

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

In the Matter of Water Rights Application)
R-87125, Benton County)

RESCINDING FINAL ORDER

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 March 17, 2008, U.S. Fish and Wildlife 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 April 8, 2008. A 60-day comment period followed.
2. On November 7, 2008, the Department issued a Final Order approving Application R-87124, and Permit R-14668 was issued.
3. On December 4, 2008, the Department received a request for reconsideration from the applicant. The applicant requested that the following permit language be removed: "Notwithstanding that Oregon Department of Fish and Wildlife (ODFW) has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish-screening and by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish." In addition, the applicant requested reconsideration of the following language: "Ensure adequate egress for native fishes from Turtle Flats".
4. After consultation with ODFW, the Department finds that Permit R-14668 shall be rescinded and a superseding permit will be issued at a later time in order to allow ODFW to compose revised language that will more accurately reflect the situation at Turtle Flats Pond.

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.

Conclusions of Law

The Department may withdraw the order dated November 7, 2008 for Application R-87125 for purposes of reconsideration.

Now Therefore, it is Ordered:

The Final Order dated November 7, 2008 approving water right application R-87125 and associated Permit R-14670 are rescinded.

Dated at Salem, Oregon on FEBRUARY 2, 2009.



for Phillip C. Ward, Director
Water Resources Department

This order was produced by Kerry Kavanagh. 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 503-986-0816 or Kerry.L.Kavanagh@ 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.