



Final Order
Limited License Application LL-1690

Appeal Rights

This is a final order in other than a 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

On March 3, 2017, the Water Resources Department received completed application **LL-1690** from Willow Creek Dairy c/o Greg te Velde for the use of 644 gallons per minute up to 1037 acre-feet per year from 3 alluvial wells, located in the SE $\frac{1}{4}$, NW $\frac{1}{4}$, the NW $\frac{1}{4}$, SW $\frac{1}{4}$, and the NW $\frac{1}{4}$, SE $\frac{1}{4}$, Section 16, Township 3 North, Range 26 East, W.M., for agricultural water use to construct and operate a dairy, for the period of 5 years from issuance.

On March 28, 2017, the applicant's attorney reduced the limited license request to use 354 gallons per minute for a total of 97 acre-feet March 30 to May 31, 2017, for dairy operations. From May 1 to November 30, 2017, the amended request is for 53 gallons per minute for a total of 50 acre-feet for the purpose of completing construction of the dairy.

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 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 application after amendment proposes use of 354 gallons per minute for a total of 97 acre-feet March 30 to May 31, 2017, for dairy operations. From May 1 to November 30, 2017, the application requests 53 gallons per minute for a total of 50 acre-feet for the purpose of completing construction of the dairy.
2. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).

3. The Department provided public notice of the application, on March 7, 2017, as required by OAR 690-340-0030(2).
4. This license request is limited to an area within a single drainage basin as required by OAR 690-340-0030(3).
5. The wells described in the application are located west of, and, outside of, the Ordnance Alluvial Critical Ground Water Area. One well has been constructed, and two wells remain to be constructed.
6. The Department Watermaster for this area, Greg Sibernagel, submitted comments for this application on March 3, 2017. He asked that totalizing flow meters be required. He also suggested that the North Central Region well inspector be notified of well-construction activity prior to and during construction of wells.
7. The Department has determined that the proposed source has not been withdrawn from further appropriation.
8. The Department reviewed the application to determine groundwater availability, and found that groundwater is available in the amounts requested provided the use is conditioned to protect the groundwater resource.
9. The Department received comments related to the possible issuance of the license for the original request of 1037 acre-feet from Center for Biological Diversity, Center for Food Safety, Columbia Riverkeeper, Friends of the Columbia Gorge, Food and Water Watch, Humane Oregon, Humane Society of the United States, WaterWatch of Oregon, and individual citizens. These comments, which were read, evaluated, and considered, pertained to the following topics: injury to other water rights, limited water availability, water and air pollution, water quality, and treatment of confined cattle. Although the Department does not have authority to address the water and air pollution concerns raised, nor to address the treatment of confined cattle, the Department has conditioned the use to address the potential for injury to existing water rights.
10. Pursuant to OAR 690-340-0030(5), conditions have been added with regard to notice and water-use measurement.
11. Morrow County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan.
12. On March 28, 2017, the applicant provided notice to the Department of the location of the diversion, the quantity of water to be diverted, and the intended use and place of use, and indicated that they would like to begin use on March 30, 2017.

Conclusions of Law

1. Use of water for construction purposes and for dairy operation is allowed under ORS 537.143.

2. Groundwater is available in the amounts requested, provided the use is conditioned to require totalizing flow meters, water-use measurement and reporting, static water-level monitoring, and by limiting the duration of the license to no more than one year.
3. The proposed use will not injure existing water rights, provided groundwater-level measurements are collected monthly as provided in the order below.
4. The proposed use will protect the groundwater resource, provided wells are constructed in accordance with applicable well-construction standards. The order (below) is conditioned to require coordination with the regional well inspector.
5. The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as conditioned in the order below.

Order

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, application **LL-1690** is approved as conditioned below.

1. The rate, volume and period of use for **LL-1690** shall be 354 gallons per minute for a volume of 97 acre-feet from April 10, 2017, for dairy operations. In addition, 53 gallons per minute for a volume of 50 acre-feet for the purpose of completing construction of the dairy from May 1 to November 30, 2017. The total volume allowed under this license is 147 acre-feet.
2. The licensee has provided notice to the Watermaster in the district, as required in OAR 690-340-0030(4), 15 days in advance of using water under the license. Use under the license may commence upon issuance of this order.
3. Groundwater shall be produced only from the alluvial groundwater aquifer from wells that meet well-construction standards.
4. Before and during any new well construction, the licensee shall notify the North Central Region Well Inspector by phone at 541-278-5456.
5. Before water use may begin under this license, the licensee shall install a totalizing flow meter 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. The licensee 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 monthly. Two copies shall be provided to the Department: one to the Pendleton office, and one to the Water-Use Reporting Section in Salem. Further, the Director may require the licensee to report general water-use information, including the place and nature of water use under the license. The Director may provide an opportunity for the licensee to propose alternative measuring and reporting procedures for review and approval.
6. Groundwater-level measurements shall be collected monthly. Two copies shall be provided to the Department: one to the Pendleton office and one to the Salem groundwater section as

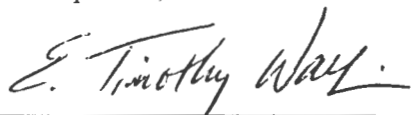
long as this license is in effect. The measurements shall be collected at the wells known as: MORR 52293/L117303, MORR 52329/L120178, and MORR 52328/L120177.

Measurements collected by Department staff will satisfy this condition. All measurements shall be made by a certified water rights examiner; registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board, and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement;
 - B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface;
 - C. Specify the method used to obtain each well measurement; and
 - D. Certify the accuracy of all measurements and calculations reported to the Department.
7. 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 reason.
8. 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.
9. A copy of this license shall be kept at the place of use, and be 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 April 10, 2017



E. Timothy Wallin, Water Rights Program Manager
for Director, Oregon Water Resources Department

cc: Gregory M. Silbernagel, District 5 Watermaster
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Smita Mehta, DEQ
Hydrographics
Commenters via e-mail
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 the license number for fastest service.

Remember, this 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.

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