

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application G-18793 in the)
name of WILSON DINSDALE and BH LAND)
LLC)

PROPOSED FINAL ORDER
TO DENY

Summary: The Department proposes to issue an order denying Application G-18793 because the use does not comply with rules of the Commission, specifically Oregon Administrative Rule (OAR) 690-210.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and OAR Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410 and the Willamette Basin Program (OAR 690-502). These statutes and rules can be viewed on the following website:
<https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>.

The Department's main website can be found at: <https://www.oregon.gov/OWRD>.

The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and ORS 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission. ORS 537.621(2); OAR 690-310-0150(2)(b)

All four criteria must be met for a proposed use to be presumed to ensure the preservation of the public welfare, safety and health. When the criteria are met and the presumption is established the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies, and any other available information to determine whether the presumption is overcome. OAR 690-310-0140

If the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525 and may either:

- a) Propose denial of the application upon a finding that the use will impair or adversely affect the public welfare, safety and health; or
- 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 15, 2019, Wilson Dinsdale and BH Land LLC filed a complete application for the following water use:

 Source: A WELL (MARI 4111) IN WILKERSON CREEK BASIN
 Use: IRRIGATION OF 213.0 ACRES
 Rate: 1.0 CUBIC FOOT PER SECOND (CFS)
 Period of Use: MAY 1 THROUGH OCTOBER 31
 County: POLK COUNTY
 Place of Use: SECTION 24 AND 25, TOWNSHIP 8 SOUTH, RANGE 4 WEST, W.M.
2. On November 15, 2019, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 1.0 CFS of water from a well (MARI 4111) in Wilkerson Creek Basin for irrigation of 213.0 acres is not allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On November 19, 2019, 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.
4. On January 22, 2020, the application was put on administrative hold, which ended on July 22, 2020.
5. On December 23, 2021, the Department sent a certified letter to the applicant requesting evidence that the well (MARI 4111) proposed for appropriation under this application complies with minimum construction standards and gave until April 10, 2022 to respond.
6. As of this date, the Department has not received the required information.

Presumption Criteria (a) - Consistency with Basin Program

7. Irrigation is allowed under Willamette Basin Program OAR 690-502-0160(2). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)

Presumption Criteria (b) - Water Availability

8. 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

9. 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

10. 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)
11. 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)
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. No written comments were received by the close of the comment period. OAR 690-310-0140(3)(a)
14. The well does **not** comply with minimum well construction standards. ORS 537.621(3)(b); OAR 690-210

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 (the use does not comply with rules of the Commission) the presumption is **not** established. OAR 690-310-0140(1)
16. Because the presumption is not established the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525; OAR 690-310-0140(2)

Other Criteria and Requirements

17. The proposed use is not within or above a state scenic waterway. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)
18. The amount requested, 1.0 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d)
19. 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 and to prevent damage to public uses of any affected surface waters. These measures are adequate at this time. OAR 690-310-0150(2)(j)
20. The proposed use does not comply with one or more of the rules of the Water Resources Commission.

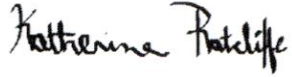
CONCLUSIONS OF LAW

1. The proposed use will impair or adversely affect the public welfare, safety and health as described in ORS 537.525.

PROPOSED ORDER

The Department recommends issuing an order denying Application G-18793.

DATED May 17, 2022

A handwritten signature in black ink, reading "Katherine Ratcliffe". The signature is written in a cursive style with a horizontal line underneath it.

Katherine Ratcliffe
Water Right 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 **July 1, 2022**.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services until May 1, 2022, and will be accepting protests over the counter after this date. If you wish to submit a protest 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 **July 1, 2022**. 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.

- If you have any questions about statements contained in this document, please contact Kim French at 503-979-3168 or Kim.R.French@water.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 503-979-9160.
 - 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