

# Oregon Water Resources Department

## **Order Denying Petition for Reconsideration, and Order Denying Stay, Related to Application LL-1968**



On June 4, 2024, Rogue Family Farms (“Applicant”) filed a petition for reconsideration of the Oregon Water Resources Department’s May 31, 2024, Reconsideration and Withdrawal of Final Order Approving Application LL-1968, and Final Order Denying Application LL-1968 (“Final Order”). Under OAR 137-004-0080(1), the period to file such a petition expires 60 days after the date of the order. The Petition was timely filed.

Pursuant to OAR 137-004-0080(4), the Department may grant or deny a petition for reconsideration by summary order. The Department has reviewed Applicant’s Petition and herein denies the Petition. The Final Order remains in effect.

The Department’s Final Order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within 60 days following the date this order denying the Petition is served, as specified by ORS 183.484(2).

### **Order Denying Stay**

The Applicant has requested a stay of the Final Order pursuant to OAR 137-004-0090. In accordance with OAR 137-004-0092(2), the stay request is denied. LL-1968 seeks an authorization to use water that must be affirmatively approved by the Department. The Final Order denies the authorization. A stay of the Final Order would not approve the authorization. In other words, granting a stay of the Final Order would have no effect on the Applicant’s ability to use water and therefore the Applicant will not suffer irreparable injury if the order is not stayed. In addition, the Applicant has not shown a colorable claim of error in the Final Order. The Petition acknowledges that “the proposed use does not satisfy the statute referenced in the [Final Order],” but argues “the facts of this case make it reasonable for a modification of 537.143(9) for a limited time (i.e., 2024 irrigation season).” Petition at 2. However, as a state agency, the Department lacks authority to act contrary to or temporarily modify statutes. As such, an argument that the Department erred by not granting a limited license for a use that is not eligible for a limited license under ORS 537.143 does not raise a colorable claim of error.

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