

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

In the Matter of Water Right Application)
R-88420, in the name of CASEY)
ASCHIM, YAMHILL COUNTY

ORDER ON RECONSIDERATION

Authority

Oregon Administrative Rule 137-004-0080 authorizes reconsideration of a final order within 60 calendar days of the date of the order, and requires the issuance of a new order following reconsideration.

Findings of Fact

The findings of fact in the Final Order issued November 21, 2017 are incorporated herein with the following changes.

1. The Oregon Water Resources Department requested that Oregon Department of Fish and Wildlife (ODFW) complete a second review to clarify whether the proposed use would pose a significant detrimental impact to existing fishery resources. ODFW determined that the following conditions are necessary so that “the use will be mitigated in a manner that it will not pose a significant detrimental impact to an existing fishery resource.” (ODFW Alternate Reservoir Application Review, dated 5/14/18.) The following conditions are incorporated into the permit.
 - **b51a:** Permit is conditioned to restrict the diversion period to November 1 through April 30.
 - **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.
 - **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.
 - **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 the Oregon Department of Fish and Wildlife’s Fish and Wildlife Habitat Mitigation Policy OAR 635-415. Prior to diversion of water, the permittee shall submit a Riparian Mitigation Plan approved in writing by ODFW unless ODFW provides documentation that riparian mitigation is not necessary. The permittee is hereby directed to contact the local ODFW Fish Biologist prior to diverting water.
 - **Prohibited Activities:** Permittee may not cause pollution to any waters of the state, or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means, per ORS 468B.025(1). The use may be restricted if the Department of Environmental Quality notifies the Water Resources Department that the permittee fails to meet corrective actions associated with the violation.

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 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). 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.

Agricultural Water Quality Management Area Rules: Permittee must comply with basin-specific Agricultural Water Quality Management Area Rules in OAR 603-095. Livestock management and cropping must protect riparian areas on the property, allowing site capable vegetation along streams to establish and grow to provide the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff. Active management of livestock and/or a livestock exclusion fence is needed to protect riparian areas and provide the required functions.

ODFW also recommends the applicant determine if the project requires a 1200-C permit (Kathy Jacobsen, 541-687-7326) and/or a 401 water quality certification (Alex Holecěk, 541-686-7763) from DEQ.

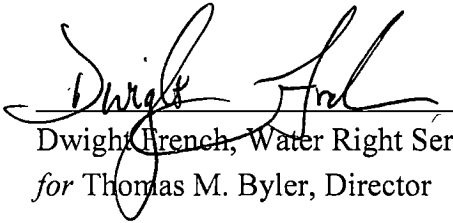
Conclusions of Law

1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use, as conditioned, will not pose a significant detrimental impact to existing fishery resources.
4. Application R-88420 is consistent with the requirements of ORS 537.409.

Now Therefore, it is Ordered:

Application R-88420 is approved, and Permit R-15337 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on May 24, 2018



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

This order was produced by Scott Grew. If you have any questions about any of the statements contained in this document, he can be reached at 503-986-0899 or scott.a.grew@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.