

FINDINGS OF FACT

Application History

On March 5, 2019, the Port of Portland filed a complete application for the following water use:

Source: EXTRACTION WELLS:

WELL EW-1, WELL EW-2, AND WELL EW-3 IN COLUMBIA RIVER BASIN

INJECTION WELLS:

WELL IW-1, WELL IW-2, WELL IW-3, WELL IW-4, WELL IW-5, WELL IW-6, WELL IW-7, AND WELL IW-8 IN COLUMBIA RIVER BASIN

Use: INDUSTRIAL USE

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Rate: 10.03 CUBIC FEET PER SECOND (CFS)

County: MULTNOMAH COUNTY

Place of Use: SECTIONS 8 AND 9, TOWNSHIP 1 NORTH, RANGE 2 EAST, W.M.

1. On October 25, 2019, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 10.03 CFS of water from the extraction wells, Well EW-1, Well EW-2, and Well EW-3, in Columbia River Basin for industrial use is allowable January 1 through December 31 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.
2. On October 29, 2019, the Department noticed the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
3. On October 29, 2019, the Water Resources Department received a letter requesting a 180-day administrative hold to have additional time to address public concerns related to the project, which expired on April 27, 2020.
4. On October 23, 2020, the Groundwater Section added underlined requirement for the injection sites to the **Water Use Measurement, Recording, and Reporting Condition as follows:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation and injection. The permittee shall maintain the device in good working order.
 - C. The permittee shall keep a complete record of the volume of water used and injected each month, and shall submit an annual report which includes the recorded water-use and injection measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

Presumption Criteria (a) - Consistency with Basin Program

5. Industrial use is 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. 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 located within a designated critical groundwater area. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)

Determination of Presumption that a proposed groundwater use will ensure the preservation of the public welfare, safety and health

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.621(2); OAR 690-310-0150(2)(g)

Further evaluation of the proposed use

11. One comment was received by the close of the comment period. OAR 690-310-0140(3)(a)
12. In summary, commenters expressed concern about the project's potential effects on municipal water supplies are substantial and warrant OWRD's attention. The Department has considered the comments and the attached draft permit has been further conditioned.
13. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not ensure the preservation of the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(3)

Other Criteria and Requirements

14. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826. 537.621(3)(a); OAR 690-310-0150(2)(a)
15. The amount requested, 10.03 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d)
16. 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)
17. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSIONS OF LAW

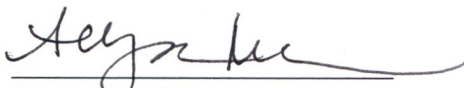
1. The proposed use, as conditioned, would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

PROPOSED ORDER

The Department recommends approval of Application G-18798 and issuance of a permit consistent with the attached draft permit.

DATED October 27, 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 **December 11, 2020**.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Protests must be in writing and 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 **December 11, 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 servicemembers 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 Lisa Graham at Elisabeth.A.Graham@oregon.gov or 503-986-0808.
 - 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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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF MULTNOMAH

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

PORT OF PORTLAND
PO BOX 3529
PORTLAND OR 97208

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-18798

SOURCE OF WATER:

EXTRACTIONS WELLS: WELL EW-1, WELL EW-2, AND WELL EW-3 IN COLUMBIA RIVER BASIN

INJECTION WELLS: WELL IW-1, WELL IW-2, WELL IW-3, WELL IW-4, WELL IW-5, WELL IW-6, WELL IW-7, AND WELL IW-8 IN COLUMBIA RIVER BASIN

PURPOSE OR USE: INDUSTRIAL USE

MAXIMUM RATE: 10.03 CUBIC FEET PER SECOND

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: MARCH 5, 2019

AUTHORIZED POINT OF APPROPRIATION:

EXTRACTION WELLS							
POD	POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	EW 1	1 N	2 E	WM	5	NE SW	1393 FEET NORTH AND 1685 FEET EAST FROM SW CORNER, SECTION 5
2	EW 2	1 N	2 E	WM	5	NE SW	1280 FEET NORTH AND 1980 FEET EAST FROM SW CORNER, SECTION 5
3	EW 3	1 N	2 E	WM	5	NE SW	1555 FEET NORTH AND 1408 FEET EAST FROM SW CORNER, SECTION 5

INJECTION WELLS							
POD	POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4	IW 1	1 N	2 E	WM	5	SE SE	49 FEET SOUTH AND 4150 FEET EAST FROM NW CORNER, SECTION 8
5	IW 2	1 N	2 E	WM	8	NE NE	182 FEET SOUTH AND 4427 FEET EAST FROM NW CORNER, SECTION 8
6	IW 3	1 N	2 E	WM	8	NE NE	345 FEET SOUTH AND 4700 FEET EAST FROM NW CORNER, SECTION 8
7	IW 4	1 N	2 E	WM	8	NE NE	492 FEET SOUTH AND 4983 FEET EAST FROM NW CORNER, SECTION 8
8	IW 5	1 N	2 E	WM	8	NE NE	630 FEET SOUTH AND 5263 FEET EAST FROM NW CORNER, SECTION 8
9	IW 6	1 N	2 E	WM	9	NW NW	783 FEET SOUTH AND 5538 FEET EAST FROM NW CORNER, SECTION 8
10	IW 7	1 N	2 E	WM	9	NW NW	940 FEET SOUTH AND 5817 FEET EAST FROM NW CORNER, SECTION 8
11	IW 8	1 N	2 E	WM	9	NW NW	1080 FEET SOUTH AND 6080 FEET EAST FROM NW CORNER, SECTION 8

AUTHORIZED PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q
1 N	2 E	WM	7	NE NE
1 N	2 E	WM	8	NE NW
1 N	2 E	WM	8	NW NW
1 N	2 E	WM	8	SW NW
1 N	2 E	WM	8	SE NW

1. Water Use Measurement, Recording, and Reporting Condition:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation and injection. The permittee shall maintain the device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water used and injected each month, and shall submit an annual report which includes the recorded water-use and injection measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

2. Prior to use of water under this permit, the permit holder must register the injection activity with the Oregon Department of Environmental Quality's Underground Injection Control Program, which can be contacted at 2020 SW 4th Ave, Ste 400, Portland OR 97201, or 503-229-5263.
3. All water produced under this permit, with the exception of water discharged solely for back-flushing of injection wells, is to be injected into the three authorized injection wells WELL EW-1, WELL EW-2, AND WELL EW-3. Prior to operation of the system, the permit holder is to submit documentation affirming that any applicable additional requirements of the Department's Division 230 rules have been met, including submission and approval of an injection plan.
4. Groundwater production shall be only from the Troutdale Sandstone Aquifer groundwater reservoir between 400 feet and 500 feet below land surface.
5. **Well Identification Tag Condition:**

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
3. If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
4. The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.
5. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

6. Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.
7. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
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. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the construction deadline to begin is missed.
10. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
11. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued _____

DRAFT - THIS IS NOT A PERMIT

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

Mailing List for PFO/Draft Permit Copies

Application G-18798

PFO Date October 20, 2020

Original mailed via CERTIFIED MAIL to applicant:

PORT OF PORTLAND
ATTN: DOROTHY SPERRY
PO BOX 3529
PORTLAND OR 97208

Copies Mailed
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

Sent via auto email:

1. Applicant - Dorothy.Sperry@portofportland.com
2. Agent – Owen McMurtrey - omcmurtrey@gsiws.com
3. WRD – Watermaster District #20, Amy J. Landvoigt
4. WRD - Mike McCord NWR

Copies sent to:

1. WRD - File # G-18798
2. Commenter - Douglas Wise, Portland Water Bureau: douglas.wise@portlandoregon.gov

Application Specialist: Lisa Graham