

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

Water Right Application R-87333 in the)
name of PAT VOIGHT and RICCO)
RANCH

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 viewed 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In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon's Scenic Waterway laws – to determine whether the use is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 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.

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 10, 2008, Pat Voigt and Ricco Ranch submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Volume	3.0 ACRE-FEET
Dam Height	16.0 FEET
Source	UNNAMED STREAM, TRIBUTARY TO DIXIE CREEK
County	GRANT COUNTY
Reservoir Location	SECTION 24, TOWNSHIP 12 SOUTH, RANGE 33 EAST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. On November 18, 2008, the Department provided public notice of the application in the Department's weekly public notice. A 60-day comment period followed.
4. On January 20, 2009, the Department received comments from WaterWatch of Oregon, Inc. (WaterWatch). WaterWatch asserts that the reservoir will pose a significant detrimental impact to existing fishery resources, and they requested that the Department deny the application.
5. On May 18, 2011, the Department received public comment from the Oregon Department of Environmental Quality (DEQ) who expressed concerns regarding temperature and bacteria sources (E. Coli). The Department has recorded its evaluation of the public comment received on Comment Evaluation Forms, which can be found in the application file.
6. On January 25, 2011, Clackamas County Circuit Court Judge Susie L. Norby issued an order relating to the processing of reservoir applications filed under ORS 537.409. In this order, Judge Norby determined that an application for stored water filed under ORS 537.409 is not complete unless/until the Department receives sufficient information to demonstrate that the reservoir:
 - a. does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and
 - b. does not injure any existing water right.
7. On July 8, 2011, the applicant was notified of the reservoir application processing modification under ORS 537.409 and requested additional information to deem the application complete.
8. On August 4, 2011, the Department received authorization from the applicant to use the existing February 2, 2010 Watermaster review and the September 27, 2010 Oregon Department of Fish and Wildlife (ODFW) review to complete the application.
9. On August 9, 2011, the Department again provided public notice of the application. Within the second 60-day comment period, the Department received comments from WaterWatch. WaterWatch resubmitted and incorporated by reference, comments submitted in January 2009 and believes the reservoir will pose a significant detrimental impact to existing fishery resources. They request that the Department deny the application.

10. The Department relies on the ODFW's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. On September 27, 2010, the Department received a review from ODFW. ODFW reviewed the proposed use and the comments submitted by WaterWatch, and determined that limiting the period of use to December 1 through April 15 will mitigate any impact the reservoir may have on existing fishery resources.
11. 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 December 1 through June 30 of each year.
12. The Department finds that existing water rights would not be injured by the proposed use.
13. The Department has determined that the proposed source has not been withdrawn from further appropriation under ORS 538.
14. The proposed reservoir is not prohibited under ORS 390.835.

CONCLUSIONS OF LAW

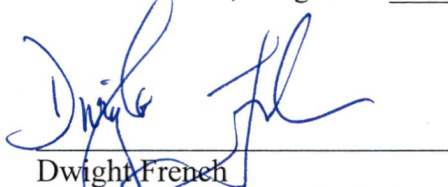
1. Application R-87333 is consistent with the requirements of ORS 537.409.
2. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.409.

ORDER

Application R-87333 is approved. **Upon payment of the permit recording fee of \$520, 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 will 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.

Dated at Salem, Oregon on AUG 11 2020



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 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.

STATE OF OREGON

COUNTY OF GRANT

DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

PAT VOIGT
RICCO RANCH
PO BOX 397
PRAIRIE CITY OR 97869

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

APPLICATION FILE NUMBER: R-87333

SOURCE OF WATER: UNNAMED STREAM, TRIBUTARY TO DIXIE CREEK

STORAGE FACILITY: MACKSEY POND (RESERVOIR 2)

MAXIMUM DAM HEIGHT: 16.0 FEET

MAXIMUM VOLUME: 3.0 ACRE-FEET

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1
THROUGH APRIL 15

DATE OF PRIORITY: NOVEMBER 10, 2008

Dam Location/Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	33 E	WM	24	SE NE	2825 FEET NORTH AND 1030 FEET WEST FROM SE CORNER, SECTION 24

The Area To Be Submerged by the Reservoir:

Twp	Rng	Mer	Sec	Q-Q
12 S	33 E	WM	24	SE 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 Director may require the permittee to install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. If the Director notifies the permittee to install a meter or other measuring device, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the permittee shall maintain the meter or measuring device in good working order, and shall allow the

watermaster access to the device(s). The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.

- C. 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.
 - D. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use 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. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
- 2. 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.
 - 3. The permittee shall pass all live flow outside the storage season described above.
 - 4. 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.
 - 5. 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.
 - 6. 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.
 - 7. Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 14048000, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

John Day Scenic Waterway	
Month	Minimum Flow (cfs)
December	500

January	500
February	1000
March	2000
April	2000

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. If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.
6. 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.
7. 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.
8. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
9. The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir capacity is equal to or greater than 9.2 acre-feet.
10. If no secondary permit exists and the reservoir capacity is less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:
 - a. the dimensions of the reservoir;
 - b. the maximum capacity of the reservoir in acre-feet; and
 - c. a map identifying the location of the reservoir prepared in compliance with Departmental standards.

Issued _____

DRAFT – NOT A PERMIT

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