



**WaterWatch of Oregon**  
**Protecting Natural Flows In Oregon Rivers**

Mary Bjork  
Oregon Water Resources Department  
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Salem, OR 97301  
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May 20, 2024

Re: Comments, Application LL-1976 in the name of Jeld-Wen, Inc

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OWRD

Dear Ms. Bjork,

Thank you for this opportunity to comment on LL-1976 in the name of Jeld-Wen, Inc. WaterWatch is a river conservation group dedicated to protecting and restoring rivers, streams and aquifers statewide. WaterWatch opposes the issuance of LL-1976 and provides the following comments.

Jeld-Wen applied for a groundwater right in 2015 for industrial/manufacturing and irrigation (G-17983). The OWRD issued a PFO on April 10, 2018, but then retracted the PFO by issuing a Withdrawal Order on May 24<sup>th</sup>, 2018. Since then, Jeld-Wen has applied for and received two limited licenses for industrial/manufacturing use (LL-1540 and LL-1784). This application seeks to continue this use forward for another five years.

WaterWatch opposes this limited license application for several reasons, including but not limited to the following:

1. Limited licenses can only be issued for uses of short term or limited duration. ORS 537.143. Industrial/manufacturing use is not of short term or limited duration, rather it is an ongoing long term use as is evidenced by the fact that the applicant is seeking a permanent water right for the use requested under the limited license application.
2. Limited licenses cannot be issued for more than 5 consecutive years for the same use. ORS 537.143(8). Application LL 1976 would continue forward the same use as authorized by LL-1540 and LL-1784 for another 5 years, which means 15 years of consecutive use. This is not allowed by law.
3. Limited licenses cannot be used as a "bridge" while an applicant is waiting for a decision on a water right application before OWRD. Limited licenses are limited to "uses" that are of short duration and were never intended to allow a permanent use to be developed in hopes of an approval of a water right application pending before the OWRD. To allow such sets bad policy and usurps the many checks and balances of the state's water right permitting process.

**WaterWatch of Oregon**  
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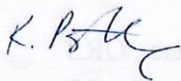


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4. Limited licenses cannot be approved unless the OWRD can determine that the use will not impair or be detrimental to the public interest, including ensuring that water is available for the requested use. There is no groundwater review for this LL 1976 on WRIS. That said, given the state of the groundwater resources in the Klamath basin it is highly unlikely that the OWRD groundwater section could make a finding that water is available.
  5. Mitigation cannot overcome a finding of no water available. While there is no groundwater determination in the file in relation to this application, OWRD previously found the potential for substantial interference with over appropriated surface waters for Jeld-Wen's past limited license applications. In those cases, the OWRD found that surface water was not available for appropriation. That said, the OWRD approved the past limited licenses based on mitigation provided. Since the last limited license was issued in 2019, an OWRD memo from Dwight French to Ivan Gall, Justin Iverson, WRSD Staff and Rachel Lovelford dated Jan 21, 2022 determined that mitigation does not overcome findings that water is not available (attached). Thus, the proposed mitigation under LL-1976 cannot be used to overcome any finding that water is not available.
  6. The application does not include documentation that the conditions of LL-1784 were met, including installation of a dedicated measuring tube and annual static water level measurement requirements. Without documentation that past conditions have been met, the OWRD cannot make the required determination that the proposed use will not harm or be detrimental to the public interest

In sum, the proposed limited license is not in compliance with law, sets bad public policy and does not ensure the use will not impair or be detrimental to the public interest. As such, we urge the denial of this application.

Thank you for your consideration of our comments.

Sincerely,



Kimberley Priestley  
Senior Policy Analyst  
WaterWatch of Oregon

Attachment

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**MEMO**

To: Water Right Application Caseworkers  
Alyssa Mucken

January 21, 2022

Cc: Ivan Gall, Justin Iverson, WRSD staff, Rachel Lovelford

From: Dwight French

Recently, the Department has realized that providing mitigation when there is no water available does not address the problems associated with a "no water available" finding. If a system is already over appropriated, when mitigation is provided, either by cancelling a water right or transferring a water right instream, it generally is not in a quantity that would result in a finding that water is available at the 80% exceedance level, or in the case of storage, 50% exceedance level. The result of allowing mitigation in these instances is that the Department issues a water right that is the most junior on the stream system, even though water is not available.

Effective on applications received after January 1, 2022, Water Right Application caseworkers should no longer include an invitation to mitigate when there is a no surface water availability finding. This applies to reservoir, surface water and groundwater applications (G applications that also have a PSI finding).

One exception: This memo does not apply to groundwater applications within the Deschutes Groundwater Study Area who can continue to mitigate consistent with the Deschutes mitigation program and our rules that manage that program.