

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

In the Matter of Water Rights Application)
R-86357, Lake County)

SUPERSEDING FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER AND
INCORPORATING SETTLEMENT
AGREEMENT

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 30, 2005, O Mountainair, Ltd. submitted an application for a permit to store water pursuant to ORS 537.409.
Storage Volume: 28.0 ACRE FEET
Dam Height: 6.0 FEET
Source: RUNOFF AND SPRINGS, TRIBUTARY TO LA SERE CREEK
Location: LAKE COUNTY IN SECTION 32, TOWNSHIP 38 SOUTH, RANGE 18 EAST, 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 July 12, 2005. A 60-day comment period followed.
4. The Department did not receive public comment related to the possible issuance of the attached permit.

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. 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. On October 6, 2005, the Department issued a Final Order denying the storage of surface water because water was not available for the proposed use.
8. On October 19, 2005, the Department received a Petition for Reconsideration of Final Order for Application R-86357 from Albert M. Monaco, Jr., on behalf of the applicant.
9. On October 21, 2008, Brian Mayer, Watermaster District # 12, described in a memo to the file that water is available for the proposed use and that Fish Lake is a natural lake with additional storage capacity above the natural lake outlet created by a dam. An outlet pipe exists below the natural lake outlet, allowing the evacuation of water down to and below the natural lake level. The storage capacity, above the natural lake outlet, is calculated to be 13.6 acre feet.
10. Because water is available, the Department finds that existing water rights would not be injured by the proposed use.
11. 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.
12. A Settlement Agreement was signed by all parties as of April 29, 2010. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

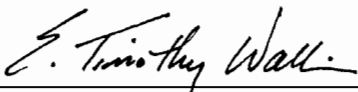
Conclusions of Law

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-86357 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-86357 is therefore approved pursuant to the "Terms of Agreement" as described in the attached Settlement Agreement, and Permit R-14856 is issued as limited by the conditions contained in the Settlement Agreement.

Dated at Salem, Oregon on MAY 27 20 10 .



for Phillip C. Ward, Director
Water Resources Department

This order was produced by Kerry Kavanagh. 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 503-986-0816 or Kerry.L.Kavanagh@wrд.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.

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

In the Matter of Water Right Application)
R-86357 in the name of O Mountainair, Ltd.)
) SETTLEMENT
) AGREEMENT
)

The Oregon Water Resources Department (OWRD) and O Mountainair, Ltd. (Applicant) and collectively (“the parties”) do hereby stipulate and agree in this “Settlement Agreement” (Agreement) as follows:

A. Background

1. On June 30, 2005, O Mountainair, Ltd. 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 July 12, 2005. A 60-day comment period followed.
2. On October 6, 2005, the Department issued a Final Order denying the storage of surface water because water was not available for the proposed use.
3. On October 19, 2005, the Department received a request for hearing on the final order from Albert M. Monaco, Jr., on behalf of the applicant.
4. On October 21, 2008, Brian Mayer, Watermaster District # 12, described in a memo to the file that water is available for the proposed use.
5. OWRD and the Applicant agree that all issues related to Application R-86357 are resolved solely on the following terms.

B. Consent


1. The Applicant hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the draft Superseding Final Order Approving the Storage of Surface Water and Incorporating Settlement Agreement and draft permit for Application R-86357 which are hereby incorporated by reference.
2. The Applicant understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. The Applicant understands and agrees that this Agreement and the Superseding Final Order Approving the Storage of Surface Water and Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitute the complete and final resolution of the request for hearing of the Final Order denying Application R-86357.
4. Effective upon the issuance by OWRD of the Superseding Final Order Approving the Storage of Surface Water and Incorporating Settlement Agreement and Permit the

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MAY 05 2010
WATER RESOURCES DEPT
SALEM, OREGON

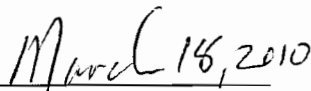
Applicant waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Superseding Final Order Approving the Storage of Surface Water and Incorporating Settlement Agreement for Application R-86357 issued by OWRD.

C. Terms of the Agreement

1. Within 60 days of the signing of this Agreement by all parties, the OWRD shall issue a Superseding Final Order Approving the Storage of Surface Water and 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 Superseding Final Order Approving the Storage of Surface Water and 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



Date



O Mountainair, Ltd.



Date

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MAY 05 2010

WATER RESOURCES DEPT
SALEM, OREGON

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OF THE STATE OF OREGON**

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10. Because water is available, the Department finds that existing water rights would not be injured by the proposed use.
11. 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.
12. A Settlement Agreement was signed by all parties as of _____. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

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-86357 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-86357 is approved. Upon payment of the permit recording fee of \$400 and upon meeting the "Terms of Agreement" as described in the attached Settlement Agreement, a permit consistent with the attached draft 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 _____ 20 _____.

for Phillip C. Ward, Director
Water Resources Department

This order was produced by Kerry Kavanagh. 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 503-986-0816 or Kerry.L.Kavanagh@wrд.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 LAKE

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

O MOUNTAINAIR LTD
35 SOUTH G ST
LAKEVIEW OR 97630

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

APPLICATION FILE NUMBER: R-86357

SOURCE OF WATER: RUNOFF AND SPRINGS, TRIBUTARY TO LA SERE CREEK

STORAGE FACILITY: FISH LAKE

MAXIMUM VOLUME: 13.6 ACRE FEET

DATE OF PRIORITY: JUNE 30, 2005

WATER MAY BE APPROPRIATED DURING THE PERIOD: NOVEMBER 1 THROUGH JUNE 15

USE: MULTIPLE PURPOSE

Dam Location/Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	18 E	WM	32	NW NE	1200 FEET SOUTH AND 2050 WEST FROM NE CORNER, SECTION 32

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
38 S	18 E	WM	32	NW NE

Measurement, recording and reporting conditions:

- A. Before water is legally stored under this permit, the permittee shall install a staff gage capable of measuring the lake level. The staff gage shall be viewable from the bank of the reservoir and shall be able to measure the full range of the reservoir level. The permittee shall maintain the measuring device in good working order and keep a record of monthly lake elevations May 1st through Nov 1st and shall submit a report that includes the measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information or be required to make lake elevations more frequently as needed by the Watermaster for regulation purposes.
- B. The permittee shall allow the watermaster access to the devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.

The permittee shall improve the outlet control works so they can be accessed from the bank of the reservoir at full pool and be approved by the watermaster. The improved outlet control works shall be maintained in good working order. The permit holder/landowner must keep the works and the spillway channel clear of any man made or animal caused obstructions.

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.

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 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.
6. Construction shall be completed and up to the permitted volume of water shall be stored within five years of the date of permit issuance.
7. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
8. 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.
9. 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 _____ 20____.

DRAFT - NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

