

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number R-87555

Final Order

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application History

On November 23, 2009, David A. and Kathyrn S. Rogers submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order (PFO) on January 31, 2012. Following issuance of the PFO, the Department determined that notice was not provided on the Department's January 31, 2012 Public Notice. Therefore, the Department provided notice of the PFO on the Department's February 14, 2012 Public Notice. The protest period closed March 30, 2012, and no protest was filed.

On March 13, 2012, the applicant requested that the Department approve 90-degree V-Notch weirs on the ditches as measuring devices at the diversion points. On March 19, 2012, Michael Mattick, Watermaster District 2, determined that because storage may only be allowed between November and May, totalizing flow meters are not required. Further, Mr. Mattick endorses the V-Notch weirs as an alternative, however allowing the Department the ability to revoke

such exception if, after some time, the Department determines that flow meters or other suitable measuring devices are required.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the measurement, recording, and reporting conditions.

The Proposed Final Order described the following measurement, recording, and reporting conditions:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.
- B. The Director may require the permittee to install staff gages that measure the entire range and stage between full reservoir level and dead-pool level in the reservoir(s). The staff gage(s) shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- C. If the Director notifies the permittee to install a staff gage(s), or other suitable measuring device(s), the permittee shall install such devices 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 devices in good working order and shall allow the watermaster access to the devices.
- D. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted/stored, and may require the permittee to report water use/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.
- E. The permittee shall allow the watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) is located within a private structure, the watermaster shall request access upon reasonable notice.

- F. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The measurement, recording, and reporting conditions, as modified in the attached permit, are:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a 90-degree V-Notch weir or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the weir or measuring device in good working order.
- B. The Director may require the permittee to install staff gages that measure the entire range and stage between full reservoir level and dead-pool level in the reservoir(s). The staff gage(s) shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- C. If the Director notifies the permittee to install a staff gage(s), or other suitable measuring device(s), the permittee shall install such devices 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 devices in good working order and shall allow the watermaster access to the devices.
- D. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted/stored, and may require the permittee to report water use/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.
- E. The permittee shall allow the watermaster access to the measuring device(s); provided however, where the measuring device(s) is located within a private structure, the watermaster shall request access upon reasonable notice.
- F. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

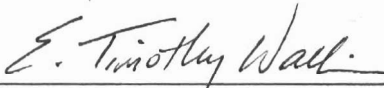
Order

Application R-87555 is therefore approved as proposed by the Proposed Final Order. **Upon payment of outstanding fees in the amount of \$400, a 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 April 26, 2012



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

This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

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 Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF LINN

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DAVID A ROGERS AND KATHRYN S ROGERS
26366 GAP RD
BROWNSVILLE, OR 97327-9720

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

APPLICATION FILE NUMBER: R-87555

SOURCE OF WATER: THREE UNNAMED STREAMS AND RUNOFF, TRIBUTARIES OF COURTNEY CREEK

STORAGE FACILITIES: RESERVOIRS 400-1 THROUGH 400-10 AND 600-1 THROUGH 600-14

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE USE TO BE MAINTAINED UNDER APPLICATION G-17289

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: NOVEMBER 1 THROUGH MAY 31

DATE OF PRIORITY: NOVEMBER 23, 2009

MAXIMUM VOLUME: 174.3 ACRE FEET (AF) EACH YEAR, FURTHER LIMITED BELOW

RESERVOIR INFORMATION:

RESERVOIR	DAM HEIGHT (FT)	DEPTH (FT)	AREA (ACRES)	VOLUME (AF)
400-1	5.0	3.0	2.9	7.3
400-2	5.0	3.0	4.1	9.0
400-3	5.0	3.0	1.7	5.1
400-4	5.0	3.0	3.0	7.5
400-5	5.0	3.0	2.0	6.0
400-6	5.0	3.0	3.7	8.9
400-7	5.0	3.0	2.7	6.8
400-8	5.0	3.0	8.6	17.2
400-9	5.0	3.0	9.2	18.4

RESERVOIR	DAM HEIGHT (FT)	DEPTH (FT)	AREA (ACRES)	VOLUME (AF)
400-10	5.0	3.0	3.5	8.8
600-1	5.0	3.0	3.1	7.8
600-2	5.0	3.0	1.7	4.3
600-3	5.0	3.0	2.4	6.0
600-4	5.0	3.0	3.2	8.0
600-5	5.0	3.0	2.7	6.8
600-6	5.0	3.0	1.8	4.5
600-7	5.0	3.0	3.9	9.0
600-8	5.0	3.0	2.8	7.0
600-9	5.0	3.0	0.9	2.3
600-10	5.0	3.0	1.3	3.3
600-11	5.0	3.0	1.7	4.3
600-12	5.0	3.0	3.7	8.9
600-13	5.0	3.0	1.3	3.3
600-14	5.0	3.0	1.5	3.8

POINTS OF DIVERSION (POD) LOCATIONS:

POD A - SENE, SECTION 7, T14S, R2W, W.M.; 1820 FEET NORTH AND 1960 FEET EAST FROM NW CORNER, DLC 61

POD B - SWNE, SECTION 7, T14S, R2W, W.M.; 1800 FEET NORTH AND 1550 FEET EAST FROM NW CORNER, DLC 61

POD C - SWNE, SECTION 7, T14S, R2W, W.M.; 1740 FEET NORTH AND 1440 FEET EAST FROM NW CORNER, DLC 61

POD D - SWNE, SECTION 7, T14S, R2W, W.M.; 1760 FEET NORTH AND 1070 FEET EAST FROM NW CORNER, DLC 61

POD E - NWSE, SECTION 7, T14S, R2W, W.M.; 850 FEET NORTH AND 550 FEET EAST FROM NW CORNER, DLC 61

POD F - NESW, SECTION 7, T14S, R2W, W.M.; 490 FEET NORTH AND 10 FEET EAST FROM NW CORNER, DLC 61

POD G - NESW, SECTION 7, T14S, R2W, W.M.; 300 FEET NORTH AND 110 FEET EAST FROM NW CORNER, DLC 61

RESERVOIR LOCATIONS:

- RESERVOIR 400-1: NENW, SECTION 7, T14S, R2W, W.M.; 2800 FEET NORTH AND 600 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 400-2: SENW, SECTION 7, T14S, R2W, W.M.; 2600 FEET NORTH AND 100 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 400-3: SENW, SECTION 7, T14S, R2W, W.M.; 2350 FEET NORTH AND 630 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 400-4: SWNW, SECTION 7, T14S, R2W, W.M.; 2300 FEET NORTH AND 1000 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 400-5: SWNE, SECTION 7, T14S, R2W, W.M.; 2100 FEET NORTH AND 600 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 400-6: SWNE, SECTION 7, T14S, R2W, W.M.; 2050 FEET NORTH AND 750 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 400-7: SWNE, SECTION 7, T14S, R2W, W.M.; 2050 FEET NORTH AND 950 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 400-8: SENW, SECTION 7, T14S, R2W, W.M.; 1400 FEET NORTH AND 400 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 400-9: SWNE, SECTION 7, T14S, R2W, W.M.; 1400 FEET NORTH AND 1050 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 400-10: SWNE, SECTION 7, T14S, R2W, W.M.; 1900 FEET NORTH AND 1500 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 600-1: NWSW, SECTION 7, T14S, R2W, W.M.; 400 FEET NORTH AND 1600 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-2: NWSW, SECTION 7, T14S, R2W, W.M.; 300 FEET NORTH AND 1400 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-3: NWSW, SECTION 7, T14S, R 2W, W.M.; 500 FEET NORTH AND 1550 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-4: NWSW, SECTION 7, T14S, R 2W, W.M.; 750 FEET NORTH AND 1550 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-5: NWSW, SECTION 7, T14S, R 2W, W.M.; 600 FEET NORTH AND 1140 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-6: NWSW, SECTION 7, T14S, R 2W, W.M.; 330 FEET NORTH AND 1260 FEET WEST FROM NW CORNER, DLC 61

RESERVOIR LOCATIONS (CONTINUED):

- RESERVOIR 600-7: NESW, SECTION 7, T14S, R 2W, W.M.; 500 FEET NORTH AND 600 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-8: NESW, SECTION 7, T14S, R 2W, W.M.; 700 FEET NORTH AND 650 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-9: NESW, SECTION 7, T14S, R 2W, W.M.; 750 FEET NORTH AND 850 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-10: NESW, SECTION 7, T14S, R 2W, W.M.; 900 FEET NORTH AND 600 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-11: NESW, SECTION 7, T14S, R 2W, W.M.; 900 FEET NORTH AND 400 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-12: NESW, SECTION 7, T14S, R 2W, W.M.; 850 FEET NORTH AND 200 FEET WEST FROM NW CORNER, DLC 61
- RESERVOIR 600-13: NESW, SECTION 7, T14S, R 2W, W.M.; 950 FEET NORTH AND 200 FEET EAST FROM NW CORNER, DLC 61
- RESERVOIR 600-14: NESW, SECTION 7, T14S, R 2W, W.M.; 600 FEET NORTH AND 200 FEET EAST FROM NW CORNER, DLC 61

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

- SW ¼ NE ¼
- SE ¼ NE ¼
- NE ¼ NW ¼
- NW ¼ NW ¼
- SW ¼ NW ¼
- SE ¼ NW ¼
- NE ¼ SW ¼
- NW ¼ SW ¼
- NW ¼ SE ¼
- SECTION 7

TOWNSHIP 14 SOUTH, RANGE 2 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a 90-degree V-Notch weir or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the weir or measuring device in good working order.

- B. The Director may require the permittee to install staff gages that measure the entire range and stage between full reservoir level and dead-pool level in the reservoir(s). The staff gage(s) shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- C. If the Director notifies the permittee to install a staff gage(s), or other suitable measuring device(s), the permittee shall install such devices 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 devices in good working order and shall allow the watermaster access to the devices.
- D. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted/stored, and may require the permittee to report water use/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.
- E. The permittee shall allow the watermaster access to the measuring device(s); provided however, where the measuring device(s) is located within a private structure, the watermaster shall request access upon reasonable notice.
- F. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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.

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.

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.

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

The permittee shall not release stored water from the reservoir(s) June 1 through October 31 unless determined necessary by the Water Resources Department to satisfy prior downstream rights.

STANDARD CONDITIONS

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.

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 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

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.

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.

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.

Construction shall be completed and the permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS **NOT** A PERMIT

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