

Oregon Water Resources Department

Final Order
Limited License Application LL-1951



Appeal Rights

This is a final order in other than 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

Applicant: ART KUENZI

Date Submitted: MARCH 27, 2023

Amount: 3 GALLONS PER MINUTE (0.007 CUBIC FOOT PER SECOND (CFS))

Source: AN UNNAMED SPRING, TRIBUTARY TO SPRING VALLEY CREEK

Use: COMMERCIAL USE (WINERY AND TASTING ROOM)

Duration: YEAR-ROUND USE FROM SEPTEMBER 1, 2023 THROUGH FIVE YEARS OR
ISSUANCE OF A PERMANENT WATER RIGHT

County: POLK COUNTY

Pod Location: 6.00S-3.00W-18 SW NW

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. On March 28, 2023, the Department provided public notice of the application, as required by OAR 690-340-0030(2).
3. The Department has not received public comment related to the possible issuance of the limited license.

4. On April 18, 2022, the applicant clarified the use applied for as winery and tasting room to commercial use for the purpose of a winery and tasting room.
5. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).
6. The Department has determined that water is available for the requested use.
7. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.
8. The Department may not issue a limited license for the same use for more than five consecutive years. (ORS 537.143)(8).
9. 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 statewide rules under OAR 690-033-0310. 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. The Oregon Department of Fish and Wildlife (ODFW) and the Oregon Department of Environmental Quality (ODEQ) recommended conditions to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). The authorization of LL-1951 is conditioned to address the recommendations.
10. Because this use is from surface water and has the potential to impact fish, the Department finds that fish screening is required to protect the public interest.
11. Pursuant to OAR 690-340-0030(4) and (5), conditions have been added with regard to notice and water-use measurement.
12. Polk County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan. A copy of the land use compatibility statement is in the file.

Conclusions of Law

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

Order

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, Application LL-1951 is approved as conditioned below.

1. The authorized use of water under this limited license is as follows:

Amount: 3 GPM (0.007 CFS)

Source: AN UNNAMED SPRING, TRIBUTARY TO SPRING VALLEY CREEK

Use: COMMERCIAL USE (WINERY AND TASTING ROOM)

Duration: YEAR-ROUND USE FROM SEPTEMBER 1, 2023 THROUGH FIVE YEARS
OR ISSUANCE OF A PERMANENT WATER RIGHT

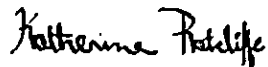
POD Location: 6.00S-3.00E-18 SW NW

2. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted, and the intended use and place of use.
3. The licensee shall install, maintain, and operate a water use control and/or measuring device, as identified by OWRD. The device shall be installed, functional, and approved by the local Watermaster, prior to diversion of water.
4. The licensee shall maintain a record of all water use, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be submitted to the Department upon request.
5. If the riparian area is disturbed in the process of developing a point of diversion, the licensee 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.
6. Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of **July 15-October 15** unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.
7. All water use under this license shall comply with state and federal water quality laws. The licensee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. The licensee is responsible for obtaining any necessary state and federal permits.
8. The Director may revoke the right to use water for any reason described in ORS 537.143(2), and OAR 690-340-0030(6). Such revocation may be prompted by field regulatory activities or by any other information.
9. Use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate, and shall be subordinate to all other authorized uses that rely upon the same source.
10. The licensee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).
11. The licensee shall install, use, and maintain fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. See copy of enclosed fish screening criteria for information.

12. 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.
13. A copy of this limited license shall be kept at the place of use, and be made available for inspection by the Watermaster or other state authority.

NOTE: This water-use authorization is temporary. Applicants are advised that issuance of this final order does not guarantee that any permit for the authorized use will be issued in the future; any investments should be made with that in mind.

Issued MAY 04 2023



Katherine Ratcliffe, Water Rights Section Manager, *for*
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Enclosures - fish screen criteria

cc: Joel M. Plahn, District 22 Watermaster
Western Region, ODFW
Mid Fork Willamette, DEQ
Surface Water Section
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.

Water Rights Section
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem OR 97301-1271
Phone: (503) 979-9895 Fax: (503) 986-0901

FISH SCREENING CRITERIA FOR WATER DIVERSIONS

This summary describes ODFW fish screening criteria for all fish species.

Screen material openings for ditch (gravity) and pump screens must provide a minimum of 27% open area:

Perforated plate: Openings shall not exceed 3/32 or 0.0938 inches (2.38 mm).

Mesh/Woven wire screen: Square openings shall not exceed 3/32 or 0.0938 inches (2.38 mm) in the narrow direction, e.g., 3/32 inch x 3/32 inch open mesh.

Profile bar screen/Wedge wire: Openings shall not exceed 0.0689 inches (1.75 mm) in the narrow direction.

Screen area must be large enough to prevent fish impact. Wetted screen area depends on the water flow rate and the approach velocity.

Approach velocity: The water velocity perpendicular to and approximately three inches in front of the screen face.

Sweeping velocity: The water velocity parallel to the screen face.

Bypass system: Any pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted.

Active pump screen: Self cleaning screen that has a proven cleaning system.

Passive pump screen: Screen that has no cleaning system other than periodic manual cleaning.

Screen approach velocity for ditch and active pump screens shall not exceed 0.4 fps (feet per second) or 0.12 mps (meters per second). The wetted screen area in square feet is calculated by dividing the maximum water flow rate in cubic feet per second (1 cfs = 449 gpm) by 0.4 fps.

Screen sweeping velocity for ditch screens shall exceed the approach velocity. Screens greater than 4 feet in length must be angled at 45 degrees or less relative to flow. An adequate bypass system must be provided for ditch screens to safely and rapidly collect and transport fish back to the stream.

Screen approach velocity for passive pump screens shall not exceed 0.2 fps or 0.06 mps. The wetted screen area in square feet is calculated by dividing the maximum water flow rate by 0.2 fps. Pump rate should be less than 1 cfs.

For further information please contact:

Statewide Fish Screening Coordinator
Oregon Dept. Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302
(503) 947-6229