

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-87512

Final Order

Notice of a Right to a Hearing

Pursuant to ORS 537.409(8), the applicant has the right to a contested-case hearing on this Final Order, which will be conducted in accordance with ORS Chapter 183. If you want a hearing, you must submit a request in writing to the Department within 60 calendar days of the postmarked date of this Final Order. To be timely, a request must be received by the Department within 60 days of that date. If a request for a hearing is not received by the Department within the time allowed, you will have waived the right to a contested case hearing.

The request for a hearing should include your name, address, telephone number, a statement that you are requesting a hearing, and a detailed description of how the Final Order is in error or deficient, and how it can be corrected.

If you request a hearing, the Department will provide you with information about the contested-case hearing process, including your rights and opportunity for appeal, before the hearing occurs.

This Final Order will remain the Department's final decision on your application if you do not request a hearing within the time allowed, or withdraw your request for a hearing, or request a hearing and then notify the Department that you will not appear, or fail to appear at a scheduled hearing.

If you do not request a hearing in the time allowed, the Department's Final Order may be appealed in the Oregon Court of Appeals (ORS 183.482).

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 August 10, 2009, Alan and Janet Krusi submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Capacity: 1.5 ACRE FEET

Dam Height: ZERO FEET (EXCAVATED)

Source: RUNOFF, TRIBUTARY TO CALAPOOYA CREEK AND POND 1
(CALAPOOYA CREEK, TRIBUTARY TO UMPQUA RIVER)

Location: DOUGLAS COUNTY IN SECTION 28, TOWNSHIP 25 SOUTH,
RANGE 6 WEST, W.M.

2. The required examination 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 August 18, 2009. A 60-day comment period followed.
4. The Department has not received public comment related to the proposed use.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation.
6. The proposed reservoir is not prohibited under ORS 390.835.
7. Water is available for the proposed use according to the Department's water-availability model and the watermaster's assessment.
8. Because water is available, the Department finds that existing water rights would not be injured by the proposed use.
9. Based upon a review by the Oregon Department of Fish and Wildlife (ODFW), the Department has determined that the proposed use **will** pose a significant detrimental impact to existing fishery resources, specifically, Oregon Coast Coho, Chinook, Steelhead, Umpqua Chub, and Lamprey. ODFW also found conditions cannot be applied to mitigate the significant detrimental impact to the existing fishery because the proposed pond is within the 25-year floodplain, which can entrap listed fish.
10. The Department has not received adverse comments related to the possible approval of Application R-87512.

Conclusions of Law

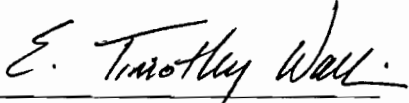
1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. **The proposed use will pose a significant detrimental impact to existing fishery resources.**

4. Application R-87512 is **not** consistent with the requirements of ORS 537.409.

Order

Application R-87512 therefore is denied.

DATED February 11, 2010



for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Brook Geffen. 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 503-986-0808.

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.