

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-17085

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 July 18, 2008, Scenic Fruit Co., submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 3, 2009. The protest period closed December 18, 2009, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest.

Order

Application G-17085 is therefore approved as proposed by the Proposed Final Order. **Upon payment of outstanding fees in the amount of \$400**, 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 January 21, 2010



for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Joel Plahn. 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 503-986-0815.

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.
STATE OF OREGON

DRAFT

COUNTY OF CLACKAMAS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SCENIC FRUIT CO.
7510 SE ALTMAN RD
GRESHAM, OR 97080

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

APPLICATION FILE NUMBER: G-17085

SOURCE OF WATER: WELL 1 (CLAC 52000), WELL 2, WELL 3, WELL 4, WELL 5,
AND WELL 6 IN TICKLE CREEK BASIN

PURPOSE OR USE: AGRICULTURE USES, NURSERY USE ON 120.0 ACRES, PRIMARY
IRRIGATION TO MAKE UP A DEFICIENCY IN RATE ON 110.0 ACRES AND
SUPPLEMENTAL IRRIGATION OF 10.0 ACRES

MAXIMUM RATE: 1.5 CUBIC FEET PER SECOND (CFS), BEING NO MORE THAN 0.8
CFS FOR PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE, AND 0.13 CFS
FOR SUPPLEMENTAL IRRIGATION; FURTHER LIMITED TO 0.58 CFS FROM EACH WELL

PERIOD OF USE:

AGRICULTURE AND NURSERY USE - JANUARY 1 THROUGH DECEMBER 31

PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE AND SUPPLEMENTAL
IRRIGATION - MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: JULY 17, 2008

WELL LOCATIONS:

WELL 1 (CLAC 52000) - NESE, SECTION 30, T2S, R5E, W.M.; 520 FEET
SOUTH AND 1850 FEET WEST FROM NE CORNER, NWSW, SECTION 29

WELL 2 - NESE, SECTION 30, T2S, R5E, W.M.; 1605 FEET NORTH AND 520
FEET WEST FROM SE CORNER, SECTION 30

WELL 3 - NESE, SECTION 30, T2S, R5E, W.M.; 1935 FEET NORTH AND 1255
FEET WEST FROM SE CORNER, SECTION 30

WELL 4 - SESE, SECTION 30, T2S, R5E, W.M.; 1135 FEET NORTH AND 1260
FEET WEST FROM SE CORNER, SECTION 30

WELL 5 - SESE, SECTION 30, T2S, R5E, W.M.; 335 FEET NORTH AND 1250
FEET WEST FROM SE CORNER, SECTION 30

WELL 6 - NENE, SECTION 31, T2S, R5E, W.M.; 590 FEET SOUTH AND 1255 FEET WEST FROM NE CORNER, SECTION 31

The amount of water used for nursery use is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to one fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

AGRICULTURE		NURSERY	IRRIGATION	SUPPLEMENTAL IRRIGATION
NW ¼ SW ¼	X	18.0 ACRES	18.0 ACRES	
SW ¼ SW ¼	X	25.0 ACRES	25.0 ACRES	
		SECTION 29		
NE ¼ SE ¼	X	18.0 ACRES	8.0 ACRES	10.0 ACRES
SE ¼ SE ¼	X	40.0 ACRES	40.0 ACRES	
		SECTION 30		
NE ¼ NE ¼	X	19.0 ACRES	19.0 ACRES	
		SECTION 31		
TOWNSHIP 2 SOUTH, RANGE 5 EAST, W.M.				

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. 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.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or

measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Reference Water Level Determination

Following the first year of water use, the user shall report one static water level measurement in the month specified above which will establish the reference level against which future annual measurements will be compared. The Director may require the user to obtain and report additional water levels after the reference level has been determined. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well 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(s) 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 with senior priority.

The period of non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee'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 senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

The well(s) shall produce ground water from no shallower than 500 feet below land surface.

The wells shall be equipped with and measured through measuring tubes pursuant to OAR 690-210-0280.

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.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit

conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

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 downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

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.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of

permitted water has not been made before this date, 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 making beneficial use 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

DRAFT - THIS IS NOT A PERMIT

for Phillip C. Ward, Director
Water Resources Department