

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

In the Matter of Water Rights Application)
R-87239, 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 July 21, 2008, William Potter submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Capacity: 7.0 ACRE FEET
Dam Height: 9.0 FEET
Source: SERVICE CREEK, TRIBUTARY TO JOHN DAY RIVER
Location: WHEELER WHEELER COUNTY IN SECTION 36, TOWNSHIP 8 SOUTH,
RANGE 22 EAST, W.M.
2. The Department provided public notice of the application in the Department's weekly public notice on August 8, 2008. A 60-day comment period followed.
3. 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 The Department has determined that the proposed source has not been withdrawn from further appropriation.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 according to 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.

Conclusions of Law

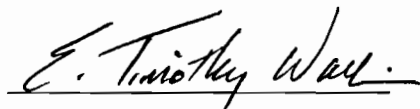
1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87239 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-87239 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 DECEMBER 4, 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.

STATE OF OREGON

COUNTY OF WHEELER

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

WILLIAM POTTER
40333 HWY 19
FOSSIL OR 97830

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

APPLICATION FILE NUMBER: R-87239

SOURCE OF WATER: SERVICE CREEK, TRIBUTARY TO JOHN DAY RIVER

STORAGE FACILITY: BIG SARVICE CORRAL POND

MAXIMUM VOLUME: 7.0 ACRE FEET

DATE OF PRIORITY: JULY 21, 2008

WATER MAY BE APPROPRIATED DURING THE PERIOD: DECEMBER 1 THROUGH THE END OF FEBRUARY

USE: STORAGE FOR IRRIGATION USE, FIRE PROTECTION, FISH CULTURE, LIVESTOCK, AND RECREATION

Dam Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	22 E	WM	36	NW NE	1250 FEET SOUTH AND 1630 FEET WEST FROM NE CORNER, SECTION 36

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	22 E	WM	25	SW SE	955 FEET NORTH AND 2575 FEET WEST FROM NE CORNER, SECTION 36

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
8 S	22 E	WM	36	NW NE
8 S	22 E	WM	36	SW 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 diverted, and may require the permittee to submit this record on a periodic schedule as established by the Director. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

Storage 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 and storage 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 and storage under this right if it is determined by the Department that the flows listed below are unmet.

Month	Minimum Bypass Flow (cfs)
December	500
January	500
February	1000

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 Director may require the user 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.

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.

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, 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 Water Resource Department standards.

Issued _____, 2009

DRAFT – NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department