

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application S-88579 in the)
name of THOMAS M. BIRKMAIER and)
BIRKMAIER RANCH INC.)

FINAL ORDER
APPROVING THE USE OF
STORED WATER

Authority

Oregon Revised Statute (ORS) 537.147 establishes the process by which an application to use stored water exclusively may be submitted. Oregon Administrative Rule (OAR) Chapter 690, Divisions 310 and 340 implement the statute, and provide the Department's procedures and criteria for evaluating applications to use stored water exclusively.

FINDINGS OF FACT

1. On May 4, 2018, Thomas M. Birkmaier and Birkmaier Ranch Inc. submitted an application for a water-use permit pursuant to ORS 537.147.
2. The Department provided public notice of the application in the Department's weekly public notice on May 22, 2018. A 30-day comment period followed.
3. The Department has evaluated the application and any comments received, and finds that no public interest under ORS 537.170(8) would be affected adversely by the proposed use.

CONCLUSIONS OF LAW

Application S-88579 is consistent with the requirements of ORS 537.147, and OAR Chapter 690.

ORDER

Application S-88579 is approved. **Upon receipt of a valid executed agreement with Associated Ditch Company, 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.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 536.075 and ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to 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.

Dated at Salem, Oregon on October 19th, 2018.

A handwritten signature in blue ink, appearing to read "Dwight French", written over a horizontal line.

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

If you have questions about statements contained in this document, please contact Barbara Poage at Barbara.J.Poage@oregon.gov or 503-986-0859.

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.

STATE OF OREGON

COUNTY OF WALLOWA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

THOMAS M. BIRKMAIER
 BIRKMAIER RANCH INC.
 84263 WALKER LANE
 JOSEPH OR 97846

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

APPLICATION FILE NUMBER: S-88579

SOURCE OF WATER: WALLOWA LAKE RESERVOIR, CONSTRUCTED UNDER PERMIT R-347, TRIBUTARY OF WALLOWA RIVER

PURPOSE OR USE: PRIMARY IRRIGATION OF 11.6 ACRES AND SUPPLEMENTAL IRRIGATION OF 131.3 ACRES

MAXIMUM VOLUME: 358.5 ACRE-FEET (OR AS FURTHER LIMITED BY CONTRACT)

DATE OF PRIORITY: MAY 8, 2018

PERIOD OF USE: MAY 1 THROUGH SEPTEMBER 30

Authorized Point of Re-Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	12	SE SW	3969 FEET SOUTH AND 2098 FEET EAST FROM THE NW CORNER, SECTION 12

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to a diversion of not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	1	NE NW	3.9
2 S	45 E	WM	1	NW NW	4.3
2 S	45 E	WM	1	SW NW	15.5
2 S	45 E	WM	1	SE NW	13.0
2 S	45 E	WM	1	NE SW	7.1

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	1	NW SW	4.6
2 S	45 E	WM	1	SE SW	10.6
2 S	45 E	WM	1	NW SE	3.1
2 S	45 E	WM	1	SW SE	37.4
2 S	45 E	WM	2	NE SE	1.4
2 S	45 E	WM	12	NW NE	30.4
2 S	45 E	WM	1	NE SW	2.2
2 S	45 E	WM	1	NW SE	4.8
2 S	45 E	WM	2	NE SE	4.6

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

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. 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 diverted each month, and shall submit a report which includes water-use 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.
2. The water user shall install, maintain, and operate fish screening and fish passage devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion, while passage devices provide adequate upstream and downstream passage for fish. The required screen and passage devices are to be in place and functional, and approved in writing by ODFW prior to diversion of water. The water user may submit evidence in writing that ODFW has determined screens and/or passage devices are not necessary.
3. The use of water under this right is subject to the terms and conditions of a valid executed agreement between the American Ditch Company and the permittee, a copy of which must be on file in the records of the Water Resources Department.

STANDARD 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. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
3. 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.
4. 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.
5. 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.
6. 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 Chapter 635, Division 415, shall be followed.
7. 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.
8. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
9. Within one year after making complete application 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 _____ 2018.

DRAFT – NOT A PERMIT

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