

# Oregon Water Resources Department

## **Final Order Limited License Application LL-1784**



### ***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 May 24, 2019, the Water Resources Department received completed application LL-1784 from Jeld-Wen Inc. for the use of 0.5 cubic foot per second (CFS) from a well, located in the SW ¼, NE ¼, Section 19, Township 38 South, Range 9 East, W.M., for industrial/manufacturing uses, for the period of license issuance through 5 years.

### ***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 June 4, 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. As part of its review to determine groundwater availability, the Department's Groundwater Section has determined that groundwater cannot be determined to be over appropriated, and will, if properly conditioned, avoid injury to existing groundwater rights or to the groundwater resource. The Department's Groundwater Section has stipulated conditions pertaining to water-use and static water level measurements. A copy of this review is in the file.

5. The Groundwater Section also determined that the proposed groundwater use will have the potential for substantial interference with Upper Klamath Lake. Surface water from Upper Klamath Lake is not available.
6. The Department has determined that mitigation would be required to off-set impacts to surface water and to maintain scenic waterway flows.
7. Jeld-Wen Inc. holds Claim KA-107, which allows up to 1.0 CFS and 100 acre-feet per year for industrial use and fire protection, and is currently leased to instream use in its entirety. Jeld-Wen Inc. has agreed to continue forbearance of Claim KA-107 to provide mitigation during the requested period of use under this limited license.
8. The Department may not issue a limited license for the same use for more than five consecutive years. (ORS 537.143)(8).
9. The Department has received comments related to the possible issuance of the limited license from the Oregon Department of Environmental Quality. The authorization of limited license LL-1784, 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. Klamath County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan. A copy of the land use compatibility statement 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-1784 is approved as conditioned below.

1. The period and rate of use for LL-1784 shall be from August 4, 2019 through August 3, 2024, for the use of 0.5 CFS, further limited to 100 acre-feet annually, for the purpose of industrial/manufacturing uses.
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. In the case of this application, this order serves as the notice described above.
3. Before water use may begin under this limited 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. 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. Use of water under this license is contingent upon the Department's approval of a forbearance agreement where the licensee will not use water at any time under surface water Claim KA-107 to offset the potential impact of the license use on Upper Klamath Lake.
5. Static Water Level Condition:

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

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. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The Department may require the discontinuance of groundwater use, or reduce the rate or volume of withdrawal, from the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

6. Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.
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 information.
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. 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.
10. 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 Aug. 2, 2019

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

cc: Danette M. Watson, District Watermaster  
William Tinniswood, ODFW  
Smita Mehta, 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.

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