

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

Water Right Application R-89177 in the)
name of ED SEUBERT and DONNA MARTIN)
)

SUPERSEDING FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER

This Final Order and Permit supersede the Final Order and Permit R-15522 issued April 26, 2022

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.

In addition, the Department will review ORS Chapter 538 to determine if the source of water has been withdrawn from further appropriation and will conduct a review consistent with ORS Chapter 390.835 – Oregon’s Scenic Waterway laws – to determine whether the use is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

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 536.075 and ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

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 October 14, 2021, Ed Seubert and Donna Martin submitted an application for a permit to store water pursuant to ORS 537.409.

Storage Volume: 1.5 ACRE-FEET

Dam Height: 4.0 FEET

Source: RUNOFF, TRIBUTARY TO COAL CREEK

County: CLACKAMAS COUNTY

Reservoir Location: SECTION 29, TOWNSHIP 6 SOUTH, RANGE 2 EAST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. On November 30, 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 November 1 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, if limited to December 1 through May 31 and as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.
7. The Department has determined that the proposed use, as conditioned, will not injure other water rights.
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.
10. On April 26, 2022, the Department issued a Final Order approving Application S-89177 and Permit R-15522. Subsequently, the Department discovered Permit R-15522 erroneously identified the volume of water to be stored in Peterson Pond as 0.25 acre-foot and the dam height of Peterson Pond to be zero feet. The volume of water to be stored in Peterson Pond is corrected to be 1.5 acre-feet and the dam height is corrected to be 4.0 feet, as indicated in the attached permit.

CONCLUSIONS OF LAW

1. Application R-89177 is consistent with the requirements of ORS 537.409.
2. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.409.

ORDER

Application R-89177 is approved and Permit R-15529 is issued as limited by the conditions contained therein.

This Final Order and Permit supersede the April 26, 2022 Final Order and Permit R-15522, which are of no further force or effect.

Dated at Salem, Oregon on 8/19/22



Katherine Ratcliffe
Water Rights Section Manager, 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@water.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.