

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

In the Matter of Water Rights Application)
R-87021, Curry County)

RECONSIDERATION AND
SUPERSEDING 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 October 31, 2007, Coventry Farms, LLC submitted an application for a permit to store water pursuant to ORS 537.409:
Storage Capacity: 2.0 ACRE FEET
Dam Height: 6.0 FEET
Source: UNNAMED DRAINAGE AND RUNOFF, TRIBUTARIES TO BOULDER CREEK
Location: CURRY COUNTY IN SECTION 33, TOWNSHIP 31 SOUTH, RANGE 15 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 November 13, 2007. A 60-day comment period followed.
4. On January 14, 2008, WaterWatch of Oregon submitted comments opposing the issuance of a permit for the proposed reservoir because of the potential to harm fishery resources in the river system. The Department has recorded its evaluation of public comment on a Comment Evaluation Form in the application file.

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. 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, the Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.
10. On March 18, 2010, the Department issued a Final Order and draft permit concluding that the proposed use would not pose a significant detrimental impact to existing fishery resources.
11. On May 13, 2010, the Department received a petition for reconsideration of the Final Order from the applicant. In addition, the applicant requested additional time beyond the 60 days noted in the Final Order to allow time for discussion with Oregon Department of Fish and Wildlife (ODFW) staff regarding permit conditions.
12. On May 4, 2010, ODFW stated that the existing reservoir and fish passage structure are adequate. Thus, ODFW recommended that the following condition be removed from the attached permit: "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."
13. The petition for reconsideration of the Final Order was filed within the 60-day period specified in Oregon Administrative Rules (OAR) 137-004-0080.
14. The attached permit, R-14877, has been modified to address ODFW's comments regarding proposed permit conditions.


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-87021 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-87021 is approved, and Permit R-14877 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on OCTOBER 14 2010.



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@wrd.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.