

# Oregon Water Resources Department

## **Final Order Limited License Application LL-1773**



### ***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 14, 2019, the Water Resources Department received completed application **LL-1773** from Craig Edminster for the use of 190.0 gallons per minute from Calapooia River, located in the SW1/4, SW1/4, Section 12, Township 14 South, Range 2 West, W.M., for irrigation to establish a hazelnut crop, May 1, 2019 through September 30, 2024.

### ***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 limited 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 forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. The Department provided public notice of the application on March 26, 2019, as required by OAR 690-340-0030(2).
3. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).
4. The Department has determined that there is water available for the requested use.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.200.
6. In this location, hazelnut establishment does not necessarily require continuing irrigation after establishment. This limited license is issued to establish hazelnuts. The Department may issue a limited license for irrigation if the sole purpose of the use is to provide water

necessary to establish a crop for which no further irrigation will be required after the crop is established. ORS 537.143 (6)(a).

7. Because this use is from surface water and has the potential to impact fish, the Department finds that fish screening is required to protect the public interest.
8. Because the use requested is longer than 120 days and because the use is in an area that has sensitive, threatened or endangered fish species, the use is subject to the Department's rules under OAR 690-033. These rules 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. No comments were received that would cause the Department to require additional conditions or limitations.
9. The Department has received comments related to the possible issuance of the limited license. The local Watermaster and Oregon Department of Fish and Wildlife have requested that the use of water be limited to the season of May through July. The authorization of limited license **LL-1773**, as conditioned below, will satisfactorily address the issues raised in those comments.
10. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.
11. Linn County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan. A copy of the land use compatibility is in the file.

### ***Conclusions of Law***

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

### ***Order***

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, application **LL-1773** is approved as conditioned below.

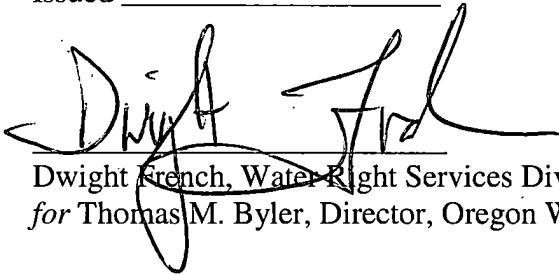
1. The period and rate of use for **LL-1773** shall be from May 1, 2019 through July 31, 2024, for the use of 190.0 gallons per minute from Calapooia River, for the purpose of irrigation to establish a hazelnut crop. **The season of use is limited to May through July.**
2. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted, and the intended use and place of use.
3. Before water use may begin under this limited license, the licensee shall install a totalizing flow meter at each point of diversion. The totalizing flow meter must be installed and maintained in good working order. In addition the licensee shall maintain a record of all water use, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. During the period of the limited

license, the record of use shall be submitted to the Department annually, and shall be submitted to the Watermaster upon request.

4. Water may be used under this limited license only to establish a crop for which no future irrigation will be required after the crop is established (ORS 537.143(6)(a)).
5. 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 information.
6. 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.
7. The licensee shall install, use, and maintain fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. See copy of enclosed fish screening criteria for information.
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. A copy of this limited license shall be kept at the place of use, and be made 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     MAY 21 2019    



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

Enclosures - fish screen criteria

cc: Lanaya Blakely, District 2 Watermaster  
Elise Kelley, ODFW  
Nancy Gramlich, DEQ  
Hydrographics  
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 your limited license number for fastest service.

Remember, this limited 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.

**Water Rights Section**

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