

Oregon Water Resources Department
Water Rights Services Division

Water Rights Application
Number R-87409

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 March 5, 2009, Rob Williams submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on December 11, 2012. The protest period closed January 25, 2013, and no protest was filed.

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 omit the following condition:

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.

Order

Application R-87409 is therefore approved with these modifications to the Proposed Final Order. **Upon resolution of the outstanding issues described below, a permit shall be issued authorizing the proposed water use. Prior to issuance of a permit the Department must receive the following:**

1. Permit recording fees in the amount of \$400.00.
2. As-built drawings, by an engineer licensed in Oregon, with necessary modifications. In addition, engineered modifications to the dam are required to ensure that:

The spillway is repaired to pass a 100 year flow with 2 feet of freeboard. This spillway repair must be based on the engineered design.

The low-level conduit, including valve, is repaired or replaced to be safe and functional.

Failure to meet these requirements 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 March 15, 2013

E. Timothy Wallin

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

This document was prepared by Jeana Eastman. 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 503-986-0859.

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.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF WHEELER

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROB WILLIAMS
12993 SW CORNETT LOOP
POWELL BUTTE, OR 97753

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

APPLICATION FILE NUMBER: R-87409

SOURCE OF WATER: UNNAMED STREAM, A TRIBUTARY OF HORSESHOE CREEK

STORAGE FACILITY: SIX SHOOTER RANCH POND

PURPOSE OR USE OF THE STORED WATER: STORAGE FOR FISH, WILDLIFE, AND RECREATION

MAXIMUM VOLUME: 60.0 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1 THROUGH APRIL 14

DATE OF PRIORITY: MARCH 5, 2009

DAM LOCATION: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 27, T10S, R23E, W.M.; 317 FEET NORTH AND 2376 WEST FROM SE CORNER, SECTION 27

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

SE $\frac{1}{4}$ SW $\frac{1}{4}$
SW $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 27

NW $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 34

TOWNSHIP 10 SOUTH, RANGE 23 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed and maintained in the reservoir.

- B. The permittee shall maintain all required devices in good working order.
- C. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. 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.
- E. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 14048000, 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.

John Day Scenic Waterway	
Month	Minimum Flow (cfs)
December 1 - January 31	500
February 1 - February 29	1000
March 1 - April 14	2000

Notwithstanding that Oregon Department of Fish and Wildlife has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

DAM CONDITIONS

Routine maintenance or repair of the dam, its conduits and all appurtenant structures shall be performed to include, but not limited to, removal of woody or high vegetation from the embankment, abutments, removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.

Repair or replacement of defective or worn-out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe.

Except for routine repair and maintenance, design plans and specifications must be prepared by an Oregon licensed professional engineer and approved by the Water Resources Dam Safety Program prior to any enlargement, modification, or alteration of the dam, its spillway or any appurtenant structure.

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