

FINDINGS OF FACT

Application History

1. On November 7, 2018, Otis Creek Ranch LLC filed a complete application for the following water use:

Source	JACK WELL 1 AND CONLEY WELL 1 IN WARM SPRINGS CREEK BASIN
Use	PRIMARY IRRIGATION OF 172.3 ACRES, SUPPLEMENTAL IRRIGATION OF 141.0 ACRES
Rate	3.91 CUBIC FEET PER SECOND (CFS)
County	HARNEY COUNTY
Place of Use	SECTIONS 8 & 9, TOWNSHIP 20 SOUTH, RANGE 36 EAST; SECTIONS 25 & 36, TOWNSHIP 19 SOUTH, RANGE 35 EAST, AND SECTIONS 30 & 31, TOWNSHIP 19 SOUTH, RANGE 36 EAST, W.M.

2. On December 7, 2018, the Department mailed the applicant notice of its Initial Review, determining that "**The appropriation of 3.91 CFS of water, being 2.15 CFS for primary irrigation of 172.3 acres and 1.76 CFS for supplemental irrigation of 141.0 acres from Jack Well 1 and Conley Well 1 in Warm Springs Creek Basin, is allowable March 1 to October 1 of each year.**" The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On December 11, 2018, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

Presumption Criteria (a) - Consistency with Basin Program

4. The proposed use is allowed under the Malheur Basin Program (OAR 690-510-0010). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)

Presumption Criteria (b) - Water Availability

5. An assessment of groundwater availability has been completed by the Department's Groundwater/Hydrology section. A copy of this assessment is in the file. Groundwater will likely be available within the capacity of the resource, and if properly conditioned (and, if authorized), the proposed use of groundwater will avoid injury to existing groundwater rights. ORS 537.621(3)(c); OAR 690-310-0150(2)(c)

Presumption Criteria (c) - Injury Determination

6. The proposed use, if authorized, will not injure other water rights. ORS 537.621(3)(d); OAR 690-310-0150(2)(e)

Presumption Criteria (d) - Whether the use complies with rules of the Commission

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b)

8. The proposed groundwater use is not located within a designated critical groundwater area. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)
9. The Department has determined that the proposed groundwater use will not have the potential for substantial interference with surface water. The Division 9 (Ground Water Interference with Surface Water) review is in the file and can be viewed on the Department's website. ORS 537.621(3)(b); OAR 690-009-0040(4)
10. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

Determination of Presumption that a proposed groundwater use will ensure the preservation of the public welfare, safety and health

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.621(2); OAR 690-310-0150(2)(g)

Further evaluation of the proposed use

11. No comments were received by the close of the comment period. OAR 690-310-0140(3)(a)
12. 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 not ensure the preservation of the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(3)

Other Criteria and Requirements

13. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826. 537.621(3)(a); OAR 690-310-0150(2)(a)
14. The amount requested, 3.91 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d)
15. The applicant did not propose any methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream, or to prevent damage to public uses of any affected surface waters. Measures addressing these requirements will be conditions of water use in the permit. OAR 690-310-0150(2)(j)

CONCLUSION OF LAW

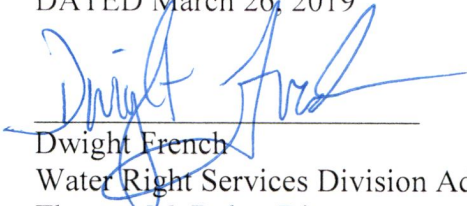
1. The proposed use, as conditioned, would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

PROPOSED ORDER

The Department recommends approval of Application G-18753 and issuance of a permit consistent with the attached draft permit.

DATED March 26, 2019



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received by the Water Resources Department no later than **May 10, 2019**. Protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, a protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **May 10, 2019**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF HARNEY

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

OTIS CREEK RANCH LLC
PO BOX 224
DREWSEY OR 97904

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-18753

SOURCE OF WATER: JACK WELL 1 AND CONLEY WELL 1 IN WARM SPRINGS CREEK BASIN

PURPOSE OR USE: PRIMARY IRRIGATION OF 172.3 ACRES, SUPPLEMENTAL IRRIGATION OF 141.0 ACRES

MAXIMUM RATE: 3.91 CUBIC FEET PER SECOND (CFS), BEING 2.15 CFS FOR PRIMARY IRRIGATION AND 1.76 CFS FOR SUPPLEMENTAL IRRIGATION

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 1

DATE OF PRIORITY: NOVEMBER 7, 2018

WELL LOCATION:

POA	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
JACK WELL 1	20 S	36 E	WM	8	NW NE	1030 FEET SOUTH AND 870 FEET EAST FROM N1/4 CORNER, SECTION 8
CONLEY WELL 1	19 S	36 E	WM	31	NW NW	260 FEET SOUTH AND 510 FEET EAST FROM NW CORNER, SECTION 31

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Primary Irrigation (Acres)	Supplemental Irrigation (Acres)
20 S	36 E	WM	8	NE NE		25.0
20 S	36 E	WM	8	NW NE		38.0
20 S	36 E	WM	8	SW NE		40.0
20 S	36 E	WM	8	SE NE		18.0
20 S	36 E	WM	9	NW NW		20.0
19 S	35 E	WM	25	NE SE	14.90	
19 S	35 E	WM	25	SE SE	40.50	
19 S	35 E	WM	36	NE NE	5.90	
19 S	36 E	WM	30	NE SW	12.10	
19 S	36 E	WM	30	NW SW	4.90	
19 S	36 E	WM	30	SW SW	39.80	
19 S	36 E	WM	30	SE SW	37.00	
19 S	36 E	WM	31	NE NW	5.80	
19 S	36 E	WM	31	NW NW	11.40	

1. Measurement Devices, and Recording/Reporting of Annual Water Use Conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. 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 used each month, and shall submit an annual report which includes the recorded 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.

2. Well Construction Conditions:

- A. Groundwater production shall occur only from the fractured bedrock groundwater reservoir between approximately 450 feet and 750 feet below land surface.
- B. A dedicated observation well shall be constructed and maintained by the permittee to assess the impacts of use of the permitted wells. When possible, drill cuttings for each production well drilled under this permit shall be collected at 10 foot intervals and at changes in lithology in the well; and a labeled split of each sampled interval shall be provided to the Department. The observation well shall be drilled at least 500 feet from either production well, shall be at least 6 inches in diameter, and shall be constructed to the same specifications and completed in the same aquifer as the production well. After the observation well is completed, Department staff shall be allowed access to the well to run video and geophysical logs, and to install and maintain automatic water level monitoring equipment.

3. Well Identification Tag Condition:

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

STANDARD CONDITIONS

- 1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
- 2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
- 3. If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
- 4. The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.
- 5. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster,

and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

6. Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.
7. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
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. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the construction deadline to begin is missed.
10. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
11. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing List for PFO Copies

Application G-18753

PFO Date March 26, 2019

Original mailed via CERTIFIED MAIL to applicant:

OTIS CREEK RANCH LLC
PO BOX 224
DREWSEY OR 97904

SENT VIA AUTO EMAIL:

1. WRD - JR Johnson - # 10
2. Agent – John Short, JOHNSHORT@USA.COM

Copies sent to:

3. WRD - File # G-18753

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

5/10/2019
Protest/ Standing Dates
checked
