



## Water Right Application Initial Review

July 11, 2025

HBE, LLC  
23301 SW MCKIBBEN ROAD  
SHERIDAN OR 97378

Reference: Application S-89904

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your options. In determining whether an application may be approved, the Water Resources Department (Department) must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information supplied, the Department has made the following preliminary determinations:

### **Preliminary Determinations under Oregon Administrative Rule (OAR) 690-310-0080:**

1. The application proposes the diversion of 2.23 cubic feet per second (CFS) of water from the South Yamhill River, tributary to the Yamhill River, for frost protection from March 1 through May 15 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Frost protection (temperature control) is included in agricultural use and is allowable under the Willamette Basin Program from November 1 through April 30. OAR 690-300-0010(2) and (54); OAR 690-502-0010(2); OAR 690-502-0100(4)(a).
4. An assessment of water availability at 80% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). The assessment established, during the period of use requested, surface water is available March 1 through May 15 of each year.
5. The proposed use is not located within or above any state scenic waterway.
6. This application proposes to use water for frost protection on lands that have an existing frost protection water right, evidenced by Permit S-55503. It is unclear how it would be beneficial use to

authorize additional appropriation under this application on the portion of lands already covered by Permit S-55503. Please see the **Additional Information Requested** section below for details.

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

| Summary of Preliminary Determinations  |
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| <b>The diversion of 2.23 CFS of water from the South Yamhill River, tributary to the Yamhill River, for frost protection from March 1 through April 30 of each year may be allowable. Please see the <u>Additional Information Requested</u> section below for more details.</b> |

**Additional Information Requested:**

A portion of the lands proposed for frost protection use in this application are currently authorized for frost protection use under Permit S-55503. It is unclear how it would be beneficial use to authorize additional appropriation under this application on these lands. Additional information is required prior to issuance of any Proposed Final Order that may recommend approval.

- A. Please provide information describing how the additional water requested under this application would be put to beneficial use, and the Department will take this into consideration; or
- B. Please amend Application S-89904 to remove the lands where frost protection is currently authorized under Permit S-55503. The Department would need to receive this request in writing along with an amended map; or
- C. Alternatively, you may wish to consider voluntarily cancelling Permit S-55503 for frost protection use. The Department would need to receive a completed form authorizing voluntary cancellation of Permit S-55503, which would only be processed concurrently with any permit that may be issued for Application S-89904; or
- D. Another means of dealing with the overlap of the use proposed under this application and Permit S-55503.

**Please submit this information no later than August 14, 2025.** If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time is needed and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

### **Public Comment & Further Review:**

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

**Division 33 Review** – The Department’s Division 33 administrative rules (OAR 690-033) establish additional procedures and standards to 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 (STE) fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will now undergo an additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be required to mitigate for potential impacts identified in the review.

**Mitigation for impacts to STE Species** – Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to STE fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$790 (or \$1,185 depending on the status of House Bill 2803) required with any mitigation proposal submitted.

#### **At this time, you must decide whether to proceed or to withdraw the application.**

- **To Proceed** - If you choose to proceed with the application, you do not have to notify the Department. The application will be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.
- **To Withdraw** - You may withdraw the application and fees in excess of \$310 (or \$465 depending on the status of House Bill 2803) will be returned. You must notify the Department **in writing by July 25, 2025**. For your convenience you may use the enclosed "STOP PROCESSING" form. For more information, please contact your caseworker as described on Page 5.

#### **If a permit is issued, it will likely include the following conditions:**

1. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. A permit is subject to cancellation proceedings if the begin construction deadline is missed.

## **2. Water Use Measurement, Recording, and Reporting:**

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter, or other suitable measuring device as determined by the watermaster, at each point of diversion. The permittee shall maintain the device in good working order.
- B. The permittee 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.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

## **3. Temperature Control Water Use Report:**

The permittee shall submit a report detailing the amount of water used, the times of application and conditions requiring the use of water for temperature control. The report shall be submitted annually to the Department and is in addition to any requirement for the permittee to report annual water use under the "Water Use Measurement, Recording, and Reporting" condition included in this permit.

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program website at [www.oregon.gov/ODA](http://www.oregon.gov/ODA) to learn more about the plans and how they may affect the proposed water use.

**For Further Information:**

Feel free to contact me at Lucinda.R.Vranizan@water.oregon.gov or 971-375-2256 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Lucinda Vranizan, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

*Lucinda Vranizan*

Lucinda Vranizan  
Water Right Application Specialist  
Oregon Water Resources Department

Enclosures:   Application Process Description  
                  Stop Processing Request Form

S-89904  
WAB: 162  
Proposed to Approve

# APPLICATION FACT SHEET

Application File Number: S-89904

Applicant: HBE, LLC

County: YAMHILL

Watermaster: JOEL PLAHN, #22, NWR

Priority Date: JUNE 9, 2025

Source: SOUTH YAMHILL RIVER, TRIBUTARY TO YAMHILL RIVER

Purpose or Use: FROST PROTECTION (AGRICULTURAL USE)

Rate: 2.23 CUBIC FEET PER SECOND

Period of Use: MARCH 1 THROUGH MAY 15

Basin Name & Number: WILLAMETTE, #2

WAB: S YAMHILL R > YAMHILL R - AB COZINE CR

Points of Diversion:

| POD Name | Twp | Rng | Mer | Sec | Q-Q   | Measured Distances                                      |
|----------|-----|-----|-----|-----|-------|---|
| POD 1    | 5 S | 5 W | WM  | 31  | NW SW | 630 FEET NORTH AND 630 FEET WEST FROM NW CORNER, DLC 62 |
| POD 2    | 5 S | 5 W | WM  | 31  | NW SW | 640 FEET NORTH AND 640 FEET WEST FROM NW CORNER, DLC 62 |

Place of Use:

| Twp | Rng | Mer | Sec | Q-Q   |
|-----|-----|-----|-----|-------|
| 5 S | 5 W | WM  | 31  | SW SW |
| 6 S | 6 W | WM  | 1   | NE NE |

**PUBLIC NOTICE DATE: July 15, 2025**

**14 DAY STOP PROCESSING DEADLINE DATE: July 25, 2025**

**30 DAY COMMENT DEADLINE DATE: August 14, 2025**

## **APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS**

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our website at: [www.oregon.gov/owrd](http://www.oregon.gov/owrd)

### **1. Pre-application considerations**

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference, contact the Department's Water Rights Customer Service Group at (503) 986-0900.

### **2. Application filing**

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- An incomplete application and fees are returned to the applicant.
- Only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing.

### **3. Initial Review (IR)**

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.

### **4. Proposed Final Order (PFO)**

- Caseworker evaluates application against required criteria and develops draft permit, if appropriate.
- PFO includes instructions for filing of protests.
- Caseworker considers public comments and mails PFO to Applicant.
- The PFO is included in Department's weekly Public Notice.
- Public protests to the PFO must be submitted within 45 days after the Public Notice.

### **5. Final Order (FO)**

- If no protest is filed, Final Order is issued.

#### ***The protest process***

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- Proposed Order;
- period of time to file exceptions; or
- possible hearing by Water Resources Commission.
- Final Order is issued.

### **Permit holder responsibilities**

- Comply with all water use conditions of the permit.
- Advise Department of address change or assignment to new permit holder.
- If need arises, request extension of time or authorize cancellation of permit.
- Submit timely claim of beneficial use (COBU) to the Department.
- Most permits require COBU to be prepared by a Certified Water Right Examiner.
- Permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions.

## STOP PROCESSING REQUEST FORM

### FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

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- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **S-89904**.

After reviewing the Initial Review for my application, I request that processing be stopped, and fees in excess of \$310 (or \$465 depending on the status of House Bill 2803) will be returned. I understand that without a valid permit, I may not legally use the water as requested in my application.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped, and fees in excess of \$310 (or \$465 depending on the status of House Bill 2803) will be returned.

- This notice must be received at Water Resources Department by:

**July 25, 2025**

- Return the notice to:

OWRD, Water Right Services Division  
STOP PROCESSING  
725 Summer Street, NE - Suite A  
Salem OR, 97301-1266

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