

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number G-16346

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.

Findings of Fact

On November 23, 2004, Black Family Vineyard, LLC, submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on March 6, 2007.

A superseding Proposed Final Order was issued June 10, 2008.

Arlon Bakanoff submitted a timely protest on July 14, 2008.

To overcome the presumption that a proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence, that an aspect of the public welfare, safety and health as described in ORS 537.525 would be impaired or detrimentally affected.

Mr. Bakanoff's protest provided no information demonstrating that the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525. Therefore, Mr. Bakanoff's protest failed to demonstrate how the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525, and does not overcome the presumption established in the Superseding Proposed Final Order for Application G-16346 (ORS 537.621(2)(a)(B)).

Additional water level data has been collected by Department ground water staff from both the upper aquifer, which Mr. Bakanoff's well relies on, and the lower aquifer, which the Black well penetrates. The water level data supports the Department's conclusions that Mr. Bakanoff's well does not produce from the same aquifer as the Black well. The water level data is contained in the application file.

Jonathan Stout submitted a timely protest on July 22, 2008.

To overcome the presumption that a proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence, that an aspect of the public welfare, safety and health as described in ORS 537.525 would be impaired or detrimentally affected.

Mr. Stout's protest provided no information demonstrating that the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525. ORS 537.621(2)(a)(A). Therefore, Mr. Stout's protest failed to demonstrate how the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525, and does not overcome the presumption established in the Superseding Proposed Final Order for Application G-16346. ORS 537.621(2)(a)(B).

Additional water level data has been collected by Department ground water staff from both the upper aquifer, which Mr. Stout's well relies on, and the lower aquifer, which the Black well penetrates. The water level data supports the Department's conclusions that Mr. Stout's well does not produce from the same aquifer as the Black well. The water level data is contained in the application file.

The City of Dundee submitted a timely protest on July 2, 2008, that contained all information required by statute.

The City's protest states that the Superseding Proposed Final Order fails to adequately analyze or address the sustainability of the proposed use and authorizes use of water that fails to protect the City's existing senior rights. The protest also asserts the following: a) the proposed use will result in ground water level declines that injure the City's water supply; b) the Superseding Proposed Final Order is deficient because it fails to adequately analyze and assess whether the proposed use will avoid injury to the City's existing water rights, and c) the determination that the proposed use will not injure other water rights and that water is available is not supported by adequate findings of fact and conclusions of law.

To overcome the presumption that a proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence, that an aspect of the public welfare, safety and health as described in ORS 537.525 would be impaired or detrimentally affected.

The City previously submitted a technical evaluation in rebuttal to the Department's finding that the use of ground water, as conditioned, will avoid injury to existing rights and the resource. The Department's technical staff reviewed the information and determined that the City's submittal did not overcome the Department's determination that the use of ground water, as conditioned, will avoid injury to existing rights and the resource because the ground water source of the City's well was separate and distinct from the applicant's proposed source; the two aquifers are not hydraulically connected. Therefore, the City failed to demonstrate by a preponderance of evidence that the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525, specifically ORS 537.525(2). ORS 537.621(2)(a)(A)

Additional water level data has been collected by Department ground water staff from both the upper aquifer, which the City's well relies on, and the lower aquifer, which the Black well penetrates. The water level data supports the Department's conclusions that the Black well does not produce from the same aquifer as the City's well. The water level data is contained in the application file.

The City's protest does not contain any information showing how the Department's analysis and assessment regarding injury to the City's rights is deficient under the existing statute and rules. Therefore, the City's protest failed to demonstrate by a preponderance of evidence how the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525. ORS 537.621(2)(a)(B).

The City's protest does not contain any information showing how the Department's determination that the proposed use will not injure other water rights and that water is available is not supported by adequate findings of fact and conclusions of law. Therefore, the City's protest failed to demonstrate by a preponderance of evidence how the proposed use will impair or detrimentally affect an aspect of the public welfare, safety and health as described in ORS 537.525. ORS 537.621(2)(a)(B)

For the reasons stated above, the City's protest does not overcome the presumption that the proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b).

Conclusions of Law

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

Order

Application G-16346 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

MAY 19, 2011

E. Timothy Ward.

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 YAMHILL

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BLACK FAMILY VINEYARD LLC
550 WEST C ST SUITE 1300
SAN DIEGO, CA 92101

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

APPLICATION FILE NUMBER: G-16346

SOURCE OF WATER: WELL 1 IN CHEHALEM CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 20.0 ACRES AND DOMESTIC USE FOR 36 HOUSEHOLDS

MAXIMUM RATE: 0.28 CUBIC FOOT PER SECOND (CFS), BEING 0.25 CFS FOR IRRIGATION AND 0.03 CFS FOR DOMESTIC USE

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31 FOR IRRIGATION
YEAR ROUND FOR DOMESTIC

DATE OF PRIORITY: NOVEMBER 23, 2004

WELL LOCATION: NE ¼ NW ¼, SECTION 25, T3S, R3W, W.M.; 570 FEET SOUTH & 1480 EAST FROM NW CORNER, SECTION 25

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:

NE ¼ SE ¼ DOMESTIC
SE ¼ SE ¼ DOMESTIC AND 4.5 ACRES
SECTION 23

NW ¼ SW ¼ DOMESTIC
SW ¼ SW ¼ DOMESTIC AND 1.0 ACRE
SECTION 24

NE ¼ NW ¼ DOMESTIC AND 3.5 ACRES
NW ¼ NW ¼ DOMESTIC AND 6.0 ACRES
SECTION 25

NE ¼ NE ¼ DOMESTIC AND 5.0 ACRES
SECTION 26
TOWNSHIP 3 SOUTH, RANGE 3 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 each point of appropriation. The permittee shall maintain the meter in good working order.
 - B. The permittee shall keep a complete record of the amount of water used each month, and shall submit an annual report which includes the recorded water use measurements to the Department by December 1 of each year. 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 the 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.
- (1) 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 three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well(s).
- (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 subsection (a) of this section, 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 permittee/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 shall be available from the Department.
- (e) The permittee/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 in section (1) are evidenced by the well measurement required in section (2).
- (f) Measurements from a suitable alternative well can be substituted for measurements in the production well if an alternative measurement plan is submitted to, and approved by, the Department.

The well shall be continuously cased and continuously sealed to a minimum depth of 290 feet below mean sea level. If it can be shown that an alternative casing and seal depth will prevent commingling of shallow and deep aquifers and prevent interference with the Red Hills Estate and City of Dundee wells listed below, the permittee may contact the Department Hydrogeologist for this permit or the Ground Water/Hydrology Section Manager to request approval for an alternative construction design. The request shall be in writing and shall include a rough well log and a proposed construction design.

Before water is used under this permit, the permittee shall demonstrate, to the satisfaction of the Department, that the well is not likely to interfere with any of the following nearby wells, as currently constructed, which are listed on senior water rights:

- (a) City of Dundee well #3 (YAMH 4549/4538, Certificate 29157)
- (b) City of Dundee well #9 (YAMH 1659/52883, Permit G-12685)
- (c) Red Hills Estates well #1 (YAMH 4548/53743, Permit G-13671)
- (d) Red Hills Estates well #2 (YAMH 121/50706, Permit G-13671)

A down-hole video log shall be made prior to installation of permanent casing and a copy of the log shall be submitted to the Department.

The Department requests that drill cuttings be collected from the well at 10-foot intervals and at changes in formation, that the cuttings be stored in bags with the sample interval noted on each bag, and that the cuttings be submitted to the Department for geologic analysis.

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 not be valid, 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 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.

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.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

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 , 2011

DRAFT - THIS IS NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department