

From: [KAVANAGH Kerry L](#)
To: [EASTMAN Jeana M](#)
Cc: [KAVANAGH Kerry L](#)
Subject: FW: Alternate Reservoir Application R-87655 Donna Linebaugh
Date: Monday, July 21, 2014 4:27:43 PM
Attachments: [R-87655_WM_review.pdf](#)
[R-87655-ODFW-rev.pdf](#)
[R-87655_menu_of_conditions.pdf](#)

Kerry

From: Kerry Kavanagh
Sent: Thursday, June 28, 2012 11:14 AM
To: edwardl541@gmail.com
Cc: peter.a.samarin@state.or.us; Kathy Smith; 'Kerry.L.Kavanagh@wrд.state.or.us'
(Kerry.L.Kavanagh@wrд.state.or.us); Jerry Sauter
Subject: Alternate Reservoir Application R-87655 Donna Linebaugh

Hi Ed,

Here is the email explaining what we discussed in our recent telephone conversation. Please see the attached pdf's of the watermaster review by Kathy Smith November 29, 2010, the ODFW review by Brent Crowe completed January 6, 2011, and the menu of conditions. Brent Crowe is no longer the fish biologist for the region of your proposed reservoir; Peter Samarin is the new fish biologist located in Central Point - Peter's phone number is 541-826-8774.

In addition, I noticed that the applicant is in the name of Donna Linebaugh. Based on a recent telephone conversation I had with Donna, you have a lease option to purchase the property where the proposed reservoir is located. Because you are not the applicant of record, I will either need Donna to respond to this inquiry or you may want to request an assignment of the application to you which requires completion of the "Request for Assignment" form and payment of \$75. You may view the Request for Assignment form on our website at:
http://www.oregon.gov/owrd/pubs/docs/forms/req_assign_8_21_09.pdf
Please contact Jerry Sauter at 503-986-0817 if you have questions about how to complete the Request for Assignment form.

Brent Crowe recommended the condition entitled "fishdiv33" - which includes the following language:

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 decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

Please note that the first paragraph above regarding riparian area and the second paragraph above regarding water quality are standard conditions that the Department includes in every permit issued under the alternate reservoir process. However, based on our recent telephone conversation, namely that there is no diversion from a stream that fills your proposed reservoir, rather the source is runoff, you may want to discuss the fish screening/by-pass devices described in the third paragraph above with Peter Samarin (telephone 541-826-8774).

Here is the email explaining what we discussed in our recent telephone conversation about direction that I need from you before I can proceed with processing Application R-87655:

We are modifying how we process applications under the alternate reservoir process. We will no longer consider an application complete unless it contains information from the Oregon Water Resources Department (OWRD) regarding whether the proposed use will injure any existing water right and information from the Oregon Department of Fish and Wildlife (ODFW) regarding whether the proposed use poses a significant detrimental impact to existing fishery resources.

With regard to your pending application, we need direction from you regarding how to proceed so that we may deem the application complete. **You may either:**

1. **Seek a determination** from the OWRD regarding whether the proposed use would injure any existing water right and a determination from the ODFW regarding whether the proposed use will pose a significant detrimental impact to existing fishery resources; *or*
2. **Direct the OWRD to use the existing reviews** completed by OWRD and ODFW in your application file so that we may deem the application complete. Please see the attached reviews from the watermaster and ODFW fish biologist.

Please select the appropriate items below and delete the two selections that do not apply and reply to kerry.l.kavanagh@state.or.us at the Oregon Water Resources Department.

I will seek an injury review from **OWRD** & submit it to OWRD
I will seek a fisheries review from **ODFW** & submit it to OWRD
OR:

Please use the **existing OWRD review** to process the application
Please use the **existing ODFW review** to process the application

***Note: you may choose to use both existing reviews from OWRD and ODFW, use only one and seek a new review from the other agency, or seek new reviews from both agencies.**

This information is required for us to continue processing the application. If you do not respond within 60 days from the date of this letter, the Department may issue a Final Order denying the application. If you have any questions, please contact me. Thank you for your prompt attention to this matter.

For your convenience, you may view the application materials at the following link:
http://apps.wrd.state.or.us/apps/wr/wrinfo/wr_folder_image.aspx?snp_id=170243

Kerry Kavanagh
Water Rights Caseworker
(503) 986-0816

Oregon Water Resources Dept
725 Summer St NE, Suite A
Salem, OR 97301-1266
front desk (503) 986-0900
fax (503) 986-0901

<http://oregon.gov/OWRD>

Messages to and from this e-mail address may be available to the public under Oregon law.

WATERMASTER ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

The review of alternate reservoirs is limited to these criteria only.

Date: November 23, 2010

R-87655

Please return to

DONNA LINEBAUGH

WRAD before: January 18, 2011

Water is available: January through March

3505 E FORK RD
WILLIAMS OR 97544

1) Does the proposed reservoir have the potential to injure existing water rights?

NO / YES

Explain: _____

2) Can conditions be applied to mitigate the potential injury to existing water rights?

NO / YES

If YES, which conditions are recommended:

N/A

3) Did you meet with staff from another agency to discuss this application?

NO / YES

Who: _____ Agency: _____ Date: _____
Who: _____ Agency: _____ Date: _____

Watermaster signature: Kathy Smeeth Date: 11-29-2010

WRD Contact: Caseworker: Michele McAleer, Water Rights Division
503-986-0853/ Fax: 503-986-0901 / e-mail: Michele.R.MCALEER@ wrd.state.or.us

ODFW ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

The review of alternate reservoirs is limited to these criteria only.

Application #: R- 87655 Applicant's Name: Donna Linebaugh

1) Would the proposed reservoir pose a significant detrimental impact to an existing fishery resource? NO YES

Explain: (For example, list STE species or other existing fishery resources that would be negatively impacted.)

Rock Creek provides habitat for summer steelhead, and cutthroat trout. This is an off channel pond and water is diverted into it from Rock Creek. OWRD has determined that water is available January through March. If the permit is conditioned to allow storage of water only during this time period, there should not be a significant impact to native fish species.

Please check either of the boxes below if appropriate:

Any diversion or appropriation of water for storage during the period _____ through _____ poses a significant detrimental impact to existing fishery resources. (For example, if diversion of water for storage during a certain time period would cause a significant detrimental impact to an existing fishery resource, then ODFW should recommend conditions or limitations.)

This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam. ODFW has determined that additional diversions of water in this area poses a significant detrimental impact to existing fishery resources during the period April 15 through September 30.

2) Can conditions be applied to mitigate the significant detrimental impact to an existing fishery resource? NO YES

If YES, which conditions are recommended: _____ (select from the Menu of Conditions listed on back)

Fishdiv33

Water should only be stored during the period that OWRD has determined it is available (January through March)

3) Did you meet with staff from another agency to discuss this application? NO YES

Who: Kathy Smith Agency OWRD Date: December 2010

Who: _____ Agency _____ Date: _____

ODFW Representative Signature: Brent Crowe Date: 01/06/2011

WRD Contact: Caseworker: Michele McAleer Water Rights Division, 503-986-0900 / Fax 503-986-0901

MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND AG

The following condition will be included in any permit issued unless ODFW explicitly requests that it be omitted:

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 or exemption through the Oregon Department of Fish and Wildlife. 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.

- fishself** 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. 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.
- fishapprove** 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, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
- fishdiv33** 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 decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
- 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, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
- fishmay** Notwithstanding that ODFW 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 by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
- b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.
- b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.
- b51a** The period of use has been limited to _____ through _____.
- b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point.
- b58** Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgment the installation of the weir(s) will provide no public benefit.
- futile call** The use of water allowed herein may be made only at times when waters from the (NAME OF SURFACE WATER) would not otherwise flow into a tributary of the _____ River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.
- riparian** 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.
- wq** The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
- fence** The stream and its adjacent riparian area shall be fenced to exclude livestock.
- blv** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.