

Oregon Water Resources Department
Water Right Services Division

Water Right Application S-89144 in the)	FINAL ORDER
name of RICK TOOTHAKER)	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 June 21, 2021, Rick Toothaker submitted an application for a water-use permit pursuant to ORS 537.147.

Source: LOST CREEK RESERVOIR, CONSTRUCTED UNDER PERMITS R-8141 AND R-8142, TRIBUTARY TO ROGUE RIVER

Use: IRRIGATION OF 0.36 ACRE AND RECREATION

Volume: 1.62 ACRE-FEET (AF)

Period of Use: IRRIGATION – APRIL 1 THROUGH NOVEMBER 30
RECREATION – JANUARY 1 THROUGH DECEMBER 31

County: JACKSON COUNTY

Place of Use: SECTIONS 19, TOWNSHIP 36 SOUTH, RANGE 3 WEST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. On August 10, 2021, the Department provided public notice of the application in the Department's weekly public notice. A 30-day comment period followed.
4. The Department has not received public comments related to the possible issuance of the attached permit. Therefore, the Department has determined that no public interest issues as identified in ORS 537.170(8) have been raised.

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.

CONCLUSIONS OF LAW

1. Application S-89144 is consistent with the requirements of ORS 537.147 and OAR Chapter 690.

ORDER

Application S-89144 is approved. **Upon submission of a valid, executed contract with the U.S. Bureau of Reclamation authorizing the use of stored water from the Lost Creek Reservoir, 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 NOV 05 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 503-979-3168.

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

DRAFT

STATE OF OREGON

COUNTY OF JACKSON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

RICK TOOTHAKER
3737 HIGHWAY 238
JACKSONVILLE OR 97530

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

APPLICATION FILE NUMBER: S-89144

SOURCE OF WATER: LOST CREEK RESERVOIR, CONSTRUCTED UNDER PERMITS R-8141 AND R08142,
TRIBUTARY TO ROGUE RIVER

PURPOSE OR USE AND PERIOD OF USE: IRRIGATION OF 0.36 ACRE – APRIL 1 THROUGH NOVEMBER 30
RECREATION – JANUARY 1 THROUGH DECEMBER 31

MAXIMUM VOLUME: 1.62 ACRE-FEET (OR AS FURTHER LIMITED BY CONTRACT)

DATE OF PRIORITY: JUNE 21, 2021

AUTHORIZED POINT OF RE-DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	19	NW NE	1100 FEET SOUTH AND 75 FEET EAST FROM N1/4 CORNER, SECTION 19

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 4.5 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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	3 W	WM	19	NW NE	0.36

RECREATION				
Twp	Rng	Mer	Sec	Q-Q
36 S	3 W	WM	19	NW NE

PERMIT SPECIFIC 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. **Water Use Measurement, Recording, and Reporting:**
 - 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 Director may require the permittee to keep and maintain a record of the volume of water diverted, 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.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

3. **Fish Screen/Passage:**

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.

4. The use of water under this permit is subject to the terms and conditions of contract No. XXXX, or a satisfactory replacement, between the U.S. Bureau of Reclamation and the permittee, a copy of which must be on file in the records of the Water Resources Department.

STANDARD CONDITIONS

1. 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.

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.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. 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.
2. 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.
3. 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 _____

DRAFT – NOT A PERMIT

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