

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Right Application)	ORDER ON RECONSIDERATION
R-88298 in the name of Calapooya Covey)	AFFIRMING FINAL ORDER APPROVING
LLC, Douglas County)	APPLICATION R-88298

Summary: Application R-88298 is approved and Permit R-15262 is issued.

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process under which an application to store waters of the public is processed. Oregon Administrative Rule (OAR) 137-004-0080 provides for Petitions for Reconsideration of agency final orders.

Findings of Fact

1. On October 11, 2016, Calapooya Covey LLC submitted a complete application for a permit to store 5.5 acre feet of water from Calapooya Creek in Douglas County, pursuant to ORS 537.409.
2. The required examination fees were paid and minimum application requirements were met.
3. The Department provided public notice of the application in the Department's weekly public notice on October 25, 2016. A 60-day comment period followed.
4. On December 26, 2016, WaterWatch of Oregon, Inc. submitted a public comment.
5. The proposed source has not been withdrawn from further appropriation.
6. The proposed reservoir is not prohibited under ORS 390.835.
7. Water is available for the proposed use according to the Department's water-availability model and the watermaster's assessment.

APPEAL RIGHTS

Appeal to a circuit court: This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

Petition to the Department for Reconsideration of the Final Order: A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

8. Existing water rights would not be injured by the proposed use.
9. The Oregon Department of Fish and Wildlife (ODFW) reviewed the proposed use to determine whether the proposed use would pose a significant detrimental impact to existing fishery resources. The review stated that there would be such an impact and it recommended conditions to mitigate the impact. The Department found that, as conditioned, the proposed use would not pose a significant detrimental impact to existing fishery resources.
10. On December 26, 2016, WaterWatch of Oregon, Inc. submitted a public comment.
11. No person requested the department to deny the application pursuant to ORS 537.409(5).
12. On May 4, 2017, the Department issued a Final Order approving R-88298 and issuing Permit R-15220.
13. On August 31, 2017, WaterWatch of Oregon, Inc. filed a timely Petition for Reconsideration.
14. The Department notified ODFW of the Petition and requested clarification of the statements in its review. ODFW submitted a revised review on September 6, 2017. The revised review also finds the use will pose a significant detrimental impact. The review modifies the conditions to require the applicant to “build a berm around the pond at or above the 100-year flood interval elevation which should prohibit fish entrapment in the pond during possible high water events”, and to comply with a specific condition (fishdiv33) for “addressing any impacts to adjacent riparian areas for screening requirements on pond inlets/outlets/pipes”. Both requirements are now included in the attached permit. ODFW confirmed that the conditions would alleviate the significant detrimental impact to the point that ODFW no longer considers them significant. A memorandum of this statement is included in the application file.
15. The ODFW review also stated that “pond construction and operation may impact water quality (e.g. temperature and contaminants) in Calapooya Creek during periods of pond discharge.” However, ODFW did not include any condition on the construction or operation of the reservoir to address its statement. The ODFW reviewer confirmed that the review intentionally did not include a condition because after consulting with Oregon Department of Environmental Quality, it concluded that none were necessary. The permit contains the standard condition that the use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows. A memorandum of the reviewer’s statement is included in the application file.

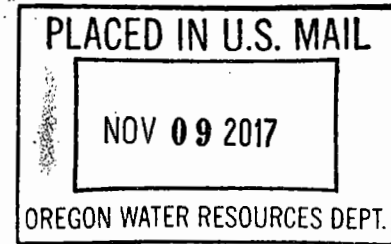
Conclusions of Law


1. Pursuant to ORS 537.409(6) the department has completed the expedited public interest review, finding water is available, the use is conditioned such that it will not pose a significant detrimental impact to existing fishery resources, and there is no potential injury to existing water rights.
2. Pursuant to ORS 537.409(8) the application may be approved and a permit issued.

Now Therefore, it is Ordered:

Application R-88298 is approved, and Permit R-15262 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on November 7 2017




Dwight French, Administrator, Water Right Services Division
for Thomas M. Byler, Director

This order was produced by Lisa Graham. If you have any questions about any of the statements contained in this document, I can be reached at 503-986-0808 or Elisabeth.A.Graham@oregon.gov.

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