

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

In the Matter of Water Rights Application)
R-87561, Clackamas 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 DECEMBER 21, 2009, BURL MOSTUL submitted an application for a permit to store water pursuant to ORS 537.409:
Storage Capacity: 2.0 ACRE FEET
Dam Height: ZERO FEET
Source: RUNOFF, TRIBUTARY TO BEAVER CREEK
Location: CLACKAMAS COUNTY IN SECTION 24, T3S, R1E, 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 January 5, 2010. A 60-day comment period followed.
4. The Department received comments from Charles and Deborah Noble. Mr. and Ms. Noble believe the reservoir will pose a significant detrimental impact to existing fishery resources, and they request that the Department deny the application.
5. The Department relies heavily upon the Oregon Department of Fish and Wildlife's (ODFW) review and recommendations in determining significant detrimental impact to existing fishery resources. ODFW reviewed the proposed use and the comments submitted by Mr. and Ms.

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.

Noble, and determined conditions can be applied to mitigate any impact the reservoir may have on existing fishery resources. The attached draft permit is conditioned accordingly. Based upon the review by ODFW, the Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.

6. The Department has determined that the proposed source has not been withdrawn from further appropriation.
7. The proposed reservoir is not prohibited under ORS 390.835.
8. Water is available for the proposed use according to the Department's water-availability model and the watermaster's assessment.
9. Because water is available, the Department finds that existing water rights would not be injured by the proposed use.

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-87561 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-87561 is approved, and Permit R-14898 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 Jeana Eastman. 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 503-986-0859 or Jeana.M.Eastman@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.