

**OUTLET CONTROL STRUCTURE / WEIR DISCUSSION**  
**WATER QUALITY MEETING**  
February 17, 2010

**HISTORY**

**October 9 2003**, Weir Impending Failure: In a fragile state and in need of repair before the winter storm period. ODOT has claimed no responsibility for its maintenance. The weir is adjacent to Dick Anderson's property. City's contingency fund, \$3,750 used to make repairs.

**May 13, 2004**, Council took action to proceed with the application to store water. Ward said that Dunes City would work out an arrangement where Dr. Anderson would give the weir to the City along with an easement for access to the weir for maintenance.

**June 10, 2004**, Ward gave the report for the Water Control Committee. John Stead will be filling out the application to the State to add the 6" board to the Woahink Weir.

**September 9, 2004**, City Insurance Services (CIS) investigator will be visiting the site of the Weir to determine liability. CIS would be able to defend the City, but not pay damages.

**February 10, 2005**, Ward said that the permit was received from the Water Resources Department to store water on Woahink Lake using the weir.

**January 9, 2006**, Signed MOU received by the City.

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The permit to store water authorizes the City to construct a reservoir and store the public waters for multiple purposes. Water from Woahink Creek can be diverted to storage October 1 through July 31. Outside the storage season, all live flow must be passed into the creek. Records of the amounts of water used each month must be maintained and reported to WRD annually.  
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**EMAIL – (Opinion from DSL)**

**From:** YOUNG Cyril  
**Sent:** Monday, November 23, 2009 1:55 PM  
**To:** [newlands222@msn.com](mailto:newlands222@msn.com)  
**Subject:** RE: Woahink Lake Weir Structure

I think I have resolved some of your questions but not all. When Woahink Creek was moved to make way for the Highway 101 construction, that is considered to be an avulsive action and not a natural movement of the creek. At the time that the creek was relocated by ODOT, State ownership would not have moved with the creek, but would have remained with those southern portions of the creek which remained in their original bed. I have reviewed our plat book and other surveys of the lakes and the creek from the early days and compare those to the current Woahink Creek location. The State does not claim the bed and banks of the upper end of Woahink Creek at its current location, it does seem to be in private ownership and if the weir is located with in Parcel 2 or Tax Lot 105 then it is not on state owned lands. . . .  
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## DEFINITIONS

### Avulsive

The term "avulsive". At [http://en.wikipedia.org/wiki/Avulsion\\_\(legal\\_term\)](http://en.wikipedia.org/wiki/Avulsion_(legal_term))

"In real property law, AVULSION refers to a sudden loss or addition to land, **which results from the action of water.** (emphasis added) It differs from accretion, which describes a gradual loss or addition to land resulting from the action of water."

### Avulsion

"The immediate and noticeable addition to land caused by its removal from the property of another, by a sudden change in a water bed or in the course of a stream.

When a stream that is a boundary suddenly abandons its bed and seeks a new bed, the boundary line does not change. It remains in the center of the original bed even if water no longer flows through it. This is known as the rule of avulsion.

Avulsion is not the same as accretion or alluvion, the gradual and imperceptible buildup of land by the continuous activity of the sea, a river, or by other natural causes.

West's Encyclopedia of American Law, edition 2. Copyright 2008

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The implication seems to be that the "immediate and noticeable" definition is intended for acts of nature, not man made changes such as the creation of a new channel for the creek incident to road construction.

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### ORS

274.025 Jurisdiction over submersible and submerged lands generally. (1) The title to the submersible and submerged lands of all navigable streams and lakes in this state now existing or which may have been in existence in 1859 when the state was admitted to the Union, or at any time since admission, and which has not become vested in any person, is vested in the State of Oregon. The State of Oregon is the owner of the submersible and submerged lands of such streams and lakes, and may use and dispose of the same as provided by law.

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274.005 Definitions. As used in this chapter, unless the context requires otherwise:

(7) "Submerged lands," except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.