

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-86935

Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Application History

On June 29, 2007, Gary Young submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on June 9, 2009, recommending the application be denied because the use of water is not consistent with the Deschutes Basin Program, OAR 690-505-0030(1)(c).

On July 27, 2009, a timely protest was filed by the applicant. The protest included additional information which clarified that the use of water would also be for livestock and wildlife. The additional information is sufficient for compliance with Deschutes Basin Program, OAR 690-505-0030(1)(c). The updated uses are reflected in the attached draft permit.

A settlement agreement was signed by all parties as of January 12, 2010. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.


The Protestant and the Department have agreed to permit conditions set forth in the draft permit.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to include a condition to require fish screening and by-pass devices, which was recommended by Oregon Department of Fish and Wildlife. The attached draft permit includes the recommended condition.

Order

Application R-86935 is therefore approved with modifications to the Proposed Final Order. Upon meeting the "Terms of Agreement" as described in the attached Settlement Agreement and payment of outstanding recording fees in the amount of \$400, a permit consistent with the attached draft permit shall be issued.

DATED March 18, 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 questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". 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.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF CROOK

DRAFT PERMIT TO STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

GARY YOUNG
14005 SE PAULINA VALLEY RD
PAULINA, OR 97751

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

APPLICATION FILE NUMBER: R-86935

SOURCE OF WATER: BEAVER CREEK, A TRIBUTARY OF CROOKED RIVER

STORAGE FACILITY: BEAVER CREEK WEST RESERVOIR

PURPOSE OR USE OF THE STORED WATER: IRRIGATION, LIVESTOCK, AND WILDLIFE

MAXIMUM VOLUME: 61.25 ACRE FEET

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: MARCH 1 THROUGH
APRIL 14

DATE OF PRIORITY: JUNE 29, 2007

THE AREA SUBMERGED BY THE RESERVOIR, WHEN FULL, WILL BE 3.75 ACRES AND
THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 40.0 FEET.

POINT OF DIVERSION: NE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 34, T16S, R23E, W.M.; 3432 FEET
SOUTH AND 660 FEET WEST FROM NE CORNER, SECTION 34

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

Place of Use:

NW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 34
TOWNSHIP 16 SOUTH, RANGE 23 EAST, W.M.

Measurement, recording and reporting conditions:

1. A. Before water may be diverted for storage under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which

includes the recorded measurements to the Department annually or more frequently as may be required by the Director.

2. A. Before water may be diverted for storage under this permit, a staff gage that measures the entire range between full reservoir level and dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- B. The Director may require the permittee to keep and maintain a record of the water level measurements on a periodic schedule as established by the Director.
3. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
4. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.
5. The permittee shall maintain all required devices in good working order.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right, or as those quantities may be reduced subsequently. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the required mitigation is maintained.

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.

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 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.

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

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.

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 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

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.

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.

Construction shall be completed and the permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

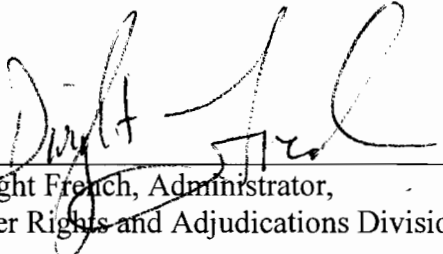
Within one year after storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS **NOT** A PERMIT

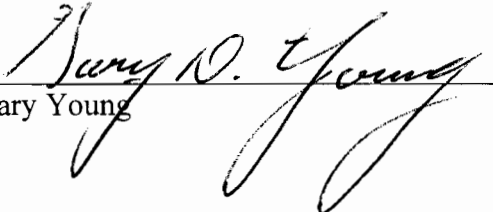
for Phillip C. Ward, Director
Water Resources Department

1. OWRD shall issue a Final Orders Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
2. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
3. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
4. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement and draft Permit, and understands and agrees with the contents thereof.
5. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. This Settlement Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

12/24/09
Date



Gary Young

1/12/10
Date