

Water Right Transfer Cover Sheet

Transfer T-12187

Transfer Specialist: _____

Transfer Type: Regular

Applicant Name/Address: TUMALO IRRIGATION DISTRICT KEN RIECK 64697 COOK AVE BEND, OR 97701	Agent Name/Address: MARTHA O. PAGEL 530 CENTER ST NE SUITE 400 SALEM, OR 97301	Rec Landowner Name/Address:
CWRE Name/Number:	Irr. District Name/Address:	Affected Gov'ts Name/Address: Deschutes County Planning Department
Commentors: Name/Address:		Current Landowner Name/Address:

Water Rights Affected

Records Marked	Records Copied	App File No. or Decree Name	Permit No.	Certificate No.	RR/CR Needed	RR/CR Nos.
<input type="checkbox"/>	<input type="checkbox"/>	R-37238	R-2743	76684	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

Key Dates & Initial Actions

Rec'd: October 22, 2015	Proposed Action(s): place of use	
Fees Pd: 1000.00	WM District: 11	ODFW District:
Initial Notice: October 27, 2015	WM Review sent: 10/22/2015	ODFW Review sent:
Acknowledgement Letter Sent <input checked="" type="checkbox"/>		GW Review sent:

Processing Dates & Actions

Deficiency Contacts: _____

Newspaper quote requested: _____

not required

DPD Mailed: _____

Request for news \$ sent: _____

ODFW contact sheet sent with DPD, or N/A

News \$ received: _____

WM measurement contact sheet sent, or N/A

PD Signed: _____

Request to publish sent to newspaper: _____

PD Weekly Notice: _____

Affidavit of publication received: _____

DPD Review (Optional)	PD Review (Salem)	Final Order Review (Salem)
Reviewer: _____	Reviewer: _____	Reviewer: _____
Date: _____	Date: _____	Date: _____
Coordinator: _____	Coordinator: _____	Coordinator: _____
Date: _____	Date: _____	Date: _____
Comments/Special Issues:		

Special Order Volume: Vol _____ Pages _____ Final Order Signature Date: _____

Notice of FO email'd to processors _____



State of Oregon
 Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900

Application for Permanent Water Right Transfer

Part 1 of 5 – Minimum Requirements Checklist

This transfer application will be returned if Parts 1 through 5 and all required attachments are not completed and included.
 For questions, please call (503) 986-0900, and ask for Transfer Section

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Check all items included with this application. (N/A = Not Applicable)

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- Part 1 – Completed Minimum Requirements Checklist.
- Part 2 – Completed Transfer Application Map Checklist. SALEM, OR
- Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at: http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator. If you have questions, call Customer Service at (503) 986-0801.
- Part 4 – Completed Applicant Information and Signature.
- Part 5 – Information about Water Rights to be Transferred: **How many water rights are to be transferred? 1 List them here: Partial transfer of Certificate 76684**
 Please include a separate Part 5 for each water right. (See instructions on page 6)

Attachments:

- Completed Transfer Application Map.
- Completed Evidence of Use Affidavit and supporting documentation.
- N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
- N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
- N/A Land Use Information Form with approval and signature (or signed land use form receipt stub). Not required if water is to be diverted, conveyed, and/or used only on federal lands or if **all** of the following apply: a) a change in place of use only, b) no structural changes, c) the use of water is for irrigation only, and d) the use is located within an irrigation district or an exclusive farm use zone.
- N/A Water Well Report/Well Log for changes in point(s) of appropriation (well(s)) or additional point(s) of appropriation.
- N/A Geologist Report for a change from a surface water point of diversion to a ground water point of appropriation (well), if the proposed well is more than 500' from the surface water source and more than 1000' upstream or downstream from the point of diversion. See OAR 690-380-2130 for requirements and applicability.

(For Staff Use Only)

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

<input type="checkbox"/> Application fee not enclosed/insufficient	<input type="checkbox"/> Map not included or incomplete
<input type="checkbox"/> Land Use Form not enclosed or incomplete	<input type="checkbox"/> Part _____ is incomplete
<input type="checkbox"/> Additional signature(s) required	

Other/Explanation _____

Staff: _____ 503-986-0 _____ Date: ____/____/____

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Part 2 of 5 – Transfer Application Map Checklist

SALEM, OR **Your transfer application will be returned if any of the map requirements listed below are not met.**

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For a list of CWREs, see http://apps.wrd.state.or.us/apps/wr/cwre_license_view/. CWRE stamp and signature are not required for substitutions.
- N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- Permanent quality printed with dark ink on good quality paper.
- The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- A north arrow, a legend, and scale.
- The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- Township, Range, Section, ¼ ¼, DLC, Government Lot, and other recognized public land survey lines.
- Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- Existing place of use that includes separate hachuring for each water right, priority date, and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- N/A Proposed place of use that includes separate hachuring for each water right, priority date, and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.
- Existing point(s) of diversion or well(s) with distance and bearing or coordinates from a recognized survey corner. This information can be found in your water right certificate or permit.
- N/A If you are proposing a change in point(s) of diversion or well(s), show the proposed location and label it clearly with distance and bearing or coordinates. If GPS coordinates are used, latitude-longitude coordinates may be expressed as either degrees-minutes-seconds with at least one digit after the decimal (example – 42°32’15.5”) or degrees-decimal with five or more digits after the decimal (example – 42.53764°).

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Part 4 of 5 - Applicant Information and Signature

Applicant Information SALEM, OR

APPLICANT/BUSINESS NAME Tumalo Irrigation District		PHONE NO. 541-382-3053	ADDITIONAL CONTACT NO.
ADDRESS 64697 Cook Avenue		FAX NO.	
CITY Bend	STATE OR	ZIP 97701	E-MAIL ken@tumalo.org
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.			

Agent Information - The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME Martha Pagel/ Schwabe, Williamson & Wyatt		PHONE NO. 503-540-4260	ADDITIONAL CONTACT NO.
ADDRESS 530 Center St. NE, Suite 400		FAX NO. 503-796-2900	
CITY Salem	STATE OR	ZIP 97301	E-MAIL mpagel@schwabe.com
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.			

Explain in your own words what you propose to accomplish with this transfer application, and why: Permanent transfer of 124.79 acre-feet of water storage from the Upper Tumalo Reservoir to a new, lined, storage reservoir. The new reservoir is at the top of the system, is lined to reduce leakage, and will enable TID to use the storage facility to regulate virtually its entire system. The storage right is held on Certificate 76684. The new reservoir is a significant upgrade to TID's system and greatly improves the operational efficiency and flexibility of the District.

TID is not transferring the storage right to another entity, merely transferring the place of use.

If you need additional space, continue on a separate piece of paper and attach to the application as "Attachment 1".

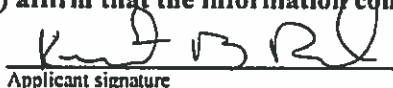
Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

Check One Box

- By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); OR
- I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; OR
- I affirm the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer application, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: Bend Bulletin.

I (we) affirm that the information contained in this application is true and accurate.


Applicant signature

Ken Rieck, District Manager
Print Name (and Title if applicable)

10.20.2015
Date

Applicant signature

Print Name (and Title if applicable)

Date

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Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located? Yes No *If NO, include signatures of all deeded landowners (and mailing and/or e-mail addresses if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) were conveyed.*

Check the following boxes that apply:

- The applicant is responsible for completion of change(s). Notices and correspondence should continue to be sent to the applicant.
- The receiving landowner will be responsible for completing the proposed change(s) after the final order is issued. Copies of notices and correspondence should be sent to this landowner.
- Both the receiving landowner and applicant will be responsible for completion of change(s). Copies of notices and correspondence should be sent to this landowner and the applicant.

At this time, are the lands in this transfer application in the process of being sold? Yes No

If YES, and you know who the new landowner will be, please complete the receiving landowner information table below. If you do not know who the new landowner will be, then a request for assignment will have to be filed for at a later date.

If a property sells, the certificated water right(s) located on the land belong to the new owner, unless a sale agreement or other document states otherwise. For more information see:

<http://www.oregon.gov/owrd/docs/transfer-propertytransactions.pdf>

RECEIVING LANDOWNER NAME KC Development Group, LLC		PHONE NO. 541-639-5200	ADDITIONAL INFORMATION RECEIVED BY OWRD
ADDRESS 63560 Johnson Road		FAX NO. OCT 21 2015	
CITY Bend	STATE OR	ZIP 97703	E-MAIL ecadwell@gmail.com

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Describe any special ownership circumstances here: **TID holds a recorded, perpetual easement over the property to store water and regulate TID's existing irrigation system. TID has full control of the water storage and can preclude all other uses or activities that interfere with TID's use and ability to store water. TID is not transferring the storage right to KC Development Group, LLC. TID remains the holder and owner of the water right.**

Check here if any of the water rights proposed for transfer are or will be located within or served by an irrigation or other water district. (Tip: Complete and attach Supplemental Form D.)

IRRIGATION DISTRICT NAME Tumalo Irrigation District	ADDRESS 64697 Cook Avenue	
CITY Bend	STATE OR	ZIP 97701

Check here if water for any of the rights supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

 To meet State Land Use Consistency Requirements, you must list all county, city, municipal corporation, or tribal governments within whose jurisdiction water will be diverted, conveyed or used.

ENTITY NAME Deschutes County	ADDRESS PO Box 6005	RECEIVED
CITY Bend	STATE OR	ZIP 97708

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ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

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INSTRUCTIONS for editing the Application Form

To add additional lines to tables within the forms or to copy and paste additional Part 5 pages, please **save the application form to your computer**. Unlock the document by using one of the following instructions for your Microsoft Word software version:

Microsoft Word 2003

Unlock the document by one of the following:

- Using the **Tools** menu => click **Unprotect Document**;
- OR
- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

To relock the document to enable the checkboxes to work, you will need to:

- Using the **Tools** menu => click **Protect Document**;
- OR
- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

Microsoft Word 2007

- Unlock the document by clicking the **Review** tab, then click **Protect Document**, then click **Stop Protect**
- To relock the document, click **Editing Restrictions**, then click **Allow Only This Type of Editing**, select **Filling In Forms** from the drop-down menu, then check **Yes, Start Enforcing Protection**.

Microsoft Word 2010

- Unlock the document by clicking the **Review** tab, toggle the **Restrict Editing** icon at the upper right, then click **Stop Protect** at the bottom right. Then uncheck the “**Allow only this type of editing** in the document: **Filling in forms**” in the “Editing restrictions” section on the right-hand list of options.
- To relock the document, check the **Editing Restrictions/Allow Only This Type of Editing/Filling In Forms** box from the drop-down menu, then check **Yes, Start Enforcing Protection**. You do not need to assign a password for the editing restrictions.

Other Alternatives:

- Photocopy pages or tables in Part 5, ~~mark through~~ any non-applicable information, insert/attach photocopied pages to document in the appropriate location, and manually amend page numbers as necessary (e.g. Page 5 of 9 10).
- You may refer to additional attachments that you may include, such as separately produced tables or spreadsheets to convey large numbers of rows of place of use listings, owner/property parcels, etc. You may contact the Department at 503-986-0900 and ask for Transfer Staff if you have questions.

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Once the application has been unlocked, you may:

- add additional rows to tables using the Table tools, and
- select and copy the pages of Part 5 and paste as many additional sets of Part 5 pages as needed at the end of the application.

After editing, re-lock the document to enable checkboxes to work.

Part 5 of 5 – Water Right Information

Please use a separate Part 5 for each water right being changed. See instructions on page 6, to copy and paste additional Part 5s, or to add additional rows to tables within the form.

CERTIFICATE # 76684

Description of Water Delivery System

System capacity: N/A cubic feet per second (cfs) OR
 _____ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. **Diversion from the Tumalo Feed Canal into south pond of new reservoir. Piped connection to north pond from south pond of new reservoir.**

Table 1. Location of Authorized and Proposed Point(s) of Diversion (POD) or Appropriation (POA)
 (Note: If the POD/POA name is not specified on the certificate, assign it a name or number here.)

POD/POA Name or Number	Is this POD/POA Authorized on the Certificate or is it Proposed?	If POA, OWRD Well Log ID# (or Well ID Tag # L-___)	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
3P	<input checked="" type="checkbox"/> Authorized <input type="checkbox"/> Proposed		17	S	11	E	23	SE	NE		2080 feet South and 1310 feet West from NE Corner of Section 23
	<input type="checkbox"/> Authorized <input type="checkbox"/> Proposed										
	<input type="checkbox"/> Authorized <input type="checkbox"/> Proposed										
	<input type="checkbox"/> Authorized <input type="checkbox"/> Proposed										

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Check all type(s) of change(s) proposed below (change "CODES" are provided in parentheses):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Place of Use (POU) | <input type="checkbox"/> Supplemental Use to Primary Use (S to P) |
| <input type="checkbox"/> Character of Use (USE) | <input type="checkbox"/> Point of Appropriation/Well (POA) |
| <input type="checkbox"/> Point of Diversion (POD) | <input type="checkbox"/> Additional Point of Appropriation (APOA) |
| <input type="checkbox"/> Additional Point of Diversion (APOD) | <input type="checkbox"/> Substitution (SUB) |
| <input type="checkbox"/> Surface Water POD to Ground Water POA (SW/GW) | <input type="checkbox"/> Government Action POD (GOV) |

Will all of the proposed changes affect the entire water right?

- Yes Complete only the Proposed ("to" or "on" lands) section of Table 2 on the next page. Use the "CODES" listed above to describe the proposed changes.
- No Complete all of Table 2 to describe the portion of the water right to be changed.

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Please use and attach additional pages of Table 2 as needed.
See page 6 for instructions.

Do you have questions about how to fill-out the tables?
Contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Changes to Water Right Certificate # 76684

List the change proposed for the acreage in each 1/4 1/4. If more than one change is proposed, specify the acreage associated with each change.
If there is more than one POD/POA involved in the proposed changes, specify the acreage associated with each POD/POA.

AUTHORIZED (the "from" or "off" lands)										PROPOSED (the "to" or "on" lands)												
The listing that appears on the certificate BEFORE PROPOSED CHANGES List only that part or portion of the water right that will be changed.										The listing as it would appear AFTER PROPOSED CHANGES are made.												
Twp	Rng	Sec	1/4 1/4	Tax Lot	Gvt Lot or DLC	Acre	Type of USE listed on Certificate	POD(s) or POA(s) (name or number from Table 1)	Priority Date	Twp	Rng	Sec	1/4 1/4	Tax Lot	Gvt Lot or DLC	Acre	New Type of USE	POD(s)/ POA(s) to be used (from Table 1)	Priority Date			
EXAMPLE																						
2	S	9	NE	NW	100	15.0	Irrigation	POD #1 POD #2	1901	2	S	9	E	1	NW	NW	500	1	10.0	POD #5	1901	
16	S	11	E	SE		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	NE	NW	00828		Acre Feet	Storage	3P	12/8/61
16	S	11	E	SW		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	NW	NE	00828		Acre Feet	Storage	3P	12/8/61
16	S	11	E	SW		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	NW	SW	00828		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NW		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	NW	SW	00824		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NW		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	SE	NW	00828		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NW		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	SE	NW	00824		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NE		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	SE	NW	00828		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NE		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	SW	NW	00824		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NE		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	NE	SW	00824		Acre Feet	Storage	3P	12/8/61
17	S	11	E	NE		Acre Feet	Storage	3P	12/8/61	17	S	11	E	13	NE	SW	00824		Acre Feet	Storage	3P	12/8/61
TOTAL ACRE FEET: 124.79										TOTAL ACRE FEET: 124.79												

Additional remarks: _____
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For Place of Use or Character of Use Changes

Are there other water right certificates, water use permits or ground water registrations associated with the "from" or the "to" lands? Yes No

If YES, list the certificate, water use permit, or ground water registration numbers: _____.



Pursuant to ORS 540.510, any "layered" water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

For Substitution (ground water supplemental irrigation will be substituted for surface water primary irrigation)

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Ground water supplemental Permit or Certificate # _____;
Surface water primary Certificate # _____.

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For a change from Supplemental Irrigation Use to Primary Irrigation Use

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Identify the primary certificate to be cancelled. Certificate # _____

For a change in point(s) of appropriation (well(s)) or additional point(s) of appropriation:

Well log(s) are attached for each authorized and proposed well(s) that are clearly labeled and associated with the corresponding well(s) in Table 1 above and on the accompanying application map.

Tip: You may search for well logs on the Department's web page at:

http://apps.wrd.state.or.us/apps/gw/well_log/Default.aspx

AND/OR

Describe the construction of the authorized and proposed well(s) in Table 3 for any wells that do not have a well log. For *proposed wells not yet constructed or built*, provide "a best estimate" for each requested information element in the table. The Department recommends you consult a licensed well driller, geologist, or certified water right examiner to assist with assembling the information necessary to complete Table 3.

Table 3. Construction of Point(s) of Appropriation

Any well(s) in this listing must be clearly tied to corresponding well(s) described in Table 1 and shown on the accompanying application map. Failure to provide the information will delay the processing of your transfer application until it is received. The information is necessary for the department to assess whether the proposed well(s) will access the same source aquifer as the authorized point(s) of appropriation (POA). The Department is prohibited by law from approving POA changes that do not access the same source aquifer.

Proposed or Authorized POA Name or Number	Is well already built? (Yes or No)	If an existing well: OWRD Well ID Tag No. L-	Total well depth	Casing Diameter	Casing Intervals (feet)	Seal depth(s) (intervals)	Perforated or screened intervals (in feet)	Static water level of completed well (in feet)	Source aquifer (sand, gravel, basalt, etc.)	Well -specific rate (cfs or gpm). If less than full rate of water right

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Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Watermaster Review Form: Water Right Transfer

Transfer Application: T-12187

Review Due Date: 11/21/15

Applicant Name: Tumalo ID

Proposed Changes: POU POD POA USE OTHER

Reviewer(s): Giffin

Date of Review: Nov. 17, 2015

1. Do you have evidence that the right has not been used in the last 5 years and that the presumption of forfeiture would not likely be rebuttable? Yes No If "yes", attach evidence (e.g. dated aerial photo showing pavement or building on the land for >5 yrs.)
2. Is there a history of regulation on the source that serves this (or these) right(s) that has involved the transferred right(s) and downstream water rights? Yes No
 Generally characterize the frequency of any regulation or explain why regulation has not occurred: _____
3. Have headgate notices been issued for the source that serves the transferred right(s)?
 Yes No Records not available.
4. In your estimation, after the proposed change would distribution of water for the right(s) result in regulation of other water rights that would not have occurred if use under the original right(s) was/were maximized?
 Yes No If "Yes", explain: _____
5. In your estimation, if the proposed change is approved, are there upstream water rights that would be affected? Yes No If "Yes", describe how the rights would be affected and list the rights most affected: _____
6. Check here if it appears that downstream water rights benefit from return flows resulting from the current use of the transferred right(s)? If you check the box, generally characterize the locations where the return flows likely occur and list the water rights that benefit most: _____ N/A
7. For POD changes and instream transfers, check here if there are channel losses between the old and new PODs or within the proposed instream reach? If you check the box, describe and, if possible, estimate the losses: _____ N/A
8. For instream transfers that propose protection of a reach beyond the mouth of the source stream: N/A Would the quantity be measureable into the receiving stream consistent with OAR 690-077-0015(8)? Yes No
9. For POU changes: N/A Is it likely the original place of use would continue to receive water from the same source? Yes No If "Yes", explain: Yes, however it would receive less water than it did before this proposed transfer.

- 10. For POU or USE changes: N/A In your best judgment, would use of the existing right at "full face value," result in the diversion of more water than can be used beneficially and without waste? Yes No If "Yes", explain: _____
- 11. Are there other issues not identified through the above questions that should be considered in determining whether the change "can be effected without injury to other rights"? Yes No If "Yes", explain: To avoid enlargement a staff plate will need to be installed in both Upper tumalo reservoir and the new proposed storage facility to ensure that more water is not stored in the two facilities than was allowed in Upper Tumalo Reservoir prior to this transfer.
- 12. What alternatives may be available for addressing any issues identified above: _____
- 13. Do conditions need to be included in the transfer order to avoid enlargement of the right or injury to other rights? No Yes, as checked below:

- A Headgate should be required prior to diverting water.
- Measurement Devices for POD or POA: (if this condition is selected, also fill in the top sections of page 3)
 - a. *Before water use may begin under this order, the water user shall install a **totalizing flow meter***, or, with prior approval of the Director, another suitable measuring device, at each point of diversion/appropriation (new and existing) or at each new point of diversion/appropriation.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
- Reservoir water use measurement: (if this condition is selected, also fill in the top sections of page 3)
 - a. *Before water use may begin under this order, the water user shall install **staff gages***, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*
 - b. *Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.*

*** The following alternative device(s) should be substituted for the bold, underlined device in the above selected condition:**

- Weir
- Submerged Orifice
- Parshall Flume
- Flow Restrictor
- Other: _____

Oregon Water Resources Department

Measurement Condition Information for the Applicant

(to be sent with the Draft Preliminary Determination or Final Order)

Transfer #: T-12187

In order to avoid enlargement of the right or injury to other rights, a staff plate will be required to be installed **prior to diversion of water**, as a condition of this transfer:

- at each point of diversion/appropriation (new and existing) **or**
- at each new point of diversion/appropriation.

For additional information, or to obtain approval of a different type of measurement device, the applicant should contact the area Watermaster:

Watermaster name: Jeremy Giffin

District: 11

Address: 231 SW Scalehouse Lp

City/State/Zip: Bend, OR 97701

Phone: 541-306-4808

Email: Jeremy.T.GIFFIN@wrd.state.or.us

Note: If a device other than the one specified in the Preliminary Determination or Final Order is approved by the Watermaster, fill out and mail the form below to the Salem office.

Approval of an Alternate Measurement Device T-
(to be filled out after consultation with the applicant, or after a site visit)

On behalf of the Director, I authorize use of the following suitable **alternate measurement device**:

Watermaster signature	District	Date
-----------------------	----------	------

If this form is used for approval of an alternative measurement device, it must be mailed to:

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266

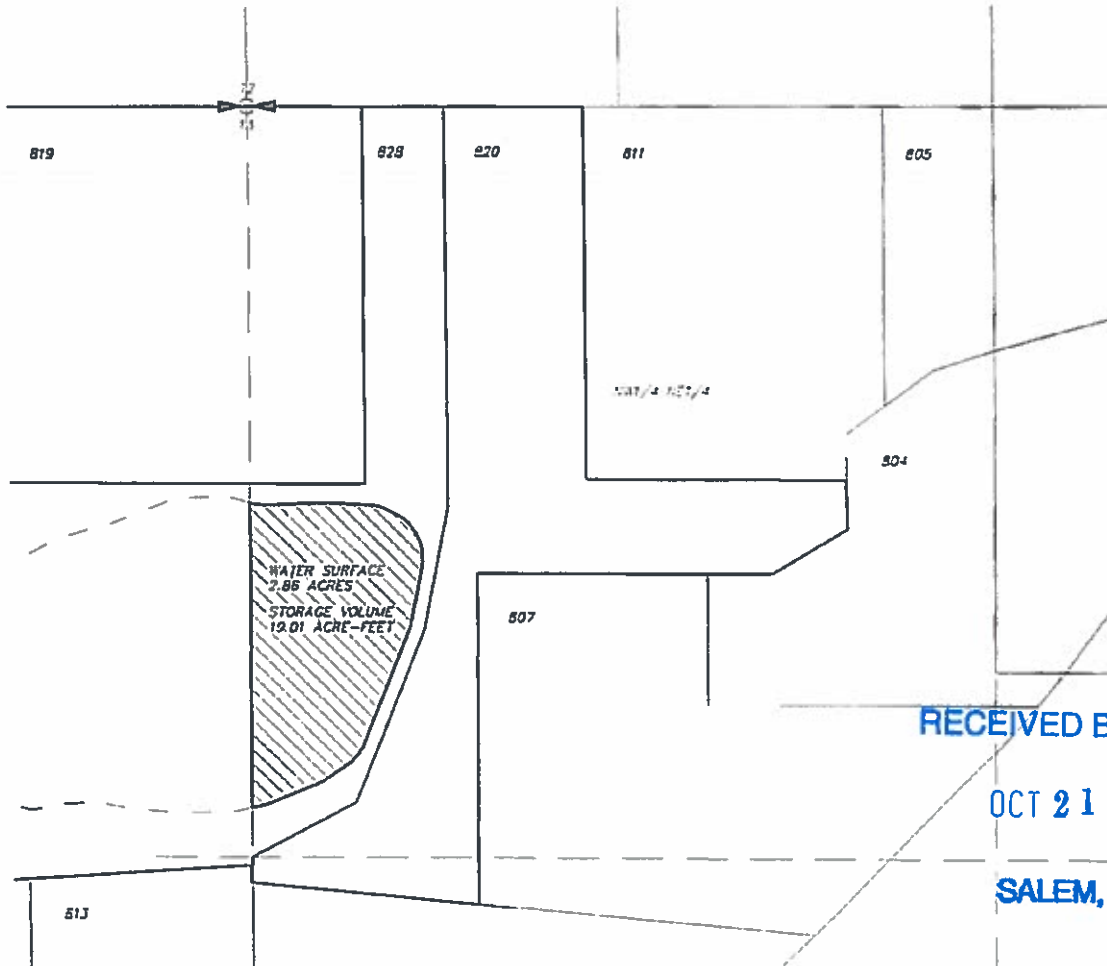
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

NW 1/4 OF THE NE 1/4

SCALE: 1"=300'



NORTH



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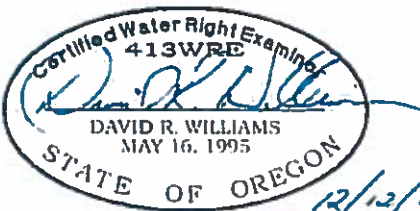
SALEM, OR

STORAGE MAP

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TAX LOT NO. 828: 13.67 ACRE-FEET

T 12187



STORAGE RIGHT

HWA SURVEYORS ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC.

1701 17th WALK STREET SUITE 100
SEASIDE, OREGON 97138
PHONE: 541.389.9261 FAX: 541.353.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 12/11/2014

041125-WATER RIGHTS.DWG

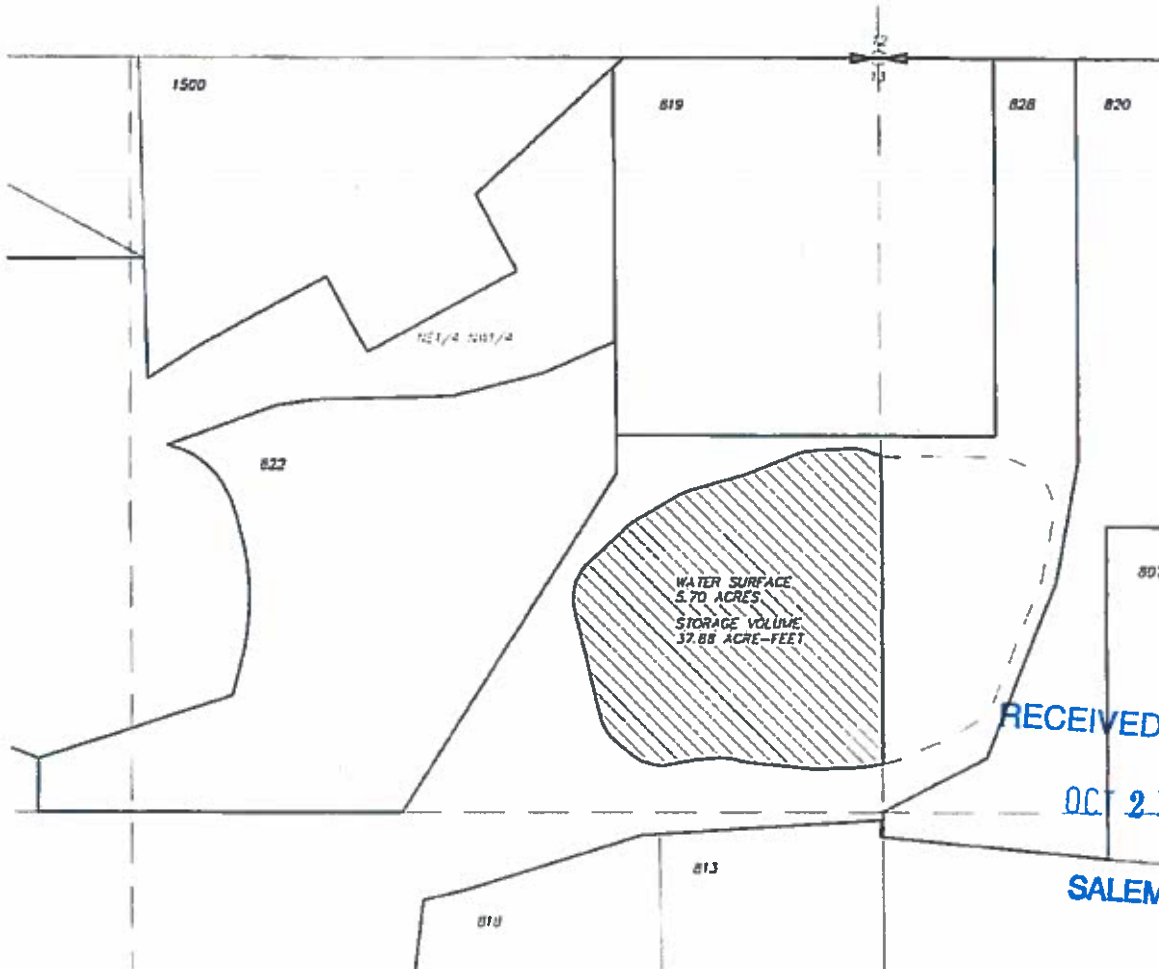
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

NE 1/4 OF THE NW 1/4

SCALE: 1"=300'



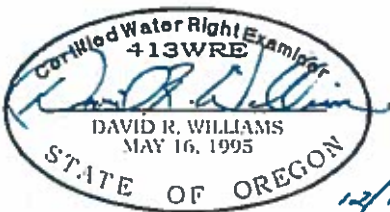
NORTH



STORAGE MAP

TAX LOT NO. 828: 27.23 ACRE-FEET

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STORAGE RIGHT

T 12187

HWA SURVEYORS ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC

1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE 541 389 9351 FAX 541 382 5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 12/11/2014

041125-WATER RIGHTS.DWG

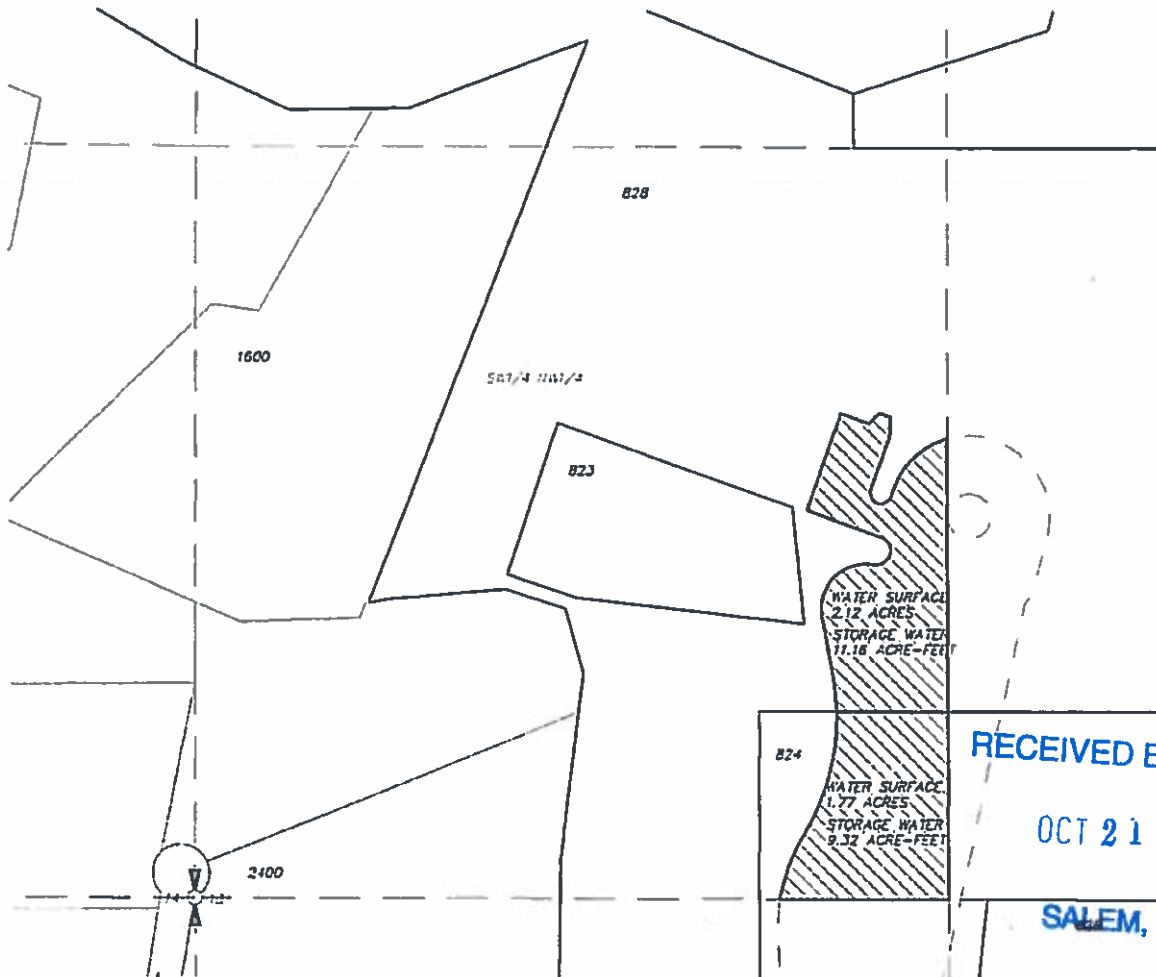
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

SW 1/4 OF THE NW 1/4

SCALE: 1"=300'



NORTH



STORAGE MAP

TAX LOT NO. 828: 11.03 ACRE-FEET
TAX LOT NO. 824: 9.21 ACRE-FEET

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STORAGE RIGHT

T 12137

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC.
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9251 FAX: 541.328.6416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 12/11/2014

041125-WATER RIGHTS.DWG

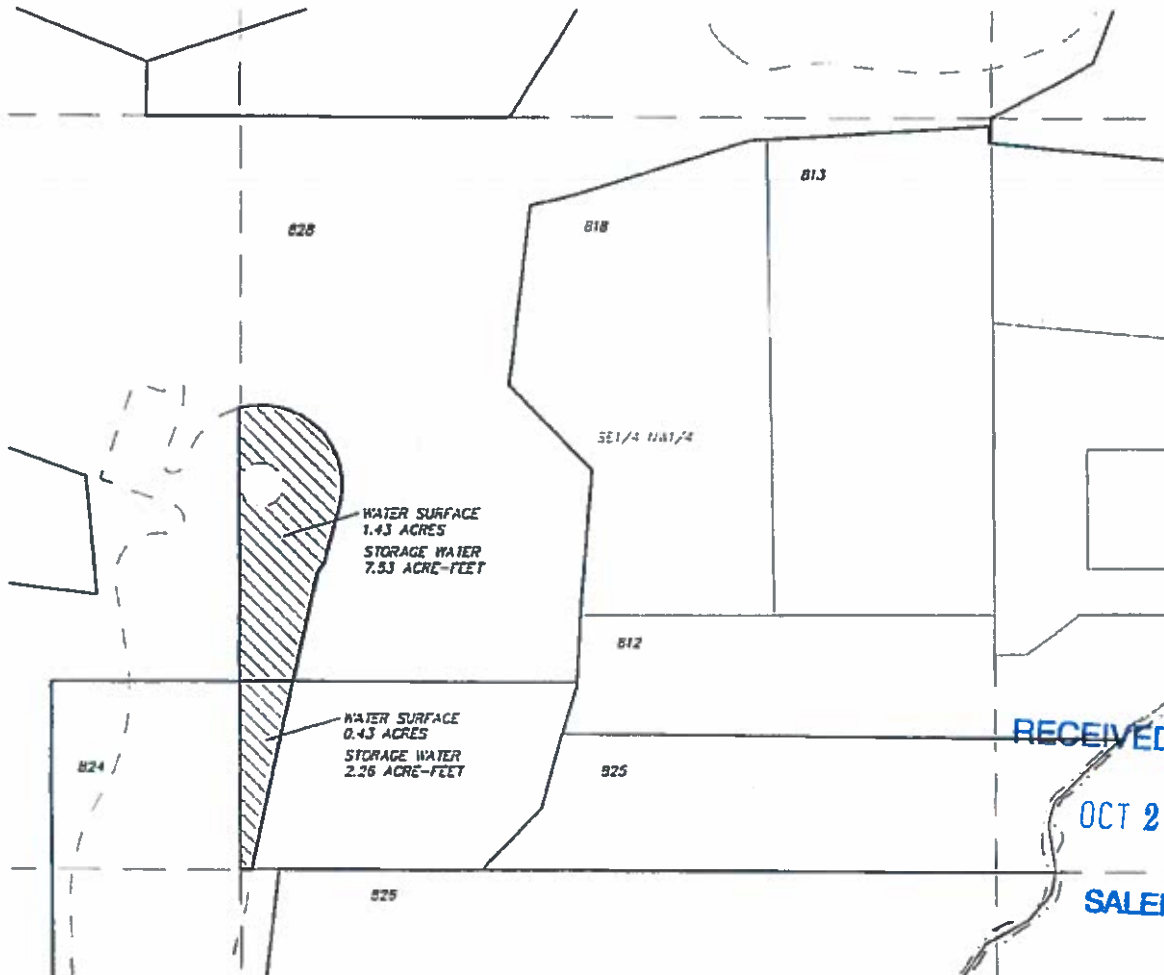
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

SE 1/4 OF THE NW 1/4

SCALE: 1"=300'



NORTH



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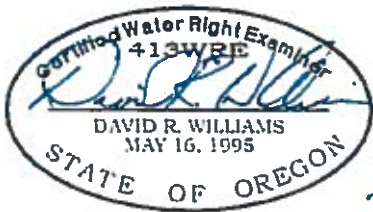
SALEM, OR

STORAGE MAP

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TAX LOT NO. 828: 7.44 ACRE-FEET
TAX LOT NO. 824: 2.23 ACRE-FEET

12/21/14

T 12137



STORAGE RIGHT

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC

1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.323.5414

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 12/11/2014

041125-WATER RIGHTS.DWG

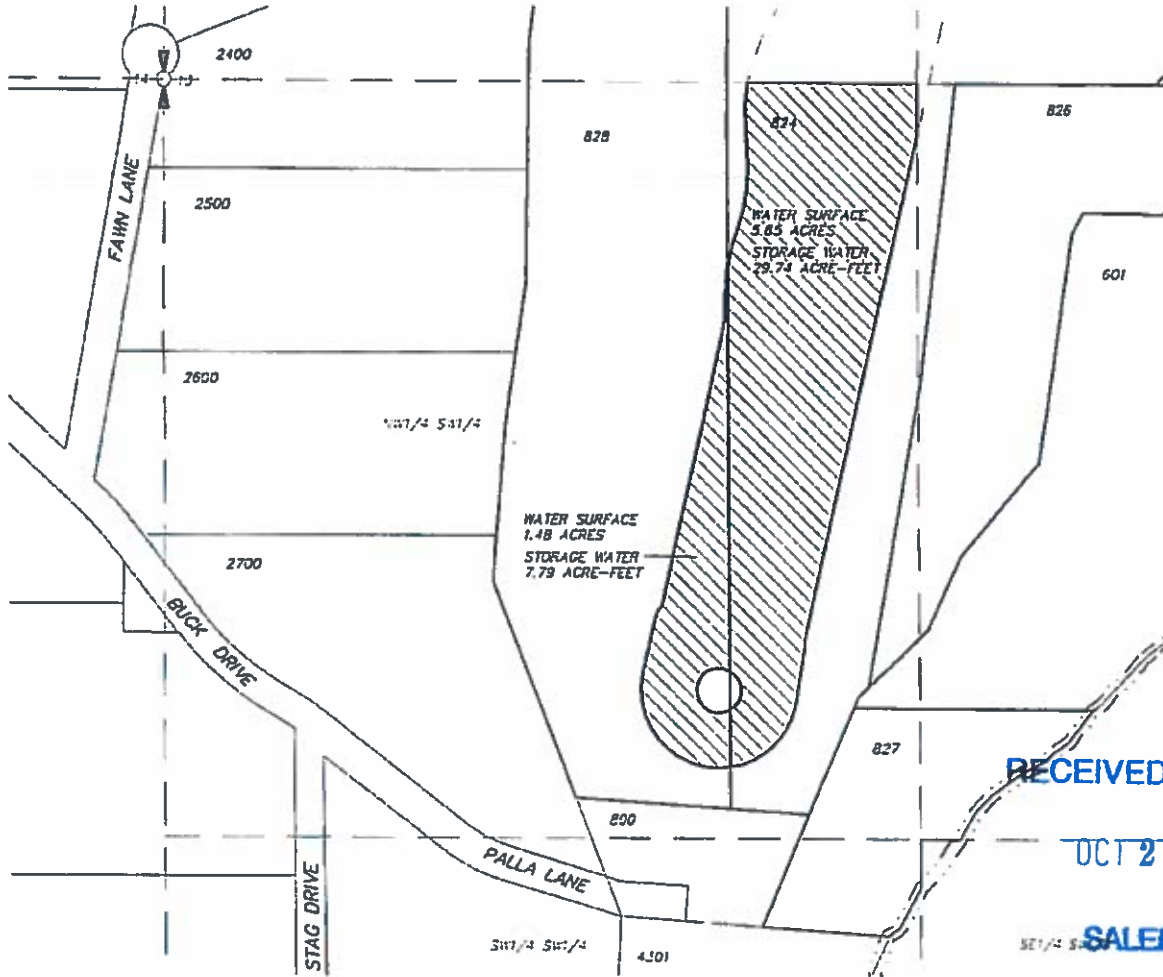
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

NW 1/4 OF THE SW 1/4

SCALE: 1"=300'



NORTH



STORAGE MAP

TAX LOT NO. 828: 7.70 ACRE-Feet
 TAX LOT NO. 824: 29.39 ACRE-Feet

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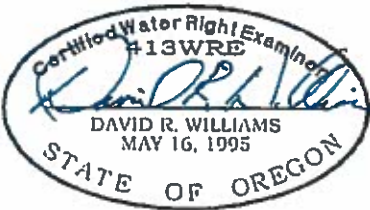
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STORAGE RIGHT



12/12/14

1 12127

HWA SURVEYORS ENGINEERS & PLANNERS
 HICKMAN, WILLIAMS & ASSOCIATES, INC.

1201 NW WALL STREET, SUITE 100
 BEND, OREGON 97701
 PHONE: 541 329 9351 FAX: 541 323 5416

APPLICATION FOR STORAGE RIGHT TRANSFER
 KC DEVELOPMENT GROUP, LLC

DATE: 12/11/2014

041125-WATER RIGHTS.DWG

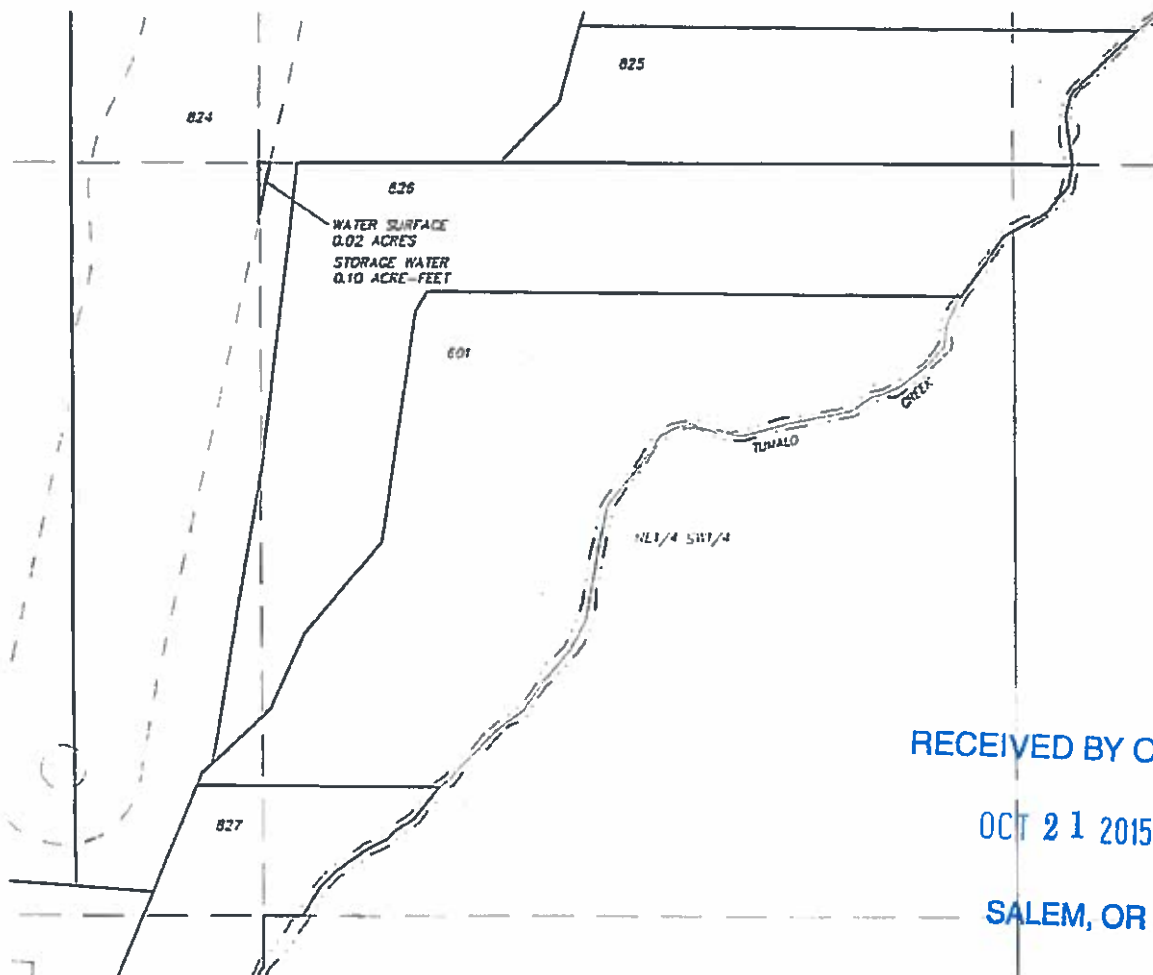
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

NE 1/4 OF THE SW 1/4

SCALE: 1"=300'



NORTH



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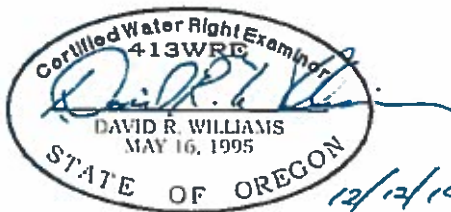
SALEM, OR

STORAGE MAP

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TAX LOT NO. 824: 0.10 ACRE-FEET

1 12167



STORAGE RIGHT

HWA SURVEYORS ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
SEASIDE, OREGON 97138
PHONE (541) 389-9358 FAX (541) 388-6416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 12/11/2014

041125-WATER RIGHTS.DWG

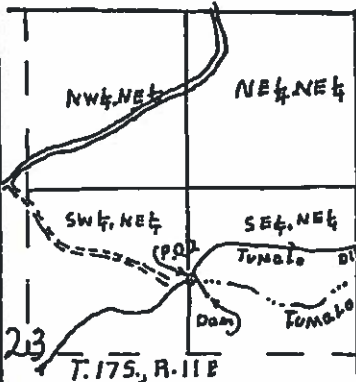
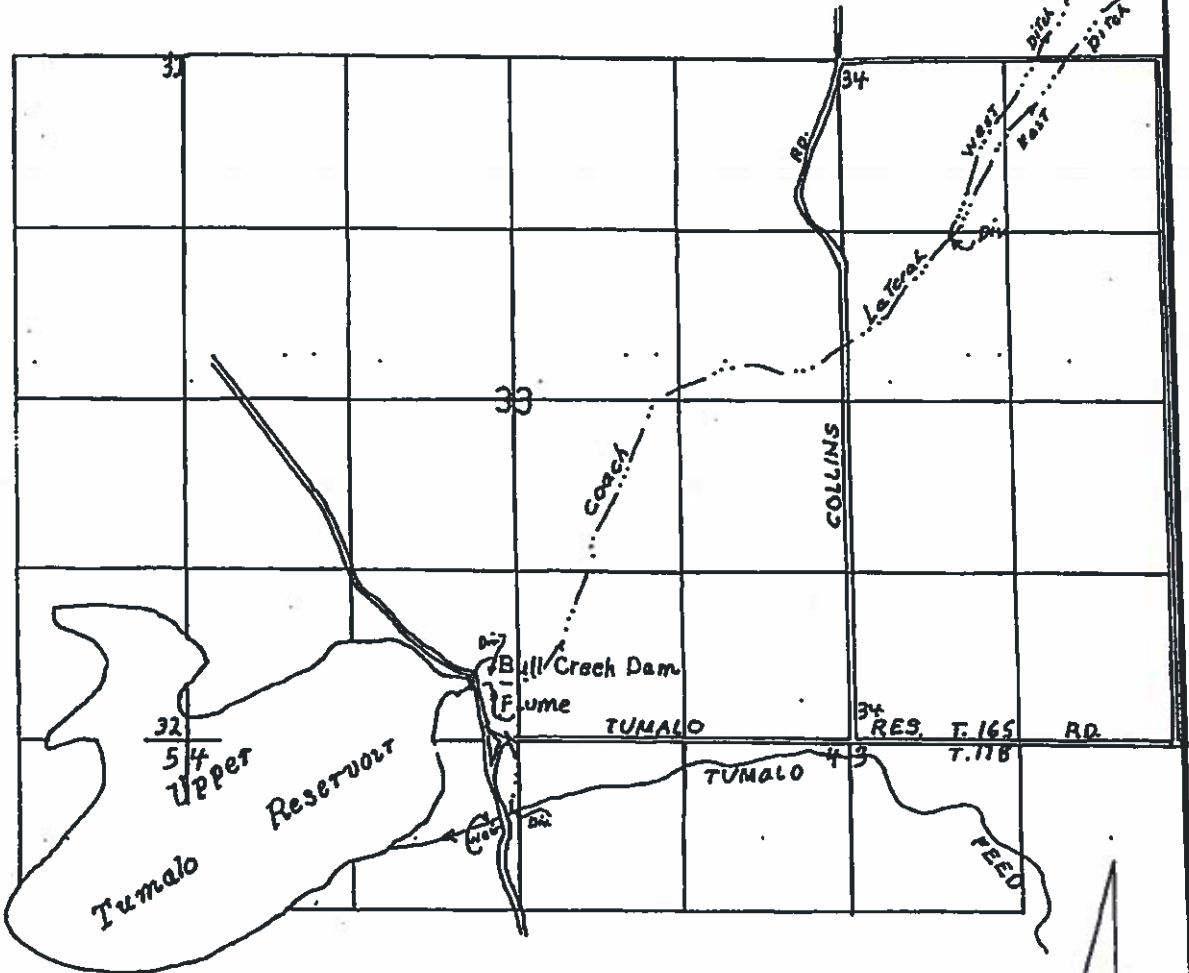
T.16,17S.,R.11E.,W.M.

off

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OCT 05 1998

WATER RESOURCES DEPT
SALEM, OREGON



**FINAL PROOF SURVEY
UNDER**

Application No. R-37238 Permit No. R-2743...
IN NAME OF

TUMALO IRRIGATION DISTRICT.

Surveyed AUG.26. 1998., by R.M.SUTTERFIELD

23
T.17S., R.11E
DIV. PT. 2080'S & 1310' W FROM
NE COR. OF SEC. 23.

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7 1/2 quad - Tumalo Dam Date 9-16-98 by R.M.S.

OREGON WATER RESOURCES DEPARTMENT
ACCOUNT ACTIVITY RECORD

Account Name: Schwabe, Williamson & Wyatt

Account #: CA0012 Activity Date: 10/22/15

Please complete and leave with Customer Service Representative. CSG, please place in ASD mailbox.

Transaction Description	Number of Items or Hours	Project Name (If Applicable)	Customer Contact Name (Person Making Copies)	OWRD Personnel Providing Assistance (Or Verifying Fees)	Amount (\$) of Activity
Deposit to Account:					
Copying: Self Service Agency Assisted					
Faxing:					
Research:					
Other: Transfer T-12187	Application for transfer \$1,000.00 46110		Maha Pagel	Kelley Starnes Maissa	\$1,000.00
Other:					

Your account may be required to provide an account project number per your accounting department. If required, please have your project number ready upon any service request.

6/13/14 Updated by Cammi Hungate

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Total = \$1,000

Regular Permanent Water Right Transfer Application Checklist

Checked by Jeffrey Date 22-Oct-15

Certs & acres involved:
76484

Changes: POU

cfs involved:

Source:

(If OK, check box to left; if not, fill in the blank)

1. Page 1 of application: Are all attachments that have been checked actually included?
If not, what is missing? _____

2. Are fees included and correct? Fee paid: _____
If not, the correct fee would be: _____, so the amount missing is: _____

▶ If a Substitution (see Page 5 of application)

Base fee for 1 well (POA)		\$725.00
Number of additional wells = _____	x \$350.00 =	
Total =		

▶ If a Government Action POD change (see: Page 5): NO CHARGE

▶ If any other type of "regular permanent" transfer:

Base fee for one water right, one change and first cfs =		\$1,000.00
# of additional water rights beyond the first (see Part 4 of application) = _____	x \$450.00 =	
Additional fee for groundwater staff review if any number of changes to well location(s), additional well(s) or change from SW diversion point to a well =	\$350.00	
1 or 2 additional TYPES of change* (see Page 5 of application) = _____	x \$800.00 =	
If <i>Place of Use</i> or <i>Character of Use</i> change and transfer involves more than 1 cfs (based on primary acres x rate), # cfs or fraction above the first cfs = _____	x \$300.00 =	
<i>HINT: Total cfs on WR (÷) total # acres on WR (x) # acres involved in transfer = # cfs involved in transfer</i>		
Sub-total =		<u>1000</u>
If a letter from ODFW endorsing this as a "fish-friendly" transfer is included, multiply sub-total by 0.50 =		
Total = sub-total minus 50% "fish-friendly" reduction, if applicable =		

*NOTE: [POD/APOD, POA/APOA, SW to GW, Gov Action] are all counted as one type
POU is counted as one type
[USE or (Supplemental to Primary)] are counted as one type

3. Page 3 of application: Have all the applicants listed at the top of the page signed?
If no, whose signature is missing? _____

4. Are all listed certificates or permits shown by WRIS as non-cancelled?
If no, which are cancelled? _____
For each cancelled certificate, if there has been a remaining right certificate issued that covers the lands in the left side of Table 2, list its number _____ and check the #4 box at left on this checklist.

5. If any certificate is in the name of a "district", is a Supplemental Form D from that district enclosed?
 N/A Form D needed from _____ (district)

6. If all #1-#5 boxes on this checklist are checked (with no remaining deficiencies identified), accept the application and assign it a numbered transfer folder. Put this check sheet in the transfer folder. If #1, #2, #3, #4 or #5 on this checklist is deficient, the application cannot be accepted. It should be returned and the deficiencies listed in the "staff" section at the bottom of Application Page 1, unless the applicant or agent can resolve the deficiencies within 2-3 days.

MARTHA O. PAGEL

Admitted in Oregon and Washington

Direct Line: Salem 503-540-4260; Portland 503-796-2872

E-Mail: mpagel@schwabe.com

October 20, 2015

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BY HAND DELIVERY

OCT 21 2015

Kelly Starnes
Transfer Program Analyst
Oregon Water Resources Department
725 Summer Street NE
Salem, OR 97301

SALEM, OR

Re: Application for Permanent Water Right Transfer
Our File No.: 126604-203010

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Dear Kelly:

Enclosed for filing on behalf of Tumalo Irrigation District ("TID") is an Application for Permanent Water Right Transfer together with supporting documentation. Please charge the \$1,000 application fee to Schwabe, Williamson & Wyatt's account with the Department. I will serve as the applicant's agent.

This application requests a change in the place of use under TID's existing water right for Upper Tumalo Reservoir to include two interconnected ponds that are operated as part of the distribution system for TID. The permanent transfer is intended to provide long-term authorization for the project. We are simultaneously filing a limited license application for the same water use, but from a different source (Crescent Lake Reservoir.) The limited license is intended as a "bridge" to provide short-term authorization while TID pursues the permanent transfer application.

T 12187

Kelly Starnes
October 20, 2015
Page 2

Thank you for your assistance with this matter. Please contact me if you have questions or need additional information to complete your review.

Sincerely,



Martha O. Pagel

MOP:kdo
Enclosure
cc: Ken Rieck (via email; w/encl.)

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S&W

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Application for Water Right Transfer

Evidence of Use Affidavit



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Please print legibly or type. Be as specific as possible. Attach additional pages if you need more spacing. Supporting documentation must be attached.

State of Oregon)
) ss
 County of DESCHUTES)

I, KEN RIECK, in my capacity as MANAGER OF TUMALO IRRIGATION DISTRICT,
 mailing address 64697 COOK AVENUE
 telephone number (541)382-3053, being first duly sworn depose and say:

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1. My knowledge of the exercise or status of the water right is based on (check one):

- Personal observation Professional expertise

OCT 21 2015

2. I attest that:

SALEM, OR

Water was used during the previous five years on the entire place of use for Certificate # 76684; **OR**

My knowledge is specific to the use of water at the following locations within the last five years:

Certificate #	Township	Range	Mer	Sec	¼ ¼	Gov't Lot or DLC	Acres (if applicable)

OR

- Confirming Certificate # ____ has been issued within the past five years; **OR**
- Part or all of the water right was leased instream at some time within the last five years. The instream lease number is: ____ (Note: If the entire right proposed for transfer was not leased, additional evidence of use is needed for the portion not leased instream.); **OR**
- The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached.
- Water has been used at the actual current point of diversion or appropriation for more than 10 years for Certificate # ____ (For Historic POD/POA Transfers)

(continues on reverse side)

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FS

3. The water right was used for: (c.g., crops, pasture, etc.): STORAGE FOR MULTIPLE PURPOSE USES
4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

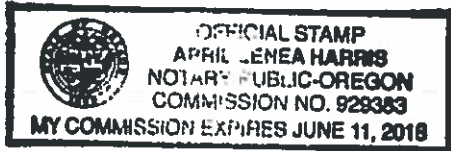
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KLGRQ
Signature of Affiant

10.20.2015
Date

OCT 21 2015

Signed and sworn to (or affirmed) before me this 20 day of October, 2015. SALEM, OR



April Lenea Harris
Notary Public for Oregon

My Commission Expires: June 11, 2018

Supporting Documents	Examples
<input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate)	Copy of confirming water right certificate that shows issue date
<input type="checkbox"/> Copies of receipts from sales of irrigated crops or for expenditures related to use of water	<ul style="list-style-type: none"> • Power usage records for pumps associated with irrigation use • Fertilizer or seed bills related to irrigated crops • Farmers Co-op sales receipt
<input checked="" type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none"> • District assessment records for water delivered • Crop reports submitted under a federal loan agreement • Beneficial use reports from district • IRS Farm Usage Deduction Report • Agricultural Stabilization Plan • CREP Report
<input type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph	<p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.</p> <p>Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com</p>
<input type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number

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T 12187

Facility Water Use Report



Report ID 16593

2010
begin water
year

UPPER TUMALO RESERVOIR;
2080 FEET SOUTH AND 1310 FEET WEST FROM NE CORNER, SECTION 23
(17S-11E-23-SE NE)

Cert:76684 CF *

TUMALO IRRIGATION DISTRICT

Records per page: 10

Acre-feet (AF) of Water Used														Total Water Used	Irrigated Acres
Water Year*	Method of Measurement	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep		
2014	EFV	100.00	100.00	100.00	100.00	100.00	100.00	100.00	900.00	900.00	100.00	100.00	100.00	900.00	8114.00
2013	EFV	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1100.00	1100.00	100.00	100.00	100.00	1100.00	
2012	EFV	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1100.00	1100.00	100.00	100.00	100.00	1100.00	
2011	EFV	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1100.00	1100.00	100.00	100.00	100.00	1100.00	
2010	EFV	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1100.00	1100.00	100.00	100.00	100.00	1100.00	

*The water year is named for the calendar year in which it ends. Example: the 2014 water year begins Oct. 1, 2013 and ends Sep. 30, 2014.

Method(s) of Measurement:

EFV Estimate (for pond/reservoir right): Reservoir AF volume allowed by water right

- Monthly amounts indicate:
 - For diverted rights, the total amount diverted during the month;
 - For storage rights, the amount generally stored in the reservoir/pond during the month, as represented by the volume of water impounded on approximately the same day each month.
- Water Use amounts have all been converted to "acre-feet" (AF), regardless of the original measurement unit reported. One AF is the volume of water that will cover an acre of ground one foot deep = 325,850 gallons.
- Zeroes indicate that a report was received, stating that no water was used during those months; if a year is not listed, no report of water use was received for that year.

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T 12187

Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
 - d) The application involves irrigation water uses only.

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NOTE TO LOCAL GOVERNMENTS

SALEM, OR

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

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OWRD

Land Use Information Form



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Applicant(s): Tumalo Irrigation District

Mailing Address: 64697 Cook Avenue

City: Bend

State: OR

Zip Code: 97701

Daytime Phone: 541-382-3053

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
Water diverted and conveyed from Upper Tumalo Reservoir in Townships 16 and 17 South, Range 11 East (see accompanying water right application) to new storage location described below:									
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>NENW</u>	<u>00828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>NWNE</u>	<u>00828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>NWSW</u>	<u>00828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>NWSW</u>	<u>00824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>SENW</u>	<u>00828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>SENW</u>	<u>00824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>SWNW</u>	<u>00828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>SWNW</u>	<u>00824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>
<u>17S</u>	<u>11E</u>	<u>13</u>	<u>NESW</u>	<u>00824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Reservoir</u>

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Deschutes County

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water
 Water Right Transfer
 Permit Amendment or Ground Water Registration Modification
 Limited Water Use License
 Allocation of Conserved Water
 Exchange of Water

Source of water: Reservoir/Pond Ground Water Surface Water (name) _____

Estimated quantity of water needed: 124.79 cubic feet per second gallons per minute acre-feet

Intended use of water:
 Irrigation Commercial Industrial Domestic for _____ household(s)
 Municipal Quasi-Municipal Instream Other Storage for multiple purpose uses

Briefly describe:

Permanent transfer of 124.79 acre-feet of water storage from the Upper Tumalo Reservoir to a new, lined, storage reservoir.

T 12137

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OCT 20 2015
OWRD

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 4. →

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OCT 20 2015

OWRD

OCT 21 2015

For Local Government Use Only

SALEM, OR

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s):
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) If approvals have been obtained but all appeal periods have not ended, check "Being pursued."

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
See below	Chapter 18.60 Chapter 18.84	<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input checked="" type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
	Chapter 18.128 Chapter 18.134	<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
	Chapter 18.132	<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
	OCC Chapter 22	<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

Applications currently pending before Deschutes County are: 247-15-000226-CU, 247-15-000227-CU, 247-15-000228-LM, 247-15-000383-MA, 247-15-000384-SP, and 247-15-000385-V.

Name: Peter Gutowski Title: Planning Manager
 Signature: [Signature] Phone: 541 385-1709 Date: 10.20.15
 Government Entity: Deschutes County

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____
 City or County: _____ Staff contact: _____
 Signature: _____ Phone: _____ Date: _____

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 OWRD



1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440

Janet E. Neuman
Senior Counsel

Direct Dial: 503.802.5722
Direct Fax: 503.972.7422
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November 25, 2015

VIA E-MAIL AND U.S. MAIL

Mr. Kelly Starnes
Transfer Program Advisor
Water Right Services Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301

Re: Permanent Transfer Application T-12187 (Tumalo Irrigation District)

Dear Mr. Starnes:

I. Introduction

I represent Thomas and Dorbina Bishop, 63382 Fawn Lane, Bend, Oregon 97701. The Bishops' property is located within the boundaries of the Tumalo Irrigation District ("TID" or the "District"). The Bishops are patrons of TID and receive water from the District pursuant to appurtenant water rights included in Certificate 74146.

On October 27, 2015, the Oregon Water Resources Department ("OWRD" or "the Department") published notice of TID's Permanent Transfer Application T-12187. With this Application, TID purports to change the place of use of storage for 124.79 acre feet of the water covered by the District's storage right in Certificate 76684, which authorizes storage of 1100 acre feet of water in the Upper Tumalo Reservoir ("UTR"). In T-12187, TID seeks *retroactive* approval for moving a portion of its water to two private unpermitted lakes built, owned, operated, and used by KC Development Group, LLC ("KCDG") on KCDG's private property.

II. History of TID's attempts to move water to KCDG's private lakes

As the Department is well aware, this is not TID's first attempt to obtain OWRD approval for moving stored water into KCDG's facilities. In 2014, TID submitted first a temporary transfer application (T-11833) and later a permanent transfer application (T-11951) under ORS 540.570 and ORS 540.580—the irrigation district transfer statutes. The Department properly denied both applications on several grounds on April 29, 2015. On or about the same date, TID filed what it called "amended" transfer applications asking the Department to process its requests under ORS 540.510 and 540.520—the regular transfer statutes—rather than under

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the irrigation district statutes. The Department did not at any time publish notice of the "amended" applications.

On June 16, 2015, the Department issued an Enforcement Order and Limited License in Conjunction with Enforcement Order ("Order & License") to carry out its April decisions denying the District's transfer applications.¹ On June 25, 2015, TID filed petitions for reconsideration of the April orders. Those petitions were denied on August 24, 2015, by operation of ORS 183.484(2). On August 14, 2015, the Bishops filed a petition for reconsideration of the Order & License, and on October 13, 2015, OWRD granted the Bishops' petition and withdrew the June 16th Order & License for reconsideration.

On October 20, 2015, TID filed an application for a limited water use license (LL-1613) and the current application for a water right permanent transfer (T-12187). Three days later, on October 23, 2015, TID filed a petition for judicial review of the order denying T-11951—the earlier permanent transfer application—in Deschutes County Circuit Court.

The Bishops submitted comments on LL-1613 by letter to Jerry Sauter on November 9, 2015.² Transfer T-12187 is the subject of this letter.³

III. Discussion: The Department should deny T-12187

The Bishops urge OWRD to deny TID's application for a permanent transfer of water from the Upper Tumalo Reservoir to KCDG's private lake for several important reasons. First and foremost, the KCDG facilities do not have reservoir permits and the facilities therefore cannot legally store water. By failing to obtain appropriate permits, KCDG has evaded required public reviews of its facilities. Additionally, TID cannot properly use a transfer proceeding to move stored water and there is no precedent for doing so. T-12187 must also be denied because the transfer cannot be approved without enlargement of TID's water right and injury to other water rights holders. Finally, approving the transfer of irrigation district water to a private, unpermitted recreational lake is against public policy.

¹ To date, the Order & License have never been included in the Department's Water Resources Information System ("WRIS"), thereby depriving the public of full and timely information about the status of TID's various transfer applications and the Department's decisions pertaining to them. Although the Bishops learned about the Order & License in time to seek review within the applicable deadline, other members of the public were deprived of that opportunity by the failure to publish this document.

² A copy of the Bishops' comments on LL-1613 is included with these comments as Attachment 1.

³ A copy of the Bishops' comments on TID's earlier application for permanent transfer, T-11951, is included with these comments as Attachment 2. For ease of reference, copies of the Bishops' recent submissions to Deschutes County in the ongoing land use proceedings are also included with these comments as Attachment 3.

A. TID seeks to transfer water to an illegal storage facility

TID has now submitted a total of five transfer applications and one limited water use license application in its attempt to store water in KCDG's constructed private lakes. But no matter how many times and how many methods TID has tried to get permission to store water in KCDG's lakes, the fact remains that *KCDG does not have a reservoir permit for its storage facilities*. The KCDG reservoirs were constructed and filled in violation of ORS 537.130, ORS 537.400, and applicable administrative rules. KCDG built and filled its two reservoirs without any permit, and thus the reservoirs are storing water illegally.

Oregon law is crystal clear in requiring a permit to store water. ORS 537.130(1) requires "any person intending to acquire the right to the beneficial use of any of the surface waters of this state" to obtain a permit "*before beginning construction . . . of any distributing or controlling works, or performing any work in connection with the construction.*" (Emphasis added.) ORS 537.400(1) (titled "reservoir permits") restates that "all applications for reservoir permits shall be subject to the provisions of ORS 537.130." As the Department knows, KCDG did not get a permit from the Department before beginning (and indeed, completing) construction of its works. Section 2 of the same statute prohibits anyone from *using, storing, or diverting* any water "until after the department issues a permit." (Emphasis added.) KCDG diverted water from TID's pipeline, stored the water, and used the lakes for recreational and other purposes without any permit.

Department rules define "storage" as "the retention or impoundment of surface or groundwater by artificial means for public or private uses and benefits." OAR 690-300-010(47). KCDG designed and lined the two lakes to retain water for its private recreational use and esthetic benefit. "Reservoir" is defined by OAR 690-250-0010(13) as a "natural or artificial lake or pond in which water is collected for beneficial use or purpose." KCDG's facilities are artificial lakes where water is collected and used by KCDG for its private purposes. OAR 690-250-0010(10) defines "legally stored water" as "any water impounded in a reservoir under the provisions of an established right to store water." KCDG's facilities do not contain legally stored water.

No one can deny that the KCDG facilities were constructed to store and retain water. A dozen or more heavy construction vehicles operated in full shifts for several months to build these facilities—excavating, filling, and moving hundreds of thousands of cubic yards of material to create the lakes and build a road.⁴ Polyethylene liners were installed in both lakes to

⁴ See Attachment 2, Exhibit A, which is a copy of a document submitted by KCDG to the Department of Geology and Mineral Industries ("DOGAMI") Mineral Land Regulation and Reclamation Office on

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retain the stored water. Parts of the property had formerly been used for mining rock, but had been reclaimed and re-vegetated by 2005 as required by the Department of Geology and Mineral Industries ("DOGAMI").⁵ In 2007, Harris Kimble, a member of KCDG, applied for and received approval from Deschutes County to rezone the property to a rural residential use zone with overlays of landscape management and wildlife management (to protect deer winter range, among other purposes).⁶ KCDG's construction activities completely destroyed the previously reclaimed and re-vegetated property in order to create the two new lakes.⁷

From mid-March through August of 2014, KCDG constructed the reservoirs and filled them with water from TID's Tumalo-Bend Feed Canal. According to the Application for T-12187, the completed reservoirs have a water surface area of more than 21 acres and they hold just under 125 acre feet of water—the equivalent of more than five million cubic feet—or nearly 41 million gallons—of water. The KCDG facilities are clearly unpermitted—and illegal—storage reservoirs.⁸

According to the Department, when a water user is "purposely manipulating" water and gaining a beneficial use from a pond or other impoundment, a permit is required.⁹ KCDG is undeniably manipulating the water in these ponds. Rudimentary engineered drawings of the two facilities that were submitted by KCDG to Deschutes County show the specifications

October 8, 2014, stating that 259,981 cubic yards of material were excavated for KCDG's "south pond" alone.

⁵ See Attachment 2, Exhibit B (DOGAMI's *Report of Onsite Inspection Conducted January 11, 2005*). In fact, when DOGAMI discovered the current excavation, it required KCDG to submit an application for a surface mining operating permit, as discussed in Part B.3 below.

⁶ See Attachment 4, excerpted pages from the November 8, 2007 Decision of Deschutes County Hearings Officer Karen Green in File PA-07-2 and ZC-07-2. Due to the size of this document, I have included only the pertinent pages.

⁷ See Attachment 2, Exhibit C, which shows photographs of the site before, during, and after the construction of the lakes. The exhibit is a Power Point presentation prepared by the Bishops' land use attorney, Jennifer Bragar, and presented at a hearing before the Deschutes County Board of County Commissioners ("BOCC") on January 29, 2015, in the consolidated LUCS appeal filed by TID and the Bishops on the LUCS issued for the temporary transfer T-11833. See also the construction photographs included in Attachment 1.

⁸ The structures do not qualify as "exempt reservoirs" under ORS 537.409, because they contain a storage capacity of considerably more than 9.2 acre feet; furthermore, even qualifying small reservoirs still need to go through the alternative permitting process outlined in that statute. ORS 537.147 provides for a secondary permit for use of stored water in certain circumstances, but KCDG did not pursue a permit under that statutory section either.

⁹ See Attachment 2, Exhibit E, a Water Resources Department Power Point presentation on ponds and reservoirs, produced to the Bishops in response to a public records request.

for the storage in the two lakes and the diversion structure that delivers water from the TID pipeline into the water ski lake, and then from the water ski lake to the northerly lake.¹⁰ Furthermore, KCDG uses the impounded water for its private benefit. In fact, storing the water is so valuable to KCDG that it is paying TID for the privilege.¹¹ Specifically, the reservoirs were designed by KCDG to serve as the centerpieces and first phase of a planned residential cluster development. The smaller of the two lakes is a recreational pond, while the larger of the two reservoirs was specially designed as a water ski lake, including two constructed islands to facilitate turns and to provide wake reduction, and a ski boat waiting area complete with a boat launch ramp, a dock and pilings for a boat house.¹² Recreational use of the two KCDG facilities began as soon as they were filled with water.¹³

Neither of these water reservoirs existed or stored water prior to KCDG's excavation and construction. Neither reservoir has a permit as explicitly required by ORS 537.130 and 537.400. Neither of the facilities qualifies for any permit exemption. Without a permit or an exemption, KCDG's storage of water is illegal. The fact that KCDG physically obtained the water to fill the reservoirs from TID does not somehow make the reservoirs legal. Whether the water in the reservoirs comes from TID, the City of Bend, or KCDG's well, the storage is still illegal because KCDG does not have a reservoir permit. An irrigation district cannot store water in unpermitted reservoirs constructed by others, any more than it could build a new reservoir for itself without a permit.

Despite the absolutely clear definitions and statutory permit requirements, KCDG constructed the two lakes on its property in 2014 without any permits from OWRD or any other government agency. KCDG proceeded without land use approvals in the form of conditional use permits from Deschutes County for excavation to create the reservoirs and for use of the water ski lake as a recreational facility requiring large acreage, both of which were determined

¹⁰ See Attachment 5, a rudimentary drawing of KCDG's facilities. This drawing was not included in any of TID's transfer or license applications to OWRD, however.

¹¹ See discussion in Part III.F below. On January 29, 2015, at the BOCC hearing described in footnote 7 above, TID and KCDG's attorney stated that Harris Kimble and the KCDG group installed the reservoirs to increase their property values for an ultimate cluster development because Mr. Kimble had not successfully marketed the property to date. The recording of the hearing is available at http://deschutes.granicus.com/MediaPlayer.php?view_id=2&clip_id=417.

¹² Construction was stopped before completion by a Stop Work Letter from Deschutes County because KCDG did not have a building permit.

¹³ See photographs of the recreational use of the KCDG reservoirs in Attachment 2, Exhibit C. Because KCDG had not obtained the necessary County conditional use permits for construction and recreational use of its lakes, the County issued a Notice of Violation pertaining to the water skiing, included as Exhibit E to Attachment 2. KCDG is now seeking retroactive approval from the County, as described more fully later in this letter.

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by the County to be required. The only permit KCDG obtained, in response to county code enforcement complaints, was a limited-scope, one-month rock-crushing permit from Deschutes County that covered only about 15 acres of KCDG's property. Yet OWRD has accepted and processed four different applications from TID seeking retroactive approval for delivering water to the KCDG facilities—a temporary water right transfer, a limited water use license, and two permanent water right transfer applications—rather than directing KCDG and TID to apply for reservoir permits for the two lakes as required by law

The Department's conduct with regard to the KCDG project is the polar opposite of the strong stance it has taken in other cases of storing and using water without a permit. The Department battled for more than a decade with an individual in southern Oregon over his construction of three reservoirs on his land without obtaining a storage permit.¹⁴ Gary Harrington was eventually convicted of several misdemeanors, leading to a jail sentence, three years of probation, a fine, and an order to empty the reservoirs. Like KCDG, Harrington built docks on his ponds and used them for recreation. The Harrington reservoirs were much smaller in surface area and held only about 40 acre feet of water all together, while KCDG's reservoirs exceed 21 acres in water surface area and hold more than three times the amount of water as Harrington's ponds and are located in the high desert.

Recently, the Department pursued an enforcement action against an individual named Gary Crossan who filled a pond in Linn County with groundwater without a permit to create a commercial sprint boat track. The Department assessed civil penalties against Mr. Crossan for using water without authorization.¹⁵ The Bishops and many others are mystified—and angered—by the Department's refusal to enforce the same permit requirement against KCDG and TID. Indeed, as a public body, TID should be held to a higher standard of compliance with the Department's rules.

¹⁴ See "*Harrington Conviction and Sentence: Judgment Addresses 11 Years of Illegal Water Use*" (Oregon Department of Justice Press Release, July 27, 2012), and Eric Mortensen, "*Jackson County man sentenced for illegal water diversion, ordered to breach dams*" (THE PORTLAND OREGONIAN, July 27, 2012), attached as Exhibit F to Attachment 2.

¹⁵ See Attachment 6 (Order 96-162, Settlement Agreement and Consent Order in the Matter of the Violation of ORS 537.535 by Gary Crossan, OAH Case No. WR-15-003, Agency Case No. PC 05-14).

B. By failing to enforce the statutory permit requirement for construction of the KCDG reservoirs, the Department has allowed the developer to evade required public reviews

1. A permit is necessary to develop critical information about the KCDG project

An important purpose of the permit application process is to provide adequate information about a project to the Department, to other agencies and local governments, to water users, and to the public, so that they can evaluate whether the project meets all applicable requirements and determine how the project will affect their interests. Because KCDG has never applied for a reservoir permit, the Bishops, Deschutes County, other agencies, and other interested parties have been required to do the work of finding and reviewing pertinent and crucial information themselves, at considerable cost in terms of time and money. But this task is nearly impossible without access to proper plans for KCDG's development, and it has been made even more difficult by the conflicting statements and misrepresentations by KCDG and TID throughout the process.¹⁶

If OWRD properly directed KCDG to obtain a storage permit to construct and fill two reservoirs, KCDG would be required to provide all of the important and detailed information described in ORS 537.140 and OAR 690-310-0040(1) before putting a shovel (or in this case, many excavators) in the ground. Providing the required information in a permit application is not just an abstract exercise. Instead, this information is critical for the Department and others to properly evaluate and review a proposed project.

For example, an application to "store water and to construct a reservoir, or multiple reservoirs" must include "preliminary plans, specifications and supporting information" for the reservoirs, as well as "proposed dates for the beginning and completion of construction of the reservoir, the date the water will be stored and put to beneficial use and the uses to be made of the impounded water."¹⁷ Instead, KCDG simply started digging.

¹⁶ See the explanation of misrepresentations to Deschutes County identified in footnote 18 to the Bishops' October 26, 2015 letter to the Hearings Officer, and Exhibit 4 to that letter, included within Attachment 3.

¹⁷ OAR 690-310-0040(1)(c)(A) and (B).

The Bishops and other interested parties have been forced to try to ferret out this information themselves.¹⁸ At considerable personal expense, the Bishops have submitted numerous public records requests to OWRD, Deschutes County, and TID since June of 2014, trying to elicit information about this project that should have been available for public review from the beginning. As a consequence of KCDG's failure to apply for appropriate permits before beginning construction, the agency review processes have been convoluted and out of sequence. For instance, if KCDG had properly provided information about its proposed use of water, particularly water skiing in a rural residential zone, a year and a half of contentious land use challenges leading to ongoing requests for retroactive approval of conditional use applications might have been avoided. Moreover, if KCDG had applied for a permit before beginning construction and had provided information about its proposed activities and schedule, they would have been prevented from doing any work during the deer winter range closure period.¹⁹

A proper permit application also includes "a description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and conveyance of the appropriated waters." As noted already, to date neither KCDG nor TID have ever submitted such a description to OWRD. TID simply asserts in its transfer application, without any explanation or supporting materials, that "the new reservoir . . . will enable TID to use the storage facility to regulate virtually its entire system" and that the reservoir "improves the operational efficiency and flexibility of the District." Since the KCDG lakes are only built to receive water from TID, and not to deliver water back into TID's system, this statement is simply not true.

An application further must contain "information . . . that describes why the amount of water requested is needed, measures the applicant proposes to prevent waste, to measure the amount of water diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream and measures the applicant proposes to prevent damage to public uses of affected surface waters."²⁰ The Bishops and other District water patrons have spent the better part of the last year and a half trying to elicit concrete information about the proposed operation of KCDG's private lakes as TID reservoirs—information that should have been available for public review from the beginning.

¹⁸ As noted in footnote 10, above, KCDG and TID have submitted more detailed information about the construction and operation of the two storage facilities recently to Deschutes County than they have ever provided to OWRD.

¹⁹ See discussion in Part III.B.3 below about KCDG's improper construction during the closure period.

²⁰ OAR 690-310-0040(1)(a)(K).

Despite the Bishops' and others' best efforts to obtain basic information about the mechanics of storing TID water in the KCDG reservoirs, neither KCDG nor TID has ever provided an adequate operations plan for these facilities. Neither KCDG nor TID have ever been required to justify to OWRD and interested parties the amount of water stored in the KCDG facilities. Nor have they effectively countered evidence submitted by the Bishops and others to the County showing that storing water in the shallow, black-lined KCDG facilities will substantially increase evaporation and is thereby wasteful.²¹ Neither KCDG nor TID has adequately explained how the District's water in the KCDG lakes will be managed for the benefit of the District's patrons other than KCDG, or how KCDG will be limited to using only the water it is entitled to for its own irrigation, which is a fraction of the water that KCDG will hold and control in its two lakes. TID has never explained how moving more than 11% of the water stored at Upper Tumalo Reservoir to another location will affect UTR and the public uses it supports. TID has never offered any plausible explanation for why the KCDG reservoirs were constructed without any means of pumping water back out of KCDG's lakes to distribute to TID's patrons, even though TID disingenuously claims that the facilities built to KCDG's specifications for KCDG's benefit will be operated as part of the District's irrigation distribution system—a post-hoc rationalization for KCDG's illegal use. TID owes fiduciary duties to the Bishops and all other District patrons, but it has failed to uphold those duties.²²

The Department is the fiduciary of the state's water resources, and the agency owes specific duties to the public and water rights holders to manage those resources in accordance with the law.²³ Yet, due to the Department's failure to properly enforce the permit requirements in this instance, the Bishops and other patrons have been compelled to conduct their own investigation—on their own time and at considerable expense—to develop the facts about this project. In addition to numerous public records requests, the Bishops issued two tort claims notices and one public contracting notice to TID, appeared at numerous TID Board meetings, and pursued extensive comment and appeal processes through OWRD, Deschutes County, and DOGAMI in order to shed light on this questionable transaction. The Bishops and others are astounded that the Department continues to allow and assist TID and KCDG in their highly visible evasion of basic legal requirements.

²¹ See discussion in Part III.B.2 below.

²² See *Ft. Vannoy Irrigation District v. Water Resources Comm'n*, 345 OR. 56, 188 P.3d 277 (2008) (describing irrigation districts' fiduciary relationship with its members).

²³ See ORS 537.110 (declaring the public ownership of the state's waters).

2. Without a full permit review, the Department abdicates its duty to determine if KCDG's project is in the public interest

Bypassing the applicable permit requirements in this situation violates both the letter and the spirit of the Water Code. The purpose of gathering information and conducting a full review of a proposed project to store and use water is self-evident—to allow the Department to exercise its authority to make a fully informed decision about the proper use of the waters of the state. In particular, the Department must conduct a full public interest review of new reservoir applications.²⁴

Department rules (OAR 690-310-0120) require WRD to consider several factors to determine if the public interest presumption is established:

- "Water use efficiency and the avoidance of waste;
- Threatened, endangered or sensitive species;
- Water quality . . . ;
- Fish or wildlife;
- Recreation;
- Economic development; and
- Local comprehensive plans"

The Department has evaded its responsibilities by not considering any of this information. The Department has not considered the impact of the two new storage facilities on evaporative water losses—either from the new reservoirs or from drawing down Upper Tumalo Reservoir.²⁵ The Department has not addressed the water quality impacts of using the lakes for water skiing. Approximately 60 of TID's patron households use TID water for their domestic

²⁴ Oregon law does not require a public interest review of transfers; thus, the only opportunity for considering whether a particular use of water is in the public interest is during the review of the initial permit application.

²⁵ According to the District's own 2005 Water Conservation and Management Plan, the net evaporation rate in Central Oregon is 2.4 to 3 feet per year, with a peak evaporation rate of 4-6 inches a month during the summer months; the annual evaporative loss from Upper Tumalo Reservoir is about 60 acre feet per year. TID 2005 Plan, p. 1-1. Even though the volume of water stored in UTR will be somewhat reduced, it is not clear that the amount of evaporation will also decrease, and, if so, whether any decrease will be enough to offset the additional evaporation from the KCDG lakes. In fact, depending on the transfer might affect UTR's surface area and depth, removing water from UTR may very well increase the rate of evaporation from the reservoir, which would constitute an enlargement. Moreover, the KCDG reservoirs are relatively shallow, and are lined with black liners, likely leading to significant evaporation from their 21 acres of new water surface area. See Attachment 3 at pages 9-11.

household use.²⁶ Although those patrons are required to install their own filtration system, certified by the District, a whole new set of substances is now being introduced into the water by the use of power boats on the KCDG property. It is questionable whether these drinking water customers will be protected by their existing systems. These households, or members of the public on their behalf, have been denied any opportunity to raise this issue in a meaningful way at a meaningful time as part of the public interest review.

Nor has the Department addressed the impact on groundwater recharge of moving water from UTR to the KCDG reservoirs. Recently, TID entered into a contract with Avion Water Company, which supplies drinking water to 11,500 customers in the Bend area. The contract provided for a testing program to determine whether UTR provides recharge to Avion's wells; the study concluded that recharge does occur.²⁷ Meanwhile, even as this testing was being conducted, TID was dealing away a portion of the UTR water to KCDG. Surely, Avion and its customers are an important sector of the public whose interest the Department ought to be considering and protecting in a public interest review of KCDG's reservoir project. Furthermore, Upper Tumalo Reservoir and its surrounding lands serve several public uses, including wildlife habitat and recreation, whereas KCDG's reservoirs are private facilities, the construction of which destroyed more than 50 acres of wildlife habitat and disrupted travel within the Tumalo Winter Deer Range. A proper permit review requires a description of the impact on these public uses of reducing the water authorized to be stored at UTR by more than 11%.

The Bishops and other interested parties have presented significant information on all of these impacts to Deschutes County in the ongoing land use proceedings. Copies of the Bishops' recent county submissions are included with these comments as Attachment 3. The Bishops and other interested parties should have had an opportunity to present this important and relevant evidence to OWRD as part of a full public interest review long ago. More importantly, the Department has been deprived of information that is critical to making an informed decision about the use of the state's water.

3. The permit process is necessary to elicit critical information from federal, state, and local agencies

The water rights permit process is designed to serve important purposes beyond just implementing the provisions of the Water Code. The Department's statutes and rules require

²⁶ See Attachment 3 at pages 33-35.

²⁷ See Attachment 3 at pages 9-10.

that other agencies receive the Department's weekly notices.²⁸ Agencies and Tribes then provide comments related to their jurisdiction and areas of expertise, including, among other issues: air, water, and noise pollution; fish and wildlife; land use; transportation; and public safety. Although transfer applications are included in the weekly notice bulletins, other agencies understand that transfers receive more limited review (for enlargement and injury to other water rights) rather than a full public interest review for which their comments are pertinent. KCDG's reservoirs are already finished, filled with Tumalo Irrigation District water, and being used for KCDG's private purposes on property designated as winter deer range and zoned for wildlife protection, without ever going through a proper and thorough agency review.

Once again, obtaining proper agency review is not simply a matter of checking a box. Obtaining agency review at an appropriate time can have substantive impact on a project, and the "appropriate time" is before a project is built. By not applying for a reservoir permit, KCDG evaded a permit required by DOGAMI and the appropriate land use compability analysis by Deschutes County prior to construction.

In September of 2014, a DOGAMI employee, Ben Mundie, in reviewing aerial photographs of the Bend area, noticed excavation activity occurring on the KCDG property and contacted Deschutes County about it.²⁹ Mr. Mundie knew that the mining operation on this property had stopped several years ago and the site had been reclaimed according to DOGAMI's requirements, so he investigated. After talking with the County and receiving additional information from the Bishops' land use attorney, DOGAMI notified KCDG that a surface mining operating permit is required for its excavation and reservoir construction. KCDG submitted a permit application and DOGAMI circulated it for agency comment in January of 2015.³⁰ DOGAMI has not made a decision on the permit because of the ongoing land use proceedings, since that agency requires the same land use compatibility review as the Department.

Review by ODFW was also short-circuited by building the KCDG lakes without a reservoir permit. ODFW submitted comments to DOGAMI and to Deschutes County in the ongoing land use proceedings describing the detrimental impacts to wildlife caused by constructing and filling the reservoirs, including improperly conducting construction activities during the deer winter range closure season, a loss of wildlife habitat, and disruption of deer

²⁸ OAR 690-310-0090 requires the Department to send its weekly notices to local, state, and federal agencies and Indian tribes.

²⁹ See Exhibit G to Attachment 2, at p. 1.

³⁰ *Id.* at pp. 2-9.

movement.³¹ ODFW explicitly states that no surface mining permit should issue due to the violation by KCDG of constructing the reservoirs during the deer winter range closure season. This is precisely the sort of information that should and would be developed prospectively in agency review of a new permit application, rather than after the damage has already been done. Here, however, KCDG built the lakes and TID filled them with water more than a year ago, leaving DOGAMI and ODFW playing catch-up.

Deschutes County is perhaps in the most difficult position of all of the agencies who have been forced to review an already completed project. KCDG's failure to apply for a permit before building its water storage facilities set in motion a cavalcade of convoluted, time-consuming, and expensive land use proceedings that are still ongoing. When TID applied for a temporary transfer, it first maintained it did not need to obtain a Land Use Compatibility Statement ("LUCS") from Deschutes County, but OWRD required it to get one. However, its application for the LUCS was incomplete in its description of the project. The LUCS that was issued on that basis was appealed by the Bishops, who ultimately prevailed before a Hearings Officer and Board of County Commissioners.³² The matter was then appealed to LUBA, but dismissed for lack of jurisdiction. The outcome of hours of proceedings and thousands of pages of submissions by the parties was the County's direction to KCDG and TID to apply for conditional use permits for a "recreational use requiring large acreage" for the water ski lake, and for the surface mining that was conducted to create the KCDG lakes. Those proceedings are ongoing. If this project had gone through a proper sequence of permit applications, much of this activity would not have been necessary, at considerable savings of time and expense to the County and all of the interested parties and members of the public.

By failing to require a storage permit for the two KCDG reservoirs, the Department has abdicated its responsibility under the Water Code. The public has been denied the opportunity to gain a full understanding of this project and federal, state, and local agencies have been prevented from appropriately and prospectively exercising their statutory authorities. The Bishops and others have been denied important procedural and substantive rights.

³¹ See Letter from Corey Heath, Deschutes District Wildlife Biologist to Ben Mundie, Reclamationist, January 30, 2015, attached as Exhibit H to Attachment 2 (noting that operations were conducted during the winter range closure period, that the operations had resulted in a loss of wildlife habitat, that the "two large, linear, lined ponds" disrupted deer movement, that the steep, lined ponds and surrounding graveled areas provided no wildlife cover, and that the upland areas had been denuded and had no habitat value).

³² The Hearings Officer's decision is included as Exhibit J to Attachment 2.

C. The transfer statutes do not authorize a "change in place of use" for storage

Transfer T-12187 purports to "change the place of use" for a portion of the storage right authorized by Certificate 76684. In T-11951, TID previously sought to use the irrigation district statutes (ORS 540.580 *et seq.*) to accomplish this change. The Department properly denied T-11951, finding that the irrigation district transfer statutes do not authorize a change in place of use of storage. Now TID is trying to use the general transfer statutes (ORS 540.510, 540.520, and 540.530) as a different means to the same end. However, the general transfer statutes do not provide any better authority than the district transfer statutes for this type of change. The transfer statutes are simply not intended to allow water users to create new storage facilities without permits.

There is no explicit reference in ORS 540.510 or the accompanying rules in Division 380 to changing the place of use for a storage right. ORS 540.510 says "all water used in this state for any purpose shall remain *appurtenant to the premises upon which it is used . . .*" except as changed pursuant to 540.520 and 540.530. (Emphasis added.) This statement does not make sense as applied to stored water. Stored water is not "used" where it is stored, except temporarily and incidentally, as the primary purpose of storing water is to hold it for use elsewhere. A storage right is by definition tied to a single and particular location, which is not just an area on a map, but is within the storage facility itself.

Irrigation districts are formed to provide irrigation water to the owners of irrigable lands within their boundaries. Storing water is simply a means to the end of providing water to the district's patrons for irrigation. Nothing in either the statutes establishing irrigation districts or in the transfer statutes exempts districts from the permit requirements applying to new reservoirs. Nor do the statutes authorize irrigation districts to convey their patrons' water or valuable storage rights to a third party—or to convey special benefits to a single patron. Districts must manage their water in trust for all of their patrons.³³ There may be some circumstances in which an irrigation district could legitimately request to move water from one storage facility to another *existing and permitted* facility within its control—or within the control of other districts or public entities with appropriate safeguards. However, that is not the situation here, where the purported "to" reservoirs have been illegally built from scratch by a private party without any reservoir permits, on private property not owned or leased by the District.

In denying TID's previous application for a permanent transfer, T-11951, the Department said the following:

³³ See *Ft. Vannoy*, *supra* note 22.

"Certificate 76684, however, is a primary water right authorizing storage of water in Upper Tumalo Reservoir for multiple purpose uses. A primary water right authorizes the storage of water for beneficial use under secondary permits. ORS 537.400(1). The water stored in Upper Tumalo Reservoir is applied to lands as specified in secondary water rights that enumerate the acres to which the water stored in Upper Tumalo Reservoir may be applied. The water impounded in Upper Tumalo Reservoir, however, is not itself applied to land. Instead, it is water impounded in the reservoir for use and application to lands pursuant to authorized secondary water rights for which the Upper Tumalo Reservoir is the source. Although impounded water occupies land, it is not applied to land and may not be considered the type of use authorized for transfer pursuant to ORS 540.580."³⁴

The same reasoning applies to TID's current transfer request. The transfer statutes do not authorize a "change in place of use" of stored water.

D. There is no precedent for TID's attempt to change the place of use of storage to a newly-constructed, unpermitted reservoir through a transfer proceeding, or for the Department to allow the transfer process to be used this way

In the summer of 2014, while TID's temporary transfer application T-11833 was pending, the Bishops submitted a public records request to the Department that included the following request:

"All public records pertaining to other instances, besides that addressed in TID's Transfer Application T-11833, when the Water Resources Department has allowed the holder of a reservoir permit or certificate to move the place of use of storage authorized in the permit or certificate to another location, including by a temporary or permanent transfer or other form of permission or approval."³⁵

Although this request was submitted during the pendency of T-11833, the request was not limited to either temporary transfers or irrigation district transfers and the responsive records are thus relevant to TID's current transfer request as well. The Department produced copies of 11 transfer files in response to this request, some small, some voluminous. Comparing the elements of these other transfers with the transfer now proposed in T-12187 reveals

³⁴ Order 95-1026, Final Order Denying a Permanent Change to Water Right Certificate 76684, In the Matter of Transfer Application T-11951, Deschutes County (April 29, 2015).

³⁵ Public Records Request from Janet Neuman to the Water Resources Department, July 14, 2014.

significant differences and demonstrates that the produced transfer files do not provide any meaningful support or precedent for the Department's handling of TID's requested "change in place of use" of storage as a transfer.³⁶

The files produced by the Department did reflect instances where the Department allowed a change in place of use from one storage location to another. But that is where the similarity with TID's proposed transfer ends. In every instance except for one, the *receiving facilities* had already been through a full permit review process, which is not the case here. And in the last case (affecting only 3.6 acre feet of water), the receiving facility was essentially contiguous to the originally-permitted reservoir, which had been wiped out by a landslide. In this case, by contrast, the receiving facilities were constructed without any reservoir permit and without any Department review whatsoever.

Furthermore, in every one of the produced files, the changes occurred on and within a parcel owned by a single landowner, which is not the case here. In this instance, the Upper Tumalo Reservoir belongs to the Tumalo Irrigation District, while the receiving facilities are located several miles away on private land owned by KCDG, and subject to KCDG's control.³⁷

In two of the transfers, the receiving facilities had already been in existence for some time as authorized by their previously-issued permits. In contrast, the construction of the KCDG reservoirs occurred before filing this transfer application, and as noted, they were constructed without any permit or Department review—a critical difference between TID's transfer and the files produced in response to the Bishops' records request.

Furthermore, in all of the produced files, the site of the receiving pond or reservoir was either the same or very close to the location originally permitted. In fact, three of the orders themselves recite that the sites were "contiguous." The transfer orders thus served the purpose of "tweaking" the location of the originally-permitted facilities, for a variety of reasons: replacing a reservoir damaged by a landslide; working around wetlands or a steep grade that interfered with the originally-planned reservoir location; shifting the location of a permitted reservoir slightly in order to divide the land for sale; and improving reservoir operations by combining or reconfiguring the originally-planned location. The greatest distance between the old and new place of use in any of these previous transfers was 1500 feet. In that transfer, the receiving pond had previously been permitted and certificated, but for some reason, the certificate holder (the City of Willamina) had voluntarily cancelled its water right. The transfer

³⁶ Further details about the produced files appear in Attachment 7.

³⁷ As discussed further in Part III.F below, in this case TID has essentially abdicated control of a portion of the District's water to KCDG.

order effectively allowed the City to rescind its cancellation, and resume use of the previously-certificated pond. In contrast, in TID's transfer, the distance between the "from" facility and the "to" facility is over four miles as the crow flies, the zoning, character, and ownership of the properties are entirely different, and, again the "to" facilities do not have reservoir permits.

Finally, the other transfers were subject to public notice and comment *prior* to changing the location of the water, except where the facilities had already existed for some time. Significantly, none of the other transfers received any objections during the review process, nor did they elicit any land use compatibility complaints. TID's proposed transfer stands in stark contrast. The water has already been moved, over significant objections. Notably, these objections include a contentious ongoing land use challenge.³⁸

The transfer files produced by the Department do not support the proposed change of place of use of storage rights as proposed in T-12187 in any way whatsoever. In fact, these files further demonstrate that the transfer process is being misused by TID. There is no precedent for allowing an irrigation district to move a significant amount of its storage right to a newly-constructed, unpermitted, privately-owned-and-operated reservoir whose primary purpose is to serve as a recreation facility within a private development.

TID's persistent but contorted attempt to change the place of use of storage using a transfer should not be allowed. The Department should deny T-12187 and require a new reservoir permit application for the KCDG reservoirs.

E. TID's proposed transfer will result in enlargement of its water right

TID's Certificate 76684 authorizes storage of 1100 acre feet "each year." This restriction to an annual amount of storage is called the "one-fill rule."³⁹ Storage of more than that amount constitutes illegal water use, subjecting the water right holder to enforcement action by the Department.⁴⁰

This transfer will result in enlargement of TID's right, and has resulted in violation—and will result in continued violations—of the one-fill rule. In fact, the October 14,

³⁸ See Attachment 3 (detailing the extensive land use concerns raised by this project).

³⁹ See C.J.S. Waters §438 ("Under the 'one fill rule,' injury to other appropriators is prevented by prohibiting a reservoir from making more than one fill annually...") See also Attachment 8 (April 16, 2007 Memorandum from Tim Wallin to Application Caseworkers noting that reservoir permits provide for one fill annually).

⁴⁰ OAR 690-250-0150.

2014 Agreement between TID and KCDG contains the following language, which virtually guarantees violation of the one-fill rule:

"TID is aware and understands that the liners used to seal the new Reservoir Ponds should not be exposed to open air for long periods of time. As such, TID will make a reasonable effort to replace water used by TID as soon as possible during the irrigation season, providing that the water is available."⁴¹

Furthermore, the TID transfer application and the TID/KCDG contract are unclear on how the two KCDG reservoirs relate to each other. TID has said at times that only the water ski lake will be used as a re-regulating reservoir, and that the northern lake will be used to store KCDG's irrigation water in the form of a BIS.⁴² Yet the application maps submitted by TID with its transfer application show that the northern lake has a capacity far in excess of an appropriate BIS for KCDG—a total capacity of at least 60 acre feet. Furthermore, the northern lake is lower in elevation than the water ski lake, and the project is designed to divert water first into the water ski lake, and then pass it on to the northern lake, with no way of redistributing it to other TID patrons. Such operation will inevitably lead to enlargement of both TID's and KCDG's water use.

Even though the requested transfer only applies to Tumalo Creek water, the KCDG reservoirs are receiving water from Tumalo Creek and from Crescent Lake via the Deschutes River. There is nothing in the TID/KCDG contract, nor in the transfer application, to insure that storage in the KCDG reservoirs will be properly limited to the water that is the subject of the transfer.

There is also some question about whether TID has already forfeited some of its right under Certificate 76684. The Bishops understand that one reason offered to KCDG by the Watermaster for obtaining water from TID was to help the District hang on to a water storage right that it was in danger of losing.⁴³ If that is indeed the case, TID should not be allowed to move water that has already been forfeited by non-use, as that would clearly constitute an enlargement of TID's right.

F. TID's proposed transfer will injure the Bishops and other water users

⁴¹ See October Agreement, at p. 3, included within Attachment 2, Exhibit L.

⁴² See Attachment 3, page 18 (discussing the dubious legitimacy for any BIS on the KCDG property).

⁴³ At TID's April 8, 2014 Board meeting, Watermaster Jeremy Giffin said the following to the Board in discussing the TID's proposal to transfer water to KCDG: ". . .so you are basically salvaging 108 acre feet of paper water right from future cancellation and turning that into a revenue stream." T-11833 covered 108 acre feet of water, but T-11951 and T-12187 cover 124.7 acre feet.

It is incumbent on the applicant to provide—and the Department to require—sufficient information for the Department to fully evaluate a transfer under a "no injury" test. TID's transfer application does not explain how the reservoirs owned, operated, and controlled by KCDG will be integrated with the TID facilities, and how TID will assure that the priorities of its water patrons and residents are honored. KCDG's use of the water at the new location is not discussed in the application, even though KCDG owns the reservoirs and the surrounding property and is already using the reservoirs for its own purposes.

The fact that the District has ceded control of 125 acre feet of its stored water to a single district water user is a *de facto* injury to the other district members and water users because the KCDG reservoirs have no outflow facilities to return the water to the TID system for delivery to or use by other District patrons. This still the case a year and a half after the lakes were filled. There is no reason to believe TID's claims about its supposed purpose for the KCDG lakes. The other patrons will thus be injured. During the declared drought last summer, TID made no effort to take water from the KCDG lakes, and in fact, continued to put water into the lakes, in spite of reducing water deliveries to some of its patrons and ending the irrigation season early.

As described above, the system as constructed simply diverts water from the Tumalo Feed Canal pipe into KCDG's "south lake" (the water ski lake), from which a "south lake overflow pipe" delivers water into KCDG's "north lake" (the recreational lake). The only outflow from the system is an irrigation pipe serving KCDG's own property from the north lake. (The north lake is lower in elevation than the water ski lake.) There are a number of TID patrons whose diversion points are "downstream" of KCDG along the TID pipeline, including the Bishops. In fact, TID claims in the transfer application that it can use the KCDG facilities to "regulate virtually its entire system." The Bishops have an earlier priority date than both KCDG and the Upper Tumalo Reservoir. Yet there is no way to get the water back out of the KCDG reservoirs, particularly once it gets into the lower northern lake. There is no way for KCDG to release water to these senior users, to junior users further along the pipeline who would receive that water but for the change in storage location, or to TID's Upper Tumalo Reservoir, pipelines, or other facilities.⁴⁴ My clients and other water rights holders are thereby injured.

The October Agreement contains another troublesome provision that further limits TID's control over the water for the benefit of its members. Paragraph 2 on page 2 of the Agreement says, in full:

⁴⁴ Yet paragraph 10B of the Agreement says that in order for KCDG to qualify for a permanent transfer, KCDG must prove that it can "pull water from the Reservoir Ponds and deliver into the TID canal for reregulation."

"TID shall also deliver surface irrigation water ("Irrigation Water") to the Subject Property and surrounding areas, which shall pass through the Reservoir Ponds, but not be included as part of the 125 acre feet of Stored Water under Certificate Number 76684, or a subsequent certificate number as it may be assigned by OWRD. The Irrigation Water shall be used for irrigation in accordance with irrigation rights appurtenant to properties owned by KCDG, and is not the subject of this Agreement."

As noted earlier, even before TID's approval of the original June 10th Agreement with KCDG, and prior to TID's submission of its temporary transfer application on June 11, 2014, KCDG had already filled the north lade. Although Watermaster Jeremy Giffin said they were entitled to store water there as a BIS, they were storing considerably more than any reasonable BIS amount, while performing little, if any, irrigation on their property. In fact, as discussed above, the northern lake's total capacity is more than 60 acre feet. KCDG has already abused the BIS concept and the structure of the project virtually guarantees further abuse.

The October Agreement provides that KCDG will indemnify the District for certain liabilities and losses. However, there are no requirements for insurance or any other financial representations to support this obligation. The District has been very concerned about public safety in its system; part of the reason for its piping project, in addition to conservation, was to reduce the risk of drowning or other injury. It is questionable whether the District and, indirectly, its water patrons are adequately protected from such liabilities at these two new reservoirs which are intended for heavy recreational use and which are unfenced in a developed rural residential neighborhood.

In addition to receiving irrigation water from the District, the Bishops and several other households surrounding the KCDG property receive domestic water from a well operated by Klippel Water, Inc. ("Klippel"). This well is located on Klippel property directly adjacent to the southern end of the KCDG property. The information provided in the application is insufficient for the Bishops and the other Klippel Water, Inc. customers to evaluate the impact of the lakes on this drinking water supply. The lined lakes now capture water that would otherwise have percolated into the ground, possibly recharging this well.⁴⁵

The Bishops and other District water patrons will pay higher annual costs for their water deliveries due to the below-market consideration being paid by KCDG to the District. The true value of the water storage right transfer to KCDG is much greater than the \$50 an acre foot provided for in the Agreement with the District. This asset, if properly valued for KCDG's intended use, would result in substantially more annual revenue to TID, by several orders of

⁴⁵ See Attachment 3, at pages 10-11.

magnitude, thereby reducing the annual costs imposed on all of the District's water patrons. The water patrons will be economically harmed by paying more annual charges for their water than they should pay.

In spite of the basic indemnification provision in the TID/KCDG Agreement, the Agreement fails to provide many important protections for TID from costs and financial risks. These costs and risks will ultimately fall upon the water patrons. Potential risks include, but are not limited to:

- Potential tort liability from operation of the lakes for water skiing and other recreational or private purposes. There is risk of injury and drowning for which the District could be alleged to be liable for failing to properly control, manage and secure the water storage facilities.
- Potential liability for environmental harms or human health hazards from the water stored on KCDG property, such as from use of motorized water craft or the introduction of hazardous chemical, biological or other substances into the water.
- Credit risk related to KCDG or its successors in interest. The lots on which the water would be stored are apparently subject to a Trust Deed securing a revolving line of credit for up to 4.2 million dollars extended to KCDG by its lender. The equity KCDG or its successors have in the property may provide inadequate security. The indebtedness could result in losing control of the property. The indebtedness could also lead to inadequate maintenance by KCDG or its successors of the water storage reservoirs.

TID cannot be allowed to transfer water to KCDG to the injury of its other patrons, and T-12187 must be denied.

G. Allowing irrigation districts to transfer stored water to private water ski lakes is contrary to public policy

OWRD will create important precedent with its decision on this transfer. Landowners and developers around the state who want water ski lakes or other water features on their property are looking for sources of water. In central Oregon, as well as in other basins, it is nearly impossible to find "new water" to appropriate, especially as climate change and recurrent drought inject further uncertainty into the water supply. Landowners and developers seeking water are turning to transfers of existing water rights to find water for their private lakes.

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In fact, artificial water ski lakes are proliferating across the state, especially in arid Central Oregon. Attachment 9 includes aerial photographs, schematic drawings, and other material about several water ski lakes in central Oregon and elsewhere throughout the state. Some are completed and some are under construction. Some are vague proposals.⁴⁶

The proliferation of water ski lakes raises important water issues. The lakes have a characteristic design—they are long and shallow, with a barbell shape and artificial islands at both ends. The shallow depth contributes to evaporation, particularly if the lakes are located in arid areas. If a lake is lined, it will further intensify evaporation and may also reduce infiltration to local groundwater. If it is unlined or if the lining fails, boating activity may contribute pollutants to nearby surface and groundwater. A variety of other impacts can occur, depending on the specific location of any given lake.⁴⁷

Where is the water coming from for these facilities? Although ORS 537.130 and 537.400 clearly require a reservoir permit for any new water storage facility, only one of the examples included in Attachment 9 (River Run Ranch) has obtained such a permit. The lake on the Baney Corporation facility appears to have no permit or other approval. Owners of the KG Ranch facility may have applied for some sort of permit at one time, but it seems that any review process is in abeyance. According to documents submitted to Deschutes County as part of an application for a conditional use permit for a farm pond expansion, KG Ranch intends to fill its lake with water provided by the Central Oregon Irrigation District.⁴⁸

The KCDG/TID project has engendered opposition and controversy since construction of the lakes began in the spring of 2014. The Bishops and many other interested parties have registered their concerns in extensive and extremely contentious proceedings before

⁴⁶ The Faith Hope and Charity Vineyards and Events Center lists a water ski lake under "luxuries" on its website, though the link then says "coming soon." <http://vineyards.property/master-plan/> The main page of the website says "It takes faith. It takes hope. It takes charity. Yes, you can grow grapes in central Oregon!" <http://faithhopeandcharityevents.com/> "Judging by the information in Attachment 9, you can also build and fill water ski lakes. In fact, it appears to be much easier than starting a vineyard.

⁴⁷ See Attachment 3 for extensive discussion of the localized land use impacts associated with just the KCDG lakes.

⁴⁸ A county staff report associated with a conditional use permit for the KG Ranch water storage facility (247-15-000221-CU) has the following curious statement: "The owner-applicant expanded the pond to 9.02 acres with a large berm surrounding the pond. Although the expanded pond has the elongated shape, turn-around islands, and boat access ramp typical of a water-skiing facility, no recreational use of the pond is proposed at this time." It appears that KG Ranch is trying the same approach as KCDG of building a project first and later asking for forgiveness rather than permission.

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OWRD, DOGAMI Deschutes County, and LUBA.⁴⁹ The Bishops' participation has revealed to them the vastly inconsistent and insufficient public and agency review processes being applied to the KCDG facilities and other artificial water ski lakes, some already built and some proposed.

The Department's role in reviewing these facilities is crucial. It is the Department's job to safeguard and manage the state's water resources. No other agency has the authority or expertise to consider the impacts of constructing artificial lakes and filling them with the public's precious water. Requiring these new water storage facilities to obtain reservoir permits is the first step in assuring that the projects get comprehensive and consistent review—not just by the Department, but by other agencies with relevant concerns and expertise and by the public. In particular, appropriate review in conjunction with a reservoir permit application *prior to* constructing and filling the lakes will allow local governments to learn of the projects before it is too late for them to effectively evaluate the projects' land use impacts and respond prospectively and consistently.

If the Department does not get out in front of the water use issues associated with water ski lakes and other “creative” water storage projects, OWRD and other agencies and local governments will continue to be enmeshed in contentious case-by-case battles as these facilities proliferate. Landowners and developers will continue to look for water for their lakes wherever they can find it. Since many irrigation districts control large blocks of stored water, there will undoubtedly be more cozy deals between developers and districts to “change the place of use” of storage to newly-constructed, unpermitted, artificial lakes. The transfer statutes were never meant to support such activity. Nor were irrigation districts intended to serve as water suppliers for private land developments.

As the Department is well aware, much of Oregon is experiencing protracted drought. The Deschutes Basin faces unique water management challenges because of its interconnected surface and groundwater, and new water uses require scrutiny.⁵⁰ Given these stresses on water resources, the Department should be particularly wary of the growing number of artificial lakes and their demands for water.

⁴⁹ The Department and the County have received numerous comments from many people and groups in addition to the Bishops opposing the KCDG project and TID's attempts to provide water for the project.

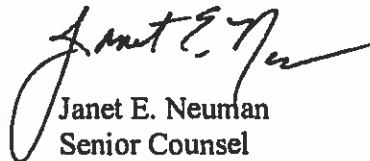
⁵⁰ Both of these topics received significant coverage at the latest Oregon Water Resources Commission meeting on November 19 and 20, 2015 (Agenda Items A and D), available at http://apps.wrd.state.or.us/apps/misc/wrd_notice_view/Default.aspx?notice_id=41.

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IV. Conclusion

For over a year and a half, TID has colluded with KCDG to supply KCDG with water for its two private lakes, built for its own use and benefit, without appropriate permits or land use approvals. KCDG's lakes are illegally storing water that belongs to the District's patrons. This transfer will result in enlargement of TID's and KCDG's water rights and will cause injury to other water rights holders. The transfer is not authorized by law and is contrary to public policy. For any and all of these reasons, T-12187 should be denied outright.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Attachments

037351/00001/6792240v1



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

www.wrd.state.or.us

October 22, 2015

TUMALO IRRIGATION DISTRICT
64697 COOK AVE
BEND, OR 97701

Reference: Application T- 12187

On October 22, 2015, we received your water right Transfer application. The application was accompanied by \$1000.00. Our receipt number CA is enclosed.

By copy of this letter, we are asking the Watermaster for a report regarding the potential for injury to existing water rights which may be caused by the requested change.

Your application will be examined to determine whether additional information is needed. We will notify you if further information or corrections to the application or map are required.

This application may require publication of a notice for two consecutive weeks in a newspaper with general circulation in the area where the water right is located. If it is determined that newspaper notice will be required, the Department will prepare the notice and notify you of the cost. You will be responsible for submitting payment to the Department prior to publication of the notice.

Except as provided under ORS 540.510(3) for municipalities, you may not use water in the new place of use until a final order approving the transfer application has been issued by the Department.

In order to avoid any possible forfeiture of the water right, you should continue to use the water as described by your existing water right.

If the land is sold before the application is approved, the buyer's consent to the application will be required unless a recorded deed or other legal document clearly established that the water right was not conveyed in the sale.

Refer to the following page for a chart showing the steps and expected timelines for the processing of your application.

If you have any questions, please contact the Transfer Section at (503) 986-0807.

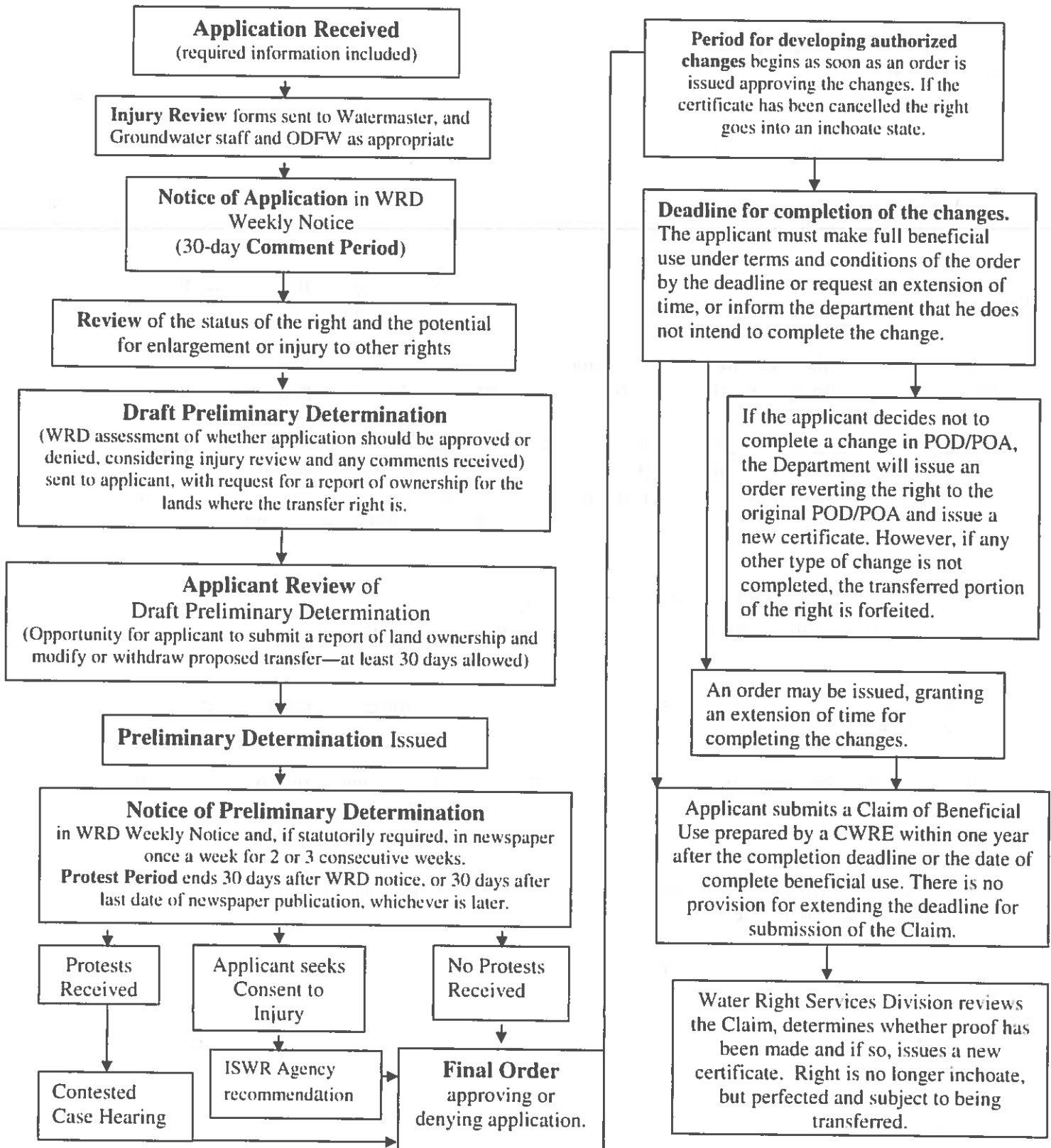
Cc: Watermaster Dist. #11 (*via email*)
Martha Pagel, Agent
KC Development Group LLC

Enclosure



Regular Transfer Process (including "Proving Up" on the changes)

OAR 690 Division 380



Transfer Applications: Regular

The holder of a water right may apply to permanently change an existing water use subject to transfer as defined in ORS 540.505(4). An application may involve any of the following changes: Point of diversion or appropriation; Additional point of diversion or appropriation; Historic POD; Place of use; Character of use; Instream; Substitution; or Exchange.

The Department seeks public comment on the recently-filed transfer applications listed below. Any person may comment on a transfer application. Comments must be received by the Department on or before November 26, 2015. Any person who provides comments within the comment period will receive a copy of the Department's preliminary determination of whether the application should be approved or rejected after the Department has completed a review of the application and will be provided an opportunity to protest the application and preliminary determination at that time.

Transfer	<u>T 12187</u>
Water Right	Cert: 76684
County/Basin	Deschutes / Deschutes (5)
Applicant Name	RIECK, KEN TUMALO IRRIGATION DISTRICT 64697 COOK AVE BEND, OR 97701
Proposed Change	PLACE OF USE
Sources/TRSQ40Q160	TUMALO CREEK > DESCHUTES RIVER / 17.00S 11.00E 23 SENE
Use/Quantity	MULTIPLE PURPOSE / 1100.000 AF
Priority Date	12/08/1961

STARNES Kelly

From: Lister, Stephen <Stephen.Lister@Mattel.com>
Sent: Friday, November 27, 2015 9:24 PM
To: STARNES Kelly
Subject: T-12187 application

Mr. Starnes,

Mark McDowell and I (Stephen Lister) are the owners of the property located at 63410 Fawn Lane, Bend, Oregon, 97701 and we wish you to know that we have read a copy of the comments that were submitted on Nov. 27, 2015 by our neighbors Ken Graham and Kris Jewett and by WaterWatch related to the subject application T-12187 and we fully support the comments made by them.

Please include this email in the record of the T-12187 application so that our comments are a matter of public record on this issue.

Many thanks,
Stephen Lister
Mark McDowell
63410 Fawn Lane
Bend, OR 97701
(562) 591-3700

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STARNES Kelly

From: Kimberley Priestley <kjp@waterwatch.org>
Sent: Friday, November 27, 2015 9:49 AM
To: patrick.k.starnes@state.or.us
Cc: dwight.w.french@state.or.us
Subject: Comments T-12187
Attachments: tid permanent transfer novembe 2015.pdf

Hi Kelly,

Attached please find WaterWatch's comments in opposition to T-12187. If you have any problems with the attachment please let me know.

Thanks, Kimberley



November 27, 2015

Kelly Starnes
Water Resources Department
725 Summer St NE, Ste A
Salem, OR 97301-1271

RE: Comments, Tumalo Irrigation District, Transfer Application T-12187

Dear Mr. Starnes,

WaterWatch of Oregon objects to the issuance of T-12187 on the grounds that the proposed transfer is not allowed under the transfer statutes (ORS 540.510 et al).

Tumalo Irrigation District's (TID) is proposing to move 124.79 AF of water stored in Upper Tumalo Reservoir under certificate 76684 to two new reservoirs built by KC Development Group (KCDG). One reservoir support water skiing, the other provides aesthetic features for luxury homes. These are permanent reservoirs, neither of which has an underlying reservoir permit.

TID is attempting to use the permanent transfer process to effect this change, asserting that moving water from Tumalo Reservoir to these two unpermitted reservoirs is a "change in place of use". Moving a source of water is not in fact a change of "place of use" under any stretch of the imagination. The transfer process is an inappropriate avenue for TID to attempt to make this change. The WRD should deny this proposal on the grounds that the proposed change is not in accordance with governing statutes and rules and cannot be processed, let alone approved.

This is one in a string of attempts to fill these unpermitted reservoirs in a manner not compliant with statute. For further background information and legal arguments, we incorporate by reference our comments on T-11951, T-11833 and LL-1613. WRD has already appropriately denied T-11951 and T-11833. For the following reasons, WRD should also deny T-12187:

1. The two reservoirs that seek to use Tumalo Reservoir water are not legal reservoirs: Under Oregon law all new ponds and reservoirs must have a reservoir permit in place before they are constructed. ORS 537.400, ORS 537.130(1) & (2). Oregon law only allows for one exemption from this law, and that is for off-channel ponds that were in existence on or before January 1, 1995 that stored less than 9.2 af or had a dam or impoundment structure of less than 10 feet and registered with the WRD before 1997. ORS.537.405(1)&(2), OAR 690-340-0010(1)(e).

Neither KCDG nor TID hold reservoir rights for the newly constructed reservoirs. Nor do KCDG's reservoirs qualify for the exception allowed under ORS 537.405(1), (2). A storage right, either in part or whole, cannot simply be "transferred" as a mechanism to allow the building and filling of a permanent new storage project. Either KCDG or TID must apply for reservoir permits for the two reservoirs at issue before water, from any source, can be used to fill them.

2. The transfer statutes do not allow for the transfer of a storage right as a change in "place of use": The transfer statutes do not allow the transfer of storage rights as a loophole to existing legal requirements to obtain a reservoir permit for new storage projects.

Storage rights are a distinct type of right under Oregon water law. ORS 537.400. Storage, by statute, is considered a "supply of water". See ORS 537.400(1). To use water that is already stored in a permitted or certificated storage project, an applicant must apply for a secondary water right to use that supply of water. *Id.* While storage water from Upper Tumalo Reservoir can served secondary purposes, these secondary purposes must be legally permitted uses. There is no legal authority to use stored water from a permitted reservoir to fill an illegally constructed reservoir.

3. Even if a transfer of a storage reservoir under a "place of use" change were allowed by law, the proposed use will result in enlargement and injury: Transfers cannot result in enlargement or injury. By rule, enlargement is an expansion of a water right, including but not limited to, failing to keep the original place of use from receiving water from the same source. OAR 690-380-010(c). Injury to an existing water right means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled. *Id.* at (6).

TID is not proposing to keep the original place of use from receiving water from the same source. Rather, TID is proposing to expand the current footprint to two additional reservoirs. This expanded footprint constitutes enlargement under OAR 690-380-010(c).

Moreover, it is common knowledge that Upper Tumalo Reservoir leaks. A Bureau of Reclamation Report states that Tumalo Reservoir "does not hold water", and that the Tumalo dam and Reservoir provide only "temporary regulatory storage for about 800 acre feet of water; the reservoir does not hold water making it ineffective as a long term storage facility". See The Crescent Lake Dam Project, Toni Raie Linenberger, Bureau of Reclamation 1999 at 10. An e-mail from the Water Master to the District Manager also confirms that Tumalo Reservoir is "unable to store the full 1100". See e-mail from Jeremy Giffin, 3/20/14 in file for comments to T-11951 and T-11833.

TID is not, as far as we understand it, proposing to limit its water withdrawals to that which they pull today to fill Tumalo Reservoir. As we understand it, they will continue to try to fill their leaky Tumalo Reservoir and also fill the two new reservoirs. If the transfer were to allow TID to store more water than it can currently, which it presumably would, then this would in fact not only constitute enlargement but would also cause injury to other water right holders who are currently relying on water from Tumalo Creek.

4. Allowing the transfer statutes to be used as a loophole around the state's regular reservoir permitting process is bad public policy: As noted, the transfer process is not the correct process to make KCDG's two unpermitted reservoirs legal. To allow such a transfer would not only allow two new reservoirs to be built without the benefit of the thorough public interest review that applies to new reservoir applications, but such a decision but would also set incredibly damaging precedent statewide. Presumably if the theory being advanced by TID via their permanent transfer application holds water here, then it would also apply to on channel reservoirs. Thus, a new stream spanning dam of any size could be built simply by "transferring" an existing storage right to that new reservoir site (on that same stream). Given that prohibitions against injury/enlargement are the only public interest standards that apply to transfers, this could result in environmentally harmful dams being built across the state. Putting the resource even more at risk is the fact that the WRD is limited in its ability to attach new conditions of use via the transfer statutes. Thus a new storage project built under the "transfer" theory that relies on an old storage certificate issued before modern day environmental laws could not be conditioned to protect endangered species or other public interest values. This sets Oregon's policy on storage backwards and could have devastating effects to important stream systems across Oregon.

Conclusion: As noted above, Oregon's transfer statutes do not allow for the "change in place of use" of an existing storage project to a new storage project. The proposed change is not only contrary to law, but it would set precedent that could have devastating effects across the state. The WRD should reject this application.

Sincerely,



Kimberley Priestley
WaterWatch of Oregon
213 SW Ash, Suite 208
Portland, OR 97204

Cc: Dwight French, WRD

STARNES Kelly

From: kris <kriskenbend@msn.com>
Sent: Friday, November 27, 2015 10:17 AM
To: STARNES Kelly
Subject: Email--Ken Graham & Kris Jewett to OWRD--T-12187
Attachments: ~WRD0000_.docx

Patrick please include this attached document in regards to application T-12187. Please send us a response that you received it in it's entirety. Thank you very much, Ken Graham & Kris Jewett

To: Kelly Starnes patrick.k.starnes@wrld.state.or.us

Re: Comments Objecting to Water Right Transfer Application T-12187

Please include this email from us in the file for T-12187, a permanent water right transfer application by Tumalo Irrigation District ("TID").

We are long time water patrons of TID. We reside in the district. Our home in which we have lived since 1984, on Klippel Rd, is adjacent to property of KC Development Group, LLC ("KCDG") to which TID proposes to transfer the storage of water. We are opposed to any approval of water transfer rights for TID or KCDG to store water on KCDG's property in our residential neighborhood. We specifically object to application T-12187 by Tumalo Irrigation District to transfer the place of storage of water under Oregon Water Resources Department Certificate 76684.

As we wrote to the OWRD in our public comments early this year in regards to TID's application T-11951, which the OWRD rightly denied on April 29, we aren't sure why water rights are being decided at this time when the "reservoirs" were built without permits. Illegal "reservoirs" should not be receiving water from any source. The impact of this project is severe to the neighbors and the wildlife. We believe that KCDG built the "reservoirs" as fast as possible to avoid permits, supervision and wildlife impact studies hoping that once they were in place no one would call for their removal.

Why TID is willing to fill these "reservoirs" remains a mystery. They are not reservoirs. Ponds or small lakes is a better description. Their intended use is for enhancing a housing development and has very little if any use for irrigation storage or use. One of them is designed specifically as a water ski lake and not for storage of water. The water will be polluted with gas and oil from motorized use. There is no outlet to the irrigation system. The evaporation rate is significant and should be seriously evaluated by experts who cannot be influenced by TID or KCDG. The lakes are located in designated, protected Winter Deer Range. Before the lakes were illegally constructed in 2014 the area was open space habitat for deer. It has not been shown that wildlife in the area need more access to surface water (there are irrigation ponds and Tumalo Creek). The banks of the new lakes are very steep (with slopes exceeding previously established DOGAMI and County requirements for the property) with liner posing a threat to any animal that might fall into them.

You will not hear from some of our neighbors, this is a rural neighborhood with most people appreciating privacy, peace & quiet and averse to conflict.

KCDG seems to have unlimited funds for this project and "some way" of swaying others in their favor. We are hoping that your department is beyond KCDG's scope of influence and that time will be spent looking into their insincere practices, lack of respect for longtime residents, land use laws, and wildlife protection.

No Reservoir Permit Exists on the "Transfer to" Property:

Certificate 76684 allows TID to store water only in Upper Tumalo Reservoir. Neither it nor the laws of Oregon allow a transfer of any portion of that storage right to another reservoir or storage facility. They certainly do not allow such a transfer to property or an impoundment thereon for which a reservoir permit pursuant to ORS 537.130 and ORS 537.400 has neither been applied for nor obtained. TID proposes to transfer 124.79 acre feet of storage right to be impounded on private property in Deschutes County owned by KC Development Group, LLC (“KCDG”) for which neither KCDG nor TID has sought or obtained such permit.

For TID to apply to transfer a storage right to KCDG’s property puts the cart before the horse, even if the transfer statutes were to allow a transfer of a storage right. It presumes that water approved to be stored elsewhere can instead now be stored on KCDG’s property. This is simply not true. The OWRD has not authorized the construction or filling of any reservoir on KCDG property. The fact that KCDG illegally constructed two reservoirs for its private use in 2014, adjacent to our property, without obtaining i) conditional land use approvals from Deschutes County, ii) a required surface mining operating permit from DOGAMI, or iii) reservoir permits from OWRD under the statutes mentioned above, precludes KCDG’s property from being legally capable of having an appurtenant water storage right, by transfer or otherwise. The water storage right TID seeks to transfer is appurtenant to the land TID owns at Upper Tumalo Reservoir. KCDG’s property does not have any permitted reservoirs. As a result, it cannot have a water storage right appurtenant to its property. Application T-12187 should be promptly rejected outright because there is no permitted reservoir on KCDG’s property.

It is a disservice to the public interest for TID to have submitted an application to transfer a water storage right to KCDG’s property when it knows neither KCDG nor it have obtained the permits mentioned above that are a pre-requisite for a water storage right to become appurtenant to KCDG’s property. The OWRD should not have accepted TID’s application since it knows no reservoir or other required permits have issued for KCDG’s property. Processing the application as if it might be capable of serious consideration or approval is a waste of time for everyone.

The Storage Right Under Certificate 76684 is a Primary Right that Can’t be Transferred:

The OWRD already found and stated in its Order 95-1026 dated April 29 denying a permanent change to Certificate 76684, that Certificate 76684 is a primary water right for impounding water and is not a right for applying water to land. As such, it is not a use of water that can be considered the type of use that can be transferred. This is an additional reason why the application should promptly be rejected and TID’s nonsense in submitting the application should be ended.

Indeed, the application does not propose any change in the place of use of water. Notice that on line 2 of “Part 3 of 5—Fee Worksheet” in the application that the box indicating a change in “Place of Use” was left blank, the number of water rights included in the transfer as set forth on line 3 is shown as 0 and that at line 5 the application indicates with respect to a whether there is a change in the place of use or character or use the application says “N/A Storage”. Furthermore, it is notable that TID did not actually include with its application T-12187 a “Completed Evidence of Use Affidavit and supporting documentation” despite having checked a box on Part 1 of 5—Minimum Requirements Checklist of the application.

There are no secondary rights to use water that are proposed in application T-12187 to be transferred with the storage right to KCDG's property. That is, as far as we can ascertain, there would be no secondary right for water stored on KCDG's property to be used on any other water patron's property and to that extent there would be injury to other water patrons by moving the storage of water from Upper Tumalo Reservoir with respect to which there are secondary rights to KCDG's property. Furthermore, neither the application nor the maps submitted therewith show any means by which a secondary use of the water proposed to be stored on KCDG's land would or could occur. TID makes a self-serving statement on "Part 4 of 5—Applicant Information and Signature that a transfer of water storage to KCDG's property "will enable TID to use the storage facility to regulate virtually its entire system". However, there are no secondary rights allowing the use on lands of any irrigation rights holders of water that would be stored on KCDG's property and no physical facilities allowing that to happen exist at this time or have even been described or shown in any of the documentation included with the application. Furthermore, TID intends to pressurize its pipeline and there has been no showing that TID would even be capable of moving water from KCDG's property into TID's pressurized pipeline, even if there were secondary rights to remove water from KCDG's land and use it elsewhere. TID's claim that it can or intends to use water stored on KCDG's land for regulation purposes is simply not credible. Secondary rights are capable of being transferred under the transfer statutes, but the application does not propose that any be transferred. Therefore, the application, as submitted, is not about the transfer of rights for the use of water. Consequently, the water right transfer application process that TID is seeking to use is not applicable to what TID is seeking to do, which is to transfer the place for storage of water, not the place for a use of water. The application should be promptly denied for this reason.

The Proposed Transfer Does Not Benefit Our Property or Other Upstream Properties:

Permanent Transfer Application Form—Page 4 of 10 misleadingly states "The new reservoir [on KCDG's property] is at the top of the system..." It is actually below our property and that of several other current and potential future water patrons. As such, even if TID were to have secondary rights to use the water it would store on KCDG's property and were to construct a means to move water from it downstream in its system, such water will not be available for delivery to us or several of our neighbors who are also water patrons.

The Proposed Transfer is an Impermissible Enlargement of TID's Water Right:

TID's application states only that it intends to move storage of 124.79 acre feet of water to KCDG's property, but in fact it has already moved much more than that and intends each year to move much more than that to KCDG's property. We personally observed during the 2014 and 2015 irrigation seasons that after having illegally filled both of the unpermitted reservoirs on KCDG's property, TID continued to replenish and "top off" the reservoirs to replace evaporative loss and any leakage that may have occurred. Additionally, during each of four winter stock runs that have occurred since the initial fill of the reservoirs, additional water was diverted into these reservoirs. The topping off and other diversions of water, in excess of a "one-fill" allowance each year, that TID has done and contemplates continuing in the future is an impermissible enlargement of the water right. TID has asserted, and the OWRD found with its enforcement

order issued on June 16, 2015, that TID intends to keep the reservoir liners on the KCDG reservoirs covered with water (to prevent use of the lined surfaces by wildlife and exposure to the air) at all times. This necessarily means that TID does not intend to do only one-fill of the reservoirs each year, but will divert significant amounts of additional water to replace loss due to evaporation, seepage, uses by KCDG and uses, if any, by TID for re-regulation purposes if it ever does build facilities for removing water from the KCDG reservoirs, which it might never do. Because TID intends to divert much more water to the KCDG reservoirs than the 124.79 acre feet it seeks approval to transfer to it, it is impermissibly enlarging its water right. For this reason, the application T-12187 should be denied.

Further evidencing TID's intent to use much more water in connection with a transfer of storage to KCDG's property is the fact that for each of the irrigation years from 2009 thru 2013 it has reported to the OWRD, with respect to Certificate 76684, that for 10 months of the year it has stored only 100 acre feet of water in Upper Tumalo Reservoir and for two months, May and June, it has stored 1,100 acre feet. For 2014, it reported storing 100 acre feet for 10 of the months and 900 acre feet for the months of May and June. TID now proposes to store year-round on KCDG's property 124.79 acre feet of water (before considering the refills and topping off quantities that it also is contemplating). It has no need to store water at all in months that are not within the approximately 6-month irrigation season. Water stored year-round on KCDG's property would exceed, for 10 months of the year, the amount of water that TID has stored under Certificate 76684 in recent years. This is an irresponsible planned use by TID of the public's water for the private benefit of KCDG and of no benefit to any of the other water patrons of TID or residents of Oregon.

Injury to Us:

To the extent TID would actually divert water from Crescent Lake to fill reservoirs on KCDG's property, as it sometimes does to add water to Upper Tumalo Reservoir, it will reduce the volume of water that is available to us. This is because we are upstream from KCDG's property in TID's distribution system, but downstream from Crescent Lake. With serious long-term drought concerns, we are concerned with TID enlarging its use of water and sourcing some of that water from Crescent Lake as it will reduce the volume of water held for use by all of TID's water patrons, and most notably by those of us whose properties are higher in the system than KCDG's. We are also concerned with the loss of stream flow in Tumalo Creek, along which we live, downstream from TID's diversion point, to the extent that TID diverts water from Tumalo Creek to store on KCDG's property for the private benefit of KCDG or (theoretically) for the potential benefit of downstream TID water patrons. It will harm us.

ODFW Recommends Against Allowing the Reservoirs that were Excavated on KCDG's property:

It is noteworthy that at line 6 of "Part 3 of 5—Fee Worksheet" the application asks the question "Is this transfer:....endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat?" TID correctly did not respond in the affirmative. What it does not say in the application is that, in fact and as the OWRD already knows from the record, Mr. Corey Heath, writing on behalf of ODFW to Deschutes County officials about the excavation KCDG did in 2014 in creating unpermitted reservoirs, recommended that the County deny approval of

the excavation that occurred because excavation was performed during the Tumalo Winter Deer Range closure period. He also commented on and expressed great concern for the significant loss of habitat caused by the construction of the reservoirs and the manner in which they interfere with the ability of deer to migrate across the property.

Harm to the Public Trust

Untold harm would be done to the public faith and trust in the rule of law, and in our governing institutions, if TID (and, thru it, KCDG) is rewarded for its notoriously bad conduct in misrepresenting its actions and intentions and failing to obtain state and county permits by obtaining a license to store water on land that to date does not have land use approval for excavated reservoirs or for large acreage recreational facilities and does not have OWRD-issued reservoir permits or DOGAMI operating permits, some of which have not yet even been applied for!

Ken Graham & Kris Jewett

PO Box 910

Bend, OR 97709

