

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-87079

Reconsideration and Superceding Final Order

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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

Application History

On February 6, 2008, Van Duzer Vineyards submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on April 29, 2008. The protest period closed June 13, 2008, and no protest was filed.

On July 31, 2008, the Department issued a Final Order concluding that the proposed use would not impair or be detrimental to the public interest.

On September 16, 2008, the Department received a petition for reconsideration of the Final Order from Jeanne Boatwright, on behalf of the applicant. Ms. Boatwright requested that a staff gage only be required for Reservoir C and Reservoir D prior to the use of water from the reservoirs under any out-of-pool secondary permit, and requested clarification about which part of the condition the caveat of providing alternative measuring procedures applied to, whether the weir or both the weir and the staff gage. In addition, Ms. Boatwright also amended the related secondary application, S-87080, by removing Reservoir C and Reservoir D as sources of water.

Findings of Fact

The petition for reconsideration of the Final Order was filed within the 60-day period specified in OAR 137-004-0080.

The July 31, 2008 Final Order for Application R-87079 is superseded by this Reconsideration and Superceding Final Order and is of no further force or effect.

The petition for reconsideration of the July 31, 2008 Final Order is granted.

The measurement, recording and reporting conditions as described in the attached draft permit are amended as follows:

- 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 storage must be installed in Reservoir A and Reservoir B. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- B. The Director may require the permittee to install a staff gage that measures the entire range and stage between full reservoir level and dead pool storage in Reservoir C and Reservoir D. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. If the Director notifies the permittee to install a staff gage, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period.
- C. The permittee shall maintain all required devices in good working order.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.
- E. The permittee shall allow the watermaster access to the devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- F. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, 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. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

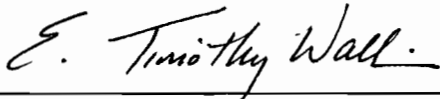
The proposed use as amended in the attached draft permit will not impair or be detrimental to the public interest.

Order

Application R-87079 therefore is approved with the above modifications.

Upon payment of outstanding fees in the amount of \$300.00, a permit shall be issued authorizing the proposed water use. Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application. If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

DATED October 23 , 2008



for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Jeana Eastman. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0859.

If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF POLK

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

VAN DUZER VINEYARDS
11975 SMITHFIELD RD
DALLAS, OR 97338

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

APPLICATION FILE NUMBER: R-87079

SOURCE OF WATER: RUNOFF, TRIBUTARY OF HOEKSTRE SLOUGH AND BASKETT SLOUGH

STORAGE FACILITIES: RESERVOIR A, RESERVOIR B, RESERVOIR C, AND
RESERVOIR D

PURPOSE OR USE OF THE STORED WATER: MULTIPLE PURPOSE

MAXIMUM VOLUME: 13.0 ACRE FEET (AF) EACH YEAR, BEING 4.8 AF IN
RESERVOIR A, 3.9 AF IN RESERVOIR B, 1.8 AF IN RESERVOIR C, AND 2.5 AF
IN RESERVOIR D

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

DATE OF PRIORITY: FEBRUARY 6, 2008

THE AREA SUBMERGED BY THE RESERVOIRS, WHEN FULL: 0.32 ACRE FOR
RESERVOIR A, 0.34 ACRE FOR RESERVOIR B, 0.19 ACRE FOR RESERVOIR C, AND
0.28 ACRE FOR RESERVOIR D

THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED: 18.0 FEET FOR
RESERVOIR A, 20.0 FEET FOR RESERVOIR B, 9.0 FEET FOR RESERVOIR C, AND
13.0 FEET FOR RESERVOIR D

DAM LOCATIONS:

RESERVOIR A: NW ¼ SE ¼, SECTION 3, T7S, R5W, W.M.; 120 FEET SOUTH
AND 1040 FEET WEST FROM SW CORNER, HENRY LANDERS DLC 73

RESERVOIR B: SW ¼ SW ¼, SECTION 2, T7S, R5W, W.M.; 780 FEET SOUTH
AND 610 FEET EAST FROM SW CORNER, HENRY LANDERS DLC 73

RESERVOIR C: SE ¼ SE ¼, SECTION 3, T7S, R5W, W.M.; 840 FEET SOUTH
AND 855 FEET WEST FROM SW CORNER, HENRY LANDERS DLC 73

RESERVOIR D: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 10, T7S, R5W, W.M.; 100 FEET
NORTH AND 75 FEET WEST FROM N'LY NW CORNER, IRA KIMBALL DLC 45

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

SW $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 2

NW $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 3

NE $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 10

TOWNSHIP 7 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 storage must be installed in Reservoir A and Reservoir B. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- B. The Director may require the permittee to install a staff gage that measures the entire range and stage between full reservoir level and dead pool storage in Reservoir C and Reservoir D. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. If the Director notifies the permittee to install a staff gage, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period.
- C. The permittee shall maintain all required devices in good working order.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.
- E. The permittee shall allow the watermaster access to the devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- F. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic

schedule as established by the Director. In addition, 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. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

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.

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.

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.

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.

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.

If the riparian area is disturbed in the process of developing a point of diversion, 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 Chapter 635, Division 415, Section 030 adopted November 13, 1991 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, the reservoir shall be filled, and complete application of the water to the use shall be made on or before October 1, 2013. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____, 2008

DRAFT - THIS IS NOT A PERMIT

for Phillip C. Ward, Director
Water Resources Department