

**Final Order
Limited License Application LL-1836**



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 July 17, 2020)

Applicant: RLK SMITH ORCHARDS

Date Submitted: JUNE 10, 2020

Amount: 0.04 CUBIC FOOT PER SECOND (CFS)

Source: A WELL (WASH 53314)

Use: IRRIGATION TO ESTABLISH HAZELNUT TREES

Duration: MARCH 1 – OCTOBER 31 OF EACH YEAR; FROM LIMITED LICENSE ISSUE DATE – SEPTEMBER 1, 2024

County: WASHINGTON COUNTY

Well Location: 2.00N-4.00W-33-SE SE

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. On June 23, 2020, the Department provided public notice of the application, as required by OAR 690-340-0030(2).
3. This limited license request is limited to an area within a single drainage basin, as required by OAR 690-340-0030(3).

4. On July 7, 2020, the Department completed a technical review, determining that groundwater is not over appropriated and will likely be available in the amounts requested. The proposed use will, if properly conditioned, avoid injury to existing groundwater rights or to the groundwater resource. A copy of this technical review is in the file and can be viewed on the Department's website.
5. On July 17, 2020, the applicant's agent amended the application by reducing the requested rate to 18 gallons per minute (0.04 CFS) in order to avoid the potential for substantial interference with surface water.
6. The Department has stipulated conditions pertaining to annual static water level measurements and limiting groundwater production from the Columbia River Basalt Group aquifer only.
7. The Department received comments from the Oregon Department of Fish and Wildlife pertaining to whether the well has the potential for substantial interference with surface water and associated impacts to sensitive, threatened, or endangered fish species. No issues were raised in that review that would cause conditioning of limiting this application.
8. The Department has determined that the proposed source has not been withdrawn from further appropriation per ORS 538.200.
9. In this location, hazelnut trees do not necessarily require continuing irrigation after establishment. This limited license is issued to establish hazelnut trees. 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).
10. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.
11. Washington County has indicated that the proposed use is compatible with the applicable acknowledged comprehensive land-use plan. A copy of the land use compatibility statement is 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-1836 is approved as conditioned below.

1. The authorized use of water under this limited licenses is as follows:

Amount: 0.04 CFS (18 GPM)

Source: A WELL (WASH 53314)

Use: IRRIGATION TO ESTABLISH HAZELNUT TREES

Duration: MARCH 1 – OCTOBER 31 OF EACH YEAR; FROM LIMITED LICENSE
ISSUE DATE – SEPTEMBER 1, 2024

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. 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.

- 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 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 only occur from a single aquifer within the **Columbia River Basalt Group**.
6. 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)).
7. 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.
8. 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.
9. 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.
10. 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 JUL 22 2020



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

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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.

Water Rights Section
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