

Oregon Water Resources Department

**Final Order  
Limited License Application LL-1926**



***Appeal Rights***

This is a final order in other than contested case. This order is subject to judicial review under 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 ORS 536.075 and OAR 137-004-0080 you may either 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.

***Requested Water Use***

**Applicant:** JAKE MADISON; MADISON RANCHES INC.

**Date Submitted:** APRIL 1, 2022

**Amount:** 25 CUBIC FEET PER SECOND (CFS)

**Source:** BUTTER CREEK, A TRIBUTARY OF THE UMATILLA RIVER

**Use:** ARTIFICIAL GROUNDWATER RECHARGE

**Duration:** JANUARY THROUGH AUGUST; ISSUANCE THROUGH FIVE YEARS

**County:** UMATILLA COUNTY

**Pod Location:** 2.00N-27.00E-1 NW NW

***Authorities***

The Department may approve a limited license pursuant to its authority under ORS 537.143, 537.144 and OAR 690-340-0030.

ORS 537.143(2) authorizes the Director to revoke the right to use water under a limited license if it causes injury to any water right or a minimum perennial streamflow.

A limited license will not be issued for more than five consecutive years for the same use, as directed by ORS 537.143(8).

***Findings of Fact***

1. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. On April 19, 2022, the Department provided public notice of the application, as required by OAR 690-340-0030(2).
3. The Department has not received public comment related to the possible issuance of the limited license.

4. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).
5. On October 3, 2022, the Department completed a technical review. The proposed use will, if properly conditioned, avoid injury to existing rights. A copy of this technical review is in the file and can be viewed on the Department's website.
6. The Department has determined that water is available for the requested use.
7. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.
8. The Department may not issue a limited license for the same use for more than five consecutive years. (ORS 537.143)(8).
9. Because the use requested is longer than 120 days and because the use is in an area that has sensitive, threatened or endangered fish species, the use is subject to the Department's statewide rules under OAR 690-033-0310. These rules aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species. The Oregon Department of Fish and Wildlife (ODFW) provided recommendations on a measurement device, maintaining passage, future protection through fish screening, restoration and enhancement of any riparian area disturbed by development of the point of diversion, in-water work, and ODFW retaining the prerogative to pursue a future instream water right for Butter Creek. The Oregon Department of Environmental Quality (ODEQ) provided recommendations on notice to the District 5 Watermaster, diverting water when there is adequate flow in Butter Creek, compliance with ODEQ water-quality requirements, herbicide applications, a measurement device, and agricultural water quality management area rules. The Department's Groundwater Section provided recommendations on a totalizing flowmeter, a written annual report, adhering to the current, approved test and monitoring plan, compliance with all ODEQ water quality standards and permitting requirements; failure to meet the conditions of the license, and conducting recharge testing. The Department's Watermaster provided recommendations on regulation of recharge diversions and the Butter Creek Distribution Plan. The authorization of LL-1926 is conditioned to satisfactorily address the recommendations.
10. Per OAR 690-350-0120 (3)(a), the Oregon Department of Fish and Wildlife (ODFW) verifies that there is currently no minimum perennial stream flow or instream water right for the protection of aquatic and fish life established for the source stream identified in the Madison Ranches limited license application 1926. Therefore, the applicant does not need to provide a copy of a minimum perennial stream flow or instream water right as an attachment to the application.
11. Pursuant to OAR 690-340-0030(4) and (5), conditions have been added with regard to notice and water-use measurement.
12. Umatilla County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan. A copy of the land use compatibility statement is in the file.

### ***Conclusions of Law***

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

**Order**

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, Application LL-1926 is approved as conditioned below.

1. The authorized use of water under this limited license is as follows:

**Amount:** 25 CFS

**Source:** BUTTER CREEK, A TRIBUTARY OF THE UMATILLA RIVER

**Use:** ARTIFICIAL GROUNDWATER RECHARGE

**Duration:** JANUARY THROUGH AUGUST; ISSUANCE THROUGH FIVE YEARS

2. The licensee shall give notice to the District 5 Watermaster not less than 15 days or more than 60 days in advance of using the water under this limited license. Before diverting any water to the recharge area, the user shall obtain approval from the Watermaster for each recharge event to ensure flows are within limits (and available), no rotation is in effect, and there would be no affect to downstream irrigators. The Watermaster shall make the determination that the streamflows described below are available at the diversion prior to diversion under this license. Once recharge begins, the user shall provide the Watermaster with daily updates by email or telephone of bypass, diversion, and place-of-use flows.
3. Before water use may begin under this license, the licensee shall install a totalizing flowmeter to record recharged volume at the entrance to each infiltration basin. The totalizing flowmeters must be installed and maintained in good working order. In addition, the licensee shall maintain a record of all water use, including the total number of hours of diversion, the total volume diverted, and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be available for review by the Department upon request, and shall be submitted to the Watermaster upon request. This record shall include the amount of water diverted from Butter Creek and the amount delivered to each recharge area.
4. The licensee shall install, maintain, and operate a water use control and/or measuring device, as identified by OWRD. The device shall be installed, functional, and approved by the local Watermaster, prior to diversion of water.
5. The licensee is required to provide a written annual report by April 15th of each year. This report will detail recharge testing and any subsequent recovery under a secondary limited license from the preceding water year. Reporting shall include, but is not limited to, the results of testing efforts that relate to water quality, water quantity, and operations. Water level data shall be submitted in a Department-specified digital format. The licensee shall consult with ODEQ and OWRD to identify additional specific reporting elements. The first report is due in April 2023.
6. Water may only be diverted when there is adequate flow in Butter Creek to honor all existing water rights. Use is allowed only when the rotations described in the Butter Creek Distribution Plan are not in effect.
7. Butter Creek is regulated annually. Recharge may only occur when there is enough water to satisfy all other existing water rights. This is determined based on calls for water from downstream users. The Watermaster may require diversions to decrease or cease to prevent accumulation rotation system identified in the Butter Creek Management Plan from going into effect.

8. No water may be diverted when the Butter Creek Distribution Plan is in effect. This is because permitted rights do not participate in the accumulation/rotation plan associated with the Butter Creek Management Plan. Diversion under this limited license would be a junior user to these permitted rights
9. The licensee shall adhere to the current, approved test and monitoring plan. A revised, superseding plan may be submitted to the Department at any time. The Department may approve, condition, or reject such plans.
10. The licensee shall comply with all ODEQ water-quality requirements, including monitoring that relates to possible nitrate movement. If monitoring data or other information results in identification of potential water-quality concerns, ODEQ may seek modifications to the approved monitoring plan and/or require a permit of its own to address the water-quality concerns prior to resuming artificial ground water recharge testing..
11. When herbicide application is within three feet of water, the licensee is responsible for ensuring that herbicide application laws are met, and that they obtain from DEQ any necessary pesticide application permits, including the 2300-A Pesticide General Permit or the 2000-J NPDES General Permit. Polluted return flows are not allowed to enter waters of the state per ORS 468B.025(1).
12. All water use under this limited license shall comply with state and federal water quality laws. The licensee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not 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. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. The licensee is responsible for obtaining any necessary state and federal permits.
13. The licensee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The licensee shall protect riparian areas, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
14. The licensee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).
15. The licensee may be required in the future to install, maintain, and operate fish screening per ORS 498.306 to prevent harm to fish from the proposed diversion. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification from ODFW that a fish screen is required. Once installed, the water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards:
16. If the riparian area is disturbed in the process of developing a point of diversion, the licensee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

17. Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 1 – September 30 unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.
18. In supporting this license, ODFW retains the prerogative to pursue a future instream water right for Butter Creek, and the license shall be subordinate to any such right.
19. Failure to meet the conditions of the license to the satisfaction of the Department will lead to a cancellation of the limited license, in which case it would no longer be in force.
20. The Director may revoke the right to use water for any reason described in ORS 537.143(2), and OAR 690-340-0030(6). Such revocation may be prompted by field regulatory activities or by any other information.
21. Use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate, and shall be subordinate to all other authorized uses that rely upon the same source.
22. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
23. A copy of this limited license shall be kept at the place of use, and be made available for inspection by the Watermaster or other state authority.

NOTE: This water-use authorization is temporary. Applicants are advised that issuance of this final order does not guarantee that any permit for the authorized use will be issued in the future; any investments should be made with that in mind.

Issued **FEB 24 2023**



Katherine Ratcliffe, Water Rights Section Manager, *for*  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department

Enclosures - limited license

cc: Gregory M. Silbernagel, District 5 Watermaster  
Eastern, ODFW  
Umatilla, DEQ  
GSI Water Solutions, Inc. Attn: Robyn Cook – 55 SW Yamhill St, Suite 200, Portland, OR 97204  
Surface Water Section  
File

If you need further assistance, please contact the Water Rights Section at the address, phone number, or fax number below. When contacting the Department, be sure to reference your limited license number for fastest service.

Remember, this limited license does not provide a secure source of water. Water use can be revoked at any time. Such revocation may be prompted by field regulatory activities or many other reasons.

Water Rights Section  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem OR 97301-1271  
Phone: (503) 979-9895      Fax: (503) 986-0901

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# FISH SCREENING CRITERIA FOR WATER DIVERSIONS

This summary describes ODFW fish screening criteria for all fish species.

**Screen material openings for ditch (gravity) and pump screens** must provide a minimum of 27% open area:

**Perforated plate:** Openings shall not exceed 3/32 or 0.0938 inches (2.38 mm).

**Mesh/Woven wire screen:** Square openings shall not exceed 3/32 or 0.0938 inches (2.38 mm) in the narrow direction, e.g., 3/32 inch x 3/32 inch open mesh.

**Profile bar screen/Wedge wire:** Openings shall not exceed 0.0689 inches (1.75 mm) in the narrow direction.

**Screen area** must be large enough to prevent fish impact. Wetted screen area depends on the water flow rate and the approach velocity.

**Approach velocity:** The water velocity perpendicular to and approximately three inches in front of the screen face.

**Sweeping velocity:** The water velocity parallel to the screen face.

**Bypass system:** Any pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted.

**Active pump screen:** Self cleaning screen that has a proven cleaning system.

**Passive pump screen:** Screen that has no cleaning system other than periodic manual cleaning.

**Screen approach velocity for ditch and active pump screens** shall not exceed 0.4 fps (feet per second) or 0.12 mps (meters per second). The wetted screen area in square feet is calculated by dividing the maximum water flow rate in cubic feet per second (1 cfs = 449 gpm) by 0.4 fps.

**Screen sweeping velocity for ditch screens** shall exceed the approach velocity. Screens greater than 4 feet in length must be angled at 45 degrees or less relative to flow. An adequate bypass system must be provided for ditch screens to safely and rapidly collect and transport fish back to the stream.

**Screen approach velocity for passive pump screens** shall not exceed 0.2 fps or 0.06 mps. The wetted screen area in square feet is calculated by dividing the maximum water flow rate by 0.2 fps. Pump rate should be less than 1 cfs.

*For further information please contact:*

Statewide Fish Screening Coordinator  
Oregon Dept. Fish and Wildlife  
4034 Fairview Industrial Drive SE  
Salem, OR 97302  
(503) 947-6229