

- 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 February 14, 2019, Bryan Long filed a complete application for the following water use:
 - Source:** SUMP 1 AND SUMP 2 IN GRAVE CREEK BASIN
 - Use:** COMMERCIAL USE, INDUSTRIAL/MANUFACTURING USE, LIVESTOCK USE, AND MINING NOVEMBER 1 THROUGH MARCH 31; AND PRIMARY AND SUPPLEMENTAL IRRIGATION OF 40.0 ACRES OF 40.0 ACRES APRIL 1 THROUGH OCTOBER 31
 - Rate:** 1.0 CUBIC FOOT PER SECOND (CFS)
 - County:** JOSEPHINE COUNTY
 - Place of Use:** SECTIONS 3, 4, 9, & 10, TOWNSHIP 34 SOUTH, RANGE 6 WEST, W.M.
2. On July 26, 2019, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 1.0 CFS of water from Sump 1 and Sump 2 in Grave Creek Basin for commercial use, industrial/manufacturing use, livestock use, mining, primary irrigation of 40.0 acres, and supplemental irrigation of 40.0 acres is not allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On July 30, 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.
4. On November 6, 2019, the applicant amended the application and removed commercial use and industrial/manufacturing use from the application, and on December 20, 2019, the applicant removed livestock use and mining from the application.
5. On March 2, 2020, the applicant submitted an instream transfer (T-13382) to provide mitigation for water availability and impacts to sensitive, threatened, and endangered fish species.

Presumption Criteria (a) - Consistency with Basin Program

6. Irrigation is allowed under Rogue Basin Program. OAR 690-515-0040(1)(a). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)

Presumption Criteria (b) - Water Availability

7. 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

8. 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

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 have the potential for substantial interference with surface water, namely Grave Creek. ORS 537.621(3)(b); OAR 690-009-0040(4)
11. The finding of the potential for substantial interference requires that surface water availability be considered. Surface water is not available anytime of the year (at an 80 percent exceedance probability). OAR 690-410-0070(1) and OAR 690-400-0010(11)(a)(A)
12. 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)
13. The proposed use is in an area of the state in which OAR 690-033-0310 thru -0340 applies. These rules establish definitions, additional procedures, and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs occur in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
- D. The interagency review team was convened to review the application and recommended mitigation as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). The applicant has submitted an Instream Transfer (T-13382) to provide mitigation under this application.

14. No written comments were received by the close of the comment period. OAR 690-310-0140(3)(a)

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 the criteria are not met (surface water is not available) the presumption is **not** established.
OAR 690-310-0140(1)

16. OAR 690-310-0140(2)(b) states that when the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public interest, and may make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public interest, and propose approval of the application with appropriate modifications or conditions.

17. To determine whether the proposed use will preserve the public interest, the factors in ORS 537.170(8) have been considered as follows:

- A. The conservation of the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

Irrigation is classified under the Rogue Basin Program, and therefore is one of the highest and best uses.

- B. The maximum economic development of the waters involved.

Water for irrigation provides economic development of land and impacts the local community by increasing employment.

- C. The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

The proposed use must be made without waste and will be regulated as necessary, thus the control and beneficial use consideration is met.

- D. The amount of waters available for appropriation for beneficial use.

Surface water is not available for the proposed use during the full period requested, however, mitigation provided by Instream Transfer T-13382 will sufficiently offset impacts the proposed use will have on surface water flows.

In addition, the Oregon Department of Fish and Wildlife and Department for Environmental Quality have recommended approval of the application with the conditions described above to reduce the impacts of the proposed use.

- E. The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

The use will be conditioned to require reasonable use of the water and measurement, recording and reporting conditions as required under ORS 390.835(6)(d)(C).

- F. All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

The pending application's priority date and the Department's existing system of regulation are the means necessary to protect existing vested and inchoate rights, thus the protection of rights consideration is satisfied.

- G. The state water resources policy.

The Department determined the proposed use is consistent with the state water resources policy formulated under ORS 536.295 to 536.350.

- 18. The Department therefore concludes that, in accordance with OAR 690-310-0140 (2) (b), although the presumption is not established, the proposed use as modified and conditioned in the attached draft permit will ensure the preservation of the public interest.

Other Criteria and Requirements

- 19. The proposed use is located above the Rogue State Scenic Waterway, as designated under ORS 390.826. The Department has determined, based upon OAR 690-310-0260, that there is not a preponderance of evidence that the proposed use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife. 537.621(3)(a); OAR 690-310-0260(9)(a)
- 20. The amount requested, 1.0 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d)
- 21. 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)
- 22. 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-18792, as amended, and issuance of a permit consistent with the attached draft permit.

DATED August 3, 2021

Alyssa Mucken Digitally signed by Alyssa Mucken
Date: 2021.07.23 12:19:37 -07'00'

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 **September 17, 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, 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 \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 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 **August 6, 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;

- 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 \$270. If a hearing is scheduled, an additional fee of \$680 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 97301-126
Fax: 503-986-0901
-

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF JOSEPHINE

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BRYAN LONG
3903 HELMS RD
GRANTS PASS OR 97527

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

APPLICATION FILE NUMBER: G-18792

SOURCE OF WATER: SUMP 1 AND SUMP 2 IN GRAVE CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 40.0 ACRES AND SUPPLEMENTAL IRRIGATION OF 40.0 ACRES

MAXIMUM RATE: 1.0 CUBIC FOOT PER SECOND

PERIOD OF USE: APRIL 1 THROUGH OCTOBER 31

DATE OF PRIORITY: FEBRUARY 14, 2019

AUTHORIZED POINT OF APPROPRIATION:

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
SUMP 1	34 S	6 W	WM	9	NW NE	265 FEET SOUTH AND 1760 FEET WEST FROM THE NE CORNER, SECTION 9
SUMP 2	34 S	6 W	WM	4	SE SE	400 FEET SOUTH AND 1740 FEET WEST FROM THE NE CORNER, SECTION 9

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

AUTHORIZED PLACE OF USE:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	6 W	WM	3	SW SW	6.0
34 S	6 W	WM	4	SE SE	14.0
34 S	6 W	WM	9	NW NE	20.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	6 W	WM	9	NE NE	7.0
34 S	6 W	WM	9	NW NE	2.0
34 S	6 W	WM	9	SE NE	16.0
34 S	6 W	WM	9	NE NW	5.0
34 S	6 W	WM	10	NW NW	10.0

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. 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 each month, and shall submit an annual report which includes the recorded water-use 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. Scenic Water Way Condition:

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

3. 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-18792

PFO Date June 22, 2021

Original mailed via CERTIFIED MAIL to applicant:

BRYAN LONG
3903 HELMS RD
GRANTS PASS OR 97527

Copies Mailed
By: _____
(SUPPORT STAFF)

on: _____
(DATE)

Sent via auto email:

1. Applicant - blong29777@yahoo.com
2. Agent – Scott Fein - sfeinsurveyor@gmail.com
3. WRD – Watermaster District #14, Scott C. Ceciliani
4. WRD - Jake Johnstone SWR
5. WRD – SW Section

Copies sent to:

1. WRD - File # G-18792

Application Specialist: Kim French