

FINDINGS OF FACT

Application History

1. On October 26, 2012, Golden Rule Farms Inc. filed a complete application for the following water use:

Source	THIRTY WELLS IN MALHEUR AND MALHEUR LAKE BASINS
Use	IRRIGATION OF 4180.96 ACRES
Rate	80.2 CUBIC FEET PER SECOND (CFS)
County	HARNEY COUNTY
Place of Use	SECTIONS 23, 24, 26, 34, AND 35, TOWNSHIP 26 SOUTH, RANGE 32 EAST, W.M.; SECTIONS 1, 2, 3, 5, 6, 8, 9, 10, 11, TOWNSHIP 27 SOUTH, RANGE 32 EAST, W.M.; AND SECTIONS 6, 8, 17, 19, 20, TOWNSHIP 17 SOUTH, RANGE 34 EAST, W.M.

2. On March 8, 2013, the Department mailed the applicant notice of its Initial Review, determining that **"...the appropriation of 80.2 CFS, being 2.67 CFS each from Briggs 6, Briggs 7, Briggs 8, Briggs 9 North, Briggs 9 South, Briggs 10, Briggs 11, Briggs 12, Briggs 13, Briggs 14, Briggs 15, Briggs 16, Briggs 17, Briggs 18, Briggs 19, Briggs 20, Briggs 21, Briggs 22, Briggs 23, Briggs 24, Briggs 25, Briggs 26, Briggs 27, Briggs 28, Briggs 29, Briggs 30, Briggs 31, Briggs 32, Briggs 33, and Briggs 34 in Malheur Lake Basin, for irrigation of 4180.96 acres March 1 through October 31 is not allowable..."** The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On March 12, 2013, 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 placed on four administrative holds, the last ending May 3, 2016.
5. On January 26, 2018, the applicant amended the application to remove the wells within the Malheur Lake Basin, reduce the rate to 15.9 CFS from eight wells (Briggs Well #10 – Briggs Well #17) located in the Malheur Basin, and reduce the acreage to 952.26 acres.

Presumption Criteria (a) Consistency with Basin Program

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

Presumption Criteria (b) Water Availability

7. A re-assessment of groundwater availability was completed by the Department's Groundwater Section on October 10, 2019. A copy of this re-assessment is in the file and can be viewed on the Department's website. Groundwater will **not** likely be available within the capacity of the resource and the proposed use of groundwater **will** likely cause injury to senior water users. ORS 537.621(3)(c); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

8. The proposed use (if authorized) will likely 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

9. 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)
10. The Department has determined that the proposed groundwater use will not have the potential for substantial interference with surface water. ORS 537.621(3)(b); OAR 690-009-0040(4)
11. 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)
12. 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)
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 one of the four criteria is not met (groundwater is not available) 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)


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-17592.

DATED January 21, 2020


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 **March 6, 2020**. 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 **March 6, 2020**. 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-17592

PFO Date January 21, 2020

Original mailed via CERTIFIED MAIL to applicant:

GOLDEN RULE FARMS INC.
PO BOX 255
CHRISTMAS VALLEY OR 97641

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

Sent via auto email:

1. WRD - Watermaster JR Johnson -# 10
2. Agent – John Short – johnshort@usa.com

Copies sent to:

3. WRD - File # G-17592

Application Specialist: Kim French