

Oregon Water Resources Department

Final Order

Limited License Application LL-1967



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: JOHN AND DIANE KILKENNY
Date Submitted: FEBRUARY 22, 2024
Amount: 150 GALLONS PER MINUTE (0.334 CUBIC FOOT PER SECOND (CFS))
UP TO 500 ACRE-FEET (AF)
Source: A WELL (MORR 206)
Use: ROAD CONSTRUCTION OR MAINTENANCE AND GENERAL
CONSTRUCTION FOR WHEATRIDGE RENEWABLE ENERGY FACILITY
EAST
Duration: YEAR-ROUND USE FROM MAY 1, 2024 THROUGH APRIL 30, 2029
County: MORROW COUNTY
Well Location: 2.00S-28.00E-29 NW 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 February 27, 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. As part of its review to determine groundwater availability, the Department has determined that groundwater is not over appropriated and will likely be available within the capacity of the groundwater resource. In addition, the proposed groundwater use will not have the potential for substantial interference with surface water. Therefore, water is available for the requested use. If properly conditioned, the proposed use will not injure other water rights. The Department has stipulated conditions pertaining to measurement and reporting, and static water level declines. A copy of this review is in the file.
6. The local Watermaster provided recommendations related to a totalizing flow meter.
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 for the same use for more than five consecutive years. (ORS 537.143)(8).
9. Pursuant to OAR 690-340-0030(4) and (5), conditions have been added with regard to notice and water-use measurement.
10. Morrow County provided documentation indicating that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded. A copy of this documentation 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-1967 is approved as conditioned below.

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

Amount: 150 GPM (0.334 CFS) UP TO 500 AF

Source: A WELL (MORR 206)

Use: ROAD CONSTRUCTION OR MAINTENANCE AND GENERAL
CONSTRUCTION FOR WHEATRIDGE RENEWABLE ENERGY FACILITY
EAST

Duration: YEAR-ROUND USE FROM LIMITED LICENSE ISSUE DATE THROUGH
APRIL 30, 2029

Well Location: 2.00S-28.00E-29 NW SW

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. Before water use may begin under this limited license, the licensee shall install a totalizing flow meter with instantaneous readout in cubic feet per second (CFS) or gallons per minute (GPM) with the capacity of two years of accumulated use at each point of appropriation. The totalizing flow meter must be installed and maintained in good working order. The licensee 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.
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. During the period of the limited license, the record of use shall be submitted to the Department upon request.
5. For each well on this authorization, beginning on the limited license signature date for existing wells or in the year well construction is completed for new wells, and each year thereafter, the licensee 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 limited license, 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 Annual High Water Levels have been increased measurably by human activity, then the Department may set a different reference level using best available information. If the licensee fails to measure and report the static water level within 12 months of limited license 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.

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

- A. Any annual high elevation static groundwater level in any well on this limited license declines 25 or more feet below the reference level for that well, or

- B. Groundwater levels are not measured and properly reported as specified above for any completed well that is authorized on the limited license for two consecutive years, or
- C. 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 licensee to stop all water use under this limited license. The licensee 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 limited license will not be allowed and may only resume once the licensee receives notice from the Department. If the licensee fails to stop use, then the Department may take control of the controlling works of any wells authorized under this limited license and may reduce the amount of groundwater pumped until the unlawful use is eliminated.

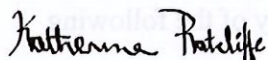
The licensee acknowledges that one or more of the conditions requiring stoppage of use may occur prior to any use of any well on this limited license.

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

- 6. 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.
- 7. 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.
- 8. 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.
- 9. 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 SEP 13 2024



Katherine Ratcliffe
Water Rights Section Manager, for
Ivan Gall, Director

Oregon Water Resources Department

cc: Kenneth C. Thiemann, District 21 Watermaster
Eastern Region, ODFW
Umatilla, DEQ
Rory Kilkenny, Agent
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
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