

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-86459

**Final Order**

*Hearing and Appeal Rights*

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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 NOVEMBER 8, 2005, G E T REALTY TRUST submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on May 8, 2007. The protest period closed June 22, 2007, and no protest was filed.

On June 19, 2007, Eric Urstadt, Certified Water Rights Examiner, submitted comments on behalf of the applicant. Because all stored water will be diverted from Reservoir E for irrigation, Mr. Urstadt requested that the totalizing flow meter only be required at the Reservoir E point of diversion. The outlets from four of the five reservoirs (Reservoir J, Reservoir K, Reservoir L, and Reservoir M) all flow by gravity to Reservoir E. Reservoir I is used as a surge pond with water diverted from Reservoir E and later distributed by gravity flow to vineyards located near Reservoir I. In addition, Mr. Urstadt submitted documentation from Danette Ehlers, Oregon Department of Fish and Wildlife (ODFW) fish biologist, stating that fish are not currently nor were historically present and that no fish screening or fish passage is required. Mr. Urstadt requested that the screening and bypass condition be removed from the permit.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to describe the measurement, recording, and reporting condition and screening/fish passage condition.

The Proposed Final Order described the measurement, recording and reporting conditions as:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each diversion point. The totalizing flow meter(s) must be installed and maintained as identified in OAR 690-507-645. The permittee shall maintain the meter(s) in good working order.
- 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.
- C. 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 measurement, recording and reporting conditions, as modified in the attached draft permit are:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at the point of diversion at Reservoir "E". The permittee shall maintain the meter in good working order.
- B. The permittee shall allow the watermaster access to the meter; provided however, where the meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. 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 Final Order described the screening/fish passage condition as:

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.

Because of ODFW documentation submitted by Mr. Urstadt, the attached draft permit will not contain the condition above.

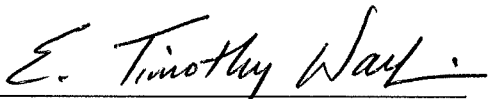
#### Order

Application S-86459 is therefore approved with these modifications to the Proposed Final Order. 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 September 10, 2007



for Phillip C. Ward, Director  
Water Resources Department

*This document was prepared by Kerry Kavanagh. 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 503-986-0816. If you have questions about how to file a protest or a request for standing, please refer to section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact the Protest Coordinator 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 APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

G E T REALTY TRUST  
4552 DELMAR DR  
LAKELAND, FL, 33801

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

APPLICATION FILE NUMBER: S-86459

SOURCE OF WATER: RESERVOIR E, PERMIT R-11498; RESERVOIR I, PERMIT R-14300; RESERVOIR J, PERMIT R-14301; RESERVOIR K, PERMIT R-14302, RESERVOIR L, PERMIT R-14303; AND RESERVOIR M, PERMIT R-14304; ALL TRIBUTARIES OF ASH SWALE

PURPOSE OR USE: IRRIGATION USE ON 195.8 ACRES

MAXIMUM VOLUME: 91.0 ACRE FEET (AF) EACH YEAR, BEING 52.5 AF FROM RESERVOIR E; 4.5 AF FROM RESERVOIR I; 9.0 AF FROM RESERVOIR J; 10.0 AF FROM RESERVOIR K; 8.0 AF FROM RESERVOIR L; AND 7.0 AF FROM RESERVOIR M

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: NOVEMBER 8, 2005

DAM LOCATIONS:

RESERVOIR E - SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 5, T7S, R4W, W.M.; 1990 FEET SOUTH & 40 FEET EAST FROM NW CORNER, SECTION 5

RESERVOIR I - NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 6, T7S, R4W, W.M.; 1115 FEET SOUTH & 3673 FEET WEST FROM NE CORNER, SECTION 6

RESERVOIR J - NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 6, T7S, R4W, W.M.; 717 FEET SOUTH & 2685 FEET WEST FROM NE CORNER, SECTION 6

RESERVOIR K - NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 6, T7S, R4W, W.M.; 270 FEET SOUTH & 1354 FEET WEST FROM NE CORNER, SECTION 6

RESERVOIR L - NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 6, T7S, R4W, W.M.; 640 FEET SOUTH & 1103 FEET WEST FROM NE CORNER, SECTION 6

RESERVOIR M - NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 6, T7S, R4W, W.M.; 945 FEET SOUTH & 808 FEET WEST FROM NE CORNER, SECTION 6

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PERMIT DRAFT

## POINT OF DIVERSION LOCATION:

RESERVOIR E - SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 5, T7S, R4W, W.M.; 1990 FEET SOUTH & 40 FEET EAST FROM NW CORNER, SECTION 5

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

## THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  12.9 ACRES

SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  5.9 ACRES

SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  4.2 ACRES

SECTION 31

TOWNSHIP 6 SOUTH, RANGE 4 WEST, W.M.

NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  3.9 ACRES

SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  5.0 ACRES

SECTION 5

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  29.7 ACRES

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  16.2 ACRES

SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  12.9 ACRES

SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  5.5 ACRES

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  40.0 ACRES

NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  5.1 ACRES

SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  4.8 ACRES

SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  37.8 ACRES

NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  3.6 ACRES

NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  8.3 ACRES

SECTION 6

TOWNSHIP 7 SOUTH, RANGE 4 WEST, W.M.

## Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at the point of diversion at Reservoir "E". The permittee shall maintain the meter in good working order.
- B. The permittee shall allow the watermaster access to the meter; provided however, where the meter is located within a private structure, the watermaster shall request access upon reasonable notice.

- C. 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.

#### STANDARD CONDITIONS

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.

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.

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.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2011. 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 \_\_\_\_\_, 2007

**DRAFT - THIS IS NOT A PERMIT**

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Phillip C. Ward, Director  
Water Resources Department