

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

Water Right Application R-88456 in the name)
of ERIC ANTHONY URSTADT)
)

FINAL ORDER

Summary: Order approving Application R-88456 and issuing a draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the Willamette Basin Program OAR 690-502. These statutes and rules can be viewed on following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages.default.aspx>

The Department's main page is <https://www.oregon.gov/OWRD>.

This Final Order is issued pursuant to ORS 537.170(6) to (9) and OAR 690-310-0170 to 0190.

FINDINGS OF FACT

1. On September 5, 2017, Eric Anthony Urstadt submitted an application to the Department for a water use permit.
2. On June 4, 2019, the Department issued a Proposed Final Order recommending approval of the application. The protest period closed July 19, 2019, and no protest was filed.
3. The findings of fact in the Proposed Final Order are incorporated herein
4. On July 24, 2019, the applicant identified that the dam height in the application was erroneously identified as 25.0 feet. The applicant clarified that the correct height of the dam is 42.0 feet. The draft permit has been adjusted accordingly.

CONCLUSIONS OF LAW

1. The conclusions of law in the Proposed Final Order are incorporated herein with the above modification.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a Final Order in other than 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 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.

2. The proposed use, as conditioned, would not impair or be detrimental to the public interest.

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of the water to be appropriated for the project.

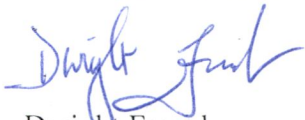
ORDER

Application R-88456 is approved. A permit consistent with the attached draft permit shall be issued upon submission and approval of dam engineering plans and specifications (as-builts).

Submission of dam engineering plans and specifications (as-builts) are due no later than 60 days from the date of this Final Order. Failure to submit the dam engineering plans and specification and within 60 days from the date of this Final Order may result in the proposed rejection of Application R-88456.

If you need to request additional time to submit the required documentation, the written request should be received in the Salem Office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED AUG 28 2019



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

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- If you have any questions about statements contained in this document, please contact Kim French at Kim.R.French@oregon.gov or 503-986-0816.
 - 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.
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STATE OF OREGON
COUNTY OF WASHINGTON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ERIC ANTHONY URSTADT
39290 NW MURTAUGH RD
NORTH PLAINS OR 97133

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

APPLICATION FILE NUMBER: R-88456

SOURCE OF WATER: RUNOFF, TRIBUTARY TO EAST FORK DAIRY CREEK

STORAGE FACILITY: BLACKY BOY RESERVOIR

THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 42.0 FEET

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

MAXIMUM VOLUME: 12.3 ACRE-FEET

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1 THROUGH APRIL 30

DATE OF PRIORITY: SEPTEMBER 5, 2017

POINT OF DIVERSION/DAM LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	3 W	WM	5	NW NE	730 FEET SOUTH AND 1120 FEET EAST FROM N1/4 CORNER, SECTION 5

AREA TO BE SUBMERGED BY THE RESERVOIR:

Twp	Rng	Mer	Sec	Q-Q
2 N	3 W	WM	5	NW NE

1. Water Use Measurement, Recording, and Reporting Condition:

- 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 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.

2. Water Quality Conditions:

- A. The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
- B. The permittee shall not release polluted off-channel stored water into waters of the state, unless under emergencies. For routine maintenance, the permittee shall land apply stored water or provide treatment prior to releasing it December 1 through April 15. The permittee shall comply with OAR 340-041 and ensure that water-quality standards are not violated by releases from storage.
- C. The permittee shall not cause pollution of any waters of the state, or 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, per ORS 468B-025(1). If the Department of Environmental Quality (DEQ) determines that pollution of waters of the state is occurring, the permittee is not in compliance with ORS 468.025(1), and DEQ shall notify the Department of the violation.
- D. 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, including through irrigation practices and the management of any livestock, 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.
- E. Once the allocated volume has been stored, all live flow must be passed downstream at a rate equal to that of the inflow in a method that protects instream water quality.

DAM CONDITIONS

- 1. Routine maintenance or repair of the dam, its spillway, and all appurtenant structures shall be performed to include, but not be limited to, removal of woody or high vegetation from the embankment, abutments and spillway; removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.

2. Repair or replacement of defective or worn out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe.
3. If the dam is enlarged, modified, or otherwise altered, this work must be based on design plans and specifications prepared by a Registered Professional Engineer licensed in Oregon. These plans must be approved by the Water Resources Dam Safety Program prior to such alterations of the dam, its spillway, or any appurtenant structure(s).
4. No valve shall be installed at the downstream end of the low level conduit, and the low level conduit shall not be operated in a pressurized condition unless the dam has been designed for pressurized operation by the design engineer. There must be an operations manual for the dam that describes pressurized operation, and necessary inspections of pressurized conduits for the dam.
5. If used, flashboards shall be maintained in good condition, replaced as needed, and removed as necessary prior to potential winter storms, or unusual rainfall or snowmelt events at any time of the year.

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 Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
4. 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. 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. 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.
3. 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.

4. 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.
5. 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.
6. 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.
7. 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

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