

Oregon Water Resources Department

**Final Order
Limited License Application LL-1969**



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: MORELLO CONSTRUCTION LLC

Date Submitted: MARCH 19, 2024

Amount: 500 GALLONS PER MINUTE (1.114 CUBIC FEET PER SECOND (CFS))

Source: NORTH CANAL, KLAMATH DRAINAGE DISTRICT, TRIBUTARY TO THE KLAMATH RIVER

Use: GENERAL CONSTRUCTION, DUST CONTROL AND COMPACTION

Duration: MAY 1, 2024 THROUGH NOVEMBER 15, 2024 AND MAY 1, 2025 THROUGH NOVEMBER 15, 2025

County: KLAMATH COUNTY

Pod Locations: 40.00S-9.00E-28 SE NW
40.00S-9.00E-35 SW SW

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 March 26, 2024, 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. The Department has determined that water is available for the requested use.
6. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.
7. The Department may not issue a limited license for the same use for more than five consecutive years. (ORS 537.143)(8).
8. 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) and the Oregon Department of Environmental Quality (ODEQ) recommended conditions to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). DEQ provided recommendations on water quality, construction activities, riparian areas and flow restrictor installation related to the possible issuance of the limited license. ODFW provided recommendations on a measurement device. The authorization of limited-license LL-1969 is conditioned to address the recommendations.
9. The local Watermaster provided recommendations related to recording water use.
10. Because this use is from surface water and has the potential to impact fish, the Department finds that fish screening is required to protect the public interest.
11. Pursuant to OAR 690-340-0030(4) and (5), conditions have been added with regard to notice and water-use measurement.
12. Klamath 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-1969 is approved as conditioned below.

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

Amount: 500 GPM (1.114 CFS)

Source: NORTH CANAL, KLAMATH DRAINAGE DISTRICT, TRIBUTARY TO THE KLAMATH RIVER

Use: GENERAL CONSTRUCTION, DUST CONTROL AND COMPACTION

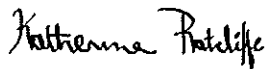
Duration: ISSUANCE THROUGH NOVEMBER 15, 2024 AND MAY 1, 2025 THROUGH NOVEMBER 15, 2025

2. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted, and the intended use and place of use. In the case of this application, this order serves as the notice described above.
3. The licensee shall install, maintain, and operate a water use control and/or measuring device. For static pumping diversion, the licensee shall ensure the water hauler uses a meter to account for flows being diverted into the tank/water haulers. For water haulers with their own onboard pumping apparatus, the licensee shall ensure the water hauler keeps record of the times of diversion, location of the diversion, the filling of the tank, and the total volume of the water hauler.
4. The licensee shall maintain a record of all water use, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. The licensee shall keep a copy of the limited license final order in each water truck and make a record of each time a water truck is filled from the point of diversion. This can be a hand-written note on the limited license final order. During the period of the limited license, the record of use shall be submitted to the Department upon request.
5. 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.
6. 1200-C NPDES Stormwater Construction permit coverage is required from DEQ or Agent for construction activities (clearing, grading, excavation, grubbing, stumping, demolition, staging, stockpiling and other land disturbing activities) that will disturb one or more acres, or that will disturb less than one acre of land but is part of a common plan of development or sale that will ultimately disturb one or more acres of land and have the potential to discharge to surface waters or to a conveyance system that leads to surface waters of the state.
7. If the riparian area is disturbed in the process of developing, modifying or repairing a point of diversion under this limited license, the licensee shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's Habitat Mitigation Policy described in Oregon Administrative Rule OAR Chapter 635-415. Prior to development, modification or repairs at the point of diversion, the licensee shall submit, to the Oregon Water Resources Department, either a Riparian Mitigation Plan approved in writing by Oregon Department of Fish and Wildlife (ODFW) or a written declaration from ODFW that riparian mitigation is not necessary. The licensee shall maintain the riparian area for the life of the limited license per the approved Riparian Mitigation Plan. The licensee is hereby directed to contact the local Oregon Department of Fish and Wildlife Fish Biologist prior to development of the point of diversion.

8. The licensee shall install a flow control valve on the diversion system to limit use to the licensed rate. The valve shall be in place, functional prior to the use of water. The valve or a suitable replacement shall remain in place for the life of the water right.
9. 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.
10. 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.
11. The licensee shall install, use, and maintain fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. See copy of enclosed fish screening criteria for information.
12. 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.
13. 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 MAY 10 2024



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

Enclosures - fish screen criteria

cc: Tom D. Skiles, District 17 Watermaster
Eastern Region, ODFW
Klamath, DEQ
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

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