

Oregon Water Resources Department

Final Order Limited License Application LL-1811



Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date, the petition was filed, the petition shall be deemed denied.

Requested Water Use

Applicant: Brett Rudd

Date Submitted: November 27, 2019

Amount: 350.0 GPM (0.78 CFS), further limited to 140 GPM (0.31 CFS) during March 1 through April 14 of each year

Source: An alluvial groundwater well (UNIO 51835/UNIO 51770)

Use: Artificial Groundwater Recharge testing of the Columbia River Basalt Aquifer

Duration: December 1 – April 14 of each year; from issuance date through five years

County: Union County

Well Locations: Rudd Well No. 1 (Source Well) (UNIO 51835/UNIO 51770) 2S-39E-Section 30, SWNE
Rudd Basalt Well (AR Well) (UNIO 52415) 2S-39E-Section 20, SWNW

Authorities

The Department may approve a limited license pursuant to its authority under ORS 537.143, 537.144 and OAR 690-340-0030.

ORS 537.143(2) authorizes the Director to revoke the right to use water under a limited license if it causes injury to any water right or a minimum perennial streamflow.

Findings of Fact

1. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. On January 14, 2020, the Department provided public notice of the application, as required by OAR 690-340-0030(2).
3. The Department has not received comments related to the possible issuance of the limited license.
4. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).

5. On July 17, 2020, the Department completed a technical review, determining that groundwater is not over appropriated. The proposed use will, if properly conditioned, avoid injury to existing groundwater rights or to the groundwater resource. A copy of this technical review is in the file and can be viewed on the Department's website.
6. The Department also determined that the proposed appropriation of groundwater is hydraulically connected to surface water in the Upper Grande Ronde Basin, and is therefore limited by Scenic Waterway Rules (ORS 390.835). Surface water is not available during a portion of the time period requested under this application, being March 1 through April 14.
7. On March 2, 2020, GSI Water Solutions, Inc., agent for the applicant, submitted a proposal to mitigate during the period of March and April 14 by reducing the use authorized under Water Right Certificate 90977.
8. The Department has determined that forbearance of water use and idling irrigated acres under a portion of Certificate 90977 will provide sufficient mitigation for impacts to surface water and scenic waterway flows.
9. Forbearance of irrigation under Certificate 90977 must occur during the entire irrigation season in order for the licensee to use water under the limited license during the period of March 1 through April 14. The forbearance of irrigation under Certificate 90977 during a given year shall be based on the planned maximum rate of water use under the limited license by the licensee during the period of March 1 through April 14. The forbearance of irrigation during each year shall be calculated by the following equation:

$$\text{Forbearance of Irrigation (Acres)} = \text{Maximum rate of water use during March 1 to April 14 (gpm)} \times 1440 \text{ minutes/day} \times 45 \text{ days} \div 325,851 \text{ gallons/acre-feet} \div 3.0 \text{ acre-feet per acre}$$

where,

March 1 to April 14 = 45 days; and,

3.0 acre-feet per acre is the duty limit of Certificate 90977

Example: A rate of water use of 140 GPM under the limited license requires a forbearance of irrigation of **9.3 acres** under Certificate 90977 during the entire irrigation season.

10. The Department has stipulated conditions pertaining to annual static water level measurements and mitigation for impacts to surface water.
11. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.200.
12. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.
13. Union County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan. A copy of the land use compatibility statement is in the file.

Conclusions of Law

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

Order

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, Application LL-1811 is approved as conditioned below.

1. The authorized use of water under this limited licenses is as follows:

Amount: 350.0 GPM (0.78 CFS), further limited to 140 GPM (0.31 CFS) during March 1 through April 14

Source: An alluvial groundwater well (UNIO 51835/UNIO 51770)

Use: Artificial Groundwater Recharge testing of the Columbia River Basalt Aquifer

Duration: December 1 – April 14 of each year; from issuance date through five years

Well Locations: Rudd Well No. 1 (Source Well) (UNIO 51835/UNIO 51770) 2S-39E-Section 30, SWNE
Rudd Basalt Well (AR Well) (UNIO 52415) 2S-39E-Section 20, SWNW

2. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted, and the intended use and place of use.
3. The licensee shall meter all water use and maintain a record of use, including the total volume diverted and the categories of beneficial use to which water is applied. During the period of the license, the record of use shall be available for review by the Department upon request, and shall be submitted to the Watermaster upon request. This record shall include the volume of water pumped from UNIO 51835 and the volume of water injected in UNIO 52415.
4. Use of water under this limited license during the period of March 1 through April 14 is contingent upon the forbearance of an equivalent amount of water use under Water Right Certificate 90977. The forbearance of irrigation during each year shall be calculated by the following equation:

$$\text{Forbearance of Irrigation (Acres)} = \text{Maximum rate of water use during March 1 to April 14 (gpm)} \times 1440 \text{ minutes/day} \times 45 \text{ days} \div 325,851 \text{ gallons/acre-foot} \div 3.0 \text{ acre-feet per acre}$$

5. By February 15 of each year, the licensee shall submit to the watermaster in writing the following items: notice of the planned maximum rate of water use under this limited license during the period of March 1 through April 14, the calculated forbearance of irrigation (acres) according to the equation stated in this order, and a map indicating which acres will not be irrigated as part of the forbearance agreement. Failure to provide notice to the watermaster may result in regulation of use under this limited license.
6. Static Water Level Measurement Condition:

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the limited license. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The licensee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the licensee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this limited license. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

7. Artificial Groundwater Recharge Conditions:

1) Approved Monitoring Plan

- (A) The licensee shall adhere to the approved monitoring plan. A revised, superseding plan may be submitted to the Department at any time. The Department may deny, condition or approve that plan.

- (B) The licensee must have a DEQ-approved plan that addresses manganese treatment and management of treatment residuals prior to recharging water.
- (C) All manual water level measurements shall be performed in accordance with the approved monitoring plan and only when wells are confirmed to be static. This shall be confirmed by performing a series of 3 measurements, 10 minutes apart, with no discernable change in water level within the well.

2) Annual Reporting

- (A) The user is required to provide a written report by **February 15th** of each year detailing the test results over the last year. This report shall include, but is not limited to, the results of testing efforts that relate to water quality, water quantity, and operations. Water level and water quality data shall be submitted in a Department-specified digital format. The user shall consult with ODEQ and OWRD to scope out additional specific reporting elements, but these agencies may also require additional testing. The first report in February 2022 shall also contain the testing results of any recharge testing under Limited License LL-1811 for Water Year 2021. The annual report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice geology.
- (B) As pertinent, annual reporting shall include the formatting and additional information cited in Condition 3 below.

3) Special Reporting Condition. The licensee shall provide the following information to the Department:

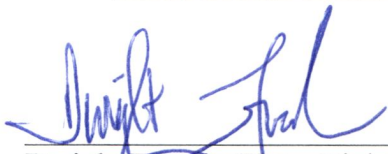
- (A) Submission of any and all hydrogeologic data collected and reports developed for the project, including but not limited to cuttings analysis, video logs, geophysical logs, aquifer test and step tests.
- (B) Submission of digital water level data for all AR wells and any other wells measured in conjunction with the project (in a Department-specified format), including annual report data.
- (C) Submission of annual reports with locations and elevations for all project wells (actual locations of built wells and proposed locations for proposed wells) and locations and elevations for all non-project wells that have been used for collecting water levels or other data pertinent to the project (in a Department-specified format).
- (D) Notification in the annual report of any changes in well construction to the AR license file.
- (E) Associating all project well data with the Department Well Identification Number (Well ID Number), the Department Well Log ID, if available, and the project Well Name.
- (F) Submission of all digital water quality data collected in conjunction with the project (in a Department-specified format).

8. The Director may revoke the right to use water for any reason described in ORS 537.143(2), and OAR 690-340-0030(6). Such revocation may be prompted by field regulatory activities or by any other information.

9. Use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate, and shall be subordinate to all other authorized uses that rely upon the same source.
10. 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.
11. A copy of this limited license shall be kept at the place of use, and be made available for inspection by the Watermaster or other state authority.

NOTE: This water-use authorization is temporary. Applicants are advised that issuance of this final order does not guarantee that any permit for the authorized use will be issued in the future; any investments should be made with that in mind.

Issued **JUL 09 2021**



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

cc: Shad L. Hattan, District 6 Watermaster
Danette Faucera, ODFW
Karen Whisler, DEQ
Matt Kohlbecker, Agent
Ted Ressler, Agent
Surface Water Section
File

If you need further assistance, please contact the Water Rights Section at the address, phone number, or fax number below. When contacting the Department, be sure to reference your limited license number for fastest service.

Remember, this limited license does not provide a secure source of water. Water use can be revoked at any time. Such revocation may be prompted by field regulatory activities or many other reasons.

Water Rights Section
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