

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

Water Right Application G-17834 in the	)	PROPOSED FINAL ORDER
name of ANDY ROOT	)	TO DENY
	)	

**Summary:** The Department proposes to issue an order denying Application G-17834 because groundwater will not likely be available within the capacity of the resource, and the proposed use of groundwater will cause injury to existing groundwater rights.

**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 Malheur Lake Basin Program OAR 690-512. These statutes and rules can be viewed on the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages.default.aspx>.

The Department's main website can be found at: <https://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 ORS 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 690-310-0150(2)(b)

All four criteria must be met for a proposed use to be presumed to ensure the preservation of the public welfare, safety and health. When the criteria are met and the presumption is established the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies, and any other available information to determine whether the presumption is overcome. OAR 690-310-0140

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 April 11, 2014, Andy Root filed a complete application for the following water use:

Source	WELL 1 (HARN 1094), WELL 5 (HARN 51146/L26615), WELL 7 (HARN 51272/L72702), WELL 9 (HARN 51448/L93552), WELL 10 (HARN 51765/L102536), WELL 11 (HARN 51760/L102534), WELL 12 (HARN 51817/L107659), WELL 13 (HARN 51445/L104470), WELL 14 (HARN 51871/L109033), AND WELL 15 (HARN 51970/L11173) IN HARNEY LAKE BASIN
Use	IRRIGATION OF 277.0 ACRES
Rate	4.62 CUBIC FEET PER SECOND (CFS)
County	HARNEY COUNTY
Place of Use	SECTION 32, TOWNSHIP 25 SOUTH, RANGE 30 EAST, W.M., AND SECTIONS 4, 8, AND 8, TOWNSHIP 26 SOUTH, RANGE 30 EAST, W.M.

2. On May 9, 2014, the Department mailed the applicant notice of its Initial Review, determining that **"...the appropriation of 4.62 cubic feet per second (CFS) of water from Well 1 (HARN 1094), Well 5 (HARN 51146/L26615), Well 7 (HARN 51272/L72702), Well 9 (HARN 51448/L93552), Well 10 (HARN 51765/L102536), Well 11 (HARN 51760/L102534), Well 12 (HARN 51817/L107659), Well 13 (HARN 51445/L104470), Well 14 (HARN 51871/L109033), and Well 15 (HARN 51970/L11173) in Harney Lake Basin for irrigation of 277.0 acres is not allowable, and it appears unlikely that you will be issued a permit."** The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On May 13, 2014, 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.
4. The application was put on several administrative holds, the last of which expired on April 30, 2016.

**Presumption Criteria (a) - Consistency with Basin Program**

5. The proposed use is allowed under Malheur Lake Basin Program OAR 690-512-0010. ORS 537.621(3)(b); OAR 690-310-0150(2)(b)

**Presumption Criteria (b) - Water Availability**

6. An assessment of groundwater availability has been completed by the Department's Groundwater Section. A copy of this assessment is in the file. Groundwater will not likely be available within the capacity of the resource, and the proposed use of groundwater will cause injury to existing groundwater rights. ORS 537.621(3)(c); OAR 690-310-0150(2)(c)
7. Pursuant to OAR 690-512-0020(4)(d), the Department may find that water is available if confirmed offset water was provided by April 15, 2019.
8. Confirmed offset water was not provided by April 15, 2019.

**Presumption Criteria (c) - Injury Determination**

9. The proposed use, if authorized, will 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**

10. 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)
11. 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)
12. The proposed groundwater use is not within a designated critical groundwater area. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)
13. No written comments were received by the close of the comment period. OAR 690-310-0140(3)(a)
14. The proposed use does not comply with rules of the Water Resources Commission not otherwise described above.

**Determination of Presumption and whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525**

15. Because two of the four criteria is not met (groundwater is not available and the proposed use of groundwater will cause injury) the presumption is not established. OAR 690-310-0140(1)
16. Because the presumption is not established the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525, OAR 690-310-0140(2)

**Other Criteria and Requirements**

17. The proposed use is not within or above a state scenic waterway. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)
18. The amount requested, 4.62 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d)
19. The applicant proposed methods to measure the amount of water appropriated, 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. These measures are adequate at this time. OAR 690-310-0150(2)(j)

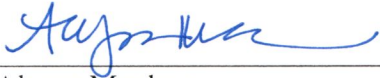
**CONCLUSIONS OF LAW**

The proposed use will impair or adversely affect the public welfare, safety and health.

**PROPOSED ORDER**

The Department recommends issuing an order denying Application G-17834.

DATED September 3, 2019



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Alyssa Mucken  
Water Rights Section Manager, 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 **October 18, 2019**. Protests must be in writing, and must 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 **October 18, 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



# Mailing List for PFO Copies

Application G-17834

PFO Date September 3, 2019

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**Original mailed via CERTIFIED MAIL to applicant:**

ANDY ROOT  
524 HWY 20 N  
HINES OR 97738

Copies Mailed

By: \_\_\_\_\_  
(SUPPORT STAFF)

on: \_\_\_\_\_  
(DATE)

**Sent via auto email:**

1. Agent – Scott Montgomery - scott@apeands.com
2. WRD - Watermaster JR Johnson -# 10

Protest/Standing Dates  
checked  
**10/18/19**

\_\_\_\_\_

**Copies sent to:**

1. WRD - File # G-17834

Application Specialist: Kim French