

Oregon Water Resources Department



Final Order to Deny Limited License Application LL-1434

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

On August 31, 2012, the Water Resources Department received completed application **LL-1434** from Havilah Resources LLC for the use of 8.45 cubic feet per second from 11 sump wells, located in the NE ¼, SW ¼, - NW ¼, SW ¼ - SW ¼, SW ¼ - SE ¼, SW ¼, Section 8, the NE ¼, SW ¼ - SE ¼, SE ¼, Section 7, all in Township 34 South, Range 5 West, W.M., for mining use, for the period of license issuance through issuance of a permit for this same use.

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.

A limited license will not be issued for more than five consecutive years for the same use, as directed by ORS 537.143(8).

Findings of Fact

1. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. The Department provided public notice of the application, on September 11, 2012, as required by OAR 690-340-0030(2).
3. This request is limited to an area within a single drainage basin as required by OAR 690-340-0030(3).
4. The Department has determined that water is not available at any time of the year for the requested use.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation.

6. The Department has not been notified that Land Use approval from Josephine County has been obtained as required by OAR 690-005.
7. The Department has determined that use of water for mining is allowed only from November 1 through May 1 per OAR 690-515-0040(1)(E)(i).
8. Because the use requested is longer than 120 days and because the use is in an area that has sensitive, threatened or endangered fish species, the use is subject to the Department's rules under OAR 690-33. These rules 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. Peter Samarin of Oregon Department of Fish and Wildlife (ODFW) commented on September 25, 2012. Grave Creek provides spawning, rearing, and migration habitat for federally threatened Coho salmon, and state sensitive summer steelhead and Pacific lamprey. Grave Creek also ranks as a stream in the highest need of flow restoration, and water use should be allowed only when instream water right flows are met. Heather Tugaw of Oregon Department of Environmental Quality (ODEQ) commented on September 25, 2012. Grave Creek has been placed on the 303(d) list, category 3 for several pollutants. In addition, the Rogue River Basin Temperature TMDL has been approved and applies to Grave Creek.
9. As part of its review to determine ground water availability, the Department's Ground Water/Hydrology Section has determined that the proposed sump wells would be hydraulically connected with the potential for substantial interference (PSI) with either Grave Creek, Shanks Creek, or an unnamed tributary to Shanks Creek. In addition, reductions in monthly flows in the Rogue Scenic Waterway, have been calculated. An evaluation of the proposed mitigation for PSI shows that the water proposed for the mitigation is to be appropriated under this limited license. To effectively mitigate for a new appropriation, mitigation water must come from an existing right.
10. The Department has received 81 timely comments related to the possible issuance of the license. These comments were against the issuance this limited license based on possible effects to wells and interference, water availability, streamflow, wildlife and spawning issues, noise, heavy vehicle traffic, reduction in property values, rural peaceful atmosphere and pollution. These comments were considered carefully and a comment evaluation is included in the file.

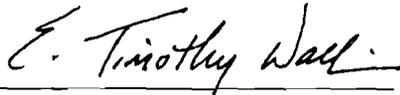
Conclusions of Law

The proposed water use will impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2).

Order

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, application **LL-1434** is denied.

Issued October 11, 2012



E. Timothy Wallin, Water Rights Program Manager, *for*
Phillip C. Ward, Director

Enclosures - limited license denial

cc: Kathy A. Smith, District 14 Watermaster
Peter Samarin, ODFW
Heather Tugaw, DEQ
Hydrographics
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.

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