as may be required by the Director). Further, the Director may require the permittee to report general water-use information, including 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.

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.

The permittee shall pass all live flow outside the storage season described above. In addition, the permittee shall release all water stored under this permit and bypass all inflow if Prineville Reservoir is not filled to 148,640 AF by April 15th of each year.

The permittee shall maintain a vegetated buffer strip above the reservoir to trap sediment, nutrients, and other pollutants before they enter the reservoir.

The permittee shall limit polluting activities near the reservoir or in areas that drain into the reservoir.

The permittee shall exclude livestock from the reservoir.

The permittee shall carefully read and follow label directions when using aquatic herbicides.

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.

A fishway to ensure adequate upstream and downstream passage for fish is required for any in-channel obstruction, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission.

Notwithstanding that Oregon Department of Fish and Wildlife (ODFW) has made a determination that fish screens are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish-screening devices to prevent fish from entering the proposed diversion.

STANDARD CONDITIONS

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.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

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.

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.

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.

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

Dwight French, Administrator,
Water Right Services Division
for Thomas M. Byler, Director