

STATE OF OREGON

COUNTY OF POLK

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

FERN CREEK VINEYARDS LLC
(C/O) PREMIER PACIFIC VINEYARDS
PO BOX 3989
NAPA, CA 94558

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

APPLICATION FILE NUMBER: R-87120

SOURCE OF WATER: UNNAMED STREAM, TRIBUTARY TO COOPER CREEK

STORAGE FACILITY: FERN CREEK RESERVOIR

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE TO BE APPROPRIATED UNDER APPLICATION S-87121 FOR IRRIGATION

MAXIMUM VOLUME: 100.0 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: NOVEMBER 1 THROUGH JUNE 30

DATE OF PRIORITY: MARCH 14, 2008

THE AREA SUBMERGED BY THE RESERVOIR, WHEN FULL, WILL BE 6.0 ACRES. THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 25.0 FEET.

DAM LOCATION: SE ¼ NW ¼, SECTION 16, T8S, R5W, W.M.; 2750 FEET NORTH AND 1760 FEET EAST FROM SW CORNER, SECTION 16

POINT OF DIVERSION LOCATION: NE ¼ NW ¼, SECTION 21, T8S, R5W, W.M.; 1250 FEET SOUTH AND 1650 FEET EAST FROM SW CORNER, SECTION 21

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SE ¼ NW ¼
NW ¼ SW ¼
NE ¼ SW ¼
SECTION 16

TOWNSHIP 8 SOUTH, RANGE 5 WEST, W.M.

Measurement, recording and reporting conditions:

- 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 level must be installed in the

reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. The permittee shall maintain the measuring device(s) in good working order, shall keep a complete record of the amount of water used each month, and shall submit a 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, the periods of water use and the place and nature of use of water under the permit.

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The permittee shall pass all live flow outside the storage season described above.

The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

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 used for out-of-reservoir purposes, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

Notwithstanding that Oregon Department of Fish and Wildlife has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass

devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

DAM CONDITIONS

All construction shall be performed under the supervision of a registered professional engineer licensed in Oregon.

No embankment fill shall be placed until preparation of the foundation and the excavation of the core trench has been completed and examined in entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both.

The constructed works shall conform to the approved plans and specifications on file with the Water Resources Dam Safety program. The engineer of record shall notify the Water Resources Dam Safety program before making any significant change to the approved design prior to or during construction.

No water shall be stored until the Water Resources Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications. If final construction deviates from the approved design a set reproducible as-constructed drawings, including a revised reservoir capacity graph or table, must accompany the engineer's letter of completion.

Routine maintenance or repair of the dam, its spillway and all appurtenant structures shall be performed to include, but not limited to, the removal of woody vegetation or debris, prompt restoration of areas of erosion or to replace defective equipment necessary for the continued safe operation of the project works.

Except for routine repair and maintenance, design plans and specifications must be prepared by an Oregon Licensed professional engineer and approved by the Water Resources Dam Safety program prior to any enlargement, modification, or alteration of the dam, its spillway or any appurtenant structure.

STANDARD CONDITIONS

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.

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum

diameter of 8 inches or an approved alternative siphon or pumping system subject to approval by the dam safety section.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

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.

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.

Construction shall be completed and 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.

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 August 21, 2009

E. Timothy Wall.
for Phillip C. Ward, Director
Water Resources Department