

FINDINGS OF FACT

Application History

1. On February 12, 2020, David Welsh and Stacy Welsh filed a complete application for the following water use:
 - Source:** WELL 1 (DESC 51137), TO BE APPROPRIATED UNDER APPLICATION G-18915, IN DESCHUTES RIVER BASIN
 - Use:** WILDLIFE, FIRE PROTECTION, RECREATION AND AESTHETICS
 - Rate/Volume:** 9.6 ACRE-FEET (AF)
 - Period of Use:** JANUARY 1 THROUGH DECEMBER 31
 - County:** DESCHUTES COUNTY
 - Place of Use:** SECTION 1, TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M.
2. On February 26, 2021, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 9.6 acre-feet (AF) of groundwater from Well 1 (DESC 51137) in the Deschutes River Basin, to be appropriated under Application G-18915, for storage, being 9.0 AF in Pond 1, 0.3 AF in Pond 2 and 0.3 AF in Pond 3 for year-round wildlife, fire protection, recreation and aesthetics is allowable, contingent upon the approval of Application G-18915. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On March 2, 2021, 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. Wildlife, fire protection, recreation and aesthetics are allowed under the Deschutes Basin Program (OAR 690-505-0040). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

5. An assessment of groundwater availability was completed by the Department. The Department determined that upon submission of documentary evidence that mitigation has been obtained under Application G-18915, groundwater will be available for the proposed use. 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 an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded. 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, 9.6 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-88807, as amended, and issuance of a permit consistent with the attached draft permit, contingent upon the approval of Application G-18915.

DATED November 2, 2021

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 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, 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 **December 17, 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 \$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 Kim French at Kim.R.French@oregon.gov or 503-986-0816.
 - 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
Fax: 503-986-0901 Salem, OR 97301-1266
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DAVID WELSH
STACY WELSH
PO BOX 587
DIABLO CA 94528

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

APPLICATION FILE NUMBER: R-88807

SOURCE OF WATER: WELL 1 (DESC 51137), TO BE APPROPRIATED UNDER APPLICATION G-18915, IN DESCHUTES RIVER BASIN

STORAGE FACILITIES: POND 1, POND 2, POND 3

MAXIMUM DAM HEIGHT: THE RESERVOIRS ARE ENTIRELY BELOW GROUND SURFACE; THERE ARE NO DAMS.

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

MAXIMUM VOLUME: 9.6 ACRE-FEET (AF), BEING 9.0 AF IN POND 1, 0.3 AF IN POND 2 AND 0.3 AF IN POND 3w

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

DATE OF PRIORITY: FEBRUARY 12, 2020

AUTHORIZED POINT OF APPROPRIATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	1	SW NE	55 FEET NORTH AND 20 FEET EAST FROM C1/4 CORNER, SECTION 1

POND LOCATIONS:

POND Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POND 1	17 S	11 E	WM	1	SW NE	150 FEET NORTH AND 230 FEET EAST FROM THE C1/4 CORNER, SECTION 1
POND 2	17 S	11 E	WM	1	NW SE	75 FEET SOUTH AND 485 FEET EAST FROM THE C1/4 CORNER, SECTION 1

POND Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POND 3	17 S	11 E	WM	1	NW SE	240 FEET SOUTH AND 655 FEET EAST FROM THE C1/4 CORNER, SECTION 1

THE AREA TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
17 S	11 E	WM	1	SW NE
17 S	11 E	WM	1	NW SE

PERMIT SPECIFIC 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. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. 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 Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage 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.
 - D. 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. 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.
2. 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.
3. 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.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. 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.
2. 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.
3. 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

Mailing List for PFO/Draft Permit Copies

Application R-88807

PFO Date November 2, 2021

Original mailed via CERTIFIED MAIL to applicant:

DAVID WELSH
STACY WELSH
PO BOX 587
DIABLO CA 94528

Copies Mailed

By: _____

(SUPPORT STAFF)

on: _____

Sent via auto email:

1. Applicant - stacywelsh@yahoo.com stacywelsh@yahoo.com
2. Agent – Michelle Sims - sims.mw@gmail.com
3. WRD – Watermaster District #11, Jeremy T. Giffin
4. WRD - Kyle Gorman SCR
5. WRD – SW Section

Copies sent to:

1. WRD – File # R-88807
2. DSL – Wetlands Specialist

Application Specialist: Kim French