PLACED IN U.S. MAIL
OCT 13 2011
OREGON WATER RESOURCES DEPT.

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Water Rights Application R-87673, Jackson 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 29, 2010, DANIEL J BOYDEN AND BMT LLC submitted an application for a permit to store water pursuant to ORS 537.409.

   Storage Volume: 4.9 ACRE FEET

   Dam Height: LESS THAN 10 FEET

   Source: RUNOFF/SPRING, TRIBUTARY TO WILLOW CREEK

   Location: JACKSON COUNTY IN SECTION 2, TOWNSHIP 39 SOUTH, RANGE 3 EAST, W.M.

2. The required examination fees were paid.

3. The Department provided public notice of the application in the Department's weekly public notice on January 1, 2011. A 60-day comment period followed and no comments were received.

4. Clackamas County Circuit Court Judge Susie L. Norby issued an order relating to the processing of reservoir applications filed under ORS 537.409. In this order, Judge Norby determined that an application for stored water filed under ORS 537.409 is not complete unless/until the Department receives sufficient information to demonstrate that the reservoir:

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.

a. does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and

b. does not injure any existing water right.

5. Shortly after the Department determined the application was complete, the Department again provided public notice of the application. The Department did not receive any comments during the second comment period.

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.

10. The Department relies heavily on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.

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-87673 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-87673 is approved, and Permit R-14928 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on SEPTEMBER 30 2011.

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager

for Phillip C. Ward, Director

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@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.