

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

Water Rights Application
Number S-87775

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 December 30, 2011, Charles K Kelley submitted an application to the Department for a water use permit pursuant to ORS 537.147. The Department provided public notice of the application in its weekly notice which included an invitation to raise public interest issues regarding this application within 30 days of the notice. No written comments were received within 30 days.

The Department conducted an assessment of water availability by comparing the storage capacity for the proposed source, being Muddy Creek Reservoir, and all secondary rights authorized to appropriate the water from the reservoir. Based on this assessment, the Department determined that water was not available for the proposed use.

Because a public interest issue had been raised, specifically water availability, under ORS 537.147 (3) the Department was required to move the expedited secondary application to use exclusively stored water to the standard process and review the application pursuant to ORS 537.153, by issuing a Proposed Final Order.

On December 11, 2012, the Department issued a Proposed Final Order proposing to deny the application because water was not available for the proposed use. The protest period closed January 25, 2013, and no protest was filed.

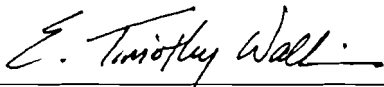
On January 10, 2013, the applicant amended the application proposing to appropriate 303.2 acre feet (AF) of water stored in Muddy Creek Reservoir. The applicant also provided an accounting of secondary rights for appropriation of water from Muddy Creek Reservoir demonstrating that 389.52 AF of remaining water in the reservoir was available for appropriation.

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 volume of stored water in Muddy Creek Reservoir available to be appropriated for irrigation under this application.

Order

Application S-87775 therefore is approved with the above modifications to the Proposed Final Order, and Permit S-54800 is issued as limited by the conditions set forth therein.

DATED February 28, 2013



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 questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". 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.