

Oregon Water Resources Department
Water Rights Services Division

Water Rights Application
Number S-86175

Superseding 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 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.

Findings of Fact

1. On February 14, 2005, Premier Pacific Vineyard and Robert deOcampo submitted an application to the Department for a water use permit proposing the appropriation of stored water from five reservoirs for supplemental irrigation.
2. The Department issued a Proposed Final Order on April 16, 2005. The protest period closed June 10, 2005, and no protest was filed.
3. On June 30, 2005, a Final Order was issued approving Application S-86175 pending payment of permit recording fees and the submittal and approval of dam plans and specifications for associated Application R-86140, which proposed the enlargement of Zena Heights Reservoir 1, constructed under Permit R-5384.
4. On April 11, 2008, Joseph Richards, authorized agent, requested withdrawal of Application R-86140 stating that Zena Heights Reservoir 1 was not enlarged as proposed.

5. On March 2, 2011, Eric Urstadt, authorized agent, requested withdrawal of Application R-86140 stating that Zena Heights Reservoir 1 was not enlarged as proposed. Mr. Urstadt also requested that Application S-86145 be modified to reflect the request for withdrawal of Application R-86140.
6. On March 2, 2011, Eric Urstadt requested cancellation of Permit R-14144 (Application R-86141 - Zena Heights Reservoir 2) and Permit R-14145 (Application R-86142 - Zena Heights Reservoir 4).
7. On April 29, 2011, the Department issued an Order withdrawing Application R-86140.
8. On May 26, 2011, the Department issued Orders cancelling Permits R-14144 and R-14145.
9. On June 13, 2011, Eric Urstadt requested reinstatement of Application R-86140, stating that although Zena Heights Reservoir 1 was not enlarged by 14.5 AF as originally proposed, the actual volume of water stored is more than the amount authorized under the original permit, R-5384.
10. On June 13, 2011, Eric Urstadt requested reinstatement of Permit R-14144 (Application R-86141 - Zena Heights Reservoir 2) and Permit R-14145 (Application R-86142 - Zena Heights Reservoir 4).
11. On June 23, 2011, the Department reinstated Application R-86140.
12. On June 23, 2011, the Department reinstated Permit R-14144 and Permit R-14145.
13. On November 15, 2011, Eric Urstadt provided cross-section and capacity information describing Zena Heights Reservoir 1 as two adjacent reservoirs, being Reservoir 1A with a capacity of 2.21 AF and Reservoir 1B with a capacity of 3.90 AF, for a total of 6.61 AF. In addition, the dam structures are less than 10.0 feet in height.
14. On November 18, 2011, Keith Mills, the Department's Dam Safety Engineer, evaluated Mr. Urstadt's report and determined that the dam is under statutory limits and does not require dam plans and specifications.
15. The Department's continuing evaluation reveals that the Proposed Final Order requires modification to include current standard conditions.
16. The Proposed Final Order included the following conditions:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the water user shall install a meter or other suitable measuring device as approved by the Director. The water user shall maintain the meter or measuring device in good working order.
- B. The water user 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.
- C. The Director may require the water user to keep and maintain a record of the amount (volume) of water used and may require the water user to report water use on a periodic

schedule as established by the Director. In addition, the Director may require the water user 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 water user to submit alternative reporting procedures for review and approval.

17. The 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 or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.
- B. 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.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted, 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.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

18. This Final Order supersedes the June 30, 2005 Final Order, which is of no further force or effect.

Conclusions of Law

The proposed use would not impair or be detrimental to the public interest (ORS 537.153).

Now, therefore, it is ORDERED:

Application S-86175 therefore is approved with the above modifications to the Proposed Final Order as limited by the conditions set forth therein. Upon payment of the permit recording fee of \$285, 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 February 14, 2012



E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director

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 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.

STATE OF OREGON

COUNTY OF POLK

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

PREMIER PACIFIC VINEYARDS
RE: ZENA HEIGHTS VINEYARD, LLC
PO BOX 3989
NAPA, CA 94558

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

APPLICATION FILE NUMBER: S-86175

SOURCE OF WATER: ZENA HEIGHTS RESERVOIR #1, CONSTRUCTED UNDER PERMIT R-5384, TO BE ENLARGED UNDER APPLICATION R-86140, ZENA HEIGHTS RESERVOIR #2, CONSTRUCTED UNDER PERMIT R-14144, ZENA HEIGHTS RESERVOIR #4, CONSTRUCTED UNDER PERMIT R-14145, ZENA HEIGHTS RESERVOIR #5, CONSTRUCTED UNDER PERMIT R-14146, AND ZENA HEIGHTS RESERVOIR #6, CONSTRUCTED UNDER PERMIT R-14147, TRIBUTARIES OF SPRING VALLEY CREEK

PURPOSE OR USE: SUPPLEMENTAL IRRIGATION OF 55.0 ACRES

MAXIMUM VOLUME: 39.0 ACRE FEET EACH YEAR (AF); BEING 17.0 AF FROM ZENA HEIGHTS RESERVOIR #1; 9.0 AF FROM ZENA HEIGHTS RESERVOIR #2; 10.0 AF FROM ZENA HEIGHTS RESERVOIR #4; 2.0 AF FROM ZENA HEIGHTS RESERVOIR #5; AND 1.0 AF FROM ZENA HEIGHTS RESERVOIR #6

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: FEBRUARY 14, 2005

POINTS OF DIVERSION LOCATIONS:

ZENA HEIGHTS RESERVOIR #1: NW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 23, T6S, R4W, W.M.;
1390 FEET NORTH & 350 FEET EAST FROM SW CORNER, SECTION 23

ZENA HEIGHTS RESERVOIR #2: SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 23, T6S, R4W, W.M.;
510 FEET NORTH & 790 FEET EAST FROM SW CORNER, SECTION 23

ZENA HEIGHTS RESERVOIR #4: SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 23, T6S, R4W, W.M.;
1260 FEET NORTH & 560 FEET EAST FROM SW CORNER, SECTION 23

ZENA HEIGHTS RESERVOIR #5: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 23, T6S, R4W, W.M.;
920 FEET NORTH & 2530 FEET EAST FROM SW CORNER, SECTION 23

ZENA HEIGHTS RESERVOIR #6: NE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 23, T6S, R4W, W.M.;
1920 FEET NORTH & 2260 FEET EAST FROM SW CORNER, SECTION 23

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:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 34.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.0 ACRES
SECTION 23
TOWNSHIP 6 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 or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.
- B. 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.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted, 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.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and 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 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

E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director
Water Resources Department