

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

In the Matter of Water Rights Application)
R-87668, Wasco 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 November 17, 2010, Claud Marvin Davis submitted an application for a permit to store water pursuant to ORS 537.409.

Storage Volume: 2.0 ACRE FEET
Dam Height: LESS THAN 10 FEET
Source: BADGER CREEK, TRIBUTARY TO TYGH CREEK
Location: WASCO COUNTY IN SECTION 6, TOWNSHIP 4 SOUTH, RANGE 13 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 November 23, 2010. A 60-day comment period followed and no comments were received.
4. On January 11, 2011, 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 proposed reservoir is not prohibited under ORS 390.835.
 7. The Department has determined that the proposed source has not been withdrawn from further appropriation.
 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 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.

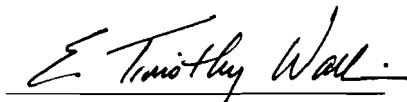
Conclusions of Law

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-87668 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-87668 is approved, and Permit R-14918 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on NOVEMBER 3, 2011.



E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director
Water Resources Department

This order was produced by Michele McAleer. 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 503-986-0853 or Michele.R.McAleer@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 WASCO

PERMIT TO STORE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO:

CLAUD MARVIN DAVIS
81540 FAIRGROUNDS RD
TYGH VALLEY OR 97063

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

APPLICATION FILE NUMBER: R-87668

SOURCE OF WATER: BADGER CREEK, TRIBUTARY TO TYGH CREEK

STORAGE FACILITY: A RESERVOIR

MAXIMUM VOLUME: 2.0 ACRE FEET

DATE OF PRIORITY: NOVEMBER 17, 2010

WATER MAY BE APPROPRIATED AS FOLLOWS: JANUARY 1 THROUGH APRIL 14

USE: MULTIPLE PURPOSE

Dam Location:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 4 S | 13 E | WM | 6 | SW NE | 2240 FEET SOUTH AND 1400 FEET WEST FROM NE CORNER, SECTION 6 |

Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 4 S | 13 E | WM | 6 | SW NE | 2200 FEET SOUTH AND 1680 FEET WEST FROM NE CORNER, SECTION 6 |

The Area To Be Submerged:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 4 S | 13 E | WM | 6 | SW NE |

Measurement, recording and reporting conditions:

- A. The Director may require the permittee to install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. If the Director notifies the permittee to install a totalizing flow meter or other measuring device, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the permittee shall maintain the meter or measuring device in good working order and shall allow the watermaster access to the meter or measuring device.

- B. The Director may require the permittee to keep and maintain a record of the amount (volume) of water stored, and may require the permittee to report water storage on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

| Deschutes River Scenic Waterway | |
|---------------------------------|---------------------------|
| <i>Month</i> | <i>Minimum Flow (cfs)</i> |
| January | 4500 |
| February | 4500 |
| March 1-15 | 4500 |
| March 16-31 | 4000 |
| April 1-14 | 4000 |

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.

The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

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 devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen meets the state's criteria, or the permittee shall submit documentation that ODFW has determined screens are not necessary.

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 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 Chapter 635, Division 415, shall be followed.
6. The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
7. 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.
8. Construction shall be completed and up to the permitted annual volume of water shall be stored within five years of the date of permit issuance.
9. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
10. 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.

11. 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 NOVEMBER 3, 2011.

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director
Water Resources Department