

Oregon Water Resources Department

Final Order
Limited License Application LL-1878



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: TERRY SILBERNAGEL

Date Submitted: JUNE 4, 2021

Amount: 20 GALLONS PER MINUTE (0.045 CUBIC FOOT PER SECOND (CFS))

Sources: FOUR PROPOSED WELLS

Use: IRRIGATION TO ESTABLISH A VINEYARD

Period of Use: IRRIGATION SEASON; SUMMER 2021 THROUGH SUMMER 2026

County: MARION COUNTY

Well Locations: WELL 1 (PROPOSED) - 8.00S-2.00W-10 NW NW

WELL 2 (PROPOSED) - 8.00S-2.00W-10 NW NW

WELL 3 (PROPOSED) - 8.00S-2.00W-10 NW NW

WELL 4 (PROPOSED) - 8.00S-2.00W-10 NW 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 June 15, 2021, 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. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).
5. The applicant applied for the use of irrigation to establish a vineyard from a proposed new well. The application further describes that four proposed wells are applied for, being two in the alluvial aquifer, and two in the underlying basalt aquifer, but that only one well is planned to be constructed.
6. As part of its review to determine groundwater availability, the Department has determined that groundwater is not over appropriated and is available for the requested use as limited in findings described below. The proposed use will, if properly conditioned, avoid injury to existing groundwater rights or to the groundwater resource. A copy of this review is in the file.
7. The Department has determined that Wells 1 and 3 are in the basalt aquifer and has stipulated special conditions pertaining to measurement and reporting, and meeting applicable standards in the Columbia River Basalt Group.
8. The Department has determined that Wells 2 and 4 are in the alluvial aquifer and are hydraulically connected to an unnamed tributary to Fruitland Creek and have the Potential for Substantial Interference (PSI) with surface water. Therefore, surface water availability must be considered. Water availability shows that surface water is **not** available from June through October. A copy of this review is in the file.
9. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.
10. The Department may not issue a limited license for the same use for more than five consecutive years. (ORS 537.143)(8).
11. In this location, vineyards do not necessarily require continuing irrigation after establishment. This limited license is issued to establish a vineyard. The Department may issue a limited license for irrigation if the sole purpose of the use is to provide water necessary to establish a crop for which no further irrigation will be required after the crop is established. ORS 537.143 (6)(a).
12. 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) recommended conditions to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). ODFW recommended that the season of use be limited to the period of March 1 to May 31 for any well determined by OWRD to have the potential for substantial interference with surface water per OAR 690-009. The authorization of limited-license LL-1878 is conditioned to address the recommendations.
13. Pursuant to OAR 690-340-0030(4) and (5), conditions have been added with regard to notice and water-use measurement.

14. Marion 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.
15. The applicant requested a five-year limited license period beginning in 2021. Due to a substantial delay in the groundwater review, the duration of this license is five years from 2024, as further limited below.

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-1878 is approved as conditioned below.

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

Amount: 20 GPM (0.045 CFS)

Sources: ONE WELL

Use: IRRIGATION TO ESTABLISH A VINEYARD FROM ONE WELL

Duration: MARCH 1 THROUGH OCTOBER 31 OF EACH YEAR FOR WELLS 1 OR 3;
OR MARCH 1 THROUGH MAY 31 OF EACH YEAR FOR WELLS 2 OR 4;
FROM LIMITED LICENSE ISSUE DATE THROUGH OCTOBER 31, 2029,
FOR WELLS 1 OR 3; FROM LIMITED LICENSE ISSUE DATE THROUGH
MAY 31, 2029, FOR WELLS 2 OR 4

Well Locations: WELL 1 (PROPOSED) - 8.00S-2.00W-10 NW NW
WELL 2 (PROPOSED) - 8.00S-2.00W-10 NW NW
WELL 3 (PROPOSED) - 8.00S-2.00W-10 NW NW
WELL 4 (PROPOSED) - 8.00S-2.00W-10 NW 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. In the case of this application, this order serves as the notice described above.
3. Construction of the proposed well shall be completed in a manner that protects ground water resources as required under Oregon Administrative Rules 690-200 through 690-240. During construction of the well, specific attention should be paid to ensure sealing requirements are met and that the well does not commingle aquifers.
4. Water may be used under this limited license only to establish a crop for which no future irrigation will be required after the crop is established (ORS 537.143(6)(a)).
5. Water Use Measurement, Recording, and Reporting Conditions for Wells 1 and 3:

Before water use may begin, the water user shall install a totalizing flow meter at the point of appropriation. The totalizing flow meter must be installed and maintained in good working order. In addition, the water user shall maintain a record of all water used each month, 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 annually, or more frequently as may be required by the Director and shall be submitted to the Watermaster upon request.

6. Water Use Measurement, Recording, and Reporting Conditions for Wells 2 and 4:

- A. Before water use may begin under this limited license, the licensee shall install a totalizing flow meter at the point of appropriation. The licensee shall maintain the device in good working order.
- B. The licensee 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 licensee to keep and maintain a record of the volume of water diverted, and may require the licensee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the licensee to report general water-use information, the periods of water use and the place and nature of use of water under the limited license.
- D. The Director may provide an opportunity for the licensee to submit alternative measuring and reporting procedures for review and approval.

7. Special Conditions for Wells 1 and 3:

- A. The basalt well shall be open to a single aquifer of the Columbia River Basalt Group and shall meet the applicable well construction standards (OAR 690-200 and OAR 690-210).

In addition, the open interval in the well shall be no greater than 100 feet. An open interval of greater than 100 feet may be allowed if substantial evidence of a single aquifer completion can be demonstrated to the satisfaction of the Department Hydrogeologists, using information from a video log, downhole flowmeter, water chemistry and temperature, or other downhole geophysical methods. These methods shall characterize the nature of the basalt rock and assess whether water is moving in the borehole. Any discernable movement of water within the well bore when the well is not being pumped shall be assumed as evidence of the presence of multiple aquifers in the open interval.

If during well construction, it becomes apparent that the well can be constructed to eliminate the comingling of aquifers and/or interference with hydraulically connected streams in a manner other than specified in this limited license, the licensee can contact the Department Hydrogeologist for this limited license or the Groundwater Section Manager to request approval of such construction. The request shall be in writing and shall include a rough well log and a proposed construction design for approval by the Department. The request can be approved only if it is received and reviewed prior to placement of any permanent casing and sealing material. If the request is made after casing and seal are placed, the requested modification will not be approved.

- B. A dedicated water level measuring tube shall be installed in the well. The measuring tube shall meet the standards described in OAR 690-215-0060. When requested, access to the well shall be provided to Department staff in order to make water level measurements.

- C. For any well constructed under this or subsequent limited license, the licensee shall coordinate with the driller to ensure that drill cuttings are collected at 10-foot intervals and at changes in formation in the well. A split of each sampled interval shall be provided to the Department.
- D. If any geologic and hydrogeologic reports are completed for the licensee during the development of the authorized well, including geophysical well logs and borehole video logs, then copies of the reports shall be provided to the Department. Except for borehole video logs, two paper copies or a single electronic copy shall be provided of each report. Digital tables of any data shall be provided upon request.

8. Static Water Level Measurement Condition for Wells 1 and 3:

Use of water from any well, as allowed herein, shall be controlled or shut off if the well displays:

- A. An average water-level decline of 3 or more feet per year for five consecutive years; or
- B. A total water-level decline of 15 or more feet; or
- C. A hydraulic interference decline of 15 or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.

The licensee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well.

- A. Use of water from a new well shall not begin until an initial static water level in the well has been measured and reported to the Department.
- B. In addition to the measurement required in the subsection above, a water-level measurement shall be made each year during the period March 1 through March 31.
- C. All water-level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructor, licensed pump installer, or the licensee/appropriator.
- D. Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment is available from the Department.

The licensee/appropriator shall report the record of measurement to the Department on a form available from the Department. The record of measurement shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements, and shall be submitted to the Department within 90 days from the date of measurement. The Department shall determine when any of the declines cited herein are evidenced by the well measurement required in the static water level condition.

9. Static Water Level Measurement Condition for Wells 2 and 4:

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for the well on the limited license. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The licensee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well if any of the following events occur:

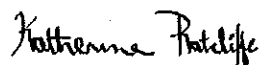
- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the licensee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this limited license.

10. 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.
11. 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.
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 AUG 02 2024



Katherine Ratcliffe
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Oregon Water Resources Department

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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
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