

# Oregon Water Resources Department

## Final Order Limited License Application LL-1777



### *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 (as amended on August 9, 2019)*

<b>Applicant</b>	John Burnham
<b>Date Submitted</b>	March 25, 2019
<b>Source &amp; Amount</b>	One Well: 0.045 cubic foot per second for a total annual volume of 1.44 acre-feet
<b>Use</b>	Irrigation to establish grapes for wine on 12 acres
<b>Period of Use</b>	Issuance through October 31, 2024
<b>County</b>	Polk County
<b>POD Location</b>	Well 2 (POLK 52073) - NE ¼, SE ¼, Section 13, Township 6 South, Range 4 West, W.M.

### *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 limited 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 April 2, 2019, as required by OAR 690-340-0030(2).
3. The Department has not received comments related to the possible issuance of the limited license.

4. On August, 9, 2019, the applicant's agent reduced the limited license request to use 0.045 cubic foot per second for a total annual volume of 1.44 acre-feet, from Well 2 (POLK 52073) only, for irrigation to establish grapes for wine on 12 acres. Well 1 (POLK 52191) was also removed from the application.
5. On September 11, 2019, the Department's Groundwater Section conducted a second review, based upon the amended application. The Department has determined that groundwater cannot be determined to be over appropriated, and will, if properly conditioned, avoid injury to existing groundwater rights or to the groundwater resource. The Department's Groundwater Section has stipulated conditions pertaining to water-use and static water level measurements, limiting groundwater production only from a single aquifer in the Columbia River Basalt Group, and shut off if injury to certificated rights occurs. A copy of this review is in the file.
6. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).
7. The Department has determined that water is available for the requested use.
8. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.200.
9. The Department may not issue a limited license for the same use for more than five consecutive years per ORS 537.143(8).
10. In this location, wine grapes do not necessarily require continuing irrigation after establishment. This limited license is issued to establish wine grapes. The director may issue a limited license for irrigation if the sole purpose of the use is to provide water necessary to establish a crop for which no further irrigation will be required after the crop is established. ORS 537.143 (6)(a).
11. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.
12. Polk County has indicate that the proposed use is compatible with the applicable acknowledged comprehensive land use plan. A copy of the land use compatibility statement tis in the file.

### ***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-1777 is approved as conditioned below.

1. The period and rate of use for LL-1777 shall be from the date of this Final Order through October 31, 2024, for the use of 0.045 cubic foot per second for a total annual volume of 1.44

acre-feet from **Well 2 (POLK 52073) only**, for the purpose of irrigation to establish grapes for wine on 12 acres.

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 limited 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. In the case of this application, this order serves as the notice described above.
3. Before water use may begin under this limited 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 limited license, the record of use shall be submitted to the Department annually, and shall be submitted to the Watermaster upon request.

4. Static Water Level Condition:

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 15 or more feet; or
- C. A hydraulic interference decline of 15 or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.

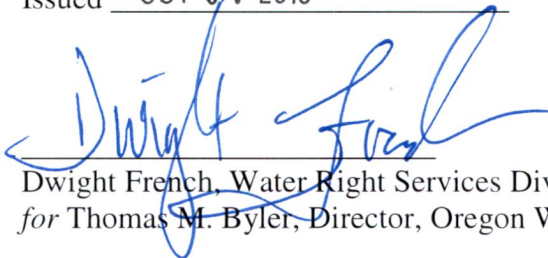
The appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well(s).

- 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.
- 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 is 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).
5. Groundwater production shall be allowed only from a single aquifer in the Columbia River Basalt Group groundwater reservoir.
  6. Well 2 (POLK 52073) shall be shut off if either Certificate 43863 or Certificate 93133 does not receive the water to which it is legally entitled. The well shall remain shut off until the following spring, unless it is specifically re-authorized by the Director.
  7. Irrigation allowed under this limited license shall be by drip irrigation or by an equally efficient method.
  8. Water may be used under this limited license only to establish a crop for which no future irrigation will be required after the crop is established (ORS 537.143(6)(a)).
  9. 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.
  10. 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.
  11. 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.
  12. A copy of this limited license shall be kept at the place of use, and be made 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 OCT 07 2019



Dwight French, Water Right Services Division Administrator  
for Thomas M. Byler, Director, Oregon Water Resources Department

Enclosures - limited license

cc: Joel M. Plahn, District Watermaster  
Elise Kelley, 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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