

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application G-19212 in the)
name of KYLE ROWLAND)
)

PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application G-19212 and a permit consistent with the attached draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410, and the Powder Basin Program (OAR 690-509). These statutes and rules can be viewed on the following website: www.oregon.gov/OWRD/programs/policylawandrules

The Department's main website can be found at: www.oregon.gov/OWRD

The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission.

ORS 537.621(2); OAR 690-310-0130.

All four criteria must be met for a proposed use to be presumed to ensure the preservation of the public welfare, safety and health. When the criteria are met and the presumption is established the Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies, and any other available information to determine whether the presumption is overcome. OAR 690-310-0140(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a Proposed Final Order recommending issuance of the permit subject to any appropriate modifications or conditions.

FINDINGS OF FACT

Application History

1. On October 18, 2021, Kyle Rowland filed a complete application for the following water use:

Source: A WELL (WELL 1) IN NORTH POWDER RIVER BASIN

Use: PRIMARY IRRIGATION OF 10.0 ACRES AND SUPPLEMENTAL IRRIGATION OF 32.0 ACRES

Rate/Volume: 0.50 CUBIC FOOT PER SECOND (CFS); FURTHER LIMITED TO AN ANNUAL VOLUME OF 86.0 ACRE-FEET

Period of Use: MARCH 1 THROUGH OCTOBER 31 FOR PRIMARY IRRIGATION, AND JULY 1 THROUGH OCTOBER 31 FOR SUPPLEMENTAL IRRIGATION

County: BAKER COUNTY

Place of Use: SECTION 17, TOWNSHIP 7 SOUTH, RANGE 38 EAST, W.M.

2. On November 4, 2022, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 0.50 CFS, being 0.13 CFS for primary irrigation of 10.0 acres, March 1 through October 31 and 0.38 CFS for supplemental irrigation of 32.0 acres, July 1 through October 31 from Well 1 in North Powder River Basin, is allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On November 8, 2022, the Department noticed the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. The Department has determined that an error was made in the Initial Review. A rounding error occurred that showed the diversion rate for primary irrigation as 0.13 CFS. The actual diversion rate should have been 0.12 CFS.
5. On September 25, 2023, the applicant's agent submitted an amended application page 5, resolving a discrepancy between the application form and the application map.
6. The applicant requested approval of a well anywhere within a 100-foot radius of 1,163 feet north and 807 feet west from the southeast corner of Section 17. However, the Department reviews applications for new water rights based on specific locations; therefore, if a permit is issued for this application, it will include a specific approved well location rather than a radius.

Presumption Criterion (a) - Consistency with Basin Program

7. Irrigation is allowed under the Powder Basin Program (OAR 690-509-0000(1)). ORS 537.621(3)(b); OAR 690-310-0150(2)(b).
8. The proposed groundwater use is not within a designated critical groundwater area. ORS 537.621(3)(b); OAR 690-310-0150(2)(b).

Presumption Criterion (b) - Water Availability

9. An assessment of groundwater availability has been completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. Groundwater for the proposed use is not over-appropriated. In addition, the Department has determined that the

proposed groundwater use will not have the potential for substantial interference (PSI) with surface water. OAR 690-009-0040. Therefore, water is available for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(c); OAR 690-300-0010(57).

Presumption Criterion (c) - Injury Determination

10. The proposed use, if properly conditioned and if authorized, will not injure other water rights. ORS 537.621(3)(d); OAR 690-310-0150(2)(e).

Presumption Criterion (d) - Whether the Use Complies with Rules of the Commission

11. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b).

12. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826. OAR 690-310-0260.

13. The proposed groundwater use is not located within a designated critical groundwater area. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a).

Presumption that a Proposed Groundwater Use will Ensure the Preservation of the Public Welfare, Safety and Health under ORS 537.525

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.621(2); OAR 690-310-0150(2)(g).

Further Evaluation of the Proposed Use

14. No comments were received by the close of the comment period. OAR 690-310-0140(3)(a).

15. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not ensure the preservation of the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(3).

Other Criteria and Requirements

16. The amount of water requested, 0.50 CFS, further limited to an annual volume of 86 acre-feet, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d).

17. The applicant proposed measures to prevent waste, measure the amount of water appropriated, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 6 and 8 of the application. OAR 690-310-0150(2)(j).

18. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

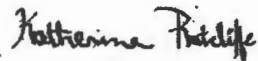
1. The proposed use, as conditioned, would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

PROPOSED ORDER

The Department recommends approval of Application G-19212 and issuance of a permit consistent with the attached draft permit.

DATED November 28, 2023



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

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. If you wish to submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline specified. Protests must be received by the Water Resources Department no later than **January 12, 2024**.

As provided in ORS 537.621(7), ORS 536.050(1)(j), and OAR 690-002-0025 — 0035, protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To effect the Department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **January 12, 2024**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;

- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not timely file a protest or timely request a hearing, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default. OAR 137-003-0670.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice To Active Duty Servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
 - If you have any questions about the Department or any of its programs; please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF BAKER

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KYLE ROWLAND
12832 BULGUR FLAT LANE
HAINES OR 97833

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-19212

SOURCE OF WATER: A WELL (WELL 1) IN NORTH POWDER RIVER BASIN

PURPOSE OR USE: PRIMARY IRRIGATION OF 10.0 ACRES AND SUPPLEMENTAL IRRIGATION OF 32.0 ACRES

MAXIMUM RATE/VOLUME: 0.50 CUBIC FOOT PER SECOND (CFS), BEING 0.12 CFS FOR PRIMARY IRRIGATION AND 0.38 CFS FOR SUPPLEMENTAL IRRIGATION; FURTHER LIMITED TO AN ANNUAL VOLUME OF 86.0 ACRE-FEET

PERIOD OF USE:

PRIMARY IRRIGATION – MARCH 1 THROUGH OCTOBER 31

SUPPLEMENTAL IRRIGATION – JULY 1 THROUGH OCTOBER 31

DATE OF PRIORITY: OCTOBER 18, 2021

AUTHORIZED POINT OF APPROPRIATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7S	38 E	WM	17	SE SE	1163 FEET NORTH AND 807 FEET WEST FROM SE CORNER, SECTION 17

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

AUTHORIZED PLACES OF USE:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7S	38 E	WM	17	SW SE	10.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7S	38 E	WM	17	SW SE	18.7
7S	38 E	WM	17	SE SE	13.3

PERMIT SPECIFIC CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the device in good working order.
 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The permittee shall keep a complete record of the volume of water used each month, and shall submit an annual report which includes the recorded water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
3. **Groundwater Level Measurement, Reporting, and Shut-Off Condition:**

For each well on this authorization, beginning on the permit signature date for existing wells or in the year well construction is completed for new wells, and each year thereafter, the permit holder must report a static water-level measurement ("measurement") taken in March. The measurement is required whether the well is used or not. If pumping is to commence following completion of the well and prior to the next March, then a measurement must be made at least one week following well completion and before pumping commences.

Measurements must be properly reported within 30 days of measurement using forms specified by the Department. A measurement will be properly reported if the submission includes all required information as listed in the document attached. Measurements must be made with equipment that is accurate to the standards specified in Oregon Administrative Rule (OAR) 690-217-0045. Measurements must be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed land surveyor, licensed well constructor, pump installer licensed by the Construction Contractors Board, or Department staff. The Department is not responsible for regular measurement of the static water level, but Department staff may measure the well during the normal course of groundwater level monitoring or to confirm the submitted measurement(s).

For each well on this permit, the Department will establish a reference groundwater level using the best available data. The reference level is intended to represent the highest elevation (shallowest

depth) static water level that has been measured or can be reasonably estimated to have existed within each well at any time before its reference level is set. If the permit holder fails to measure and report the static water level within 12 months of permit issuance, or of completion of the well(s), then Department staff will estimate the static water level using available data, including measurements in surrounding wells. In case the permit is amended or the subsequent certificate is transferred, the Department may establish a new reference level for any new or additional wells under new permits or certificates issued under this right. The reference level for a new or additional well should reflect the highest static water level in that well or, if that measurement occurred after the time represented by the original reference level, then the water level that would have been measured in that well, if the well existed and was measured at the time represented by the original reference level.

All water use authorized under this permit must immediately stop if any of the following occur:

- Any annual high elevation static groundwater level in any well on this permit declines 25 or more feet below the reference level for that well, or
- Any groundwater right with an earlier priority date and whose source is the same groundwater reservoir (as determined by the Department) has exceeded any water level decline condition listed in its permit, or
- Groundwater levels are not measured and properly reported as specified above for any completed well that is authorized on the permit for two consecutive years, or
- Hydraulic interference contributes to a decline of 25 or more feet in any neighboring well with senior priority, at any time during the year.

The Department will determine when any of the above conditions have occurred and may order the permit holder to stop all water use under this permit. The permit holder is also responsible for stopping all water use if they become aware that any of the conditions have occurred, even without notice from the Department. Following such a stop, water use under this permit will not be allowed and may only resume once the permit holder receives notice from the Department. If the permit holder fails to stop use, then the Department may take control of the controlling works of any wells authorized under this permit and may reduce the amount of groundwater pumped until the unlawful use is eliminated.

The permit holder acknowledges that that one or more of the conditions requiring stoppage of use may occur prior to any use of any well on this permit.

The Department may allow the permit holder to pause annual water level measurement and reporting requirements from some of the permitted wells if measurements from those wells are redundant with other data being collected by the Department. The permit holder must receive written notification of such an allowance before stopping measurements. If this happens, the Department may reinstate the measurement requirements at any time.

4. Groundwater production shall be only from the granite groundwater reservoir between 200 feet and 400 feet below land surface.

5. **Well Identification Tag:**

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

STANDARD CONDITIONS

1. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
2. If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
3. The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.
4. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
5. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
6. 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.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

2. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the construction deadline to begin is missed.
3. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
4. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

ISSUED _____

DRAFT - THIS IS NOT A PERMIT

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