

## Oregon Water Resources Department

### Reconsideration and Withdrawal of Final Order Approving Application LL-1968, and Final Order Denying Application LL-1968



#### *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.

#### *Reconsideration and Withdrawal of Order Dated April 22, 2024*

On May 13, 2024, and pursuant to OAR 137-004-0080(1)-(2), Richard Harrington submitted a petition for reconsideration of the Department's April 22, 2024 final order approving application LL-1968. The petitioner asserts that the Department lacks statutory authority under ORS 537.143 to issue a limited license to irrigate crops beyond crop establishment. Petitioner specifically cites subsections (1) and (6)(a) of the statute. The Department notes that the statement in ORS 537.143(1) that "the use of water...for irrigation is not eligible for a limited license" is preceded by the clause "[e]xcept as provided in subsections (4) to (6) and (9) of this section." Subsection (9) authorizes the Department to, "notwithstanding any other provision of this section," issue a limited license if the use of water under the limited license is for the use of stored water consistent with the purposes for which the stored water is authorized and the use of water is authorized by a contract between the user and a local, state or federal government. The requested use under application LL-1968 is consistent with the purposes for which the stored water is authorized under Permit R-15198. However, upon further evaluation the Department determined that the application did not include a contract between the user and a local, state, or federal government to use the stored water as required by ORS 537.143(9) and ORS 537.144(2)(a)(A). Instead, the request is to use water from a private reservoir not owned or managed by a governmental entity. Therefore, the requested use does not qualify under ORS 537.143(9) to use stored water for irrigation. Accordingly, upon reconsideration and pursuant to OAR 137-004-0080(8), the Department withdraws its April 22, 2024 final order approving application LL-1968 and enters this new final order denying application LL-1968.

#### *Requested Water Use*

**Applicant:** ROGUE FAMILY FARMS

**Date Submitted:** MARCH 14, 2024

**Amount:** 300 GALLONS PER MINUTE (0.668 CUBIC FOOT PER SECOND (CFS));  
TOTAL VOLUME OF 8.2 ACRE-FEET (AF)

**Source:** XP RESEVOIR CONSTRUCTED UNDER PERMIT R-15198

**Use:** IRRIGATION ON 14 ACRES FROM STORED WATER

**Period of Use:** MAY 1, 2024 THROUGH OCTOBER 31, 2024

**County:** JACKSON COUNTY

**Pod Location:** 35.00S-1.00W-28 NE SE

***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.

***Findings of Fact***

1. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. On March 19, 2024, the Department provided public notice of the application, as required by OAR 690-340-0030(2).
3. The Department has received public comment related to the possible issuance of the limited license from Richard Harrington.
4. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).
5. Permit R-15198 allows for the storage of 8.2 acre-feet of water for multiple purpose.
6. The Department has determined that stored 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 under ORS 537.143(9) for more than one year. (ORS 537.143)(9)(a).
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 stated that as application LL-1968 is for a proposed secondary use of stored water permitted under R-15198 and fish screening/passage was worked out during previous regulatory reviews for the reservoir and use of stored water, the ODFW does not have any comments on the application at this time. The Department's Watermaster provided recommendations on the use being metered and passing water during the irrigation season.
10. Jackson 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.
11. ORS 537.143(9) authorizes the Department to, "notwithstanding any other provision of" ORS 537.143, issue a limited license if the use of water under the limited license is for the use of stored water consistent with the purposes for which the stored water is authorized and the requested use of water is authorized by a contract between the user and a local, state or federal government. Here, the



requested use is consistent with the purposes for which the stored water is authorized. However, the application did not include a contract between the user and a local, state, or federal government to use the stored water. Therefore, the requested use does not qualify under subsection (9) to use stored water for irrigation and the application must be denied. ORS 537.143(9); ORS 537.144(2)(a)(A).

***Conclusions of Law***

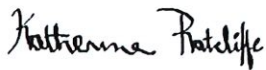
The proposed water use will impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2).

***Order***

Therefore, pursuant to ORS 537.143 and ORS 537.144, and OAR 690-340-0030, Application LL-1968 is denied.

MAY 31, 2024

Issued \_\_\_\_\_



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

cc: Shavon L. Haynes, District 13 Watermaster  
Western Region, ODFW  
Rogue, DEQ  
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Richard Harrington  
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.

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