

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

Water Right Application R-89229 in the
name of MICHAEL SEVEREID and FLYING
FEATHER ORCHARD INC.

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SUPERSEDING FINAL ORDER

This Final Order and Permit R-15544 supersede the Final Order and Permit R-15531 issued July 15, 2022

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 accessed 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.

Hearing Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed. Only the applicant or protestant may appeal this order. (ORS 537.170(7)(b)).

Appeal Rights

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.

In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon’s Scenic Waterway laws – to determine whether the use is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

FINDINGS OF FACT

1. On April 4, 2022, Michael Severeid and Flying Feather Orchards Inc. submitted an application for a permit to store water pursuant to ORS 537.409.

Storage Volume: 40.0 ACRE-FEET

Dam Height: 9.99 FEET

Source: UNNAMED STREAM, TRIBUTARY TO HAWN CREEK

County: YAMHILL COUNTY

Reservoir Location: SECTION 25, TOWNSHIP 3 SOUTH, RANGE 4 WEST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. On April 12, 2022, 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 receive public comment related to the possible issuance of the attached 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 October 1 through through July 31 of each year 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 November 1 through April 30 and as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.
7. The Department has determined that the proposed use, 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.

10. On July 15, 2022, the Department issued a Final Order approving Application R-89229 and Permit R-15531. Subsequently the Department discovered the July 15, 2022 Final Order erroneously omitted a condition required by the Oregon Department of Fish and Wildlife. The following condition has been included in the attached permit:
- a. Off-Channel Stored Water Releases: The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.
11. Additionally, the Department determined that Permit R-89229 contained the following scrivener's error:
- a. The measured distance for the point of diversion identified that the measurement was from the North $\frac{1}{4}$ corner of Section 25. The measured distance in the attached permit has been corrected as follows: 2500 feet South and 802 feet East from the NW corner, Section 25.
12. Accordingly, pursuant to OAR 137-004-0080 (5), a superseding Final Order and Permit will be issued.

CONCLUSIONS OF LAW

1. Application R-89229 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

This Final Order and Permit supersede the July 15, 2022 Final Order and Permit R-15531, which are of no further force or effect.

Application R-89229 is approved and Permit R-15544 is issued.

DATED SEP 09 2022

Katherine Ratcliffe

Katherine Ratcliffe
Water Rights Section Manager, 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 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
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