

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

Water Right Application G-18480 in the)	PROPOSED FINAL ORDER
name of GRAHAM LANDSCAPE AND)	TO DENY
DESIGN CO and CANTRELL FARMS)	
LLC/GRAHAM FAMILY TRUST		

Summary: The Department proposes to issue an order denying Application G-18480 because the well (LANE 17834) does not comply with minimum construction standards, pursuant to Oregon Administrative Rule (OAR) 690-210.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and OAR Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410 and the Willamette Basin Program (OAR 690-502). 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 March 9, 2017, Graham Landscape and Design Co. and Cantrell Farms LLC/Graham Family Trust filed a complete application for the following water use:

Source	A WELL (LANE 17834) IN COYOTE CREEK BASIN
Use	NURSERY USE ON 1.0 ACRE
Rate	0.033 CUBIC FOOT PER SECOND (CFS)
County	LANE COUNTY
Place of Use	SECTION 6 TOWNSHIP 18 SOUTH, RANGE 4 WEST, W.M., AND SECTION 1, TOWNSHIP 18 SOUTH, RANGE 5 WEST, W.M.

2. On August 24, 2018, the Department mailed the applicant notice of its Initial Review, determining that **“The appropriation of 0.033 CFS of water from a well (LANE 17834) in Coyote Creek Basin for year-round nursery use on 1.0 acre is allowable.”** The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On August 28, 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.
4. On May 20, 2019, the Department sent a certified letter by mail, notifying the applicant that the well (LANE 17834) did not comply with minimum well construction standards. The applicant had until July 19, 2019 to submit evidence of well construction compliance, or put the application on administrative hold or the Department would proceed with a Proposed Final Order recommending denial of the application. As of this date, the applicant has not responded nor put the application on administrative hold.

Presumption Criteria (a) - Consistency with Basin Program

5. Uses included in nursery use are included in irrigation and agriculture uses, both of which are allowed under the Willamette Basin Program OAR 690-502-0160(2). 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 and can be viewed on the Department’s website. 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

7. 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

8. 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)
9. 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)
10. 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)
11. The Department's Well Construction and Compliance Section reviewed the water supply well reports for this application. Well (LANE 17834) does not appear to comply with current minimum well standards, per OAR 690-210. The Department will not issue a permit for Well 1 (LANE 17834), unless it is brought into compliance with current minimum well construction standards, or information is provided showing that it is in compliance with current minimum well construction standards.
12. 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

13. Because one of the four criteria is not met (the well does not comply with minimum construction standards) the presumption is not established. OAR 690-310-0140(1)
14. 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

15. Comments were received by the close of the comment period. OAR 690-310-0140(3)(a)
16. In summary, commenters expressed concern about the source of water currently being used by the applicant. The Department has considered the comments and the attached draft permit /has not been further conditioned.
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, 0.033 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

1. The proposed use will impair or adversely affect the public welfare, safety and health as described in ORS 537.525.

PROPOSED ORDER

The Department recommends issuing an order denying Application G-18480.

DATED February 4, 2020



Alyssa Mueken
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 20, 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 20, 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

- A standing fee of \$230. If a hearing is scheduled, an additional fee of \$580 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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- If you have any questions about statements contained in this document, please contact Kim French at 503-986-0816 or Kim.R.French@oregon.gov.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
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Mailing List for PFO Copies

Application G-18480

PFO Date February 4, 2020

Original mailed via CERTIFIED MAIL to applicant:

GRAHAM LANDSCAPE AND DESIGN CO.
CANTRELL FARMS LLC/GRAHAM FAMILY TRUST
PO BOX 5125
EUGENE OR 97405

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

Sent via auto email:

1. Agent – Karl Mueller - onemuleteam@gmail.com
2. WRD - Watermaster #, 2 Lanaya F. Blakely
3. WRD - Mike McCord NWR

Copies sent to:

1. WRD - File # G-18480
2. Commenter – Cantrell Neighbors - cnffaw@gmail.com

Application Specialist: Kim French