

3. On November 26, 2004, the Department received a petition for reconsideration from the applicant citing the costs of screening and the absence of cost-sharing monies to assist the applicant in installing the screens. The petition was filed within the 60-day period specified by ORS 183.484(2).
4. On January 24, 2005, the Department responded to the petition and notified the applicant that the order would be reconsidered after the Department had received notification of the results of discussions between the applicant and the Department of Fish and Wildlife to identify a mutually acceptable approach to resolving the screening issues.
5. On February 2, 2005, the Department received a letter from the Department of Fish and Wildlife recommending that, given the lack of availability of cost-share funds for screening, the fish screening condition be modified. The proposed conditions would allow the use of water at the new point of diversion with the understanding that the diversion will be screened within two years after cost-share funds become available, but not later than five years after issuance of the order.

Now, therefore, it is ORDERED:

1. The order approving application T-9379 and entered at Special Order Volume 62, Pages 79 to 81 is withdrawn and modified to replace condition 5 requiring a fish screen or by-pass device with the following conditions:

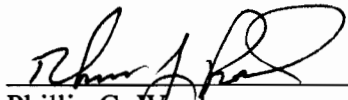
“5. The Oregon Department of Fish and Wildlife (ODFW) that determined that the new point of diversion requires a fish screen and/or by-pass device, however, the water user may withdraw water without a fish screening and by-pass device until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. The point of diversion must be screened within two years after anticipated cost share funds become available. If cost share funds do not become available within five years after the date of this order, the water user must screen regardless of cost share funding availability.

“6. The fish screen and/or by-pass device must meet ODFW design, construction, operational and maintenance standards. Fish screening will prevent fish from entering the diversion, while a by-pass device safely transports fish back to the body of water from which the fish were diverted. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screen, and by-pass devices were installed to the state’s criteria.”

2. The order is further modified to change the date for completion of the proposed change, as established in condition 1, from October 1, 2006 to October 1, 2010.

3. All remaining portions of the order approving application T-9379 are affirmed and the order, as modified, issues.

Dated at Salem, Oregon this 16th day of February, 2005.



Phillip C. Ward
Director

Mailing date: ~~_____ FEB 22 2005 _____~~