



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

**CERTIFIED MAIL**  
**Return Receipt Requested**

EAST VALLEY WATER DISTRICT  
PO BOX 1046  
MOUNT ANGEL, OR 97362

October 18, 2013

Reference: File R-87871

Dear Applicant:

**THIS IS NOT A PERMIT AND IS  
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water-use permit application and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application proposed to appropriate water from unnamed streams, tributaries of Drift Creek, and Drift Creek, tributary of Pudding River, during the period October 1 through April 30, and to store 12,000 acre feet (AF) of water in Drift Creek Reservoir for irrigation and flow augmentation.  
  
The dam height will be approximately 70.0 feet and the reservoir will inundate approximately 384.0 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Per Oregon Administrative Rule (OAR) 690-502-0040(4), water may be stored for irrigation and flow augmentation from November 1 through June 30.
4. Surface water is available during the period November 1 through June 30.
5. Consistent with Oregon Revised Statute (ORS) 537.248(1), you are not required to submit engineering plans and specifications before a permit is issued, if one is issued. However, you may not begin construction of the reservoir until the Department approves the engineering plans and specifications.
6. ORS 537.400(5) allows the Department to issue a permit, subject to the condition that before the reservoir may be filled, you must submit to the Department evidence that the you own, or have written authorization or an easement permitting access to, all lands to be inundated by the reservoir.

7. A portion of the area proposed to be inundated by this reservoir appears to be covered by an existing reservoir water right authorized under Certificate 36095. Prior to perfection of the permit under this application, if one is issued, the conflict will need to be resolved via either transfer or cancellation of any overlapping lands.
8. The Department has received comments from several landowners in the area, all of whom oppose the approval of the application.
9. The application is subject to Section 4(d) of the Endangered Species Act.
10. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

### **Summary of Initial Determinations**

**The storage of 12,000 AF of water from unnamed streams, tributaries of Drift Creek, and Drift Creek, tributary of Pudding River for irrigation and flow augmentation may be allowed November 1 through April 30, contingent upon the submission of the additional required information.**

Because of the Department's determination, your application can be moved to the next phase of the water-rights application review process, where public interest factors will be evaluated. However, due to #3 and #4 above, your application will likely be limited accordingly.

### **Additional Information Required:**

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend approval.

- Please provide a copy of the legal description of the property from which the water is to be diverted and the property upon which the water is to be stored, as these are minimum application requirements per OAR 690-310-0040(1)(a)(I)(i) and 690-310-0040(1)(c)(C). A legal description is a description of a specific parcel of real estate which often uses one of the following methods; government survey metes and bounds, aliquot parts, subdivision block and lot numbers, or a combination of these. It is often found on a deed, land sales contract, or title insurance policy.

**Please submit this information no later than Thursday, November 21, 2013.** If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

At this time, you must decide whether to proceed or to withdraw your application as described below.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, November 1, 2013**. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
  - A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed and maintained in the reservoir.
  - B. The permittee shall maintain all required devices in good working order.
  - C. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
  - D. The permittee shall keep a complete record of the amount of water stored each month, and shall submit a report which includes the recorded report water-storage 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.
  - E. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
2. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe that allows drainage of the reservoir within a safe period of time. This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
3. The permittee shall pass all live flow outside the storage season described above.
4. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

5. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
6. Construction shall be completed and the permitted volume of water shall be stored within 10 years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
7. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
8. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

The water source identified in your application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at [http://www.oregon.gov/ODA/NRD/water\\_agplans.shtml](http://www.oregon.gov/ODA/NRD/water_agplans.shtml) to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0812 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Jeana Eastman, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Jeana Eastman  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

# APPLICATION FACT SHEET

Application File Number: R-87871

Applicant: EAST VALLEY WATER DISTRICT

County: Marion

Watermaster: 16

Priority Date: February 21, 2013

Source: UNNAMED STREAMS, TRIBUTARIES OF DRIFT CREEK, AND DRIFT CREEK,  
TRIBUTARY OF PUDDING RIVER

Use: STORAGE FOR IRRIGATION AND FLOW AUGMENTATION

Quantity: 12,000.0 ACRE FEET

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 14 DRIFT CR

Dam Location: NWE, SECTION 36, T7S, R1W, W.M.; 3990 FEET NORTH AND 355 FEET  
EAST FROM S1/4 CORNER, SECTION 36

Area submerged by reservoir:

NE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
NW  $\frac{1}{4}$  SW  $\frac{1}{4}$   
SW  $\frac{1}{4}$  SW  $\frac{1}{4}$   
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$

SECTION 31

TOWNSHIP 7 SOUTH, RANGE 1 EAST, W.M.

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$   
NW  $\frac{1}{4}$  NE  $\frac{1}{4}$   
SW  $\frac{1}{4}$  NE  $\frac{1}{4}$   
SE  $\frac{1}{4}$  NE  $\frac{1}{4}$   
NE  $\frac{1}{4}$  SE  $\frac{1}{4}$   
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$   
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$   
SE  $\frac{1}{4}$  SE  $\frac{1}{4}$

SECTION 36

TOWNSHIP 7 SOUTH, RANGE 1 WEST, W.M.

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$   
SW  $\frac{1}{4}$  NE  $\frac{1}{4}$   
NE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
NW  $\frac{1}{4}$  NW  $\frac{1}{4}$   
SW  $\frac{1}{4}$  NW  $\frac{1}{4}$   
SE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
NE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
NW  $\frac{1}{4}$  SW  $\frac{1}{4}$   
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$   
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$

SECTION 6

TOWNSHIP 8 SOUTH, RANGE 1 EAST, W.M.

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$   
SECTION 1  
TOWNSHIP 8 SOUTH, RANGE 1 WEST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, November 1, 2013**

**PUBLIC NOTICE DATE: Tuesday, October 22, 2013**

**30 DAY COMMENT DEADLINE DATE: Thursday, November 21, 2013**

# Mailing List for IR Copies

Application #R-87871

IR Date : October 18, 2013

**Original mailed to applicant:** EAST VALLEY WATER DISTRICT  
PO BOX 1046, MOUNT ANGEL, OR 97362

**SENT VIA EMAIL:**

WRD - Watermaster # 16

ODFW:

DEQ:

Copies sent to:

1. WRD - File # R-87871
2. WRD - Water Availability: Shawn Turner

IR, Map, and Fact Sheet Copies sent to:

1. Department of Agriculture

Copies Mailed

By: \_\_\_\_\_  
(SUPPORT STAFF)

on: \_\_\_\_\_  
(DATE)

Affected Landowners (include "Notice of Initial Review--Affected Landowner")

1. KATHLEEN E JAQUET & CHERI PERRY-HARBOUR, PO BOX 533, HOBART WA 98025
2. KATHLEEN E JAQUET, ET AL, PO BOX 44, MOCLIPS WA 98562
3. ROBERT B QUALEY, 15256 FOX RD SE, SILVERTON OR 97381
4. NORBERT V AND GAIL K DOMINICK, 1116 VICTOR POINT RD SE, SILVERTON 97381
5. JOEL D & DONNA L RUE, 1316 VICTOR POINT RD SE, SILVERTON OR 97381
6. BRUCE P JAQUET, 14752 DOERFLER RD SE, SILVERTON OR 97381
7. FOX LAND CO LLC, 16364 FOX RD SE, SILVERTON OR 97381
8. TODD F PETERS, 4742 LIBERTY RD #173, SALEM OR 97302
9. FLOYD T FOX JR., 16364 FOX RD SE, SILVERTON OR 97381
10. FRERES TIMBER INC, PO BOX 276, LYONS OR 97358
11. ROBERT LIERMAN, STEVEN LIERMAN, 1985 VICTOR POINT RD S, SILVERTON OR 97381

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

1. Adam Sussman, GSI Water Solutions, 1600 SW Western Blvd, Ste 240, Corvallis OR 97333
2. KORY SLAYTON, 29885 EASY ST LN, HILLSBORO OR 97123
3. DUSTIN CZAPLA, 644 W PAGOSA DR, GRAND JUNCTION CO 81506
4. ZACH TAYLOR, 2538 DRIFT CR RD NE, SILVERTON OR 97381
5. RICHARD & MARY JO MOLES, 14823 RICHES RD SE, SILVERTON OR 97381

Caseworker: Jeana Eastman

# APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to take and use the waters of Oregon, a citizen must first obtain a permit from the Water Resources Department. The water must be used for beneficial purpose - without waste. To become well-informed about water right topics, weekly public notice, forms and fees please visit our web site at [www.wrd.state.or.us](http://www.wrd.state.or.us)

## 1. Pre-application considerations

- follow instructions in the application packet
- if you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Information Group (WRIG) at 503-986-0801

## 2. Application filing

- application with fee is received by the Department
- Department determines completeness of application
- if use is not allowed by statute (ORS 538), the application and fees are returned to the applicant
- incomplete application and fees are returned to the applicant
- only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing

## 3. Initial Review (IR)

- caseworker reviews application by considering basin plans, water availability, statutory restrictions and all other appropriate factors
- caseworker sends IR report to applicant
- contact the caseworker if you have questions about the IR
- seven days after date of the IR, it is included in Department's weekly Public Notice
- public comments must be submitted within 30 days after the Public Notice
- **administrative hold** may be requested in writing by applicant

## 4. Proposed Final Order (PFO)

- caseworker evaluates application against required criteria and develops draft permit, if appropriate
- PFO includes instructions for filing of protests
- caseworker considers public comments and mails PFO to applicant
- the PFO is included in Department's weekly Public Notice
- public protests to the PFO must be submitted within 45 days after the Public Notice

**Stop Processing deadline is within 14 days of Initial Review - use the form below**  
- applicant may request no further action and fee refund of all but \$200

### STOP PROCESSING REQUEST FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

Applicant notification to withdraw Water Right Application # \_\_\_\_\_

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$200 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application

Signature \_\_\_\_\_ date \_\_\_\_\_

Signature \_\_\_\_\_ date \_\_\_\_\_

*Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$225 examination fee) be returned.*

This notice must be received at Water Resources Department by \_\_\_\_\_

Return the notice to: OWRD, Water Rights Division

STOP PROCESSING

725 Summer Street, NE - Suite A

Salem OR 97301-1271

**5. Final Order (FO)**

- if no protest is filed, Final Order is issued

***The protest process***

If one or more protests are filed, permit process consists of:

- settlement discussion
- contested case hearing
- proposed order
- period of time to file exceptions
- possible hearing by Water Resources Commission
- final order issued

***Permit holder responsibilities***

- comply with all water use conditions of the permit
- advise Department of address change or assignment to new permit holder
- if need arises, request extension of time or authorize cancellation of permit
- submit timely claim of beneficial use (COBU) to Department
- most permits require COBU to be prepared by a Certified Water Right Examiner
- permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions