

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

Water Right Application R-88888 in the)
name of SPIES REAL ESTATE GROUP)
LLC)

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In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon's Scenic Waterway laws – to determine whether the use is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 October 22, 2020, Spies Real Estate Group LLC submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Volume: 15.0 ACRE-FEET

Dam Height: ZERO FEET

Source: HAMMER CREEK, RUNOFF, AND SEEPAGE, TRIBUTARY TO
MARYS RIVER

County: BENTON COUNTY

Reservoir Location: SECTION 26, TOWNSHIP 14 SOUTH, RANGE 6 WEST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. On November 10, 2020, the Department provided public notice of the application in the Department's weekly public notice. A 60-day comment period followed.
4. The Department did not received public comment related to the possible issuance of the attached draft permit.
5. 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 November 1 through through July 31 for the proposed use.
6. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that, if limited to December 1 through May 31 and as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.
7. The Department finds that the proposed use, if limited to November 1 through April 30 and as conditioned, will not injure other water rights.
8. The Department has determined that the proposed source has not been withdrawn from further appropriation under ORS Chapter 538.
9. The proposed reservoir is not prohibited under ORS 390.835.

CONCLUSIONS OF LAW

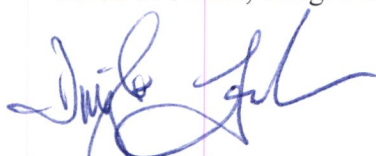
1. Application R-88888 is consistent with the requirements of ORS 537.409.
2. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.409.

ORDER

Application R-88888 is approved. **Upon submission of documentation from the relevant planning jurisdiction that either a) the proposed use is allowed outright or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded, 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.

Dated at Salem, Oregon on **JAN 29 2021**



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.

DRAFT

THIS IS NOT A PERMIT
STATE OF OREGON

DRAFT

COUNTY OF BENTON

DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SPIES REAL ESTATE GROUP LLC
PO BOX 548
CORVALLIS OR 97339

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

APPLICATION FILE NUMBER: R-88888

SOURCE OF WATER: HAMMER CREEK, RUNOFF, AND SEEPAGE, TRIBUTARY TO MARYS RIVER

STORAGE FACILITY: ALPINE FARM RESERVOIR

THE RESERVOIR IS ENTIRELY BELOW GROUND SURFACE; THERE IS NO DAM.

MAXIMUM VOLUME: 15.0 ACRE-FEET

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

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

DATE OF PRIORITY: OCTOBER 22, 2020

AUTHORIZED POINTS OF DIVERSION:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
RUNOFF	14 S	6 W	WM	26	NW SE	100 FEET SOUTH AND 600 FEET EAST FROM C1/4 CORNER, SECTION 26
H1	14 S	6 W	WM	26	NE SW	375 FEET SOUTH AND 50 FEET WEST FROM C1/4 CORNER, SECTION 26
H2	14 S	6 W	WM	26	NW SE	375 FEET SOUTH AND 55 FEET EAST FROM C1/4 CORNER, SECTION 26
H3	14 S	6 W	WM	26	NW SE	390 FEET SOUTH AND 450 FEET EAST FROM C1/4 CORNER, SECTION 26
H4	14 S	6 W	WM	26	NW SE	330 FEET SOUTH AND 820 FEET EAST FROM C1/4 CORNER, SECTION 26

CENTER OF RESERVOIR:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	6 W	WM	26	NW SE	100 FEET SOUTH AND 600 FEET EAST FROM C1/4 CORNER, SECTION 26

THE AREA TO BE SUBMERGED BY THE RESERVOIR:

Twp	Rng	Mer	Sec	Q-Q
14 S	6 W	WM	26	SW NE
14 S	6 W	WM	26	NW SE

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. Fish Screen/By-Pass Condition:

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

3. Riparian Condition:

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.

4. Water Quality Condition:

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.

5. In-Water Work Condition:

Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 1 through October 15, unless an alternate time period is approved by Oregon Department of Fish and Wildlife.

6. 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.
7. The permittee shall pass all live flow outside the storage season described above.
8. 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.
9. 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.
10. 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 to the Oregon Water Resources Department.
8. 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.
9. 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 Water Resource Department standards.

Issued

DRAFT – NOT A PERMIT

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