

FINDINGS OF FACT

Application History

1. On September 11, 2020, Hettervig Properties LLC filed a complete application for the following water use:

Source: A WELL (JEFF 325), TO BE APPROPRIATED UNDER APPLICATION G-19026, IN THE DESCHUTES RIVER BASIN

Use: STORAGE FOR IRRIGATION, FIRE PROTECTION AND WILDLIFE

Rate/Volume: 4.0 ACRE-FEET (AF), BEING 0.1 AF IN RESERVOIR 1, 0.4 AF IN RESERVOIR 2, AND 3.5 AF IN RESERVOIR 3

Period of Use: JANUARY 1 THROUGH DECEMBER 31

County: JEFFERSON COUNTY

Place of Use: SECTION 6, TOWNSHIP 10 SOUTH, RANGE 13 EAST, W.M.

2. On November 13, 2020, the Department mailed the applicant notice of its Initial Review, determining that the storage of 4.0 AF of groundwater from a well (JEFF 325), to be appropriated under Application G-19026 in the Deschutes River Basin, being 0.1 AF in Reservoir 1, 0.4 AF in Reservoir 2, and 3.5 AF in Reservoir 3, for irrigation, wildlife and fire protection may be allowable, contingent upon the submittal of documentary evidence for mitigation obtained under Application G-19026. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On November 17, 2020, the Department provided notice of 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.

Presumption Criteria (a) Consistency with Basin Program

4. Storage for irrigation, fire protection and wildlife is allowed under the Deschutes Basin Program (OAR 690-505-0400). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

5. An assessment of groundwater availability was completed under Application G-19026, by the Department's Groundwater Section, pursuant to OAR 690-009. A copy of this assessment is in the application file. The assessment determined that the proposed use of groundwater will not likely be available within the capacity of the resource; however, if sufficient mitigation water is provided to satisfy the mitigation obligation of the proposed use under Application G-19026, use under this application may be allowed under OAR 690-505-0610. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

6. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

Presumption Criteria (d) Whether the Use Complies with Rules of the Commission

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(2)(b); OAR 690-310-0150(2)(b)

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

8. No comments were received by the close of the comment period. OAR 690-310-0120(3)
9. 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 impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

10. The proposed use is located above the Deschutes Scenic Waterway, as designated under ORS 390.826.
11. The amount requested, 4.0 AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
12. The applicant proposed methods to measure the amount of water diverted, 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)
13. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project.

PROPOSED ORDER

The Department recommends approval of Application R-88876 and issuance of a permit consistent with the attached draft permit, contingent on the submission of documentary evidence for mitigation obtained under Application G-19026.

DATED January 12, 2021

Alyssa Mucken Digitally signed by Alyssa Mucken
Date: 2020.12.24 08:40:08 -08'00'

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 **February 26, 2021**.

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, impair or be detrimental to the public interest, ORS 537.153(6) 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 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170 (8) 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 **February 26, 2021**. 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;

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF JEFFERSON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

HETTERVIG PROPERTIES LLC
1976 SE OCHOCO ST
MILWAUKIE OR 97222

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

APPLICATION FILE NUMBER: R-88876

SOURCE OF WATER: A WELL (JEFF 325), TO BE APPROPRIATED UNDER APPLICATION G-19026, IN THE DESCHUTES RIVER BASIN

Reservoir Name	Maximum Volume	Maximum Dam Height
RESERVOIR 1	0.1 AF	4 FEET
RESERVOIR 2	0.4 AF	5 FEET
RESERVOIR 3	3.5 AF	6 FEET

PURPOSE OR USE OF THE STORED WATER: IRRIGATION, FIRE PROTECTION, AND WILDLIFE

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 11, 2020

AUTHORIZED POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	13 E	WM	6	NW SW	1060 FEET SOUTH AND 460 FEET EAST FROM W1/4 CORNER, SECTION 6

DAM LOCATIONS:

Reservoir Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
RESERVOIR 1	10 S	13 E	WM	6	SW NW	80 FEET NORTH AND 1210 FEET EAST FROM W1/4 CORNER, SECTION 6
RESERVOIR 2	10 S	13 E	WM	6	SE NW	1260 FEET NORTH AND 2550 FEET EAST FROM W1/4 CORNER, SECTION 6
RESERVOIR 3	10 S	13 E	WM	6	NE NW	1810 FEET NORTH AND 2450 FEET EAST FROM W1/4 CORNER, SECTION 6

THE AREA TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
10 S	13 E	WM	6	NE NW
10 S	13 E	WM	6	SW NW
10 S	13 E	WM	6	SE NW

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

- A. The Director may require the permittee to install a totalizing flow meter at each point of appropriation. If the Director notifies the permittee to install a measuring device, the permittee shall install such device within the period stated in the notice. Once installed, the permittee shall maintain the device in good working order, and shall allow the watermaster access to the device.
- B. The Director may require the permittee to keep and maintain a record of the volume of water diverted, and may require the permittee to report water-use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
- C. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

RESERVOIR CONDITIONS

- 1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8” for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
- 2. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

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. 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.
- 3. 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.

4. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.
5. Construction of the water system 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 begin construction deadline is missed.
6. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
7. Within one year after storage of water, 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