

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

Water Rights Application
Number R-87436

Final Order

Notice of a Right to a Hearing

Pursuant to ORS 537.409(8), the applicant has the right to a contested-case hearing on this Final Order, which will be conducted in accordance with ORS Chapter 183. If you want a hearing, you must submit a request in writing to the Department within 60 calendar days of the postmarked date of this Final Order. To be timely, a request must be received by the Department within 60 days of that date. If a request for a hearing is not received by the Department within the time allowed, you will have waived the right to a contested case hearing.

The request for a hearing should include your name, address, telephone number, a statement that you are requesting a hearing, and a detailed description of how the Final Order is in error or deficient, and how it can be corrected.

If you request a hearing, the Department will provide you with information about the contested-case hearing process, including your rights and opportunity for appeal, before the hearing occurs.

This Final Order will remain the Department's final decision on your application if you do not request a hearing within the time allowed, or withdraw your request for a hearing, or request a hearing and then notify the Department that you will not appear, or fail to appear at a scheduled hearing.

If you do not request a hearing in the time allowed, the Department's Final Order may be appealed in the Oregon Court of Appeals (ORS 183.482).

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 April 10, 2009, Scott and Laura Lillie submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Capacity: 25.0 ACRE FEET, PROPOSED ENLARGEMENT OF
RESERVOIR CONSTRUCTED UNDER PERMIT R-14027

Dam Height: 9.5 FEET

Source: UNNAMED STREAM, TRIBUTARY OF ROCK CREEK

Location: JACKSON COUNTY IN SECTION 6, TOWNSHIP 36 SOUTH, RANGE 2 WEST, 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 April 21, 2009. 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:
 - 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 during the period December 1 through May 31 as determined by the Department's water-availability model.
7. The Department finds that existing water rights would be injured by the proposed use.
8. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether the proposed use will pose a significant detrimental impact to existing fishery resources. The Department has determined that the proposed use will not pose a significant detrimental impact to existing fishery resources.

Conclusions of Law

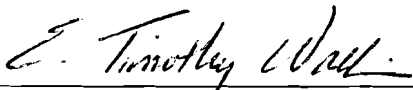
1. Water is available for the proposed use from December 1 through May 31.

2. The proposed use **will injure** existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87436 is **not** consistent with the requirements of ORS 537.409.

Order

Application R-87436 therefore is denied.

DATED September 27, 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.