

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

In the Matter of Water Rights Application)
R-87249, Umatilla County)

FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

Findings of Fact

1. On August 4, 2008, Matthew Steiner submitted an application for a permit to store water pursuant to ORS 537.409. The Department provided public notice of the application in the Department's weekly public notice on August 12, 2008. A 60-day comment period followed.
2. The Department has not received comments related to the possible issuance of the attached permit.
3. The Department has evaluated the application and any comments received, and finds that as conditioned, the proposed use will not impair or be detrimental to the public interest described in ORS 537.409(6).
4. The Department received a review from Oregon Department of Fish and Wildlife related to the possible issuance of a permit. The attached permit is conditioned to address concerns raised in that review.
5. Water is available for the proposed use as described in the attached permit.
6. The use, as described in the attached permit, will not injure existing water rights and does not pose potential detrimental impacts to fishery resources.
7. The map submitted with your application shows that you intend to divert water from land that is not included in your deed. Under OAR 690-310-0040 (1)(a)(G), prior to permit issuance, the

APPEAL RIGHTS

Appeal to a circuit court: This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

Petition to the Department for Reconsideration of the Final Order: A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

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.

Department must receive a statement that you have written authorization or an easement permitting access to lands not owned by you.

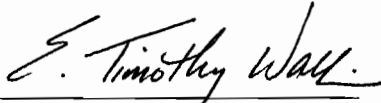
Conclusions of Law

Application R-87249 is consistent with the requirements of ORS 537.409. Therefore, the proposed use will not impair or be detrimental to the public interest.

Now Therefore, it is Ordered:

Application R-87249 is approved pursuant to ORS 537.409, and upon receiving a statement that you have written authorization or an easement permitting access to lands not owned by you, a permit will be issued authorizing the proposed water use.

Dated at Salem, Oregon on NOVEMBER 17, 2008.



for Phillip C. Ward, Director
Water Resources Department

This order was produced by Brook Geffen. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0808 or Brook.A.Geffen@ wrd.state.or.us.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF UMATILLA

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

MATTHEW STEINER
55685 N FORK WALLA WALLA RIVER WATER RD
MILTON FREEWATER OR 97862

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

APPLICATION FILE NUMBER: R-87249

SOURCE OF WATER: NORTH FORK WALLA WALLA RIVER, TRIBUTARY TO WALLA WALLA RIVER

STORAGE FACILITY: RESERVOIR 1

MAXIMUM VOLUME: 5.0 ACRE FEET

DATE OF PRIORITY: AUGUST 4, 2008

WATER MAY BE APPROPRIATED DURING THE PERIOD: JANUARY 1 THROUGH APRIL 14

USE: MULTIPLE PURPOSE

Dam Location/Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	22	SW NE	1440 FEET SOUTH AND 2000 FEET WEST FROM NE CORNER, SECTION 22

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
5 N	36 E	WM	22	NE NE

Measurement, recording and reporting conditions:

- A. 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.
- B. 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 reporting procedures for review and approval.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The permittee shall pass all live flow outside the storage season described above.

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.

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 used for out-of-reservoir purposes, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

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.

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 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 Chapter 635, Division 415, Section 030 adopted November 13, 1991 shall be followed.
6. The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
7. 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.
8. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2013.

9. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
10. 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.
11. 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 _____ 2008.

DRAFT – NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

