

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16656

Final Order

Hearing and Appeal 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 above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than contested case. This order is subject to judicial review under 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 ORS 536.075 and OAR 137-004-0080 you may either 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Application History

On April 7, 2006, FRED JUSTESEN submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on August 7, 2007. The protest period closed September 21, 2007, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the location of Pheasant Lake, the measurement, recording, and reporting conditions, and additional standard conditions.

The Proposed Final Order described the dam location as:

PHEASANT LAKE - SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 20, T3S, R16E, W.M.; 3465 FEET NORTH & 1155 FEET EAST FROM SW CORNER, SECTION 20

The dam location as modified in the attached permit is:

PHEASANT LAKE - SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 20, T3S, R16E, W.M.; 3465 FEET NORTH & 1155 FEET EAST FROM SW CORNER, SECTION 20

The Proposed Final Order described the measurement, recording, and reporting conditions as:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring 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 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 measurement, recording, and reporting conditions as modified in the attached permit:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring 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 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.

- D. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that surface water is not stored without authorization. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data collected on a periodic basis be recorded and reported to the Department annually or more frequently.

The conditions included in the attached permit are:

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

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 635-415-030 adopted November 13, 1991, shall be followed.

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.

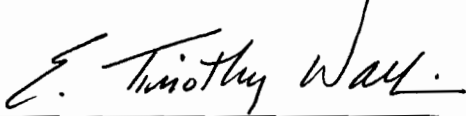
The permittee is required to pass all surface water flow for which a water-use authorization does not exist.

At the time of certification, the total rate allowed for pond maintenance may be reduced, in accordance with Departmental standards, so as to be commensurate with the certified volume(s) of the reservoir(s).

Order

Application G-16656 therefore is approved with the above modifications to the Proposed Final Order, and Permit G-16239 is issued as limited by the conditions set forth therein.

DATED November 28, 2008



for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

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 Ste A, Salem OR 97301-1266, Fax: 503-986-0901.