

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-87498

Final Order

Notice of a Right to a Hearing

Pursuant to ORS 537.409(8), the applicant has the right to a contested-case hearing on this Final Order, which will be conducted in accordance with ORS Chapter 183. If you want a hearing, you must submit a request in writing to the Department within 60 calendar days of the postmarked date of this Final Order. To be timely, a request must be received by the Department within 60 days of that date. If a request for a hearing is not received by the Department within the time allowed, you will have waived the right to a contested case hearing.

The request for a hearing should include your name, address, telephone number, a statement that you are requesting a hearing, and a detailed description of how the Final Order is in error or deficient, and how it can be corrected.

If you request a hearing, the Department will provide you with information about the contested-case hearing process, including your rights and opportunity for appeal, before the hearing occurs.

This Final Order will remain the Department's final decision on your application if you do not request a hearing within the time allowed, or withdraw your request for a hearing, or request a hearing and then notify the Department that you will not appear, or fail to appear at a scheduled hearing.

If you do not request a hearing in the time allowed, the Department's Final Order may be appealed in the Oregon Court of Appeals (ORS 183.482).

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

Findings of Fact

1. On July 20, 2009, HPC Properties, Inc. submitted an application for a permit to store water pursuant to ORS 537.409:

Storage Capacity: 0.3 ACRE FOOT

Dam Height: ZERO FEET (EXCAVATED)

Source: FARMER'S IRRIGATION DITCH, TRIBUTARY TO
FERGUSON CREEK

Location: HOOD RIVER COUNTY IN SECTION 3, TOWNSHIP 2
NORTH, RANGE 10 EAST, W.M.

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 July 28, 2009. A 60-day comment period followed.
4. The Department has not received adverse comments related to the possible approval of Application R-87498.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation.
6. The proposed reservoir is not prohibited under ORS 390.835.
7. Water from live flow is available for the proposed use according to the Department's water-availability model and the watermaster's assessment. However, the Department has determined the proposed source, described on the application form as "Farmer's Irrigation Ditch", has already been diverted for beneficial use and is not subject to appropriation; therefore, water is not available for the proposed use.
8. Because water is not available, the Department finds that existing water rights would be injured by the proposed use.
9. Based upon a review by the Oregon Department of Fish and Wildlife, the Department has determined that the proposed use will not pose a significant detrimental impact to existing fishery resources.

Conclusions of Law

1. **Water is not available for the proposed use.**
2. **The proposed use will injure existing water rights.**
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87498 is not consistent with the requirements of ORS 537.409.

Order

Application R-87498 therefore is denied.

DATED February 18, 2010

E. Timothy Ward

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 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.