

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application G-18994 in the)	
name of MONSON LAND DEVELOPMENT,)	PROPOSED FINAL ORDER
LLC)	TO DENY

Summary: The Department proposes to issue an order denying Application G-18994 because the proposed use: (1) will, based on a preponderance of evidence, measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife; and (2) does not comply with rules of the Commission, specifically Oregon Administrative Rule (OAR) 690-210.

This Proposed Final Order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest with no further action required by the Department unless a timely protest is received or the Proposed Final Order is withdrawn by the Department. ORS 536.077(4) and (5).

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410, and the Klamath Basin Compact (ORS 542.620). These statutes and rules can be viewed on the following website: www.oregon.gov/OWRD/programs/policylawandrules

The Department’s main website can be found at: www.oregon.gov/OWRD

The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission.

ORS 537.621(2); OAR 690-310-0130.

All four criteria must be met for a proposed use to be presumed to ensure the preservation of the public welfare, safety and health. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either one or more of the criteria for establishing the presumption are not satisfied, or that the proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in any comments received, information available in the Department’s files or received from other interested agencies, and any other available information. ORS 537.621(2); OAR 690-310-0130(2).

If the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525 and may either:

- a) Propose denial of the application upon a finding that the use will impair or adversely affect the public welfare, safety and health; or
- b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications or conditions.

OAR 690-310-0140(2).

FINDINGS OF FACT

Application History

1. On June 15, 2020, John Bourdet, Ken Fry, and Josanne Pierce Irrevocable Trust filed a complete application for the following water use:

Source: WELL 1 (KLAM 1501) IN SPRAGUE RIVER BASIN

Use: IRRIGATION OF 223.3 ACRES

Rate: 2.79 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 669.9 ACRE-
FEET (AF) ANNUALLY

Period of Use: MARCH 1 THROUGH OCTOBER 31

County: KLAMATH COUNTY

Place of Use: SECTIONS 17, 20, AND 21, TOWNSHIP 35 SOUTH, RANGE 10 EAST, W.M.

2. On October 16, 2020, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 2.79 CFS of water from Well 1 (KLAM 1501) in Sprague River Basin for irrigation of 223.3 acres is not allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On October 20, 2020, the Department provided notice of the application in its weekly public notice, requesting comments and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. On November 25, 2020, the application was placed on a 180-day administrative hold. This administrative hold expired May 25, 2021.
5. On September 16, 2021, the Department sent a certified letter requesting the submission of the additional information outlined in the Initial Review and evidence that Well 1 (KLAM 1501) meets Well Construction and Compliance standards by December 16, 2021.
6. On December 6, 2021, the applicant requested an additional 180-day administrative hold to provide time for new landowners to request an assignment of the application and to review the requirements in the Initial Review. This administrative hold expired June 6, 2022.
7. On January 3, 2022, the assignment from John Bourdet, Ken Fry, and Josanne Pierce Irrevocable Trust to Monson Land Development, LLC was recorded in the Department's records.

8. On May 24, 2022, the applicant requested an additional 180-day administrative hold to allow time to address the well construction and scenic waterway mitigation requirements in the Initial Review. This administrative hold expired November 24, 2022.
9. As of the date of this order, the Department has not received a mitigation proposal information or evidence that Well 1 (KLAM 1501) meets minimum Well Construction and Compliance standards.

Presumption Criterion (a) - Consistency with Basin Program

10. The Commission has not established a basin program for the Klamath River Basin. Therefore, neither the proposed use nor the quantity of the proposed use is restricted as a result of this consideration. ORS 537.621(3)(a)(B); OAR 690-310-0150(2)(a)(B).
11. The proposed groundwater use is not within a designated critical groundwater area. ORS 537.621(3)(a)(B); OAR 690-310-0150(2)(a)(B).

Presumption Criterion (b) - Water Availability

12. An assessment of groundwater availability has been completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. Groundwater for the proposed use is not over-appropriated. In addition, the Department has determined that the proposed groundwater use will not have the potential for substantial interference (PSI) with surface water. OAR 690-009-0040. Therefore, water is available for the proposed use. ORS 537.621(3)(a)(C); OAR 690-310-0150(2)(a)(C); OAR 690-300-0010(57).

Presumption Criterion (c) - Injury Determination

13. If properly conditioned (and if authorized), the proposed use of groundwater will not injure other water rights. ORS 537.621(3)(a)(D); OAR 690-310-0150(2)(a)(E).

Presumption Criterion (d) - Whether the Use Complies with Rules of the Commission

14. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(a)(B); OAR 690-310-0150(2)(a)(B).
15. The proposed use is located above the Klamath State Scenic Waterway, as designated under ORS 390.826. OAR 690-310-0260 establishes rules the Department uses in determining whether a proposed use will significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

OAR 690-310-0260 Scenic Waterway Findings

- A. The Department has determined, based upon OAR 690-310-0260, that there is a preponderance of evidence that the proposed use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife. The one CFS limit prescribed in OAR 690-310-0260(11) has been exceeded. OAR 690-310-0260(9)(a)-(c). The applicant did **not** provide evidence to overcome the Department's finding related to impacts to the Klamath State Scenic Waterway. The applicant did **not** provide mitigation

consistent with the provisions of ORS 390.835(9)-(10). Therefore, the Department is required to deny the application. OAR 690-310-0260(9)(d).

16. The Department has determined that Well 1 (KLAM 1501) was not constructed in a manner that protects groundwater resources and does not meet current minimum well construction standards, as required in OAR 690-210.

Presumption that a Proposed Use will Ensure the Preservation of the Public Welfare, Safety and Health under ORS 537.525

17. Because the proposed use of water is not consistent with the rules of the commission at OAR 690-310-0260 and OAR 690-210, one of the criteria necessary to establish the presumption is not met and the presumption that the proposed groundwater use will ensure the preservation of the public, welfare, safety and health under ORS 537.525 is **not** established. OAR 690-310-0140(1); OAR 690-310-0150(2)(a)(H).
18. Because the presumption is not established, the Department evaluated whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(2).
19. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would otherwise ensure the preservation of the public welfare, safety and health under ORS 537.525. ORS 537.625(2); OAR-690-310-0140(2).

Further Evaluation of the Proposed Use

20. No comments were received by the close of the comment period. OAR 690-310-0140(3)(a).

Other Criteria and Requirements

21. The amount of water requested, 2.79 CFS, further limited to 669.9 AF annually, is necessary for the proposed use. ORS 537.621(3)(a)(C); OAR 690-310-0150(2)(a)(D).
22. The applicant proposed measures to prevent waste, measure the amount of water appropriated, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 6 and 8 of the application. OAR 690-310-0150(2)(a)(J).
23. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

1. The proposed use will not ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

PROPOSED ORDER

The Department recommends issuing an order denying Application G-18994.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by the Department on or before June 12, 2026, and the Department does not withdraw this Proposed Final Order on or before July 15 2026, this Proposed Final Order is a final order without any further action by the Department on July 15, 2026.

DATED April 28, 2026



Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 537.153(6) and ORS 536.077(1) (for surface water) or ORS 537.621(6) and ORS 536.077(1) (for groundwater), any person may protest this Proposed Final Order. Protests may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline. Protests may be emailed to will.davidson@water.oregon.gov, but payment of Protest fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Protests and protest fees must be received by the Water Resources Department no later than **June 12, 2026**.

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, telephone number, and email address, if the protestant has an email address;
- Include the name, address, telephone number, and email address of the protestant's attorney, if the protestant is represented by an attorney;
- Include a description of the protestant's interest in the Proposed Final Order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonably available arguments that support the protestant's position, which may include arguments related to the public welfare, safety and health presumption factors under ORS 537.621(2) and the public welfare, safety and health factors under ORS 537.625(4);
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;
- If the protestant is the applicant, include a protest fee of \$720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of \$1,425 required by ORS 536.050.

If a timely protest is filed, after the protest period has ended, the Director will: (1) issue a final order if the applicant has not filed a protest and the Director finds that there are no significant issues related to the proposed use of water; (2) schedule a contested case hearing if a protest has been submitted; or (3) provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the case to the Office of Administrative Hearings for a contested case hearing.

Requests for Party Status: Under the provisions of ORS 537.153(6) and ORS 536.077(2) (for surface water) or ORS 537.621(6) and ORS 536.077(2) (for groundwater), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. There is no need for the applicant to file a request for party status. The applicant will automatically be a party to any contested case proceeding on this Proposed Final Order. Requests for party status may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline. Requests for party status may be emailed to will.d.davidson@water.oregon.gov, but payment of request for party status fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Requests for party status and request for party status fees must be received by the Water Resources Department no later than **July 13, 2026**.

Requests for party status must be in writing and include the following:

- Names, addresses, and email addresses (if any) of the requestor and any organization the requestor represents;
- Name, address, and email address of the requestor's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requestor seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requestor seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requestor's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requestor seeks to represent; and
- The request for party status fee of \$1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 690-002-0225.

Additional Notices

Notice of requirement to provide updated contact information: Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings unless timely updated by the party. OAR 609-002-0081.

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a

protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 690-002-0235; OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an “authorized representative” as defined at OAR 137-003-0555(1)(b) may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Nick Reece at Nick.A.Reece@water.oregon.gov or 971-719-1058.
 - If you have questions about how to file a protest or a request for party status, or if you have previously filed a protest or a request for party status and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
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