

Oregon Water Resources Department



Final Order Limited License Application LL-1708

Appeal Rights

This is a final order in other than a 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.

Requested Water Use

On July 3, 2017, the Water Resources Department received completed application **LL-1708** from Kenneth Baker for the use of 30 gallons per minute up to 13,000 gallons per year from a well, located in the SW ¼, SW ¼, Section 13, Township 4 South, Range 1 East, W.M., for irrigation to establish hazelnuts, for the period July 1, 2017 through July 1, 2022.

Authorities

The Department may approve a limited license pursuant to its authority under ORS 537.143, 537.144 and OAR 690-340-0030.

ORS 537.143(2) authorizes the Director to revoke the right to use water under a limited license if it causes injury to any water right or a minimum perennial streamflow.

A license will not be issued for more than five consecutive years for the same use, as directed by ORS 537.143(8).

Findings of Fact

1. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. The Department provided public notice of the application, on July 11, 2017, as required by OAR 690-340-0030(2).
3. This license request is limited to an area within a single drainage basin as required by OAR 690-340-0030(3).
4. The Department has determined that there is water available for the requested use.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation.
6. The Department can allow issue a license for only five years (ORS 537.143).

7. As part of its review to determine ground water availability, the Department's Ground Water/Hydrology Section has stipulated conditions pertaining to measurement and reporting, decline in static water level, and interference.
8. The Department has not received comments related to the possible issuance of the license.
9. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.
10. Clackamas County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan.

Conclusions of Law

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

Order

Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, application **LL-1708** is approved as conditioned below.

1. The period, rate and volume of use for **LL-1708** shall be from July 31, 2017, through July 1, 2022, for the use of 30 gallons per minute up to 13,000 gallons per year, for the purpose of irrigation to establish hazelnuts.
2. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.
3. Before water use may begin under this license, the licensee shall install a totalizing flow meter at each point of appropriation. The totalizing flow meter must be installed and maintained in good working order. In addition the licensee shall maintain a record of all water use, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. During the period of the license, the record of use shall be submitted to the Department annually, and shall be submitted to the Watermaster upon request.
4. Water may be used under this license only to establish a crop for which no future irrigation will be required once the crop is established (ORS 537.144(6)(a)).

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are

required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

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. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The Department may require the discontinuance of groundwater use, 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 restricted use shall continue until the water level rises above the decline level which triggered the action or 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 causing substantial interference with senior water rights. The water user shall not 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.

- 5. If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this license, 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.

6. The Director may revoke the right to use water for any reason described in ORS 537.143(2), and OAR 690-340-0030(6). Such revocation may be prompted by field regulatory activities or by any other information.
7. Use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate, and shall be subordinate to all other authorized uses that rely upon the same source.
8. A copy of this license shall be kept at the place of use, and be available for inspection by the Watermaster or other state authority.

NOTE: This water-use authorization is temporary. Applicants are advised that issuance of this final order does not guarantee that any permit for the authorized use will be issued in the future; any investments should be made with that in mind.

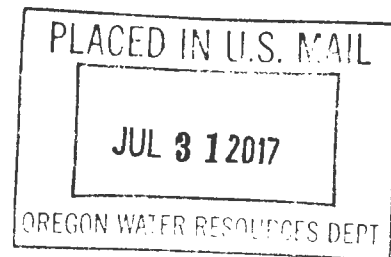
Issued July 27, 2017



E. Timothy Wallin, Water Rights Program Manager
for Director, Oregon Water Resources Department

Enclosures - limited license, fish screen criteria

cc: Amy J. Kim, District 20 Watermaster
Josie Thompson, ODFW
Nancy Gramlich, DEQ
Hydrographics
File



If you need further assistance, please contact the Water Rights Section at the address, phone number, or fax number below. When contacting the Department, be sure to reference your limited license number for fastest service.

Remember, this limited license does not provide a secure source of water. Water use can be revoked at any time. Such revocation may be prompted by field regulatory activities or many other reasons.

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