

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

Water Right Application G-19408 in the
name of DYKE PROPERTIES LLC

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PROPOSED FINAL ORDER
TO DENY

Summary: The Department proposes to issue an order denying Application G-19408 because the proposed use: (1) will have the potential for substantial interference with surface water and surface water is not available for the proposed use; (2) will cause injury to existing surface water rights; and (3) does not comply with rules of the commission at OAR 690-033. In addition, information was not provided describing how the amount of water requested would provide a beneficial use.

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with no further action required by the Department unless a timely protest is received or the Proposed Final Order is withdrawn by the Department.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 Powder Basin Program (OAR 690-509). 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 December 18, 2023, Dyke Properties LLC filed a complete application for the following water use:

Source: TWO WELLS IN WARM SPRINGS CREEK BASIN

Use: SUPPLEMENTAL IRRIGATION OF 563.0 ACRES

Rate: 2.5 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 2.5 ACRE-FEET (AF) ANNUALLY

Period of Use: MARCH 1 THROUGH SEPTEMBER 30

County: BAKER COUNTY

Place of Use: SECTIONS 10 AND 11, TOWNSHIP 7 SOUTH, RANGE 38 EAST, W.M.

2. On April 18, 2025, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 2.5 CFS, further limited to 2.5 AF annually, of water from two wells in Warm Springs Creek Basin for supplemental irrigation of 563.0 acres from March 1 through September 30 of each year is not allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On April 22, 2025, 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.

Presumption Criterion (a) - Consistency with Basin Program

4. Irrigation is allowed under the Powder Basin Program (OAR 690-509-0000(1)). ORS 537.621(3)(a)(B); OAR 690-310-0150(2)(a)(B).
5. 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

6. 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. ORS 537.621(3)(a)(C); OAR 690-310-0150(2)(a)(C); OAR 690-300-0010(57).

7. The Department has determined that the proposed groundwater use will have the potential for substantial interference (PSI) with Warm Springs Creek OAR 690-009-0040. Therefore, in accordance with OAR 690-300-0010(57)(a) and OAR 690-400-0010(11)(a)(B), surface water availability must be considered. During the period of use requested, surface water is not available (at an 80% exceedance probability. Therefore, water is **not** available for the proposed use. ORS 537.621(3)(a)(C); OAR 690-310-0150(2)(a)(C); OAR 690-300-0010(57); OAR 690-410-0070.

Presumption Criterion (c) - Injury Determination

8. The proposed use of groundwater **will** injure other water rights (surface 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

9. 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).
10. The proposed use is in an area of the state in which OAR 690-033-0115 through -0140 and OAR 690-033-0310 through -0340 apply. These rules establish definitions, 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 fish species.

OAR 690-033-0115 Upper Columbia Rules (Above Bonneville Dam)

- A. The Oregon Department of Fish and Wildlife and Oregon Department of Environmental Quality determined that threatened or endangered fish will not be impacted by the proposed use. Therefore, by default, the proposed use is consistent with the Fish and Wildlife Program (Program) for the purposes of OAR 690-033-0120(1).
- B. The application is not presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2).
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a).
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b).
- D. The interagency review team was convened to review the application and recommend conditions as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b).

As a result of this review, it was determined that the proposed use will result in a net loss of essential habitat of a sensitive species.

11. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826. OAR 690-310-0260.

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

12. Because water is not available, injury to surface water rights will occur, and the proposed use of water is not consistent with the rules of the Commission at OAR 690-033, criteria necessary to establish the presumption are 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).
13. 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).
14. In accordance with ORS 537.525(1)(c), it is necessary that beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water to ensure the preservation of the public welfare, safety and health. The applicant proposed the unusually low annual duty of 0.004 AF per acre and, upon being provided with the opportunity, failed to provide justification and explanation for how the proposed use of water would be beneficial use without waste. Because the applicant did not demonstrate that the proposed use of water would be a beneficial use, the Department has determined the proposed use will impair or adversely affect the public welfare, safety, and health under ORS 537.525. ORS 537.525; ORS 537.621(2); OAR 690-310-0140(2).

Further Evaluation of the Proposed Use

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

Other Criteria and Requirements

16. The amount of water requested, 2.5 CFS, further limited to 2.5 AF annually, would amount to 0.004 AF per acre. This is an unusually low annual duty, and information was not provided describing how the amount of water requested would be sufficient and necessary for the proposed use. ORS 537.621(3)(a)(C); OAR 690-310-0150(2)(a)(D).
17. 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).
18. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

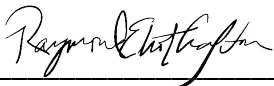
1. The proposed use will not ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

PROPOSED ORDER

The Department recommends issuing an order denying Application G-19408.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by the Department on or before September 25, 2026, and the Department does not withdraw this Proposed Final Order on or before October 28, 2026, this Proposed Final Order is a final order without any further action by the Department on October 28, 2026.

DATED August 11, 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.d.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 **September 25, 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 **October 26, 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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