

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-15037

**Proposed Final Order**

*Summary of Recommendation:* The Department recommends that the attached draft permit be issued with conditions.

*Application History*

On September 24, 1999, MAX ZELLWEGER, for WINEMAKERS LLC, submitted an application to the Department for the following water use permit:

- Amount of Water: 168.0 GALLONS PER MINUTE (0.374 CFS)
- Use of Water: IRRIGATION OF 30.0 ACRES
- Source of Water: A WELL IN BATTLE CREEK BASIN
- Area of Proposed Use: MARION County within SECTION 25, TOWNSHIP 8 SOUTH, RANGE 3 WEST, W.M.

On 11/26/99, the Department mailed the applicant notice of its Initial Review, determining that "The use of 0.374 CUBIC FOOT PER SECOND (168.0 GALLONS PER MINUTE) from A WELL, IN THE BASALT FORMATIONS of the BATTLE CREEK BASIN, for DRIP OR EQUALLY EFFICIENT IRRIGATION OF 30.0 ACRES may be allowed from March 1 through October 31 of each year. The amount of water used for irrigation under this application shall be limited to one acre-foot per acre per year, and if a permit is issued, it will be limited to a five-year period." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 12/15/99, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

Within 30 days of the Department's public notice, written comments were received from Lisa Milliman, of Marion county planning, requesting that

any permit issued under application G-15037 include conservation measures and be for a limited duration.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- designations of any critical groundwater areas
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- any comments received

#### *Findings of Fact*

The Willamette Basin Program allows the use of groundwater for irrigation from the South Salem Hills Groundwater Limited Area, if the use is limited to drip or equally efficient irrigation, 1.0 acre-foot of water per acre each year, and a 5 year permit with the opportunity to extend for additional 5 year periods if the resource can support the extended use.

A well in Battle Creek basin is not within or above a State Scenic Waterway.

An assessment of water availability has been completed by the Department's groundwater section. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation March 1 through October 31, the irrigation season.

The proposed well is not within a designated critical ground water area.

The Department determined, based upon OAR 690-09, that the proposed groundwater use will not have the potential for substantial interference with surface water, namely Battle Creek. Upon further review prompted by a comment from Marion County, the Department also determined that, if properly conditioned, as described below, the proposed use will avoid injury to existing rights and the groundwater resource.

The permit will be limited by the requirements of the basin program described above.

The use from the well will be limited to a maximum cumulative total of 60 gallons per minute (0.134 cfs) for applications G-12479, G-15037, and G-15071. *(THIS RESTRICTS THE JUNIOR WELLS IF THE SENIOR WELL IS AT MAX. CAPACITY)*

The Department finds that the amount of water allowed by the groundwater review, 0.134 cfs, is an acceptable rate.

The Groundwater Section finds, per OAR 390.835(9), there is NOT a preponderance of evidence that the proposed use of groundwater 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.

#### *Conclusions of Law*

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Willamette Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or

- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
- (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED May 16, 2000

  
Dwight French  
Water Rights Section Manager

*If you have any questions,  
please check the information  
box on the last page for the  
appropriate names and  
phone numbers.*

*Protest Rights and Standing*

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;

- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.
- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.

#### Requests for Standing

Under the provisions of 537.621(6), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$150.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **June 30, 2000**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

*This document was prepared by Russell W. Klassen. 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 toll free within Oregon at 1-800-624-3199 extension 266. Outside of Oregon you can dial 1-503-378-8455.*

*If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her extension number is 239.*

*If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 201.*

*Address all other correspondence to:*

Water Rights Section, Oregon Water Resources Department, 158 12th ST NE SALEM, OR 97310  
Fax: (503)378-2496 .

RWK- WEEK 251

DRAFT

This is not a permit!!!

DRAFT

STATE OF OREGON

COUNTY OF MARION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WINEMAKERS LLC  
MAX ZELLWEGER  
PO BOX 1019  
SUNNYSIDE, WASHINGTON 98944-1019

(509)836-2524

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

APPLICATION FILE NUMBER: G-15037

SOURCE OF WATER: A WELL IN BATTLE CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 30.0 ACRES

MAXIMUM RATE: NOT TO EXCEED A COMBINED MAXIMUM CUMULATIVE TOTAL OF 0.134 CFS FOR APPLICATIONS G-12479, G-15037, AND G-15071

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: SEPTEMBER 24, 1999

POINT OF DIVERSION LOCATION: SE 1/4 NW 1/4, SECTION 25, T8S, R3W, W.M.; 620 FEET SOUTH & 1230 FEET WEST FROM N 1/16<sup>th</sup> 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 drip or equally efficient irrigation at a diversion rate of ONE-EIGHTIETH of one cubic foot per second and 1.0 acre-foot for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW 1/4 NW 1/4 5.0 ACRES  
SE 1/4 NW 1/4 8.0 ACRES  
NE 1/4 SW 1/4 15.0 ACRES  
NW 1/4 SW 1/4 2.0 ACRES

SECTION 25

TOWNSHIP 8 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 meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, 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 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.

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.

This permit expires in five years from date of issuance. This permit may be extended for additional five year periods if the Director finds the groundwater resource can probably support the extended use.

Within two years of permit issuance, the permittee shall prepare a plan for the Director which shall indicate the steps for obtaining a long term water supply.

- (1) Use of water from the 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 water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well.
  - (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and submitted 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 submit a record of the 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 (3).

#### STANDARD CONDITIONS

The wells 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.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

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

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin within one year from issuance of the final order approving the use. Complete application of the water to the use shall be made on or before October 1, 2004. 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 \_\_\_\_\_, 2000

**DRAFT - THIS IS NOT A PERMIT**

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Martha O. Pagel, Director  
Water Resources Department

Application G-15037  
Basin 2  
RWK- WEEK 251

Water Resources Department  
Volume 10A BATTLE CREEK  
MGMT.CODE 7BG 7BR 7IG 7IR

PERMIT DRAFT  
District 16