



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

**CERTIFIED MAIL
Return Receipt Requested**

FERN CREEK VINEYARDS, LLC.
C/O PREMIER PACIFIC VINEYARDS
ATTN: MATT MCKAMEY
PO BOX 3989
NAPA, CA 94558

December 12, 2008

Reference: File S-87121

Dear Mr. McKamey:

**THIS IS NOT A PERMIT AND IS
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application requested the use of 3.0 cubic feet per second (CFS) from an unnamed stream, tributary to Cooper Creek, for irrigation use on 383.0 acres from March 1 through October 31, and year-round pond maintenance of Fern Creek Reservoir. The application also requested the use of 180.0 acre feet (AF) from Fern Creek Reservoir (Application R-87120) for irrigation use on the same 383.0 acres from March 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of stored water for irrigation is allowable from March 1 through October 31 under the Willamette Basin Program.
4. The use of water from an unnamed stream for irrigation is only allowed November 1 through April 30.
5. Stored water is available, subject to approval of Application R-87120.

6. Surface water is not available in the amount requested during the period July 1 through September 30.
7. The standard allowable rate for pond maintenance is 0.01 CFS/AF of stored water. Your application did not specify a rate for pond maintenance. If the application is approved, the rate allowed for pond maintenance will be limited to 1.8 CFS.
8. Your application requested a completion date of 2015. The Department requires that completion of construction and complete application of the water be made 5 years from issuance of the permit.
9. The table on the map describes 23.6 acres in the SENE, 27.5 acres in the NESE, and 30.0 acres in the SESE, Section 16, Township 8, South, Range 5 West W.M.. However the map shows hachuring in these same quarter-quarters in *Section 17* not Section 16.

In addition, the table on the map describes 29.8 acres in the NWNE, and 40.0 acres in the NWNW Section 21, Township 9 South, Range 5 West W.M.. The map shows hachuring in the NWNW and *NENW* in Township 8 *South*, not Township 9 South.

Please submit a map that addresses these discrepancies.

10. The Department has determined there are deficiencies with the application. Please refer to the **Additional Information Required** section below for specific information.

Summary of Initial Determinations

The use of 3.0 CFS from an unnamed stream, tributary to Cooper Creek, for irrigation on 383.0 acres from March 1 through October 31 is not allowed.

The use of 1.8 CFS from an unnamed stream, tributary to Cooper Creek, for pond maintenance is allowable from October 1 through June 30.

The use of 180.0 AF from Fern Creek Reservoir for irrigation on 383.0 acres is allowable from March 1 through October 31, contingent upon the approval of Application R-87120.

Because of the Department's determination, your application can be moved to the next phase of the water rights application review process. However, due to **#4, 6 and 7** above, your application will likely be limited accordingly.

Additional Information Required:

Please provide a completed Land Use Information Form or a receipt signed and dated by a Polk County official for the property described as Tax Lot 303 and 304, Section 16, Township 8 South, Range 5 West, W.M., and Tax Lot 302, Section 17, Township 8 South, Range 5 West,

W.M.. The application demonstrates land-use approval has been obtained for Tax Lot 300 and 400, but the approval status for Tax Lots 302, 303 and 304 is unclear.

Please submit this information no later than Thursday, January 15, 2009. If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a proposed final order recommending denial of the application.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$150 processing charge per application.) To accomplish this you must notify the Department in writing by **Friday, January 2, 2009**. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a proposed final order.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the meter(s) in good working order. The permittee 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, including the place and nature of use of water under the permit.

- B. The permittee shall allow the watermaster access to the meter(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- 2. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a proposed final order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

The water source identified in your application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at http://www.oregon.gov/ODA/NRD/water_agplans.shtml to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0815 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Joel Plahn, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Joel Plahn
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form
S-87121
WAB 2-30200301
POU 2-30200301
GW

APPLICATION FACT SHEET

Application File Number: S-87121

Applicant: FERN CREEK VINEYARDS, LLC.

County: POLK

Watermaster: 16

Priority Date: March 14, 2008

Source: UNNAMED STREAM AND FERN CREEK RESERVOIR UNDER APPLICATION R-87120, TRIBUTARIES TO COOPER CREEK

Use: IRRIGATION USE ON 383.0 ACRES AND POND MAINTENANCE

Quantity: 3.0 CUBIC FEET PER SECOND AND 180.0 ACRE FEET

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 9A LITTLE LUCKIAMUTE R MISC

Point of Diversion Location(s):

UNNAMED STREAM - NENW, SECTION 21, T8S, R5W, W.M.; 1250 FEET SOUTH AND 1650 FEET WEST FROM NW CORNER, SECTION 21

FERN CREEK RESERVOIR - SENW, SECTION 16, T8S, R5W, W.M.; 2750 FEET NORTH AND 1760 FEET EAST FROM SW CORNER, SECTION 16

Place of Use:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 38.5 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES AND POND MAINTENANCE
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES AND POND MAINTENANCE
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.6 ACRES AND POND MAINTENANCE
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 38.0 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SECTION 16

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 23.6 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 27.5 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 30.0 ACRES
SECTION 17

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 29.8 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
SECTION 21
TOWNSHIP 8 SOUTH, RANGE 5 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, January 2, 2009

PUBLIC NOTICE DATE: Tuesday, December 16, 2008

30 DAY COMMENT DEADLINE DATE: Thursday, January 15, 2009

Mailing List for IR Copies

Application #S-87121

IR Date : December 12, 2008

Original mailed to applicant:

FERN CREEK VINEYARDS, LLC., PO BOX 3989, NAPA, CA 94558

Copies sent to:

1. WRD - File # S-87121
2. WRD - Water Availability: Ken Stahr

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>

IR, Map, and Fact Sheet Copies sent VIA EMAIL to:

3. WRD - Watermaster # 16
4. ODFW: Karen Hans
5. DEQ: Nancy Gramlich

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

7. Urstadt, Eric, CWRE #385
Stuntzner Engineering & Forestry, LLC, 2137 19th Avenue, Forest Grove OR 97116
8. William Kness,
Stuntzner Engineering & Forestry, LLC, 2137 19th Avenue, Forest Grove OR 97116
9. Luckiamute Watershed Council, WOU, 345 North Monmouth Ave, Monmouth OR 97361
10. Gerald McDonald 3830 Mistletoe Rd Dallas, OR 97338

Caseworker: Joel Plahn

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