

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

In the Matter of Water Rights Application)
R-87442, Linn 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 April 20, 2009, Kenneth and Linda Barton 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 28, 2009. A 60-day comment period followed.
2. The Department has received comments related to the possible issuance of the attached permit. Pamela Wright with Oregon Department of Environmental Quality submitted the following comment:

The Oregon DEQ strongly discourages their [in-channel reservoirs] construction because they are a source of persistent low level sediment in downstream fish bearing streams. Although the impact from individual reservoirs is small, cumulatively they degrade aquatic habitat and water quality downstream. They also contribute considerable sediment during 5 to 10-year (or longer) flood events if the containment walls or earthen dams are washed out. For mitigation, some landowners plant and grow grasses that tolerate low levels of light in shallow in-channel ponds.
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.

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.

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 a significant detrimental impact to existing fishery resources.

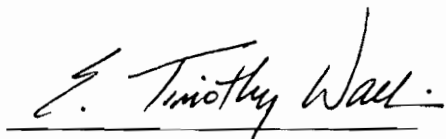
Conclusions of Law

Application R-87442 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-87442 is approved pursuant to ORS 537.409, and Permit R-14767 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on July 23, 2009.



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@wrdd.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.