

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

Water Right Application R-89133 in the)
name of BRUCE JOHAM)
)

FINAL ORDER
DENYING THE STORAGE OF
SURFACE WATER

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.409, which establishes the process by which an application to store waters of the public may be submitted. This statute can be accessed here:

<https://www.oregon.gov/OWRD/programs/policylawandrules/Pages.default.aspx>

The Water Resources Department's website can be accessed here:

<https://www.oregon.gov/OWRD>

In accordance with ORS 537.409, the Department shall conduct a public interest review of an application submitted to store water in a reservoir that has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height.

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.

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).

In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon’s Scenic Waterway laws – to determine whether the use is prohibited.

Following this review, the Department shall issue a final order granting or denying the permit or granting the permit with conditions.

FINDINGS OF FACT

1. On July 1, 2021, Bruce Joham submitted an application for a permit to store water pursuant to ORS 537.409.

Storage Volume: 9.0 ACRE-FEET

Dam Height: 13.0 FEET

Source: BITTERLICK CREEK, TRIBUTARY TO LITTLE BUTTE CREEK

County: JACKSON COUNTY

Reservoir Location: SECTION 31, TOWNSHIP 35 SOUTH, RANGE 1 EAST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. On August 10, 2021, the Department provided public notice of the application in the Department's weekly public notice. A 60-day comment period followed.
4. The Department did not receive public comment related to the possible issuance of the attached permit.
5. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department’s Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). The assessment established that water is available December 1 through through May 31 of each year for the proposed use.
6. The Department relies on the Oregon Department of Fish and Wildlife’s review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that the proposed use **will** pose a significant detrimental impact to existing fishery resources January through December of each year.
7. The Department has determined that the proposed use **will** injure other water rights. There are no conditions that can be added that will overcome this finding.
8. The Department has determined that the proposed source has not been withdrawn from further appropriation under ORS Chapter 538.
9. The proposed reservoir is not prohibited under ORS 390.835.

CONCLUSIONS OF LAW

1. Application R-89133 is consistent with the requirements of ORS 537.409.
2. The proposed use **would** impair or be detrimental to the public interest as described in ORS 537.409.

ORDER

Application R-89133 is denied.

Dated at Salem, Oregon on APR 01 2022

A handwritten signature in blue ink, appearing to read "Dwight French", is written over the printed name.

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

If you have questions about statements contained in this document, please contact Kim French at Kim.R.French@oregon.gov or 503-979-3168.

If you have other questions about the Department or any of its programs please contact our Water Resources Customer Service Group at 503-986-0900.