

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

In the Matter of Water Rights Application)
R-87196, Wheeler 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 June 12, 2008, Adrian and Kay Fisher submitted an application for a permit to store water pursuant to ORS 537.409.
Storage Volume: 5.7 ACRE FEET
Dam Height: 10.0 FEET
Source: CLUBFOOT HOLLOW, TRIBUTARY TO PINE CREEK
Location: WHEELER COUNTY in SECTION 10, TOWNSHIP 8S, RANGE 21E, W.M.
2. The required fees were paid and minimum application requirements were met.
3. The Department provided public notice of the application in the Department's weekly public notice on June 24, 2008. A 60-day comment period followed. The Department has not received public comment related to the possible issuance of the attached draft permit.
4. The Department has determined that the proposed source has not been withdrawn from further appropriation.
5. The proposed reservoir is not prohibited under ORS 390.835.

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.

6. Water is available for the proposed use as determined from the Department's water-availability model and the watermaster's assessment.
7. Because water is available, the Department finds that existing water rights would not be injured by the proposed use. Should water not be available to senior water rights in the future, this relatively junior allocation would be regulated according to the doctrine of prior appropriation.
8. Based upon a review by the Oregon Department of Fish and Wildlife, the Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources. The attached draft permit is conditioned to address concerns raised in that review.

Conclusions of Law

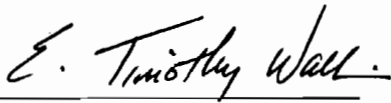
1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87196 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-87196 is approved. Upon payment of the permit recording fee of \$400, a permit shall be issued authorizing the proposed water use. Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

Dated at Salem, Oregon on NOVEMBER 17 2009.



for Phillip C. Ward, Director
Water Resources Department

This order was produced by Jeana Eastman. 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 503-986-0859 or Jeana.M.Eastman@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.

STATE OF OREGON

COUNTY OF WHEELER

DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

ADRIAN AND KAY FISHER
30218 S APPALOOSA DR
MOLALLA OR 97038-9504

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

APPLICATION FILE NUMBER: R-87196

SOURCE OF WATER: CLUBFOOT HOLLOW, TRIBUTARY TO PINE CREEK

STORAGE FACILITY: FISHER RESERVOIR

MAXIMUM VOLUME: 5.7 ACRE FEET

DATE OF PRIORITY: JUNE 12, 2008

WATER MAY BE APPROPRIATED DURING THE PERIOD: NOVEMBER 1 THROUGH JUNE 30

USE: MULTIPLE PURPOSE

Dam Location/Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	21 E	WM	10	NW NE	250 FEET SOUTH AND 1630 FEET WEST FROM NE CORNER, SECTION 10

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
8 S	21 E	WM	10	NW NE

Measurement, recording and reporting conditions:

- A. The permittee is required to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
- 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.

Notwithstanding that 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.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.

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

Use of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 1048000, and discontinue diversion when the flows specified below are unmet. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the Watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet.

John Day Scenic Waterway	
Month	Minimum Bypass Flow (cfs)
November	500
December	500
January	500
February	1000
March	2000
April	2000
May	2000
June	2000

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, shall be followed.
6. The use may be restricted if the quality of 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. Construction shall be completed and up to the permitted annual volume of water shall be stored within five years of the date of permit issuance.
9. Within one year after storage of water, 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 Departmental standards.

Issued _____ 2009.

DRAFT – NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department