



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

April 29, 2015

Reference: Transfer Application T- 11833

The above referenced transfer application was denied and recorded in the records of the Water Resources Department on April 29, 2015, in Special Order Volume 95, Pages 1018-1025 (copy enclosed).

The transfer application is no further force or effect.

If you have any questions related to the approval of this transfer, you may contact your caseworker, Susan Douthit, by telephone at (503) 986-0858 or by e-mail at Susan.M.Douthit@wrд.state.or.us.

Sincerely,

Susan Douthit

Transfers and Conservation Section

Enclosure



**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Transfer Application) FINAL ORDER DENYING A
T-11833, Deschutes County) TEMPORARY CHANGE TO WATER
) RIGHT CERTIFICATE 76684

Authority

ORS 540.505 to 540.580 establishes the processes in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications and petitions to temporarily or permanently change a water use subject to transfer managed by a district.

Oregon's land use planning statutes require state agencies to comply with statewide planning goals and comprehensive use plans when taking actions affecting land use. ORS 197.180. OAR Chapter 690 Division 05 governs the procedure the Department must follow to assure that its actions are consistent with land use laws. OAR 690-005-0010 – 0060.

Applicant

BU
Sent Certified Mail 04/30/2015

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Attorneys

BU
Sent Certified Mail 04/30/2015

Carl (Bill) W. Hopp, Jr. 168 NW Greenwood Ave. Bend, OR 97701	Elizabeth A. Dickson Hurley Re, P.C. 747 SW Mill View Way Bend, OR 97702
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Other

Deschutes County
Planning Division
Attn: Community Development
PO Box 6005
Bend, OR 97708-6005

Commenters and Interested Parties

See attached list.

Findings of Fact

1. On June 11, 2014, the Tumalo Irrigation District (TID) filed a transfer application proposing a change to a portion of Certificate 76684 pursuant to ORS 540.570. The Department assigned the application number T-11833.
2. Notice of the application for temporary transfer was published in the Department's weekly public notice on June 17, 2014, pursuant to ORS 540.570(4). Comments were filed in response to the notice. Several commenters objected to the proposed transfer on grounds

This order is a final order other than contested case subject to judicial review under ORS 183.484. A petition for judicial review of this order must be filed within the time specified by ORS 183.484(2).

including assertions that the transfer was not consistent with law and would injure existing water rights.

3. The portion of the right proposed to be transferred is as follows:

Certificate: 76684 in the name of Tumalo Irrigation District (confirmed under T-8557; originally perfected under Permit R-2743)
Use: A primary reservoir right for storage of water for Multiple Purpose Uses
Priority Date: December 8, 1961
Quantity: 108 acre-feet
Source: Tumalo Creek, a tributary of the Deschutes River.

Authorized Point of Diversion for the off-channel reservoir is located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SE NE	2080 FEET SOUTH AND 1310 FEET WEST FROM THE NE CORNER OF SECTION 23

The reservoir is located as follows:

Twp	Rng	Mer	Sec	Q-Q
16 S	11 E	WM	32	SE SE
16 S	11 E	WM	33	S ½ SW ¼
17 S	11 E	WM	4	NE NW
17 S	11 E	WM	4	W ½ NW ¼
17 S	11 E	WM	5	NE ¼

The primary storage (reservoir) right authorizes storage of 1100.00 acre-feet of water.

4. The primary storage water right (Certificate 76684) is the source of water for the following secondary certificates and their specified uses:

74146	74147	76106	74149	76520
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5. Transfer Application T-11833 proposes to change the location of a portion of the stored water to:

Twp	Rng	Mer	Sec	Q - Q	Tax lot	District Notice #
17 S	11 E	WM	13	NE NW	828	T14S.001
17 S	11 E	WM	13	NW NE	828	T14S.001
17 S	11 E	WM	13	NW SW	828	T14S.001
17 S	11 E	WM	13	NW SW	824	T14S.001
17 S	11 E	WM	13	SE NW	828	T14S.001
17 S	11 E	WM	13	SE NW	824	T14S.001
17 S	11 E	WM	13	SW NW	828	T14S.001
17 S	11 E	WM	13	SW NW	824	T14S.001
17 S	11 E	WM	13	NE SW	824	T14S.001

The subject property for the proposed transfer is approximately 79 acres in size and consists of two adjacent tax lots: tax lot 824 and tax lot 828. The property is developed with two man-made,

lined reservoirs. The larger reservoir is elongated in shape, located on tax lots 824 and 828, and has a capacity of approximately 67 acre-feet of water. The smaller reservoir, located on tax lot 828 has a capacity of 41 acre-feet of water. The reservoirs are approximately 22 acres in combined size.

6. A Land Use Information Form did not accompany TID's application.

7. On July 18, 2014 the Department requested TID to provide a Land Use Information Form containing a Land Use Compatibility Statement (LUCS) from Deschutes County specifying whether the proposed action is consistent with applicable land use laws.

8. On August 18, 2014, the Department received a LUCS that contained TID's characterization of the transfer as follows:

This is an intra-district transfer in place of use of 108 a.f. of Tumalo Creek water. TID to TID (Storage water). The transfer of this storage water is necessary for the operations and maintenance of our irrigation system, and allowed as an outright use in the RR-10 zone. The current site was built in the 1920's and no longer serves TID's needs. The new site is a significant upgrade that will enable TID to reduce dependence on Tumalo Creek for natural flow, provide emergency water supplies for the District and Emergency Services responders and provide increased efficiency in the operations and maintenance of the TID system overall.

The LUCS was signed by Nick Lelack, Deschutes County Community Development Director, who determined that the "[I]and uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan" and referred to an attached land use decision that found among other things that the "transferring in-district storage from the Tumalo Reservoir upstream to the Klippel Acres Mining Pit in order to improve the operations of TID's existing irrigation system is a use permitted outright in the zone."

9. On December 16, 2014, the Department received a final decision of the Deschutes County Hearings Officer dated December 15, 2014. The final decision was a result of a challenge to the LUCS submitted to the Department by the TID. The final decision from a Deschutes County Hearing Officer found that the county incorrectly categorized TID's proposed use on the Department's LUCS as a use allowed without review and that the county erred in issuing a LUCS decision finding that the TID's proposed use was allowed without a review. The order reversed and remanded the LUCS to the county to reissue the Department's LUCS form and the LUCS decision to categorize TID's proposed use as one involving discretionary land use approvals that have not yet been obtained. Specifically, the Hearing Officer found that discretionary approvals would need to be obtained including "the conditional use of surface mining for reservoirs in conjunction with operation and maintenance of irrigations systems under Section 18.60.020(W), and/or a recreation-oriented facility requiring large acreage under Section 18.60.030(G)."

10. The 2014 irrigation season ended on October 31, 2014.

Conclusions of Law

1. The temporary transfer is expired and all uses of water must revert to the terms and conditions of Certificate R-76684. ORS 540.570(1).
2. The Department's actions to approve the District's temporary transfer must be compatible with acknowledged comprehensive plans. ORS 197.180; OAR 690-005-0025(3); OAR 690-005-0035.
3. The Department may not conditionally approve the temporary transfer because the proposed action is not authorized by ORS 540.570. OAR 690-005-0035(4).
4. The temporary transfer of a primary reservoir right is not authorized under ORS 540.570.

Opinion

A. The Temporary Transfer is Expired

ORS 540.570(1) specifies that a district with a manager may, "for one irrigation season" temporarily transfer the place of use of water appurtenant to any land. In this case, an application for temporary transfer was made for the 2014 irrigation season which ended on October 31, 2014. Upon expiration of the temporary transfer period, "all uses of water for which a temporary transfer is allowed * * * shall revert automatically" to the terms and conditions of the original water right certificate. Because the 2014 irrigation season is ended, all water subject to transfer as described in the temporary transfer application must revert to the terms and conditions of Certificate 76684.

B. Land Use Approval is Necessary and has not Been Obtained

Pursuant to ORS 540.570, the Department must issue an order approving a petition for a temporary transfer if, among other things "[a]ny other applicable requirement for district [temporary] water right transfers are met." OAR 690-385-3500(4). Other provisions of law, namely OAR Chapter 690 division 05 (OWRC rules governing land use compatibility) provide "applicable requirements" that in this case, may not be met.

Oregon's land use planning statutes (ORS 197.180) require state agencies to comply with statewide planning goals and comprehensive use plans when taking actions affecting land use. OAR Chapter 690 division 05 and the Water Resources Department's State Agency Coordination Program (SAC) govern the Department's actions that affect land use and provide the coordination procedures the Department must follow to assure that its actions are consistent with land use laws. OAR 690-005-0010; OAR 690-005-0020(1); OAR 690-005-0035.

The coordination procedure in division 5 applies to Department programs that are considered "land use programs" to which land use laws are applicable. OAR 690-005-0025. Water right transfers are land use programs "except for those":

- (a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provide in ORS 215.203 or within irrigation districts;
- (b) Which involve changes in place of use only;

(c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) Which involve irrigation water uses only.

OAR 690-005-0025(3).

For a transfer to be considered exempt from the Department's land use program it must meet all of the factors in (a) through (d). In this case, the TID's proposed transfer does not qualify as a transfer that is exempt from the Department's land use program. The transfer involves the placement of or modification of "impoundment" facilities because the reservoirs have been modified or created to hold the impounded water the TID seeks to move from the existing Upper Tumalo Reservoir to the two new reservoirs it has created on tax lots 824 and 828. Because the proposed transfer is a land use program, the Department's actions must be consistent with the process in OAR 690-005-0035(4).

OAR 690-005-0035(4) states that land use information must be submitted with requests "prior to the department taking action on the water use approval." OAR 690-005-0035(4). The information must be sufficient to assess compatibility as specified on the Department's land use forms as provided in the SAC. *Id.* The Department may only approve the proposed water use if: the land use served by the proposed water use is allowed outright or does not require discretionary land use approvals under the applicable comprehensive plan or if the applicant has already received necessary land use approvals for the land use served by the proposed water use.

The Department may not approve the temporary transfer because necessary land use approvals have not been received. Although on August 13, 2014, the Deschutes County planner found that the TID's proposed transfer was "allowed outright" this decision was over-turned by the Hearing Officer on December 15, 2014. It is not clear at this point whether the proposed land use approval is being appealed to the Land Use Board of Appeals or whether the land use approval may be deemed denied. If the land use approval is being appealed it may at best, be considered as "pending" but not yet obtained. *Skrepetos v. OWRD*, 172 Or App 9, 12 (2001)(a land use decision is pending before a county until it reaches the state of final disposition or is withdrawn or dispositively rejected at an earlier stage).

Where a land use decision is pending the Department may place conditions on the approval to preclude water use until the applicant obtains all required land use approvals. The Department may only conditionally approve a water use, however, if all requirements of the statutes governing the Department's actions are met. OAR 690-005-0035(4)(c); OAR 690-005-0035(4)(b)(A). In this case, the Department may not conditionally approve the temporary transfer because it is expired and because, as discussed below, the water use is not consistent with ORS 540.570.

Where a land use decision is pending the Department may also withhold issuance of the water use approval until the applicant obtains all required land use approvals. OAR 690-005-0035(4)(c). Here, withholding approval until land use approvals are obtained is not an option because the temporary transfer may not be allowed at all.

In sum, notwithstanding that land use approval may be pending, the Department may not approve the temporary transfer because the 2014 irrigation season is ended and because movement of stored water is not authorized by ORS 540.570.

C. ORS 540.570 Does Not Authorize Movement of Stored Water

The TID has requested the Department to transfer water stored under reservoir right Certificate 76684 to the two reservoirs in tax lots 824 and 828. That is, the TID requests to move water impounded in Upper Tumalo Reservoir to two other reservoirs so that it may be stored in a different location. ORS 540.570 does not authorize this change.

ORS 540.570 governs temporary transfers of water by irrigation districts with a manager. ORS 540.570(1) specifies the type of temporary transfers that may occur:

(1) Provided that the proposed transfer complies with all of the provisions of this subsection and will not result in injury to any existing water right, a district with a manager may, for one irrigation season, temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to an equal acreage elsewhere within the legal boundaries of that district or temporarily transfer the type of use identified in a right to store water. A temporary transfer of the place of use may occur if:

(a) The rate and duty, and the *total number of acres to which water will be applied under the transfer*, do not exceed existing limits on the water use subject to transfer;

(b) The type of use authorized under the water use subject to transfer remains the same; and

(c) The *land from which the water use is being transferred* does not receive any water under the right being transferred during the irrigation season in which the change is made.

(Emphasis added.)

The text of ORS 540.570(1) authorizes a district to temporarily transfer “the place of use of water appurtenant to any land” within the district “to an equal acreage elsewhere” within the district. A temporary transfer of a place of use may only occur if, among other things, the total number of acres to which water “will be applied” under the temporary transfer does not exceed the limits on the water use subject to transfer and if the “land from which the water use is being transferred” does not receive any water under the right being transferred during the irrigation season in which the change is made. That is, the text of the statute only authorizes the transfer of water that is applied to appurtenant lands and requires that the “from” lands be dried up before the “to” lands may receive the transferred water.

Conversely, the TID seeks to move water stored pursuant to primary (reservoir) right Certificate 76684 to another location where it will be impounded in two different reservoirs. Movement of stored water from one location to another is not authorized by ORS 540.570 because, while the water is held in the reservoir, it is water that is impounded rather than applied to lands. TID’s right (Certificate 76684) to store water is not in and of itself a right to apply water to lands, it is a right to impound water for multiple purposes as may be allowed pursuant to other authorizations. ORS 537.400. The authorization to use or apply the stored water to lands is contained in TID’s secondary water rights that enumerate the acres to which the stored water

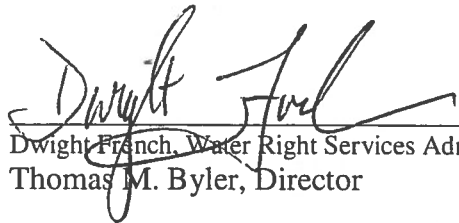
may be applied. Because ORS 540.570 does not authorize changing the location of stored water, the temporary transfer is denied.

ORDER

Now, therefore, it is ORDERED:

Transfer Application T-11833 is denied.

Dated at Salem, Oregon this 29 day of April, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director

Mailing date: APR 30 2015

Commenters and Interested Parties:

Janet Neuman
Senior Counsel
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Ave.
Portland, OR 97204

WaterWatch of Oregon
Attn- Kimberley Priestly
213 SW Ash, Suite 208
Portland, OR 97204

Dr. Leslie Hudson
Tumalo Reservoir Rd.
Bend, OR 97701
Les.hudson@q.com

Nunzie Gould
19845 JW Brown Rd.
Bend, OR 97701

Ken Graham & Kris Jewett
PO Box 910
Bend, OR 97709

Howard Finck
65360 Gerking Market Rd.
Bend, OR 97701

Cathy Morton
20210 Swalley Rd.
Bend, OR 97701
cleemorton@earthlink.net

Copies Sent to the Above:
4/30/15 BW

1-11833

Land Use Information Form

from Deschutes Co. website 6/20/14



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

Applicant: Tumalo Irrigation District
First Last

Mailing Address: 64697 Cook Avenue

Bend OR 97701 Daytime Phone: 541-382-3053
City State Zip

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:
					see attached	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

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-storage
- 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: 108 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

Briefly describe:

Inter-district transfer in place of use of 108 a.f. of Tumalo Creek water. TID to TID (Storage water)

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 3. →

For Local Government Use Only

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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

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.



7-11833

Land Use Information Form

from Deschutes Co website 6/20/14



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

Applicant: Tumalo Irrigation District
First Last

Mailing Address: 64697 Cook Avenue

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						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
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List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

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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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

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.





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-11833

Review Due Date: 7/11/14

Applicant Name: Tumalo Irrigation District

Proposed Changes: POU POD POA USE OTHER

Reviewer(s): Giffin

Date of Review: Jun. 12, 2014

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: We do split the instream water right requirements with TIDs diversion rights since many of these rights share the same priority date.
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: But only for the remaining 992 af of storage left in Upper Tumalo Reservoir.

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: A staff plate needs to be installed in both the new reservoirs and the existing upper tumalo reservoir to ensure that no more than 108 AF is stored in the two new reservoirs combined. In addition a staff plate in upper tumalo reservoir will ensure that the new level of 992 af is not exceeded.
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: _____

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.

NOTE TO LOCAL GOVERNMENTS

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.

RECEIVED BY OWRD

AUG 18 2014

SALEM, OR

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:
<u>17</u>	<u>11</u>	<u>13</u>	_____	<u>1711130 000828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	<u>storage</u>
<u>17</u>	<u>11</u>	<u>13</u>	_____	<u>1711130 000824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	<u>storage</u>
_____	_____	_____	_____	_____	_____	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	_____
_____	_____	_____	_____	_____	_____	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	_____

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 - ~~Storage~~
 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: _____ 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

Briefly describe:

This is an intra-district transfer in place of use of 108 a.f. of Tumalo Creek water. TID to TID (Storage water). The transfer of this storage water is necessary for the operations and maintenance of our irrigation system, and allowed as an outright use in the RR-10 zone. The current site was built in the 1920's and no longer serves TID's needs. The new site is a significant upgrade that will enable TID to reduce dependence on Tumalo Creek for natural flow, provide emergency water supplies for the District and Emergency Services responders, and provide increased efficiency in the operations and maintenance of the TID system overall.

Affected tax lots are 1711130000828 and 1711130000824. See attached for TID Boundary map.

RECEIVED BY OWRD

[Empty rectangular box]



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 3. →

RECEIVED BY OWRD

AUG 18 2014

SALEM, OR

AUG 18 2014

SALEM, OR

For Local Government Use Only

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): See attached decision.
- 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:	
		<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
		<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
		<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.

Name: Nick Lelack Title: Community Development Director
 Signature: [Signature] Phone: 541-385-1708 Date: August 12, 2014
 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: _____

DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Tuesday, October 07, 2014 7:41 AM
To: FRENCH Dwight W; WOODCOCK Doug E; GORMAN Kyle G
Cc: SPANSAIL Joshua A
Subject: FW: Tumalo Irrigation District New Reservoir Storage Transfer LUCS - Hearing October 7
Attachments: Douthit Letter.pdf

Hi all,
See below and attached.
Please let me know your thoughts.
~S

From: Ken Katzaroff [<mailto:jkkatzaroff@hurley-re.com>]
Sent: Monday, October 06, 2014 12:05 PM
To: DOUTHIT Susan M
Subject: Tumalo Irrigation District New Reservoir Storage Transfer LUCS - Hearing October 7

Ms. Douthit,

We are preparing for a contentious public hearing on the Tumalo New Reservoir storage transfer LUCS tomorrow evening before Deschutes County. As you may recall, my firm represents the developer, KC Development Group LLC ("KCDG") and TID, in the joint defense of the LUCS supporting this transfer. Opponents argue that you have classified the transfer as being to a "non-existing" system, and that since the OWRD says it's non-existing, Deschutes County should interpret it the same way, and so declare that this transfer is not an outright approved use in Deschutes County. They quote a letter that you sent to Tumalo Irrigation District ("TID"), on July 18, 2014, regarding their transfer application T-11833. I have attached the letter for your review. The letter states "[b]ecause this change, unlike typical temporary district water right transfers, involves structural changes and/or the creation of new impoundment facilities, a completed Land Use Information Form is required." Deschutes County Staff, in preparing their report to the Hearings Officer, has asked the Hearings Officer to decide whether or not the Klippel pits can be considered as part of TID's existing system, as that term is defined by Deschutes County.

TID classifies the Klippel pit area as part of their existing system. They've irrigated in that area for decades. The main canal passes right by it. The pits themselves, once lined, served as the delivery method for 56 acres of area irrigation, before the reservoir storage transfer was applied for or tested. Was it your intent to interpret Deschutes County's meaning of their code, when they specified "existing system?" Was it your intent to counter TID's determination that this was part of their existing system? We would very much appreciate any clarification you can provide on this matter, particularly regarding your intent in your letter regarding this transfer.

Please advise.

Sincerely,

Ken

J. Kenneth Katzaroff

Hurley Re, P.C.
747 SW Mill View Way
Bend OR 97702

t: 541.317.5505 | f: 541.317.5507
jkkataroff@hurley-re.com | www.hurley-re.com

HURLEY | RE

ATTORNEYS AT LAW | P.C.

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Oregon

John A. Kitzhaber, MD, Governor

RECEIVED

JUL 22 2014

Deschutes County CDD

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

July 18, 2014

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Carl (Bill) W. Hopp, Jr., Attorney at Law, LLC
168 NW Greenwood Ave.
Bend, OR 97701

Dear Mr. Rieck,

I was recently assigned temporary transfer application T-11833 filed by Tumalo Irrigation District. This temporary transfer proposes to move a portion of the authorized storage water from Upper Tumalo Reservoir (evidenced by Certificate 76684) into new storage facilities within T17S R11E, Section 13, W.M.

Because this change, unlike typical temporary district water right transfers, involves structural changes and/or the creation of new impoundment facilities, a completed Land Use Information Form is required. (See Oregon Administrative Rules 690-005-0025.)

During a recent telephone conversation with your legal representation, Mr. Hopp, it was mentioned the District originally submitted the Department's Land Use Information Form to Deschutes County, but later withdrew the request for completion of the form. I have since spoken with Mr. Nick Lelack, Community Development Director for Deschutes County, who stated the Planning Division of Deschutes County was prepared to sign the Department's Land Use Information Form noting that the proposed use is allowed outright.

In a subsequent conversation with Mr. Hopp, I was informed that Deschutes County will be crafting a letter, in addition to the completed land use form mention above, stating they believe the use is consistent with Deschutes County planning. I suggested that the letter be attached as an addendum to the properly filled out and appropriately signed land use form.

Because of the reasons outlined above, the Department requests submittal of an appropriating completed and signed Land Use Information Form. If the Land Use Information Form is not received by the Department by August 18, 2014, the Department may issue a Final Order denying the transfer application.

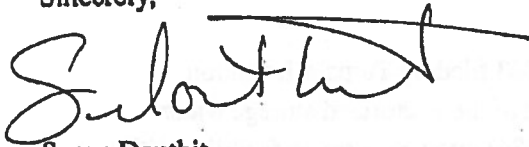
I have enclosed a Land Use Information Form for your convenience.



Finally, prudence dictates the District is reminded that all uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use upon expiration of the temporary transfer at the end of the irrigation season. Furthermore, should the transfer not be approved, the changes made upon submission of the transfer application must be reversed. (See OAR 690-385-3000(5))

Feel free to contact me by telephone at 503-986-0858 or via email at susan.m.douthit@ wrd.state.or.us if you have any questions.

Sincerely,



Susan Douthit
Transfer and Conservation Section

Cc: Nick Lelack, Community Development Department, Director
Transfer File T-11833
Dwight French, Water Right Services Division Administrator
Doug Woodcock, Field Services Division Administrator
Kyle Gorman, Region Manager

DOUTHIT Susan M

From: Ken Katzaroff <jkkatzaroff@hurley-re.com>
Sent: Monday, October 06, 2014 12:05 PM
To: DOUTHIT Susan M
Subject: Tumalo Irrigation District New Reservoir Storage Transfer LUCS - Hearing October 7
Attachments: Douthit Letter.pdf

Ms. Douthit,

We are preparing for a contentious public hearing on the Tumalo New Reservoir storage transfer LUCS tomorrow evening before Deschutes County. As you may recall, my firm represents the developer, KC Development Group LLC ("KCDG") and TID, in the joint defense of the LUCS supporting this transfer. Opponents argue that you have classified the transfer as being to a "non-existing" system, and that since the OWRD says it's non-existing, Deschutes County should interpret it the same way, and so declare that this transfer is not an outright approved use in Deschutes County. They quote a letter that you sent to Tumalo Irrigation District ("TID"), on July 18, 2014, regarding their transfer application T-11833. I have attached the letter for your review. The letter states "[b]ecause this change, unlike typical temporary district water right transfers, involves structural changes and/or the creation of new impoundment facilities, a completed Land Use Information Form is required." Deschutes County Staff, in preparing their report to the Hearings Officer, has asked the Hearings Officer to decide whether or not the Klippel pits can be considered as part of TID's existing system, as that term is defined by Deschutes County.

TID classifies the Klippel pit area as part of their existing system. They've irrigated in that area for decades. The main canal passes right by it. The pits themselves, once lined, served as the delivery method for 56 acres of area irrigation, before the reservoir storage transfer was applied for or tested. Was it your intent to interpret Deschutes County's meaning of their code, when they specified "existing system?" Was it your intent to counter TID's determination that this was part of their existing system? We would very much appreciate any clarification you can provide on this matter, particularly regarding your intent in your letter regarding this transfer.

Please advise.

Sincerely,

Ken

J. Kenneth Katzaroff

Hurley Re, P.C.
747 SW Mill View Way
Bend OR 97702
t: 541.317.5505 | f: 541.317.5507
jkkatzaroff@hurley-re.com | www.hurley-re.com

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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
janet.neuman@tonkon.com

August 22, 2014

VIA E-MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Supplemental Comments (#2) on Transfers 11833 and 11834

Dear Ms. Douthit:

On August 4, 2014, I sent a letter on behalf of my clients, Thomas and Dorbina Bishop, requesting that the Department reopen the public comment period on the above-referenced transfers. Although I have not received any official response to this request, I understand that it will not likely be granted. Nonetheless, in the interest of providing the Department with full information pertinent to its decision on these transfers, I am submitting these additional comments.

My August 4th request outlined four reasons for extending the comment period. One reason had to do with the fact that the Department had not yet received the required Land Use Information Form addressing whether or not the water use in T-11833 was compatible with the Deschutes County land use plans and ordinances. That form has apparently now been submitted, and the County "checked the box" saying that the "land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by [the] comprehensive plan." It is critical for the Department to understand that the County's decision to this effect is not final, as my clients have today filed an appeal because they believe that the County's decision is in error. I have attached a copy of this Appeal as Attachment 1. Thus, the information submitted so far does not embody the final decision as to land use compatibility and cannot be relied upon by the Department.

Furthermore, as I noted in my earlier letter, as of August 4th, my clients and their land use counsel were investigating other activities on the KCDG property (the target location of the two transfers) that they believed violated applicable land use requirements. In particular, the

Ms. Susan M. Douthit
August 22, 2014
Page 2

Bishops were concerned about three docks that had been constructed on the northerly pond—including one with electrical service—and activity associated with a planned boathouse on the water ski lake. Since then, the Bishops learned from the Director of the County Community Planning Department that a permit should have been applied for before extending electrical service to the proximity of the northern dock on the northerly pond, and the County official told the Bishops that his Department would pursue this issue. Apparently, a permit was issued on August 13, after this matter was called to the County's attention by my clients.

Other recent developments relevant to land use issues include construction taking place on the water ski lake. A large number of pilings were installed in early August in the water ski lake, apparently as the foundation for a boathouse and associated boat slips. The developers initially submitted an application to Deschutes County for building and electrical permits for this structure (in contrast to no applications for the structures on the northern pond), but then withdrew the application. Yet, even after withdrawing the application, the developers proceeded with this work. On August 6, 2014, the Deschutes County Community Development Department issued a stop work order in a letter to Eric Cadwell of the KC Development Group. The letter states that the County's "Building Safety Division is aware of work recently performed on a boat house foundation at or about 19210 Klippel Rd., Bend," that "[t]here are no records of any Land Use approval or Building permits at that site for any boat house or related structures," and that "[n]o further work is to be performed on this site until all required Land Use and Building Division requirements have been met." I have attached a copy of this document, along with a photograph of the pilings taken in early August (Attachment 2).

Because of these ongoing land use issues, the Department would be well-advised to take the Land Use Information Form submitted by the County with a grain of salt.

The August 4th request also discussed my clients' concerns about open public records requests that could produce documents pertinent to TID's transfers. Since then, we have received a few documents from TID and Deschutes County, but our request to the Department is still pending. Although we have not yet received written records from the Department, Mr. Bishop did visit the Department on August 19th to review at least some of the files in person. He requested the documents pertaining to T-11833 and T-11834 that would be available for any member of the public to review. Among the documents that Mr. Bishop obtained in his review are a few items that cause us concern. Although we already understood that Watermaster Jeremy Giffin had suggested the storage transfer to TID in the first place, we would still expect the Department to make an objective, independent evaluation of the transfer application, and to give due regard to public comment in deciding whether to approve it. But several of the Department emails give the impression that the Department is promoting the transfer more than reviewing it. (See copies of emails in Attachment 3.)

Ms. Susan M. Douthit
August 22, 2014
Page 3

Mr. Bishop was also dismayed to find in the file for T-11833 an aerial photo containing handwritten notes identifying "Bishop's residence" and "pond?" (Attachment 4) We assume this document relates to the email sent by Jeremy Giffin on June 12, 2014, in response to the Bishops' earlier questions about the validity of justifying water stored in the KCDG northerly pond as a "bulge-in-the-system" ("BIS"), which I discussed in my July 17th comments. In that email, after dismissing the BIS concerns about the KCDG pond because of the intervening TID transfer application, Mr. Giffin went on to say:

"I do however have concerns over your client Mr. Bishop's property immediately to the west that has 2 acres of irrigation right and a large pond that is too large to be considered a bulge in the system when the same calculations are performed. Our records indicate that Mr. Bishop does not have the required storage right for his pond. It may also be possible for Mr. Bishop to also do a temporary transfer of water to be in compliance. I appreciate you bringing these items to my attention and helping resolve the issues to bring both parties into compliance."

The Bishops acknowledge that the Watermaster has the authority to enforce the BIS limits on all water users equally. However, to single out the Bishops seems somewhat retaliatory under the circumstances, and a photo of their residence and pond is irrelevant to consideration of the District's proposed transfer and has no place in the Department's transfer file.

In my earlier comments submitted on T-11833 and T-11834 on July 17, I discussed extensively the mischaracterization of the KCDG reservoir project as a TID project. For example, I discussed the lack of TID planning or process concerning these reservoirs as evidence that this is truly not a District project. In the past several days, my clients have located additional documents offering further support for this argument. In the past, TID has given ample notice to its patrons about District activity, as evidenced by several attached documents. In letters dated November 17 and 18, 2010, TID notified my clients (and other water patrons) of pipe installation activity near their property. The notices provided details about where the work would be done, how the work was being funded, and the impacts of the work on the District's water deliveries, and further invited the property owners along the work area to a meeting with the District Manager. On July 25, 2012, TID sent a notice about weed spraying activity. (These letters are included in Attachment 5.)

In addition to these direct notices, in the past, TID included information about ongoing projects in its newsletter, the Tumalo Times.¹ I have attached several issues of the newsletter to show the extent of the District's communication with its members in years past about construction, water management activities, and budgetary issues. (Attachment 6) (*See, e.g.*, the "Manager's Report" in all five of the attached newsletters, and the "Current Projects" discussions in August of 2010, February of 2011, and January of 2012.) The August, 2012, newsletter also contains a notice about District "Property for Sale." In the words of my client, Tom Bishop, these earlier communications "stand in stark contrast" to the lack of notice and disclosure with respect to the KCDG project. TID's characterization of the KCDG reservoirs as a *District project* is not borne out by the District's conduct.

In fact, KCDG and TID seem to have actively tried to hide pertinent information from the public. I have attached an email exchange between Eric Cadwell of KCDG and Ken Rieck of TID dated May 6, 2014. Mr. Cadwell titled his email "Heads-up on Tom Bishop" and closed it by saying "I would also appreciate it if you could keep this email in confidence. If he knows that I emailed you, he might stir up even more trouble in other areas." Mr. Cadwell also said in the email: "this is a contract between TID and KC Development Group. He is not a party to the contract, so there is no reason to have any say in it. All parties and their lawyers have agreed to it." When Mr. Bishop made an oral request to see TID public documents pertaining to KCDG, including a draft of the KCDG/TID contract, pertinent emails, and minutes of prior TID board meetings, Mr. Rieck denied the existence of any such documents. Mr. Bishop then submitted a written request for relevant documents, and he was given only some mapping information. It was only after the Bishops' attorney, Jennifer Bragar, submitted a series of written public records requests, beginning on May 9, 2014, that this email, the draft contract, and other documents came to light, revealing Mr. Rieck's misrepresentations.

My July 17th comments also pointed out that the transfer applications did not include sufficient information for other water users to determine the impact and injury to their water rights. My earlier comments already discussed this issue in some detail, pointing out the

¹ The District no longer publishes the Tumalo Times, and instead apparently relies primarily on its website to communicate with its water patrons. However, the website contains considerably less information than the newsletter did. The website does not contain any link for information about current projects. Minutes of the District Board meetings are available, as is the date of the next Board meeting. Apparently, the agenda for the next upcoming board meeting is posted about a week before the meeting, but the agendas for past meetings are not posted. The only references I could find to KCDG were in the Minutes of the April, May, and June 2014 Board meetings. The first mention that the KCDG project involved the contemplated change of place of use for TID's water storage was in the April Minutes; however, these Minutes were not made available to the patrons and the public until *after* the May 13, 2014 Board meeting.

Ms. Susan M. Douthit
August 22, 2014
Page 5

information gaps about how these new reservoirs will be managed to assure that other water users are not deprived of their lawful deliveries, and further pointing out the degree to which TID has abdicated control to KCDG over a portion of the District's water, thereby elevating one water patron in the District over all the others. The Bishops are not the only water patrons and District residents concerned about the impacts of the KCDG transaction on the District's operations and on the water users themselves. I have attached several letters and emails received by TID from concerned water users seeking information about the impacts of this project. (Attachment 8) These concerns and queries have not been addressed.

We have also raised the issue of injury to the drinking water source serving the Bishops and the other residents of the Klippel Acres Subdivision. Attachment 9 contains two photographs supporting this concern. The first photo shows one of the two wells operated by Klippel Water, Inc. This well, and the other KWI well, are located within approximately 300 feet of the southerly end of the water ski lake. These wells serve as the sole source of domestic water for approximately 27 homes. The second photograph shows the steep slope of the water ski lake's sides. This lined lake, with very steep side slopes, will capture rainfall that would otherwise seep into the ground and reach local aquifers supplying KWI's wells and other domestic wells in the vicinity.

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. The 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. It thus falls to the Bishops and others to try to determine these impacts in a vacuum. The following description of how the system works has been provided to me by Mr. Bishop; location and distance estimates are his. As I understand the situation, TID diverts water from Tumalo Creek and/or the Deschutes River into a TID pipeline that runs north along the property line between the KCDG property (Tax Lot 828 on the enclosed map) and the Bishops' and their neighbors' property (Tax Lot 2500 and neighboring lots) (Attachment 10). The pipeline continues northwesterly to the Upper Tumalo Reservoir. At a point approximately 30 feet north of the southwesterly corner of Tax Lot 828, water is diverted from the TID pipeline and piped a distance of about 25 feet to the east, where it enters a double head-gate. One of the two head-gate chambers provides water to several District patrons (between 4 and 7, approximately) whose property lies east of KCDG's property. The other head-gate chamber apparently delivers water to the KCDG property. Under the terms of the KCDG/TID transaction, KCDG can now take delivery at that point of 108 acre feet of water that would otherwise "belong" to the Upper Tumalo Reservoir under Certificate 76684 *and* all of the irrigation water that is appurtenant to KCDG's parcels under Certificates 74146 and 74147. Furthermore, we understand that KCDG personnel now hold the head-gate keys.

There are a number of TID patrons whose diversion points are "downstream" of KCDG along the TID pipeline, including the Bishops. The Bishops have an earlier priority date than KCDG. Yet we still have no evidence that there is any way that KCDG can 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. Equally important, the contract terms do not require KCDG to do so or give TID the ability to access the water except in cases of drought or emergency, without any definition of these terms or of the mechanism by which this access would be enforced. My clients and other water rights holders are thereby injured.

Finally, I want to supplement my earlier comments in one more respect. My July 17th injury discussion also raised questions about the impact to TID's fiduciary and financial duties to its water patrons from giving up control of a portion of its water to KCDG. In further support of those arguments, I have attached a copy of a Line of Credit Trust Deed ("Trust Deed") given by KC Development Group LLC ("KCDG") to Carlton M. Cadwell in exchange for a line of credit of 4.2 million dollars. (Attachment 11) (The Trust Deed was later modified by a Modification of Line of Credit Trust Deed, but that document maintains all of the terms of the original Trust Deed except that it adds additional real property.) Section 1 on page 2 of the Trust Deed says that in exchange for the loan, KCDG

"grants, bargains, sells, conveys, assigns and transfers to the Trustee, in trust, for the benefit and security of Beneficiary [Cadwell] with power of sale and right of entry and possession, all of Grantor's [KCDG's] right, title, interest in the Trust Property *together will all of the improvements now or hereinafter erected on the Trust Property* and all easements; *rights*; appurtenances; rents; royalties; mineral, oil and gas rights and profits; *water rights*; and *all fixtures now or hereinafter* a part of the Trust Property. . . ." (Emphasis added.)

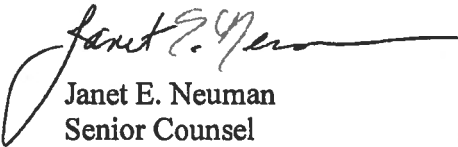
By ceding control of a portion of its water to KCDG, TID has allowed this improper encumbrance to attach to water and water rights that belong to its patrons, to the further injury of the District and its members.

Attachment 1

Ms. Susan M. Douthit
August 22, 2014
Page 7

For the reasons discussed in these comments, as well as our previous comments dated June 23, 2014, July 17, 2014, and August 4, 2014, the Bishops urge the Department to deny Transfers 11833 and 11834.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures

copy w/enc: Tom and Dorbina Bishop (by e-mail)
Jennifer Bragar (by e-mail)
Dwight French (by e-mail)

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PORTLAND OFFICE
eleventh floor
121 se murrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

GARVELY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

August 21, 2014

BY HAND DELIVERY

Hearings Officer
Deschutes County Planning Commission
117 NW Lafayette Avenue
Bend, Oregon 97701

Re: Notice of Appeal
Appellants: Thomas and Dorbina Bishop, Trustees
File No 247-14-000238-PS

To the Hearings Officer:

We represent Thomas and Dorbina Bishop, Trustees of the Bishop Family Trust. The Bishops live at 63382 Fawn Lane, Bend, Oregon, and are personally members of the Tumalo Irrigation District ("TID" or "District") and residents of Deschutes County. This letter is submitted in support of the Bishops' appeal of the Community Development Director's decision for File Number 247-14-000238-PS, the Land Use Compatibility Statement ("LUCS") to allow the District to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to property owned by Harris Kimble, Eric Cadwell and/or the KC Development Group, LLC (collectively, "KCDG") located at 63560 Johnson Road, Bend.¹

Please note that in accordance with the appeal application requirements color Exhibits B, G and S have a blue separation sheet after which black and white copies of the color exhibits are inserted.

I. Executive Summary

The County Planning Director issued a LUCS finding compatibility of TID's proposed change in water storage location based on TID's assertion that the new location for the water storage - two reservoirs located on KCDG's property - are "existing irrigation systems" operated by the District. The conclusion was based solely on the application materials submitted by TID

¹ The property is further identified on the County Assessor's Map 17-11-13 as Tax Lots 828 and 824.



that merely cite to Deschutes County Code (“DCC”) 18.60.020.I and 18.120.050² and follow those citations with the conclusory remark, “We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review.” See Exhibit A. However, the District provides no factual information to support the claim that DCC 18.60.020.I authorizes the newly constructed reservoirs by KCDG.

The Planning Director’s decision to issue the LUCS must be reversed because, among other things, the decision does not address all the applicable criteria, including the site plan and design review requirements of the Landscape Management overlay zone and the County’s Comprehensive Plan Goals for rural residential areas and wildlife areas.

Further, the Planning Director erred in his conclusion that the reservoirs are permitted uses under DCC 18.60.020.I because the District has not satisfied that such containment areas are “existing irrigation systems operated by an Irrigation District.” Instead, the reservoirs are newly constructed containment areas that are owned and operated by the private property owner - KCDG for purposes unrelated to irrigation.

The LUCS decision fails to recognize that the County must subject the use of these reservoirs to conditional use approval. The purpose of the reservoirs is to create a private recreational facility that requires a conditional use permit. The combination of the reservoir construction with the construction of the unpermitted westerly road and stockpile of gravel on the subject property demonstrate that the property is being used for a cluster or planned unit development that also require conditional use approval under the County Code.

II. Factual Background

The following information provides a brief description of the two reservoirs located on the KCDG property and KCDG’s unpermitted construction activity and use of the subject property.

A. KCDG property characteristics.

The subject properties, identified on County Assessor’s Map 17-11-13 as Tax Lots 828 and 824, are zoned Rural Residential (“RR-10”) with Wildlife Area Combining Zone (“WA”) and Landscape Management Combining Zone (“LM”) overlays. Prior to KCDG’s unpermitted installation of the two reservoirs, the only existing District owned and operated irrigation system was located along the perimeter of Tax Lot 828 where the TID pipeline (formerly canal) is located. Tax Lot 824 contained absolutely no TID irrigation system until installation of the reservoir constructed for use as a water ski lake.

² We agree with the County Planning Director’s decision that DCC 18.120.050.C is not applicable to this LUCS.



B. KCDG's unpermitted construction activity and use of the subject property.

Since a picture can be worth a thousand words, I direct your attention to the enclosed photographs (Exhibit B). Some of these photographs were taken by my client, Tom Bishop; others were taken by his son, Gene Bishop, and others by one of his neighbors. Taken from May to August 2014, the photographs show the construction of two substantial reservoirs on land owned by KCDG on land immediately adjacent to the Bishops' property. The photographs illustrate the scale and speed of this project and set the context for this appeal.

In only a few months, from early spring to the beginning of July, KCDG built and filled two large water storage facilities without any meaningful public review of the project. KCDG does not have a water permit that allows construction and fill of the reservoirs, nor does it have any land use approval for the development of the property. KCDG constructed the ponds on property formerly used for mining rock. That property is now zoned for rural residential (RR-10) use with wildlife management and landscape management overlays.³ Although the LUCS at issue here purports review the reservoirs as part of an irrigation system, KCDG publicly disclosed its intent to construct water ski lakes to serve a cluster or planned development. See Exhibit D containing documents that Harris Kimble has circulated to potential investors.⁴ In the attached video, Brianna Caldwell, a member of KCDG, acknowledges that the water ski lake will serve a private residential development and that the boats from the water ski lake will have noise impacts.⁵ See Exhibit E. In addition, Harris Kimble, in the context of testimony to TID regarding the reservoirs, acknowledged that KCDG plans to use the reservoirs for water skiing. See Exhibit F, an excerpt of TID's May 13, 2014, Board Meeting Minutes. One of the reservoirs (identified as the northerly pond in photographs B-1 and 2) is intended as a recreational fishing pond to serve KCDG's proposed housing development. The other reservoir (identified as the water ski lake in photographs B-8 through 17) is intended and designed for use as a water ski lake serving the development.

Without notice, a dozen or more heavy construction vehicles operated in full shifts for several weeks to construct these facilities, excavating, filling, and moving tens of thousands of cubic yards of material to create the reservoirs. In connection with the construction of the reservoirs, KCDG also constructed an unpermitted road along the westerly side of Tax Lot 828, and is storing mined aggregate resources on the property.⁶ Photographs of the stored gravel and the unpermitted road area are included as Exhibit G. All of this activity was carried on without any review or approval other than a one-month rock crushing permit from Deschutes County.

³ Although the property was mined, the Oregon Department of Geology and Mineral Industries deemed the reclamation of the site complete. The property was rezoned to RR-10 by Harris Kimble on November 9, 2007. See Exhibit C.

⁴ The Bishops are aware that KCDG's initial layout shown in the map in Exhibit D is likely outdated, but the depiction provides a roadmap of the development plans for the subject property.

⁵ This video was broadcast on June 4, 2014. See the website printout accompanying the MP4 file of the video in Exhibit E.

⁶ The unpermitted road stretches approximately 1,500 feet along the westerly side of the water ski lake.



During construction, tens of thousands of gallons of water were pumped from a well on the property into an elevated water tank, and then used to fill tanker trucks for dust control and other construction purposes (see photographs B-3 and 4). The northerly pond was filled with water during May and the water ski lake was filled to a low level beginning in the last week of June.

On numerous occasions during construction, the Bishops contacted Deschutes County officials, TID's management, the Oregon Water Resources Department (OWRD), and District 11 Watermaster, Jeremy Giffin, to object to the project's proceeding without any land use or water use approvals. The Bishops also attended District Board meetings to register their objections - both substantive and procedural - to the District's entering into a contract to convey water to KCDG. In spite of those objections, a parcel of land that consisted mostly of naturally vegetated ground in a winter wildlife migration zone a few months ago now contains two large artificial water bodies covering approximately 20 acres. KCDG also constructed an unpermitted westerly road and stockpiled rock and gravel through unpermitted mining activity in connection with the construction of the reservoirs. My clients are astounded that these reservoirs have been completely built and filled, with resultant damage to the wildlife habitat and landscape - all without public review.

Although TID characterizes the water bodies as reservoirs, KCDG has already put the northerly reservoir to recreational use. On August 3, 2014, the Bishops witnessed several people using the northerly reservoir for recreation - with kayaks and a paddle board afloat and in use on the reservoir. On consecutive weekends at the end of July, other project neighbors also observed recreational activity on the northerly reservoir.

Based on this overview of the construction and development of the reservoirs, the following discussion describes the errors in the County Planning Director's issuance of the LUCS to OWRD finding that the reservoirs are compatible with the County's Comprehensive Plan and Zoning Ordinance.

III. The Planning Director Did Not Address All of the Applicable Criteria When He Issued the LUCS

Under OAR 690-005-0010 - 0060, Oregon Water Resources Department (OWRD) requires the applicant for a water storage transfer to obtain a LUCS to ensure compatibility with the County's acknowledged Comprehensive Plan. See Exhibit H. Under OAR 690-005-0035(4), OWRD cannot approve a proposed water use unless it is allowed outright or does not require discretionary land use approvals.

Under ORS 197.763(3), land use notices are required to list all the applicable criteria. In the Notice of Decision the County lists the applicable criteria as the Deschutes County Code (DCC) - Ch. 22.16, Ch. 18.60, Ch. 18.88, and Ch. 18.120. However, as set forth above, the subject property is subject the LM overlay. Moreover, DCC Ch. 18.84 also applies. The Hearings Officer must reverse the Planning Director's decision because it did not examine all of the applicable criteria.



As set forth in DCC 18.84.050.A, the LM's site plan and design review requirements apply to all new structures. Under DCC 18.04.030, a structure is defined as follows:

“Structure’ means something constructed or built having a fixed base on, or fixed connection to, the ground or another structure.”

The reservoirs are structures because they have a fixed connection to the ground as shown by the lining of the reservoirs in the pictures attached as Exhibit B-8, 11 and 15. However, the County did not subject the reservoirs on KCDG's property were not subject to the County's LM review. Therefore, it is impossible for the County to determine whether the use is compatible with the County's Code and the LUCS cannot be issued.

Moreover, the County makes no mention of the County's Comprehensive Plan goals and policies. The Comprehensive Plan at Table 2.7.2 lists mule deer as a species sensitive to human disturbance and shows a declining population. Although the County decision acknowledges that the entirety of the subject property is subject to the WA overlay, the reservoirs have not been analyzed for their impact to mule deer. At Section 2.6 of the County Comprehensive Plan, the wildlife goals are set forth, including Goal 1 to “[m]aintain and enhance a diversity of wildlife and habitats.” The WA overlay was adopted to implement the County's Goal 5 obligations, and the overlay therefore, requires that development be analyzed against impacts to deer. As set forth below, the reservoirs are not permitted uses under DCC 18.60.020.I and the County's decision is out of compliance with the Comprehensive Plan's goal to protect deer habitat and obtain an April adult mule population of 18,7000 [sic.] mule deer. See Comprehensive Plan, Ch. 2, p. 52.

Further, under Section 3.3 of the Comprehensive Plan, the County has adopted policies related to rural housing lands. Goal 1 states that the County will, “[m]aintain the rural character and safety of housing in unincorporated Deschutes County.” The Planning Director's LUCS determination does not address these criteria, and it is impossible to do so as rural residential areas were not intended to house private reservoirs.

IV. The Planning Director Erred in His Conclusion That the Reservoirs are Permitted Uses Under DCC 18.60.020.I

DCC 18.60.020.I lists as uses permitted outright, “[o]peration, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.”⁷ Therefore, to qualify as a permitted use under this section, 1) the reservoirs must be “existing irrigation systems”; 2) the District must operate the existing irrigation systems; and 3) the use of the property by the District must be operation, maintenance and/or piping.

⁷ The only other permitted use that TID could qualify for is under DCC 18.60.020.B as a utility facility necessary to serve the area including a water supply. However, under DCC 18.04.030, a utility facility must be owned by a public, private or cooperative water company. Therefore, TID could only qualify the reservoirs as utility facilities if it exercised its eminent domain authority under ORS 545.239.



A. TID's Agreement with KCDG does not transform the reservoirs into "existing irrigation systems operated by an Irrigation District."

The applicant inaccurately and disingenuously characterizes this proposal to move water to the KCDG reservoirs as a Tumalo Irrigation District project. This is a KCDG project, first and foremost. KCDG owns the land and the reservoirs and has, for some time, planned to build a luxury housing development on the site. Several years ago, these developers approached Jeremy Giffin, District 11 Watermaster, about obtaining a permit to construct ponds on the KCDG property, as part of its long-term development plan. KCDG decided not to apply for a water right, but to pursue obtaining water from the Tumalo Irrigation District instead. In fact, we understand that it may have been Mr. Giffin himself who suggested that the developers contact the District for water; in any event, it was not the District who approached KCDG about storing district water, but the other way around.

The District did not independently propose to move water from Upper Tumalo Reservoir to the KCDG property to serve District needs. The District did not look for alternative water storage facilities or locations. If the District had been truly interested in seeking out new storage facilities, as a matter of legitimate irrigation district business, it would have been proper for it to include the proposal in the regular district planning process, to discuss the needs with its members, to investigate alternative ways of meeting the needs, and to seek competitive storage proposals from its water users, other property owners with available land, or existing reservoir owners and operators. The District did not do any of those things, in spite of specific requests to do so from the Bishops and others.⁸

The District completed two detailed and thoughtful Water Management and Conservation Plans in 2000 and 2005. See Exhibits K and L. These plans assessed water losses throughout the irrigation system (estimated at 60-70% historically), analyzed several alternatives to better manage and conserve water, and set forth a detailed plan to pipe all of the District's canals to eliminate most of the system's water loss. The Plans noted evaporation and leakage losses from Upper Tumalo Reservoir, but did not propose reducing the volume of water stored there or moving storage away from the reservoir.⁹

⁸ See Public Contract Notice, Exhibit I. The Bishops and other district water users told the District that if it really wanted to find another location to store Tumalo Reservoir water, it should open the process to offers or bids from other property owners and take the offer that would maximize the financial return to the District (which in turn would benefit the members). Such considerations would have allowed the District to avoid the substantial risks (including potential tort liability) and uncertainties of having its water storage under control of a private party or the party's possible successors in interest - such as a future homeowners' association, or the Beneficiary of the Line of Credit is secured in part by KCDG's improvements to the subject property and water rights. See Exhibit J.

⁹ The initial plan, prepared in 2000, included a brief discussion of reconstructing the Upper Tumalo Reservoir or storing water elsewhere within the pipe network, but in a very limited context, relating only to the prospects for storing water during peak demand periods in order to lessen the impact on other irrigation districts of TID's varying rates of diversion from the Deschutes River. The Plan dismissed these alternatives and instead suggested approaching the North Unit Irrigation District about adjusting its own operations to deal with the river flow variations expected after full implementation of TID's conservation project; this discussion apparently took place



It was not until quite recently that the District began to describe the KCDG ponds project as if it were actually a *district* project. In a June 19, 2014 letter to Deschutes County, the District Manager, Ken Rieck, said that the District "has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir."¹⁰ Mr. Rieck refers to the new site only as the "Klippel Acres Mining Pit." The letter makes no mention of KCDG or its plans for the ponds and the intended surrounding development, except by way of copying the letter to "Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site." Nor did the District, when it submitted its LUCS application on August 4, 2014, mention KCDG's application for a permit to build a boathouse and boat slip that were later withdrawn, or the fact that KCDG moved forward with construction of the unpermitted boat house and the County issued a related stop work order. See Exhibit M. The June 19, 2014 letter, included in the complete application, claims that "Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review . . ." notwithstanding the fact that the District neither owns nor leases the land, and will not own or operate the reservoirs. Mr. Rieck cites to DCC 18.60.020.I which allows "operation, maintenance, and piping of *existing irrigation systems operated by an Irrigation District . . .*" as an outright use in a rural residential zone. (Emphasis added). Describing KCDG's extensive pond construction project - most of which was completed before the TID Board approved the Agreement with KCDG at its June 10, 2014 meeting - as part of the District's existing irrigation system is disingenuous and misleading at best, and just plain false at worst.

Notably, Tax Lot 824, where a majority of the water ski reservoir is located contained no TID facilities prior to construction of the reservoir. The only TID facilities associated with Tax Lot 828, prior to construction of the reservoirs, was the TID canal/pipeline that runs along the western perimeter of the lot. As the Planning Director's decision on this LUCS concludes, the application does not propose to pipe existing canals and ditches, so there is no existing irrigation system on the subject property. This attempt to shoehorn in two enormous reservoirs under the guise that such containment areas are somehow extensions of the pipelines that deliver irrigation water to rights holders as "existing" District irrigation systems is a ludicrous stretch of the imagination. Further, as discussed below, the District has essentially ceded its control of the water stored on KCDG's property to KCDG, and thus does not operate the reservoirs.

In fact, when the TID Board discussed the KCDG Agreement at its meetings on May 13, 2014, and June 10, 2014, the tenor of the discussion was considerably different. The project was not discussed as a District project, but rather the Board emphasized the fact that KCDG and the Watermaster had brought the proposal to the District.¹¹ In contrast, when TID does have a

and was favorably received. Tumalo Irrigation District, Water Conservation Plan, pp. 5-5 - 5-6 (July 16, 2000). The 2005 Update noted the evaporation and seepage losses from the reservoir, but contained no further discussion about the reservoir. The discussion about storage during peak demand periods did not appear at all in the later Plan.

¹⁰ Letter from Ken Rieck to Nick Lelack, Deschutes County Community Development Director, June 19, 2014, included in Exhibit A.

¹¹ Tom Bishop attended the May 13th meeting and Gene Bishop attended the June 10th meeting, along with a Garvey Schubert Barer lawyer, who took careful notes on the entire discussion, except the Executive Sessions. At



project that affects the customers and members of the District, it provides extensive notice and publication about such projects. For example, in 2010, the District provided notice about a pipe that it installed in place of open canals and held meetings in regards to the project; provided frequent updates about projects in the Tumalo Times; and in 2012 even provided mailed notice of spraying weeds along the pipeline canal. See Exhibit N with copies of these notices and issues of the Tumalo Times attached. The only notice of the KCDG reservoirs was in a brief agenda entry of the May 13, 2014 TID Agenda packet, with no mention that TID was involved in the project, aside from the cryptic reference to "KC Development (Kimble) Contract and Transfers approvals." See Exhibit O. It was the Bishops who exposed the purpose of transfer of the water storage right to KCDG to allow KCDG to build its private reservoirs for recreational use.¹²

The Agreement that TID authorized at its June 10, 2014 Board meeting, does not even describe this as a District project, saying instead: "Whereas KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property... and [w]hereas TID is willing to allow KCDG to hold the Stored Water . . ." ¹³ See Exhibit Q. Furthermore, the District points to its lack of ownership of the project to support its position that the public contracting laws do not apply to its transaction with KCDG.¹⁴ The District cannot have it both ways.

Instead of investigating available storage options and determining the best alternative for the District and its members, the District entered into a lopsided deal brought to it by KCDG. The Agreement approved on June 10, 2014, by the District's Board allows KCDG to take control of stored water belonging to the District and convert it to the developers' own private benefit. As noted, to begin with, the Agreement recites that KCDG desires to store water and the District is willing to allow KCDG to hold the stored water. The District agrees to use a district temporary transfer to move water to KCDG's ponds, to renew the temporary transfer on an annual basis as needed, and eventually to request a district *permanent transfer*. KCDG agrees to pay the District \$50 an acre foot per year for the stored water (for a total of \$5,400 annually), as well as to cover all of the costs of the transfer applications, and to submit final proof of the permanent transfer to the Department by March 1, 2018, in support of the issuance of a new certificate. The price to be paid to the District is far below the market value for KCDG's use of the water.

the May meeting, after taking some public comment from Mr. Bishop and others, the Board tabled consideration of the contract. At the June meeting, the Board Chair said only that KCDG's lined reservoir would be superior to the Upper Tumalo Reservoir, and that the District had explored other potential storage sites, without providing any support for that statement. The Board approved the contract with only minor modifications to the version it considered in May.

¹² Although a brief discussion of the KCDG transfer is found in the April 8, 2014 TID Board Meeting minutes, these minutes were not publicly available until after the May 13, 2014 meeting. See Exhibit P.

¹³ Agreement, *supra* note 8, at p. 1, Recitals.

¹⁴ See June 30, 2014 email from Bill Hopp responding to the Public Contract Notice, attached hereto as Exhibit R.



The Agreement does not explicitly state that the water in the ponds will belong to the District and/or its members, or will be subject to the District's exclusive management and control, as the water in Upper Tumalo Reservoir is now. KCDG agrees to grant the District an easement across KCDG's property, *but only* "for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement." The Agreement provides that "TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect." These provisions clearly limit the circumstances under which the District can access and use its water once it is on KCDG's property. If KCDG defaults on the Agreement, the District's only remedy is to start another transfer proceeding to try to move the water back to Upper Tumalo Reservoir or another location.

The Agreement does not contain any description of the "plumbing" by which the District can access the ponds and the stored water to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting the water *to* KCDG's property and *into* the ponds. See photographs at Exhibit S. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands.

In addition, two sets of provisions in the Agreement are particularly troublesome and are discussed here to evidence that the construction of the reservoirs cannot be considered existing irrigation systems, or District operated containment areas. The reservoirs are intended to receive more than the 108 acre feet of stored water because KCDG will also hold and use irrigation water in the reservoirs.¹⁵ Paragraph 2 on page 1 of the Agreement says, in full:

"TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in Exhibit A, particularly in the ponds (the "Ponds") described in "Exhibit B," (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property, or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)"

This provision of the Agreement is at the very least confusing, and very likely misleading. How will KCDG assure that the irrigation water passes through the ponds without being stored there? Prior to the District's approval of the Agreement with KCDG on June 10, 2014, and prior to the submission of the District's two transfer applications on June 11, 2014, KCDG had already filled the northerly pond. KCDG apparently claimed a right to do so by permission of Watermaster Jeremy Giffin to store irrigation water as a "bulge-in-the-system" ("BIS").¹⁶ The northerly pond has a capacity of approximately 41 acre feet. After several communications and complaints to Mr. Giffin on behalf of the Bishops about the water being stored on site, Mr. Giffin investigated;

¹⁵ See Water Transfer Application T-11834 attached as Exhibit T.

¹⁶ It does not appear that much irrigation, if any, is actually occurring on KCDG's property during this season, thus eliminating any justification for storing water as a BIS.

he confirmed in a June 12th email that KCDG was storing more water than the 18.25 acre feet that he would allow as a BIS.¹⁷ However, he also said that, as of June 11, he had received the District's transfer application to move water into the ponds, and therefore the BIS issue was no longer a concern, since the District was allowed to "operationally" move the water once it had submitted the application. In addition to our general concerns about this sequence of events, and about whether the BIS concept properly applied at all to KCDG, we question how the BIS concept will be integrated with this provision of the Agreement. KCDG has already abused the BIS concept once; what is to prevent it from doing so again? It seems very likely that KCDG will in fact hold its irrigation water in the ponds, contrary to the Agreement's terms.¹⁸

The second set of provisions of concern includes language in paragraphs 7 and 8 of the Agreement. These two provisions make it clear that the transfer of storage rights and the transfer of irrigation rights are interrelated. Before the District will request (on KCDG's behalf) a permanent transfer of the storage rights to KCDG's property, KCDG must fill the ponds with 108 acre feet of water *and* complete a transfer of the irrigation rights now associated with the land under the ponds. Paragraph 8 says, in part, "If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, *fails to beneficially apply water to land with the water rights to be serviced by said Ponds* for a period of 5 years, . . . then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location." (Emphasis added.) It would certainly seem that as far as KCDG and the District are concerned, KCDG will use the ponds to store both Upper Tumalo Reservoir water and irrigation water from Tumalo Creek and other sources.

Why does this matter? First, these provisions further demonstrate that this is a KCDG project, and not a project for the good of the District. KCDG will exercise complete discretion and control over how it manages the ponds, as long as KCDG "uses" all the water provided to it under the Agreement.¹⁹ The ponds will undoubtedly be operated for KCDG's benefit first and foremost, not for the benefit of the District or its other members. The Bishops and other water users will be injured by giving KCDG control over so much of the District's water, as further discussed below. These provisions also illustrate the impropriety of reviewing this project under the assumption that the irrigation system is "existing" or "operated by an Irrigation District."

¹⁷ On June 12, 2014, Mr. Giffin reported in an email to Jennifer Bragar and Janet Neuman that KCDG could only store 18.25 acre feet as a BIS.

¹⁸ Even if some small amount of irrigation were permitted as an agricultural use by KCDG, the amount would be much less than the size of the reservoirs. Further, the agricultural use of the water is also subject to a water right transfer - T-11834, and cannot be a permitted use until OWRD approves such transfer. Moreover, the location of such irrigation water is subject to the site plan and design review under the LM zoning overlay.

¹⁹ In fact, the Bishops and their neighbors understand that the District gave KCDG the "keys" to control the diversion structures to direct water onto KCDG's land, even though these diversions also control and/or affect water to which other users are entitled, and even though District employees are supposed to be the only ones with the ability to lock and unlock diversions, but we have not confirmed this claim with the District, however.



To call this project simply a change in place of use for some of the District water currently stored in Upper Tumalo Reservoir to an existing irrigation system operated by the District completely obscures the true nature and purpose of the project. The use of the property is not TID's operation, maintenance or piping of an existing irrigation system that is allowed under DCC 1860.020.I. Rather, these reservoirs are new construction performed by KCDG for the benefit of KCDG.

B. The reservoirs do not "exist" as irrigation systems until OWRD approves the water transfer.

Under DCC 18.040.040, "existing" is defined to mean "existing at the time of application." As a matter of land use, a use cannot occur without the requisite parts available to accomplish a use. In this case, the reservoirs cannot exist without water. KCDG cannot obtain water without a water storage right transfer. The water storage right transfer cannot be approved by OWRD until the County issues a LUCS. Therefore, the District cannot claim that the reservoirs are existing irrigation systems, in accord with the term existing as defined by the County code.

Further, OWRD requested a LUCS because the KCDG reservoirs are new containment areas. The applicability of the LUCS requirement is set forth in OAR 690-005-0025(3) and subsection (c) describes that a LUCS is required for all water rights transfers that involve the placement of new impoundment structures.²⁰ In fact, OWRD's District Transfer Program Advisor, Susan Douthit, described, "Because this change, unlike typical temporary district water rights transfers involves structural changes and/or the creation of new facilities, . . ." a LUCS is required. See July 18, 2014 letter from Susan Douthit to TID attached hereto as Exhibit U. Thus, new reservoirs require the County to consider whether such uses are compatible with the Comprehensive Plan and local land use regulations. The reservoirs are not existing irrigation systems and do not qualify as TID operated systems. Therefore the County cannot rely on TID's claim that the reservoirs are the District's irrigation systems and the County cannot issue the LUCS.

V. The County Must Subject the Reservoirs to Conditional Use Approval

²⁰ OAR 690-005-0025 provides, "The provisions of OAR 690-005-0010 through 690-005-0060 apply to actions taken by the Department pursuant to the following land use programs: * * *

(3) Water Right Transfers (OAR Chapter 690, Division 15) except for those:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) Which involve changes in place of use only;

(c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) Which involve irrigation water uses only."

OWRD also required the LUCS because the water storage right does not involve solely irrigation water uses under OAR 690-005-0025(3)(d).



For some unknown reason, TID is willfully aiding KCDG in its attempt to sidestep the public review process for conditional use approval by providing a post-hoc justification that the reservoirs are irrigation systems operated by the District.²¹ But, the disclosure by the property owners to build a water ski lake and fishing pond as centerpiece of a cluster or planned development, coupled with KCDG's full control over the reservoirs, and KCDG's activities since the northern reservoir has been completed defines the uses of the property as conditional uses under DCC 18.60.030. The Hearings Officer must stop the flagrant misinterpretation of its land use laws to provide for meaningful public review of nonresidential uses. See DCC 18.60.010. The rural residential character of this neighborhood as a quiet, serene, gateway to the wilderness will be lost if all that a private property owner has to do is hire a bulldozer and ask for forgiveness and ratification later.

A. The reservoirs are conditional use recreational facilities under DCC 18.60.030.G.

In addition to the self-described intent of KCDG to build a cluster development with a water ski lake centerpiece and accompanying fishing pond in the northern reservoir, the Bishops and several neighbors have already witnessed an abundance of regular recreational activities in the northern reservoir. On August 3, 2014, the Bishops observed several people on the northern reservoir in what appeared to be inflatable kayaks and a paddle board. On consecutive weekends at the end of July, other project neighbors observed the same kind of activity, including an outdoor party that centered on recreational use of the reservoir. This continued use of the northern lake for recreation, and the high likelihood that KCDG intends to start water skiing as soon as the larger reservoir is completed requires the County to deny the LUCS until KCDG applies for conditional use approval for its recreational use. Significantly, under DCC 18.88.040.B.7, the wildlife overlay prohibits recreational facilities in deer winter ranges.²² Yet, the County did not even mention the wildlife issues in its review.

B. The reservoirs, construction of the westerly road, and on-site storage of rock piles are parts of KCDG's cluster or planned development that require conditional use approval under DCC 18.60.030.E or F.

²¹ The OWRD Land Use Information Form requires that the applicant, TID, fill out information boxes to reflect the proposed land use, the source of water, and the intended use of the water. See Exhibit V, page 2. All of these sections are inaccurate. The proposed land use, as set forth above is for recreational use, not for storage as shown on the form. TID described the source of water on the form as "reservoir/pond." However, it is impossible to physically move water from the Upper Tumalo Reservoir to the new reservoirs. Instead, the source of water is actually Tumalo Creek. Last, the intended use of water is first and foremost recreation instead of "storage" as indicated on TID's application form. Notwithstanding these misrepresentations, the County Planning Director signed off on the form. See Exhibit V, page 4. But due to the inaccuracies included on the form by the applicant, the LUCS cannot be approved.

²² This prohibition is no surprise given the County Comprehensive Plan's recognition that uses that generate noises and cause habitat alteration adversely impact deer winter range. See Comprehensive Plan, Section 2.6, pp. 51-52. See also the January 11, 2005 DOGAMI Report of Onsite Inspection explaining that the surface mining reclamation and revegetation has established habitat for deer and other wildlife. See Exhibit W.



As discussed above, KCDG intends to build a cluster or planned unit housing development. KCDG started development of these uses with the construction of the reservoirs that are subject to the LUCS. KCDG constructed not only the centerpiece reservoirs for recreational uses such as water skiing and fishing, but has also constructed an unpermitted road along the western side of Tax Lot 828 that will serve future development, as well as stockpiled large amounts of gravel onsite to prepare foundations for the cluster or planned development.

KCDG's surface mining activities is not an allowed use in the RR-10 zone. If KCDG continues to stockpile gravel onsite, it should be required to rezone the property and obtain a surface mining permit.

- C. If the County concludes that the reservoirs are irrigation systems operated by the District, then the District is undertaking surface mining activities without a conditional use permit.

In the alternative, and notwithstanding any of the foregoing arguments, even if the County could conclude that the reservoirs are irrigation systems operated by an Irrigation District, the surface mining, as evidenced by the stockpiled aggregate on the KCDG property, requires a conditional use permit under DCC 18.60.030.W:

"W. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material."

Certainly, the construction of the reservoirs was preceded by mining activities to make pits for the containment structures. The mined aggregate was used for the construction of the unpermitted westerly road, and is being stockpiled for use in the cluster or planned development. If TID wants to take ownership of the project, then require the District to adhere to the land use rules.

VI. Conclusion

TID's involvement in this application for a LUCS is a post-hoc justification to enable KCDG to construct the centerpieces of its planned cluster development - two recreational reservoirs for water skiing and fishing - without being subject to the County's land use review process. The Bishops have continually questioned why TID has involved itself in a private development outside its purview and statutory purpose of providing irrigation water to its members, but without response. Therefore, the Bishops turn to the County to enforce its Comprehensive Plan and Code to ensure that the appropriate conditional use approval will be and can be attained before the District is allowed to claim that it has any ownership or operational control over these brand new containment structures.



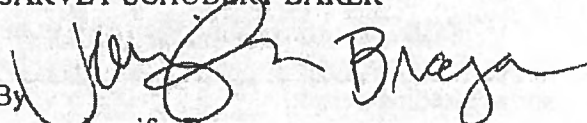
GARVEY SCHUBERT BARER

Hearings Officer
August 21, 2014
Page 14

The Bishops have shown that the newly constructed reservoirs do not qualify as permitted uses based on the above arguments, and the LUCS should not issue until TID or KCDG apply for and obtain the correct land use approvals to allow the uses proposed.

Sincerely,

GARVEY SCHUBERT BARER

By 
Jennifer Bragar

JB:jcl
Enclosures

cc: clients
Nick Lelack (by e-mail without enclosures)
John Laherty (by e-mail without enclosures)

PDX_DOCS:521328.4

Attachment 2

Tom @ Bischoff TRUST . com



Community Development Department

Planning Division • Building Safety Division • Environmental Soils Division

P.O. Box 6005 • Bend, Oregon • 97708-6005
117 NW Lafayette Avenue • Bend, Oregon • 97701
(541) 388-6575 • FAX (541) 385-1764
<http://www.deschutes.org/cdd/>

August 6, 2014

Eric Cadwell
KC Development Group LLC
63560 Johnson Road
Bend, Oregon 97701

Stop Work

The Deschutes County Building Safety Division is aware of work recently performed on a boat house foundation at or about 19210 Klippel Rd., Bend.

There are no records of any Land Use approval or Building permits at that site for any boat house or related structures.

All work requiring Building permits must cease immediately. No further work is to be performed on this site until all required Land Use and Building Division requirements have been met.

David K. Pedersen
Deschutes County Building Official
117 NW Lafayette Ave.
Bend, Oregon 97701
541-385-3200
Dave.pedersen@deschutes.org

Quality Services Performed with Pride



Attachment 3

DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Thursday, April 10, 2014 5:11 PM
To: GIFFIN Jeremy T
Subject: RE: storage right - 30af

Well, our "regular path" might be the straw that breaks this board members back. I'm confident that folks w/in the district will lead the way and bring folks along. =>
~S

From: GIFFIN Jeremy T
Sent: Thursday, April 10, 2014 2:56 PM
To: DOUTHIT Susan M
Cc: SAUTER Jerry K; STARNES Kelly; GORMAN Kyle G
Subject: RE: storage right - 30af

Thank you for the confirmation. The process outlined below is the product I will sell the district. On a side note when we discussed this at the last board meeting one of the board members was not sold on any new uses within the district and wanted regular irrigation to stay as regular irrigation so getting through OUR process may be only one hurdle they have to overcome before this transfer comes to fruition.

J

From: DOUTHIT Susan M
Sent: Thursday, April 10, 2014 2:27 PM
To: GIFFIN Jeremy T
Cc: SAUTER Jerry K; STARNES Kelly; GORMAN Kyle G
Subject: RE: storage right - 30af

Thanks for the conversation this afternoon Jeremy.
If my understanding is complete and accurate (HA!) we'll be seeing a regular transfer to change the character of use and place of use along w/a new application for a new reservoir. The storage water will be linked to C83571, which is, of course, already allocated water.
The transfer component will go down the "regular" path.
~S

From: GIFFIN Jeremy T
Sent: Thursday, April 10, 2014 2:02 PM
To: DOUTHIT Susan M
Cc: SAUTER Jerry K; STARNES Kelly; GORMAN Kyle G
Subject: RE: storage right - 30af

Kyle and I will be meeting with the contractor and COID early next week to go over the application process. They filled out forms a few weeks back and listed the source as the local canal lateral. So the new application will have the source as Deschutes River already allocated under 83571. So for clarification when describing the process, the "ponied up" water will be water put into a transfer for a change in type of use???

On another case, yet very similar, the transfer within Tumalo Irrigation district from storage to storage was approved by the board of directors on Tuesday and will be applied as a temp transfer this year so the district can do a claim of beneficial use prior to the permanent district transfer.

Jeremy

From: DOUTHIT Susan M
Sent: Tuesday, March 11, 2014 10:08 AM
To: GIFFIN Jeremy T
Cc: SAUTER Jerry K; STARNES Kelly
Subject: storage right - 30af

Hey-

I've chatted w/Jeremy and Jerry thought it prudent to get something written down as well as wrap Kelly into the conversation.

There is a need to establish a 30AF storage right w/in COID. There will be Industrial water in the pond that needs cooled along w/??.....in order for a new storage right to be established a source must be identified. There was some concern if the Deschutes R. was identified as the source that the application would be denied because no water is available from that source.

Per Jerry S. the source should be id'd as Deschutes R. under already allocated c83571. This means there will need to be some water "ponied up" from the district so as to avoid enlargement.

Clear as mud?

~S

Susan Douthit
District Analyst
OR Water Resources
503-986-0858



DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Thursday, May 29, 2014 5:27 PM
To: dwight.w.french@state.or.us
Subject: FW: Tumalo Irrigation Water MisUse

This relates to the transfer application you inquired about today.
~S

From: GIFFIN Jeremy T
Sent: Thursday, April 03, 2014 10:59 AM
To: DOUTHIT Susan M
Cc: GORMAN Kyle G
Subject: FW: Tumalo Irrigation Water MisUse

Susan, the question that I had was if we moved 108 AF of the in-district storage right certificate 88894 for multiple use over to a new storage facility, still within the district, would the supplemental water right certificate 76684 still be able to be utilized from the new storage facility given the supplemental right is for stored water from upper Tumalo reservoir? I will be talking to the district board about this issue on next Tuesdays board meeting.

Kyle and I thought that if this issue was clarified in the transfer order and following certificate that we would have all of the bases covered.

(also, this transfer should not be confused with the Gordon Smith transfer within COID that is being proposed)

(also, also, the Gordon Smith should not be confused with the Gordon Smith that is in Congress)

Thanks,

Jeremy

From: GIFFIN Jeremy T
Sent: Thursday, March 20, 2014 8:26 AM
To: 'Kenneth B. Rieck'; rcochran@bendnet.com; Elmer McDaniels
Cc: Fran DeRock
Subject: RE: Tumalo Irrigation Water MisUse

Ken,

The email below is factually inaccurate. The pond can be used for irrigation as a bulge in the system. The storage right that is being moved over cannot be changed to an irrigation right it can only be used to store water. Since the upper Tumalo reservoir is unable to store the full 1100 AF this transfer does two things, first it saves 108 af from potential abandonment and second it creates a revenue stream for the district (in perpetuity) where there was not one before. Mr. Niedzwiecke needs to realize that the storage right can never be transferred to irrigation (per transfer rules and enlargement concerns) and has to either remain in upper Tumalo reservoir or be transferred to another storage facility within the district. The stored water is for multipurpose use so the storage facility can be used for virtually anything (boating, aesthetics, or recreation). Everything that is proposed by this project is legal per Oregon water law and I am unaware of anyone that governs an irrigation district outside of the board of directors.

Look forward to seeing you next board meeting,

Jeremy Giffin
Deschutes Basin Watermaster

From: Kenneth B. Rieck [<mailto:Ken@tumalo.org>]
Sent: Thursday, March 20, 2014 7:56 AM
To: rcochran@bendnet.com; Elmer McDaniels
Cc: GIFFIN Jeremy T; Fran DeRock
Subject: RE: Tumalo Irrigation Water MisUse

Hello,

I have arranged for the state water master (Jeremy) to be on hand at the next board meeting to answer any questions. Fran would you please put it on the agenda list - Thanks.

Ken

----- Original Message -----

Subject: Tumalo Irrigation Water MisUse

Dear Directors,

It has come to our attention that you are contemplating a transfer of a significant amount of water to a person, Harris Kimble, or corporation, KC Development LLC or Klippel Lakes LLC.

I was told by Ken at the district office, that this was an agreement for him to store water for recreational use and he could not use it for irrigation. Let me ask this question, if he cannot or does not plan to use it for irrigation and we cannot use it for irrigation and it is to be stored there, then how does the district plan to use that water? We also suspect that it is not just for recreational use but for the monetary benefit of one person commercially. Why would the district even consider such a proposal?

We think that this is really a misuse of irrigation water and will benefit no one except the developers who are invading our neighborhood.

Can you please provide us information for the agency that governs irrigation districts in the state of Oregon.

Thanks in advance,

Andy Niedzwiecke

andynez@q.com

DOUTHIT Susan M

From: GIFFIN Jeremy T
Sent: Monday, June 02, 2014 7:56 AM
To: DOUTHIT Susan M; FRENCH Dwight W; Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Subject: RE: transfer filed?

We are waiting for final board approval, should happen at next Tuesdays meeting then the application shortly thereafter.

J

From: DOUTHIT Susan M
Sent: Thursday, May 29, 2014 5:15 PM
To: FRENCH Dwight W; Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Cc: GIFFIN Jeremy T
Subject: RE: transfer filed?

Funny you should mention this.

I believe this transfer will come in via the district program and be for a change in place of use only. I also believe it will be a temporary transfer "valid" for only a single year.

I suspect we'll see it arrival ~June 11.

~S

From: FRENCH Dwight W [mailto:dwight.w.french@state.or.us]
Sent: Thursday, May 29, 2014 3:53 PM
To: Kelly Starnes (blkeklein@yahoo.com); DOUTHIT Susan M
Subject: transfer filed?

Have we received a transfer to change the place of use on a reservoir location involving Tumalo I.D.? I heard one is coming. This smells like trouble and I want to know when it comes in. Then we'll need a meeting if it does come in.

Thanks,
Dwight

Dwight French
Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@state.or.us
503-986-0819

DOUTHIT Susan M

From: FRENCH Dwight W
Sent: Wednesday, August 13, 2014 11:08 AM
To: DOUTHIT Susan M
Subject: FW: TID LUCS Decision

Your email to Bill was good.

Can we discuss on Friday the "what we do next" part.

I have concerns about the alleged lack of "out" infrastructure but they might not be done with that part of construction yet.

Dwight

Dwight French

Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@state.or.us
503-986-0819

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:50 AM
To: FRENCH Dwight W
Subject: FW: TID LUCS Decision

Meant to cc you the first time around.

~S

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:37 AM
To: bill@cwhopp.com
Subject: RE: TID LUCS Decision

As requested, this is confirmation that I have received the LUCS from Deschutes Co. I will be taking a look at this document to evaluate whether it addresses the Department's request. I'll be letting you know if additional information or clarification is required.

The deadline for submittal of this information appears to have been met.

More to follow asap.

~S

From: Nick Lelack [<mailto:Nick.Lelack@deschutes.org>]
Sent: Tuesday, August 12, 2014 12:00 PM
To: bill@cwhopp.com; Elizabeth A. Dickson (eadickson@hurley-re.com); Ken Katzaroff (jkkataroff@hurley-re.com); DOUTHIT Susan M; 'Dwight.w.french@state.or.us'
Cc: Anthony Raguline; Peter Gutowsky
Subject: TID LUCS Decision

Everyone,

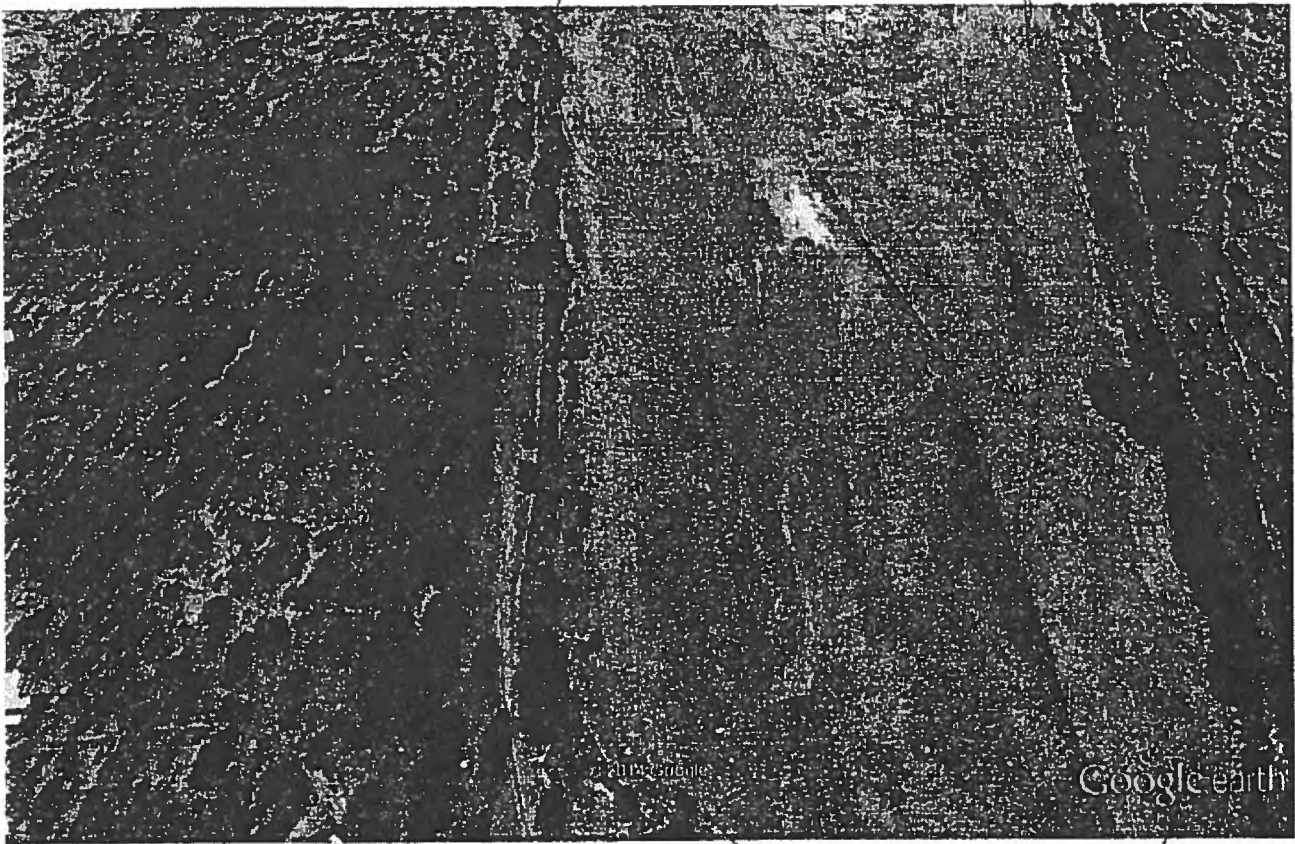
Please find attached the Notice of Decision for the TID LUCS. The decision will be mailed tomorrow, August 13.

Senior Planner Anthony Raguline will be the staff planner and contact for this application going forward. I will continue to be involved.

Thank you.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

Attachment 4



Google earth

feet
meters



Pond? Bishop's residence

19020 Klippel Kalf Bend

Attachment 5

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

November 17th, 2010

Bishop, Thomas E
Po Box 1026
Bend, Or 97709-1026

Dear Sir or Madam,

Tumalo Irrigation District will be installing pipe in the Tumalo Feed Canal in your area. The installation of Phase II starts at the end of Phase I (below Buck Drive) and ends downstream of Johnson Rd. I would like to meet with you and your neighbors who own property between these two points.

The meeting will be Monday evening, November 29, 2010 at 6:00 P.M. at the Tumalo Irrigation District Office. The office is located at 64697 Cook Avenue in Tumalo (across from the Shell Service Station).

If you have any questions or cannot attend the meeting, please feel free to call me at the office at 541-382-3053.

Sincerely,


Elmer G. McDaniels

District Manager

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

November 18th, 2010

Dear Water Patron,

Tumalo Irrigation District will be installing pipe in the Tumalo Feed Canal during this off water season. The funds for extending the pipeline in the canal are being provided by grants from several state and federal agencies. The piping will decrease seepage loss in the canal.

Unfortunately, due to the construction and pipe installation, the District will not be able to provide the last 2 stock runs to our patrons, as planned. Following is a list of water hauling companies in the area that may be able to help you with water delivery in the next few months:

Bend Water Hauling LLC	541-382-0759
High Desert Water Hauling	541-389-4040
Incident Command Services	541-317-9400

Again, I apologize that we cannot provide the stock runs in January and February but this time of the year is the only time the construction can be done. Please contact the office at 541-382-3053 if you have any questions.

Sincerely,



Elmer McDaniels
District Manager

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, Oregon 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

July 25, 2012

Bishop Family Living Trust
P.O. Box 1026
Bend, OR 97709

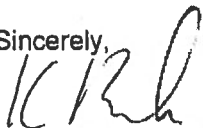
Dear Tom & Dorbina,

Please be informed that Weekly Bros, the District's contractor for Phase II of the Tumalo Feed Canal Pipeline, will be spraying for weeds along the Tumalo Feed Phase II area on or about **August 6th, 2012**.

If you do **not** wish your property sprayed for weeds, the area should be clearly marked at the limits of the area you do not wish sprayed. Hand pulling of these areas will be done shortly after the spraying is completed.

Thank you.

Sincerely,



Kenneth B. Rieck
Assistant Manager

KR/fd

Attachment 6

Tumalo Times

Volume VI Issue II

August 2010

Manager's Report

After reading the August 2009 Manager's report I see we didn't quite make my (optimistic) prediction of filling Crescent Lake this spring. Although we had a fairly wet (and cold!) spring, the winter snow pack left a lot to be desired and we didn't quite make it past 76,000 AF. Currently Crescent Lake is at 65,000 AF (75% full) and we expect to end the season with about 54,000 AF hold over. We are at the same level we were in Jan 2010 so at this time

we have used up all of the 2009/2010 snow melt we gained in the spring. We have 6 weeks to go before the season ends on October 1st 2010. It would take an exceptional winter snow pack to fill Crescent Lake from the predicted 54,000 AF. It has happened before, but I wouldn't count on it.

As you know, the economy has not improved despite this being the 'summer of recovery'. Judging by the number of

delinquencies and unpaid assessments, this is going to be another squeaker year for the District. Projecting our operating budget out until the next billing cycle we should come in very close to our budgeted amount, but this assumes all the assessments are paid in full. This economy, coming right on the heels of major budget cuts and with the loss of the pumice mining income, means we have not been able to build up much in the way of reserve funds.

Continued on page 2

Elections.....

If you have any questions regarding how to run, how to vote, or whether you are qualified to run or vote, please call Jan or Fran at (541) 382-3053.

Board of Directors Election Division 1 & 3

The Board of Directors' positions for Divisions 1 & 3 will terminate on January 3rd, 2011. The positions are for three year terms beginning January 4th, 2011 and ending January 6th, 2014. Any qualified elector from a Division may run for the position in that Division. If you wish to run for a position (you must own property in the Division for which you are running), you may pick up a petition and a list of qualified electors at the District office on or after August 26th, 2010.

Completed petitions must be returned to the office no later than 2:00 p.m. on October 5th, 2010. The petition must have at least 10 signatures of qualified electors. If more than one candidate applies in a Division an election will be held Tuesday, November 9th, 2010. Electors for that Division will be sent a letter with complete information regarding the requirements to vote.

The current positions are held by Steve Putnam & Dean Tuftin.

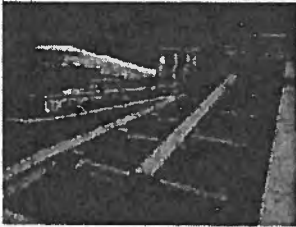


Division 1
Steve Putnam



Division 3
Dean Tuftin

Manager's Letter Cont.



Tumalo Creek Fish Ladder



Tumalo Creek Fish Screen



Tumalo Creek inlet gates



Tumalo Creek Inlet



Tumalo Creek

On the other hand, the District has managed it's operating budget debt free so far, and our goal is to keep it that way.

I'm told I must again make mention of the fact that the board has approved a payment program by which you may avoid, for a time, the District placing a lien on your property. A payment plan must be set up to have your assessment paid off by the end of December of the current year and you must stick

to the schedule. Please contact the District office if this sounds like something that would be of help to you.

Last year the District lost out on over 1 million dollars in grant funds due to the fact that we didn't have, and could not obtain, the 'matching' funds for these dollar for dollar Federal grants. This year we are again approved for a 1 million dollar USBOR dollar for dollar grant. We are required to match these Federal dol-

lars with other non-federal dollars. We are currently 'in the running' for an \$855,000 grant from the Oregon Watershed Enhancement Board (OWEB) and, if approved, we will be \$145,000 short of taking full advantage of the USBOR 1 million dollar grant.

I hope you are all enjoying the summer. I've felt Fall in the air over the last few days, so get out and enjoy the warmth before it's gone.

Current Projects

The Tumalo Feed Fish Ladder and Gauge project is basically complete. This project allows the fish passage from Tumalo Creek past our diversion dam. Year around fish passage here has been blocked for over 100 years so it's a pretty big deal. The new fish ladders and gates work in conjunction with the fish screening facility the District installed a few years ago. Now fish can once again travel from the Deschutes River, up Tumalo Creek to Tumalo Falls, and never worry about being sucked into our canals or flopping in a dry creek bed. The new

gates are designed to pass high flows and allow gravels and sediments to pass the diversion structure.

The Laidlaw Butte property development project is ongoing. This project was started over 5 years ago to develop and sell nine lots on the east side of Laidlaw Butte. The lot size will range from 10 to

over 40 acres and will be accessed from a new road off of Tumalo Reservoir Road. The road construction will be starting this week and should be complete in no more than 60 days. Once that is complete we can take the final plot plans back to Deschutes County and get this project wrapped up.

Farm Management Project Management Property Care Services

DMS
DAVENPORT MANAGEMENT SERVICES LLC
541.388.6877

Board Meetings

The Regular Board Meetings are normally held the second Tuesday of every month, at 10:00 A.M., in the District office.

Regular Board Meetings are open to the public, and we encourage you to attend whenever possible. Please note: Holidays and other events can sometimes change the

day of the meeting. In such an event, and given enough time to do so, we will notify you of the change. Check our web page for meeting dates.

If you wish to be heard at the Board Meeting, you must notify the District at least one week in advance, so that you can be put on the agenda.

Internet

Please note that the District's E-Mail address is tid@tumalo.org. While we welcome your comments on the Internet, we do not encourage using the Internet to convey your water changes, as this will delay the response from the ditch riders.

<http://www.tumalo.org>



Delinquencies

As of this newsletter publication, the District has approximately \$45,000 in unpaid assessments and other charges. All charges became delinquent as of August 1st, 2010 and are accruing monthly interest. We are making every effort to make payment arrangements with water patrons if they still have an outstanding charge.

If you have not made arrangements with the

office, in writing, by the end of August, the Board of Directors will direct our attorney to file a Notice of Right to Lien on your property. The cost to you for this Notice will be an administrative fee of \$425.00 and court costs of \$89.54. This is in addition to your unpaid assessment.

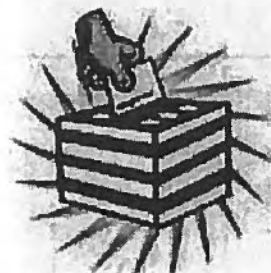
If all charges, including legal and administrative fees, are not paid by the

November Board Meeting the Directors may vote to foreclose on your property. This could easily quadruple legal and administrative costs and you could end up owing the District \$3,000 or more for these costs. If all charges are not paid you could lose your property.

District Vote

FINAL NOTE: If you have been notified by a letter of an upcoming election for your division, don't forget to vote.

Election day will be **November 9th, 2010** here at the TID office or you may vote by mail. Polls open at 7 a.m. and close at 8 p.m.



The Ditch Company

Water Supply Construction and Design

CCB 170227
Randy Putnam
541-420-6223

65910 93rd St., Bend, Oregon 97701

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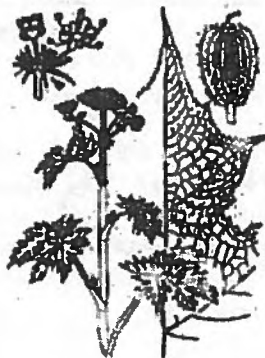


We're on the Web!
www.tumalo.org

Giant Hogweed — *Heracleum mantegazzianum*

Synonyms: Parsnip Tree (en), Riesen-Bärenklau (de), Herkuleskraut (de)

Occurrence: Home is the Caucasus. In Europe and North America frequently used as an ornamental plant in gardens and parks, also wild in woodlands and way-



sides. Widespread in Scandinavia.

Description: Perennial shrub, 3 to 5 m high, leaves up to 1 m long. White blossoms in clusters up to 50 cm in diameter. Stem hollow, with red speckles, up to 10 cm in diameter. Period of bloom from July to September.

Effects: Sap from all parts of the plant, particularly from the stem, acts as a phototoxic. When the juice gets on the skin and the skin is then exposed to ultraviolet light (some hours in the sun may be enough), the skin reddens next day, after another day a strong blister-

ing can occur. The skin changes resemble second-degree burns. Often scars or pigment changes remain permanently or last for years. Also poisonous when ingested.

Measures: Avoid either the plant's sap or the sunlight. The sap can be washed away with water and soap. Corticosteroid ointment. See a doctor if necessary.

If you feel you need help in dealing with an infestation on your property please contact Deschutes County Weed Czar Dan Sherwin



Tumalo Times

Volume VII Issue I

February 2011

Manager's Report

I thought for this Manager's Report I'd go over the District's operating budget. Tumalo Irrigation District is a quasi-municipal corporation and basically runs on a zero profit budget. Our operating budget revenue for 2011 is \$904,000 which includes all income to the District from assessments, fees, and contractual work. We have a pretty simple budget with only a few major categories.

Being a service business our primary expense is payroll, taxes, and insurance for our eight employees (including the manager) which totals \$657,000 all inclusive. We had nine employees but we did not replace one who retired a few years ago due to budget cuts when the pumice

income ended. Due to this cut-back overtime work has increased for the last few years. Our payroll unemployment taxes increased from 2% to 11% this year. Every time unemployment is extended our costs go up.

Next we have the administration expenses including, but not limited to, things like power and water for the office and shop, power to the dams and fish screens. Then there are the audits (we are audited every year), legal expenses, telephones, postage, newsletters, office supplies, office equipment, training and insurance, the list goes on. For the 2011 budget year we are predicting about \$130,000.

Real estate maintenance, property taxes, fire taxes, insurance et cetera adds another \$10,000.

Equipment maintenance for the two backhoes, dump truck, bulldozer, pickups, tires and fuel - \$57,000

System maintenance items like Crescent Lake Dam, Bend and Tumalo feed canal head works and fish screens, canal repairs and head gates, the telemetry system, small tools and system supplies - \$49,000

Of course this is not an all-inclusive list. We also have capital expenses like replacing equipment, pickups, backhoes and dump trucks for example. There are also the government

Crescent Lake and Current Projects

Crescent Lake is currently at 69,500 AF or 80% full. This time last year Crescent Lake was about 76% full. It is sure nice to be working off the top of the lake and not the bottom. The worst year I remember was during the 1993 season when we started the season with less than 20,000 AF. That year we had to rotate water, 10 days on and 10 days off, throughout the season. When you were on, we delivered 70% of your water right. Effectively a 35% delivery for the season. Some of the projects we have in progress, or at least have recently completed, are the

Tumalo Feed Canal Phase I piping project, the Tumalo Fish Ladder and Gauge project at the head of Tumalo Creek, Bill Martin Road and the 8 lots, and Tumalo Feed Canal Phase II Piping project. Tumalo Feed Canal Phase I Piping was completed in 2009 and consisted of 2900 feet of 90 inch HDPE pipe on the Tumalo Feed canal ending downstream of Buck Drive. The Tumalo Fish Ladder and Gauge was a rebuild of the Tumalo Feed head works, fish ladder, and Tumalo Creek staging gauge. This project was completed in 2010.

Bill Martin Road and the 8 lots ranging in size from 10 to 40 acres and zoned EFU, that the District has declared surplus, are destined for the sales market soon. Bill Martin road was completed in 2010 and the lots should be ready for listing in a month or two.

Tumalo Feed Canal Phase II piping project continues from the end of Phase I to Klipple Syphon. This will be about 3200 feet of 90 inch HDPE pipeline. The project is in progress and will be complete before the start of the 2011 irrigation season.

Managers Report Cont...

mandated expenses like Habitat Conservation Plans, dam safety fees to the State of Oregon, Oregon Water Resources Congress and Deschutes Basin Board of Control dues, and mandated employee training. Like taxes, we have little control over these costs.

This year we are down to cutting really small items like the shop phone. Trash pickup at both the shop and the office have been canceled. We will have to start making dump runs to take care of the garbage, this takes away from maintenance time but saves more than a few hundred dollars a year.

The Tumalo Board of Directors decided to cut their own pay such as it was from \$50 per meeting to \$0. This will save the District \$3000 this year alone. I did not quite agree with that decision. I do not think \$50 dollars per meeting was high enough as it is, but it was their decision.

The employees and Board of Directors will continue to monitor expenses, look for new ways to cut costs, and increase efficiency where ever we can while continuing to deliver the available water in a fair and efficient manner.

Assessments

The 2011 water charges are as follows: Delivery Charge - \$605.00 per account, Operation and Maintenance, \$56.00 per acre except BCX which is \$88 per acre. The first half is due March 1, 2011, and the second half is due July 1, 2011. Interest on past due accounts is charged at the rate of 16% per year.

Please contact the District office if you would like to arrange a monthly payment schedule.

Water Leasing

The Deschutes River Conservancy and Tumalo Irrigation District are partnering to offer their annual water leasing program again in 2011. Each year of a lease counts as a year of beneficial use, thereby preserving the validity of your water right. You may lease all or part of your irrigation rights. In 2010, the Tumalo Irrigation District and its patrons contributed 322 acres and nearly 4.4 cfs in-stream. 5,735 acres were leased basin wide, resulting in

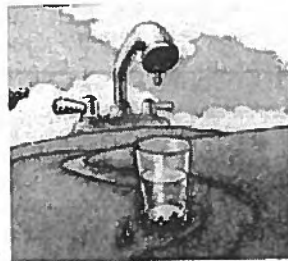
additional flows to Whychus Creek, Tumalo Creek, the Crooked River, and very significantly increasing flows in the middle Deschutes.

Under the program, water right holders are paid on a per acre foot basis to leave their water rights in the river. The funding for this program is contingent on grant funding and will be paid on a pro-rated basis. 2011 TID leases will be paid at \$7 per acre foot for measurable water in-stream at the end of the lease

season. For example, if the lease duty is 10 acre feet but only 8 acre feet are measured in-stream, then only 8 acre feet will be paid.

For more information or to sign up, contact Jan at TID 541-382-3053 before March 4th, 2011. Early notification is strongly encouraged to allow time to prepare the documents. Please note: You are still responsible for your assessment, which must be paid in full before your lease can be ap-

Safe Drinking Water Act



For those of you who have installed a treatment system, please continue to maintain it according to your installer's instructions. Those who are

having water hauled for domestic use must continue to do so until they have installed a well or a State approved treatment system.

If you are new to the District, and have a treatment system or are having water hauled, you will be notified that you are required to provide an affidavit confirming your source of domestic water.

Water Transfers

The District's water transfer policy requires that transferred water must be proved up (beneficially used) in the new location during the irrigation season in which the transfer application is made. In order for the recipient to meet this requirement, transfers must be approved by the Board of Directors no later than the August Board Meeting. Transfers made after the August deadline will be processed in the following calendar year.



Water Leasing *Cont...*

proved.

Farm Deferral

Instream leasing is a beneficial use that protects your water right from forfeiture and allows for compensation for this instream use, but please note that it does not automatically protect against loss of farm use special assessment. Exclusive Farm Use (EFU) zoned lands may still require at least minimal use with the intent to make a profit if fallowed for more than one year.

Weeds

The DRC assumes participants in the Leasing Program will continue to exercise agricultural best management practices on lands enrolled in the Program, particularly with respect to the control of noxious and/or nuisance weeds. Failure to control weeds on leased acres may result in exclusion of payment from the Program.

Payment for leases each year is contingent on grant funding; leases with unaddressed weed issues, leases of less than 5

acres and leases with public entities are not paid.

The Deschutes River Conservancy implements voluntary, market based approaches to water management. It is a non-profit organization that facilitates a wide range of transactions and discussions between agriculture, industry and municipal interests to increase streamflow and water quality in the Deschutes Basin. For additional information contact Gen Hubert at 541-382-4077, ext. 16 or gen@deschutesriver.org.



Board of Directors Election

The results of the November, 2010 election for the Board of Directors for Divisions 1 & 3 are as follows: **Division #1, Steve Putnam**, the incumbent, was the only candidate for this position and was elected by default. **Division #3, Dean Tuftin**, was the only candidate for this position and he was also elected by default. Both Directors terms will be from January 2011 to January of 2014.

The Board of Directors Election of Officers was held at the

Annual Board Meeting on January 11, 2011. The results are as follows:

Division #5-Robert Morrow-Chairman.

Division #3-Dean Tuftin-Vice-Chairman.

Division #1-Steve Putnam-Director.

Division #2-Patricia Gainsforth-Director.

Division #4-Ronald Cochran-Director.

Delinquencies

As a reminder, any accounts, whether for water charges, construction charges, or miscellaneous charges, that are unpaid after August 1st 2011 will have a Notice of Right to Lien filed against the property. If the account is still unpaid at the November 2011 Board Meeting, the District may file for foreclosure on the property. Under this policy you can lose your property. **Please contact the District office if you would like to arrange a monthly payment schedule.**

Internet

Please note that the District's E-Mail address is tld@tumalo.org. While we welcome your comments on the Internet, we do not encourage using the Internet to convey your water changes, as this will delay your response from the ditch riders.

Don't forget to visit the District's web page at <http://www.tumalo.org> for District maps and policies which are now online.



Farm Management Project Management Property Care Services



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We're on the Web!
www.tumalo.org

The mission of Tumalo Irrigation District is to manage our available resources to meet the present and future water needs of our service area by providing a reliable supply of irrigation water in an environmentally and economically responsible manner in an atmosphere of courtesy, integrity and quality of service.

Stock Run Information

Stock runs usually begin on Monday and end on Friday. Please check your ponds early in the week to avoid missing a stock run.



Winter Stock Runs

Stock runs are scheduled around clean-up and construction work by the field crew.

If a stock run is delayed or cancelled due to inclement weather, (see www.tumalo.org for why) we may have to reschedule a run with little or no notice.

Under those circumstances, please call the office for current information, or visit our web page, as sending out notices usually is not an option.

If your head gate is closed and you want water, please call the District office.

Note: There will be no additional stock runs during this maintenance season due to pipeline construction.



Tumalo Times

Volume VII Issue II

August 2011

- The 2011 irrigation season will end on Friday, September 30th 2011.

The January and February Stock runs are also subject to construction of Phase III of the Tumalo Feed pipeline.

Elections.....

If you have any questions regarding how to run, how to vote, or whether you are qualified to run or vote, please call Jan or Fran at (541) 382-3053.

Manager's Report

Those of you who are following the Districts telemetry data for Crescent Lake should know we filled Crescent this year. We had to start releasing water from the lake before we needed it down here on the District as we were flooding quite a few of the properties along the shoreline. We have not had the lake this full since the early seventies and there has been quite a lot of encroachment around the lake. That high water generated quite a few an-

gry phone calls. We will be releasing water for the better part of the winter to make room for next spring's runoff. If we have a poor snow year this winter, we should still fill Crescent Lake again next spring. It looks like we should end the season this year with about 75,000 acre feet in the lake.

With the extremely cool spring we had this year Tumalo Creek snow melt came off very slowly and we didn't have a big flood

of water come down the creek. This is great for saving water in Crescent Lake as the longer Tumalo Creek lasts the less water we have to let out of the lake. Of course it's bad for farming!

Phase II of the Tumalo Feed Canal was completed this past spring. It consisted of 3200 feet of 90 inch HDPE pipe from Buck road to Klipple Siphon. The project went really well and stayed under budget despite some

Cont on page 2

Board of Directors Election Division 2 & 5

The Board of Directors positions for Divisions 2 & 5 will terminate on January 2nd, 2012. The positions are for three year terms beginning January 3rd, 2012 and ending January 5th, 2015.

Any qualified elector from a division may run for the position in that division. If you wish to run for a position you must own property with water rights in the division for which you are running, you may pick up a petition and a list of qualified electors at the

District office on or after August 25th, 2011.

Completed petitions must be returned to the office no later than 2:00 p.m. on October 4th, 2011. The petition must have at least 10 signatures of qualified electors in your division.

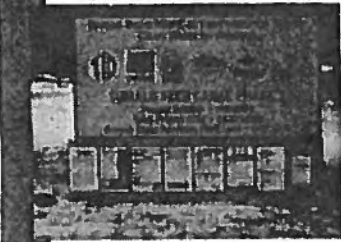
If more than one candidate applies in a division an election will be held Tuesday, November 8th, 2011. Electors for that division will be sent a letter with complete information regarding the requirements to vote.

The current positions are held by Patricia Gainsforth & Robert Morrow.

It should be noted that Patricia Gainsforth is not running for re-election for Director of Division #2.



Robert Morrow
19045 Tumalo Reservoir Rd
Bend, OR 97701
Ph: 541-389-9086



Manager's Letter Cont.

problems we had with the customer turnouts (we are still working through some kinks!).



Phase III of the Tumalo Feed Canal looks like it will be a 'go' this winter. The grants have not received the final signatures yet but we are told everything has been approved for at least 1.7 million with a possibility of a full 2 million in grant funds. Phase III will start at the outlet of Klipple Syphon and end where ever the money runs out. This

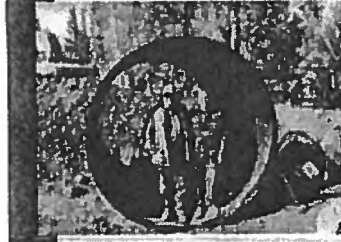
phase should add 3000 to 4000 feet of pipe to the Tumalo Feed Canal. We will be dropping down in size from the current 90 inch to 84 inch pipe as we come out of Klipple syphon.

es. We are planning to start construction on this project the day after Labor Day 2011.

We also received a grant from OWEB for thirty seven thousand dollars to install a new fish friendly gaging station on Tumalo Creek. The current weir is said to block the smaller fish from traveling up stream as they would have to jump 6 to 8 inch-

The District has 8 properties listed for sale on Laidlaw Butte ranging from 10 to 40 acres along with some million dollar views. Please contact Kim Warner at (541)382-8262 if you are interested.

I hope you are all enjoying the summer.



Water Problems?



Do you need help working with your neighbors on a shared Irrigation ditch?

tation schedules, facilitate coordination with irrigation districts, and address weed problems and property access issues. Additionally, mediators can help foster other beneficial arrangements mutually developed by irrigators. When you need help dealing with challenging neighbors over water related issues, consider contacting ODA's mediation service to set up a meeting with the neighbors.

In most cases, the cost to each party is \$35 per hour for time spent with the professional mediator. That's not much for peace of mind and an agreement with your neighbors about fair sharing of water! Most meetings of this type last two to four hours depending on the number of parties and complexities of issues; some last longer, some shorter.

The Oregon Department of Agriculture cooperates with irrigation districts and other organizations to help resolve disputes over shared private irrigation ditches.

Disputes often arise in rural Oregon over property boundaries, water distribution and maintenance responsibilities, weeds, or right of way issues. ODA can help bring together property owners who share private irrigation ditches. Meeting together may help to resolve disagreements, manage water ro-

Working together, you and your neighbor may also benefit from potential technical and financial resources to help improve irrigation efficiency and water quality.



Board Meetings



The Regular Board Meetings are normally held the second Tuesday of every month, at 10:00 A.M., in the District office.

Regular Board Meetings are open to the public, and we encourage you to attend whenever possible. Please note: Holidays and other events can

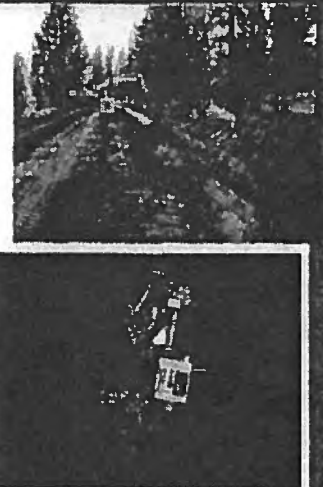
sometimes change the day of the meeting. In such an event, and given enough time to do so, we will notify you of the change. Check our web page for meeting dates.

If you wish to be heard at the Board Meeting, you must notify the District at least one week in advance,

Internet

Please note that the District's E-Mail address is tid@tumalo.org. While we welcome your comments on the Internet, we do not encourage using the email to convey your water changes, as this will delay the response from the ditch riders.

<http://www.tumalo.org>.



Delinquencies

It's that time of year again! As of this newsletter publication, the District has approximately \$97,700 in unpaid assessments and other charges. All charges became delinquent as of August 1st, 2011 and are accruing monthly interest.

If you are a patron with a delinquency and have not made arrangements with the office, in writing, by the end of August, the

Board of Directors will direct our attorney to file a Notice of Right to Lien on your property. The cost to you for this Notice will be in excess of \$500.00. This is in addition to your unpaid assessment.

If all charges, including interest, legal and administrative fees are not paid by the November Board Meeting the Directors may vote to foreclose on

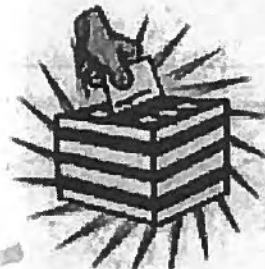
your property. This could easily quadruple legal and administrative costs and you could end up owing the District several thousand dollars for these costs. If all charges are not paid you could lose your property.

If you are a water patron with unpaid charges contact the District office as soon as possible to make arrangements to get your charges paid in full.

District Vote

FINAL NOTE: If you are notified by a letter of an upcoming election for your division, don't forget to vote.

Election day will be **November 8th, 2011** here at the TID office or you may vote by mail. Polls open at 7 a.m. and close at 8 p.m.



Farm Management Project Management Property Care Services

Water Right and Farm Deferral Compliance



On the web @ www.dmsbend.com

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We're on the Web!
www.tumalo.org

Yellow Star Thistle - *Centaurea solstitialis* L.

Yellow Star Thistle crowds out native species and is toxic to horses. It is a grayish-green plant with multiple rigid stems that extend in all directions from the base, forming a bushy-looking cluster that can reach 2 metres (6.6 ft) in height and more than that in diameter. It produces bright yellow flowers ringed with long, sharp spines. The plant grows quickly and is very competitive. It bears a tap-root that can reach 1 metre (3.3 ft) deep into the soil, allowing it to thrive during dry, hot summers.

It is versatile in its growth patterns, and can adapt to drought or low soil moisture content by producing smaller plants with fewer seeds during dry years.

Yellow star-thistle is sometimes resistant to removal methods such as mowing and burning, because of its long root system and the seeds' ability to withstand fire.

Most herbicides used for controlling Yellow Star-thistle are registered for rangelands, right-of-way, and other non-crop areas. Many auxin-like or

growth-regulator herbicides are used for post-emergence control, including 2,4-D, aminopyralid, clopyralid, dicamba, picloram and triclopyr. Alternatively, glyphosate (ie: 'Round-Up') may be used.





Tumalo Times

Volume VIII Issue I

January 2012

2012 Season Info

- The 2012 irrigation season will start on **Monday, April 16, 2012**
- The District will attempt to deliver as much water as possible, but at this time it is too early to predict a percentage. Currently Crescent Lake is 92% full.
- Due to the Tumalo Feed Canal Phase III construction, and a backlog of winter maintenance there will be no additional winter stock runs for the 2012 season.
- If you wish to transfer water during 2012, please contact the District Office as soon as possible.

Manager's Report

For this Manager's Report we'll go over the District's operating budget for the New Year. Tumalo Irrigation District is a quasi-municipal corporation and basically runs on a zero profit margin. In other words, we don't add in a company profit. This makes it impossible to absorb cost increases by making less profit.

Our operating budget revenue for 2012 is \$955,000 which includes all income to the District from assessments, fees, and contractual work. Our assessment income broken out is \$917,000 which is about a 4.7% increase from last year. We have a pretty simple budget with only a few major categories so it's pretty easy to see where the cost increases are

coming in year after year and its right across the board.

Our primary expense as a service business is payroll and the associated taxes and insurance for our eight employees including the manager. The total is \$682,000, which is all inclusive. The employees received a 1.9% pay increase this year. The Board has again decided to forgo compensation for board meetings attendance.

Next we have the administration expenses including, but not limited to, things like power and water for the office and shop, power to the dams and fish screens. Then there are the audits (we are audited every year), legal expenses, telephones, postage, newsletters,

office supplies, office equipment, training and insurance. The list goes on. For the 2012 budget year we are predicting about \$124,000.

Real estate maintenance, property taxes, fire taxes, insurance et cetera adds another \$11,000.

Equipment maintenance for the two backhoes, dump truck, bull dozer, pickups, tires and fuel - \$68,000. This one is a big jump from last year. It seems the Federal Government added a 35% increase to the cost of tires - we needed a lot of tires in 2011, including two rear backhoe tires.

System maintenance items like Crescent Lake Dam, Bend and Tumalo feed canal head works

Cont..

Crescent Lake and Current Projects

Crescent Lake is currently at 82,500 AF or 92% full. This time last year Crescent Lake was at about 80% full. With the Lake so close to filling there is a concern that it could over fill in the spring. The Lake would not over-top, but it could rise high enough to cause the homeowners around the lake some grief. Most of the spring fill in Crescent Lake comes in the later spring months of May, June, and even the first part of July. The trick is to leave just enough room for the spring snow melt. Leave too much room and the lake doesn't fill, don't leave enough room and end up over-filling the lake or flooding Crescent Creek.

So far we have had basically no significant snow during the 2011/2012 season but the snow is currently falling as I type this. We still have time to catch up the winter snow pack if we're lucky. We are currently letting about 18 CFS out of Crescent Lake into Crescent Creek. At this release level we are keeping the Lake level flat except during storm events. Our plan is to start releasing more water in April to make room for the spring snow melt. April is also the time of year Irrigation Districts are turning on so the water will not be wasted.

The main project we have going on is the Tumalo Feed Canal

Phase III piping project. This is a main canal piping project installing 3200 plus or minus feet of 84 inch HDPE pipe. The project starts at the end of phase II on Klipple Syphon, crosses Johnson Rd and ends at the private rail road car bridge on Tumalo Creek Road. This project is financed by the District leveraging \$84,727 into an \$847,270 Grant from the Oregon Watershed Enhancement Board (OWEB) and another grant of \$847,270 from the U.S. Bureau of Reclamation. You can see a photo of the 'Big Cardboard Check' on the upper right side of page three. The total cost of Phase III will be roughly 1.7 million.



Managers Report Cont...

and fish screens, canal repairs and head gates, the telemetry system, small tools and system supplies are approximately \$46,000.

There are also the government mandated expenses like Habitat Conservation Plans, dam safety fees to the State of Oregon, Oregon Water Resources Congress and Deschutes Basin Board of Control dues, and mandated employee training. Like taxes, we have little control over these costs and the cost of doing business keeps going up.

Last year we were down to cutting really small items like

the shop phone and trash pickup at both the shop and the office and I was maybe a bit too aggressive in cutting budget line items so we had more underestimated line items than I'd like to see. This year hopefully we will be a bit closer to the target.

Of course this is not an all-inclusive list. We also have capital expenses such as replacing equipment, pickups, backhoes, bull dozers and dump trucks. These items have their own income stream from the cell towers and other leases, which are dedicated to keeping the capital equipment in shape and the loan payments made

until our property sales catch up.

The employees, manager and Board of Directors will continue to monitor expenses, look for new ways to cut costs, and increase efficiency wherever we can while continuing to deliver the available water in a fair and efficient manner.

The 2012 water charges are as follows: \$625.00 per account, and \$59.00 per acre except BCX which is \$91 per acre. The first half is due March 1, 2012, and the second half is due July 1, 2012. Interest on past due accounts is charged at the rate of 16% per year.

In-stream Water Leasing

The Deschutes River Conservancy and Tumalo Irrigation District are partnering to offer their annual water leasing program again in 2012. Each year of a lease counts as a year of beneficial use, thereby preserving the validity of your water right. You may lease all or part of your irrigation rights. In 2011 the Tumalo Irrigation District and its patrons contributed 419 acres and nearly 6.25 cfs instream. 6,605 acres were leased basin wide, resulting in additional

flows to Whychus Creek, Tumalo Creek, and very significantly increasing flows in the middle Deschutes.

Under the program, water right holders are paid on a per acre foot basis to leave their water rights in the river. The funding for this program is contingent on grant funding, which has been secured for 2012 and will be paid on a pro-rated basis (early submitted leases are paid first). 2012 TID leases will be paid at \$7.00 per acre foot for

measurable water instream at the end of the lease season. For example, if the lease duty is 10 acre feet but only 8 acre feet are measured instream, then only 8 acre feet will be paid. In addition, the DRC pays the state processing fee to lease instream.

For more information or to sign up, contact Jan at TID 541-382-3053 before March 9th, 2012. Early notification is strongly encouraged to allow time to prepare the documents. Please note: You are still responsible

Safe Drinking Water Act



er's instructions. Those who are having water hauled for domestic use must continue to do so until they have installed a well or a State approved treatment system.

If you are new to the District, and have a treatment system or are having water hauled, you will be notified that you are required to provide an affidavit confirming your source of domestic water.

For those of you who have installed a treatment system, please continue to maintain it according to your install-

Water Transfers

The District's water transfer policy requires that transferred water must be proved up (beneficially used) in the new location during the irrigation season in which the transfer application is made. In order for the recipient to meet this requirement, transfers must be approved by the Board of Directors no later than the August Board Meeting. Transfers made after the August deadline will be processed in the following calendar year.



Water Leasing *Cont...*

for your assessment, which must be paid in full before your lease can be approved.

Farm Deferral

Instream leasing is a beneficial use that protects your water right from forfeiture and allows for compensation for this instream use, but please note that it does not automatically protect against loss of farm use special assessment. Exclusive Farm Use (EFU) zoned lands may still require at least minimal use with the intent to make a profit if fallowed for more than one year.

Weeds

The DRC assumes participants in the Leasing Program will continue to exercise agricultural best management practices on lands enrolled in the Program, particularly with respect to the control of noxious and/or nuisance weeds. Failure to control weeds on leased acres may result in exclusion of payment from the Program.

Payment for leases each year is contingent on grant funding; leases with unaddressed weed issues, leases of less than 5

acres and leases with public entities are not paid.

The Deschutes River Conservancy implements voluntary, market based approaches to water management. It is a non-profit organization that facilitates a wide range of transactions and discussions between agriculture, industry and municipal interests to increase streamflow and water quality in the Deschutes Basin. For additional information contact Gen Hubert at 541-382-4077, ext. 16 or gen@deschutesriver.org.



Board of Directors Election

The results of the November, 2011 election for the Board of Directors for Divisions 2 & 5 are as follows: *Division #2-* Shirley DeMaris was the only candidate for this position and was elected by default. *Division #5-* Bob Morrow, the incumbent, was the only candidate for this position and he was also elected by default. Both Directors terms will be from January 2012 to January of 2015.

The Board of Directors Election of Officers was held at the

Annual Board Meeting on January 10th, 2012.

The results are as follows:

Division #4-Ronald Cochran, Chairman

Division #3-Dean Tuftin, Vice-Chairman

Division #1-Steve Putnam, Director

Division #2-Shirley DeMaris, Director

Division #5-Robert Morrow, Director

Payment Plans



The District is now offering the option of a payment plan for those who would like to spread their assessment payments out over a number of months. If you sign a payment plan with the District your payments may be spread over as many as twelve months. Hopefully, this will help those who find it difficult to make just two larger payments in March and July. Remember, if you do not have a signed plan with the District your unpaid assessments are considered delinquent August 1st and the Board will have a Notice of Right to Lien filed on your property. Please contact the office as soon as possible if you would like to set up a payment plan.



Farm Management Project Management Property Care Services

Water Right and Farm Deferral Compliance

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T 2 P/ 2/ 459



We're on the Web!
www.tumalo.org

The mission of Tumalo Irrigation District is to manage our available resources to meet the present and future water needs of our service area by providing a reliable supply of irrigation water in an environmentally and economically responsible manner in an atmosphere of courtesy, integrity and quality of service.

Stock Run Information

Stock runs usually begin on Monday and end on Friday. Please check your ponds early in the week to avoid missing a stock run.

Stock runs are scheduled around clean-up and construction work by the field crew.

If a stock run is delayed or cancelled due to inclement weather, (see www.tumalo.org for why) we may have to reschedule a run with little or no notice.



Winter Stock Runs

Under those circumstances, please call the office for current information, or visit our web page, as sending out notices usually is not an option.

If your head gate is closed and you want water, please call the District office.

Note: There will be no additional stock runs during this maintenance season due to maintenance and pipeline construction.



Tumalo Times

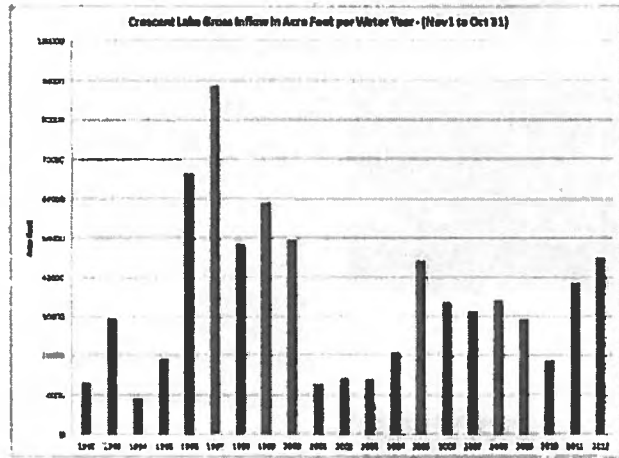
Volume VIII Issue II

August 2012

- The 2012 irrigation season will end on Friday, October 12th 2012

Manager's Report

Crescent Lake had enough water in it this past winter that we had to start a release from the lake in January 2012. We continued releasing excess water right up to when our demand started in July when it changed names from excess water to an irrigation storage release. It's not that we have had an extraordinary water year because we have not. In fact, I was digging through the old lake data and came up with this chart. What it shows is the total gross



Inflow into Crescent Lake over the last 20 years. Remember the Irrigation

District's storage capacity in the lake is 86,900 AF and the lake holds over

Cont on page 2

Board of Directors Election Division 4

The Board of Directors position for Division #4 will terminate on January 7th, 2013. The position is for a three year term beginning January 8th, 2013 and ending January 4th, 2016.

Any qualified elector from Division #4 may run for the position in that division. If you wish to run for a position (you must own property in the division for which you are running), you may pick up a petition and a list of qualified electors at the

District office on or after August 30th, 2012. Completed petitions must be returned to the office no later than 2:00 p.m. on October 9th, 2012.

The petition must have at least 10 signatures of qualified electors in Division #4. If more than one candidate applies in that division an election will be held Tuesday, November 13th, 2012. Electors for that division will be sent a letter with complete information regarding the requirements to vote.



The current position is held by Ron Cochran.

Ron Cochran
Division #4
18624 Pinehurst
Bend, OR 97701

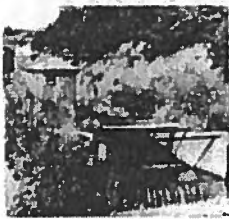
Elections.....

If you have any questions regarding how to run, how to vote, or whether you are qualified to run or vote, please call Jan or Fran at (541) 382-3053.



Manager's Letter Cont.

220,000 AF in total – this is just our part. As you can see, although we had a very good inflow, it was nowhere near what happened in the mid to late nineties. Looking at the data we can be pretty sure we will get at least 10,000 AF in a storage season. This year we will try and end the season with, at most, 70,000 AF. This means that in all but the very worst inflow years we will end up dumping excess water from the lake to make room for new snow melt. Let the good times roll.



Phase III of the Tumalo Feed canal was completed this past spring – perhaps you have seen our guys reclaiming the construction area along Johnson Rd this summer. We ended up installing over 3200 feet of pipeline on phase III starting at the Klipple Syphon and heading downstream across Johnson Road. The cost was a bit lower than we expected and along with some realignment of the



canal, we were able to add more footage with the savings. I would like to thank the property owners that the canal runs through. We do realize how much stress and inconvenience it is to have us come through your properties piping the canals. The polite and professional manner with which you all dealt with issues made the whole project run very smoothly – Thank You.

Phase IV of the Tumalo Feed Canal is being postponed this winter. We lost out on a Reclamation Grant of about \$850,000 to other Districts (not in this area) who showed more water savings. As you know these pipelines are installed with grant money, mostly from the Oregon Watershed Enhancement Board (OWEB) and the United States Bureau of Reclamation (USBOR). When one leg of the funding is lost the whole project is postponed until the next grant cycle. That's Ok though,

it will give our people a chance to catch their breath and clean up some other projects that were postponed due to the piping projects.

The Tumalo Creek Fish Friendly Gauging Station was installed this last winter with help from the Oregon State Water Resources Department, the Oregon Watershed Enhancement Board and Tumalo Irrigation District under the guidance of Oregon Fish and Wildlife.

The project was a smashing success and you can view the saved water from our piping projects rushing down Tumalo Creek from the District's web site on www.tumalo.org. Look for "Tumalo Creek In-stream Water" on the front page.

Thank you for your time and have a great year!

PROPERTY FOR SALE



The District has 6 properties listed for sale on Laidlaw Butte off Bill Martin Road.

These properties are nice little lots that range in size from 9 to 35 acres. Of course due to market conditions, they

are priced cheaper than dirt.

Please contact Kim Warner at (541)382-8262 for more info.

Board Meetings



The Regular Board Meetings are normally held the second Tuesday of every month, at 10:00 A.M., in the District office.

Regular Board Meetings are open to the public, and we encourage you to attend whenever possible. Please note: Holidays and other events can

sometimes change the day of the meeting. In such an event, and given enough time to do so, we will notify you of the change. Check our web page for meeting dates.

If you wish to be heard at the Board Meeting, you must notify the District at least one week in advance.

Internet

Please note that the District's E-Mail address is tld@tumalo.org. While we welcome your comments on the Internet, we do not encourage using the email to convey your water changes, as this will delay the response from the ditch riders.

Delinquencies

It's that time of year again! As of this newsletter publication, the District has approximately \$80,000 in unpaid assessments and other charges. All charges became delinquent as of August 1st, 2012 and are accruing monthly interest.

If you are a patron with a delinquency and have not made arrangements with the office, in writing, by the end of August, the

Board of Directors will direct our attorney to file a Notice of Right to Lien on your property. The cost to you for this Notice will be in excess of \$500.00. This is in addition to your unpaid assessment.

If all charges, including interest, legal and administrative fees are not paid by the November Board Meeting the Directors may vote to foreclose on

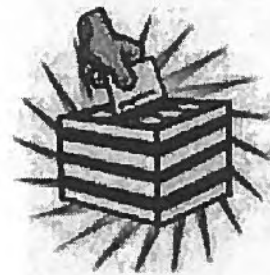
your property. This could easily quadruple legal and administrative costs and you could end up owing the District several thousand dollars for these costs. If all charges are not paid you could lose your property.

If you are a water patron with unpaid charges contact the District office as soon as possible to make arrangements to get your charges paid in full.

District Vote

FINAL NOTE: If you are notified by a letter of an upcoming election for your division, don't forget to vote.

Election day will be **November 13th, 2012** here at the TID office or you may vote by mail. Polls open at 7 a.m. and close at 8 p.m.



Farm Management Project Management Property Care Services

Water Right and Farm Deferral Compliance



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T 2 / P 2 / 452

We're on the Web!
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Dalmatian Toadflax—*Linaria dalmatica*

Dalmatian toadflax is an herbaceous perennial



native to the Mediterranean region. It was cultivated frequently because of its showy flowers. Dalmatian toadflax has a woody, stocky base, with both short prostrate stems, and puright floral

stems. Its leaves are pale green, waxy, and heart-shaped, about 1 to 3 in. in length, that clasp the stem. Seedlings generally will emerge in spring and form rosettes that are usually under 2 inches high. Some seeds will live underground (in the soil seed bank) for up to 10 years, and then emerge in the spring when the soil becomes warm enough. The plant's flowers are 1 in. long, bright yellow in color, and are often tinged with orange or red. They look much like a snapdragon flower. It spreads by horizontal or

creeping roots, and by seeds that are distributed to other regions by the wind, birds, and other animals. This plant can quickly colonize cultivated ground, primarily sandy or gravelly soils, but can develop in a wide range of conditions. The average life span of a Dalmatian toadflax plant is three years.



Attachment 7

From: [Eric Cadwell](#)
To: [Kenneth B. Rieck](#)
Subject: Re: Heads-up on Tom Bishop
Date: Tuesday, May 06, 2014 3:24:48 PM

Do you see any way that this could cause a problem with our plans and contract?
Where is he going to store 108 acre feet of water????

Thanks,
Eric

On Tue, May 6, 2014 at 3:20 PM, Kenneth B. Rieck <Ken@tumalo.org> wrote:
No problem. It looks like he wants to outbid you. He signed up for the board meeting today.

Ken

-----Original Message-----

From: Eric Cadwell [ecadwell@gmail.com]
Received: Tuesday, 06 May 2014, 2:49PM
To: Kenneth B. Rieck [ken@tumalo.org]
CC: harriskimble@aol.com [harriskimble@aol.com]
Subject: Heads-up on Tom Bishop

Ken,

Just wanted to give you the heads-up that Tom Bishop will be complaining to the board about the cost per acre that we are paying for storage rights. Yesterday, he also called code compliance on us saying that we were crushing rock out at the site, even though there has been no rock crusher for several weeks. Basically, he's using his short amount of time in town to make life as hard for us as possible. Just wanted to give you the heads-up. I do know that Harris will be at the meeting as well to represent us.

My take on it is that this is a contract between TID and KC Development Group. He is not a party to the contract, so there is no reason to have any say in it. All parties and their lawyers have agreed to it.

You have been great to work with, and I'm sorry that problems like this keep cropping up.

Please let me know if you think we should be doing anything else proactively to get this completed. As I mentioned, I will be out of the country for the next couple of weeks, but hopefully Harris can help get anything sorted out if required.

I would also appreciate it if you could keep this email in confidence. If he knows that I emailed you, he might stir up even more trouble in other areas.

Thanks,

Eric Cadwell

Attachment 8

RECEIVED
JUN 03 2014

BY:

*original
to Ron*

18130 Tumalo Reservoir Road

Bend OR 97701.

Monday, June 02, 2014

BY HAND DELIVERY TO TID OFFICE.

COPY

Mr. Ron Cochran,

Chairman, TID Board of Directors.

Dear Ron, Draft contract for Water Storage with KC Development Group LLC.

We wish to use the discussion at the June Meeting of TID to record our strong objection to the manner and nature of the expressed intent of TID to reduce the water storage capacity of the District in favor of a water skiing pond on a private property, as evidenced by the signature-ready contract considered at your May 2014 meeting. Until this intent was fully disclosed by the efforts of an affected private individual, TID had had no public process to support the sale of this strategic asset which was being contemplated at a price far below its market value.

It is clear that the District needs to diversify and enlarge its storage capability both to justify the current capacity of its Storage Certificate and also to improve upon the efficiency of the Upper Tumalo Reservoir. Partnership with private individuals or corporations might offer the looked-for improvement in storage capacity but this should be driven by a strategic plan developed by the District. It is essential that the District retains full operational control and its water patrons must have immediate and unimpeded access to stored water in times of need.

Because of the grossly unsatisfactory manner in which the above contract was sourced and developed it is not an acceptable starting point for these planning discussions and it should be set aside in its entirety until the planning process is complete.

Yours truly,

Dr. Veronica Newton-Hudson

Dr. Leslie Hudson

Water patron

Water patron

Copy to: Mr. Kenneth B Rieck, Manager and Secretary, TID

RECEIVED

6/3/14

BY:

To

Tumalo Irrigation District,

COPY

I'm writing this letter to address some of my concerns over a possible new Storage Reservoir between TID and the developers of said Reservoir.

I assume that the "water" is strictly the use of TID not the developers, and they have no rights or say in the water in Storage

What if you have ten or more homes around the "Lake" and due to low water years or other environmental concerns you draw water down to empty, you could open the District open to lawsuits brought about by Home owners

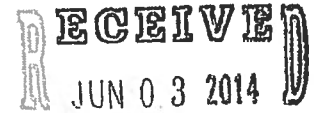
and the developers. I can see a lot of
~~and~~ litigation problems in the future.

Does TID have any say in how
the storage water is used, Boating, Rec
etc... I hope this is thought out
carefully before any agreement is reached

Chris Bud Hersman

TID member

June 3, 2014



BY:

To the Board of the Tumalo Irrigation District:

I own eight acres at the end of Buck Rd, a short distance from the proposed development of the private lake by the KC Development Group. Should it be built, the lake, homes and associated activities will have a direct impact on the serenity and character of not only my home, but also the neighborhood.

By participating in the water storage agreement easement with KCDG, TID is doing a great disservice to its constituents, the local ecology, and the greater public good. In Oregon we're fortunate, water is a public good to be held in trust by the commons. However, by electing to move 108 acre feet of surface water from the publicly accessible Upper Tumalo Reservoir to KCDG's privately owned land, TID is effectively taking this resource out of the public sphere and delivering it to only those who can afford to buy into the development.

I want to ask the Board if it truly believes that the privatization of one of our most valuable and important natural resources is really only worth \$5400 per year – the price agreed upon by the easement contract? Is removing this water from the reservoir where it is accessible by water users when needed; where it serves as local habitat for migratory birds and native species; and where its evaporation and loss is mitigated by volume and transferring it to private property where it may be contaminated by fossil fuels and fertilizers truly inline with the TID mission to manage our irrigation water "in an environmentally and economically responsible manner with an atmosphere of courtesy, integrity and quality of service?" I don't believe it is, and I hope you don't either.

The proper care and management of our water resources is what has allowed our neighborhood and many of the areas surrounding the city of Bend to retain the qualities and characteristics that we treasure as residents of central Oregon: natural beauty, serenity, healthy and fire resistant landscapes, and sustainable development. If TID allows this water transfer to occur and this development to continue as currently planned, it will foster the erosion of these qualities.

Several years ago, TID participated in the project to cover the canals. It is my understanding that part of the impetus behind that work was to limit contamination and evaporation of our irrigation water, and while I believe TID should have consulted with water rights holders prior to covering the canal, I can understand the intentions behind that project. Those intentions, however, do not seem to be inline with the KCDG agreement, and I ask the board to reevaluate its goals and desires for our water.

In closing, I do not believe this transfer is in our best interest, and further it will likely do permanent and irreversible damage to the area served by TID.

Thank you for your time and consideration.

Respectfully,

Mark Rudin



RECEIVED
JAN 11 2001
ST. LOUIS, MO

6-3-14

To anyone interested in irrigation water and water rights,

We are very concerned about Tumalo Irrigation issuing new water rights to the company developing Klippel Lakes. We have shared our concerns earlier with Tumalo Irrigation and the directors. We were misled by Ken Rieck that it would be at least a year before a decision would be made on this water and storage issue.

We never in our wildest dreams imagined that Tumalo Irrigation would even consider granting water to fill two lakes for developers for their private use and profit. We also believe that if the public and the customers of Tumalo Irrigation knew of this action most would strongly object. This has been a very covert, under the table operation and we are asking for more time and consideration to be put into this process. This is a very serious decision and has the appearance of misuse of water and water rights.

COPY

We have many concerns and once again are asking Tumalo Irrigation and the directors to allow more time for consideration before making a decision on granting water storage rights to a private land owner.



Kris Jewett and Ken Graham

I request the right to speak at the June 10th meeting

RECEIVED
JUN 03 2014

BY:

June 2, 2014



Tumalo Irrigation Members of the Board of Directors
Mr. Ron Cochran, Chairman
Ms. Shirley DeMaris, Vice Chairman
Ron Kaye
Stephan L Putman
Martin Warbinton
Mr. Kenneth Rieck

RECEIVED
JUN 03 2014

BY: Att 3:50 pm

RE: Storage of Irrigation Water – KC Development Reservoir,


I am writing a letter of concern regarding the possibility of Tumalo Irrigation District approving the storage of water in the lakes that KC Development is in the process of developing. I believe there will be an adverse affect in our community in a number of ways. There are multiple areas of concern for our neighborhood should this be approved.

- A water storage reservoir for recreational use with the noise of motorized watercraft is very incompatible within a residential neighborhood for any reason. That is their intent – to have competitive skiing on the larger lake with motorized watercraft. TID would make that possible by allowing them to store 108 acres of irrigation water.
- Another point of concern is what happens to our crops when those motorized watercraft's emissions are left in the lake and then released back into the irrigation system – which they will be. Or is TID not requiring them to release it back into the irrigation flow? And if not, why? How will those gases and oils affect our alfalfa crop and gardens in this area that Tumalo Irrigation District and Deschutes County has designated as agriculture for our small farms? This would not affect just our little area but all of the 650 landowners of Tumalo Irrigation District who pay for irrigation water and have it delivered to them. Perhaps it is time to notify those 650 landowners of what is happening.
- Cost of irrigation water for any use should be equitable across the board for anyone using it for any reason. KC Development purchased 60 acres of water with their purchase of the property they are developing. When did they purchase the additional 48 acres of water that TID may allow them to store and if not purchased then why is it ok for them to have access to water they have not purchased.
- Why would Tumalo Irrigation District pay someone (KC Development) to store water that is not necessary to store but is an added benefit to the developer. Shouldn't the developer have to pay for that right like the rest of us do?
- Why is the developer being allowed an extra acres of water to store they have not paid a penny for and is not rightfully theirs? It is very understandable if they owned all 108 acres of water and needed the lakes to store the water they are paying for but when they do not even own the water that may be stored it seems Tumalo Irrigation District is making a very big mis-appropriation of funds. Does TID have the authority to grant immunity from paying for water??? Or should the State Water Board be involved in this decision?

- We as neighbors have never been informed by Tumalo Irrigation District of its intent to transfer or allow storage of any water at KC Development.
- They are building their development right in the middle of the Wildlife Wintering Zone with no consideration of the Wildlife Management zoning – of which the lakes are right in the path of the wildlife, along with no consideration of the habitat, vegetation, impact on the roads, the neighborhood tranquility, but above all the suitability of water for district users once they are done with it, using their motorized water craft for their own monetary benefit.

I respectfully ask you to consider not approving any storage of water at KC Development for any reason. Thank you for your consideration in this matter. It is greatly appreciated.

Regards,


Marilyn Hamper
63460 Palla Ln
Bend OR 97701

Attn: Mr. Kenneth B. Rieck
Manager and Security of the Board
Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701



Irrigation water concerns:

. The holding ponds/lakes created by KCDG will be inspected each year for integrity of the water in their charge. That the water is in the same condition or better than it was when it was allocated to KCDG for storage.

. The ponds/lake's liners are in good condition and there is no water leaking into the ground water used by existing property owners for drinking water. It appears that the current water level exceeds the pond liner level, at this time. There is the potential of the water containing petroleum products, in the future, based on usage.

. There is a written and agreed upon procedure for recovering the water for TID's use at any point that it becomes necessary. And that there is no cost passed along to the TID water users for the recovery of this water as part of the maintenance charges. Since there was never a vote or letter of notice sent to all TID water users they should never bare any cost of supplying or recovering this water.

We thank you for your interest in our concerns.

Beverly Morales Mayer

John Mayer

19383 Klippel Rd.

Bend, OR 97701

(541) 318-0461

RECEIVED
JUN 03 2014

BY:

RECEIVED
JUN 03 2014

BY:

63382 Fawn Lane
Bend, OR 97701
June 3, 2014

~~VIA E-MAIL AND HAND DELIVERY~~

Mr. Ron Cochran, Chairman
Ms. Shirley DeMaris, Vice Chairman
Mr. Ronald Kaye, Director
Mr. Stephan L. Putnam, Director
Mr. Martin Warbington, Director

COPY

Mr. Kenneth B. Rieck, Manager and Secretary to the Board

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Re: Proposed Transfer of Water Storage Rights

Dear Sirs and Madam:

These comments are submitted in regards to consideration by the Tumalo Irrigation District ("TID") Board of Directors ("the Board") whether to transfer the place of storage for some of the water storage rights of TID ("the Rights") to property of KC Development Group LLC ("KCDG"). These comments are in addition to those being provided in a separate letter to the TID Board today by our legal counsel, Garvey Schubert Barer.

The Board's duty is to manage the water rights of the District for the benefit of all its users and must do so in compliance with its own governing rules and applicable laws with respect to the handling of the Rights. In the exercise of these duties, the members of the Board must fulfill their fiduciary duties to all of their constituents, should demonstrably ascertain the highest and best use of the Rights for the benefit of all TID water patrons, and should consider the effects of such use on all residents within TID's boundaries.

As I have stated in previous testimony at the May 13, 2014 TID Board meeting, the fair market value of the transfer of the Rights has not been evaluated. Further, the Board has given no consideration to the impairment of other water rights holders if this contemplated transfer occurs.

We are very concerned that TID has not informed its constituents of the true nature, scope and implications of the contemplated transfer of the Rights and does not have a record for this matter that is easily reviewed by members of the public. This lack of transparent record keeping means that neither TID's Board nor its constituents have had the opportunity to become fully informed about the implications from the proposed transfer and make educated comments in regards to the transfer of the Rights. We reach this conclusion after the difficulty we faced in our attempts to obtain the public records related to this matter.

In April, when I requested to see the documents of TID that pertain to consideration of a transfer of the Rights, I was initially told by the Manager of the District that there were no documents related to the contemplated transfer of the Rights. After submitting a formal written request for records, I was given an opportunity to view some irrigation rights mapping documents and some invoices, but not meaningful documents pertaining to the Rights or the contemplated terms of the transfer. When, at that time, I asked to see a copy of the draft contract and a copy of the minutes of the regular monthly April TID Board meeting, the Manager told me they would not be available until May 13 (at the time of the Board meeting), which of course would have allowed no time to review and consider it before making comments at that meeting.

Indeed, after retaining counsel to prepare formal public records requests, TID provided records that did exist when I previously met with the Manager, including but not limited to a form of contract signed by the developer, an analysis by KCDG of what it would offer to pay for the Rights, many e-mail messages pertaining to the Rights (including a complaint from a water patron from several weeks earlier in regards to the proposed transfer of the Rights, etc.). As a result of the difficulty in obtaining information about the transfer of the Rights, the TID Board is at great risk of losing credibility and legitimacy with its constituency, especially if it makes a decision that compromises the due process rights of its constituents.¹

For all other patrons and members of the public, the first notice that a transfer of the place of the use of TID's water storage rights was at issue was in the TID Board's April 2014 meeting Minutes. However, these April 2014 meeting Minutes were not available until after the May 13, 2014 meeting when the Board had on its agenda the proposed transfer of the Rights. The Board's consideration of such an important

¹ We appeal to the Board members to correct this situation immediately and provide more information to its constituents and the public via its website, as do many other government agencies.

contract, the main subject of which had not yet been communicated to the water patrons and public, would have been inexcusable.

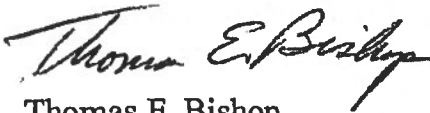
The Board acted appropriately in tabling the matter on May 13, 2014. The Board should make no decision on June 10, and should completely re-think how the District will best meet its constituents' needs for water storage. In this regard, my son, Eugene Bishop, will speak on our behalf at the June 10 meeting of the Board.

Please include this letter in the Board packet being prepared for the TID Board meeting on June 10, 2014 and include it in the administrative record for the contemplated transfer of TID's water storage rights to KCDG.

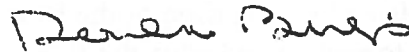
In the future, we will comment further and will remain actively involved to assist the Board in pursuing the best interests of the District, for all the water patrons and the residents, not the private pecuniary interests of one water patron.

Sincerely,

With concurrence,



Thomas E. Bishop



Dorbina O. Bishop

June 2, 2014



To Whom It May Concern at TID:

This letter is to voice a few of our concerns as a family living in the Klippel Acres neighborhood of Bend, Oregon. Our concerns stem from the recent actions and construction/environmental destruction occurring as the result of Dr Eric Cadwell's property development adjacent to our ten acre property.

The main concern we want to address here is only one of several, and it has to do with Water. As Tumalo Irrigation District deals with water, this seems appropriate to address with you. Specifically, we are thinking about a man-made desert body of standing irrigation water. What we imagine is water containing farm chemical runoff including herbicides and pesticides, fertilizers, and other potentially harmful materials. In addition, we understand from living in a wilderness area there are many animal species cohabitating our area that will likely use the water and therefore animal excrement will also become a part of the contents of this standing body of irrigation water. As such there will be a real risk of harmful infectious organisms in the water including Giardia, which can have a deleterious effect on human health if ingested even in minute quantities. Moreover, there is the possibility of algae growth on this standing body of irrigation water which can also become a serious human health hazard. Finally, there is always the likelihood that this water will be a breeding ground for mosquitos which in addition to being a terrible nuisance can transmit West Nile Virus.

Allowing motorized boats in the water will further contaminate it with gasoline and oil and by products. While treating the water to make it potentially more safe for human use may be on your mind, we are concerned about chlorine and other water treatment chemicals becoming a regular part of irrigation water for people's lawns and gardens and so forth, which would be harmful to grass and plants and flowers, as well as other living organisms where watering occurs.

We would like to hear your response to each of these concerns as you go forward In consideration of this "project" of Dr Cadwell and Mr Kemball. We imagine a day when we would have to post signage warning people in the neighborhood about the use of non-potable and potentially hazardous water near our home. We sincerely hope that day is not allowed to ever arrive in Klippel Acres. Please do the right thing.


Neighbors at Klippel Acres

RECEIVED
JUN 03 2014

BY:



www.centraloregonlandwatch.org

June 9, 2014

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Re: Proposed Water Storage Right Transfer to KC Development Group, LLC

Dear TID Board:

I am writing on behalf of Central Oregon LandWatch to express our concerns about the proposed transfer of water storage rights to a new location, to be stored by KC Development Group ("KCDG"). Our concerns include the propriety of such a transfer for a proposed water skiing lake and a proposed fish lake under Oregon water law. We are also concerned that associated land use activities to build these lakes are being carried out without county land use permits.

What is being proposed here is essentially the conversion of use of Tumalo Creek water from irrigation purposes to resort development. I was at the TID Board meeting on May 13 and it was apparent from the discussion, as well as the nature of the resort development, that this water was essentially being permanently transferred to these lakes, and that the water will not be used by TID.

As you know, the use as well as mis-use of Tumalo Creek water has become an important public issue. Questions are already being raised about the appropriateness of TID irrigation management and of using substantial public funds to finance TID piping and other projects. This kind of mis-use of Tumalo Creek water by TID for resort water ski and fish lakes will only intensify the public concern about diversions of Tumalo Creek water.

We further believe that these proposed new lakes, or "reservoirs," need permits and that there must be a public process before there can be any transfer of storage rights.

Very truly yours,

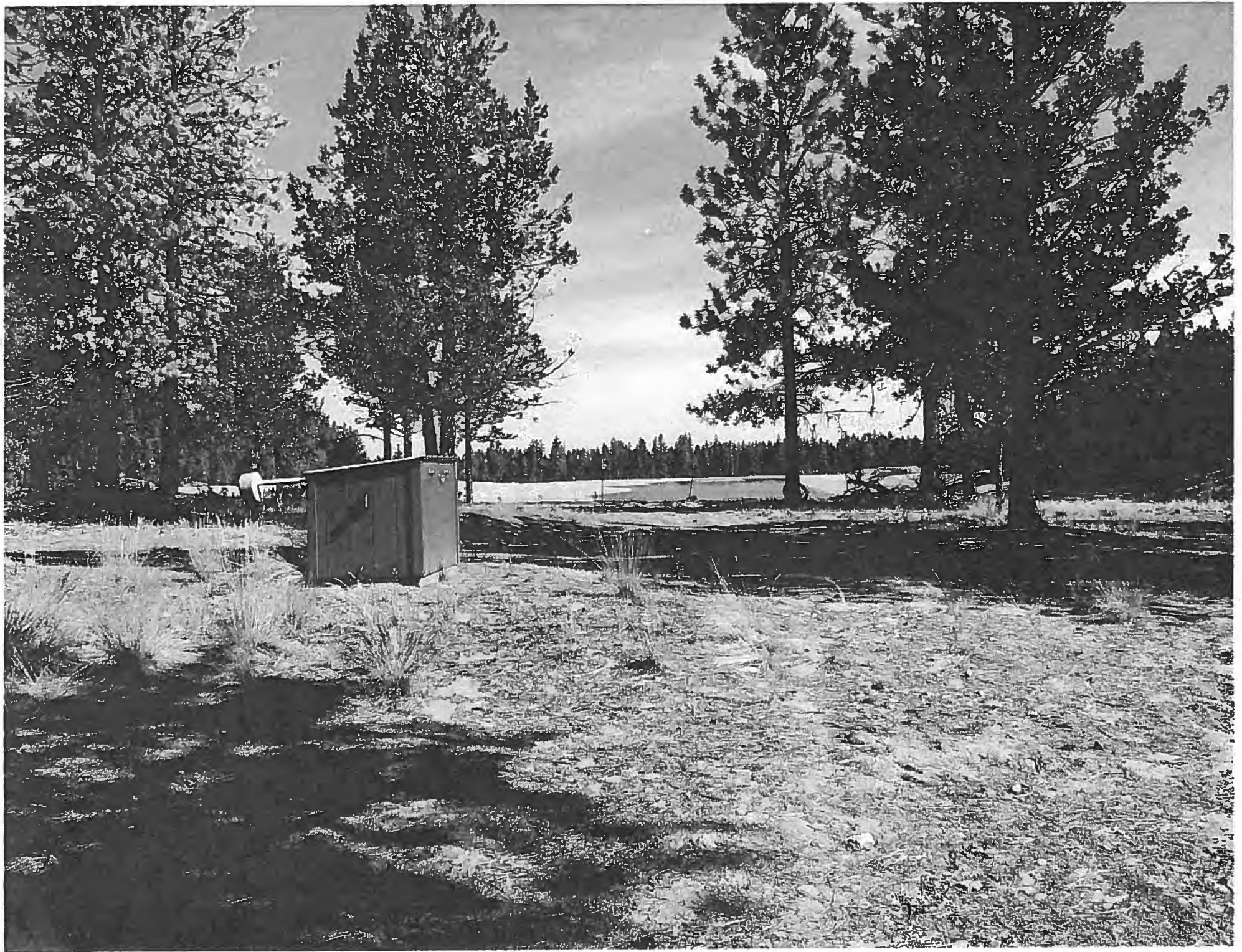
Paul Dewey
Executive Director

RECEIVED
JUN 10 2014

www.centraloregonlandwatch.org

BY:

Attachment 9



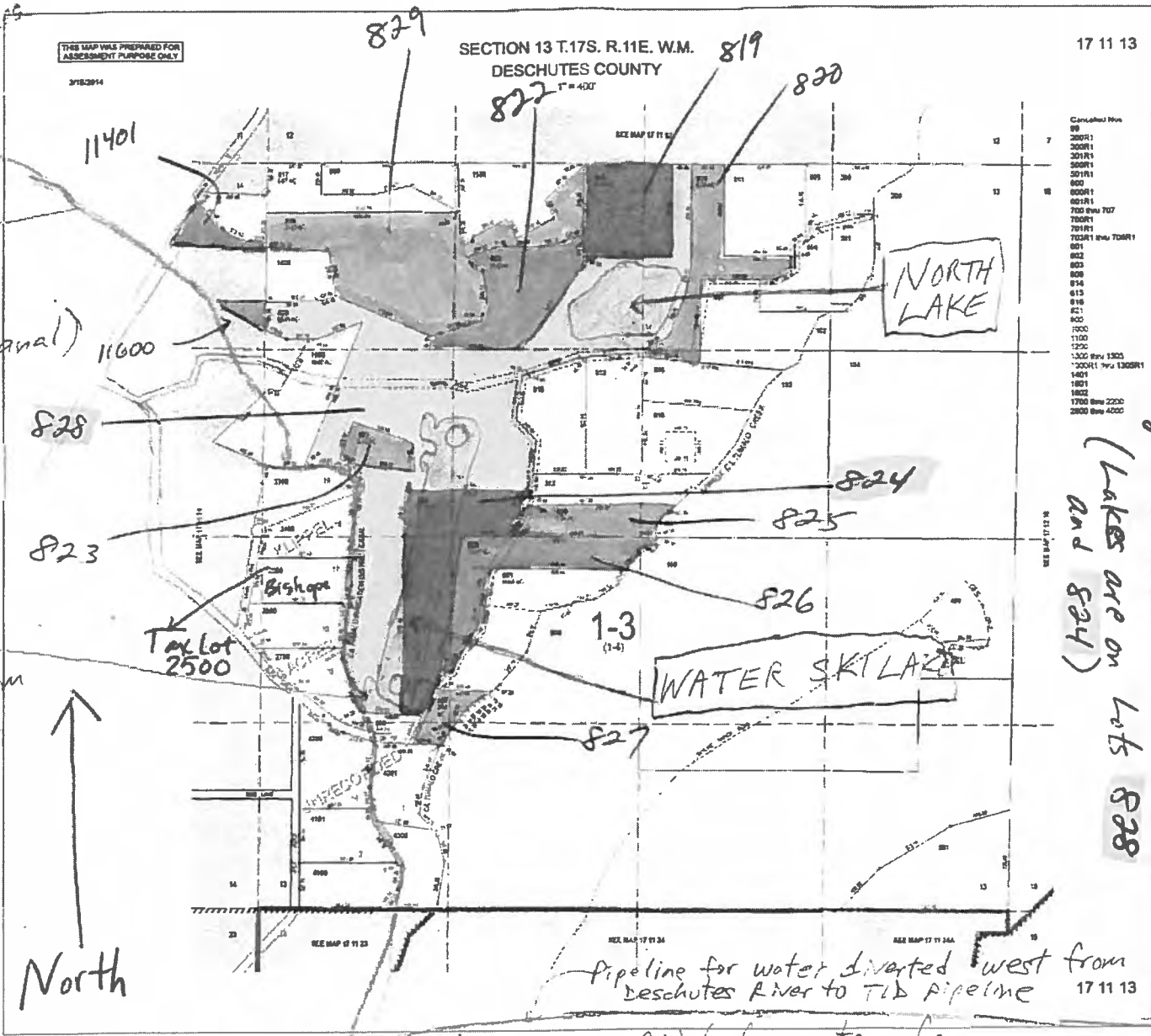


Attachment 10

Upper Tumalo Reservoir - 3 miles about 2 to west of here.

TUMALO Irrigation District Pipeline (former canal)

Head gate for water diverted from TID pipeline into Water Sk Lake



North

Pipeline for water diverted west from Deschutes River to TID pipeline

Diversion point for water from Tumalo Creek into TID pipeline

COLORED MAP OF THE 12 LOTS OWNED BY KC Development Group, LLC
Showing Lot Numbers
(Lakes are on Lots 828 and 824)

Attachment 11

After recording return to:

CARLTON CADWELL
909 North Kellogg Street
Kennewick, WA 99336

Recorded by AmeriTitle as an accommodation only. No liability is accepted for the condition of title or for the validity, sufficiency, or effect of this document.

Deschutes County Official Records **2013-044757**
M-DT
Str=4 BN 10/28/2013 08:15:14 AM
\$60.00 \$11.00 \$10.00 \$6.00 \$16.00 **\$103.00**

I, Nancy Blankenship, County Clerk for Deschutes County, Oregon, certify that the Instrument Identified herein was recorded in the Clerk records.

Nancy Blankenship - County Clerk

LINE OF CREDIT TRUST DEED

PARTIES:

GRANTOR: KC DEVELOPMENT GROUP LLC,
an Oregon limited liability company
63560 Johnson Road
Bend, OR 97701

TRUSTEE: Amerititle
15 Oregon St.
Bend, OR 97701

BENEFICIARY: CARLTON M. CADWELL
909 North Kellogg Street
Kennewick, WA 99336

RECITALS

This Trust Deed is a LINE OF CREDIT INSTRUMENT securing performance of the obligations in a Line of Credit Agreement and Promissory Note between Grantor and Beneficiary dated October 24, 2013 ("Note"). The maximum principal amount to be advanced pursuant to the Note is Four Million Two Hundred Thousand Dollars (\$4,200,000.00). The maximum principal amount may be exceeded by advances made pursuant to the credit instrument if the advances are used to complete construction of the improvements upon the Trust Property.

The term of the credit agreement commences on the date of this Trust Deed and ends thirty-six months after the Wells Fargo Effective Date as defined in the Note.

Grantor is the owner of real property described as follows:

See attached Exhibit "A"

including all appurtenances, buildings and future improvements. All of the real property is referred

to as "the Trust Property."

SUBJECT TO: Encumbrances of Record as of this Line of Credit Trust Deed recording date.

SECTION 1. LOAN

Beneficiary desires to lend to Grantor, and Grantor desires to borrow from Beneficiary, the sum of Four Million Two Hundred Thousand Dollars (\$4,200,000.00). The loan is evidenced by a Line of Credit Agreement and Promissory Note (the Note) dated October 24, 2013 between Grantor and Beneficiary. Grantor has agreed to deed to Trustee the Trust Property to secure punctual performance of all of Grantor's obligations under the Note and Agreement, any modifications, alterations, or extensions of the Note, under this Trust deed, and under any other indebtedness owing by Grantor to Beneficiary, and any future amounts which Beneficiary may loan to Grantor, together with interest.

Grantor grants, bargains, sells, conveys, assigns and transfers to the Trustee, in trust, for the benefit and security of Beneficiary with power of sale and right of entry and possession, all of Grantor's right, title, interest in the Trust Property together with all of the improvements now or hereinafter erected on the Trust Property and all easements; rights; appurtenances; rents; royalties; mineral, oil and gas rights and profits; water rights; and all fixtures now or hereinafter a part of the Trust Property. All replacements and additions shall also be covered by this Trustee. Grantor presently assigns the rents, revenues, income, issues and profits to the Trustee, its successors and its assigns, upon the terms set forth in this deed.

The Trust Property is conveyed to the Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns forever.

However, if all of the obligations secured by this Trust Deed and the Trust Deed are paid, performed and satisfied in full, then the lien and the estate granted by this Trust Deed shall be reconveyed.

SECTION 2. PARTIAL RELEASE

Grantor plans to develop the Property secured by this Trust Deed. Upon agreement to sell individual lots, Grantor shall pay the net proceeds from the sale of each lot to Beneficiary to reduce the unpaid principal balance owing on the Note and Beneficiary shall release the individual lot from this Trust Deed. The term "Net Proceeds" shall include all sums received for the purchase of any lot, less only actual closing costs. Upon payment in full of the Note, Beneficiary shall release all remaining lots secured by this Trust Deed.

SECTION 3. GRANTOR'S COVENANTS AND WARRANTIES

3.1 Payment of the Note. Grantor shall make all payments of interest and principal and late fees, if any, for which provision is made in the Note, and in any renewals, extensions or modifications of the Note, and any note or notes given in renewal or replacement, promptly as such payments become due and payable and will pay the unpaid balance of the Note upon maturity.

3.2 Warranty of Title. Grantor warrants that it holds good and merchantable title to the Trust Property subject to no liens or encumbrances other than those set out above. Grantor covenants that it will defend Beneficiary's and Trustee's rights under this Trust Deed against the adverse claims and demands of all persons.

3.3 Further Assurances.

3.3.1 Grantor shall execute, acknowledge and deliver from time to time such further documents as Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

3.3.2 Grantor, immediately upon the execution and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed and any supplemental security agreements to be recorded in such a manner and in such places that may be required by any present or future law in order to perfect, and continue perfecting, the lien of this Trust Deed.

3.3.3 Grantor shall pay all filing and recording fees, and all expenses incident to the execution, filing, recording and acknowledgement of this Trust Deed.

3.4 Trust Property. Grantor represents that the current use of the Trust Property and if developed, all improvements, are in compliance with all laws, ordinances, and regulations of all government authorities.

3.5 Taxes, Assessments, Liens & Claims.

3.5.1 Payment of Taxes and Assessments. Grantor shall pay when due all taxes, assessments and liens imposed against the Trust Property when due.

3.5.2 Evidence of Payment of Taxes or Assessments. Grantor shall furnish to Beneficiary evidence of payment of the taxes and assessments annually. Grantor authorizes the appropriate official to deliver to Trustee and Beneficiary at any time a written statement of the taxes and assessments against the Trust Property.

3.5.3 Protection of the Trust Property from Liens. Grantor shall not permit any lien prior to the trustee's title to be imposed upon the Trust Property, except liens for taxes or assessments assessed but not yet due.

3.5.4 Beneficiary's Right to Pay Taxes. In the event that Grantor shall allow the taxes or other assessments on the Trust Property to become delinquent or shall fail to pay any lien or encumbrance of any nature whatsoever imposed or permitted upon the Trust Property as they are imposed or become due, Beneficiary, without obligation to do so, shall have the right to pay the amount due and to add the amount plus all costs and attorney fees to the Note balance to bear interest at the rate provided in the Note.

3.5.5 Grantor's Right to Contest. As long as the Trustee's interest in the Trust Property is not jeopardized, Grantor may withhold payment of any taxes, assessments, claims or demands or may elect to contest liens if Grantor is, in good faith, conducting appropriate

proceedings to contest its obligation to pay. If the Trust Property is subject to a lien which is not discharged within 30 days from the date the notice of claim of lien is filed, Grantor shall deposit with Beneficiary cash, a sufficient surety bond or security reasonably satisfactory to Beneficiary in an amount adequate to provide for discharge of the lien plus any interest, costs, attorney fees or other charges that could accrue as a result of foreclosure or sale. In any contest, Grantor shall, at Grantor's expense, defend itself, Trustee and Beneficiary, and shall satisfy any adverse judgment before enforcement against the Trust Property.

3.6 Insurance.

3.6.1 Property Insurance. Grantor shall procure and maintain policies of insurance against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Beneficiary reasonably requires insurance. The coverage endorsement shall include all buildings and improvements. Loss payable shall be made to Beneficiary. The amount of insurance shall be the replacement cost or the amount of principal and interest owed on the Note, whichever is greater.

3.6.2 Insurance Companies, Policies and Certificates. Both the insurance company providing the policy and the form of the policy must be acceptable to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer issuing the policy containing a stipulation that coverage will not be canceled or diminished without a minimum of ten (10) days advance written notice to Beneficiary. Grantor shall deliver to Beneficiary at least ten (10) days prior to the expiration of any insurance policy required by this paragraph a certificate showing the placement of a renewal or substitute policy of insurance.

3.6.3 Notice of Loss. In the event of loss, Grantor shall immediately notify Beneficiary, which may make a proof of loss if it is not made promptly by Grantor.

3.6.4 Insurance Proceeds. Insurance proceeds shall be paid directly to Grantor and Beneficiary. If Beneficiary, by reason of such insurance, receives any amount for loss or damage, if payment is sufficient for repair the payment shall be used for that purpose. If the amount is insufficient to repair or replace, and Grantor is unable to make up the difference to satisfactorily accomplish the repairs, then the insurance payment shall be retained by beneficiary and shall relieve indebtedness of the Grantor in the amount paid. If the payment is greater than the indebtedness owing, the overage shall be paid to the Grantor.

3.6.5 Liability Insurance. During the term of this Trust Deed, Grantor shall maintain public liability and property damage insurance with a limit of not less than \$1,000,000.00. The insurance shall be on an occurrence basis and shall be primary with respect to all other insurance covering any of the insured risks. The policy shall cover all risks arising directly or indirectly out of Grantor's activity on or any condition of the Trust Property. The policy shall protect Grantor, Trustee and Beneficiary against claims of third persons. The policy shall be written in such form, with such terms and by such insurance companies reasonably acceptable to Beneficiary. Grantor shall deliver to Beneficiary certificates of coverage with a stipulation that coverage will not be canceled or diminished without at least ten (10) days' written notice to Beneficiary.

3.7 Use, Maintenance and Alteration.

3.7.1 Duty to Maintain. Grantor shall maintain the Trust Property in good condition and repair and promptly perform all repairs and maintenance necessary to preserve its value.

3.7.2 Waste, Nuisance. Grantor shall not conduct or permit any nuisance on the Trust Property nor commit or suffer any strip of waste. Grantor shall keep the Trust Property free of all hazardous substances. Grantor shall not remove trees unless prior written permission from Beneficiary is obtained.

3.7.3 Removal of Improvements. Grantor shall not demolish or remove any improvements on the Trust Property without the prior written consent of Beneficiary. Grantor may make alterations.

3.7.4 Beneficiaries' Right to Enter and Inspect. Grantor shall permit Beneficiary and its agents to enter upon the Trust Property at all reasonable times to inspect the Trust Property.

3.7.5 Compliance with Government Regulations. Grantor shall comply with all laws, ordinances, and regulations of all governmental authorities applicable to the Trust Property or the use or occupancy of the Trust Property.

3.8 Eminent Domain. If any part of the Trust Property is condemned, Beneficiary shall be entitled to its pro rata share.

3.9 Hazardous Substances. Grantor represents and warrants that: (1) the premises and the improvements, and, to the best of Grantor's knowledge, the surrounding areas, are not currently and have never been subject to hazardous or toxic substances or wastes or their effects; and (2) there are no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders, relating to any hazardous or toxic substances or wastes, discharges, emissions or other forms of pollution relating in any way to the premises or the improvements.

SECTION 4. EVENTS OF DEFAULT.

The following shall constitute events of default:

4.1 Nonpayment. Failure of Grantor to make any payment required by the Note when due. Failure to make any payment for taxes, insurance premiums or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien within three (3) days after written notice by Beneficiary (or Beneficiary's agents) of any such nonpayment.

4.2 Breach of Other Covenant. Failure of Grantor to perform any obligation contained in this Trust Deed within fifteen (15) days after notice from Beneficiary (or Beneficiary's representative) specifying the nature of the default or, if the default cannot be cured within fifteen (15) days, failure within such time to commence and pursue with reasonable diligence curative

action. No notice of default and opportunity to cure shall be required if during the preceding twelve (12) calendar months Beneficiary has already sent a notice to Grantor concerning default in performance of the same obligation.

4.3 Sale or Transfer of Possession. The sale of the Trust Property or transfer of possession in any manner by Grantor, whether by deed, contract of sale, lease or similar agreement, without the prior written consent of Beneficiary, which shall not be unreasonably withheld. Prior to requesting consent, Grantor shall provide a credit report and financial information on any proposed transferee.

4.4 Misinformation. Falsity in any material respect of any representations or warranties made by Grantor to Beneficiary.

SECTION 5. REMEDIES IN CASE OF DEFAULT.

If an event of default shall occur, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies, in addition to any other remedies which may be available under the laws of the State of Oregon:

5.1 Acceleration. Beneficiary may declare all sums secured by this Trust Deed, including all interest and late fees or prepayment penalties, if any, to be immediately due and payable.

5.2 Receiver. Beneficiary may have a receiver of the Trust Property appointed. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor waives all defenses and consents to the appointment of a receiver at Beneficiary's option.

5.3 Possession. Either through a receiver or in person take possession of all or any part of the Trust Property, and Grantor shall peaceably surrender the same.

5.4 Foreclosure. Beneficiary may obtain a decree foreclosing Grantor's interest in all or any part of the Trust Property.

5.5 Fixtures and Personal Property. With respect to any fixtures or personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

5.6 Abandon Security. Beneficiary may abandon any security described in this Trust Deed or any other security instrument.

5.7 Power of Sale. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and exercise of the power of sale under applicable law.

5.8 Expenditures by Beneficiary. If Grantor shall fail to comply with any provision of this

deed, Beneficiary may at its option on Grantor's behalf take the required action, and any amount that it expends in so doing shall be added to the indebtedness. Amounts so added shall be payable on demand with interest at the rate of the Note from the date of expenditure. Beneficiary shall not, by taking the required action, cure the default so as to bar it from any remedy that it otherwise would have had.

5.9 Additional Remedies. Beneficiary may exercise any other remedy provided by law.

5.10 Cumulative Remedies. Election to pursue one remedy shall not exclude resort to any other remedy, and, unless the context otherwise requires, all remedies under this Trust Deed are cumulative and not exclusive. An election to cure shall neither prejudice the right to declare a default nor constitute a waiver of the breached term or any available remedies. No delay or omission in exercising any right or remedy shall impair any other right to remedy or shall be construed to be a waiver of the default.

SECTION 6. APPLICATION OF PROCEEDS.

All proceeds realized from the exercise of the rights and remedies under this Trust Deed shall be applied as follows:

6.1 Costs and Expenses. To pay all costs of exercising such rights and remedies including, but not limited to, the costs of any sale, the costs and expenses of any receiver, the cost of a policy of title insurance and the cost of any survey.

6.2 Indebtedness. To pay all other amounts owed by Grantor, payment of which is secured by this Trust Deed.

6.3 Surplus. The surplus, if any, shall be paid to the person or persons legally entitled.

SECTION 7. GENERAL PROVISIONS.

7.1 Reconveyance upon Payment. Upon written request of Beneficiary stating that all sums secured by this Deed have been paid, surrender of this Trust Deed and the Note to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the Trust Property.

7.2 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee and Beneficiary.

7.3 Indemnity. Grantor shall hold Beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorney fees and court costs, in any suit, action, proceeding, or appeal brought against Trustee or Beneficiary by a third party resulting from or attributable to Beneficiary's ownership of the Note or Trustee's interest under this Trust Deed.

7.4 Notice. Any notice under this Trust Deed shall be in writing. Any notice to be given or document to be delivered under this Trust Deed shall be effective when either delivered in person or

deposited as registered or certified mail, postage prepared, addressed to the party at the address stated in this Trust Deed; however, any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such notice complies with all provisions of Oregon law applicable to exercise of such powers of sale. Any party may by notice to the others designate a different address.

7.5 Attorneys Representation. The law firm of Francis Hansen & Martin LLP has represented Eric Cadwell a member of Grantor in the negotiation and drafting of this Trust Deed. The law firm of Hurley Re, PC has represented Harris Kimble, the other member of Grantor in the negotiation and drafting of this Trust Deed. Beneficiary is advised to consult with an attorney on his behalf.

7.6 Substitute Trustee. Beneficiary may from time to time remove Trustee and appoint a Successor Trustee.

7.7 Expenses and Attorney Fees. In the event that Beneficiary or Trustee shall take any action, judicial or otherwise, to enforce the Note or any provision of this Trust Deed or if Beneficiary or Trustee shall be required to appear in any proceedings to protect and maintain the priority of Trustee's title to the Trust Property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyor's reports, and its attorney fees, whether incurred in a suit, action, appeal from a judgment, or in connection with nonjudicial action. Grantor shall reimburse Beneficiary or Trustee (or both) for expenses so incurred on demand with interest from the date of expenditure until repaid at a rate equal to the Note.

7.8 Beneficiary's Right to Cure. If Grantor fails to perform any obligation required of it under this Trust Deed, Beneficiary may, without notice, take any steps necessary to remedy such failure. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to the Note from the date of expenditure until repaid. Such action by Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

7.9 Applicable Law. This Trust Deed shall be governed by the laws of the State of Oregon.

7.10 Time of Essence. Time is of the essence in this Trust Deed

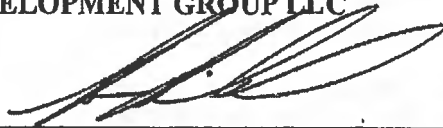
7.11 Headings. The headings to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

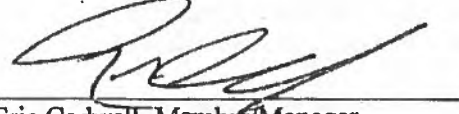
7.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Trust Deed. This Trust Deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Trust Deed.

7.13 Entire Agreement. This Trust Deed, Note and Development Agreement contain the entire agreement of this parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this Trust Deed which is not contained in its terms or in the terms of the Note or Development Agreement shall be binding or valid.

IN WITNESS WHEREOF, Grantor has caused this Trust Deed to be executed this 24 day of October, 2013.

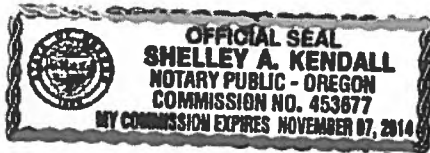
KC DEVELOPMENT GROUP LLC

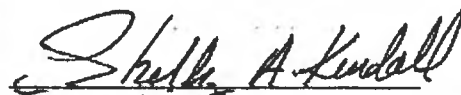
By: 
 Harris C. Kimble, Member

By: 
 Eric Cadwell, Member/Manager

STATE OF OREGON)
) ss.
 County of Deschutes)

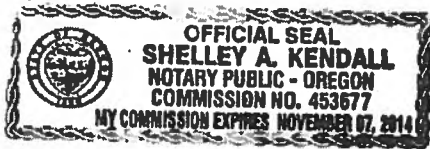
This instrument was acknowledged before me on October 24, 2013 by Harris C. Kimble, Member of KC DEVELOPMENT GROUP, LLC, an Oregon limited liability company.




 Notary Public for Oregon

STATE OF OREGON)
) ss.
 County of Deschutes)

This instrument was acknowledged before me on October 24, 2013 by Eric Cadwell, Member and Manager of KC DEVELOPMENT GROUP, LLC, an Oregon limited liability company.



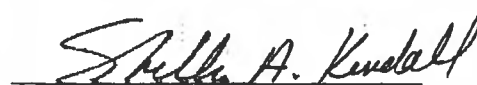

 Notary Public for Oregon

EXHIBIT A
Page 1 of 3

LR - 8

Order No. 149419
Page 4

LEGAL DESCRIPTION

A parcel of land located in a portion of Section 13, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being a portion of those lands described in Volume 235, Page 768, Deschutes County Deed Records, and being more particular described as follows:

Beginning at the southeast corner of the Northwest Quarter of said Section 13; thence along the south line of said Northwest Quarter North 89°52'12" West a distance of 895.68 feet to the centerline of a 60 foot wide Road and Utility Easement; thence along said centerline the following four (4) courses:

North 30°19'53" East a distance of 6.71 feet;

North 45°19'53" East a distance of 140.51 feet;

North 15°21'35" East a distance of 115.54 feet;

North 17°39'06" East a distance of 22.08 feet to the most southerly corner of the parcel described in the deed recorded in Book 221, Page 796, Deed Records;

Thence along the south line of said parcel and along the south line of the parcel described in deed recorded in Book 221, Page 800, Deed Records, South 89°30'44" East a distance of 978.27 feet to the centerline of Tumalo Creek; thence southerly along the centerline of Tumalo Creek the following three (3) courses:

South 47°16'27" West a distance of 163.55 feet;

South 16°23'29" West a distance of 38.04 feet;

South 08°07'40" East a distance of 84.34 feet to a point on the south line of the Northeast Quarter of said Section 13;

Thence along said south line, North 89°52'12" West a distance of 104.22 feet to the point of beginning, the terminus of this description.

LEGAL DESCRIPTION

A parcel of land located in the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4), the Northwest Quarter of the Southeast Quarter (NW1/4SE1/4), and the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of Section 13, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being a portion of those lands described in Volume 235, Page 768, Deschutes county Deed Records, and being more particular described as follows:

Beginning at the northeast corner of the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of said Section 13; thence along the north line of the Southwest Quarter (SW1/4) of said Section 13, South 89°52'12" East a distance of 67.18 feet to the True Point of Beginning of this description; thence continuing along said north line, South 89°52'12" East a distance of 1252.12 feet to the center of said Section 13; thence along the north line of the Southeast Quarter (SE1/4) of said Section 13, South 89°52'12" East a distance of 104.22 feet to the centerline of Tumalo Creek;

Thence along said centerline the following four (4) courses:

South 10°24'13" West a distance of 39.17 feet;
South 41°11'03" West a distance of 62.05 feet;
South 61°41'31" West a distance of 82.32 feet;
South 35°16'06" West a distance of 128.61 feet to the north line of the parcel described in deed recorded in Volume 222, Page 91, Deed Records;

Thence leaving said centerline along said north line North 89°30'44" West a distance of 936.06 feet to the centerline of a 60 foot wide road and utility easement; thence along said centerline and along the westerly line of said parcel the following five (5) courses:

South 30°19'53" West a distance of 43.22 feet;
South 08°35'23" West a distance of 403.92 feet;
South 40°03'23" West a distance of 212.60 feet;
South 24°36'23" West a distance of 144.06 feet;
South 46°27'23" West a distance of 141.08 feet;

Thence leaving said centerline and westerly line, North 09°51'21" East a distance of 533.54 feet; thence North 06°57'39" East a distance of 530.21 feet to the True Point of Beginning, the terminus of this description.

EXHIBIT A

Page 3 of 3

LR - 10

Order No. 149421

Page 4

LEGAL DESCRIPTION

A parcel of land located in the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4), the East Half of the East Half of the Southwest Quarter of the Southwest Quarter (E1/2E1/2SW1/4SW1/4), and the East Half of the East Half of the Northwest Quarter of the Southwest Quarter (E1/2E1/2NW1/4SW1/4) of Section 13, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being a portion of those lands described in Volume 235, Page 768, Deschutes County Deed Records, and being more particular described as follows:

Beginning at the southeast corner of the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of said Section 13; thence along the east line of the East Half of the East Half of the Southwest Quarter of the Southwest Quarter (E1/2E1/2SW1/4SW1/4) of said Section 13, South 00°02'12" West a distance of 86.97 feet to the centerline of Tumalo Creek; thence along the centerline of Tumalo Creek the following two (2) courses:

South 28°27'59" West a distance of 76.99 feet;

South 53°59'11" West a distance of 22.55 feet to the northeast corner of that parcel described in deed recorded in Volume 167, Page 450, Deed Records;

Thence along the northerly line of said parcel, North 85°55'28" West a distance of 220.93 feet to the centerline of a 60 foot wide road and utility easement and the southeast corner of the parcel described in deed recorded in Volume 358, Page 244 Deed Records; thence along said centerline, North 22°55'23" East a distance of 211.17 feet to the northeast corner of said parcel described in deed recorded in Volume 358, Page 244, Deed Records; thence continuing along said centerline, North 22°55'23" East a distance of 203.30 feet to the southwest corner of the parcel described in deed recorded in Volume 222, Page 91, Deed Records; thence along the southerly line of said parcel, South 89°31'42" East a distance of 422.86 feet to the centerline of Tumalo Creek; thence along said centerline the following seven (7) courses:

South 39°17'22" West a distance of 73.53 feet;

South 57°05'13" West a distance of 33.75 feet;

South 45°56'25" West a distance of 23.66 feet;

South 63°19'46" West a distance of 39.99 feet;

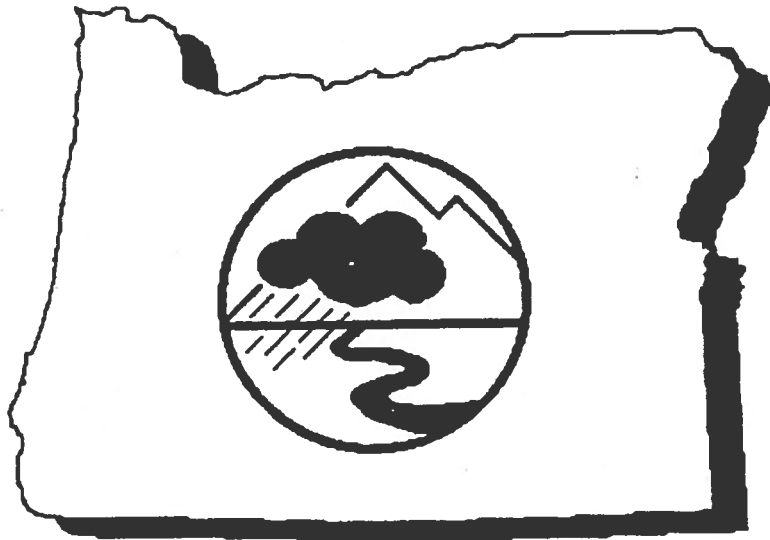
South 54°17'50" West a distance of 69.78 feet;

South 43°37'57" West a distance of 39.50 feet;

South 30°47'32" West a distance of 54.97 feet to the south line of the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4) of said Section 13;

Thence along said south line North 89°53'32" West a distance of 69.23 feet to the point of beginning, the terminus of this description.

Land Use Planning Procedures Guide



**Water Resources Department
State Agency Coordination Program**

August 1990

Water Resources Department Land Use Planning Procedures Guide

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EXECUTIVE SUMMARY

I. Introduction

Oregon's land use planning statutes (ORS 197.180) require state agencies to comply with the statewide planning goals and be compatible with local comprehensive land use plans when taking actions affecting land use. Agencies assure compliance and compatibility through State Agency Coordination (SAC) Programs. SAC Programs are to agencies as comprehensive plans are to counties and cities -- ways to achieve compliance with the goals. Just as the Land Conservation and Development Commission (LCDC) acknowledged local plans, LCDC is responsible for approving ("certifying") SAC Programs.

LCDC rules require SAC Programs to contain: (1) descriptions of programs and activities which have been identified as affecting land use; (2) rules and procedures to assure agency actions comply with the statewide planning goals and are compatible with local comprehensive land use plans; (3) procedures for coordination with the Department of Land Conservation and Development (DLCD), special districts, and other state and federal agencies; and, (4) a program for cooperating with, and providing technical assistance to, local governments.

The Water Resources Department's SAC Program contains each of these elements, plus a number of other required items. Basically, the program consists of inter-related rules and procedures as illustrated in Figure 1. A new rule division (OAR Chapter 690, Division 60) establishes the SAC Program and provides general standards for meeting compliance and compatibility obligations. Additional rules throughout portions of OAR Chapter 690 provide assurance that the Department's land use program activities meet the ORS 197.180 mandate. A section of OAR Chapter 690 Division 60 provides standards for fulfilling SAC obligations which are referenced by corresponding rules in Chapter 690. (See Figure 2 and Appendix F.) A document entitled the "Land Use Planning Procedures Guide" (Guide) contains descriptions and analyses of Department programs, as well as the required coordination and technical assistance programs.

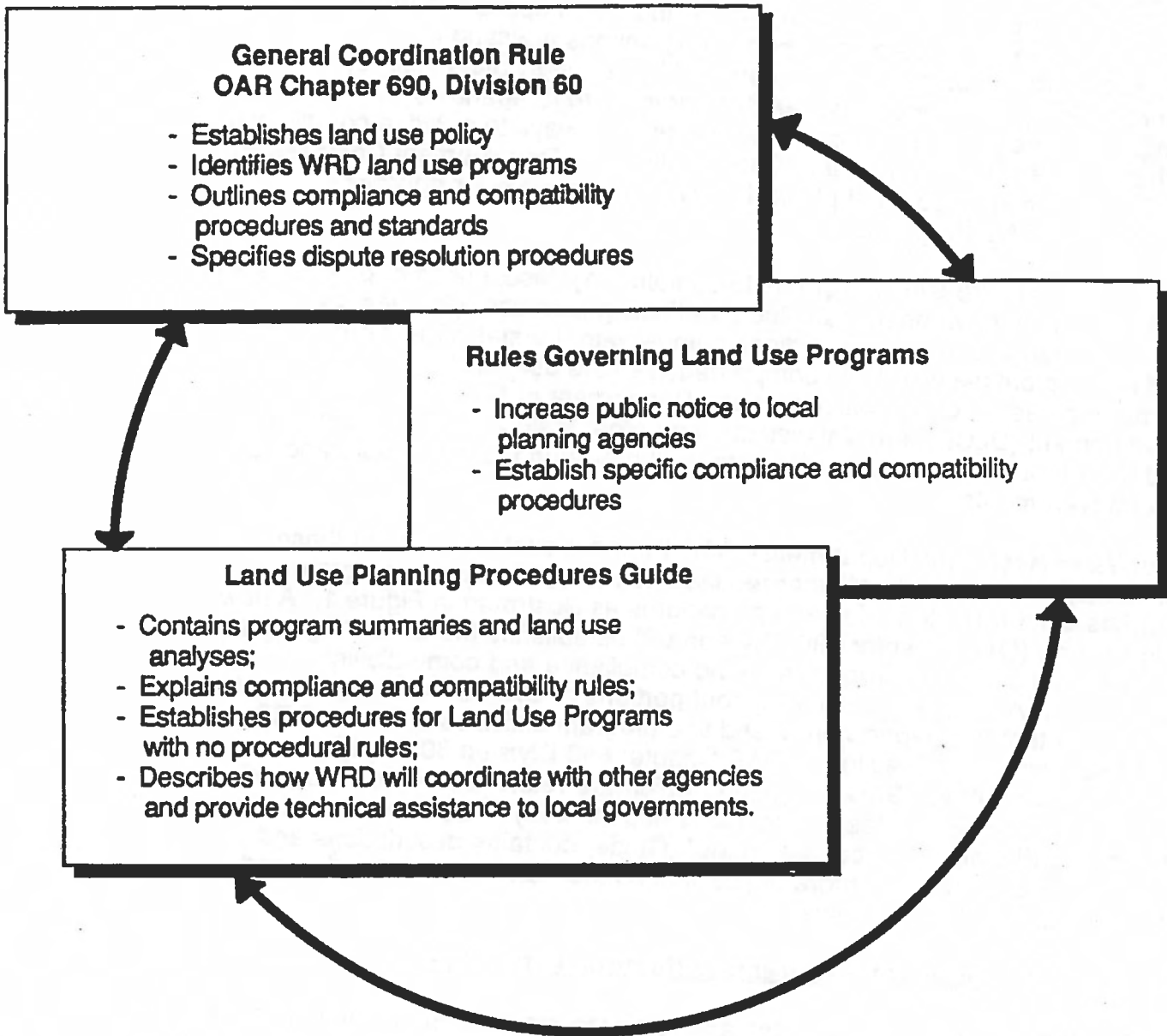
II. Identification of Programs Affecting Land Use

State agency coordination statutes and rules require state agencies to evaluate program activities and determine which significantly affect present or future land uses and/or resources identified in the statewide planning goals. Programs and activities which meet these criteria are known as "programs affecting land use" or agency "land use programs," and are subject to SAC compliance and compatibility requirements.

The Department's approached identifying land use programs with the understanding that water and land management are inseparable. In addition,

Figure 1

**Water Resources Department's
State Agency Coordination Program**



WRD's PROCESS for Fulfilling SAC Compliance and Compatibility Requirements

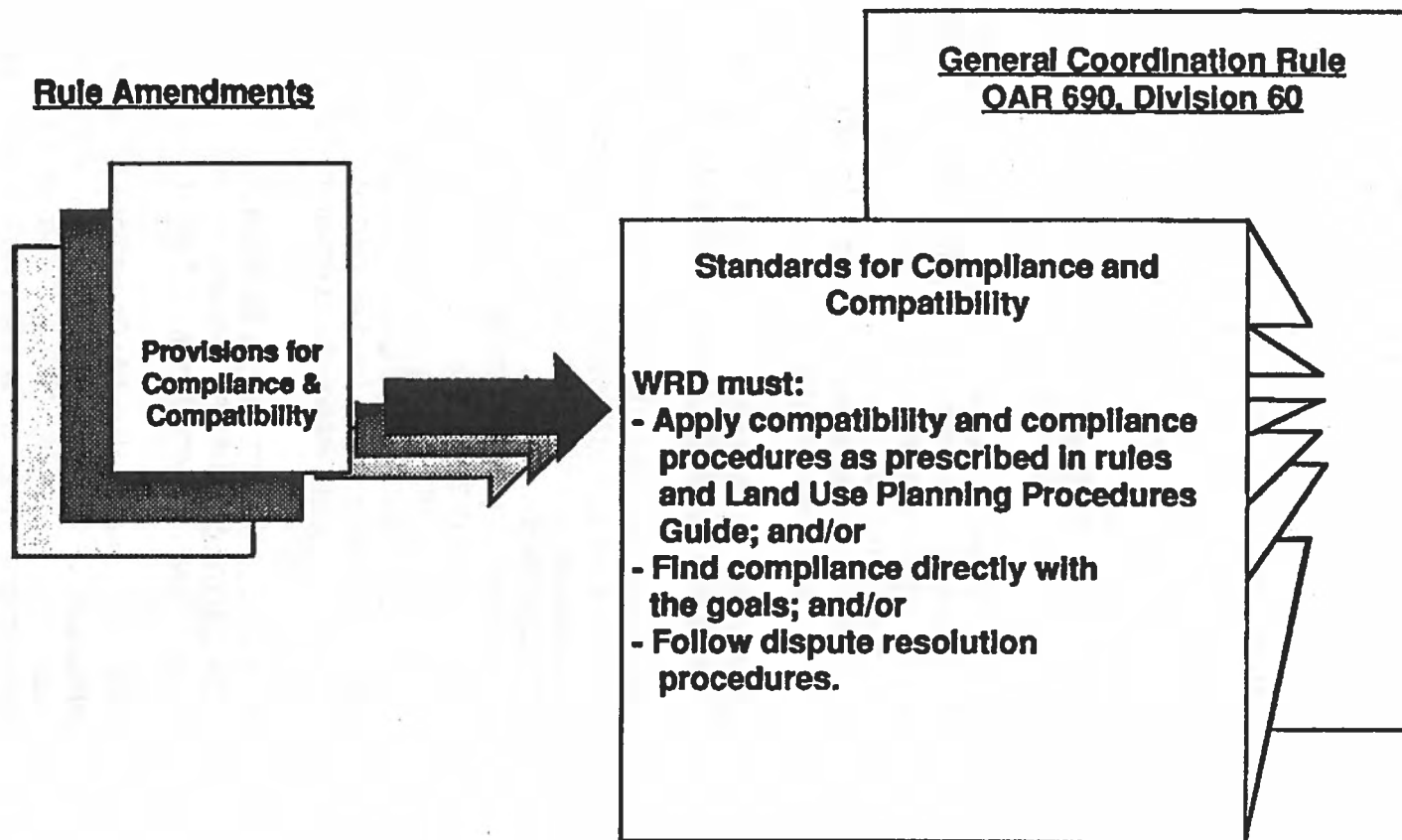


Figure 2

Executive Summary

the statutory definition of "land" includes surface and ground water, and water resources are addressed extensively in the Goals. These references to water encouraged the Department to use an inclusive approach to determining which programs affect land use.

The Department also developed and applied supplemental criteria to determine the significance of expected land use impacts. An action was found to affect land use if it:

- A) substantially affects water availability; or
- B) restricts, controls, or allows particular types of water uses; or
- C) establishes policy which will likely affect water availability or future uses of water; or
- D) is governed under the sole or lead authority of the Water Resources Commission; or
- E) involves approving grants or loans for projects to divert, convey, apply, or protect water resources.

The Department's water use approvals (i.e., permits, transfers, exchanges, use of conserved water, instream water rights), basin planning activities (including reservations), critical ground water areas and withdrawals, and water development loan program qualify as "programs affecting land use." (See Figure 3.) Advisory, data-gathering, and enforcement activities did not qualify as Department land use programs.

III. Strategies to Assure Compliance with the Goals and Compatibility with Comprehensive Plans

Having identified programs affecting land use, the Department developed strategies to ensure that actions taken to carry out these programs will comply with the Statewide Planning Goals and be compatible with comprehensive plans. LCDC rules generally require state agencies to comply with the Goals by achieving compatibility with comprehensive plans. Under certain circumstances, agencies may find actions in compliance directly with the Goals. The Department's "compatibility strategies" vary by program but can be grouped into basic types as outlined in Figure 3 and described in further detail below. An exceptions process is provided as part of each compatibility strategy and is described in the Dispute Resolution section of this summary.

- A. **Rely on Local Response to Notification of Pending Action, or "Deeming"** (See Figure 4) - (Basin Planning, Instream Water Rights, Minimum Streamflows, Reservations, and other Department water use approvals)

The Department will notify (in writing) affected local governments of a proposed basin program adoption or amendment, and of pending instream water right, minimum perennial streamflow, or reservation applications. The notice will state that the Department assumes the proposal is compatible with comprehensive plans unless informed otherwise by appropriate local officials. The Department will coordinate

Figure 3

WRD Land Use Programs	Compatibility Strategies
<p>Basin Planning Instream Water Rights Reservations for Economic Development Minimum Perennial Streamflows</p>	<p>Rely on local government response to notification of pending action, or "Deeming." WRD will presume compatibility if no response is received. Local indication of incompatibility may result in no action or initiation of dispute resolution procedures.</p>
<p>Water Use Permits Water Right Transfers Use of Conserved Water Hydroelectric Permits and Licenses Water Right Exchanges Application for uses in Addition to Classified Uses Water Development Loan Payment for Projects with Public Benefit</p>	<p>Rely on land use information supplied by applicants and confirmed by local planning officials. Depending on the allowability of the use by local plans, and the status of local land use approvals, WRD may approve, approve conditionally, or reject the proposed water use. Deviation from prescribed procedures would trigger dispute resolution procedures.</p>
<p>Critical Ground Water Area Determination Withdrawal from further Appropriation Statewide Water Policy</p>	<p>Prepare and adopt findings that the action complies with Statewide Planning Goals Coordinate with local governments to ensure that comprehensive plans reflect resource constraints in appropriate inventories. Notify local governments and planning officials of policy development and hearings. Defer assurance of compatibility to implementation phase.</p>
<p>Scenic Waterway Coordination</p>	<p>Defer to Parks and Recreation Department for compatibility assurance.</p>

RELY on LOCAL RESPONSE TO NOTICE OF PENDING ACTION, or "DEEMING"

Pending Action:

- Instream water right issuance or water use approval
- basin plan/program adoption or amendment (including reservations and minimum streamflows)

WRD will:

- Notify local planning official(s) of pending action
- Presume pending action is compatible unless informed otherwise by a specified date

The Department may proceed with the pending action if:

- no response from local government is received; or
- local response indicates that the pending action is compatible with comprehensive plans.

If the Department is informed that the pending action is not compatible with a comprehensive plan, the Department will:

- not take the action; or
- will follow dispute resolution procedures to determine an appropriate solution

Figure 4

Executive Summary

with affected local governments to achieve compatibility with local plans. If informed that the proposed action is incompatible with local plan policies or provisions, WRD will either not take the disputed action or will follow certified dispute resolution procedures.

B. Rely on Land Use Information Supplied by Applicants and Confirmed by Local Officials (See Figure 5) - (Water Use Approvals, Water Development Loan Program)

The Department will require land use information (i.e., plan designation, zoning, allowability under local plans, and status of applicable local approvals) to be submitted by applicants for permits and other water use approvals. Applicants will be required to contact local planning officials to provide written confirmation of this information. The Department will then proceed as follows:

1. If land uses that correspond with proposed water uses are allowed outright by comprehensive plans, or if all local land use approvals have been granted, the Department may approve the water use.
2. If local land use approvals are pending, the Department may approve the water use with conditions prohibiting water use (and associated construction) until all necessary local land use approvals are obtained.
3. If corresponding land uses are not allowed by local plans and plan amendments are not being pursued, or if land use approvals or plan amendments have been denied, the Department will not approve the water use except as provided in approved dispute resolution procedures.

C. Prepare and Adopt Findings that an Action Complies with the Statewide Planning Goals/Comprehensive Plan Augmentation - (Critical Ground Water Areas, Withdrawals, Statewide Policy Formulation)

To meet its statutory mandate, the Commission is required to adopt state water resources policy and authorized to restrict the use of water to solve urgent water supply or quality problems. In such cases, the Department will work closely with local planning officials to accommodate local plans and priorities to the maximum extent possible. However, if conflicts arise and/or local plans lack policies or provisions to address the situation, the Commission will adopt findings that the proposed action complies with the Statewide Planning Goals directly. Further, the Department will attempt to resolve disparities between Department rules or orders and local plans by suggesting plan amendments that reflect resource constraints and provide resource protection through the land use planning process.

Water Use Approvals

(i.e. permits, transfers, use of conserved water, exchanges)

the Department:

May APPROVE if:

- the land use is allowed outright by local plan; OR
- the land use has received local land use approval.

May APPROVE with CONDITION if:

- uses are allowable under comprehensive plans; AND/OR
- local land use approvals or comprehensive plan amendments are pending.

WILL NOT APPROVE if:

- the land use is not allowed outright; OR
- the land use has already been denied.

Dispute Resolution Procedures



Executive Summary

D. Rely on Local Response to Notification of Rule Adoption/Defer Specific Compatibility Assurance to Implementation Phase (Statewide Policy Adoption)

The Water Resources Commission is authorized to develop an integrated, coordinated state water resources policy. These policies are adopted as rule. The Department will notice local planning officials of pending rulemaking actions and will coordinate to assure general compliance and compatibility. Site specific compliance and compatibility assurances will take place in conjunction with policy implementation.

E. Defer to Lead State Agency (Scenic Waterway Coordination)

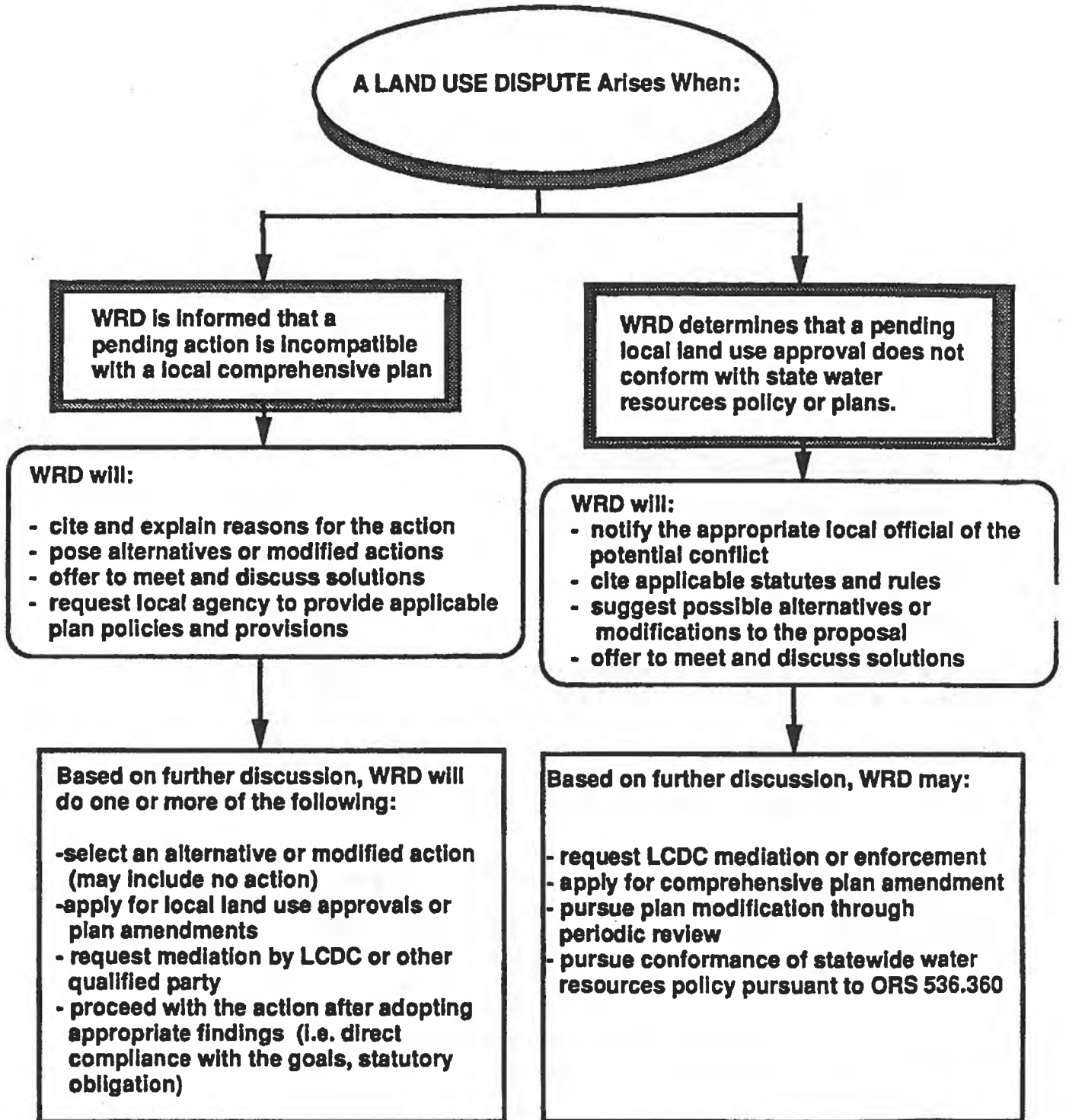
In addition to appropriating water for instream values, the Commission participates in scenic waterway planning by reviewing with Parks and Recreation Department (PRD) scenic waterway management plans. Since PRD prepares the plans prior to Commission review and concurrence, the Department will defer compliance and compatibility assurance to that provided by the PRD's certified SAC Program.

IV. Dispute Resolution Procedures

The Legislature has given authority over water resources to both local governments and the state. The SAC Program attempts to establish a balance between these authorities. The Water Resources Commission will assure that its land use programs comply with the goals and are compatible with comprehensive plans by using the approaches described above. However, despite improved coordination and the implementation compatibility strategies, land use disputes between state agencies and local governments may arise. In addition, the Water Resources Commission may find it necessary to take an action which is believed to be incompatible with comprehensive plans. This would only take place if necessary to fulfill the Commission's statutory mandates. In such cases, the Commission and Department will follow a set of dispute resolution procedures, as described below, prior to taking action.

As mentioned above, the option to initiate dispute resolution procedures is provided in each of the Department's compatibility strategies. (See Figure 6.) The procedures involve an exchange of information between local planning departments and the Department. Local planning officials must state specifically why a pending action would be incompatible with comprehensive plans. The Department must respond by explaining the reason and authority for the action. In addition, the Department must offer to meet to resolve the dispute. Resolution may occur through identification of an alternative action, not taking action, applying for amendments to comprehensive plans, or formal or informal DLCD mediation.

DISPUTE RESOLUTION PROCEDURES



Executive Summary

If no alternatives allow the Department to fulfill its legal requirements and achieve compatibility, it may proceed with the disputed action after adopting written findings. The findings must identify and cite the legal basis for the action. The findings must also document how the Department met standards for fulfilling SAC obligations as prescribed in OAR Chapter 690, Division 60.

V. Coordination with, and Technical Assistance to Local Governments

Preventing disputes between the Department and local governments is a major objective of WRD's SAC Program. The SAC Program provides for increased coordination with local governments, improved participation in periodic review and amendment of comprehensive plans, and technical assistance to local planners. Technical assistance and coordination procedures are prescribed in OAR Chapter 690 Division 60 and are further detailed in the Department's Land Use Planning Procedures Guide. These coordination activities will help ensure that the Department's water resources management and allocation activities will not conflict with local comprehensive plans. These activities will also prevent local land use decisions which conflict with state water policy.

VI. Conclusion

The Water Resources Department's State Agency Coordination Program meets the requirements of ORS 197.180 by assuring actions that affect land use comply with statewide planning goals and are compatible with comprehensive plans. Compliance and compatibility are assured through increased gathering, evaluation, and use of land use information in Department planning and decision-making. Dispute resolution procedures provides an additional forum for communication, and allow the Department to carry out statutory mandates after exploring potential solutions with local governments. The Program provides for technical assistance to local governments including participation in periodic review and amendment of comprehensive plans. Program implementation will provide important opportunities for improving water resources management and land use planning in Oregon.

I. Introduction

A. Background

The Water Resources Department (Department) is a state agency that carries out the programs and policies of the Water Resources Commission (Commission). The Commission is a seven person group appointed by the Governor to administer the water laws of the state. The Commission is a steward of the public trust in the waters of the state and is charged with developing an integrated, coordinated state water resources program. The program provides for securing the maximum beneficial use and control of the waters of the state. The Department's staff processes water use permits (water rights), conducts water planning studies, enforces water laws, compiles surface and ground water information, and advises the Commission on decisions relating to policy and water appropriation. More information on the Department's statutory mandates and programs may be found in Section II. E. 2 and Appendices A and B . The Department's structure is displayed in Figure 7.

Since the enactment of Oregon's unified water code in 1909, the state's water resources authority -- whether in the form of the State Engineer, the Water Resources Board, the Water Policy Review Board, or the Water Resources Commission -- has dealt extensively with local interests. Early water law included special provisions for providing municipalities with water and power. Before state government assumed enforcement responsibilities, water law was administered through the counties' watermasters. Oregon's water resources were developed through state interaction with local irrigation, drainage, and water improvement districts.

As Oregon's population grew and water resources issues multiplied, many more agencies and localities became involved. Coordination became increasingly difficult. In 1955 the Legislature addressed the situation by identifying the Water Resources Commission as the single authority to promote and secure the maximum beneficial use of water in the state. [ORS 536.220 (2)] The Legislature also required local governments to conform with the water resources policies of the agency. [ORS 536.360]. Thus, by 1955 the Legislature had established one avenue for state-local water resources coordination.

With the passage of SB 100 in 1973, the Legislature required all local governments to formulate comprehensive land use plans. In the land use planning statutes, "land" means both land and water. These plans must address a number of water resource topics including identifying water supplies needed for growth and water bodies that warrant protection from development. At the same time, the Legislature directed that state agency programs and activities affecting land use must comply with the statewide planning goals and be compatible with the comprehensive plans of local governments.



Oregon Water Resources Department

January 1990

DIRECTOR
WILLIAM H. YOUNG

EXEC. ASSIST.
Jan Shaw
Commission Support

**PUBLIC INFO
LEGIS. LIAISON**
Bev Hayes
Legislative Liaison
Public Information

FIELD OPERATIONS
JOHN BORDEN

CENTRAL SERVICES
KEN WEESE
General Administration

RESOURCE MANAGEMENT
BECKY KREAG

**DAM SAFETY/
HYDROGRAPHICS**
Barry Norris

Dam Safety
Hydrologic Records
Drought Coord.
Hydrologic Projects

**TECHNICAL SERV/
WELL CONSTR.**
Bud Bartels

Well Inspections
Well Constr. Licensing
Well Compliance
Well Log Maint.

**FIELD PROGRAM
SUPPORT**
Deonna Leinenbach

Clerical Support FOD

CERTIFICATES
Ves Gardner

Certificates
Certify W.R. Examiners
Transfers

**APPLICATIONS/
PERMITS**
Steve Applegate

Applications
Permit Management
Field Survey Crews
Water Right Mapping

ADJUDICATIONS
Mary Grady

Adjudications
Hydro. License

**NORTHWEST
REGION**
Tom Paul

**SOUTHWEST
REGION**
Bob Steimer

**NORTH CENTRAL
REGION**
Mike Ladd

**SOUTH CENTRAL
REGION**
Bob Main

**EASTERN
REGION**
Kere Baarles

Distribute Water
Permit/Cont. Compliance
Dam Safety Insp.
Hydrological Mess.
Well Construction Insp.
Water Dev. Loan Prog. Insp.
Public Info./Assist.
Reservoir Coord.

**WATER DEV.
LOANS**
Roslin Smith

Bond Counsels
Water Dev. Loans
Bankruptcies
Cash Flow
State-Owned Properties
Foreclosures

**SUPPORT
SERVICES**
Cindy Smith

Word Processing
Mail
Receptionist
Inventory Control
Copy Center
Supplies & Receiving

FISCAL SECTION
Bruce Moyer

Payroll
Purchasing
Allotment Plans
Accounts Payable
Accounts Receivable
Revenue Forecasting
Contracts Administration

DATA CENTER
Mike Zanon

Agency Computer Systems Mgt.
Water Rights Information System
Water Use Reporting
Geographic Information System
Database Management

**PERSONNEL/
TRAINING**
Terry Obekson

Personnel
Training
Safety Coordination
Alternative Action

PLANNING
Tom Kline

Basin Planning
Biennial Water Mgt. Prog.
Statewide Policies
Conservation Program
Gov.'s Watershed Enhance-
ment Board
Inter-agency Coord. on
Water Issues
Land Use Plan, Permit
and Project Reviews

**PRODUCTION
SERVICES**
Vivienne Torgeson

Cartographics/Basin
Mapping
Graphic Design and
Production
Print Coordination
Division Support

**GROUND WATER/
HYDROLOGY**
Fred Ujner

Ground Water Resource
Assessments
Critical Ground Water Area
Program
Well Interference Investigations
Ground Water Advisory Comm.
Geothermal Resources
Hanford Review
Hydrological Analysis

HEARINGS
Welsha Mizzi/
Sandra Muckleston

Hydroelectric Hearings
Dam Safety Hearings
Water Right Contested Cases
Well Enforcement
Contested Cases
Administrative Rule Review
Strategic Water Mgt. Hydro
Task Force

Figure 7

**B. Water Resources Department's
State Agency Coordination Program**

ORS 197.180 is the Legislature's principal mechanism for assuring land use planning coordination. This law requires state agencies to: identify which programs or actions can reasonably be expected to significantly affect land use; establish rules and procedures for assuring such programs or actions comply with the statewide planning goals and are compatible with local comprehensive land use plans; adopt procedures for coordination with state and federal agencies and special districts; and, cooperate with and provide technical assistance to local governments. These elements comprise a State Agency Coordination (SAC) Program.

SAC Programs are to state agencies what comprehensive plans are to local governments -- namely, mechanisms for complying with the statewide planning goals. Just as comprehensive plans are acknowledged by the Land Conservation and Development Commission (LCDC), SAC Programs are approved, or "certified", by LCDC. The Water Resources Department's first SAC Program was approved by LCDC in 1978. The 1978 SAC Program was oriented toward review of local government comprehensive plans during the acknowledgment process. The Department's SAC Program is being updated at the direction of LCDC. The new SAC Program will reflect recent changes in Oregon's water law and in administrative rules governing SAC Program formulation. This revised program supersedes the 1978 SAC Program.

The Water Resources Commission and the Water Resources Department place a high priority on coordination with state and federal agencies, local governments, and special districts in managing the water resources of the state. The Department's SAC Program represents a balancing of the authorities of state and local governments to protect and manage water resources. The SAC Program is designed to promote a mutual awareness in the Department and local governments of their respective water and land planning processes. Increasing opportunities for mutual involvement will help the Department promote maximum beneficial use of, and protect the public interest in, the state's water resources.

E. Water Resources Department Programs Affecting Land Use

1. Criteria for the Determination of Department Land Use Programs

a. Water Resources Department "Land Use Programs"

State agency coordination programs must assure that state agency rules and programs which affect land use ("land use programs") comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans. Administrative rules (OAR 660, Divisions 30 and 31) provide several qualifying criteria for agency land use programs. An agency program affects land use if it is:

- (1) specifically referenced in the statewide planning goals; or,
- (2) reasonably expected to have significant effects on
 - (a) resources, objectives or areas identified in the goals, or
 - (b) present or future land uses identified in acknowledged comprehensive plans; or
- (3) a permit listed in OAR 660-31-012 (2) (f).

(1) Water Resources Department Programs Referenced in the Goals

Goal 16, Estuarine Resources, references the appropriation of surface water and hydroelectric power projects. The Implementation Requirements provided in Goal 16 include a statement that the "State Water Policy Review Board ... shall consider establishing minimum fresh-water flow rates and standards" to maintain estuarine uses. This statement may represent an implicit reference to the adoption of minimum perennial streamflows which is now a function of the Water Resources Commission.

No other Water Resources Department functions are specifically referenced in the Goals. Further, the Department believes these references are outdated as they cite programs and decision-making bodies which have been largely superseded. Thus, the Department found this criterion of limited use in determining which programs affect land use. No program was determined to be a land use program solely on the basis of being referenced in the goals.

(2) Programs Reasonably Expected to Have Significant Effects on Resources Identified in the Goals or Present or Future Land Uses

As stated previously, water and land use are integrally related and must be managed accordingly. Both surface and ground water resources are mentioned in many of the Goals and are included in the description of "land," as used in the statutory definition of "comprehensive plan." The management and regulation of water supplies certainly has the potential to significantly affect land use.

Section II: Department Rules and Programs

The general nature and broad scope of these criteria forced the Department to develop more focused criteria to identify those programs reasonably expected to have significant effects. The Department worked closely with DLCDD to assure that the criteria satisfied the intent of the SAC statute and rules.

The Department's programs were divided into actions. Generally, only actions to adopt rules, policies or plans, or to appropriate water resources were found to affect land use. As determined using the additional criteria listed below, an action is expected to affect land use significantly if it:

- 1) substantially affects water availability; or
- 2) restricts, controls, or allows particular types of water uses; or
- 3) establishes policy which will likely affect water availability or future uses of water; or
- 4) is governed under the sole or lead authority of the Water Resources Commission; or
- 5) involves approving grants or loans for projects to divert, convey, apply, or protect water resources.

(3) Department Permits Listed in OAR Chapter 660, Division 31

OAR Chapter 660, Division 31 identifies Water Resources Department permits for surface water and ground water use, surface water storage, and hydroelectric use as land use programs. These, and other Department land use programs are discussed further in Sections E and F, below.

b. Department Programs Which Do Not Affect Land Use

Under OAR Chapter 660, Division 30, an agency action does not qualify as a land use program if it is:

- (1) expressly exempt from compliance and compatibility requirements by statute, constitutional provision or appellate court decision;
- (2) limited to the transfer or acquisition of real property; or
- (3) not reasonably expected to significantly affect land use.

(1) Programs Exempted By Statute, Constitutional Provision, or Court Decision

The Department has no programs which are exempt from state agency coordination requirements by statute, constitutional provision, or court decision.

(2) Acquisition or Transfer of Real Property

The Department's Water Development Loan Program includes the acquisition and transfer of real property in conjunction with loan defaults and foreclosures. This activity is summarized in Appendix B, Department Programs which Do Not Affect Land Use.

(3) Not Expected to Significantly Affect Land Use

The Department developed supplemental disqualifying criteria to further clarify the interpretation of supplemental qualifying criteria described in Subsection a. above. A Department action is not expected to affect land use significantly if it:

- (a) is advisory to other decision-making bodies or agencies with sole or lead authority; or
- (b) is limited to study or data-gathering with no Commission or Department actions which would actually affect water supplies or uses; or
- (c) involves the enforcement or validation of existing water uses in accordance with established state laws, rules, and standards; or
- (d) is limited to internal administration, such as accounting, word processing, or data processing.

These qualifying and disqualifying criteria formed the basis for determining which Department programs affect land use. A matrix showing the Departments programs evaluated according to the criteria discussed above is provided in Appendix E.

2. Summary and Analysis of Land Use Programs

Each of the Department's programs and activities were evaluated for effects on land use using criteria described in Section 1 above. Those programs and activities which qualified as Department "land use programs" include: adoption of statewide policies; water use approvals (i.e., permits, transfers, exchanges, use of conserved water, instream water rights, minimum perennial streamflows); basin planning (i.e., classification and reservation of water); critical ground water area determinations; withdrawal from further appropriation; the issuance of loan for water development projects; and Commission recommendations to the Legislature on payment for water projects with public benefits. These programs and their relationship to land use are described in further detail below.

(a) Statewide Water Policy Formulation

1. Purpose

State water policies guide Commission actions for protecting the public interest in water. Statewide water policies both express the Commission's direction on managing the state's waters and establish an institutional environment within which decisions are made.

2. Authorization

The Legislature in ORS 536.220 finds that it is in the public interest that a single state agency, the Water Resources Commission, develop and enforce a coordinated, integrated state water resources policy. Under 536.300, the Commission is directed to issue statements pertaining to its coordinated programs for the use and control of all the state's water resources. ORS 536.360 requires every state agency and public corporation to conform to state water resources policy.

There are no procedural administrative rules for formulating statewide policy. Statewide water policies are being adopted as administrative rules under Chapter 690, Divisions 400 and 410.

3. Statewide Water Policy Formulation Activities

Since 1955, the Commission has relied on policy statements in statutes and findings in basin programs to guide decision-making concerning water resources. The formal development of policy statements as administrative rules is a recent activity. In 1988, the Commission together with the Strategic Water Management Group approved the Oregon Water Management Program (OWMP). The OWMP consists of three inter-related processes: a two-year program schedule (called the Biennial Water Management Program), basin planning, and statewide policy formulation. The formulation of state water resources policies is authorized by ORS 536.300 and 536.310. One objective of formulating statewide policies is to provide a uniform expression for the state's position on a broad range of water resource issues. The OWMP will not only document existing policies, but identify where new policies are needed.

The process for formulation and adoption of statewide policies is still being developed. In late 1989 the Commission directed staff to draft statewide policies for a number of topics based on policies as found in or expressed through existing statutes and rules. New policies will be established in response to future conditions and needs. Policies will be adopted as administrative rules by the Commission after public hearings. Some policies are expected to be adopted by other lead agencies. Policies adopted by the Commission are not self-implementing. Rather, they will be applied through other programs such as basin planning, permitting, and instream water rights issuance.

4. Relationship to Land Use

Because statewide policies are rules which determine the direction and extent of water resources management throughout the state, their formulation has been identified as a land use program. Ultimately, statewide policies are expected to guide Commission and Department decision-making in most management programs. Because of the broad topical scope and statewide nature of the policy statements, testing them against each of the 277 local plans for compatibility is not feasible. Compatibility is best determined and assured at the policy implementation stage. Policies are implemented through other programs where policy-driven actions would be subject to specific compatibility strategies, as described elsewhere in the SAC program. Although statewide policies cannot meaningfully be subjected to compatibility tests at the formulation stage, coordination strategies are very important.

Providing local governments the opportunity to review and comment on proposed policies allows for construction of a coordinated water resources program that respects local interests in water. Early and frequent contact with county commissions and local planning departments also would increase a feeling of ownership in the state program. Providing local governments with a copy of the water resources program, as required under ORS 536.350, will be of little effect if local governments do not understand it or were not involved in its development.

(b) Basin Planning

1. Purpose

By law, all waters of the state belong to the public. The Water Resources Department manages the public's water by planning and providing for multiple beneficial water uses. The basin planning process: specifies the water uses for which the Department may grant water rights; identifies water resource problems and potential solutions; reserves future quantities of water for specific needs; and specifies water management controls.

2. Authorization

ORS 536.220 describes the need for a coordinated, integrated state water resources policy and the plans and actions needed to implement such a policy. ORS 536.300 directs the Commission to conduct studies and formulate an integrated, coordinated program based on the policies outlined in ORS 536.310. The policies in 536.310 address the protection of existing water rights, provision of safe supplies for human consumption, preferences for multi-purpose impoundments, maintenance of minimum perennial streamflows, and conflicting water uses.

There are no administrative rules directing the basin planning process. Basin programs are adopted as administrative rules under OAR Chapter 690, Division 500.

3. Basin Planning Activities

The Department has engaged in basin planning since the passage of the 1955 authorizing legislation. The Department conducts basin planning as part of the Commission's integrated, coordinated program for the use and control of water resources.

Basin reports and programs are the customary products of basin planning. Reports contain information on a basin's character including its size, physical features, climate, and hydrology. Reports also document the nature and extent of water use and control, and which water management issues will be addressed in the planning process.

Programs are administrative rules which control future water appropriations by establishing basin water management policies and specific allowable uses and levels of use. Future water rights may only be issued for uses allowed in basin programs. Existing water rights are not affected by basin programs, except to the extent that waste of water might be defined or controlled. Basin programs classify streams, drainage areas and other water bodies for specific future uses. These classifications can be liberal, allowing nearly every kind of use; or very restrictive, allowing only small or non-consumptive uses. The primary factors in determining classifications are water availability and identified water needs for instream flows, ground water levels and future development. Programs may also specify conditions or restrictions to be attached to water rights through the Department's permitting process. Programs have been established for all but two of the state's 18 drainage basins.

Programs adopted from 1955 to 1983 generally were narrow in scope, concerned almost exclusively with identifying those uses for which unappropriated water remained. There was little attempt to direct the pace or extent of development. Many believed public interests in water were not adequately protected.

To remedy the narrow focus, basin programs were developed using local citizen committees and with increased coordination with the Oregon Department of Fish and Wildlife. The basin planning process continues to change. It is becoming issue-driven, where before it was largely issue-neutral. The focus on issues not only assures relevance, but allows a more timely planning cycle than previously possible. It is expected that programs can be updated every 10 to 15 years, rather than every 25 years. In an effort to better manage the resource, the basin planning process now considers other water management issues in addition to appropriation questions. These issues include watershed and riparian area condition, watershed management practices, water quality and interstate issues. In addition, more emphasis is being placed on ground water management and protection. Strategies and recommendations beyond the direct authority of the Commission are now included in a document termed a basin plan.

When the Department formulates or updates basin plans and programs, it contacts other state agencies and affected local governments. Basin boundaries are such that frequently a number of counties and cities are affected. The Department relies heavily upon state agencies and local governments for information to characterize the basin's human and natural resources and to assist in identifying major water resource issues that should be addressed. Citizen advisory committees and work groups are established to provide public input on issue identification, management alternatives, and recommended solutions. Department staff is responsible for compiling information, writing reports, reporting to the Commission, assisting local committees and work groups, and drafting plan and program language.

The primary action associated with basin planning is the Commission's adoption of a basin program. The basin program consists of administrative rules which assign each stream within a basin an allowable future use or uses. Lakes and ground water bodies may also be classified in the program. Other decisions embodied in a basin program can include reservations for municipal use or economic development or the establishment of minimum perennial streamflows. Reservations provide a way to claim specific quantities of water for future need. Minimum perennial streamflows provide an administrative protection for instream flows. It is likely issuance of public instream water rights will supplant the need for establishing future minimum perennial streamflows. In a basin program update, any pre-existing classification, reservation, minimum perennial streamflow, or other program element can be changed. Existing water rights are not subject to change, however, except to prevent waste.

By statute, before adopting a program, the Commission must hold a public hearing in the affected basin. Department staff make a final recommendation to the Commission based on the hearing record. The Commission may accept, modify, or reject staff recommendations for a proposed program, but ultimately decides how to classify the waters of the basin.

The adoption of a basin plan is another action associated with basin planning. The basin plan can be viewed as the Commission's official recommendations to other commissions and agencies. Basin plans also contain those Commission directives to the Department that are not appropriately expressed through rule.

The Commission may also amend or allow exceptions to basin programs. One type of exception -- application for a water use not referenced in a basin program -- is addressed by rule (OAR 690-82-010). Other exceptions are heard by the Commission on a case-by-case basis in conjunction with a staff recommendation. Basin program amendments may be undertaken by the Commission on its own initiative or by petition from other parties. In order to amend a basin program, by statute the Commission must hold a public hearing in the affected basin.

4. Relationship to Land Use

Basin planning is designed to affect one of the most important resources addressed by the statewide land use planning goals -- water. It is therefore a "land use program" as defined in OAR Chapter 660, Division 30. However, one of the most important features of the basin planning program's relationship to land use is the position it and other water policy expressions occupy in the statutes with respect to local governments. ORS 536.360 states:

In the exercise of any power, duty or privilege affecting the water resources of this state, every state agency or public corporation of this state shall give due regard to the statements of the commission and shall conform thereto. No exercise of any such power, duty, or privilege by any such state agency or public corporation which would tend to derogate from or interfere with the state water resources policy shall be lawful.

"Public corporations" are defined under ORS 536.007 as including "any city, county or district organized for public purposes." ORS 536.370 states that the Commission must approve any public corporation order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy.

These statutes underscore the importance the Legislature places on state water resources policies which basin programs express. It is clearly the Legislature's intent that local government actions be consistent with state water resources policies. In a 1983 opinion requested by the Water Policy Review Board (predecessor to the Water Resources Commission), the Attorney General's Office concluded that local governments may exercise planning and zoning authority only to the extent not directly in conflict with the Board's statutory authority. [OP-5506, 1983] Thus, it is the goal of the Water Resources Commission to recognize local government land use plans to the maximum extent possible, consistent with the public interest as expressed through state water resources policy.

The relationship between basin planning and land use planning is not straightforward. By establishing the types and limits of allowable future water uses, it is clear that basin planning can influence the type and extent of land use. However, past basin plans and programs have done little to define potential relationships with local land use plans. Many basin programs were adopted prior to the beginning of Oregon's current land use planning process in 1972. For basin programs updated or formulated since 1972, there has been a limited understanding on the part of Department staff of the linkages between basin planning and local land use planning. Conversely, local representatives generally have not been aware of the existence or purpose of basin programs. Consequently, each program has had little effect on the other.

This lack of awareness may be partially due to the treatment of water resources in the state land use planning goals, upon which all local plans are based. There is no water resources goal, per se. General references to water resources carrying capacity are spread throughout the goals. Although Goal 5 is frequently represented as a water resources goal, it actually deals in a very broad fashion with natural resources, open space, and scenic and historic areas. Thus, local plans have not been required to address water resources issues in any specific or uniform way.

Goal 5 requires local governments to inventory "water areas" as part of their comprehensive plans. Goal 5 also recommends that reservoir sites be protected from irreversible loss and that streamflows be protected for instream uses. However, there is no reference to Water Resources Commission programs or state water policy statements -- in contrast to specific references to the Oregon Wildlife Commission, the State Natural Area Preserves Advisory Committee, and the State Advisory Committee on Historic Preservation. The only explicit reference to the Water Resources Commission (or the Water Policy Review Board at the time of Goal adoption) or the Water Resources Department is under Goal 16 (Estuarine Resources) -- and then only in terms of appropriation and minimum perennial streamflows, not planning. In short, although the Goals do not prevent local governments from coordinating with Commission planning programs and adhering to state water policy, this coordination is not encouraged or required.

The lack of understanding of the relationship between basin planning and land use planning on the part of WRD staff also stems from the complicated nature of that relationship. One of the complicating factors is how land uses identified in local plans and water uses interact. Seldom is the tie between the two so direct that Commission action precludes or would necessitate changes of the overlying land use category.

For example, the Commission may withdraw a stream in an agricultural zone from future use for irrigation. This could affect, but not necessarily preclude, the future development of irrigable lands. Alternative sources of irrigation water could include ground water, savings from conservation, purchase or lease of nearby water rights, service from existing irrigation districts, or use of water from storage. Thus, customary land uses in the area could continue. Zoning ordinances normally do not distinguish between types of agriculture. Therefore even if alternative irrigation sources are not available, agricultural uses of the land, such as dryland farming or grazing, frequently remain. Thus, in one sense, the Commission withdrawal would have no effect on the local plan designations. On the other hand, if an area relies heavily on irrigated agriculture and alternative sources are few, the withdrawal is likely to affect the local pattern and intensity of land use, even if it does not directly affect a local plan.

Conversely, the Commission might allow industrial use of a stream in a zone where industrial land uses are not allowed. This does not necessarily represent a land use / water use conflict. Water is not always used on lands immediately adjacent to a stream. For example, a potential industrial user could occupy an industrially-zoned parcel and yet need to divert water from a distant stream outside the zone. Thus, allowing a water use for a land use precluded by an overlying zone is not necessarily inconsistent. In this case, matching a stream's classification to the surrounding zoning could frustrate a local government's goal of economic development. Because of these types of issues, there is a potential for incompatibility between basin planning and land use planning.

Within a basin, water flows through many jurisdictions. In recognition of the mobile nature of both surface and ground water resources, the Commission is directed by statute to coordinate many interests. One type of coordination deals with balancing state and local interests. Another involves weighing the frequently competitive water resource demands of many local jurisdictions. Examples of the latter might include assessing opportunities for pooling water rights or funds to regionalize city water supplies, coordinating projections of water use for agriculture or recreation from a stream separating two counties, or maintaining sufficient flows to absorb projected sewerage discharge increases from all upstream cities. In short, it is likely the Commission may have to say "no" to City A, in order to meet the needs of Cities B, C, and D. This means that provisions of a given basin program which are compatible with one local plan can at the same time be incompatible with another.

It is the Commission's goal to be as compatible as possible with local plans. Ultimately, this can be assured by obtaining confirmation from all local governments in the basin that the basin plan and program are compatible with local comprehensive plans. However, compatibility is most effectively achieved through early coordination in the basin planning process, and through on-going technical assistance. For example, an area where both local and state government could derive considerable benefit is the identification of future water needs. Local plans reflect projected growth and indicate where and at what levels future development will take place. Often these projections are not tied to water supply or state water policy. It is important that WRD and local planners use the same inventory information in their respective planning processes.

Compatibility can also be achieved through the Department's permitting process. The permitting process can be viewed as one form of implementation for basin programs. That is, permits can only be issued for uses that conform to basin program classifications and statements. As described elsewhere in this document, water use permits are defined in OAR Chapter 660, Division 31 as "Class B" permits and are subject to certain compatibility requirements. In other words, the classifications established in basin programs are tested against local plans during water use permit review.

(c) Instream Water Rights

1. Purpose

Instream water rights are water rights held in trust by the Water Resources Department to support public uses in streams and lakes. The main purposes of providing for instream flows are to protect aquatic life, dilute water pollution, and maintain recreational values. Historically, the Water Resources Commission has been directed to adopt administrative rules establishing certain quantities of water for instream use. These rules, called minimum perennial streamflows, protected instream flows, but monitoring was limited and many streams were already depleted by earlier water rights not subject to the minimum streamflows. During the 1987 legislative session, public instream uses were declared to be "beneficial" for purposes of appropriation. Instream water rights were created to give public instream uses the same legal status as water rights for out-of-stream uses. Instream water rights must be set at the level needed to provide public benefit. If this level exceeds present flows, it establishes a management goal and basis for denial of further appropriations.

2. Authorization

Instream water rights are defined in ORS 537.332 to 537.360. These statutes call for conversion of previously established minimum perennial streamflows. Under these statutes, only the Oregon Departments of Fish and Wildlife, Environmental Quality and the Parks Division may apply to the Commission for instream water rights. A process for transferring and leasing out-of-stream water for instream use is also provided. Procedures and standards for issuing instream water rights are prescribed in OAR 690, Division 77.

3. Instream Water Rights Activities

To date, the Department has converted about 465 out of 490 minimum streamflows to instream water rights. About 40 instream water right applications have been submitted to the Department. Nearly all were submitted jointly by the Departments of Fish and Wildlife and Parks and Recreation to reserve flows for fish and recreational uses. Of these, about 25 have been approved with the remainder still pending.

4. Relationship to Land Use

WRD's authority and program activities to protect instream flows qualify as "land use programs" for SAC purposes. Issuing instream water rights is similar to the Department's water use permitting activities in that both provide for discretionary review of applications to use the public's water. Both result in the allocation of water that is then unavailable for future uses.

Section II: Summary and Analysis of : *Instream Water Rights*

The statutory definition of "land use" states that "land" includes water (both surface and subsurface). Under Goal 5 guidelines, local governments are encouraged to consider instream flows in their planning decisions. For example, local recreation policies and the siting of parks and recreational facilities could be influenced by an assurance that some level of flows are protected. The amenities provided by a river or lake with good water quality, scenic surroundings, and fish resources can significantly influence growth in a community. On a larger scale, the maintenance of instream flows can influence regional economies by protecting fisheries, water quality, and recreational areas which are used by in- and out-of-state residents. At the same time, the issuance of instream water rights signifies a withdrawal of water, at least in a particular stretch of stream, from future appropriation for other uses.

(d) Reservations of Water for Future Economic Development

1. Purpose

Reservations of water for future economic development allow certain quantities of water to be set aside for specified uses which, when developed, will have preference over all water rights subsequent to the date of the reservation, including instream water rights.

2. Authorization

ORS 537.356 authorizes any state agency to request the Water Resources Commission to reserve unappropriated water for future economic development. ORS 537.358 requires the Water Resources Commission to adopt rules to carry out the intent of the authorizing legislation. OAR 690-77-200 governs WRD activities relating to reservations for future economic development.

3. Water Reservation Activities

The administrative rules governing reservations set up a two-step process. First an application for a reservation is submitted. Only state agencies may apply for reservations. If the request is approved, it is recorded as an amendment to the basin program. Second, an application must be submitted at a later date for actual use of the reserved water.

WRD must notify the Oregon Departments of Fish and Wildlife, Environmental Quality, and the Parks and Recreation Department within one month of the receipt of a reservation request. A member of the Water Resources Commission must conduct a public hearing on the proposed reservation in accordance with ORS 537.170 within six months of receipt of the request. The hearing must be conducted in the basin of the proposed reservation.

Approval of the initial reservation requires a public interest determination in accordance with standards outlined in OAR Chapter 690, Division 11. The Director must prepare findings and a recommendation to the Commission on the proposed reservation. The Commission may approve, partially approve, condition or deny the request.

Applications for the use of reserved water shall also undergo a public interest determination based on the standards outlined in Division 11. The administrative rule specifically requires a consideration of "land use plans or policies of local jurisdictions," and states that, "if the reservation contemplates future development that is not foreseen in the plans, the Commission shall seek concurrence of the affected local jurisdiction(s) before making the reservation."

To date, WRD has received one inquiry into reservation of water for future economic development. The interested party was advised that information requirements include the following items:

1. Agency name and address;
2. Purpose of reservation;
3. Amount of water;
4. Source of water;
5. Natural flow or storage;
6. Season of use;
7. Place of use;
8. Developer;
9. Term of reservation;
10. Schedule of development;
11. Economic benefits;
12. Land use compatibility;
13. Alternatives;
14. Foregone opportunities;
15. Existing/future water use;
16. Adverse water impacts;
17. Water management measures;

The Commission has adopted similar information submittal requirements as part of the Department's updated SAC Program.

4. Relationship to Land Use

The intent of establishing reservations of water for future economic development is to provide known quantities of water to support certain planned land uses. Almost by definition, these reservations can reasonably be expected to have a significant impact on land use and water use in Oregon. Increasing competition for water between instream and out-of-stream uses is expected to lead to an increased interest in water reservations. Thus WRD activities in this area qualify as a "program affecting land use" and must be addressed in WRD's SAC Program.

(e) Establishment of Minimum Perennial Streamflows

1. Purpose

Minimum perennial streamflows, ("minimum streamflows"), are administrative rules which assign quantities of water and priority dates for the support of instream uses such as aquatic life or pollution abatement. Minimum flows are administered as water rights, with the exception that they are subject to administrative actions that may modify their effect.

2. Authorization

ORS 536.235 makes establishment of "minimum perennial" streamflows a high priority of the Water Resources Commission and the Water Resources Department.

ORS 536.310 (7) states that the "maintenance of minimum perennial stream flows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit .."

ORS 536.325 establishes procedures for accepting, reviewing, and adopting minimum streamflows.

OAR Chapter 690, Division 76 contains the definitions, standards, processes and criteria for the evaluation of minimum perennial streamflow applications.

3. Minimum Perennial Streamflow Activities

Since 1955, the Water Resources Commission has established over 500 minimum streamflows statewide, mostly through basin planning. In 1983 the Legislature made significant changes in the minimum streamflow program. Minimum streamflows may be requested by the Departments of Environmental Quality and Fish and Wildlife. The Commission may also modify or adopt minimum streamflows on its own initiative . Before adopting a minimum flow the Commission must consider Water Resources Department recommendations, provide all other state agencies which may be concerned an opportunity to be heard, consider all legislatively mandated policies, and hold at least one public hearing in the affected river basin.

Minimum flows have priorities dating from when applications were received or, absent applications, from when the Commission initiated action to consider the flows. Within one year of the date an application is received, the Commission must adopt the requested flow, adopt an alternative flow rate, or deny the request. If an alternative flow rate is adopted, the Commission must make a finding that the adopted rate is more appropriate for supporting aquatic life and minimizing pollution. If the request is denied, the Commission must make a finding that establishing a minimum flow is of lesser importance than other uses of the waters of the particular stream. Minimum flows are recorded in applicable basin programs.

In 1987, the Legislature created instream water rights and required all existing minimum streamflows to be converted to instream water rights after a hearing. Instream water rights are water rights held in trust for the people of the state by the Water Resources Department. Unlike minimum streamflows, they cannot be modified by administrative action. Because of this, they are expected to supplant minimum streamflows for purposes of protecting instream uses. However, the Legislature did not do away with minimum streamflows by creating instream water rights. It is possible additional minimum streamflows may be established in the future.

4. Relationship to Land Use

Minimum flows affect future water availability and are indirectly referred to in Goal 5 and Goal 16. Minimum flows also protect public uses such as fish and wildlife habitat, pollution abatement, and recreation, all of which are addressed throughout the statewide planning goals. Therefore, establishment of minimum perennial streamflows represents a land use program.

(f) Withdrawal of Water from Appropriation

1. Purpose

The Legislature established withdrawals to provide an administrative mechanism for making unappropriated water unavailable for further appropriation if necessary to: a) ensure compliance with the state water resources policy; and/or b) uphold the public interest in conserving or controlling water for the maximum beneficial use.

2. Authority

ORS 536.410 authorizes the Commission to withdraw waters of the state from further appropriation. Withdrawals are adopted as administrative rule in accordance with the Administrative Procedures Act. There are no additional administrative rules governing withdrawal activities.

3. Withdrawal Activities

Water withdrawals have been ordered since the inception of Oregon's water code in 1909. Early withdrawal orders generally withheld waters from appropriation, except as needed for irrigation purposes. The State Engineer would apply for withdrawals upon the request of irrigation or reclamation districts. Many of these early withdrawals for undeveloped storage projects have been cancelled and surplus unappropriated waters returned to the public.

The State Engineer also filed withdrawal orders in response to verified complaints that there was insufficient water on an annual basis to support existing water rights. In addition there are a number of legislative withdrawals in statute. Since 1909, the legislature has withdrawn waters for various purposes including protection of municipal supplies, fish and wildlife, and parks.

Today's statutes authorize the Water Resources Commission to file withdrawal orders. Prior to the issuance of an order, the Commission must hold a public hearing on the necessity for the withdrawal. The Commission must follow standard rulemaking proceedings as required by the Administrative Procedures Act. The Commission may amend basin programs to include withdrawals. In many ways, the action of withdrawal is similar to that of classification. The Commission is using restrictive classifications in place of withdrawals. Withdrawals are now being used more as responses to immediate needs for limited duration.

4. Relationship to Land Use

The withdrawal of unappropriated waters is found to be an "agency program affecting land use." Making unavailable a portion, or all, of the unappropriated waters of a particular water body could significantly affect land uses adjacent to and in the vicinity of the water body. In addition, restricting certain uses could require local or regional changes to rural and urban economic development strategies.

(g) Critical Ground Water Area

1. Purpose

Oregon water law contains strong policies to protect the supply and quality of ground water. The statutes authorize the Water Resources Commission to control the use of ground water to achieve policy goals. The Legislature created the "critical ground water area" (CGWA) designation as a tool to mitigate or prevent excessive ground water level declines, overdraft, interference between users, and contamination.

2. Authority

Statutory authorization for critical ground water area determinations is found in ORS 537.620, 537.730, 537.735, and 537.740. Rules to implement the program are found in OAR Chapter 690, Divisions 8 (Definition and Policy Statements Regarding Statutory Ground Water Terms), 9 (Ground Water Interference with Surface Water), and 10 (Water Resources Department).

3. Critical Ground Water Area Activities

The Water Resources Commission may declare a critical ground water area if: 1) ground water levels in the area are declining or have declined excessively; 2) there is or is likely to be substantial interference between: ground water users; or ground water and surface water users or minimum perennial streamflows with earlier priority dates; or ground water users and geothermal development managed by the Department of Geology and Mineral Industries; 3) the ground water is or is about to be overdrawn; or 4) ground water contamination is occurring, or is likely to occur. The Commission may begin the CGWA process upon its own motion, when petitioned by DOGAMI or any existing water user, or when a proposed use of ground water is likely to cause significant interference between water users.

To date, the Water Resources Commission has approved five critical ground water area orders. These include the Cooper Mountain/Bull Mountain, Ordnance, Cow Valley, the Dalles, and Butter Creek Critical Ground Water Areas. Minimum acreage-to-well ratios are also in effect under the Cooper Mountain-Bull Mountain order. The administrative rules under which existing critical ground water areas were established were superseded in 1986. Current and future CGWA proceedings will be carried out in accordance with current rules as described below.

The Water Resources Department Director initiates proceedings for determination of a critical ground water area. Notification is published in newspapers of general circulation in the proposed critical area vicinity. The notification is also mailed to ground water permit applicants and licensed water well constructors within the area boundaries, and to the governing bodies of counties and cities in the area. It is generally expected that the Department would defer action on pending applications after issuing the notification. However, the Commission could grant ground water use permits within the proposed critical area boundary only after holding a contested case hearing.

A period of investigation follows the Notification of critical area proceedings. Within 270 days, the Department must hold a public hearing or the Notification expires. The Commission must hold a public hearing prior to adopting an order establishing the critical area boundaries. State law requires that licensed well constructors, ground water appropriators, and affected cities be notified of the hearing. If the Commission confirms at the conclusion of the public hearing that any of the ground water problems listed above exist, and further finds that protecting the public welfare health and safety require the enactment of corrective controls, the Commission may adopt an order establishing the critical area boundaries. The extent of restrictions on pumping may be defined by rule or order.

The Commission must distribute copies of the order to all parties in the proceeding and file a copy of the order with the clerk of each county within which any part of the critical area lies. The clerk must record the order in the county's deed records. The Commission may suspend, modify, or cancel any order.

4. Relationship to Land Use

The designation of a critical ground water area can significantly affect land use and development and qualifies as a Department land use program. Restrictions on the issuance of ground water permits are imposed when proceedings are initiated, and when rules or orders are adopted. The order defines the areal and hydrogeologic boundaries of the critical area. The order or a separate rule may include any of the following corrective control measures: 1) closure of the critical area to further appropriation; 2) restrictions on the total withdrawal of ground water per day, month, or year; 3) preferred water uses (i.e., residential and livestock watering) not based on priority dates; 4) reduction or prohibition of pumpage by established appropriators; 5) the abatement or sealing of any well; and, 6) a system of rotation between users.

State law requires the Commission to maintain stable ground water levels, and take action to prevent and control substantial interference, overdraft, and contamination of ground water. Under Goal 5 local comprehensive plans are required to inventory and provide programs to protect important ground water resources. Critical ground water areas should be viewed not only as a regulatory tool, but also as an information source for use in local land use planning within those areas.

(h) Applications and Permits

1. Purpose

A permit is required to use, divert, or store any water in the state, except for a few very specific exceptions. Permits for water use are issued to ensure orderly development of the state's water resources for beneficial use without waste. Permits document the conditions under which water resources can be used. Permits also provide a framework for evaluating whether the use has been established (or "perfected") and can be issued a water right. The permit application review process is designed to ensure that existing beneficial uses and the public's interest in water resources are protected.

2. Authorization

Permits for appropriation of the waters of the state are required under ORS 537.110 through 537.295 and 537.505 through 537.745. These statutes apply to surface water and ground water appropriations and prescribe procedures for application and application review, exemptions, standards for approval, standards for hearing, time restrictions, and cancellation of permits.

Corresponding administrative rules are found in OAR 690 Division 11 (Applications and Permits), Division 20 (Dams), Division 50 (Appropriation and Use of Water For Hydroelectric Power Projects), Division 51 (Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications), Division 74 (Standards for Consideration of Applications Involving Hydroelectric Projects), and Division 82 (Rules for Acceptance of Applications for Water uses in Addition to Classified Uses). With one case excepted, Division 51 supersedes Divisions 50 and 74.

3. Permitting Activities

A permit to use or "appropriate" water allows a person to develop a water use prior to certification. Certification is provided through issuance of a water right. Permits are required for nearly all uses of surface water and ground water, except as follows. Certificates for instream water rights are not preceded by issuance of a permit as the use(s) does not require diversion or control of water. Transfers, exchanges, and the use of conserved water are authorized by order. Procedures for approval of these water uses are discussed under separate program summaries. ORS 537.142 exempts the use of less than 30 gallons per minute of surface waters for egg incubation from all WRD permit and certificate requirements. ORS 537.545 exempts the use of ground water for stockwatering, down-hole heat exchange purposes, and domestic, industrial, commercial, and irrigation uses less than specified amounts from WRD registration, permit, and certificate requirements. However, 1989 legislation has authorized the Water Resources Commission to require permits of exempt uses under certain circumstances.

The Water Resources Department Applications and Permits section reviews about 400 permit applications for new uses each year. Application fees are set by statute, however 1989 legislation authorized the Water Resources Commission to set fees for certain minor applications. WRD provides notice of all applications submitted to those persons on a standard weekly mailing list. County planning departments and certain DLCD Field Representatives are included on this list. However, most cities are not on the list and therefore may be unaware of ongoing state water permitting activities.

Oregon administrative rules allow the Director to act on certain permit applications. Larger or more complex appropriation requests require Water Resources Commission review. The Director must screen all permits to determine the potential for "substantial public interest issues." The Director may also refer minor permit applications where the potential for a substantial public interest issue is found to exist. Where authorized, the Director may issue a permit if: 1) the application is consistent with Commission policies; rules, and basin programs; 2) existing rights holders are protected; 3) water is available; 4) there is no request for additional review by other agencies or persons; and, 5) the appropriation does not raise any other substantial public interest issue.

The Water Resources Commission may act on a permit application in three ways. The Commission may:

- 1) find that the use would not be detrimental to the public interest and instruct the Director to issue a permit; or
- 2) find that the use, as appropriately conditioned, would not be detrimental to the public interest and instruct the Director to issue the permit with the conditions; or
- 3) find that the use may be detrimental to the public interest because it raises a substantial public interest issue and require a contested case hearing under ORS 537.170 and 537.180. The hearing is noticed to various parties including the affected local government planning agency and the owners of contiguous lands. Interested persons (including agencies) may petition for party or limited party status. If the petition is approved, they may conduct discovery, submit evidence, examine and cross-examine witnesses and file proposed findings, briefs and exceptions (see program summary for Contested Case Hearings in Appendix B).

OAR 690-11-080 (4) establishes standards to be applied by the Commission or Director in making determinations of public interest. Following a hearing, the Commission may approve issuance of a permit, approve a permit with modifications or conditions, or reject the application with findings.

According to OAR 690-11-090 (8), when a change of interest occurs in lands covered by a permit, the permittee may request the Water Resources Director to assign the permit to the new owner. Actual construction of diversion works must commence within one year of permit issuance. Time limits for completion of construction shall not exceed five years. Time extensions may be granted only to FERC-related project permits or permits issued to a municipal corporation for municipal uses. If no appropriation is made under the terms of the permit, OAR 690-11-100 authorizes the Department to initiate proceedings for permit cancellation. The permittee must be notified and given 60 days to respond to an intent to cancel the permit.

4. Relationship to Land Use

As most land uses need some amount of water to sustain them, WRD's permitting activities significantly affect land use by regulating water use throughout the state. Existing rules reflect the land/water use relationship. WRD water use permits are listed under the "Class B" heading in OAR 660 Division 31. WRD permits state that the issuance of the permit is not a finding of compliance with the statewide planning goals or compatibility with the acknowledged comprehensive Plan. Permittees are also advised that they must receive all applicable land use approvals from affected local governments.

In addition, OAR Chapter 690 Division 11 provides standards for whether a substantial public interest issue exists. These standards require the Director and the Water Resources Commission to assess whether issuance of the permit would be likely to 1) adversely affect vested or inchoate water rights (those rights applied for but uncertified at the time adjudication takes place), 2) result in the wasteful, uneconomic, impractical or unreasonable use of water, 3) impede orderly economic development of the waters involved, 4) be a non-beneficial use of water, and 5) jeopardize the public good. Existing rule language expressly requires an assessment of impacts from a permit on "the public good" to include consideration of "basin policy, state statutes and the respective land-use plans of the jurisdictions affected." (underline added)

Division 51 outlines specific standards for the review and approval of hydroelectric license and permit applications. A municipality or public utility applies for a permit while a non-municipal or private utility applies for a license to use water for hydroelectric power generation purposes. The Department is required to notice both the governing body(ies) and planning department(s) of affected cities of pending applications. The standards for project evaluation include a section entitled Land Resources. Under this rule, the Commission must enter findings that the project will avoid or minimize impacts on prime farmlands, forest lands, wetlands, scenic resources designated for protection in local comprehensive plans or by state or federal agencies, and endangered natural or geological communities as identified by the Oregon Natural Heritage Data Base. The Commission must also find that the project will not violate state noise standards, disturb fragile or unstable soils, or cause soil erosion that would impair water uses. The project must be designed with appropriate safeguards to withstand natural hazards such as geologic instability, flooding, and ice formation.

Division 51 also contains a section entitled Land Use which requires the Commission to consider input on land use in affected counties and cities. The rules require Commission action to be consistent with local government recommendations except when:

- 1) The recommended action conflicts with the development, use, and control of the state's water resources; or
- 2) The recommended action conflicts with the Commission's integrated coordinated water use program for the affected basin.

If inconsistent with the recommendation of an affected local government, the Commission must support its action with findings showing cause for action. The applicant is required to provide local government approval(s) to the Commission prior to issuance of a license or permit. To approve a hydroelectric application the Commission must find that:

- 1) The project complies with statewide land use goals; and
- 2) Either the project is compatible with the acknowledged local comprehensive plan; or local government application of the comprehensive plan conflicts with the Commission's control over, or policies for, the state's water resources.

In summary, Water Resources Department permitting activities are governed by sets of rules which already contain references to the Statewide Planning Goals and local land use planning. WRD is already attempting to achieve compatibility with local comprehensive plans. However, opportunities exist to enhance the level of communication between WRD and local governments regarding WRD's water use permitting and effects on land use.

(I) Water Rights Transfers

1. Purpose

Water rights in Oregon are issued for specific uses in specific locations. No change in either is allowed without approval of the Water Resources Department. A change in the type of use, the place of use, or the point where water is diverted is called a transfer. Water right transfers add flexibility to Oregon's prior appropriation water rights system. The laws regulating transfers ensure that net water use is not increased and that existing rights holders will not be harmed.

2. Authorization

Water right transfers are authorized under ORS 540.510 through ORS 540.570. The statutes provide special guidance for lands within irrigation and water control districts. Corresponding administrative rules for transfers are found in OAR Chapter 690, Divisions 15 and 16. There are no administrative rules governing WRD's water exchange activities. However, the statutes are very specific in outlining procedures and standards for evaluating exchange requests.

3. Transfer Activities

A transfer may include a change in the point of diversion or a change in the type or location of use. It may also include shifting a water right from supplementary to primary status. Any legal owner of a valid water right may apply to the Water Resources Department for a water right transfer or exchange. When a transfer is approved the original water right is superseded and an amended water right issued. Increasing the amount of water use and/or expanding the area of water use (for irrigation) constitutes an enlargement of the water right and is not allowed under the transfer provisions.

Transfers provide for changes in water use but preclude increasing the quantity used or injury to other users. Water rights transfers are approved through an order issued by the Water Resources Commission. Over the past approximately two decades, the Department has received an average of about 200 transfer applications annually.

Primary departmental activities associated with evaluating transfers involve ascertaining the status of existing water rights and determining the potential impact of the transfer. State statutes and rules require public notice of pending transfer applications. Administrative rules pertaining to water right transfer require that notice be published in a local newspaper when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion. Those applications requiring notice may not be approved in less than 20 days from the date of notice. Those applications not requiring notice may not be approved in less than 30 days after the date of application. Protests may be filed at any time prior to approval of a pending application. The Water Resources Commission may hold a hearing if sufficient public interest issues emerge.

Failure to complete a water right transfer as approved may constitute grounds for forfeiture of the water right. The Department may grant time extensions on completion of a transfer. Normally, time extensions are granted for one year only. An extension of up to five years may be granted to a municipal corporation for municipal use.

4. Relationship to Land Use

The review and issuance of water right transfers is similar and related to WRD permitting authority. Accordingly, most water rights transfer activities meet the criteria of a "land use program" for SAC purposes.

Transfers can be associated with a change in land use and/or the construction of diversion or distribution facilities on the ground. A change in the type or place of use could be associated with land use plan amendments, local urbanization trends, and changing land values. For example, the subdivision of agricultural lands for residential uses may include changing the point of diversion from surface water to ground water. Transfers involving changes in the point of diversion and shifts from a supplemental to primary rights would not correspond to a change in land use, but could result in the construction of diversion, transmission or pumping facilities on the ground.

However, certain transfers are not expected to have significant effects on land uses. These include transfers which:

- a) involve only irrigation uses; and
- b) involve place-of-use changes only; and
- b) involve no structural change; and
- c) would be located within Irrigation districts or Exclusive Farm Use Zones.

Water rights transfers meeting these four conditions would be expected to serve irrigation uses on farm lands both before and after Department action on the application. Further, local governments generally do not differentiate between irrigated and non-irrigated agriculture in their land use plans. Thus, the Department's review and approval activities involving transfers meeting the above criteria are not treated as land use programs.

(I) Water Right Exchanges

1. Purpose

An exchange is a transfer between sources where equal (or reduced) amounts of stored, surface or ground water are used to replace the other source in amounts sufficient to satisfy prior appropriations . Aside from ensuring protection of existing water rights and the public interest, the Water Resources Commission may approve an exchange only if water can be used more efficiently and instream uses are enhanced. Allowing exchanges adds flexibility to Oregon's prior appropriation water rights system.

2. Authorization

Water rights exchanges are authorized under ORS 540.533 through 540.543. There are no administrative rules governing WRD's water exchange activities. However, the statutes are very specific in outlining procedures and standards for evaluating exchange requests.

3. Exchange Activities

Historically, the Department approved water rights exchanges by modifying established rights and issuing rights for supplemental as well as primary uses. Only one application for exchange has been filed since the authorizing statutes were enacted in 1987. This project involves an exchange of rights to use Columbia River water for rights to use Umatilla River water. The exchange of these rights will provide for irrigation and increased instream flows.

4. Relationship to Land Use

WRD's authority to approve water exchanges meets the criteria for a "land use program" as outlined under administrative rule. Although the authorizing statutes do not provide for a change in the type of water uses allowed, exchanges may affect large amounts of land and many interested parties. Exchanges may also involve the construction of storage and distribution facilities. To ensure that existing uses can be maintained, the Commission must determine whether replacement waters will be equal to the water exchanged. Further, exchanges have the potential to maintain or enhance instream flows.

Section II: Summary and Analysis of: *Water Right Transfers*

(k) Use of Conserved Water

1. Purpose

The purpose of this program is to encourage water conservation by allowing water right holders to use a portion of their water savings. In 1987, Senate Bill 24 was passed and codified as ORS 537.455 to 537.500. This law allows a water right holder to use part of any water saved through conservation and returns part to the state. Previously, any water saved was not available to the person saving it, but was immediately returned to the public domain.

2. Authorization

ORS 537.455 to 537.500 declares the policy of the state as being the aggressive promotion of conservation and the encouragement of the highest and best use of water by allowing the sale or lease of the right to the use of conserved water. ORS 540.510 allows any right to the use of conserved water to be severed from the land and transferred or sold.

OAR Chapter 690, Division 18 establishes procedures for processing applications for the use of conserved water.

3. Activities Involving the Use of Conserved Water

Conserved water is defined in ORS 537.455 and OAR 690-18-020 as "the amount of water, previously unavailable to subsequent appropriators, that results from conservation measures." Any holder of a valid water right may apply to use conserved water if the proposal meets requirements outlined in statute and administrative rule.

Basically, an applicant must demonstrate that the proposed conservation measure(s) will make conserved water available for other uses. The processing of applications to use conserved water includes: 1) review of the conservation proposal's scope and effectiveness; 2) quantification of probable water savings; 3) analysis of impacts on other users; 4) developing recommendations for assignment of conserved water to the user and state; 5) determining public interest issues and impacts; 6) providing substantial public notice; and, 7) referral by the Director to the Commission for approval. Authorizing statutes require the Commission to allocate 25 percent of the conserved water to the state, unless the Commission finds that more or less water should be allocated to the state based on several criteria.

The Commission may allocate the conserved water if it finds that the proposed conservation measure:

- (A) Is feasible; and,
- (B) Will produce conserved water; and,
- (C) Can be effected without injury to existing water rights; and
- (D) Will not adversely affected the public interest.

When the Commission approves an application for use of conserved water, it issues a final order stipulating the percent of water allocated to the applicant and the state, and any conditions on the use of conserved water. A new water right certificate is issued for the diminished original right and another for the new use of the conserved water. When the state's share of the conserved water is dedicated to instream use, a certificate is issued for that purpose as well. Given the newness of this process and its complexity, it is unclear how many water users will participate in the program.

4. Relationship to Land Use

The use of conserved water qualifies as a "program affecting land use" for SAC purposes. The use of conserved water can involve changes in the type and intensity of land use, much like water use permits. For example, a water right holder may wish to apply conserved water for residential use to a parcel currently zoned for open space or agricultural land uses. The proportion of conserved water allocated to the state can potentially affect public uses such as recreation, fish and wildlife, water quality, navigation, and scenic values. These public uses should be reflected in local comprehensive plans as required by the Statewide Planning Goals.

(I) Water Development Loan Program

1. Purpose

The Water Development Loan Fund was established by general election in 1977. The Fund was created to provide fiscal incentives for local development of irrigation facilities and other agricultural improvement projects. Later amendments of the Act authorize loans for municipal supply projects in smaller communities, and fish protection and watershed enhancement projects. Secondary uses (i.e., recreation, conservation, water quality enhancement, power generation, etc.) may also be funded as long as the primary use falls into one of the above categories. The Commission must give the highest priority to loan applications for projects which would alleviate health hazards.

2. Authorization

Legal authority for the Water Development Loan Program is found in ORS 541.700 through 541.855 and OAR Division 90.

3. Description of Activities

The first Water Development Loan application was submitted to the Department in 1978. The first sale of general obligation bonds to fund the loans was approved in 1979. Since then, bond sales have funded approximately 190 irrigation and drainage projects. In 1984, two cities and a water district had water supply projects financed through a \$2,215,000 bond sale.

Loan application submittal requirements include detailed information to ensure the eligibility and financial solvency of the applicant, and the viability of the proposed water development project. The administrative rules require that the applicant meet the definition of a "water developer," which includes any individual resident of this state, a profit, non-profit, or cooperative whose principal income is from farming, water improvement, control, irrigation or drainage districts, ports, cities and counties. The applicant must provide a statement from the appropriate city or county official stating that the proposed project complies with applicable land use regulations and other applicable regulations and ordinances. The rules prohibit approval of a loan to fund a project that would conflict with any state or federal agency statutes or rules, or any adopted local comprehensive land use plans approved by the Land Conservation and Development Commission.

Over the life of the program, 20 loans have been foreclosed and the security property taken into state ownership, with three loans currently in the process of foreclosure. Several bankruptcies have also been declared. The rules allow the Director to collect on delinquent accounts in a number of ways. The Director may accept a deed of foreclosure or purchase or real and personal property. The Director may initiate actions such as contracting for service and repair, reserving, or sale of property owned by the Fund in order to protect the State's interest.

4. Relationship to Land Use

The Water Development Loan Program can be divided into two main categories in terms of impacts on land use. The first is the evaluation of loan applications and granting of loans for water development projects. The second is the management of property received by the State upon loan foreclosure. Only the actual granting of loans qualifies as a land use program for the purposes of SAC.

The loans finance the study and/or construction of irrigation or water supply facilities which can shape the distribution of land uses and provide for community growth. However, the property management activities associated with foreclosure do not qualify as a land use program. The Department simply maintains and sells these properties as deemed appropriate to protect the State's interest. Any improvement to these properties would be subject to local land use approvals.

(m) Payment for Public Benefits in Water Projects

1. Purpose

The Water Resources Commission, with the approval of the Governor, may identify proposed water projects which provide significant public benefit, and recommend to the Legislature funding of such projects in proportion to the public benefits provided.

2. Authorization

ORS 542.075 establishes the authority of the Commission to recommend that the Legislature fund water projects providing public benefits.

ORS 541.830 allows project funding requests submitted under the Water Development Loan Program to be considered under the provisions of ORS 542.075.

OAR Chapter 690, Division 100 provides the procedure for determining eligibility, applying for payment, determining public benefits and for the Commission's recommendations to the Governor and the Legislature.

3. Payment for Public Benefits Activities

Those seeking payment for providing public benefits through a water project must first apply to the Department. Any resident of the state, partnership, corporation, water district, or other water developer defined in ORS 541.700 may apply. Application may be made for proposed projects, as well as existing, completed projects, if it has been five years or less since beginning of construction.

The Department requires information describing the project and specifying the nature and quantity of public benefits produced. The submittal is circulated among, and a presentation made to a meeting of, the state's natural resource agencies. A public hearing is held in the vicinity of the water project for the purpose of taking public comments on the payment request. Following the hearing, the state natural resources agencies develop findings, conclusions, and recommendations on the application. The Director prepares a recommendation to the Commission based on the hearing record and comments from the agencies. The Commission may accept the Director's recommendation, modify the recommendation, or prepare a different recommendation for submission to the Governor. Any funds appropriated by the Legislature are deposited with the Water Development Loan Program or in a new Water Resources Department account, depending on whether the application is for an existing or a proposed project, respectively.

The legislation allowing payment for public benefits was enacted in 1981. There have been very few applications for payment since that time, and none have been approved by the Legislature. Future activity with regard to this program is uncertain.

4. Relationship to Land Use

The program for payment of public benefits has the potential to significantly and directly affect land use. Water projects made possible by the program could include major reservoirs and water delivery systems for municipal or agricultural use. Providing payment for public benefits could also increase the likelihood of facilities being operated to benefit instream water uses such as fish life, recreation, and pollution abatement which are addressed throughout the statewide planning goals.

The Commission's has an advisory role in the payment of public benefits. The final authority for approval rests with the Governor and the Legislature. However, to be funded, applicants must first obtain a favorable recommendation from the Commission. Thus, the Commission's role, although advisory, is nonetheless authoritative.

Because the program has the potential to significantly affect land use and resources identified in the goals, and because the Commission's role is more than strictly advisory, the program for payment of public benefits has been determined to be a Water Resources Department land use program.

(n) Scenic Waterway Coordination

1. Purpose

Through the scenic waterway program, the state seeks to protect the free-flowing character of designated streams for fish, wildlife and recreation, and to protect and enhance scenic, esthetic, natural, recreational, and scientific values along such streams.

2. Authorization

ORS 390.805 to 390.925 establish the scenic waterway program. ORS 390.815 sets forth the policy of the state on scenic waterway protection. ORS 390.825 designates certain rivers and lakes as scenic waterways. ORS 390.835 defines the highest and best use of the waters of scenic waterways and assigns certain responsibilities to the Water Resources Commission, the Fish and Wildlife Commission, and the Land Board. ORS 390.845 through ORS 390.865 describe procedures for designating and managing scenic waterway lands and waters.

OAR 736-40-005 through 736-40-095 include hearing procedures, land management regulations, and classifications for designated scenic waterways.

3. State Scenic Waterway Coordination Activities

The Scenic Waterway program protects the free-flowing nature of streams through restrictions placed on impoundments and new water uses. The program protects the natural and scenic diversity of waterways by encouraging compatible new development. Activities that noticeably alter the surroundings -- such as building construction, land clearing, road construction, timber harvesting, and changes to river banks -- must be approved by the Parks and Recreation Department. If a proposed activity would threaten scenic or natural values, the Parks and Recreation Department works with the landowner to find a mutually acceptable solution. If no solution results, Parks and Recreation has one year from the date of notification to acquire an easement or title to the property in question. Otherwise, the landowner may proceed with the activity as proposed.

The Scenic Waterways program is administered by the State Parks and Recreation Department. The Water Resources Commission, however, has responsibilities in several areas of Scenic Waterway program administration. First, the Commission cannot permit any dam, reservoir, other water impoundment facility, or placer mining within scenic waterways. The legislature has deemed the highest and best uses within scenic waterways to be for fish, wildlife, or recreation. Second, diversions may be restricted pursuant to ORS 536.300 (12). Further, before issuing permits for the use of any waters upstream from a scenic waterway, the Commission must find that the use will not diminish streamflows necessary for the purposes of the scenic waterway. Third, the Commission must concur in scenic waterway management plans, in condemnation proceedings to acquire lands, and in Parks and Recreation Department recommendations for additions to the scenic waterway system.

The Commission fulfills its responsibilities for maintaining the free-flowing nature of scenic waterway streams and protecting flows for fish, wildlife, and recreation through the permit review process (described in a separate program summary). The Commission has promulgated no rules concerning how it will concur with the Parks and Recreation Department in scenic waterway matters. There have been few instances where the Commission has been called upon for its concurrence. This is primarily due to three factors: 1) the Parks Department has completed relatively few management plans during the last 10 years; 2) condemnation of lands associated with scenic waterway has rarely occurred; and, 3) recent additions to the scenic waterway system have resulted from legislative actions and ballot initiatives, not from recommendations of the Parks and Recreation Department.

4. Relationship to Land Use

Because the Scenic Waterway Program regulates both new water and land uses, it is clearly a land use program. It is also specifically referenced in Goal 5. There are no explicit references to local comprehensive plans or land use planning in either the statutes or rules. However, ORS 390.845 (2) requires the Parks and Recreation Department to consult with affected counties when adopting rules governing the management of related adjacent lands. In addition, OAR 736-40-020(3) points out that approvals or agreements regarding scenic waterways "in no way relieve persons .. of requirements established by other governmental agencies, local, state, or federal."

Although the Water Resources Commission is assigned a number of duties, it does not have primary responsibility for initiation of action or for program administration. The Commission plays a largely reactive role, in that it either goes along with, or withholds approval from, recommendations of the Parks and Recreation Commission. The Water Resources Commission's major responsibility is discharged through its water use permitting process. Designation and management of scenic waterways should not be repeatedly subjected to local plan compatibility tests throughout the process. At the point when the Commission's concurrence is sought, the land use ramifications of scenic waterway additions, management plans, or land condemnations should already have been addressed by staff of the Parks and Recreation Department. In other words, any proposal would have passed or failed the land use plan compatibility test before, and would not be an issue when, it went to the Commission for concurrence. Compatibility strategies, then, are best designed by the Parks and Recreation Department, not the Water Resources Department.

F. Department Programs Subject to LCDC Permit Compliance Rule

OAR 660-31-015 requires state agencies to list Class A and Class B permits affecting land use. The classification system employed by LCDC is defined in OAR 660-31-012. The two classes are identified on the basis of public notice and hearings requirements. In OAR 660-31-012 (2)(f), LCDC has identified surface water, ground water, storage, and hydroelectric permits as Class B permits. The Department must either: find that the issuance of these Class B permits comply with the goals and/or are compatible with comprehensive plans; or, inform applicants that permit issuance is not a finding of compliance or compatibility, and that local land use approvals may be required. In the latter instance, the Department may rely on local government determinations of compatibility for these programs as long as local governments have made appropriate findings to justify their determination.

The Department does not propose to change the classification of the water use permits presently listed in OAR 660, Division 31. The Department also does not propose any additions to, or deletions from the established list.

Section III. Rules and Procedures for Assuring Compliance with the Statewide Planning Goals and Compatibility with Comprehensive Plans

A. Rules and Procedures to Assure Compliance with the Statewide Planning Goals

1. Procedures

The Department's general coordination rule (OAR 690 - 60 - 030) states that all Commission and Department actions taken pursuant to a land use program must comply with the Statewide Planning Goals. As OAR 660 - 30 - 065 requires, the Department will comply primarily by assuring its actions are compatible with acknowledged comprehensive plans. Acknowledged comprehensive plans had to comply with the goals. Thus, it follows that agency actions compatible with a comprehensive plan simultaneously comply with the goals.

Exceptions to this approach would require an agency to comply directly with the goals. The circumstances which would trigger this procedure are delineated in OAR 660 - 30 - 065 and fully incorporated in the Department's coordination rule (OAR 690 - 60 - 030).

The goal compliance requirements of OAR 660 - 30 -065 are fully incorporated in the Department's rule (OAR 690 - 60 - 030). Affected local government will be notified of the Department's intent to make findings of compliance directly with the goals. The Department will explain why direct goal compliance is required and offer the local government an opportunity to initiate dispute resolution procedures described in OAR 690 - 60 - 040. Readers are directed to OAR 690 - 60 - 030 for details.

2. Goals Most Likely To Be Addressed Directly

OAR 660 - 30 - 065 (5) requires agencies to: identify which goals the Department is most likely to address directly; commit to directly address other goals if requested; and, describe situations in which the Department may have to address the goals directly. These requirement are discussed below.

The Department is most likely to address Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) and Goal 11 (Public Facilities and Services) directly. Water resources are commonly referenced throughout the goals, especially in terms of carrying capacity. It is possible that the Department might have to make findings of conformance with any of the goals that reference water resources. The Department is committed to complying with all applicable goals and will do so directly, as required. A brief discussion of how Goals 5 and 11 apply to water resources follows.

Goal 5

Goal 5 requires local governments to inventory the location, quality and quantity of water areas, wetlands, watersheds, and ground water, including potential and designated scenic waterways. Conflicting land uses must be managed to protect important resources. Goal 5 planning guidelines direct local governments to identify and protect reservoir sites from irreversible loss. Implementation guidelines direct local governments to protect streamflow and water levels for fish, wildlife, pollution abatement, recreation, esthetics, and agriculture.

The most likely situations requiring direct goal compliance could include the following. Comprehensive plans, zoning ordinances, or development codes may not provide for watershed, streamflow, or ground water management in any detail. Most of the Department's actions involve the allocation water supplies between particular uses, consistent with the statewide public interest in water resources. Protecting the public interest may require addressing water allocation or other problems not identified in comprehensive plans. This is likely when conducting activities where more than one comprehensive plan is involved, such as in basin planning, critical ground water area designations, and instream water rights issuance.

Alternatively, some comprehensive plans may contain provisions that conflict with statewide public needs by failing to provide for maintenance of water levels for the uses identified in Goal 5, or by providing for one use at the expense of another. The Commission and Department are obligated under other statutes, as well as Goal 5, to protect these uses and would ultimately do so notwithstanding provisions of applicable comprehensive plans.

Goal 11

OAR Chapter 660, Division 11 requires that public facility plans must identify the water quantity necessary to support land uses within urban growth boundaries. Plans for public facility systems must include identification of water sources and information on storage, pumping and distribution. Plans must also assess system elements and contain policy statements or urban growth management agreements identifying water providers.

In many areas, demands on the state's water resources are growing rapidly. Citizens are demanding water not only for traditional uses such as for cities and irrigation, but increasingly for fisheries and recreation as well. New federal drinking water quality standards are forcing some communities to abandon established water sources and search for replacement sources. Many cities are growing and seeking to establish claims to additional water supplies for economic development.

The Department must act in the broad public interest evaluating requests for reservations, permit extensions, and instream water rights. In addition, the Department will be intensifying its scrutiny of whether water is being used efficiently prior to permitting additional appropriations to existing users. This balancing will involve review of the elements of comprehensive plans, especially public facility plans. It is conceivable that the Department may have to act incompatibly with one of the comprehensive plans of the many competing interests in order to assure orderly development of the state's water resources. Reducing the opportunity for conflict between users is one of the primary objectives of the Department's SAC program in coordinating with local governments and special districts.

Section III: Goal Compliance Procedures

B. Procedures for Assuring Compatibility with Comprehensive Plans and Pursuing Land Use Dispute Resolution

The *Coordination and Compatibility Procedures* outlined in this section specify how the Department will assure that its land use programs and activities comply with the Statewide Planning Goals and are compatible with acknowledged comprehensive plans. In general, the procedures will facilitate the exchange of land use information between the Department and local governments. Many of the procedures outlined in this section are requirements established by administrative rules. However, there are land use programs for which rules have not been adopted. Land use coordination procedures applying to these programs will be found in this Guide only. *Future Department Actions* will be undertaken to enhance the Department's land use coordination efforts as Department resources allow and priorities dictate.

The *Coordination and Compatibility Procedures* outlined in this section, as well as other portions of the Guide, are referenced in OAR Chapter 690, Division 60 (Appendix F). This division of rule establishes the Water Resources Department's SAC Program generally, and provides many of the components required in ORS 197.180 and OAR Chapter 660, Divisions 30 and 31. Many of the procedures are also outlined in the other portions of OAR Chapter 690 which govern the Department's land use programs. For programs without rules such as state water policy development, basin planning, withdrawals, and water exchanges, these procedures will, by themselves, assure compliance and compatibility. Ultimately all the Department's land use programs and activities will be subject to requirements for assuring compliance and compatibility as prescribed in OAR 690-60-045. (Standards for Goal Compliance and Compatibility with Comprehensive Plans.)

Procedures follow for the Department land use programs listed below.

- 1 State Water Resources Policy (Proposed OAR Chapter 690, Division 410)
- 2 Basin Planning
- 3 Instream Water Rights (OAR Chapter 690, Division 77)
- 4 Reservations for Future Economic Development (OAR Chapter 690, Division 77)
- 5 Minimum Perennial Streamflows (OAR Chapter 690, Division 76)
- 6 Withdrawals of Water from Further Appropriation
- 7 Critical Ground Water Area Proceedings (OAR Chapter 690, Division 10)
- 8 Water Use Permits and Applications (OAR Chapter 690, Division 11)
- 9 Water Right Transfers (OAR Chapter 690, Division 15) except for those:
 - (a) Where existing and proposed water uses would be located entirely within lands zoned for Exclusive Farm Use or within irrigation districts;
 - (b) Which involve changes in place of use only;
 - (c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and,
 - (d) Which involve irrigation water uses only.
- 10 Use of Conserved Water (OAR Chapter 690, Division 18)

Hydroelectric Permits and Licenses (OAR Chapter 690, Division 51)

10 Water Exchanges

Applications for Water Uses in Addition to Classified Uses (OAR Chapter 690, Division 82)

12 Water Development Loan - Loan Management (OAR Chapter 690, Division 90)

13 Payment for Projects with Public Benefit (OAR Chapter 690, Division 100)

14 Scenic Waterway Coordination

I. STATE WATER RESOURCES POLICY: COORDINATION AND COMPATIBILITY PROCEDURES

A. Public Notice

The Department will:

1. Publish notice of public meetings or hearings in newspapers distributed statewide.
2. Maintain a state policy mailing list that includes all parties who have responded to the initial notice or have submitted written or oral testimony on the policies.
3. Ensure that DLCD, the Association of Oregon Counties, each county planning director, the League of Oregon Cities, and the current chairperson of the City Planning Directors' Association are included on the mailing list.
4. Mail notice of public hearings to parties on the Department's state policy mailing lists.

B. Public Involvement

The Department may hold workshops and will hold at least one public hearing to receive input on draft policies.

C. Land Use Compatibility - The Department will:

1. Use the results of the WRD Local Government Land Use Survey (1989) in identifying policy making priorities;
2. Accommodate to the extent possible comments and suggestions from local government planning officials in the policies or policy-making process;
3. Initiate and follow resolution procedures outlined in OAR 690-60-040 if land use disputes arise;
4. Work with local government planning officials to amend comprehensive plans as needed to become consistent with the Commission's statewide policies (pursuant to ORS 536.360).
5. Defer additional assurances of compatibility to rules and procedures governing those Department land use programs which implement statewide water policy.

Section III: Compatibility Procedures for: State Water Resources Policy

II. BASIN PLANNING: COORDINATION AND COMPATIBILITY PROCEDURES

A. Public Notice - The Department will:

1. Send notice of public meetings and hearings to those parties on its basin planning and rulemaking mailing lists.
2. Deliver basin programs to affected public corporations as required in ORS 536.350.

B. Public Involvement - The Department will:

1. Solicit concerns from local governments through surveys, town hall meetings, and distribution of draft documents for comment.
2. Contact local governments located within basins that are scheduled (in the Biennial Water Management Program) for basin program updates within the upcoming biennium.
3. Convene a meeting of the planning directors of local governments in the basin early in the planning process. The purpose of the meeting will be to:
 - a. Identify land use and water use issues which should be addressed in the basin planning process;
 - b. Identify and select strategies for systematic involvement of local planning agencies in the basin planning process (i.e. issue assessment, water classifications (allocation), and basin plan amendments);
 - c. Determine if the Department should form a land use issues work group consisting of local planning representatives and interested citizens to participate in the basin planning process;
 - d. Establish local planning contacts to represent local governments on issue work groups and to assist Department planning staff in achieving compatibility with acknowledged comprehensive plans; and
 - e. Develop administratively feasible approaches for considering and integrating local information. Local information sources may include:
 - 1) Comprehensive plan policies, ordinances, and map information
 - 2) Local water management policies, restrictions and priorities
 - 3) population projections
 - 4) Goal 5 inventories
 - 5) Economic development strategies
 - 6) Public Facilities Plans

Section III: Compatibility Procedures for: *Basin Planning*

4. Hold at least one public hearing in the basin, as required by ORS 536.300 (3).
5. Invite local government representatives and planning officials to participate in work groups.
6. Encourage local governments to form local water resource committees to provide the Department with input on water resource issues. The Department will provide technical assistance to local committees as requested.

D. Land Use Compatibility - The Department will:

1. Upon issuing notice of upcoming rulemaking hearing(s) to adopt a basin program, mail copies of the draft basin plans and programs to the planning director of local government jurisdiction located wholly or partially within the basin under consideration. The Department will attach a notice to this mailing specifying a comment period of at least 30 days. Local governments will be informed that they must respond by the comment period deadline if they believe the draft plan or program to be incompatible with acknowledged comprehensive plans. Local governments will be requested to cite any applicable plan policies, ordinance provisions, or maps in their responses. The Director and Commission may presume that the draft plan and program is compatible with acknowledged comprehensive plans if no response is received by the comment period deadline. If the Department receives a response indicating that the basin plan or program is incompatible with acknowledged comprehensive plans, the Director or Commission will initiate dispute resolution procedures outlined in OAR 690-60-040.
2. Supplement its distribution of the final basin plan and program with a summary of major changes and implications for local land use and development in the basin. In this supplement, the Department will identify issues which should be addressed during periodic review or when otherwise amending comprehensive plans, ordinances, or codes. Other assistance strategies are detailed in Guide.

III. INSTREAM WATER RIGHTS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 77, Instream Water Rights.)

A. Public Notice - The Department will:

1. Require applicant agencies to identify affected local governments, to notify affected local government planning departments of the intent to apply for an instream water right, and to submit copies of this notification to the Department as part of an instream water right application.
2. Provide notification of instream water rights application submittals to affected local governments. Allow local governments 60 days to comment on issues related to the compatibility of the proposal with acknowledged comprehensive plans before the Director may presume compatibility. The Department's notification will include the following items:
 - a) Identification of applicant agencies
 - b) Identification of affected local governments;
 - c) Description of the proposed instream water right and identification of affected water sources
 - d) The purpose of the instream water right;
 - e) An invitation for local planning agencies to identify and submit to the Department applicable policies or provisions in local comprehensive plans that relate to instream flow protection and/or other uses of the water under consideration;
 - f) A request, if a locality believes the proposal to be incompatible with its comprehensive plan, for evidence that the local plan provisions would provide a greater public benefit than the proposed instream right as prescribed in OAR 690, Division 77; and,
 - g) An offer to discuss the proposal with interested local governments.

B. Public Involvement - Any person or agency including local governments may file a petition with the Director requesting a review of public interest issues.

C. Public Interest - The Department will:

1. Evaluate whether the proposed instream water right will adversely affect the public interest. If a public interest issue is found to exist, the Director is authorized to negotiate in attempts to resolve the issue. If the issued cannot be resolved, the Director must submit the proposal to the Commission for a contested case hearing under ORS 537.170 (5).

OAR Chapter 690, Division 77 provides standards for making public interest determinations when reviewing instream water right requests. The Water Resources Commission may modify or condition a proposed instream water right if the proposed right would preclude "planned uses with a reasonable chance of being developed that would provide a greater benefit to the public from the use of the unappropriated water available." "Planned" is defined in these rules as a situation where "a determination has been made for a specific course of action either by administrative or budgetary action of a public body or by engineering, design work, investment toward construction application for a development permit from the private sector."

2. Review petitions requesting that multi-purpose storage projects, municipal water rights, or municipal hydroelectric projects take precedence over a previously established instream water right (created through OAR 690-77-020).

D. Land Use Compatibility - The Director may presume that issuance of the instream water right is compatible with comprehensive plans unless informed otherwise within 30 days of the date shown on the Department's notice of the proposed instream water right application submittal. If the Department is informed that a proposed instream right is incompatible with local comprehensive plans, the Department will follow dispute resolution procedures in the SAC General Coordination rules prior to approving an instream water right.

E. Local Participation - The Department will encourage local planning agencies to identify where instream flows need protection and to request appropriate state agencies to apply for instream water rights. The Department will pursue this action in conjunction with periodic review of comprehensive plans and basin program updates.

F. Future Department Actions

The Department will amend OAR 690, Division 77 to establish submittal requirements and review standards for petitions and findings allowed under OAR 690-77-100. These rules allow the Commission to give precedence to storage, municipal, and municipal applicants for hydroelectric water uses over instream water rights. Standards should include consideration of how local comprehensive plans substantiate the request and provide for a balance of instream and out-of-stream uses.

Section III: Compatibility Procedures for: *Instream Water Rights*

**IV. RESERVATIONS FOR FUTURE ECONOMIC DEVELOPMENT:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 77, Instream Rights.)

A. Public Notice - The Department will:

1. Notify the Oregon Departments of Fish and Wildlife, Environmental Quality, Economic Development and the Parks and Recreation Department, within a month of receipt of application.
2. Provide notice of rulemaking hearing to those on the appropriate basin plan/program mailing list(s). Generally, these lists include counties, cities and various water and irrigation districts.

B. Public Involvement - The Department must process the application as a basin program amendment and will hold at least one public hearing in the basin where the reservation would be located.

C. Public Interest - The Director's must base his/her recommendation, and the Commission's its decision, on a determination of public interest in accordance with Division 11 standards for water use permits. These standards specifically require consideration of local land use plans and policies.

D. Land Use Compatibility - The Department will:

1. Require state agency applicants to submit a "land use coordination statement" with applications. A prototype form is provided in Appendix G of this Guide. The completed statement will include the following items:
 - a) Identification of applicant agencies
 - b) Identification of affected local governments;
 - c) A description of the proposed reservation and identification of affected water sources;
 - d) The purpose of the reservation;
 - e) An invitation for local planning agencies to identify and submit to the Department applicable policies or provisions in local comprehensive plans that relate to economic development and/or planned uses of the water under consideration; and,
 - f) An offer (from the applicant(s) and/or Department) to discuss the proposal with interested local governments.

The Department will mail the land use coordination statement to the planning departments or appropriate affected local government agency at or about the time of official notice.

Section III: Compatibility Procedures for: *Reservations for Economic Development*

2. May presume that approval of the reservation is compatible with comprehensive plans unless informed otherwise within 30 days of the date shown on the official notice of the proposed reservation. If the Department is informed that a proposed reservation is incompatible with an acknowledged comprehensive plan, the Department will follow dispute resolution procedures in the SAC General Coordination rules prior to approving the reservation.
 3. Limit to a maximum term of 20 years. Administrative rules allow the Commission to grant time extensions with retention of the original priority date. The Commission may also require periodic review of the reservation during the approved term of reservation. These extensions are subject to *de novo* review for land use compatibility so that possible changes to local planning and economic development strategies can be factored into the decision.
 4. Require applicants for the use of reserved water to meet the land use information submittal requirements and compatibility standards provided in Division 11.
- E. **Local Participation** - The Department will encourage local planning officials to identify water reservation needs to support planned economic development, and to work through DLCDC or other state agencies to submit an application. The Department will pursue this action in conjunction with periodic review of comprehensive plans and update of basin programs.

V. MINIMUM PERENNIAL STREAMFLOWS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 76, Review of Applications for Minimum Perennial Streamflows.)

- A. Public Notice** - The Department will notify affected local government planning departments of pending minimum streamflow applications. Interested persons may request written notification of the required public hearing.

- B. Public Interest** - The Commission will weigh the expected benefits of planned uses against those to be provided by minimum streamflows in making its decision. "Planned" (in OAR 690-76-010) means a determination has been made for a specific course of action either by administrative or budgetary action of a public body or by engineering, design work, investment toward construction or application for a development permit from the private sector. Planned uses may include uses designated in comprehensive plans.

- C. Public Involvement** - The Commission will hold a public hearing to consider the application.

- D. Land Use Compatibility**
 - 1. The Commission will:
 - a) Consider the impact of land use and development on streamflow when evaluating an application;
 - b) Weigh the potential economic, social, and environmental benefits of the proposed minimum streamflow against those which could be provided by other "planned uses."

 - 2. The Department will require applicant agencies to submit a "land use coordination statement" with minimum perennial streamflow applications. A form is provided in Appendix G of this Guide. The completed statement will include the following items:
 - a) Identification of applicant agencies
 - b) Identification of affected counties and cities;
 - c) A description of the proposed minimum streamflow and identification of affected water sources;
 - d) The purpose of the minimum streamflow;
 - e) An invitation for local planning agencies to identify and submit to the Department applicable policies or provisions in local comprehensive plans that relate to instream flows and/or planned uses of the water under consideration; and,

Section III: Compatibility Procedures for: *Minimum Perennial Streamflows*

- f) An offer (from the applicant(s) and/or Department) to discuss the proposal with interested local governments.

The Department will mail the land use coordination statement to the planning departments or appropriate agency of affected counties and cities at the time of official notice.

3. The Director may presume that approval of the minimum streamflow is compatible with comprehensive plans unless informed otherwise within 30 days of the date shown on the official notice of the proposed instream water right. If informed that a proposed minimum streamflow is incompatible with local comprehensive plans, the Department will follow dispute resolution procedures in the SAC General Coordination rules prior to approving a minimum streamflow.

B. Future Department Action

1. The Department will seek legislative clarification of statutes to determine if and under what circumstances instream water rights may supersede or replace minimum perennial streamflows.

**VI. WITHDRAWAL OF WATER FROM FURTHER APPROPRIATION:
COORDINATION AND COMPATIBILITY PROCEDURES**

A. Public Notice - The Department will:

1. Publish notice of the required public hearing in at least one issue each week, for at least two consecutive weeks prior to the hearing, in a newspaper of general circulation published in each county in which the waters proposed to be withdrawn are located.
2. Notify the planning department of affected local governments of upcoming hearings. The Department may also notify surrounding counties and cities which are likely to be affected by the withdrawal.

B. Public Involvement - The Department will hold at least one public hearing in or near the area where withdrawn water would be located.

C. Land Use Compatibility - The Department will:

1. Request local planning officials to submit any policies, provisions, or procedures which 1) are part of their acknowledged comprehensive plans, and 2) address and provide guidance for mitigating water resources problems related to the proposed withdrawal.
2. Work with local planning officials during development of the withdrawal order to:
 - a) Obtain and incorporate information on areas of planned growth and priority land uses; and
 - b) Accommodate comprehensive plans within the physical constraints of the subject waters and the statutory responsibilities of the Commission.
3. Consider how local government participation could increase the administrative feasibility and effectiveness of the withdrawal.

Section III: Compatibility Procedures for: *Withdrawal of Water from Appropriation*

- 4. Inform planning officials of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended (within a specific time period) to:**
 - a) Reflect the physical constraints in the withdrawn area;**
 - b) Ensure compliance with the withdrawal order; and**
 - c) Reduce the potential for future water-related problems within affected local jurisdictions located in and around the withdrawn area.**
- 5. Distribute the final withdrawal order to affected local government planning departments. Interpret the order as needed for use in local planning. Provide follow-up assistance as needed.**
- 6. Follow procedures 1. through 5. above when adopting or substantively amending a withdrawal order.**

VII. CRITICAL GROUND WATER AREA PROCEEDINGS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 10, Rules for Initiation of Proceeding for Determination of a Critical Ground Water Area.)

A. Public Notice - The Department will:

1. Notify licensed well constructors, ground water appropriators, ground water permit applicants, and counties and cities of initiation of critical ground water area proceedings and subsequent hearings.
2. Mail the Notification of initiation of critical ground water area proceedings to the planning department of each affected local government. Accompany the Notification with a statement explaining the implications of the CGWA proceedings. Provide recommendations for local land use actions (i.e., limiting the approval of development served by ground water in accordance with permit restrictions).

B. Public Involvement - The Department will:

1. Conduct a contested case hearing before issuing any ground water permits between the date of notification and the critical ground water area (CGWA) determination.
2. Send copies of CGWA orders to counties for recordation into deeds.
3. Conduct at least one public hearing within or near the proposed CGWA prior to withdrawing the aquifer by rule or issuing the critical ground water area order.

C. Land Use Compatibility - The Department will:

1. After issuing Notification, request local planning officials to submit any policies, provisions, or procedures from acknowledged comprehensive plans and which address and provide guidance for mitigating applicable ground water problems.
2. Accommodate comprehensive plans (i.e., areas of planned growth and priority land uses) to the extent possible within the physical constraints of the aquifer and the Commission's responsibilities under ORS 537.525, in adopting rules or issuing orders pertaining to CGWAs.

Section III: Compatibility Procedures for: *Critical Ground Water Areas*

3. Inform planning officials of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended (within a specified time period) to:
 - a) reflect the physical constraints in the critical area;
 - b) ensure compliance with the withdrawal or critical ground water area order; and
 - c) reduce the potential for future ground water problems within affected local jurisdictions.
4. Consider how local government participation could enhance the effectiveness of managing the area.
5. Distribute the final CGWA rule or order to planning director(s) of each affected county and city. Interpret the rule or order as needed for use in local planning. Provide follow-up assistance as needed.
6. When substantively amending a CGWA order, follow coordination strategies selected for initiation of proceedings, subsequent hearings and issuance of the order.

D. Future Department Actions

The Department will clarify procedures for determining and issuing orders for critical ground water areas in OAR 690, Division 10.

VIII. WATER USE APPLICATIONS AND PERMITS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 11, Applications and Permits.)

- A. **Public Notice** - The Department will notify the planning officials of affected local governments of water use permit application submittals. The notice of pending permit applications shall explain the various water use approvals and how local governments/citizens can participate. Except as provided in 4.b. below, the Director may presume that the proposed use is compatible with the comprehensive plan if the Department receives no response within 30 days of the date on the notice.
- B. **Public Interest** - The Department must consider acknowledged comprehensive plans in evaluating whether the water use would adversely affect the public interest (See OAR 690-11-080 (4)(f)).
- C. **Public Involvement** - Any person or agency, including local governments, may file a petition with the Director requesting further review of public interest issues.
- D. **Land Use Compatibility** - The Department will:
 - 1. Accompany water use permits and permit applications with a caveat: a) stating that the permit does not guarantee compliance with statewide planning goals, and b) directing applicants to contract local governments for information on local plan requirements.
 - 2. Require applicants to provide land use information specified in a form provided by the Department (see Appendix G) The application must include a) the completed form, or b) a receipt, signed and dated by a local government planning official as evidence that a request for information is was received by the local government. If the completed land use information form is not received by the Department within 60 days of request by the applicant, the Director may proceed with processing the application.

Section III: Compatibility Procedures for: *Applications and Permits*

The form may be modified to streamline administration as long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are allowed under by the comprehensive plan and whether any required local land use approvals are pending, approved, or denied. The completed form shall include the signature of the planning director or responsible official of affected local governments.

- c. Require applicants for municipal water uses to submit information with the application showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).
- d. Issue a permit if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:
 - 1) The land use associated with the proposed water use is allowed outright under land use and zoning designations, or is not regulated under acknowledged comprehensive plans; or
 - 2) The land use is allowable, with discretionary approval, under acknowledged comprehensive plans , and the applicant has received all applicable local land use approvals and local appeals periods have expired.
- e. Approve a permit with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
 - 1) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - 2) Land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
 - 3) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

Section III: Compatibility Procedures for: *Applications and Permits*

The Department may withhold approval of the permit until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

f. Deny the permit if:

- 1) Proposed uses are not allowable under acknowledged comprehensive plans; and
- 2) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
- 3) Local land use approvals have been denied.

However, if the Commission decides that issuing a permit or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

G. Future Department Actions

The Department will develop policies on municipal water supply and standards for granting time extensions for municipal use permits. Explore the possibility of requiring a water management plan as a condition of approving time extensions.

Section III: Compatibility Procedures for: *Applications and Permits*

IX. WATER RIGHT TRANSFERS: COORDINATION PROCEDURES AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 15, Water Right Transfers.)

Note: The procedures in this section apply to water right transfers unless the transfer involves only changes in place of use for irrigation uses with no structural changes and would be located within irrigation districts or Exclusive Farm Use zones.

A. Public Notice - The Department will:

1. Publish notice of transfer applications in a local newspaper when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion.
2. Mail notice to the planning directors of affected local governments when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion.

B. Land Use Compatibility - The Department will:

1. Accompany transfer applications and approvals with a caveat: a) stating that approval does not guarantee compliance with statewide planning goals, and b) directing applicants to local governments for information on local plan requirements.
2. Require applicants to include land use information specified in a form provided by the Department (see Appendix G) with their application. The form may be modified to streamline administration so long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not the land use supported by the proposed water use is allowed by the comprehensive plan and whether local land use approvals are required, pending, approved, or denied. The completed form shall include the signature of the planning director or responsible official of affected counties and cities.
3. Require applicants for transfers involving municipal uses to submit information, with the application, showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).
4. Approve the transfer if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:

Section III: Compatibility Procedures for: *Water Right Transfers*

- a) The land use associated with the proposed water use is allowed outright under the land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or
 - b) Land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
5. Approve a transfer with a condition prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
- a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - b) The proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
 - c) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

The Department may withhold approval of the transfer until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

6. Deny the transfer if:
- a) The proposed uses are not allowable under acknowledged comprehensive plans; and
 - b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
 - c) Local land use approvals have been denied.

However, if the Commission decides that approving the transfer or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Water Right Transfers*

X. USE OF CONSERVED WATER: COMPATIBILITY AND COORDINATION PROCEDURES

(Also refer to OAR Chapter 690, Division 18, Conservation and Use of Conserved Water.)

- A. Public Notice** - The Department will provide public notice of all conserved water use applications and preliminary evaluations in a local newspaper and to individuals and organizations on the Department's weekly and rulemaking lists. Mail notice of pending applications for conservation measures and the use of conserved water to the planning department of each affected county and city. The Director may also notify any other party of the proposal. Objections must be filed with the Department within 30 days of notification or the Commission may presume that proposed use is compatible with comprehensive plans.
- B. Public Interest** - The Department will require applicants to submit information on the existing and proposed point of diversion, place and type of use proposed for the conserved water. The application must also include a list of public and private entities which may have an interest or regulatory authority concerning any aspect of the proposed conservation measure. The Department must evaluate whether the proposal will adversely affect the public interest as defined in ORS 537.170 (5). The standards outlined in ORS 537.170 (5) do not require consideration of local land use plans.
- C. Public Involvement** - The Commission will hold a noticed public meeting prior to deciding whether to approve an application.
- D. Land Use Compatibility** - The Department will:
1. Accompany applications and orders for the use of conserved water with a caveat: a) stating that approval does not guarantee compliance with statewide planning goals, and b) directing applicants to local governments for information on local plan requirements.

Section III: Compatibility Procedures for: *Use of Conserved Water*

2. Require applicants to submit land use information, as specified in a form provided by the Department (see Appendix G), with their original application for approval of conservation measures. (This requirement applies to applicants for use of conserved water only if the proposed type or place of water use is different than that originally approved by the Commission.)

The form may be modified to streamline administration so long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are compatible with respective acknowledged comprehensive plans. The completed form shall include the signature of planning director or responsible official of affected counties and cities.

3. Require applicants for municipal use of conserved water to submit information, with the application, showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).
4. Approve the proposed use of conserved water if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:
 - a) The land use associated with the proposed water use is allowed outright under the land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or
 - b) Land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
5. Approve an order with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
 - 1) All applicable requirements of statutes and rules governing Commission and Department actions are met; and

Section III: Compatibility Procedures for: *Use of Conserved Water*

- 2) The proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
- 3) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

The Department may withhold approval of proposed use of conserved water until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

6. Deny the proposal if:

- a) The uses are not allowable under acknowledged comprehensive plans; and
- b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
- c) Local land use approvals have been denied.

However, if the Commission decides that approving the transfer or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Use of Conserved Water*

**XI. HYDROELECTRIC PROJECT PERMITS AND LICENSES:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 51, Appropriation and Use of Water for Hydroelectric Power & Standards for Hydroelectric Applications.)

- A. Public Notice** - The Department will notify the planning departments of affected local governments when an application for a preliminary permit, a license, or a permit to appropriate water for hydroelectric purposes is submitted. The Department will also notify affected local governing bodies and planning departments of upcoming project hearings.
- B. Public Involvement** - The Department will hold a public hearing for any proposed project for greater than 100 theoretical horsepower (THP). The Commission may also conduct a hearing for proposals less than 100 THP if it determines such action is in the public interest.
- C. Land Use Compatibility** - The Department will:
1. Accompany water use permits, permit applications and licenses with a caveat: a) stating that the permit does not guarantee compliance with statewide planning goals, and b) directing applicants to contract local governments for information on local plan requirements.
 2. Require project applicants to consult with appropriate public and private agencies before an application is filed. Evidence of the consultation must be filed with the application. The planning departments of affected counties and cities are to be consulted on scenic, aesthetic, recreation, land use, and access issues.
 3. Require applicants to include a discussion of land uses in the project area and the general compatibility of the proposed project with planned land uses. The applicant will be required to submit a completed land use information form, or a receipt that a request for land use information has been received by the local government.
 4. Use standards established in OAR Chapter 690, Division 51 in reviewing of hydroelectric applications. These standards require consistency with the land use recommendations of local governments except if to do so would violate the Commission's water resources policies and programs.
 5. Approve the hydroelectric facility if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:

Section III: Compatibility Procedures for: *Hydroelectric Permits and Licenses*

- a) The land use associated with the proposed water use is allowed outright under the land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or
 - b) Land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
6. Approve a permit or license with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
- a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - b) The proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or,
 - c) The applicant is pursuing a comprehensive plan amendment; to the satisfaction of the planning director.

The Department may withhold approval of a permit or license until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

7. Deny the license or permit if:
- a) The uses are not allowable under acknowledged comprehensive plans; and
 - b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
 - c) Local land use approvals have been denied.

Section III: Compatibility Procedures for: *Hydroelectric Permits and Licenses*

However, if the Commission decides that approving the permit or license or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Hydroelectric Permits and Licenses*

XII. WATER EXCHANGES: COORDINATION AND COMPATIBILITY PROCEDURES

- A. Public Notice** - The Department will provide notification of an exchange application in newspapers of general circulation in the areas of proposed water uses. The Director shall notify the planning director of local governments within which exchanged water will be diverted, conveyed, or used, of the application submittal.
- B. Public Interest** - The Commission's evaluation of a proposed exchange is required by statute to include consideration of the public interest as outlined in ORS 537.170 (5).

C. Land Use Compatibility - The Department will:

1. Accompany water use exchange applications and orders with a caveat: a) stating that approval does not guarantee compliance with statewide planning goals, and b) directs applicants to local governments for information on local plan requirements.
2. Require applicants to provide land use information specified in a form provided by the Department (see Appendix G) with the application.

The form may be modified to streamline administration as long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are compatible with respective acknowledged comprehensive plans. The completed form shall include the signature of planning director or responsible official of affected counties and cities.
3. In assuring compatibility with acknowledged comprehensive plans, the Commission will approve an exchange if all applicable statutes and rules governing Commission and Department action are met, and:
 - a) The proposed use is allowed outright under the land use and zoning designation, or is not regulated under acknowledged comprehensive plans; or
 - b) The use is allowable, with discretionary land use approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.

Section III: Compatibility Procedures for: *Water Exchanges*

4. Approve exchange orders with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:

- a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
- b) Land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
- c) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

The Department may withhold approval of the exchange until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

5. Deny the permit if:

- a) Proposed uses are not allowable under acknowledged comprehensive plans; and
- b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
- c) Local land use approvals have been denied.

However, if the Commission decides that approving an exchange or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

D Future Department Actions

The Department will develop and adopt administrative rules to govern water use exchanges. Set standards in the rule which require consideration of compatibility with local comprehensive plans.

XIII. APPLICATIONS FOR WATER USES IN ADDITION TO CLASSIFIED USES: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 82, Rules for Acceptance of Applications for Water Uses in Addition to Classified Uses.)

- A. Public Notice** - The Department will provide notice of an application submittal to the planning department of affected local governments, as well as other agencies and Indian tribes. Interested parties have 25 days in which to comment on the proposed use(s).
- B. Land Use Compatibility** - The Water Resources Department will:
1. Accompany water use permits and permit applications with a caveat: a) stating that the permit does not guarantee compliance with statewide planning goals, and b) directing applicants to local governments for information on local plan requirements.
 2. Require applicants to provide and use information specified in a form provided by the Department (see Appendix G) Applicants must submit: a) the form; or b) a receipt, signed and dated by a local government planning official, as evidence that a request for information is was received. If the completed land use information form is not received by the Department within 60 days of request by the applicant, the Director may presume that the application is compatible with comprehensive plans, and accept and process the application.

The form may be modified to streamline administration as long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are allowed under by the comprehensive plan and whether any required local land use approvals are pending, approved, or denied. The completed form shall include the signature of the planning director or responsible official of affected local governments.
 3. Require applicants for municipal water uses to submit information with the application showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).

Section III: Compatibility Procedures for: *Uses in Addition to Classified Uses*

- 4. Accept the application if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:**
 - a) The land use associated with the proposed water use is allowed outright under land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or**
 - b) The land use is allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.**

- 5. Accept the application and approve subsequent permits with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:**
 - a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and**
 - b) Land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or**
 - c) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.**

The Department may withhold acceptance of the permit application until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

- 6. Reject the application if:**
 - 1) Proposed uses are not allowable under acknowledged comprehensive plans; and**
 - 2) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or**
 - 3) Local land use approvals have been denied.**

Section III: Compatibility Procedures for: *Uses in Addition to Classified Uses*

However, if the Commission decides that accepting and application, issuing a permit or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Uses in Addition to Classified Uses*

**XIV. WATER DEVELOPMENT LOAN FUND - LOAN MANAGEMENT:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 90, Water Development Loan Fund.)

A. Land Use Compatibility - The Department will:

1. Require applications for water development projects to include: "...a statement of the appropriate city or county official stating that the proposed project complies with applicable land use regulations and other applicable regulations and ordinances."
2. Apply criteria as provided in OAR Chapter 690, Division 90, n determining whether to grant a loan from the Water Development Fund. These criteria prohibit the approval of a loan application that would "...conflict with any adopted local comprehensive land use plans approved by the Oregon Land Conservation and Development Commission."
3. Require applicants to submit land use information as required in a form provided by the Department (See Appendix G) with their application. The statement will indicate whether land uses which would be supported by the the proposed project are compatible with respective acknowledged comprehensive plans.
4. Approve a water development project loan if all applicable statutes and rules governing Commission and Department actions are met, and:
 - a) The proposed project is allowed outright under the land use and zoning designation(s), or is not regulated under acknowledged comprehensive plans; or
 - b) The project is allowable, with discretionary land use approval, under acknowledged comprehensive plans, and the applicant(s) has/have received all applicable local land use approvals and local appeals periods have expired.
5. If the project is allowable, with discretionary approval, under acknowledged comprehensive plans; and such approval is pending, the Commission will not approve a loan until the applicant has received all applicable local land use approvals and local appeals periods have expired.
6. The Commission will generally reject a loan application if:
 - a) The project is not allowable under acknowledged comprehensive plans; and

Section III: Compatibility Procedures for: *Water Development Loan Fund*

- b) The applicant is not pursuing applicable local land approvals to the satisfaction of the planning director; or
- c) Local land use approvals for the project have been denied.

However, if the Commission finds that approving a loan or taking any disputed action may be necessary to meet statutory obligations, it will follow dispute resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

B. Future Department Actions

1. The Department will amend application form or add criteria to administrative rules that would guide a loan applicant in preparing the statement of need presently required under OAR 690-90-020 (k). Criteria might include the following issues:
 - a. The extent to which the proposed project may be justified by projected growth under acknowledged local comprehensive land use plans (including public facilities plans);
 - b. Whether the proposed project is of a scale or capacity sufficient to meet the growth needs projected under local comprehensive land use plans; and
 - c. The cost-effectiveness of alternative water sources including the adoption of a regional approach in which available supplies are combined with those held by other purveyors.
2. Add standards to administrative rules that require an appropriate level of water use efficiency and justification of the approval based on reasonably expected water demand over an appropriate time period.

**XV. PAYMENT FOR PROJECTS WITH PUBLIC BENEFIT:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 100, Payment for Public Benefits in Water Projects.)

A. Public Notice - The Department will:

1. Provide public notice of each application for partial repayment of a project to "all persons and organizations which have filed a written request for notices with the Department.."
2. Require circulation of the applicant's summary report to the planning department of each affected county and city, along with state natural resource agencies listed in established rules.

B. Public Involvement - The Department will:

1. Hold a meeting with the applicant and state natural resource agencies to address questions and concerns regarding the project.
2. Hold a public meeting (if requested to do so by 10 persons or more) on the proposed payment request in the vicinity of the water project.

C. Land Use Compatibility - The Department will:

1. Require applicants to submit land use information as required in a form provided by the Department (See Appendix G).
2. Invite local planning officials to the meeting prescribed in OAR 690-100-025(2)(b)(B). Add local planning departments to the participants authorized to assist in developing findings on the proposal.
3. In assuring compatibility with acknowledged comprehensive plans, the Commission may recommend approval of partial repayment if:
 - a) The land uses supplied by the proposed water uses are allowed outright under the land use and zoning designations in acknowledged comprehensive plans; or
 - b) The land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.

Section III: Compatibility Procedures for: *Payment for Public Benefits*

- 4. If the proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans; and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director, the Commission will withhold its recommendation for approval of repayment until the applicant has received all applicable local land use approvals and local appeals periods have expired.**
- 5. If the proposed land uses are not allowable under the existing land use designation; and the applicant is pursuing necessary comprehensive plan amendments to the satisfaction of the planning director, the Commission will withhold its recommendation for approval of repayment until the applicant has received all applicable local land use approvals and local appeals periods have expired.**
- 6. The Commission generally will recommend denial of the repayment if: 1) the proposed uses are not allowable under acknowledged comprehensive plans; and 2) the applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or 3) local land use approvals have been denied. However, if the Commission decides that such repayment may be necessary to protect the public interest in the waters of the state, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.**

XVI. State Scenic Waterway Coordination: Current Coordination Procedures

Land Use Compatibility - The Department will:

Request the Parks and Recreation Department to provide evidence to the Water Resources Commission that coordination with local governments has occurred when Parks is proposing to designate scenic waterways, establish scenic waterway boundaries, [condemn property], or otherwise conduct scenic water way activities affecting land use.

Rely on the Parks and Recreation Department to ensure that scenic waterway activities, which require Water Resources Commission concurrence, comply with the Statewide Planning Goals and are compatible with comprehensive plans as prescribed in Parks' certified state agency coordination program.

Section III: Compatibility Procedures for: *Scenic Waterway Coordination*

2. Resolution of Land Use Disputes

(a) Introduction:

The Commission will follow the rules and procedures in its certified State Agency Coordination Program to ensure compliance with the Statewide Planning Goals and compatibility with acknowledged comprehensive plans. Land use disputes can be avoided through early coordination between the Department and affected local governments. However, land use disputes may arise despite preventive efforts on the part of the Commission and local governments. This section provides the context within which the Commission has adopted dispute resolution procedures as required by OAR 660, Division 30. A summary of the procedures follows this Introduction.

The Legislature has given authority to both the Commission and local governments to manage and protect water resources. State water law requires the Water Resources Commission to develop an integrated, coordinated state water resources policy to manage and protect the waters supplies of the state on behalf of the general public. [ORS 536.220 (2)]. ORS 536.360 requires state agencies and public corporations (i.e., cities, counties or districts organized for public purposes) to conform to the Commission's water resources policy. The Legislature vested the authority to manage water resources in a single agency to avoid conflicting actions and policies by the large number of public authorities with interests in water. [ORS 536.220 (1) (c)].

State law also requires local governments to "promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions." (ORS 197.005 (3)). One aspect of local land use planning is the development and protection of water resources. State land use law defines "land" to include both surface and ground water. The Statewide Planning Goals require each local government to address water resources in its comprehensive plan. In particular, Goals 5 and 6 direct local governments to inventory and provide protection measures for water resources comprehensive plans. Water is also of concern in Goals dealing with agricultural lands, forest lands, natural hazards, public facilities and services, the Willamette River Greenway, and coastal resource areas.

In passing these laws, the Legislature has created an "authority continuum" between state and local governments for managing water resources. This dual authority may increase the likelihood of disputes, but also provides opportunities for successful cooperation in managing water and land use in Oregon.

The Commission's SAC Program reflects this authority continuum. The Program provides a framework for achieving compliance with statewide planning goals and maximum compatibility with acknowledged comprehensive plans. Embodied in the framework is an explicit assumption that the Commission must also fulfill its statutory mandates to manage and protect the water resources of the state.

The Commission's dispute resolution procedures are summarized below. They were developed in close consultation with DLCD and local planning staff representatives. Upon completing these procedures, and others described in the SAC Program, the Commission will have fulfilled mandatory compatibility requirements outlined in ORS 197.180 and OAR Chapter 660, Divisions 30 and 31.

(b) Procedures:

(1) Determination of Land Use Disputes

A "land use dispute" is defined in Division 690, Division 60 (see Appendix F) as occurring when the Commission has:

- a. Completed procedures to ensure its land use program activities comply with the Statewide Planning Goals and are compatible with comprehensive plans outlined in Division 60 and other applicable sections of OAR Chapter 690; and
- b. Been informed by the planning director or other planning official of a county or city that the adoption, amendment, or implementation of a proposed Department land use program activity would not be allowable under, or would conflict with the policies or provisions of an acknowledged comprehensive plan; or
- c. Determined that the adoption, amendment, or implementation of a city or county comprehensive plan does not conform to the Commission's state water resources policy, would harm existing water rights, or would otherwise impair the public interest in water resources.

(2) Dispute Resolution Process

If a land use dispute arises, Department program staff will work with land use coordination staff to initiate dispute resolution procedures outlined in OAR 690-60-040. Department responses to land use related questions and issues will be channeled through land use coordination staff to ensure that SAC Program requirements are satisfied.

Section III. Land Use Dispute Resolution Procedures

In summary, the dispute resolution procedures of OAR 690-60-040 provide for an exchange of information between the Department and local government. The Department will explain the purpose and authorization for the disputed action to the local government. In turn, the local government must also provide justification for its position regarding the action by citing specific comprehensive plan policies and regulations. The Department will suggest and invite the local government to suggest alternatives that would allow the Department to act compatibly. Based on these negotiations, staff will recommend that the Commission consider: modifying the proposed action; taking an alternative action; abandoning the action; applying for a comprehensive plan or ordinance amendment; or requesting formal or informal LCDC mediation. If after considering these measures, the Commission determines it must take a disputed action to fulfill its statutory mandate, it may proceed after adopting written findings explaining its action.

C. New or Amended Land Use Programs

The procedures for assuring that new or amended land use programs comply with the goals and are compatible with comprehensive plans are set out in OAR 690 - 60 - 050. In summary, each new rule or rule amendment will be examined to determine if it significantly affects land use, using the criteria explained in Section E.1 .

Agency staff will complete the form in Figure 3 and forward the form to the land use coordination staff when they begin to write new rules or rule amendments. If land use is affected, the associated program or activity will be added to the list of land use programs in OAR 690 - 60 - 025. In addition, any new specific compliance or compatibility needs will be added to the rules and/or procedures governing the associated program. If it is found that an amendment disqualifies a program listed in OAR 690 - 60 - 025, the program will be dropped from that rule section.

If a new rule, rule amendment, or any other program change is found to affect land use, the Department will notify DLCDC and interested parties of: the date, time and location of hearings or other agency action; the manner and date by which comment may be submitted to the Department; an explanation of how the rule qualifies as, or affects the status of, a land use program; and a description of any additional actions proposed to assure goal compliance and comprehensive plan compatibility.

Figure 3
Land Use Check List for New Rules or Rule Amendments

Proposed Rule Number / Title: _____

- Yes No 1. The proposed rule restricts, controls, or allows specific quantities of types of water uses.
- Yes No 2. The proposed rule establishes policy which will probably affect water availability or future uses of water.
- Yes No 3. The proposed rule involves approving grants or loans for projects to divert, convey, apply, or protect water resources.
- Yes No 4. The proposed rule requires actions other than data-gathering, reporting, or enforcement of existing water law.

If you checked "Yes" to any of the above, the rule probably affects land use. Additional rule language or procedures may be needed to assure compatibility with comprehensive plans. Please contact the land use coordination staff to discuss further action. If you checked "No" to all of the above, the rule probably does not affect land use. Please keep this form as documentation that land use impacts were considered as you developed the rule. Also, please remember that even if the proposed rule is not a land use program, keeping local governments informed about the activity can benefit both the Department and the local government.

Section III. Land Use Dispute Resolution Procedures

Section IV: Coordination with Other State and Federal Agencies and Special Districts

This section describes in general terms the Department's land use coordination activities with state and federal agencies and special districts. This coordination currently takes place as a normal part of many Department programs. Coordination with agencies and districts, for the most part, is integrated into the land use program activities and procedures described in other sections of this Guide.

A. State Agencies

The Department coordinates with other state agencies when carrying out land use programs such as instream water rights issuance, basin planning, and reservations of water for future economic development. These state agencies include the Oregon Departments of Fish and Wildlife, Parks and Recreation, and Environmental Quality. Procedures for coordination with these agencies are described in Section III.

Several other important mechanisms have been established for coordination between state water resource agencies. The Strategic Water Management Group (SWMG) is composed of the directors of state natural resource agencies, including those most frequently involved in Department land use programs. SWMG provides a forum for raising, and reaching consensus on, water policy issues. The Department is a member of SWMG and also provides its administrative support. Another important coordination tool is the development of the Biennial Water Program. As the short-term implementing framework of the Oregon Water Management Program, the Biennial Water Program identifies water resources issues to be dealt with in a given biennium and assigns tasks addressing those issues to the appropriate state agencies. The Department produces the Biennial Program in close cooperation with the agencies most often involved in Department land use programs.

In addition, each biennium the Director of the Water Resources Department will report to the Director of the Department of Land Conservation and Development on the effectiveness of WRD's SAC Program. The Director will also recommend changes to either agency's rules to improve coordination between the agencies and local governments.

B. Federal Agencies

Federal agencies are usually not extensively or significantly involved in Department land use programs. Federal agencies, such as the Forest Service and the Bureau of Land Management, apply for water use permits much like other applicants. Permits are usually requested for relatively small quantities of water for livestock, campground, storage, or domestic uses. Applications for water uses on federally owned lands are not subject to land use information requirements as are other applications. Coordination with federal agencies relating to land use programs is on a case-by-case basis. The bulk of the Department's extensive coordination with federal agencies takes place in regard to non-land-use programs dealing with technical investigations, technical assistance, and advice on water resource management issues.

C. Special Districts

The Department deals directly with ditch companies and irrigation, drainage, water control, water improvement, and diking districts. There are over 200 of these bodies in the state. The Department's interactions with these districts consists mostly of processing new permit applications and transfers and tracking information submitted under the water use reporting program. The Department will continue to coordinate with districts in the customary manner. The Department will increase its efforts to coordinate with districts through its basin planning process, as described in Section III . The Department also hopes to work with DLCD, counties, and districts to update or develop the mandatory planning agreements between counties and districts required by ORS 197.185. In addition, the Department will add the Special Districts Association of Oregon to appropriate mailing lists and provide districts with information on programs or water resources upon request, as resources allow and priorities dictate.

D. Interagency Coordination Contact

The land use coordination staff is responsible for much of the Department's interagency coordination. The names, address, and phone number of the land use coordination staff are provided in Appendix H.

**Section V: Department Program for Coordination with and
Technical Assistance to Local Governments**

A. Introduction

State law requires the Commission to make information on Oregon's water resources available to the public, government agencies, and public corporations. Accordingly, the Department is extensively involved in the gathering, analysis, and distribution of water resources information. Through the SAC Program, the Commission commits itself and the Department to continued coordination with local governments to assist local planning efforts and to strengthen the Department's water resources management programs. The Department will provide technical assistance and inform local governments of water resources conditions and issues. The Department will also participate in periodic review and amendment of comprehensive plans; review and comment on local project proposals; and manage water rights reporting requirements.

Land use coordination staff are responsible for ensuring that Department activities uniformly and systematically meet the goals, objectives, and requirements of the SAC Program. Other program staff will contact the land use coordination staff regarding activities which involve land use issues or working with local planning officials. Land use coordination staff will also be consulted regarding citizen inquiries that involve land use issues. When water resources assessment or studies reveal information that could significantly affect water availability, land use coordination staff will participate in developing management strategy alternatives. The names of the land use coordination staff are provided in Appendix H.)

The Department will generally follow the procedures outlined below, as appropriate to meet the needs of a particular locality or region.

B. Procedures for Cooperation and Technical Assistance

1. Inform Local Government Planning Departments of Water Resources Issues and Water Resources Department Activities

The Commission has, in adopting this State Agency Coordination Program, significantly increased its efforts to inform local planning departments of water issues and Department activities. The Commission amended its administrative rules to include local planning departments its noticing requirements for water use approvals. The Commission has also established procedures to assure that its actions comply with Statewide Planning Goals and are compatible with acknowledged comprehensive plans. In the event a land use dispute arises, the Commission's resolution procedures will guide the Department's efforts to resolve the problem. The Commission has also established numerous procedures to enhance the level of local planning department involvement in basin planning and in developing management strategies for critical ground water areas.

In many instances, a local government will not have an official planning department or planning director. In these cases, the Commission and Department will work closely with local elected bodies, public works directors, city engineers, clerk recorders, and other local officials responsible for the preparation, maintenance and implementation of comprehensive plans. An up-to-date list of local planning department contacts is available in the Planning Section, along with a computerized mailing list in Word Processing Section of the Department.

To inform local governments of water resources issues and Department activities, staff will:

- (a) Offer to brief affected local planning departments and/or their commissions about ongoing or upcoming water resource assessments and studies;
- (b) Consider local input in preparing the scope of Department studies;
- (c) Offer to interpret and discuss the results of assessments and studies;
- (d) Provide copies of water resources reports and studies as requested;
- (e) Invite local planning staff to attend inter-agency meetings and site-visits as appropriate.
- (f) Notify the planning departments of affected counties and cities of pending actions relating to the Department's land use programs.
- (g) Invite local planning officials to participate in Department work groups and advisory committees which are dealing with issues that have significant land use implications.
- (h) Consider submitting announcements and articles describing WRD activities for publication in local government and land use planning newsletters.

- (i) **Develop and distribute model policy and ordinance language appropriate for inclusion in comprehensive plans, designed to promote water resources management and protection through the land use planning process.**

2. Participation in the Periodic Review and Amendment of Comprehensive Plans

(a) Periodic Review

Upon receipt of DLCD's periodic review notice, the land use coordination staff will send the Department's Periodic Review Guide (see Appendix I.) to the applicable planning department. This guide identifies numerous water-related issues which local planners should consider in updating their comprehensive plans. Staff will follow-up the mailing by contacting local planning staff to answer questions, provide information, and schedule meetings to discuss issues of concern. Staff will also take the following actions to the extent issues warrant and resources allow.

- (1) **Identify and explain relevant Department programs and plans adopted since the date of acknowledgment or previous periodic review;**
- (2) **Provide information on trends in local water-related conditions and issues which may affect assumptions embodied in comprehensive plans;**
- (3) **Obtain and review applicable land use plan policies, ordinance sections, and maps. Particular attention will also be directed at reviewing local public facilities plans for consistency with state water policies and plans. Staff will assess the adequacy of water resource inventories and protections, and whether the comprehensive plan designations and projections reflect water supply availability and constraints.**
- (4) **Suggest possible amendments to comprehensive plans that would enhance water management and protection consistent with the Statewide Planning Goals and state water resources policy.**

- (5) Provide materials for use by local governments in their planning efforts. Such materials might include:
- basin maps for the planning area;
 - maps displaying water classification and withdrawal information;
 - a description of the Commission and its mission;
 - a copy of the Commission's coordination rule, OAR Chapter 690, Division 60;
 - the Oregon Water Management Program, including applicable basin programs, policies, and explanatory materials;
 - a list or copies of relevant water resource investigations, reports, studies or other information (i.e., U.S. Geological Survey statistical summaries of streamflow, water atlases, or water conservation publications);
 - an explanation of how local planners can make use of these materials;
 - a summary of water resources conditions, issues, concerns, and conditions in the planning area;
 - watershed management information case studies;
- (6) Coordinate with Governor's Watershed Enhancement Board staff in addressing issues related to watershed management and enhancement;

(b) Amendment of Comprehensive Plans

Periodic review of comprehensive plans occurs approximately once every seven years. However, local planning agencies amend their comprehensive plans on an ongoing basis to improve the planning process and to reflect changes in the planning area. To coordinate the management of water resources and land use, the Commission authorizes the Department to review and participate in the comprehensive plan amendment process.

(1) Review and Comment on Proposed Plan Amendments

The Department will review proposed amendments prior to action by local decision-making bodies. The Department's land use coordination staff will:

- monitor proposed amendments published in DLCD's bi-weekly lists;
- circulate lists for review by program staff in other sections, regional offices, and watermasters' offices;
- determine, in consultation with other program staff, which amendment proposals warrant further research and attention;
- facilitate communication, information transmittal, meetings, site visits, and correspondence with local planning department and DLCD staff,
- consult with program staff to prepare advisory or position statements on proposed amendments;
- participate in preparing official testimony, if needed, for submittal at local hearings or to appeals at the state level.

(2) Department-Initiated Comprehensive Plan Amendments

In addition to the standard review of plan amendment proposals described above, the Commission may request local governments to amend comprehensive plans in order to protect and better manage water resources. Such requests may be submitted:

- during periodic review of comprehensive plans; or
- pursuant to the procedures for resolving land use disputes outlined in OAR 690-60-040 and described in this procedures guide; or
- to correct inaccurate or outdated information; or
- if the Commission finds such action necessary to comply with statewide water resources policy or otherwise protect the public interest in Oregon's water resources.

In such instances, Department land use coordination staff will work with other program staff to assess the issues and problems, craft the desired plan and ordinance amendments, coordinate with affected local agencies, and present the proposed amendment to local and state decision-making bodies.

(3) Coordination and Technical Assistance in Public Facilities Planning

The Department will coordinate with local governments, other state agencies and districts in public facilities planning. Currently, the Department issues loans from the Water Development Fund for various types of water supply projects. Administrative rules to assure that the issuance of loans complies with the goals and is compatible with comprehensive plans are contained in OAR Chapter 690, Divisions 60 and 90. Procedures for ensuring compliance and compatibility are also found in Section III of this Guide.

The Department is also represented on a task force created by the Strategic Water Management Group (SWMG) to identify and evaluate strategies for funding and regionalizing municipal water supply development, treatment and distribution. The findings and recommendations of the task force as adopted by SWMG will feed into the Department's technical assistance to local governments in preparing public facilities plans.

The Department will continue to participate, as requested by local agencies and water providers, in developing long-range water supply plans and strategies to maximize water use efficiency. Currently, the Department is working with a consortium of representatives from agencies and districts in Yamhill, Polk, Benton, and Lincoln Counties to develop a long-range water supply plan for the four-county region.

The Department will also be adopting rules allowing water providers, having merged districts or formed a water authority, to pool their water rights and apply them flexibly within a pre-determined service area. Municipal water rights can then be severed from appurtenant land and marketed for municipal uses. These rules will reflect the need to coordinate the process with the planning agencies of affected local governments.

(4) Review of Project Proposals

The Department will review individual development project proposals and provide pertinent water resources information to local governments, applicants, organizations, and individuals upon request. If necessary, program and/or land use coordination staff may visit the site under consideration to evaluate the conditions and the need for additional Department involvement. Due to constraints on Department staff resources, and the availability of private consultants to provide related services, the Department will focus its efforts on providing local governments with more generic options for managing and protecting local water resources through plan policies and ordinances.

The Department is unaware of any LCDC rule or similar policy interpretation establishing any specific compliance requirement for the Department of any other applicable state agency to meet implementation Requirement 9 in Goal 16.

In the event that it becomes necessary to for the Department to comply directly with this Goal 16 requirement, the Department will adhere to the procedures set forth in OAR 690-60-030, Compliance with Statewide Planning Goals.

Department Involvement in Coastal Management Program

The Department recognizes that the Oregon Coastal Management Program (OCMP) is part of the state program for coordinated land use planning. The OCMP is a partnership between local governments and state and federal agencies to resolve general and often competing interests through the acknowledgement of coastal city and county comprehensive plans.

The OCMP is based primarily on the Oregon Land Use Planning Act (ORS Chapter 197) and its principal elements, the Statewide Planning Goals and acknowledged comprehensive plans. In addition, the OCMP also is based upon the statutory authorities of various state agencies, including the Department of Water Resources.

The specific WRD statutory responsibilities listed in OCMP document include the following:

- a. Policies and programs for the use and conservation of surface and groundwater resources;
- b. Permits issued for the appropriation of surface and groundwater resources;
- c. Permits issued for dams not regulated by the state Energy Facility Siting Council;
- d. Coordination of river basin programs with comprehensive plans;
- e. Approval of minimum streamflows now redefined as instream water rights.;
- f. Designation of critical groundwater areas; and;
- g. Regulation of water withdrawals.

The above authorities, programs and actions are implemented by Chapter 690 of the Oregon Administrative Rules.

Section V: Cooperation and Technical Assistance to Local Governments

Federal Consistency

The Department, in cooperation with DLCD and other affected state and federal agencies, will advise DLCD as needed on the consistency of federal actions and activities which may affect Oregon's coastal zone. In carrying out its responsibilities under the federal consistency process, the Department will follow the procedures and requirements contained in LCDC's federal consistency rule, OAR Chapter 660, Division 35.

OCMP Strategic Plan

The Department will participate with DLCD and other OCMP agencies, to the extent resources allow, in the development and maintenance of a five year strategic plan for Oregon's coastal zone.

690-005-0025

Applicability

The provisions of OAR 690-005-0010 through 690-005-0060 apply to actions taken by the Department pursuant to the following land use programs:

- (1) Applications and Permits (OAR Chapter 690, Divisions 310 - 340).
- (2) Appropriation and Use of Water for Hydroelectric Power Projects (OAR Chapter 690, Division 51).
- (3) Water Right Transfers (OAR Chapter 690, Division 15) except for those:
 - (a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;
 - (b) Which involve changes in place of use only;
 - (c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and
 - (d) Which involve irrigation water uses only.
- (4) Water Exchanges.
- (5) Applications for Uses in Addition to Classified Use (division 82).
- (6) Use of Conserved Water (Division 18).
- (7) Instream Water Rights and Reservations of Water for Economic Development (OAR Chapter 690, Division 77).
- (8) Review of Applications for Minimum Perennial Streamflows (OAR Chapter 690, Division 76).
- (9) Initiation of Proceedings for Determination of a Critical Ground Water Area (OAR Chapter 690, Division 10).
- (10) Withdrawal of Water from Further Appropriation.
- (11) Statewide Policy Formulation.
- (12) Basin Planning.
- (13) Payment for Public Benefits in Water Projects (OAR Chapter 690, Division 100).

DOUTHIT Susan M

From: Kimberley Priestley <kjp@waterwatch.org>
Sent: Thursday, July 17, 2014 12:12 PM
To: DOUTHIT Susan M
Cc: FRENCH Dwight W
Subject: T-11833, TID temporary District Transfer, WaterWatch comments in opposition
Attachments: TID comment attachments.pdf; tid temporary transfer final2 july 2014 pdf.pdf

Hi Susan,

Attached please find (1) WaterWatch's comments in opposition to TID's temporary district transfer application T-11833 and (2) supporting attachments.

If you have any problems opening the attachments please let me know.

Also, if you could confirm receipt I would appreciate it.

Thank you, Kimberley

--

Kimberley Priestley
WaterWatch of Oregon
213 SW Ash, Suite 208
Portland, OR 97204
ph: 503-295-4039, x 3
www.waterwatch.org



July 17, 2014

Susan Douthit
Water Resources Department
725 Summer St NE, Ste A
Salem, OR 97301-1271

RE: Comments in opposition to District Temporary Transfer Application T-11833, Tumalo Irrigation District

Dear Ms. Douthit,

WaterWatch of Oregon opposes transfer application T-11833, in which Tumalo Irrigation District (TID) requests a district temporary transfer of storage for a total of 108 AF to two reservoirs.

WaterWatch is river conservation group dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation and other instream values. In commenting on this transfer application, WaterWatch is representing the general public interest in the water resources of this state, as well as the specific interest of WaterWatch's members and the organization itself. The interests represented by WaterWatch and its members are multifaceted and include, but are not limited to: (1) an interest in ensuring enforcement of the water laws; (2) an interest in the development and promotion of water policies that protect instream values, including fish, water quality, and recreation; and, (3) an interest in the long term implications that the WRD's decision on this transfer application will have on other transfer requests throughout the state. WaterWatch submits the following comments urging denial of T-11833.

Proposed Temporary District Transfer: TID is proposing to move 108 AF of water stored in Tumalo Reservoir under certificate 76684 to two new reservoirs built by KC Development Group (KCDG). One reservoir will support water skiing, the other will provide aesthetic features for luxury homes. These are permanent reservoirs. These two reservoirs do not have underlying reservoir permits. TID is seeking to effect this change via the temporary district transfer statute, asserting that the requested change is a "change in place of use".

The WRD should deny TID's temporary transfer application for the following reasons:

1. **The district temporary transfer statute does not allow for the transfer of a storage right as a change in "place of use":** The transfer statutes, as a whole, do not allow the transfer of storage rights as a loophole to existing 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.*

District place of use transfers, on the other hand, are limited to moving water from the original lands where the water was put to beneficial use under the terms of the permit to new lands. In other words, they are limited to changing the lands to which the water is applied to beneficial use. *See* ORS 540.570 (1).

Statutory construction makes clear that a “change in place of use” is intended to be limited to moving the right to use water on the lands in the original certificate to new, alternate lands. For instance, the temporary district transfer statute defines changes in place of use as allowing “transfer the place of use of water appurtenant to any land within legal boundaries to equal acreage elsewhere within legal boundaries of the district”. ORS 540.570(1). The statute further stipulates that a temporary transfer can only take place if “the rate, duty and total number of acres to which water will be applied under the transfer do not exceed existing limits on the water use subject to transfer”. ORS 540.570(1)(a). And that “the land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made”. *Id.* at (c).

Not only is the construct of the statute clear, but the legislative background makes this clear as well. The temporary district transfers were adopted by the Oregon Legislature in 2003 to grant flexibility to the Districts in applying irrigation water to different lands within their districts, for one season only. The Oregon Water Resources Congress was the sponsor of HB 3281, and according to a memo they delivered to Chair Jenson and the Members of the House Water Committee, the provisions of the bill “simply allow the irrigation district manager to better manage the water rights to better serve the water users in the district and enable them to use their water in the best manner to produce the best crops given the soil, weather and water conditions of that season.” *See* Memo, re: HB 3281—District Temporary Transfers & Pilot Project from Kristina McNitt, OWRC, to Chair Jenson and the House Water Committee, at 2. To use this process (which was designed to provide flexibility for crop production within irrigation districts) as a loophole to get water to an unpermitted new reservoir for a water skiing pond and another for aesthetic feature for luxury homes (uses that have absolutely nothing to do with usual and ordinary irrigation district functions), is not consistent with either the construct of the statute or the intent of the legislature in granting irrigation districts this flexibility.¹

Again, the storage right in and of itself cannot be transferred under the district temporary transfer statutes. The district’s reliance on the temporary district transfer statute to provide water to KCDG is in error. The WRD must deny this request.

¹ It is also not consistent with TID’s stated intent for the use of this water stored in Tumalo Reservoir. Certificate 76684 was originally granted to allow storage for irrigation only. In 2000 TID applied for a transfer of this water to a storage right for “multipurpose” storage. According to their application (T-8557) “The purpose of this transfer is to include in the allowable uses of Upper Tumalo Reservoir all of the usual and accustomed uses of water made in an irrigation district”. *See* transfer application T-8557. Supplying water for a water ski lake and a luxury home aesthetic feature is arguably not a usual and accustomed use of water made by an irrigation district.

the right being transferred during the irrigation season in which the change is made. *Id* at (c). TID is requesting a change in use for one year, not one irrigation season.⁵ TID is not proposing to transfer acreage under its application, rather they are proposing to transfer the supply of storage water at Tumalo Reservoir to two alternate, unpermitted, storage projects. TID is not proposing to deprive lands from which the water is being transferred from receiving any water, but rather is only proposing to decrease the amount stored in the existing statute by 108 AF. As such, TID's proposal does not meet the statutory requirements for a change in place of use, even if such a thing were allowed (which we do not believe it is).

4. **The WRD cannot protect against injury or enlargement:** The OWRD cannot approve a temporary district transfer application that will cause injury to another existing water right or enlarge the underlying water right. By rule, 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. OAR 690-380-0100(3). Enlargement means an expansion of a water right, including but not limited to, diverting more water than is legally available at the original point of diversion and failing to keep the original place of use from receiving water from the same source. *Id.* at (2).

The application file notes that WRD will be requiring a "staff plate" at both upper Tumalo Reservoir at each point of diversion (new and existing).⁶ See Transfer application, pg. 3, Measurement Condition Information for the Applicant. This in and of itself cannot protect against injury. While e-mails from the watermaster in the application file state that TID already measures the inflow and outflow of Tumalo Reservoir and will measure the inflow of the KCDG reservoirs, it is notable that there is no condition of use on either the original reservoir permit or proposed via the WRD (for the transfer) on the new reservoirs that would require measurement of both inflow and outflow of all three reservoirs. Moreover, while we appreciate the watermaster's representations about current measurement in this regard, we could find no reports in the WRD's reporting system for TID's Upper Tumalo Reservoir Storage Certificate 76684. Irrigation districts must measure and report their water use under each water right on an annual basis by statute and rule. ORS 573.098, OAR 690-085-0010.

Additionally, 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 attached e-mail from Jeremy Giffin, 3/20/14. It is unclear how this leakage affects availability in the reservoir, and/or supply of existing secondary rights that have access to Tumalo Reservoir water and how the proposed transfer of 108 af will affect those water right holders. Moreover, given lack of reporting to the WRD, it is unclear how much water TID is actually diverting and storing on an annual basis under its water right. If the transfer were to allow it to

⁵ TID contract with KCDG stipulates the agreement to supply water to KCDG is for one year, not one irrigation season.

⁶ There was no detail provided in the file as to how this would achieve the desired result, nor was there any description of how WRD would ensure its accuracy (i.e. would they do a bathymetry or other study to determine whether a staff plate is adequate to determine the volume of the reservoir?) .

2. **KCDG's unpermitted reservoirs need to obtain reservoir permits before water from Tumalo Reservoir can be used to fill them:** 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)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 or 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. KCDG must apply for reservoir rights for the two reservoirs at issue.³ If a reservoir right is granted, Tumalo Reservoir stored water could then be accessed via a secondary right to provide water to the new reservoirs. ORS 537.400.⁴

A temporary district transfer is not the correct process to make KCDG's two unpermitted reservoirs legal. To allow such a transfer would not only allow a new reservoir to be built without the benefit of the thorough public interest review that applies to new reservoir applications, but would also set incredibly damaging precedent statewide. Presumably if the theory being advanced by TID via their temporary 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 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.

3. **Even if a transfer of a storage reservoir under a "place of use" change were allowed by law, the TID request does not meet the statutory standards:** The district transfer statute makes it clear that for one irrigation season only, a district may temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to equal acreage elsewhere within the legal boundaries of that district. ORS 540.570(1). The statute further requires, among other things, that the land from which the water use is being transferred does not receive any water under

² It is our understanding that the WRD has allowed KCDG to fill the reservoirs in advance of a decision on the temporary transfer request. ORS 537.130(2) makes clear that except for limited exempt uses outlined in the statute (which this is not), a person may not use, store or divert any water until after the WRD issues a permit.

³ An email from Jeremy Giffin, 6/6/14 states that the smaller pond has been a "bulge" in the system for the 60 acres of water rights around the pond. There is no statutory authority for the concept of "bulges in the system". See arguments in #2.

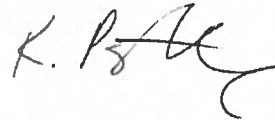
⁴ The only exemption from this statutory requirement for secondary permits to access already stored water is "water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water permit or certificate for the reservoir" and water for emergency firefighting. OAR 690-340-0010(2)(d) and (3). Troughs are defined as "a long shallow often V-shaped receptacle for the drinking water or feed of domestic animals". See Webster's Third Dictionary. KCDG's reservoirs do not fall within the definition of trough and thus cannot utilize this exception.

store more water than it can currently, which it presumably would, then this would in fact constitute enlargement and would in fact cause injury to other water right holders who are currently relying on water from Tumalo Creek. WRD should investigate reservoir leakage and the effect on supply as part of its injury and enlargement analysis.

WaterWatch does not believe that the temporary district transfer statutes allow the proposed change. However, if WRD were to approve this transfer, to ensure that any action taken by TID with regard to supplying water to KCDG does not cause injury and/or enlargement, the WRD would need to require measurement and reporting of inflow and outflow at all three reservoirs, staff plates at all three reservoirs and documentation and accounting of reservoir leakage at Upper Tumalo Reservoir. Moreover, WRD should an affirmative commitment from TID to abide by the "one fill" doctrine that applies to storage in the state of Oregon. Additionally, as the district temporary transfers are restricted to one irrigation season, the WRD must order evacuation of the storage facilities at the end of the season (October 2014). This should be a condition of the transfer (if approved) so all are clear on this point, including KCDG. Without conditions of use that require all of these provisions, the WRD cannot protect against injury both to instream and out of stream rights of Tumalo Creek, and patron rights/use within the district. Nor can it protect against enlargement. Moreover, until TID is in compliance with existing law regarding measurement reports, WRD should not approve any changes that would make tracking TID water even more nebulous.

Conclusion: As noted above, temporary district transfer statutes do not allow for the change in place of use of an existing storage project. The proposed change is not only contrary to law, but it would set precedent that could have devastating effects across the state. It would also injure other water right holders and result in enlargement. The WRD should deny this application for the reasons outlined above.

Sincerely,



Kimberley Priestley
WaterWatch of Oregon

Cc: Dwight French, WRD

540.570

11833- Tumalo Res

- land use - ~~req~~ typically not req. b/c IR
 - upon NOT IR - ^{stats + rules} written w/a tone of IR
 - w/in boundaries - ^{better} AOI
 - land from which is trans doesn't rec.
- 540.570(i)C
- upon submission
 - revert upon expiration
 - conflicts?
 - res safety triggers

^{Temp}
- App needs upd. (↓)

Bulge - used as an in-system facility during the season to handle water allowed down existing right-surface?
Usual in rotation systems
- 10 days for AG

acres \times max depth = AF
then by 0.4 (correction factor)

What's max depth?

Tumalo

- ? Is the ST for MP not authorized outright?
- ? CW needing a home *still needs land use
- ~~A ST from ST for MP to~~
- Land Use Form - is/is not allowed outright if not, = discretionary. if discretionary is t.u. being pursued?

~~Dwight~~ 3:30
TID - 11833-ST
11834-IR
- land use ?
- rules aren't

written w/ this in mind but not "forbidden"

- PN - 7/17

~~FVID.~~

Crouse need contact

SW trip

21
25 3 drawers
shelf

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<input type="checkbox"/>	Company	temp-water goes back at end of season		
<input checked="" type="checkbox"/>	Date	Division 5	Message:	April 2013
<input checked="" type="checkbox"/>	Phone			
<input type="checkbox"/>	Caller			4/5
<input type="checkbox"/>	Company	Liz - KC		Aug 2013 - 12 days
<input checked="" type="checkbox"/>	Date	allowed outright	Message:	
<input checked="" type="checkbox"/>	Phone			
<input type="checkbox"/>	Caller			
<input type="checkbox"/>	Company			



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
janet.neuman@tonkon.com

July 14, 2014

**VIA E-MAIL - publicrecords@wrdd.state.or.us
& FIRST CLASS MAIL**

Oregon Water Resources Department
Oregon Records Request
725 Summer Street NE
Salem, OR 97301-1271

Re: Public Records Request

Dear Sir/Madam:

I represent Thomas and Dorbina Bishop, who live at 63382 Fawn Lane, Bend, Oregon 97701, within the Tumalo Irrigation District ("TID" or the "District") boundaries. The Bishops' property has appurtenant water rights under TID's Certificate 74146.

Pursuant to ORS 192.410, *et seq.*, and OAR 690, Division 3, this letter is a request for copies of public records in the possession or control of the Water Resources Department, including the Salem office, the Bend office, or any other location where relevant documents may be located. For purposes of this request, the term "public record" is defined by ORS 192.410(4) and (6) to include:

"any writing that contains information relating to the conduct of the public's business . . . prepared, owned, used or retained by a public body regardless of physical form or characteristics;

* * *

'[w]riting' means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings."

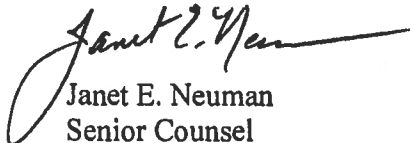
On behalf of the Bishops, I hereby request the following public records:

1. All public records pertaining to Transfer T-11833, filed by TID.
2. All public records pertaining to Transfer T-11834, filed by TID.
3. All public records pertaining to any other transfer application, besides the two listed above, filed by TID since June 10, 2014.
4. All public records not already produced in response to Requests 1-3 above pertaining to any communication with TID at any time about moving water stored at Upper Tumalo Reservoir to another storage location.
5. All public records pertaining to Harris Kimble, Nancy Kimble, Eric Cadwell, Brianna Cadwell, and/or the KC Development Group, LLC (and its affiliates, present or former directors, officers, employees, members, managers, agents, attorneys, consultants, advisors, representatives, and all other persons acting or purporting to act on KCDG's behalf), dating from 1990 to the present, including, without limitation, all records pertaining to any inquiries about obtaining a permit or any other form of permission to store water on property near Klipple Road within the TID boundaries.
6. All public records pertaining to how the "bulge-in-the-system" ("BIS") concept is calculated and applied in Water Resources District 11, including, without limitation, any guidance on the circumstances under which BIS storage is allowed, calculations on permissible amounts of BIS, how long "bulges" may be stored, and when BIS storage is required to be emptied.
7. All public records pertaining to field visits and/or enforcement action of any kind relating to complaints about BIS storage or violations of applicable BIS storage limitations within Water Resources District 11 from the year 2011 to the present.
8. All public records pertaining to the application of the BIS concept to water storage on the KCDG property referred to in number 4 above, including, without limitation, any calculations, records or notes of field visits, or evidence of permission to store water, whether prior to, on, or after June 11, 2014.
9. All public records pertaining to TID's Transfer T-8557 requesting a change in type of use for the water stored in Upper Tumalo Reservoir and resulting in the issuance of Certificate 76684.

10. 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.
11. All public records pertaining to any permits, transfer approval orders, or certificates that have been issued to irrigation districts for storing district water on private property that is not owned or leased by such district.
12. All public records pertaining to TID's Agricultural Water Management and Conservation Plan(s), *other than* the 2000 and 2005 plans themselves.
13. All public records relating to the definition of a reservoir, pond, or other water storage facility under ORS 537.130 or ORS 537.400.
14. All public records pertaining to any WRD communications about or approvals of water storage and/or use in a lake located at 61330 Gosney Road, Bend, Oregon 97702, on property owned by Baney Corporation, 475 NE Bellevue Ave, #210, Bend, Oregon 97701. This property is further described as Tax Lot 1001 (Account 180160) on Deschutes County Tax Map 18130800000, located in the SE 1/4 of Section 8 of Township 18 South, Range 13 East.

Please advise me of any fees or charges (by paragraph number) for complying with this request so I can confirm whether my clients are prepared to pay the costs associated with your response to the request. To the extent that any responsive records are accessible online, please so indicate. If you have any questions concerning this public records request, please call me at (503) 802-5722. Thank you very much.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh

037351/00001/5696577v1

DOUTHIT Susan M

From: Juanita Hryciw <juanita.hryciw@tonkon.com>
Sent: Thursday, July 17, 2014 3:25 PM
To: DOUTHIT Susan M
Cc: Janet Neuman
Subject: Supplemental Comments on Transfer Application 11833 [IWOV-PDX.FID840258]
Attachments: 7-17-14 Letter to WRD - Supplemental Comments on Transfer Application 11833.PDF

Please note that this e-mail is being sent on behalf of Janet E. Neuman. Thank you.

Susan Douthit,

Attached is Janet E. Neuman's letter to you dated July 17, 2014.

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, OR 97204
503.802.5722 | FAX 503.972.7422
janet.neuman@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.



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
janet.neuman@tonkon.com

July 17, 2014

VIA E-MAIL AND U.S. MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Supplemental Comments on Transfer Application 11833

Dear Ms. Douthit:

As you know from my earlier communications, I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID" or "the District").¹ I submitted brief comments on the Bishops' behalf on the District's Transfer Application 11833 on June 23rd. This letter contains additional and expanded comments relevant to this proposed transfer. (I have also submitted separate comments for the Bishops on the District's Transfer Application 11834.) For the reasons outlined in this letter, I urge the Water Resources Department (the "Department") to adjourn this transfer proceeding and/or deny the transfer application, to require a permit for the water storage facility which is the subject of this proceeding, and to pursue any and all appropriate enforcement action pertaining to this facility.

Since a picture can be worth a thousand words, I'd like to first direct your attention to the enclosed photographs (Exhibit C). Some of these photographs were taken by my

¹ The Bishops are also represented by Jennifer Bragar at the Garvey Schubert Barer firm on other aspects of this project, including land use issues and public contracting matters; we are coordinating our efforts on behalf of the Bishops. On June 4, 2014, Ms. Bragar filed a Code Enforcement Complaint with Deschutes County on the Bishops' behalf ("Code Complaint"). On June 16, 2014, Ms. Bragar served notice on TID of violations of the public contracting laws ("Public Contract Notice"). I have attached copies of these documents for the Department's information as Exhibits A and B, respectively, and I will refer to them when relevant later in this letter; to avoid duplicate reproduction of documents, I have omitted the attachments to these two exhibits.

client, Tom Bishop; others were taken by his son, Gene Bishop, and by one of his neighbors. Taken from May to July, the photos show the construction of two substantial reservoirs on land owned by Harris Kimble, Eric Cadwell, and/or the KC Development Group, LLC (collectively, "KCDG") on land immediately adjacent to the Bishops' property. The photographs illustrate the scale and speed of this project and set the context for these comments.

In only a few months, from early spring to the beginning of July, KCDG built and filled two large water storage facilities without any kind of meaningful agency review of the project. KCDG does not have a water permit allowing construction and filling of the reservoirs, nor does it have any land use approval for the development of the property. KCDG constructed their ponds on property formerly used for mining rock; the property is now zoned for rural residential use with wildlife management and landscape management overlays. One of the ponds (identified as the northerly pond in photos C-1 and 2) is apparently intended as a recreational fishing pond to serve KCDG's proposed housing development. The other pond (identified as the water ski lake in photos C-8 through 15) is intended and designed for use as a water ski lake serving the development. A dozen or more heavy construction vehicles operated in full shifts for several weeks to construct these facilities, excavating, filling, and moving tens of thousands of cubic yards of material to create the ponds and build a road.² All of this activity was carried on without any review or approval other than a one-month rock crushing permit from Deschutes County.³ During construction, tens of thousands of gallons of water were pumped from a well on the property into an elevated water tank, and then used to fill tanker trucks for dust control and other construction purposes (see photos C-3 and 4).⁴ The northerly pond was filled with water during May and the water ski lake was filled beginning in the last week of June.

² Photo C-16 shows some of the construction equipment. The two ponds together were constructed to store a minimum of 108 acre feet of water, which is equivalent in volume to more than 174,000 cubic yards of material. Since the site was already partially excavated in places, the amount of material removed would be somewhat less than this figure, but still a very large volume.

³ The Bishops' Code Complaint (Ex. A) challenges the lack of county land use review for constructing the ponds and the road under the applicable zoning requirements.

⁴ Photos C-3 and 4 show water being pumped from a domestic well on the KCDG property into an elevated holding tank, which was then used to fill tanker trucks (photo C-17). I believe this well is Well Number 112224, drilled in February of 2014. When I questioned District 11 Watermaster Jeremy Giffin about this water use, he said that the onsite contractors told him they were filling a 3,000 gallon tanker truck one and one-half times per day and were thus covered by the 5,000 gallon per day industrial groundwater use exemption. Having observed the heavy traffic of the tanker trucks onsite in May and June, my clients question whether this water use was always kept within the limits of the exemption. Whether the amount of water use was excessive or not, this fact also speaks to the large scale of this operation.

On numerous occasions during construction, my clients contacted Deschutes County officials, TID's management, the Department, and District 11 Watermaster, Jeremy Giffin, to object to the project's proceeding without any land use or water use approvals. The Bishops also attended District Board meetings to register their objections—both substantive and procedural—to the District's entering into a contract with KCDG. In spite of those objections, a parcel of land that consisted mostly of naturally vegetated ground in a winter wildlife migration zone a few months ago now contains two large artificial water bodies covering approximately 20 acres.⁵ My clients are astounded that these reservoirs have been completely built and filled, with resultant damage to the wildlife habitat and landscape, with no public review. The discussion below explains why we believe this to be wrong and in violation of applicable law.

1. *The KCDG reservoirs require an independent permit.*

Two water storage facilities of this magnitude should not have been constructed and filled with water without prior review by the Department. As I pointed out in my June 23rd letter, 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.) Section 2 of the same statute prohibits anyone from *using, storing, or diverting* any water "until after the department issues a permit." (Emphasis added.) 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).) And finally, ORS 537.400(1) restates that "all applications for reservoir permits shall be subject to the provisions of ORS 537.130."⁶

There can be no question that the KCDG structures are reservoirs. The two ponds together are designed to hold a minimum of 108 acre feet of water—the equivalent of nearly five million cubic feet and more than 35 million gallons of water. The two reservoirs have a combined surface area of approximately 20 acres. The larger of the two is designed specifically as a water ski lake for the residents of KCDG's contemplated development. It also contains two constructed islands to facilitate turns and a ski boat waiting area, and recently, KCDG submitted—but subsequently withdrew—an application to the County to build a boat house and an additional boat slip at this lake.

⁵ This size estimate is based on the District's application in Transfer 11834, where the District seeks to change the place of use for 21.4 acres of irrigation rights, in order to move the rights off the land now occupied by KCDG's reservoirs and road.

⁶ ORS 537.147 also provides for a secondary permit for use of stored water in certain circumstances; nonetheless, the application requirements and review process are substantially similar.

Neither of these water reservoirs existed or stored water prior to KCDG's excavation and construction. Instead of requiring a permit to build and store water in these facilities, the Department has allowed them to be filled with water as if the reservoirs were already in existence—and already permitted—and thus can simply serve as a new place of use for irrigation district water previously stored elsewhere. In this case, "elsewhere" means the Tumalo Irrigation District's Upper Tumalo Reservoir. Thus, water belonging to the District and its members, that was stored in a District-owned facility, and provided both District and public benefits, has been moved to a private facility providing private benefits, with no agency or public review.

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

The two KCDG reservoirs are precisely the sort of significant water storage and use project that a full permit review is designed to consider. In my June 23rd letter, I listed a few of the issues that would be covered in a full permit review. I want to expand on that discussion here.

To obtain a new permit to construct and fill two reservoirs as part of a housing development, KCDG would be required to provide all of the detailed information described in ORS 537.140 and OAR 690-310-0040. This includes details about the reservoir structure and its operation (to enable review and evaluation of the design, construction, and geotechnical analysis) and information about the sources of water.⁷ In Transfer Application 11833, KCDG and TID have emphasized filling the ponds with water from the Upper Tumalo Reservoir. However, in addition to holding 108 acre feet of stored water in the two reservoirs on a permanent basis, KCDG also plans to "pass through the Ponds" enough water to irrigate approximately 55 acres of land (including the approximately 21 acres that are the subject of Transfer Application 11834), but, supposedly, not to store this water in the ponds or on the property.⁸ This irrigation water comes from different sources, including Tumalo Creek.⁹ Exactly how KCDG intends to manage this commingled water is completely unknown because the project has not been subjected to public review. Instead, the project has been proposed under two separate transfer applications as if the handling of the stored water and the handling of the irrigation water bear no relationship to each other, whereas KCDG ought to be required to

⁷ See, for example, ORS 537.140(1)(a)(B); OAR 690-310-0040(1)(a)(B).

⁸ Irrigation Contract (Water Storage Easement Agreement) between the KC Development Group, LLC, and the Tumalo Irrigation District, dated June 10, 2014 (the "Agreement"), at p. 1, Section 2. A copy of this Agreement is attached to this letter as Exhibit D.

⁹ These irrigation rights are involved in T-11834.

explain how the reservoir will be managed to account for these two sources and different authorized uses of water.

In a new permit application, details about how the stored water would be used would also be required, including the plans to use one of the reservoirs principally as a water ski lake.¹⁰ The application would also require KCDG to provide justification for the amount of water to be stored and used, and how it would be measured.¹¹ Other information required includes "measures the applicant proposes to prevent damage to public uses of affected surface waters."¹² Upper Tumalo Reservoir serves several public uses, including wildlife habitat and recreation, and KCDG should be required to describe the impact of reducing the water authorized to be stored there by approximately 10%.

- b. The permit process is necessary to elicit critical information from other affected agencies, including whether the KCDG project is compatible with local land use laws.*

Another very important piece of information required for a new permit application is information about the project's compatibility with applicable land use laws.¹³ As described in the Bishops' Code Complaint (Ex. B), the status of these reservoirs under Deschutes County's land use ordinance is problematic. The KCDG property is zoned for Rural Residential use with overlying Wildlife Area Combining and Landscape Management Combining Zones. Neither the water storage facilities nor the proposed PUD or cluster development are allowed as outright uses in this zone. KCDG and the District apparently take the position that the facilities are allowed outright because they are part of the District's irrigation system. This argument is discussed further in Part 2a below.) The point for now is that the matter of land use compatibility is intended to be considered and resolved publicly as part of a water permit application process. Instead, the discussion of land use compatibility is occurring behind the scenes, out of public view.

Furthermore, when KCDG does finally request county approval for its further development of the site, the County's review will necessarily be influenced and potentially constrained by the amount of site development done so far. The fact that the site now contains a newly-constructed road and two completed water features, constructed at considerable expense, will be difficult to ignore. On June 13, KCDG applied for a permit to build a boat house on the

¹⁰ See, for example, ORS 537.140(1)(d); OAR 690-310-0040(1)(a)(E).

¹¹ OAR 690-310-0040(1)(a)(K).

¹² *Id.*

¹³ OAR 690-310-0040(1)(L). In fact, this information is also required for transfer applications, pursuant to 690-005-0025(3), but as far as my clients know, the information has not yet been provided.

water ski lake, again prior to submission of any plan for the whole site.¹⁴ It is clear that KCDG wants to do everything it can to develop this property before submitting its request for approval of building houses on the site. The more developed the site, the harder it will be, as a practical matter, for the County (or the public) to influence KCDG's development plans or deny KCDG's request. And meanwhile, all of the work on site makes the development more attractive for potential lot purchasers, further allowing KCDG to get out ahead of the agency approval process.

The County is not the only agency that is allowed to weigh in on a permit application. The Department's statutes and rules require that other agencies receive notice of new applications.¹⁵ This notice allows agencies and Tribes to provide comments related to their jurisdiction and areas of expertise, including, among other issues: public safety; air, water, and noise pollution; fish and wildlife; land use; and transportation. These agencies are accustomed to reviewing new applications for areas of concern. On the other hand, they are unlikely to review transfer applications closely, because the issues involved in transfers are much more limited.

None of the information discussed in the prior pages has been required or considered for this project, because the project is proceeding under the guise of a transfer application. Furthermore, since the review is proceeding as a *district* transfer, the process is even more truncated. As a result, KCDG's reservoirs are already finished and filled with Tumalo Irrigation District water, without review of any of the important and detailed information discussed above.

c. Without a full permit review, the Department cannot fulfill its responsibilities 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 prior to committing water to any particular project. In particular, the Department must

¹⁴ Further communications between Jennifer Bragar and the County occurred regarding that application, and it appears that the application has been withdrawn for some reason.

¹⁵ OAR 690-310-0090 requires the Department to send its weekly notices to local, state and federal agencies and Indian tribes.

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conduct a full public interest review of new applications.¹⁶ In my June 23rd letter, I raised some of the public interest concerns that are pertinent to a permit review. I will expand on these issues here.

Department rules (OAR 690-310-0120) require WRD to consider the following 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, including supporting provisions such as public facilities plans.

This list of factors illustrates all the analysis missing here. With a proper reservoir permit application by KCDG, the Department would need to consider, at the very least: the impact of adding two new storage facilities on evaporative water losses or other forms of waste; the water quality impacts of using the ponds for water skiing and other recreational uses; the water quality impacts and other potential effects on domestic wells in the area; and the impacts to wildlife, such as the barriers to wildlife migration created by the reservoirs, roads, and other development. Furthermore, the permit process would force a full consideration of how these water storage facilities fit with local plans for land use, development, and recreation. Again, *none* of these issues are addressed at all in a transfer review.

The Department's failure to require a permit application from KCDG for its two reservoirs seriously undermines the provisions of the Water Code. The Department and other federal, state, and local agencies have been prevented from gaining a full understanding of this project and from appropriately exercising their statutory authorities. And the Bishops and other members of the public are being denied important procedural and substantive rights.

¹⁶ 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 appropriation.

2. *Use of the district transfer statutes to bypass the clear language of the reservoir permit requirements distorts the facts of this project and misapplies the law.*

a. *This project is improperly characterized as a Tumalo Irrigation District project.*

The applicant inaccurately and disingenuously characterizes this proposal to move water to the KCDG reservoirs as a Tumalo Irrigation District project. This is KCDG's project, first and foremost. KCDG owns the land and the reservoirs and has, for some time, planned to build a luxury housing development on the site. Several years ago, these developers approached Jeremy Giffin, District 11 Watermaster, about obtaining a permit to construct ponds on the KCDG property, as part of its long-term development plan. KCDG decided not to apply for a water right, but to pursue obtaining water from the Tumalo Irrigation District instead. In fact, we understand that it may have been Mr. Giffin himself who suggested that the developers contact the District for water; in any event, it was not the District who approached KCDG about storing district water, but the other way around.

The District did not independently propose to move water from Upper Tumalo Reservoir to the KCDG property to serve District needs. The District did not look for alternative water storage facilities or locations. If the District had been truly interested in seeking out new storage facilities, as a matter of legitimate irrigation district business, it would have been proper for it to include the proposal in the regular district planning process, to discuss the needs with its members, to investigate alternative ways of meeting the needs, and to seek competitive storage proposals from its water users, other property owners with available land, or existing reservoir owners and operators. The District did not do any of those things, in spite of specific requests to do so from our clients and others.¹⁷

¹⁷ See Public Contract Notice, Exhibit B. Our clients and other district water users told the District that if it really wanted to find another location to store Tumalo Reservoir water, it should open the process to offers or bids from other property owners and take the offer that would maximize the financial return to the District (which in turn would benefit the members). Indeed, prior to the District entering into its contract with KCDG, Mr. Bishop offered the District \$10,000 per year to keep the water in the Upper Tumalo Reservoir rather than move it to KCDG's property. This amount is nearly twice as much as KCDG is paying the District to use the water in its development. Furthermore, this arrangement would have allowed the District to avoid the substantial risks (including potential tort liability) and uncertainties of having its water storage under control of a private party or the party's possible successors in interest—such as a future homeowners' association..

The District completed two detailed and thoughtful Water Management and Conservation Plans in 2000 and 2005. These plans assessed water losses throughout the irrigation system (estimated at 60-70% historically), analyzed several alternatives to better manage and conserve water, and set forth a detailed plan to pipe all of the District's canals to eliminate most of the system's water loss. The Plans noted evaporation and leakage losses from Upper Tumalo Reservoir, but did not propose reducing the volume of water stored there or moving storage away from the reservoir.¹⁸

It was not until quite recently that the District began to describe the KCDG ponds project as if it were actually a *district* project. In a June 19, 2014 letter to Deschutes County, the District Manager, Ken Reick, said that the District "has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir."¹⁹ Mr. Reick refers to the new site only as the "Klippel Acres Mining Pit." The letter makes no mention of KCDG or its plans for the ponds and the intended surrounding development, except by way of copying the letter to "Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site." (Nor did the letter mention the application for a permit to build a boathouse and boat slip.) Mr. Reick describes detriments of the Upper Tumalo Reservoir site and benefits of the new site. The letter claims that "Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review" notwithstanding the fact that the District neither owns nor leases the land, and will not own or operate the reservoirs. Mr. Reick cites portions of the County Code which allow "operation, maintenance, and piping of *existing irrigation systems* operated by an Irrigation District . . ." as an outright use in a rural residential zone. (Emphasis added.) Describing KCDG's extensive pond construction project—most of which was completed before the TID Board approved the Agreement with KCDG at its June 10, 2014 meeting—as part of the District's existing irrigation system is disingenuous and misleading at best, and just plain false at worst. Furthermore, as

¹⁸ The initial plan, prepared in 2000, included a brief discussion of reconstructing the Upper Tumalo Reservoir or storing water elsewhere within the pipe network, but in a very limited context, relating only to the prospects for storing water during peak demand periods in order to lessen the impact on other irrigation districts of TID's varying rates of diversion from the Deschutes River. The Plan dismissed these alternatives and instead suggested approaching the North Unit Irrigation District about adjusting its own operations to deal with the river flow variations expected after full implementation of TID's conservation project; this discussion apparently took place and was favorably received. Tumalo Irrigation District, Water Conservation Plan, pp. 5-5—5-6 (July 16, 2000). The 2005 Update noted the evaporation and seepage losses from the reservoir, but contained no further discussion about the reservoir. The discussion about storage during peak demand periods did not appear at all in the later Plan.

¹⁹ Letter from Ken Reick to Nick Lelack, Deschutes County Community Development Director, June 19, 2014, attached as Exhibit E.

discussed further below, the District has essentially ceded its control of the water stored on KCDG's property to KCDG.

In fact, when the TID Board discussed the KCDG Agreement at its meetings on May 13, 2014, and June 10, 2014, the tenor of the discussion was considerably different. The project was not discussed as a District project, but rather the Board emphasized the fact that KCDG and the Watermaster had brought the proposal to the District.²⁰ The Agreement itself does not even describe this as a District project, saying instead: "Whereas KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property... and [w]hereas TID is willing to allow KCDG to hold the Stored Water" ²¹ Furthermore, the District points to its lack of ownership of the project to support its position that the public contracting laws do not apply to its transaction with KCDG.²² The District cannot have it both ways.

Instead of investigating available storage options and determining the best alternative for the District and its members, the District entered into a lopsided deal brought to it by KCDG. The Agreement approved on June 10, 2014, by the District's Board allows KCDG to take control of stored water belonging to the District and convert it to the developers' own private benefit. As noted, to begin with, the Agreement recites that KCDG desires to store water and the District is willing to allow KCDG to hold the stored water. The District agrees to use a district temporary transfer to move water to KCDG's ponds, to renew the temporary transfer on an annual basis as needed, and eventually to request a district *permanent transfer*. KCDG agrees to pay the District \$50 an acre foot per year for the stored water (for a total of \$5,400 annually), as well as to cover all of the costs of the transfer applications, and to submit final proof of the permanent transfer to the Department by March 1, 2018, in support of the issuance of a new certificate. The price to be paid to the District is far below the market value for KCDG's use of the water.

²⁰ Tom Bishop attended the May 13th meeting and Gene Bishop attended the June 10th meeting, along with a Garvey Schubert Barer lawyer, who took careful notes on the entire discussion, except the Executive Sessions. At the May meeting, after taking some public comment from Mr. Bishop and others, the Board tabled consideration of the contract. At the June meeting, the Board Chair said only that KCDG's lined reservoir would be superior to the Upper Tumalo Reservoir, and that the District had explored other potential storage sites, without providing any support for that statement. The Board approved the contract with only minor modifications to the version it considered in May.

²¹ Agreement, *supra* note 8, at p. 1, Recitals.

²² See June 30th email from Bill Hopp responding to the Public Contract Notice, attached hereto as Exhibit F.

The Agreement does not explicitly state anywhere that the water in the ponds will belong to the District and/or its members, or will be subject to the District's exclusive management and control, as the water in Upper Tumalo Reservoir is now. KCDG agrees to grant the District an easement across KCDG's property, *but only* "for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement." The Agreement provides that "TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect." These provisions clearly limit the circumstances under which the District can access and use the water once it is on KCDG's property. If KCDG defaults on the agreement, the District's only remedy is to start another transfer proceeding to try to move the water back to Upper Tumalo Reservoir or another location.

The Agreement does not contain any description of the "plumbing" by which the District can access the ponds and the stored water to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting the water *to* KCDG's property and *into* the ponds. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands.

Two provisions in the Agreement are particularly troublesome. Earlier in these comments, I noted that the ponds are intended to receive more than the 108 acre feet of stored water. Paragraph 2 on page 1 of the Agreement says, in full:

"TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in Exhibit A, particularly in the ponds (the "Ponds") described in "Exhibit B," . . . (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property, or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)"

This provision of the Agreement is at the very least confusing, and very likely misleading. How will KCDG assure that the irrigation water passes through the ponds without being stored there? Prior to the District's approval of the Agreement with KCDG on June 10, 2014, and prior to the submission of the District's two transfer applications on June 11, 2014, KCDG had already filled the northerly pond. KCDG apparently claimed a right to do so by permission of Watermaster Jeremy Giffin to store irrigation water as a "bulge-in-the-system" ("BIS").²³ The northerly pond has a capacity of approximately 41 acre feet. After several

²³ It does not appear that much irrigation, if any, is actually occurring on KCDG's property during this season, thus eliminating any justification for storing water as a BIS.

communications and complaints to Mr. Giffin on behalf of the Bishops about the water being stored on site, Mr. Giffin investigated; he confirmed in a June 12th email that KCDG was storing more water than the 18.25 acre feet that he would allow as a BIS.²⁴ However, he also said that, as of June 11, he had received the District's transfer application to move water into the ponds, and therefore the BIS issue was no longer a concern, since the District was allowed to "operationally" move the water once it had submitted the application. In addition to our general concerns about this sequence of events, and about whether the BIS concept properly applied at all to KCDG, we question how the BIS concept will be integrated with this provision of the Agreement. KCDG has already abused the BIS concept once; what is to prevent it from doing so again? It seems very likely that KCDG will in fact hold its irrigation water in the ponds, contrary to the Agreement's terms.

In fact, language in paragraphs 7 and 8 of the Agreement adds to this concern. These two provisions make it clear that the transfer of storage rights and the transfer of irrigation rights are interrelated. Before the District will request (on KCDG's behalf) a permanent transfer of the storage rights to KCDG's property, KCDG must fill the ponds with 108 acre feet of water *and* complete a transfer of the irrigation rights now associated with the land under the ponds. Paragraph 8 says, in part, "If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, *fails to beneficially apply water to land with the water rights to be serviced by said Ponds* for a period of 5 years, . . . then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location." (Emphasis added.) It would certainly seem that as far as KCDG and the District are concerned, KCDG will use the ponds to store both Upper Tumalo Reservoir water and irrigation water from Tumalo Creek and other sources.

Why does this matter? First, these provisions further demonstrate that this is a KCDG project, and not a project for the good of the District. KCDG will exercise complete discretion and control over how it manages the ponds, as long as KCDG "uses" all the water provided to it under the Agreement.²⁵ The ponds will undoubtedly be operated for KCDG's benefit first and foremost, not for the benefit of the District or its other members. The Bishops

²⁴ On June 12, 2014, Mr. Giffin reported in an email to Jennifer Bragar and Janet Neuman that KCDG could only store 18.25 acre feet as a BIS.

²⁵ In fact, the Bishops and their neighbors have heard that the District gave KCDG the "keys" to control the diversion structures to direct water onto KCDG's land, even though these diversions also control and/or affect water to which other users are entitled, and even though District employees are supposed to be the only ones with the ability to lock and unlock diversions. I have not confirmed this claim with the District, however.

and other water users will be injured by giving KCDG control over so much of the District's water, as further discussed below. These provisions also illustrate the impropriety of reviewing this project under two separate and limited irrigation district transfer processes instead of a regular permit review.

The 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 is adequately protected from such liabilities at these two new reservoirs which are intended for heavy recreational use.

To call this project simply a change in place of use for some of the District water currently stored in Upper Tumalo Reservoir completely obscures the true nature and purpose of the project. Allowing the project to proceed as a District transfer application provides KCDG with an unjustified means of obtaining water for its own private development purposes, under terms that are very unfavorable to the District members and expose the District to substantial risks and uncertainties, without going through a full public review of its water use proposal.

b. *Reviewing this project as a District transfer allows it to avoid important agency reviews and public comment.*

Part 1 above already described the many issues that will not receive appropriate airing and review because of the lack of a full permit review process for the KCDG reservoirs. In this section, I want to shift the focus slightly, to address more specifically the inherent limitations of a transfer review, and in particular the truncated nature of a transfer requested by an irrigation district.

Oregon law does not require a public interest review of transfer applications, although some other states do. The information required to be submitted with a transfer application is correspondingly much more limited than for a new permit application. An irrigation district applying for a temporary transfer to change the place of use of a water right is required to submit minimal information—essentially of the "name, rank, and serial number" variety. For instance, OAR 690-385-2000 requires that the application include a number of facts that are matters of public record, such as the details about the right that is the subject of the transfer proceeding (certificate number, source of water, priority date, authorized uses, authorized places of use and points of diversion, and so forth). For a change in place of use, the application must identify the location of the proposed place of use and submit a map as required by OAR 690-385-2200. The district manager must state that the right hasn't been forfeited, that

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the information in the application is true and correct, and that "each user affected by the transfer [i.e., KCDG here] has provided written authorization for the transfer" OAR 690-385-3200(2) also requires a certification that "the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right." (These last two requirements are discussed further in Part c below.) That is essentially all that is required for a district temporary transfer of a place of use.

The Department's review of a transfer is limited by statute to an examination of whether the proposed change will result in enlargement and injury, as defined in OAR 690-385-0100 (4) and (6). The water right cannot be expanded by the change—for instance, the new place or type of use or new point of diversion cannot receive more water than the old locations did before the transfer. Nor can the change "result in another, existing water right not receiving previously available water to which it is legally entitled." Although non-district water users applying for a transfer must wait for Department approval before making the change, irrigation districts are allowed by OAR 690-385-3000(2) to go ahead and make their requested change as soon as they have submitted an application.²⁶

At the risk of being repetitive, I want to summarize again the sequence of events to highlight how a transfer review—and particularly an irrigation district transfer review—fails to get to the heart of this project. KCDG built a road without any agency review except for a temporary rock crushing permit. KCDG excavated many tons of dirt and rock to create two substantial water storage facilities, without any agency review. KCDG intends these facilities to be key components of their proposed housing development, which has not yet been applied for, reviewed, or—much less—approved by Deschutes County. KCDG used tens of thousands of gallons of water during construction, without any oversight of whether the amounts were excessive. KCDG filled one of the ponds with irrigation water several weeks ago, claiming permission as a "bulge in the system," even though the amount stored was clearly excessive and did not fit the Department's guidance for using BIS storage. All of this activity was carried out by KCDG before they even had any official agreement with the Tumalo Irrigation District to put District water in the reservoirs.

As soon as the District approved the KCDG Agreement on June 10th, two transfer applications were immediately submitted to the Department. Although the applications came under the name of the District, it is KCDG that is actually preparing, paying for, and handling the applications, as they are required to by the Agreement. Yet because the applications are nominally District applications, the Department has allowed the proposed

²⁶ Section (3) of this rule does allow the Department to revoke the change later if it finds enlargement or injury

changes to be made pending the ongoing transfer review process. KCDG proceeded rapidly during the latter part of June to complete and line the water ski lake, dig new ditches and install new pipelines, and fill the lake with water coming out of the TID main canal pipeline. Voila—two brand new reservoirs have been built on private land, and they are now filled with irrigation district water. By flying this project under a district transfer flag, the project proponents have assured that no agency is reviewing the full project, and no agency can effectively say no to the project, for any reason other than enlargement of water use or injury to other water rights—and then, only after the fact. This limited, backwards review process is completely inappropriate for a project of this magnitude.

c. *The District transfer statutes cannot properly be interpreted to apply to this project.*

I have already described why it is wrong, from a factual point of view, to consider this a District project. It is also wrong from a legal point of view to review the KCDG pond project under the district transfer statutes and rules in ORS 540.570 and OAR 690-385. A close reading of the statute demonstrates that the transfer statutes are designed to accommodate changes in place of irrigation, not changes in place of storage. ORS 540.570(1) states that an irrigation district may temporarily transfer "the place of use of water appurtenant to any land within the legal boundaries of the district *to an equal acreage elsewhere* within the legal boundaries of that district" as long as "*the rate and duty, and the total number of acres to which water will be applied* under the transfer, do not exceed existing limits" The plain language of the statute refers to moving irrigation water from one parcel of land to another. This meaning is reinforced by other sections of the same statute noting that the temporary changes apply to "one irrigation season" only. Furthermore, the statute discusses "affected landowners" as those whose lands are directly involved in the change of place of irrigation (the "from" or "to" lands).

The Department's administrative rules support this interpretation. OAR 690-385-0100(16) defines "user" for the purpose of the district transfer rules as "an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred." The rules then go on to require that a district's application include statements that any users affected by the transfer have given their written authorization for the change.

There is no explicit reference in the applicable statutes or rules to changes in *place of use* for a storage right. OAR 690-385-3120 discusses temporary changes in the *type* of use of a storage right, but only when a district is leasing the water instream. The absence of any discussion of changing the place of storage makes sense. It is one thing to propose moving irrigation water from one place to another within a district, as in the District's application in T-

Ms. Susan M. Douthit
July 17, 2014
Page 16

11834. After all, irrigation districts are formed to provide irrigation water to the owners of the whole portfolio of irrigable lands within their boundaries, and Oregon law provides many examples of providing district managers with the flexibility to move water around in order to use the irrigation water completely and optimally. On the other hand, a storage right is by definition tied to a very particular location. 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. However, that is not the situation here, where the purported "to" reservoirs have been built from scratch by a private party without any reservoir permits, on private property not owned or leased by the District.

The district transfer statutes were intended to facilitate irrigation districts' on-the-ground operations of diverting and delivering irrigation water to district patrons. The statutes were not intended to allow private interests to assume the mantle of a district to create brand new private reservoirs.

I recently requested public records from the Department pertaining to other instances where transfers have been used to change the place of use of storage, and in particular, where district storage has been moved to private facilities. I will be surprised if there are any other examples of transfers to newly-built, unpermitted, private reservoirs.

d. The proposed change in place of use will cause injury to the Bishops and other water users.

The bulk of this letter has been devoted to challenging the use of the district transfer process for this project. However, I want to provide comments relative to the enlargement and injury analysis as well, in the event that the Department persists in reviewing this project as a district transfer.

In order for the Department to carry out even a proper transfer review, it must obtain (and make available to the public) more information about how the KCDG ponds are intended to be integrated with the rest of the District's delivery system. It is impossible to fully assess the impact of this change on the Bishops and other water users with the limited information available. Without additional detail about how the KCDG reservoirs have been constructed, how they are connected to other District facilities, and how they will be operated, we are not able to understand how the change will affect other water users. Therefore, the Bishops cannot fully assess and comment on the potential for injury. The Bishops reserve the right to expand their comments in this regard when the full information is obtained by the Department.

Nonetheless, the fact that the District has ceded control of 108 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. As noted earlier, the District's Agreement with KCDG does not preserve sufficient access and control for the District to manage and deliver this water for its members. The Agreement provides the District with only a limited access easement to inspect the ponds. The Agreement only allows the District to pump water from the ponds for District use "in the event of drought or other emergencies." The application contains no information about how the KCDG ponds are to be operated in coordination with the rest of the District's delivery system so that the District's users receive water according to their priorities and location within the system. The Bishops' primary water rights are senior in priority date to the storage right, and also to KCDG's irrigation rights.²⁷ Yet KCDG's diversion to its ponds is upstream from the Bishops' property. Although in theory, the Bishops should still be able to call their water, it is not clear how that call will be met. Will KCDG bypass a portion of what it is allowed to store and "pass through" the ponds to satisfy senior users like the Bishops? Are the ponds "plumbed" to allow direct delivery to other users?

How will the addition of two more ponds, with a combined surface area of about 20 acres, affect the losses of water by evaporation within the District? 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.²⁸ Even though the volume of water stored in the Upper Tumalo 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 ponds. In fact, removing water from Upper Tumalo Reservoir may very well increase the rate of evaporation from the reservoir, which would constitute an enlargement.

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 ponds on this drinking water supply.

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

²⁷ The Bishops' rights have a priority date of 1900, whereas the rights appurtenant to KCDG's property have priority dates of 1907 and 1913, and the District's storage right has a priority date of 1961.

²⁸ TID 2005 Plan, p. 1-1.

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July 17, 2014

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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, 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 ponds 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 to 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, causing TID to have to incur such costs in order to protect and maintain the storage of water at the site.

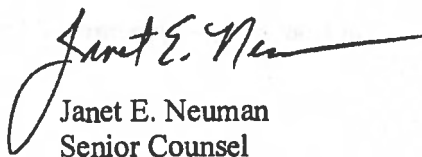
Although the injuries just described are broader than the typical injuries considered in a transfer review, they represent real risks to the Bishops and other water users within the Tumalo Irrigation District. These risks further demonstrate the impropriety of handling this project under the irrigation district transfer rules.

Ms. Susan M. Douthit
July 17, 2014
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3. *Conclusion*

These comments demonstrate that T-11833 should not be allowed to proceed. The Department should adjourn the proceeding or deny the transfer outright and should further require KCDG to obtain an independent permit for their reservoirs reflecting the actual use of the facilities. If the Department does not adjourn the transfer proceeding for the reasons discussed here, it should deny the transfer because it will cause enlargement of water use and injury to the Bishops and other water users. Thank you for your full consideration of these comments.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

GARVEY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 4, 2014

VIA EMAIL AND U.S. MAIL

Mr. Tim Grundeman
Deschutes County Code Enforcement
117 NW Lafayette Avenue
Bend, OR 97701

Re: Code Enforcement Complaint -- Unpermitted Lakes at Tax Lots 1711130000828 and 1711130000824

Dear Mr. Grundeman:

Our office represents Thomas and Dorbina Bishop, who live at 63382 Fawn Lane, Bend, Oregon, adjoining tax lot 1711130000828. We also represent Eugene Bishop, who has first hand knowledge of the information set forth here. This letter is a follow-up to our conversation this morning and provides the details of the complaint in support of the attached Deschutes County Code Enforcement Complaint Form about unpermitted activities at tax lots 1711130000828 and 1711130000824 (the "subject property"). See Attachment 1 (the former is highlighted in yellow and the latter in orange).

Eric Cadwell, Harris Kimble, and/or KC Development Group, LLC (collectively, "KCDG") own the subject property. This complaint is related to KCDG's construction of two lakes on the property without obtaining land use approvals. While the Bishops understand the County takes the position that it has no grading ordinance to limit excavation and grading on the site, and no control over water use at the subject property, the County does have land use ordinances that limit a private property owner's development without appropriate permits, and the associated public review process. The Bishops' due process and property rights are being violated because the County has not provided the public review process under its land use ordinance – Deschutes County Code Chapter 18.

KCDG is currently developing two large lakes. One lake, the northerly lake, has been filled with water. See Attachment 2.¹ KCDG has indicated that the northerly lake will be used as a recreational pond. The southerly, larger lake is currently being lined in preparation for filling with water. See

¹ Mr. and Mrs. Bishop are separately undertaking enforcement action for the unpermitted water use to fill the northerly lake with the Oregon Water Resources Department ("OWRD"). Janet Neuman of the Tonkon Torp law firm is focusing on the OWRD and other aspects of this matter for the Bishops.



G A R V E Y S C H U B E R T B A R E R

Mr. Tim Grundeman
June 4, 2014
Page 2

Attachment 3. KCDG has indicated that the southerly lake will be used as a water ski lake. Both lakes are intended to serve KCDG's planned unit or cluster development. KCDG has not obtained the necessary land use approval for either lake or the planned or cluster development.

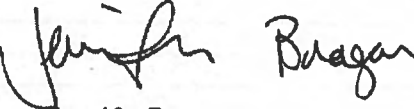
The lakes do not qualify as uses permitted outright under Deschutes County Code ("DCC") 18.60.020 because the lakes do not meet any of the listed uses identified in that code section. The lakes may qualify as conditional uses as recreation-oriented facilities, or as the County is aware of KCDG's intent, as part and parcel with KCDG's ultimate intent to apply for a planned or cluster development, subject to DCC 18.60.010 - .090.² The land use process is designed to require KCDG to obtain the necessary conditional use permit approval and to allow public review of the project. Further, the subject property is part of the Wildlife Area Combining Zone and Landscape Management Combining Zone that would further constrain KCDG's unpermitted development.

On behalf of the Bishops, this office requests that the County immediately stop work at the site and require KCDG to obtain necessary land use approvals, require the deconstruction of the lakes with complete remediation of the site under DCC Chapter 18.144, and obtain any monetary relief available to the County as a result of these violations. If the County allows the development to move forward, whereby KCDG would flout the land use process, the Bishops will treat the County's action as allowing the use.

Thank you for your prompt attention to this matter and your immediate action to stop KCDG from continued construction activities at the subject property.

Sincerely,

GARVEY SCHUBERT BARER

By 
Jennifer Bragar

JB:tk

Enclosures

cc: Lori Furlong (by e-mail)
Laurie Craghead (by e-mail)
Jeremy Giffin (by e-mail)
Tumalo Irrigation District Board of Directors (by e-mail c/o Ken Rieck
Ken Rieck, Manager of Tumalo Irrigation District (by e-mail)
Oregon Water Resources Department (by US mail)
Clients

PDX_DOCS:518323.1 [39124.00100]

² In our conversation today, you indicated that you are aware that KCDG intends to use the large lake for waterskiing as the centerpiece of a planned or cluster development.



DESCHUTES COUNTY
COMMUNITY DEVELOPMENT
117 NW Lafayette Avenue, Bend, OR 97701
Telephone (541)388-6575, Fax (541)385-1764

CODE ENFORCEMENT COMPLAINT FORM

Instructions: In order for you complaint to be accepted, you must fill in all questions *completely and sign on the back of this form*. It is important that you supply as much detail as possible. If you have any questions, call code enforcement at 541-385-1707.

Date: June 4, 2014

Address of Violation(s): tax lots 1711130000828 and 1711130000824

City: Bend State: Oregon Zip: 97701

Nearest Cross Street: Between Buck Drive and Klippel Road

Subdivision: _____

Residents Name: Eric Cadwell & KC Development Group LLC Phone: _____

Owner of Property: Same (Agent: Eric Cadwell)

Address: 63564 Johnson Road

City: Bend State: OR Zip: 97701

Details of Complaint (be specific): See attached letter.

ARE THERE ANY KNOWN OR SUSPECTED HAZARDS AT THIS LOCATION?

IE: Dangerous or unstable residents, dogs, criminal activity, etc.

() YES (X) NO () UNKNOWN

If yes, please identify the hazard in detail: _____

**** Continue on reverse side ****



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

OTHER OFFICES
beijing, china
new york, new york
seattle, washington
washington, d.c.
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Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 16, 2014

VIA EMAIL AND CERTIFIED MAIL

Carl W. Hopp, Jr.
Attorney for Tumalo Irrigation District
Carl W. Hopp, Jr., LLC
168 NW Greenwood
Bend, OR 97701

Re: Notice to Tumalo Irrigation District of Violation of Public Contracting Laws Pursuant to
ORS 279B.420(3)

Dear Mr. Hopp:

Our office represents Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the Tumalo Irrigation District ("TID") boundaries. The Bishops' property receives irrigation water from the District pursuant to an appurtenant water right. This letter provides notice under ORS 279B.420(3)(e) that the Irrigation Contract awarded to KC Development Group, LLC ("KCDG") on June 10, 2014, violates Oregon's public contracting laws. To the extent that TID has adopted further administrative remedies or procedures for review of violations of the public contracting laws, consider this letter as a request for such further administrative review.¹

The Irrigation Contract is a public contract as defined in ORS 279A.010(1)(z):

"Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public contract" does not include grants.

The Irrigation Contract is either a (1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or water storage right held by the District pursuant to Oregon

¹ If further administrative review is available through TID's adopted procedures, please provide an explanation of that process and a copy of the adopted policy and/or procedures.



GARVEY SCHUBERT BARER

Carl W. Hopp, Jr.
June 16, 2014
Page 2

Water Resources Department Certificate Number 76684. In consideration for storing a portion of TID's water on KCDG's property, KCDG contracted to pay \$50/acre feet of water annually, for up to 108 acre feet of water. See Attachment 1.

Under ORS 279B.050, TID may not award a public contract for its water storage rights without undertaking a competitive sealed bidding process. As noted above, ORS 279A.010(1)(z) defines a public contract to include both purchases and sales of goods and services. Despite numerous letters and testimony to TID in regards to the low value being received by TID for the KCDG contract, as well as notice that Mr. and Mrs. Bishop questioned TID's compliance with public contracting laws, TID still entered the contract on June 10, 2014.

The TID/KCDG Irrigation Contract must be set aside because TID entered a public contract without undertaking a competitive sealed bidding process. If TID does not immediately respond to this letter and show that the contract has been set aside, Mr. and Mrs. Bishop will pursue all available legal remedies.

Sincerely,

GARVEY SCHUBERT BARER

By

Jennifer Bragar

JB:dw
Attachment

cc: Ken Rieck (by email and certified mail)
Fran DeRock (by email)
Clients

PDX_DOCS:518797.5

EXHIBIT C

Photographs of KCDG reservoir construction

C-1 (Northern by Pond)



C-2 (Northside, Pond)

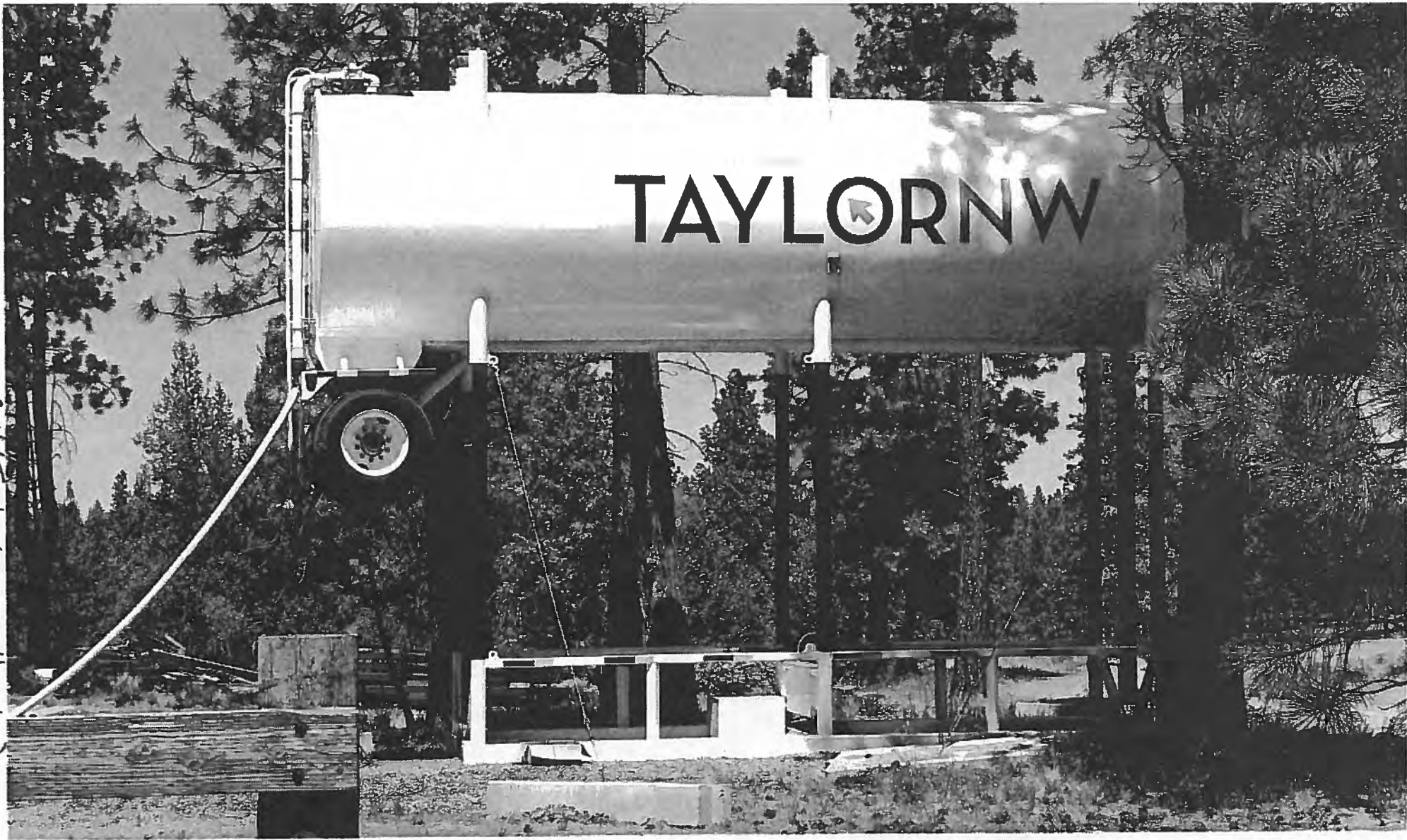


C-3/Well use for construction



TAYLORNW

C-4 (Tank storing well water)



2-5 (pond liner)





2-6 (Pond liner)



C-7 (construction of pond)

2-8 (Construction of water ski lake)



D-9 (water spillage)



E-10 (water slide lake)



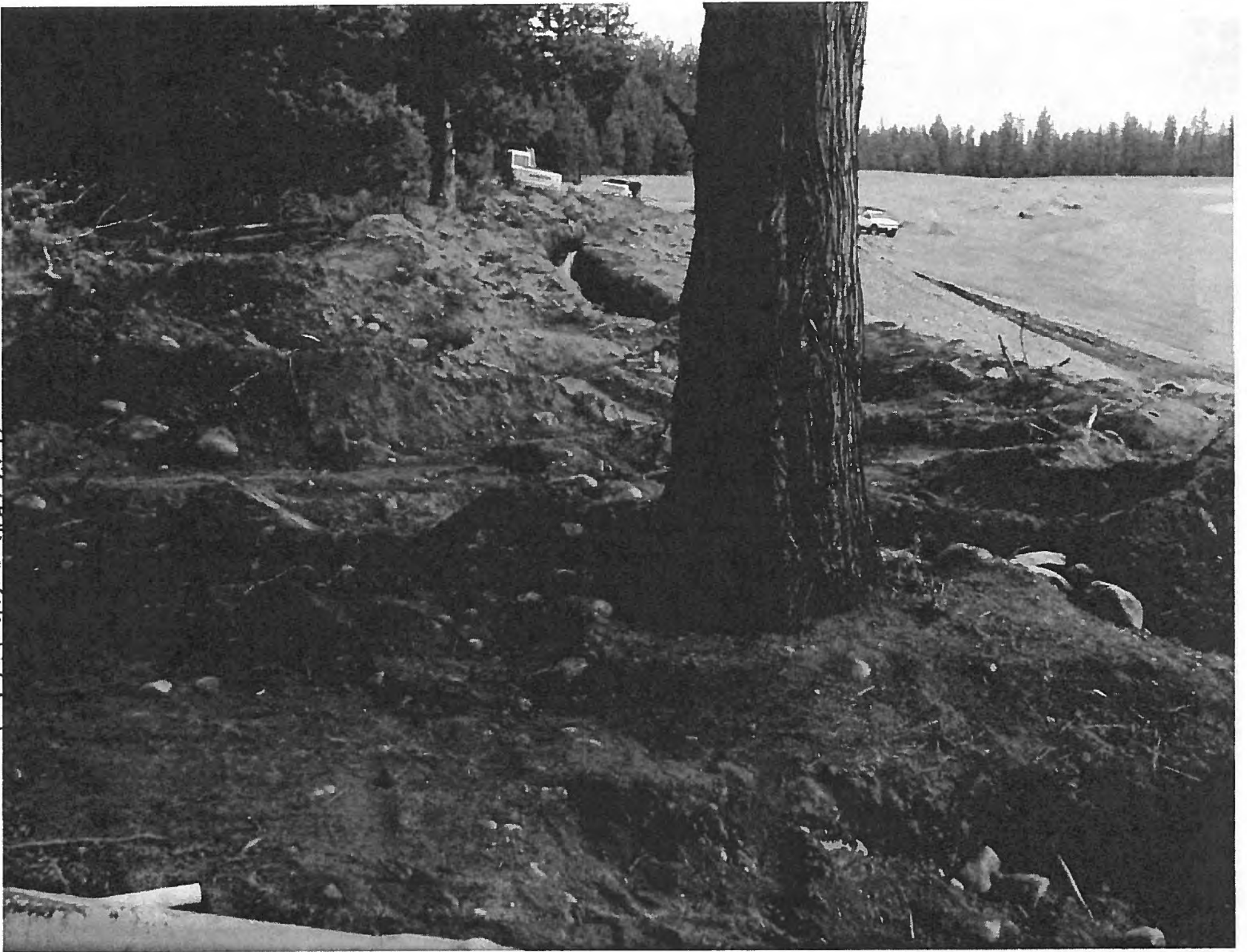
C-11 (water ski lake)





2-12 (Hillina Waterway Lake)

G-13 (filling Watson Lake)





C-14 (side to west side lake)

G-15 (WARR SLIP LAB)





0-10 (construction equipment)



C-17 (Tanker Truck)

After Recording, Return to:
KC Development Group, LLC

68560 Johnson Rd
Band OR 97701

No Changes to Tax Statements.

IRRIGATION CONTRACT

(WATER STORAGE EASEMENT AGREEMENT)

Tumalo Irrigation District, hereinafter referred to as "TID," is an Oregon Irrigation District established under ORS Chapter 545 Oregon Revised Statutes. KC Development Group, LLC, hereinafter referred to as "KCDG" is an Oregon limited liability company and the owner of real property described in "Exhibit A," attached hereto, and incorporated herein by this reference. Together, they are "Parties" to this Agreement.

RECITALS

WHEREAS, TID holds a valid water right pursuant to Oregon Water Resources Department Certificate Number *766 4* ("Certificate") to store 1100 acre feet of surface water at what is commonly known as Upper Tumalo Reservoir in Deschutes County, Oregon; and

WHEREAS, KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property described herein in "Exhibit A" (Subject Property); and

WHEREAS TID is willing to allow KCDG to hold the Stored Water authorized to be stored under the Certificate in exchange for payment to TID;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. The above recitals are incorporated herein.
2. TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in "Exhibit A," particularly in the ponds (the "Ponds") described in "Exhibit B," attached hereto and by this reference incorporated herein. (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)

3. KCDG agrees to pay to TID certain consideration to hold the Stored Water on KCDG's Subject Property. Said consideration shall be made by payment of \$50.00 per acre foot of water right, per year, payable by check or other form of payment to TID on or before March 1st of each year, commencing on JUNE 10, 2014 for the first year, and to be paid by March 1st in each subsequent year for the following irrigation season. The initial charge of \$50.00 per acre foot shall be adjusted annually by the same percentage change made by TID in the total annual assessment and other account charges for each acre of land on TID's Certificate and entitled to irrigation pursuant to ORS 545.484, or by subsequent statute as that may be changed by Oregon's Legislature in the future. Payment is based on one acre feet of storage allowed under the storage right. Failure to make payment following 30 days written notice to KCDG is a default under this Agreement.

4. The obligations represented in this Agreement are contingent upon the Oregon Department of Water Resources ("OWRD") approval of the transfer of the desired portion of the storage rights under the Certificate to the Exhibit "B" ponds. The approval of and a new certificate issued by the OWRD) shall have the final proof submitted to OWRD by March 1, 2018. In the event OWRD does not approve the transfer of storage rights to the Ponds, this Agreement shall become null and void and of no further affect.

5. As further consideration for the transfer of the storage rights from Upper Tumalo Reservoir to the Ponds, KCDG shall pay all filing fees, engineering fees, reimburse TID for reasonable legal fees expended, staff time expended by TID personnel and any other costs or fees incurred by TID for the purpose of making the subject transfer or attempted transfer of storage rights from the certificate to the Ponds. Reimbursement to TID shall be made within 30 days of submission of the bill by TID to KCDG. Failure to make payment within 30 days of written notice is a default by KCDG under this Agreement. In the event OWRD does not approve said transfer, KCDG shall not be entitled to any refund of fees and costs paid to TID.

6. Upon execution of this Agreement and thereafter, and subject to approval of the transfer described in Paragraph 4, above, KCDG grants TID a perpetual Non-Exclusive Easement across the Subject Property and the Ponds for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement.

KCDG agrees to maintain the Ponds in acceptable condition to store the water allowed under the storage right. Maintenance of the Ponds, water conveyance lines, and any other construction necessary to accomplish the intent of this Agreement are to be borne by KCDG. Any repairs, adjustments or other construction deemed necessary by TID to comply with this agreement shall be performed by KCDG, or at KCDG's expense.

7. In the event KCDG fails to perform or is otherwise in default under this Agreement, upon 30 days written notice from TID or such longer period as it reasonably necessary to perform, TID shall be entitled to apply to OWRD to transfer the storage rights from the newly created certificate back to Upper Tumalo Reservoir, and KCDG hereby appoints TID its Attorney in Fact to consummate said transfer back to Upper Tumalo Reservoir.

2 - WATER STORAGE EASEMENT AGREEMENT

To effectuate this transfer, TID shall use a District temporary transfer under ORS 540.570. This temporary transfer will be good for a period of one year. If an additional year is necessary for KCDG to prove up and accomplish all items required for the transfer of the stored water to the Ponds, such additional one year temporary transfer as needed will be filed. In order to qualify for a permanent transfer, KCDG shall be required to:

A. Fill the ponds with 108 acre feet of water, and in the event the ponds will not hold at least said amount, the permanent transfers shall be reduced to the amount of acre feet of water actually held by the Ponds.

B. KCDG will transfer the surface irrigation water rights currently appurtenant to the Subject Property area of the Ponds, and will transfer the rights to another irrigable area. The irrigation rights, when transferred, shall be proven up and are a further condition that must be completed before TID is required to apply for a permanent transfer of the stored water.

8. TID will renew the temporary transfers on a yearly basis as long as KCDG is proceeding in good faith to complete the preceding items A. and B. Once items A. and B. are completed, then TID agrees to consent to the permanent transfer. If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, fails to beneficially apply water to land with the water rights to be serviced by said Ponds for a period of 5 years, fails to maintain the Ponds in a proper, safe condition, complying with all applicable Federal, State and Local Laws, Rules and Ordinances, or to comply with the By-Laws, Rules, Regulations or other requirements of Tumalo Irrigation District then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location.

9. This Agreement is binding upon the parties, their heirs, successors, and devisees.

10. The parties understand that the law firm of Carl W. Hopp, Jr., Attorney at Law, LLC, has served as legal counsel to Tumalo Irrigation District in the negotiation of the terms of this Agreement, and does not represent KCDG in connection with this Agreement.

11. The rule of construction that a written instrument is construed against the party preparing or drafting such written instrument shall specifically not be applicable to the interpretation of this Agreement, and any documents executed and delivered pursuant to, or in connection with this Agreement.

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Seller in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and

disbursements, the fees and expenses or expert witnesses in determining reasonable attorney fees pursuant to ORCP 68, the actual cost of a litigation or foreclosure report, and such sum as the court may determine to be reasonable for the prevailing party's attorney fees connected with the trial and any appeal and by petition for review thereof.

12. KCDG shall indemnify, defend, and hold harmless TID and its directors, officers, employees, agents and contractors for, from and against any and all losses, claims, actions, damages, liabilities, penalties, fines or expense, of whatsoever nature, arising from, related to, or in any way connected to this Agreement, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property arising from the use of the Subject Property, the Ponds, or adjoining areas, or from any activities contemplated by this Agreement, in each case undertaken by KCDG or any other person claiming by, through, or under KCDG. In the event litigation or proceedings brought against TID arising out of or in any way connected with any of the above events or claims, against which KCDG agrees to defend TID, KCDG will, on notice from TID, vigorously resist and defend such actions or proceedings in consultation with TID through legal counsel reasonably satisfactory to TID. The indemnity set forth in this paragraph shall be effective without regard to compliance or non-compliance with this Agreement by KCDG or TID.

13. TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect.

14. TID makes no representation that storage water will be available. Fees under this Agreement are due TID whether or not water is available. TID is not liable for any loss, damage, or claim which may be made for failure to supply storage water or the withdrawal of storage water.


15. KCDG and its successors shall require the purchasers/lessees at the time of purchase or lease of residential lots in the development to sign and record a document acknowledging that the purchaser/lessee has read and accepted this Contract.

DATED this 10th day of June, 2014.

TUMALO IRRIGATION DISTRICT

KC DEVELOPMENT GROUP, LLC

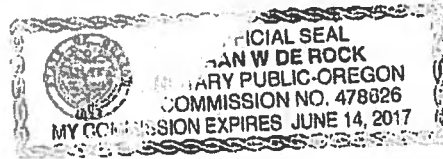
By 
Ken Reick, Manager

By 
Eric Catwell
Its managing member

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by Kenneth B. Rieck as
Manager and Secretary to the Board of Tumalo Irrigation District.

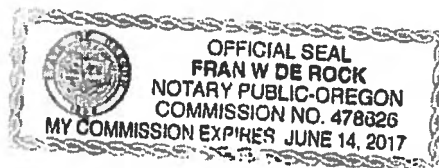
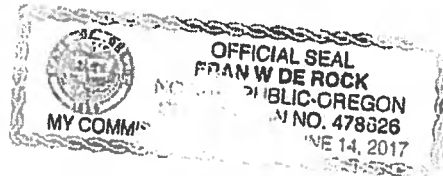
Fran W. DeRock
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by
ERIC CADWELL, _____ of KC Development Group,
LLC.

Fran W. DeRock
NOTARY PUBLIC FOR OREGON



ATTACHMENT "A"

Subject Property located on the following lots

17-11-13-NE/NW-00819

17-11-13-NW/NE-00819

17-11-13-NW/NE-00820

17-11-13-NW/NE-00821

17-11-13-NW/NW-00822

17-11-13-NE/NW-00822

17-11-13-NE/NW-00823

17-11-13-NW/NE-00823

17-11-13-NW/SW-00823

17-11-13-SE/NW-00823

17-11-13-SW/NW-00823

17-11-13-NW/SW-00824

17-11-13-SE/NW-00824

17-11-13-SW/NW-00824

17-11-13-SW/NW-00828

17-11-13-NE/NW-00829

17-11-13-NW/NW-00829

ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828

NW/NE 00828

Pond #2

NW/SW 00824 & 00828

SE/NW 00824 & 00828

SW/NW 00824 & 00828

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: lld@tumalo.org
Web Page: www.tumalo.org

June 19, 2014

Nick Lelack
Community Development Director
Deschutes County
117 NW Lafayette Ave.
Bend, OR 97701

By U.S. Mail and email to Nick_Lelack@co.deschutes.or.us

Re: Tumalo Irrigation District Regulation Pond Storage Move to Klippel Acres Mining Pit

Dear Nick;

Tumalo Irrigation District (TID) has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir. The Reservoir was designed and built in the 1920's and does not adequately serve TID's needs. It is located far down in the District's points of delivery to intercept many of our deliveries, it is very shallow so encourages loss due to evaporation and allows solar heating of the water, and it leaks. The new site will be at the top of the system so will provide the ability for us to hold water in District for the entire distribution network, it will be deeper due to the mining pits already in place, and it will be lined so it will not suffer from appreciable leakage. In short, it will be a significant upgrade to operations and maintenance capability for the District.

We also anticipate that use of this storage site will enable us to reduce dependence on Tumalo Creek for our natural flow, an ongoing goal for both TID and the Deschutes Basin as a whole. The site will also continue to provide emergency water supplies for the District as well as for other Emergency Services responders, as it did during its trial period last week, when it was the primary source for both tanker and air fire suppression efforts in the Two Bulls fire immediately to the west.

We have received mail from an Attorney Bragar and an Attorney Newman on behalf of a Mr. Bishop, concerned that our choice to move our storage to the new location is not compliant with applicable law, including land use law. We have reviewed the County's code, and find that we are allowed to operate and maintain our system without land use approval from Deschutes County. The subject property is in the Rural Residential 10 acre minimum (RR 10) zone, which allows our operations to go forward as an outright use. Here are the applicable code provisions we rely upon:

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.020. Uses Permitted Outright.

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

Chapter 18.120. EXCEPTIONS

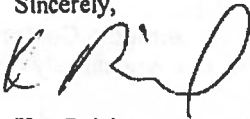
18.120.050. Fill and Removal Exceptions.

C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review. Please advise regarding this analysis.

Thank you, in advance, for your attention to this matter.

Sincerely,



Ken Reick
Tumalo Irrigation District Manager

Cc: Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site.

From: Receptionist at CW Hopp Attorney at Law [mailto:reception@cwhepp.com]
Sent: Monday, June 30, 2014 10:57 AM
To: Jennifer Bragar
Subject: Tumalo Irrigation District

Dear Ms. Bragar: This letter is in response to your letter of June 16, 2014 wherein you allege that the Agreement approved by the Tumalo Irrigation District Board of Directors with KC Development Group, LLC violates Oregon's Public Contracting laws. You are clearly in error. You allege that the irrigation contract is either a "(1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or storage right held by the District pursuant to Oregon Water Resources Department Certificate Number 76684.

First, TID has not disposed of an asset. TID has moved a portion of a storage right from one location to another. TID retains the right to use the stored water. The new location is deemed to be in the irrigation district's best interest as it is higher in the system and provides less water loss; thus providing a significant upgrade to TID's water delivery system.

Secondly, the Agreement is not for specific work to be performed for the District. The Agreement does not provide for TID to either perform work for a fee, or to have work performed for it for a fee.

Thirdly, it is a matter of urgency that the contract be executed.

In conclusion, I believe you are confused by the title "Irrigation Contract". The fact that it is termed a Contract does not make it a Public Contract as defined in ORS 279A.010(1)(z). Rather, an Irrigation Contract is specifically defined under ORS 552.618.

In summation, TID has not violated any public contracting laws. The copy of the Agreement you possess is a placeholder, as I am sure you are aware the Exhibits attached are not recordable. The final Agreement is being put together and will be recorded in the near future.

Sincerely,

Carl W. Hopp, Jr.
Attorney at Law, LLC
168 NW Greenwood Avenue
Bend, OR 97701
(541) 388-3606 Fax 541-330-1519
email:reception@cwhepp.com

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DOUTHIT Susan M

From: FRENCH Dwight W
Sent: Tuesday, July 15, 2014 1:00 PM
To: DOUTHIT Susan M; JARAMILLO Lisa J
Cc: WOODCOCK Doug E; PUSTIS Nancy N
Subject: FW: Public Records Request on behalf of Thomas and Dorbina Bishop [IWOV-PDX.FID840258]
Attachments: 7-14-14 LT Oregon WRD - Public Records Request - Bishop.PDF

Susan and Lisa,
Attached is a major public records request related to the water ski lake/TID.

At this point we are tasked with providing an estimate for these items. Estimates should include both Time and Copy costs.

Susan: Please estimate how much time it would take and how many copies would need to be made relative to items 1-4, 9, 10. Also, please check with Kelly and see if you can come up with anything for 11 and 13.

Lisa: You have it relatively easy: Same as Susan but only item 12.

I believe Doug and his staff will/may have contributions on 4, 13 and 14 and will be taking the lead on 5-8.

I'd like to have your estimates on Monday, July 21 so Nancy can coordinate a response back to the requester next week. Please cc Nancy and Doug with your estimates. Direct questions to me.

Thanks,
Dwight

Dwight French

Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@state.or.us
503-986-0819

From: PUSTIS Nancy N
Sent: Monday, July 14, 2014 3:33 PM
To: FRENCH Dwight W; WOODCOCK Doug E
Cc: GORMAN Kyle G
Subject: FW: Public Records Request on behalf of Thomas and Dorbina Bishop [IWOV-PDX.FID840258]

Good afternoon, you two.

Here is a public records request from Janet Neuman relating to Thomas and Dorbina Bishop's water right under one of Tumalo Irrigation District's water right Certificate 74146. Can you please assist me in obtaining a cost estimate for WRD's response?

Thank you!

From: SMITH Cindy S
Sent: Monday, July 14, 2014 3:15 PM
To: PUSTIS Nancy N
Subject: FW: Public Records Request on behalf of Thomas and Dorbina Bishop [IWOV-PDX.FID840258]

Cindy Smith

Executive Assistant to Acting Director Tom Paul
Oregon Water Resources Department
725 Summer Street NE
Salem, OR 97301
503-986-0876 (phone)
503-986-0903 (fax)

From: Juanita Hryciw [<mailto:juanita.hryciw@tonkon.com>]

Sent: Monday, July 14, 2014 3:14 PM

To: publicrecords

Cc: Janet Neuman

Subject: Public Records Request on behalf of Thomas and Dorbina Bishop [IWOV-PDX.FID840258]

Please note that this e-mail is being sent on behalf of Janet E. Neuman. Thank you.

Attached is a letter to you dated July 14, 2014.

Juanita

Juanita E. Hryciw
Legal Assistant to Morris J. Galen,
Janet E. Neuman and Michael J. Millender
Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204-2099
(503) 802-2081--Direct Dial
(503) 972-3781--Direct Fax
juanita.hryciw@tonkon.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think you received this e-mail message in error, please e-mail the sender at juanita.hryciw@tonkon.com. Thank you.

Janet E. Neuman
Senior Counsel

Direct Dial: 503.802.5722
Direct Fax: 503.972.7422
janet.neuman@tonkon.com

July 17, 2014

VIA E-MAIL AND U.S. MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Comments on Transfer Application 11834

Dear Ms. Douthit:

As you know from my earlier communications, I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID" or "the District"). This letter contains comments on the District's Transfer Application 11834. (I have also submitted separate comments for the Bishops today on the District's Transfer Application 11833.)

It is somewhat difficult to provide appropriate comments on T-11834 separately from T-11833, because the two applications concern one unified project. In T-11833, the District requests a change in place of use to move some of the water currently stored at Upper Tumalo Reservoir to a new location (the "reservoir water"). That new location consists of two newly-constructed, privately-owned reservoirs designed and built to serve as water features for a planned (but not yet permitted) housing development on land owned by Harris Kimble, Eric Cadwell, and/or KC Development Group, LLC (collectively "KCDG"). In *this* application, T-11834, the District requests a change of place of use for irrigation rights that are appurtenant to the parcels of land underlying the new reservoirs, in order to move those rights to different parcels of non-inundated land (the "irrigation water"). The request here is thus dependent on approval of the transfer of storage rights requested in T-11833. If T-11833 is denied, the changes requested here in T-11834 are unnecessary.

My comments on T-11833 discussed in considerable detail why that transfer proceeding should be adjourned or the request denied, and why the KCDG reservoirs should be submitted to a full permit application process. For the same reasons, this transfer should also be

Ms. Susan M. Douthit
July 17, 2014
Page 2

adjourned or denied pending a full permit review of the KCDG water storage facilities. My T-11833 comments are therefore enclosed with this letter and incorporated herein. In the rest of this letter, I will briefly highlight the issues that are particularly pertinent to T-11834.

The District has signed an Agreement with KCDG whereby the District essentially cedes control of both the storage water and the irrigation water to KCDG. In particular, KCDG is allowed to move the irrigation water covered in this transfer "through" its facilities, which will also hold the storage water. However, KCDG is not supposed to store the irrigation water with the storage water. Neither transfer application provides any information at all about how the reservoirs will be managed to accomplish this separation of the two "buckets" of water. The Agreement does not contain any description of the "plumbing" by which the District can access the irrigation water (or the stored water) to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting water *to* KCDG's property and *into* the ponds. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands. Nor is it clear how and where irrigation return flows will be directed back to the rest of the District's system.

The Bishops' water rights are senior to both the irrigation rights and the storage rights. However, KCDG's diversion to its reservoirs is upstream of the Bishops. It is thus critical for the Bishops to have adequate information to determine how the District will meet its delivery obligations to them and thus to evaluate how they will be injured by this transfer. Part 1a, pages 11-13, and Part 2d of the attached incorporated comments further detail the inadequacy of the available information and how the Bishops and other water users are injured by this transfer as proposed. The Bishops reserve the right to provide additional comments when the Department has obtained information about the operation of the KCDG reservoirs sufficient to allow an evaluation of the impact of the proposed changes.

Sincerely,

Janet E. Neuman

Senior Counsel

Enclosure

DOUTHIT Susan M

From: Janet Neuman <Janet.Neuman@tonkon.com>
Sent: Thursday, July 17, 2014 4:47 PM
To: DOUTHIT Susan M
Subject: Comments on Transfer Application T-11834 [IWOV-PDX.FID840258]
Attachments: 5710904_1.pdf

By separate email, I am also enclosing my comments on T-11833, which are incorporated herein by reference.

DOUTHIT Susan M

From: Janet Neuman <Janet.Neuman@tonkon.com>
Sent: Thursday, July 17, 2014 4:51 PM
To: DOUTHIT Susan M
Subject: Comments on Transfer Application T-11833, to be included with comments on T-11834 [IWOV-PDX.FID840258]
Attachments: 5710446_1.pdf

My legal assistant has left for the day—otherwise, this would be electronically attached to my T-11834 comment letter. I'm sorry for any confusion! The hard copy is coming as one item.



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
janet.neuman@tonkon.com

July 17, 2014

VIA E-MAIL AND U.S. MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Supplemental Comments on Transfer Application 11833

Dear Ms. Douthit:

As you know from my earlier communications, I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID" or "the District").¹ I submitted brief comments on the Bishops' behalf on the District's Transfer Application 11833 on June 23rd. This letter contains additional and expanded comments relevant to this proposed transfer. (I have also submitted separate comments for the Bishops on the District's Transfer Application 11834.) For the reasons outlined in this letter, I urge the Water Resources Department (the "Department") to adjourn this transfer proceeding and/or deny the transfer application, to require a permit for the water storage facility which is the subject of this proceeding, and to pursue any and all appropriate enforcement action pertaining to this facility.

Since a picture can be worth a thousand words, I'd like to first direct your attention to the enclosed photographs (Exhibit C). Some of these photographs were taken by my

¹ The Bishops are also represented by Jennifer Bragar at the Garvey Schubert Barer firm on other aspects of this project, including land use issues and public contracting matters; we are coordinating our efforts on behalf of the Bishops. On June 4, 2014, Ms. Bragar filed a Code Enforcement Complaint with Deschutes County on the Bishops' behalf ("Code Complaint"). On June 16, 2014, Ms. Bragar served notice on TID of violations of the public contracting laws ("Public Contract Notice"). I have attached copies of these documents for the Department's information as Exhibits A and B, respectively, and I will refer to them when relevant later in this letter; to avoid duplicate reproduction of documents, I have omitted the attachments to these two exhibits.

Ms. Susan M. Douthit
July 17, 2014
Page 2

client, Tom Bishop; others were taken by his son, Gene Bishop, and by one of his neighbors. Taken from May to July, the photos show the construction of two substantial reservoirs on land owned by Harris Kimble, Eric Cadwell, and/or the KC Development Group, LLC (collectively, "KCDG") on land immediately adjacent to the Bishops' property. The photographs illustrate the scale and speed of this project and set the context for these comments.

In only a few months, from early spring to the beginning of July, KCDG built and filled two large water storage facilities without any kind of meaningful agency review of the project. KCDG does not have a water permit allowing construction and filling of the reservoirs, nor does it have any land use approval for the development of the property. KCDG constructed their ponds on property formerly used for mining rock; the property is now zoned for rural residential use with wildlife management and landscape management overlays. One of the ponds (identified as the northerly pond in photos C-1 and 2) is apparently intended as a recreational fishing pond to serve KCDG's proposed housing development. The other pond (identified as the water ski lake in photos C-8 through 15) is intended and designed for use as a water ski lake serving the development. A dozen or more heavy construction vehicles operated in full shifts for several weeks to construct these facilities, excavating, filling, and moving tens of thousands of cubic yards of material to create the ponds and build a road.² All of this activity was carried on without any review or approval other than a one-month rock crushing permit from Deschutes County.³ During construction, tens of thousands of gallons of water were pumped from a well on the property into an elevated water tank, and then used to fill tanker trucks for dust control and other construction purposes (see photos C-3 and 4).⁴ The northerly pond was filled with water during May and the water ski lake was filled beginning in the last week of June.

² Photo C-16 shows some of the construction equipment. The two ponds together were constructed to store a minimum of 108 acre feet of water, which is equivalent in volume to more than 174,000 cubic yards of material. Since the site was already partially excavated in places, the amount of material removed would be somewhat less than this figure, but still a very large volume.

³ The Bishops' Code Complaint (Ex. A) challenges the lack of county land use review for constructing the ponds and the road under the applicable zoning requirements.

⁴ Photos C-3 and 4 show water being pumped from a domestic well on the KCDG property into an elevated holding tank, which was then used to fill tanker trucks (photo C-17). I believe this well is Well Number 112224, drilled in February of 2014. When I questioned District 11 Watermaster Jeremy Giffin about this water use, he said that the onsite contractors told him they were filling a 3,000 gallon tanker truck one and one-half times per day and were thus covered by the 5,000 gallon per day industrial groundwater use exemption. Having observed the heavy traffic of the tanker trucks onsite in May and June, my clients question whether this water use was always kept within the limits of the exemption. Whether the amount of water use was excessive or not, this fact also speaks to the large scale of this operation.

On numerous occasions during construction, my clients contacted Deschutes County officials, TID's management, the Department, and District 11 Watermaster, Jeremy Giffin, to object to the project's proceeding without any land use or water use approvals. The Bishops also attended District Board meetings to register their objections—both substantive and procedural—to the District's entering into a contract with KCDG. In spite of those objections, a parcel of land that consisted mostly of naturally vegetated ground in a winter wildlife migration zone a few months ago now contains two large artificial water bodies covering approximately 20 acres.⁵ My clients are astounded that these reservoirs have been completely built and filled, with resultant damage to the wildlife habitat and landscape, with no public review. The discussion below explains why we believe this to be wrong and in violation of applicable law.

1. *The KCDG reservoirs require an independent permit.*

Two water storage facilities of this magnitude should not have been constructed and filled with water without prior review by the Department. As I pointed out in my June 23rd letter, 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.) Section 2 of the same statute prohibits anyone from *using, storing, or diverting* any water "until after the department issues a permit." (Emphasis added.) 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).) And finally, ORS 537.400(1) restates that "all applications for reservoir permits shall be subject to the provisions of ORS 537.130."⁶

There can be no question that the KCDG structures are reservoirs. The two ponds together are designed to hold a minimum of 108 acre feet of water—the equivalent of nearly five million cubic feet and more than 35 million gallons of water. The two reservoirs have a combined surface area of approximately 20 acres. The larger of the two is designed specifically as a water ski lake for the residents of KCDG's contemplated development. It also contains two constructed islands to facilitate turns and a ski boat waiting area, and recently, KCDG submitted—but subsequently withdrew—an application to the County to build a boat house and an additional boat slip at this lake.

⁵ This size estimate is based on the District's application in Transfer 11834, where the District seeks to change the place of use for 21.4 acres of irrigation rights, in order to move the rights off the land now occupied by KCDG's reservoirs and road.

⁶ ORS 537.147 also provides for a secondary permit for use of stored water in certain circumstances; nonetheless, the application requirements and review process are substantially similar.

Ms. Susan M. Douthit
July 17, 2014
Page 4

Neither of these water reservoirs existed or stored water prior to KCDG's excavation and construction. Instead of requiring a permit to build and store water in these facilities, the Department has allowed them to be filled with water as if the reservoirs were already in existence—and already permitted—and thus can simply serve as a new place of use for irrigation district water previously stored elsewhere. In this case, "elsewhere" means the Tumalo Irrigation District's Upper Tumalo Reservoir. Thus, water belonging to the District and its members, that was stored in a District-owned facility, and provided both District and public benefits, has been moved to a private facility providing private benefits, with no agency or public review.

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

The two KCDG reservoirs are precisely the sort of significant water storage and use project that a full permit review is designed to consider. In my June 23rd letter, I listed a few of the issues that would be covered in a full permit review. I want to expand on that discussion here.

To obtain a new permit to construct and fill two reservoirs as part of a housing development, KCDG would be required to provide all of the detailed information described in ORS 537.140 and OAR 690-310-0040. This includes details about the reservoir structure and its operation (to enable review and evaluation of the design, construction, and geotechnical analysis) and information about the sources of water.⁷ In Transfer Application 11833, KCDG and TID have emphasized filling the ponds with water from the Upper Tumalo Reservoir. However, in addition to holding 108 acre feet of stored water in the two reservoirs on a permanent basis, KCDG also plans to "pass through the Ponds" enough water to irrigate approximately 55 acres of land (including the approximately 21 acres that are the subject of Transfer Application 11834), but, supposedly, not to store this water in the ponds or on the property.⁸ This irrigation water comes from different sources, including Tumalo Creek.⁹ Exactly how KCDG intends to manage this commingled water is completely unknown because the project has not been subjected to public review. Instead, the project has been proposed under two separate transfer applications as if the handling of the stored water and the handling of the irrigation water bear no relationship to each other, whereas KCDG ought to be required to

⁷ See, for example, ORS 537.140(1)(a)(B); OAR 690-310-0040(1)(a)(B).

⁸ Irrigation Contract (Water Storage Easement Agreement) between the KC Development Group, LLC, and the Tumalo Irrigation District, dated June 10, 2014 (the "Agreement"), at p. 1, Section 2. A copy of this Agreement is attached to this letter as Exhibit D.

⁹ These irrigation rights are involved in T-11834.

explain how the reservoir will be managed to account for these two sources and different authorized uses of water.

In a new permit application, details about how the stored water would be used would also be required, including the plans to use one of the reservoirs principally as a water ski lake.¹⁰ The application would also require KCDG to provide justification for the amount of water to be stored and used, and how it would be measured.¹¹ Other information required includes "measures the applicant proposes to prevent damage to public uses of affected surface waters."¹² Upper Tumalo Reservoir serves several public uses, including wildlife habitat and recreation, and KCDG should be required to describe the impact of reducing the water authorized to be stored there by approximately 10%.

- b. The permit process is necessary to elicit critical information from other affected agencies, including whether the KCDG project is compatible with local land use laws.*

Another very important piece of information required for a new permit application is information about the project's compatibility with applicable land use laws.¹³ As described in the Bishops' Code Complaint (Ex. B), the status of these reservoirs under Deschutes County's land use ordinance is problematic. The KCDG property is zoned for Rural Residential use with overlying Wildlife Area Combining and Landscape Management Combining Zones. Neither the water storage facilities nor the proposed PUD or cluster development are allowed as outright uses in this zone. KCDG and the District apparently take the position that the facilities are allowed outright because they are part of the District's irrigation system. This argument is discussed further in Part 2a below.) The point for now is that the matter of land use compatibility is intended to be considered and resolved publicly as part of a water permit application process. Instead, the discussion of land use compatibility is occurring behind the scenes, out of public view.

Furthermore, when KCDG does finally request county approval for its further development of the site, the County's review will necessarily be influenced and potentially constrained by the amount of site development done so far. The fact that the site now contains a newly-constructed road and two completed water features, constructed at considerable expense, will be difficult to ignore. On June 13, KCDG applied for a permit to build a boat house on the

¹⁰ See, for example, ORS 537.140(1)(d); OAR 690-310-0040(1)(a)(E).

¹¹ OAR 690-310-0040(1)(a)(K).

¹² *Id.*

¹³ OAR 690-310-0040(1)(L). In fact, this information is also required for transfer applications, pursuant to 690-005-0025(3), but as far as my clients know, the information has not yet been provided.

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water ski lake, again prior to submission of any plan for the whole site.¹⁴ It is clear that KCDG wants to do everything it can to develop this property before submitting its request for approval of building houses on the site. The more developed the site, the harder it will be, as a practical matter, for the County (or the public) to influence KCDG's development plans or deny KCDG's request. And meanwhile, all of the work on site makes the development more attractive for potential lot purchasers, further allowing KCDG to get out ahead of the agency approval process.

The County is not the only agency that is allowed to weigh in on a permit application. The Department's statutes and rules require that other agencies receive notice of new applications.¹⁵ This notice allows agencies and Tribes to provide comments related to their jurisdiction and areas of expertise, including, among other issues: public safety; air, water, and noise pollution; fish and wildlife; land use; and transportation. These agencies are accustomed to reviewing new applications for areas of concern. On the other hand, they are unlikely to review transfer applications closely, because the issues involved in transfers are much more limited.

None of the information discussed in the prior pages has been required or considered for this project, because the project is proceeding under the guise of a transfer application. Furthermore, since the review is proceeding as a *district* transfer, the process is even more truncated. As a result, KCDG's reservoirs are already finished and filled with Tumalo Irrigation District water, without review of any of the important and detailed information discussed above.

c. Without a full permit review, the Department cannot fulfill its responsibilities 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 prior to committing water to any particular project. In particular, the Department must

¹⁴ Further communications between Jennifer Bragar and the County occurred regarding that application, and it appears that the application has been withdrawn for some reason.

¹⁵ OAR 690-310-0090 requires the Department to send its weekly notices to local, state and federal agencies and Indian tribes.

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conduct a full public interest review of new applications.¹⁶ In my June 23rd letter, I raised some of the public interest concerns that are pertinent to a permit review. I will expand on these issues here.

Department rules (OAR 690-310-0120) require WRD to consider the following 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, including supporting provisions such as public facilities plans.

This list of factors illustrates all the analysis missing here. With a proper reservoir permit application by KCDG, the Department would need to consider, at the very least: the impact of adding two new storage facilities on evaporative water losses or other forms of waste; the water quality impacts of using the ponds for water skiing and other recreational uses; the water quality impacts and other potential effects on domestic wells in the area; and the impacts to wildlife, such as the barriers to wildlife migration created by the reservoirs, roads, and other development. Furthermore, the permit process would force a full consideration of how these water storage facilities fit with local plans for land use, development, and recreation. Again, *none* of these issues are addressed at all in a transfer review.

The Department's failure to require a permit application from KCDG for its two reservoirs seriously undermines the provisions of the Water Code. The Department and other federal, state, and local agencies have been prevented from gaining a full understanding of this project and from appropriately exercising their statutory authorities. And the Bishops and other members of the public are being denied important procedural and substantive rights.

¹⁶ 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 appropriation.

2. *Use of the district transfer statutes to bypass the clear language of the reservoir permit requirements distorts the facts of this project and misapplies the law.*

a. *This project is improperly characterized as a Tumalo Irrigation District project.*

The applicant inaccurately and disingenuously characterizes this proposal to move water to the KCDG reservoirs as a Tumalo Irrigation District project. This is KCDG's project, first and foremost. KCDG owns the land and the reservoirs and has, for some time, planned to build a luxury housing development on the site. Several years ago, these developers approached Jeremy Giffin, District 11 Watermaster, about obtaining a permit to construct ponds on the KCDG property, as part of its long-term development plan. KCDG decided not to apply for a water right, but to pursue obtaining water from the Tumalo Irrigation District instead. In fact, we understand that it may have been Mr. Giffin himself who suggested that the developers contact the District for water; in any event, it was not the District who approached KCDG about storing district water, but the other way around.

The District did not independently propose to move water from Upper Tumalo Reservoir to the KCDG property to serve District needs. The District did not look for alternative water storage facilities or locations. If the District had been truly interested in seeking out new storage facilities, as a matter of legitimate irrigation district business, it would have been proper for it to include the proposal in the regular district planning process, to discuss the needs with its members, to investigate alternative ways of meeting the needs, and to seek competitive storage proposals from its water users, other property owners with available land, or existing reservoir owners and operators. The District did not do any of those things, in spite of specific requests to do so from our clients and others.¹⁷

¹⁷ See Public Contract Notice, Exhibit B. Our clients and other district water users told the District that if it really wanted to find another location to store Tumalo Reservoir water, it should open the process to offers or bids from other property owners and take the offer that would maximize the financial return to the District (which in turn would benefit the members). Indeed, prior to the District entering into its contract with KCDG, Mr. Bishop offered the District \$10,000 per year to keep the water in the Upper Tumalo Reservoir rather than move it to KCDG's property. This amount is nearly twice as much as KCDG is paying the District to use the water in its development. Furthermore, this arrangement would have allowed the District to avoid the substantial risks (including potential tort liability) and uncertainties of having its water storage under control of a private party or the party's possible successors in interest—such as a future homeowners' association..

The District completed two detailed and thoughtful Water Management and Conservation Plans in 2000 and 2005. These plans assessed water losses throughout the irrigation system (estimated at 60-70% historically), analyzed several alternatives to better manage and conserve water, and set forth a detailed plan to pipe all of the District's canals to eliminate most of the system's water loss. The Plans noted evaporation and leakage losses from Upper Tumalo Reservoir, but did not propose reducing the volume of water stored there or moving storage away from the reservoir.¹⁸

It was not until quite recently that the District began to describe the KCDG ponds project as if it were actually a *district* project. In a June 19, 2014 letter to Deschutes County, the District Manager, Ken Reick, said that the District "has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir."¹⁹ Mr. Reick refers to the new site only as the "Klippel Acres Mining Pit." The letter makes no mention of KCDG or its plans for the ponds and the intended surrounding development, except by way of copying the letter to "Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site." (Nor did the letter mention the application for a permit to build a boathouse and boat slip.) Mr. Reick describes detriments of the Upper Tumalo Reservoir site and benefits of the new site. The letter claims that "Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review" notwithstanding the fact that the District neither owns nor leases the land, and will not own or operate the reservoirs. Mr. Reick cites portions of the County Code which allow "operation, maintenance, and piping of *existing irrigation systems* operated by an Irrigation District . . ." as an outright use in a rural residential zone. (Emphasis added.) Describing KCDG's extensive pond construction project—most of which was completed before the TID Board approved the Agreement with KCDG at its June 10, 2014 meeting—as part of the District's existing irrigation system is disingenuous and misleading at best, and just plain false at worst. Furthermore, as

¹⁸ The initial plan, prepared in 2000, included a brief discussion of reconstructing the Upper Tumalo Reservoir or storing water elsewhere within the pipe network, but in a very limited context, relating only to the prospects for storing water during peak demand periods in order to lessen the impact on other irrigation districts of TID's varying rates of diversion from the Deschutes River. The Plan dismissed these alternatives and instead suggested approaching the North Unit Irrigation District about adjusting its own operations to deal with the river flow variations expected after full implementation of TID's conservation project; this discussion apparently took place and was favorably received. Tumalo Irrigation District, Water Conservation Plan, pp. 5-5—5-6 (July 16, 2000). The 2005 Update noted the evaporation and seepage losses from the reservoir, but contained no further discussion about the reservoir. The discussion about storage during peak demand periods did not appear at all in the later Plan.

¹⁹ Letter from Ken Reick to Nick Lelack, Deschutes County Community Development Director, June 19, 2014, attached as Exhibit E.

discussed further below, the District has essentially ceded its control of the water stored on KCDG's property to KCDG.

In fact, when the TID Board discussed the KCDG Agreement at its meetings on May 13, 2014, and June 10, 2014, the tenor of the discussion was considerably different. The project was not discussed as a District project, but rather the Board emphasized the fact that KCDG and the Watermaster had brought the proposal to the District.²⁰ The Agreement itself does not even describe this as a District project, saying instead: "Whereas KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property... and [w]hereas TID is willing to allow KCDG to hold the Stored Water" ²¹ Furthermore, the District points to its lack of ownership of the project to support its position that the public contracting laws do not apply to its transaction with KCDG.²² The District cannot have it both ways.

Instead of investigating available storage options and determining the best alternative for the District and its members, the District entered into a lopsided deal brought to it by KCDG. The Agreement approved on June 10, 2014, by the District's Board allows KCDG to take control of stored water belonging to the District and convert it to the developers' own private benefit. As noted, to begin with, the Agreement recites that KCDG desires to store water and the District is willing to allow KCDG to hold the stored water. The District agrees to use a district temporary transfer to move water to KCDG's ponds, to renew the temporary transfer on an annual basis as needed, and eventually to request a district *permanent transfer*. KCDG agrees to pay the District \$50 an acre foot per year for the stored water (for a total of \$5,400 annually), as well as to cover all of the costs of the transfer applications, and to submit final proof of the permanent transfer to the Department by March 1, 2018, in support of the issuance of a new certificate. The price to be paid to the District is far below the market value for KCDG's use of the water.

²⁰ Tom Bishop attended the May 13th meeting and Gene Bishop attended the June 10th meeting, along with a Garvey Schubert Barer lawyer, who took careful notes on the entire discussion, except the Executive Sessions. At the May meeting, after taking some public comment from Mr. Bishop and others, the Board tabled consideration of the contract. At the June meeting, the Board Chair said only that KCDG's lined reservoir would be superior to the Upper Tumalo Reservoir, and that the District had explored other potential storage sites, without providing any support for that statement. The Board approved the contract with only minor modifications to the version it considered in May.

²¹ Agreement, *supra* note 8, at p. 1, Recitals.

²² See June 30th email from Bill Hopp responding to the Public Contract Notice, attached hereto as Exhibit F.

The Agreement does not explicitly state anywhere that the water in the ponds will belong to the District and/or its members, or will be subject to the District's exclusive management and control, as the water in Upper Tumalo Reservoir is now. KCDG agrees to grant the District an easement across KCDG's property, *but only* "for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement." The Agreement provides that "TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect." These provisions clearly limit the circumstances under which the District can access and use the water once it is on KCDG's property. If KCDG defaults on the agreement, the District's only remedy is to start another transfer proceeding to try to move the water back to Upper Tumalo Reservoir or another location.

The Agreement does not contain any description of the "plumbing" by which the District can access the ponds and the stored water to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting the water *to* KCDG's property and *into* the ponds. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands.

Two provisions in the Agreement are particularly troublesome. Earlier in these comments, I noted that the ponds are intended to receive more than the 108 acre feet of stored water. Paragraph 2 on page 1 of the Agreement says, in full:

"TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in Exhibit A, particularly in the ponds (the "Ponds") described in "Exhibit B," (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property, or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)"

This provision of the Agreement is at the very least confusing, and very likely misleading. How will KCDG assure that the irrigation water passes through the ponds without being stored there? Prior to the District's approval of the Agreement with KCDG on June 10, 2014, and prior to the submission of the District's two transfer applications on June 11, 2014, KCDG had already filled the northerly pond. KCDG apparently claimed a right to do so by permission of Watermaster Jeremy Giffin to store irrigation water as a "bulge-in-the-system" ("BIS").²³ The northerly pond has a capacity of approximately 41 acre feet. After several

²³ It does not appear that much irrigation, if any, is actually occurring on KCDG's property during this season, thus eliminating any justification for storing water as a BIS.

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communications and complaints to Mr. Giffin on behalf of the Bishops about the water being stored on site, Mr. Giffin investigated; he confirmed in a June 12th email that KCDG was storing more water than the 18.25 acre feet that he would allow as a BIS.²⁴ However, he also said that, as of June 11, he had received the District's transfer application to move water into the ponds, and therefore the BIS issue was no longer a concern, since the District was allowed to "operationally" move the water once it had submitted the application. In addition to our general concerns about this sequence of events, and about whether the BIS concept properly applied at all to KCDG, we question how the BIS concept will be integrated with this provision of the Agreement. KCDG has already abused the BIS concept once; what is to prevent it from doing so again? It seems very likely that KCDG will in fact hold its irrigation water in the ponds, contrary to the Agreement's terms.

In fact, language in paragraphs 7 and 8 of the Agreement adds to this concern. These two provisions make it clear that the transfer of storage rights and the transfer of irrigation rights are interrelated. Before the District will request (on KCDG's behalf) a permanent transfer of the storage rights to KCDG's property, KCDG must fill the ponds with 108 acre feet of water *and* complete a transfer of the irrigation rights now associated with the land under the ponds. Paragraph 8 says, in part, "If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, *fails to beneficially apply water to land with the water rights to be serviced by said Ponds* for a period of 5 years, . . . then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location." (Emphasis added.) It would certainly seem that as far as KCDG and the District are concerned, KCDG will use the ponds to store both Upper Tumalo Reservoir water and irrigation water from Tumalo Creek and other sources.

Why does this matter? First, these provisions further demonstrate that this is a KCDG project, and not a project for the good of the District. KCDG will exercise complete discretion and control over how it manages the ponds, as long as KCDG "uses" all the water provided to it under the Agreement.²⁵ The ponds will undoubtedly be operated for KCDG's benefit first and foremost, not for the benefit of the District or its other members. The Bishops

²⁴ On June 12, 2014, Mr. Giffin reported in an email to Jennifer Bragar and Janet Neuman that KCDG could only store 18.25 acre feet as a BIS.

²⁵ In fact, the Bishops and their neighbors have heard that the District gave KCDG the "keys" to control the diversion structures to direct water onto KCDG's land, even though these diversions also control and/or affect water to which other users are entitled, and even though District employees are supposed to be the only ones with the ability to lock and unlock diversions. I have not confirmed this claim with the District, however.

and other water users will be injured by giving KCDG control over so much of the District's water, as further discussed below. These provisions also illustrate the impropriety of reviewing this project under two separate and limited irrigation district transfer processes instead of a regular permit review.

The 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 is adequately protected from such liabilities at these two new reservoirs which are intended for heavy recreational use.

To call this project simply a change in place of use for some of the District water currently stored in Upper Tumalo Reservoir completely obscures the true nature and purpose of the project. Allowing the project to proceed as a District transfer application provides KCDG with an unjustified means of obtaining water for its own private development purposes, under terms that are very unfavorable to the District members and expose the District to substantial risks and uncertainties, without going through a full public review of its water use proposal.

b. *Reviewing this project as a District transfer allows it to avoid important agency reviews and public comment.*

Part 1 above already described the many issues that will not receive appropriate airing and review because of the lack of a full permit review process for the KCDG reservoirs. In this section, I want to shift the focus slightly, to address more specifically the inherent limitations of a transfer review, and in particular the truncated nature of a transfer requested by an irrigation district.

Oregon law does not require a public interest review of transfer applications, although some other states do. The information required to be submitted with a transfer application is correspondingly much more limited than for a new permit application. An irrigation district applying for a temporary transfer to change the place of use of a water right is required to submit minimal information—essentially of the "name, rank, and serial number" variety. For instance, OAR 690-385-2000 requires that the application include a number of facts that are matters of public record, such as the details about the right that is the subject of the transfer proceeding (certificate number, source of water, priority date, authorized uses, authorized places of use and points of diversion, and so forth). For a change in place of use, the application must identify the location of the proposed place of use and submit a map as required by OAR 690-385-2200. The district manager must state that the right hasn't been forfeited, that

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the information in the application is true and correct, and that "each user affected by the transfer [i.e., KCDG here] has provided written authorization for the transfer" OAR 690-385-3200(2) also requires a certification that "the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right." (These last two requirements are discussed further in Part c below.) That is essentially all that is required for a district temporary transfer of a place of use.

The Department's review of a transfer is limited by statute to an examination of whether the proposed change will result in enlargement and injury, as defined in OAR 690-385-0100 (4) and (6). The water right cannot be expanded by the change—for instance, the new place or type of use or new point of diversion cannot receive more water than the old locations did before the transfer. Nor can the change "result in another, existing water right not receiving previously available water to which it is legally entitled." Although non-district water users applying for a transfer must wait for Department approval before making the change, irrigation districts are allowed by OAR 690-385-3000(2) to go ahead and make their requested change as soon as they have submitted an application.²⁶

At the risk of being repetitive, I want to summarize again the sequence of events to highlight how a transfer review—and particularly an irrigation district transfer review—fails to get to the heart of this project. KCDG built a road without any agency review except for a temporary rock crushing permit. KCDG excavated many tons of dirt and rock to create two substantial water storage facilities, without any agency review. KCDG intends these facilities to be key components of their proposed housing development, which has not yet been applied for, reviewed, or—much less—approved by Deschutes County. KCDG used tens of thousands of gallons of water during construction, without any oversight of whether the amounts were excessive. KCDG filled one of the ponds with irrigation water several weeks ago, claiming permission as a "bulge in the system," even though the amount stored was clearly excessive and did not fit the Department's guidance for using BIS storage. All of this activity was carried out by KCDG before they even had any official agreement with the Tumalo Irrigation District to put District water in the reservoirs.

As soon as the District approved the KCDG Agreement on June 10th, two transfer applications were immediately submitted to the Department. Although the applications came under the name of the District, it is KCDG that is actually preparing, paying for, and handling the applications, as they are required to by the Agreement. Yet because the applications are nominally District applications, the Department has allowed the proposed

²⁶ Section (3) of this rule does allow the Department to revoke the change later if it finds enlargement or injury

changes to be made pending the ongoing transfer review process. KCDG proceeded rapidly during the latter part of June to complete and line the water ski lake, dig new ditches and install new pipelines, and fill the lake with water coming out of the TID main canal pipeline. Voila—two brand new reservoirs have been built on private land, and they are now filled with irrigation district water. By flying this project under a district transfer flag, the project proponents have assured that no agency is reviewing the full project, and no agency can effectively say no to the project, for any reason other than enlargement of water use or injury to other water rights—and then, only after the fact. This limited, backwards review process is completely inappropriate for a project of this magnitude.

c. *The District transfer statutes cannot properly be interpreted to apply to this project.*

I have already described why it is wrong, from a factual point of view, to consider this a District project. It is also wrong from a legal point of view to review the KCDG pond project under the district transfer statutes and rules in ORS 540.570 and OAR 690-385. A close reading of the statute demonstrates that the transfer statutes are designed to accommodate changes in place of irrigation, not changes in place of storage. ORS 540.570(1) states that an irrigation district may temporarily transfer "the place of use of water appurtenant to any land within the legal boundaries of the district *to an equal acreage elsewhere* within the legal boundaries of that district" as long as "*the rate and duty, and the total number of acres to which water will be applied* under the transfer, do not exceed existing limits" The plain language of the statute refers to moving irrigation water from one parcel of land to another. This meaning is reinforced by other sections of the same statute noting that the temporary changes apply to "one irrigation season" only. Furthermore, the statute discusses "affected landowners" as those whose lands are directly involved in the change of place of irrigation (the "from" or "to" lands).

The Department's administrative rules support this interpretation. OAR 690-385-0100(16) defines "user" for the purpose of the district transfer rules as "an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred." The rules then go on to require that a district's application include statements that any users affected by the transfer have given their written authorization for the change.

There is no explicit reference in the applicable statutes or rules to changes in *place of use* for a storage right. OAR 690-385-3120 discusses temporary changes in the *type* of use of a storage right, but only when a district is leasing the water instream. The absence of any discussion of changing the place of storage makes sense. It is one thing to propose moving irrigation water from one place to another within a district, as in the District's application in T-

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11834. After all, irrigation districts are formed to provide irrigation water to the owners of the whole portfolio of irrigable lands within their boundaries, and Oregon law provides many examples of providing district managers with the flexibility to move water around in order to use the irrigation water completely and optimally. On the other hand, a storage right is by definition tied to a very particular location. 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. However, that is not the situation here, where the purported "to" reservoirs have been built from scratch by a private party without any reservoir permits, on private property not owned or leased by the District.

The district transfer statutes were intended to facilitate irrigation districts' on-the-ground operations of diverting and delivering irrigation water to district patrons. The statutes were not intended to allow private interests to assume the mantle of a district to create brand new private reservoirs.

I recently requested public records from the Department pertaining to other instances where transfers have been used to change the place of use of storage, and in particular, where district storage has been moved to private facilities. I will be surprised if there are any other examples of transfers to newly-built, unpermitted, private reservoirs.

d. The proposed change in place of use will cause injury to the Bishops and other water users.

The bulk of this letter has been devoted to challenging the use of the district transfer process for this project. However, I want to provide comments relative to the enlargement and injury analysis as well, in the event that the Department persists in reviewing this project as a district transfer.

In order for the Department to carry out even a proper transfer review, it must obtain (and make available to the public) more information about how the KCDG ponds are intended to be integrated with the rest of the District's delivery system. It is impossible to fully assess the impact of this change on the Bishops and other water users with the limited information available. Without additional detail about how the KCDG reservoirs have been constructed, how they are connected to other District facilities, and how they will be operated, we are not able to understand how the change will affect other water users. Therefore, the Bishops cannot fully assess and comment on the potential for injury. The Bishops reserve the right to expand their comments in this regard when the full information is obtained by the Department.

Nonetheless, the fact that the District has ceded control of 108 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. As noted earlier, the District's Agreement with KCDG does not preserve sufficient access and control for the District to manage and deliver this water for its members. The Agreement provides the District with only a limited access easement to inspect the ponds. The Agreement only allows the District to pump water from the ponds for District use "in the event of drought or other emergencies." The application contains no information about how the KCDG ponds are to be operated in coordination with the rest of the District's delivery system so that the District's users receive water according to their priorities and location within the system. The Bishops' primary water rights are senior in priority date to the storage right, and also to KCDG's irrigation rights.²⁷ Yet KCDG's diversion to its ponds is upstream from the Bishops' property. Although in theory, the Bishops should still be able to call their water, it is not clear how that call will be met. Will KCDG bypass a portion of what it is allowed to store and "pass through" the ponds to satisfy senior users like the Bishops? Are the ponds "plumbed" to allow direct delivery to other users?

How will the addition of two more ponds, with a combined surface area of about 20 acres, affect the losses of water by evaporation within the District? 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.²⁸ Even though the volume of water stored in the Upper Tumalo 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 ponds. In fact, removing water from Upper Tumalo Reservoir may very well increase the rate of evaporation from the reservoir, which would constitute an enlargement.

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 ponds on this drinking water supply.

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

²⁷ The Bishops' rights have a priority date of 1900, whereas the rights appurtenant to KCDG's property have priority dates of 1907 and 1913, and the District's storage right has a priority date of 1961.

²⁸ TID 2005 Plan, p. 1-1.

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, 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 ponds 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 to 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, causing TID to have to incur such costs in order to protect and maintain the storage of water at the site.

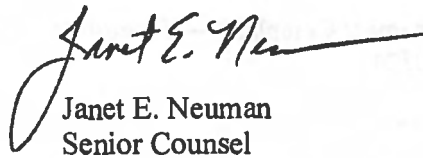
Although the injuries just described are broader than the typical injuries considered in a transfer review, they represent real risks to the Bishops and other water users within the Tumalo Irrigation District. These risks further demonstrate the impropriety of handling this project under the irrigation district transfer rules.

Ms. Susan M. Douthit
July 17, 2014
Page 19

3. *Conclusion*

These comments demonstrate that T-11833 should not be allowed to proceed. The Department should adjourn the proceeding or deny the transfer outright and should further require KCDG to obtain an independent permit for their reservoirs reflecting the actual use of the facilities. If the Department does not adjourn the transfer proceeding for the reasons discussed here, it should deny the transfer because it will cause enlargement of water use and injury to the Bishops and other water users. Thank you for your full consideration of these comments.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

G A R V E Y S C H U B E R T B A R E R

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 4, 2014

VIA EMAIL AND U.S. MAIL

Mr. Tim Grundeman
Deschutes County Code Enforcement
117 NW Lafayette Avenue
Bend, OR 97701

Re: Code Enforcement Complaint -- Unpermitted Lakes at Tax Lots 1711130000828 and
1711130000824

Dear Mr. Grundeman:

Our office represents Thomas and Dorbina Bishop, who live at 63382 Fawn Lane, Bend, Oregon, adjoining tax lot 1711130000828. We also represent Eugene Bishop, who has first hand knowledge of the information set forth here. This letter is a follow-up to our conversation this morning and provides the details of the complaint in support of the attached Deschutes County Code Enforcement Complaint Form about unpermitted activities at tax lots 1711130000828 and 1711130000824 (the "subject property"). See Attachment 1 (the former is highlighted in yellow and the latter in orange).

Eric Cadwell, Harris Kimble, and/or KC Development Group, LLC (collectively, "KCDG") own the subject property. This complaint is related to KCDG's construction of two lakes on the property without obtaining land use approvals. While the Bishops understand the County takes the position that it has no grading ordinance to limit excavation and grading on the site, and no control over water use at the subject property, the County does have land use ordinances that limit a private property owner's development without appropriate permits, and the associated public review process. The Bishops' due process and property rights are being violated because the County has not provided the public review process under its land use ordinance – Deschutes County Code Chapter 18.

KCDG is currently developing two large lakes. One lake, the northerly lake, has been filled with water. See Attachment 2.¹ KCDG has indicated that the northerly lake will be used as a recreational pond. The southerly, larger lake is currently being lined in preparation for filling with water. See

¹ Mr. and Mrs. Bishop are separately undertaking enforcement action for the unpermitted water use to fill the northerly lake with the Oregon Water Resources Department ("OWRD"). Janet Neuman of the Tonkon Torp law firm is focusing on the OWRD and other aspects of this matter for the Bishops.



G A R V E Y S C H U B E R T B A R E R

Mr. Tim Grundeman
June 4, 2014
Page 2

Attachment 3. KCDG has indicated that the southerly lake will be used as a water ski lake. Both lakes are intended to serve KCDG's planned unit or cluster development. KCDG has not obtained the necessary land use approval for either lake or the planned or cluster development.

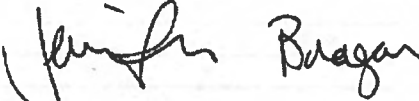
The lakes do not qualify as uses permitted outright under Deschutes County Code ("DCC") 18.60.020 because the lakes do not meet any of the listed uses identified in that code section. The lakes may qualify as conditional uses as recreation-oriented facilities, or as the County is aware of KCDG's intent, as part and parcel with KCDG's ultimate intent to apply for a planned or cluster development, subject to DCC 18.60.010 - .090.² The land use process is designed to require KCDG to obtain the necessary conditional use permit approval and to allow public review of the project. Further, the subject property is part of the Wildlife Area Combining Zone and Landscape Management Combining Zone that would further constrain KCDG's unpermitted development.

On behalf of the Bishops, this office requests that the County immediately stop work at the site and require KCDG to obtain necessary land use approvals, require the deconstruction of the lakes with complete remediation of the site under DCC Chapter 18.144, and obtain any monetary relief available to the County as a result of these violations. If the County allows the development to move forward, whereby KCDG would flout the land use process, the Bishops will treat the County's action as allowing the use.

Thank you for your prompt attention to this matter and your immediate action to stop KCDG from continued construction activities at the subject property.

Sincerely,

GARVEY SCHUBERT BARER

By 
Jennifer Bragar

JB:tk

Enclosures

cc: Lori Furlong (by e-mail)
Laurie Craghead (by e-mail)
Jeremy Giffin (by e-mail)
Tumalo Irrigation District Board of Directors (by e-mail c/o Ken Rieck)
Ken Rieck, Manager of Tumalo Irrigation District (by e-mail)
Oregon Water Resources Department (by US mail)
Clients

PDX_DOCS:518323.1 [39124.00100]

² In our conversation today, you indicated that you are aware that KCDG intends to use the large lake for waterskiing as the centerpiece of a planned or cluster development.



DESCHUTES COUNTY
COMMUNITY DEVELOPMENT
117 NW Lafayette Avenue, Bend, OR 97701
Telephone (541)388-6575, Fax (541)385-1764

CODE ENFORCEMENT COMPLAINT FORM

Instructions: In order for your complaint to be accepted, you must fill in all questions completely and sign on the back of this form. It is important that you supply as much detail as possible. If you have any questions, call code enforcement at 541-385-1707.

Date: June 4, 2014

Address of Violation(s): tax lots 1711130000828 and 1711130000824

City: Bend State: Oregon Zip: 97701

Nearest Cross Street: Between Buck Drive and Klippel Road

Subdivision: _____

Residents Name: Eric Cadwell & KC Development Group LLC Phone: _____

Owner of Property: Same (Agent: Eric Cadwell)

Address: 63564 Johnson Road

City: Bend State: OR Zip: 97701

Details of Complaint (be specific): See attached letter.

ARE THERE ANY KNOWN OR SUSPECTED HAZARDS AT THIS LOCATION?

IE: Dangerous or unstable residents, dogs, criminal activity, etc.

() YES (X) NO () UNKNOWN

If yes, please identify the hazard in detail: _____

**** Continue on reverse side ****



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

OTHER OFFICES
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

G A R V E Y S C H U B E R T B A R E R

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 16, 2014

VIA EMAIL AND CERTIFIED MAIL

Carl W. Hopp, Jr.
Attorney for Tumalo Irrigation District
Carl W. Hopp, Jr., LLC
168 NW Greenwood
Bend, OR 97701

Re: Notice to Tumalo Irrigation District of Violation of Public Contracting Laws Pursuant to
ORS 279B.420(3)

Dear Mr. Hopp:

Our office represents Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the Tumalo Irrigation District ("TID") boundaries. The Bishops' property receives irrigation water from the District pursuant to an appurtenant water right. This letter provides notice under ORS 279B.420(3)(e) that the Irrigation Contract awarded to KC Development Group, LLC ("KCDG") on June 10, 2014, violates Oregon's public contracting laws. To the extent that TID has adopted further administrative remedies or procedures for review of violations of the public contracting laws, consider this letter as a request for such further administrative review.¹

The Irrigation Contract is a public contract as defined in ORS 279A.010(1)(z):

"Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public contract" does not include grants.

The Irrigation Contract is either a (1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or water storage right held by the District pursuant to Oregon

¹ If further administrative review is available through TID's adopted procedures, please provide an explanation of that process and a copy of the adopted policy and/or procedures.



GARVEY SCHUBERT BARER

Carl W. Hopp, Jr.
June 16, 2014
Page 2

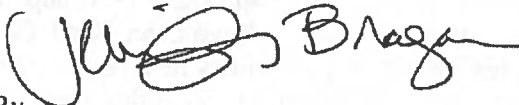
Water Resources Department Certificate Number 76684. In consideration for storing a portion of TID's water on KCDG's property, KCDG contracted to pay \$50/acre feet of water annually, for up to 108 acre feet of water. See Attachment 1.

Under ORS 279B.050, TID may not award a public contract for its water storage rights without undertaking a competitive sealed bidding process. As noted above, ORS 279A.010(1)(z) defines a public contract to include both purchases and sales of goods and services. Despite numerous letters and testimony to TID in regards to the low value being received by TID for the KCDG contract, as well as notice that Mr. and Mrs. Bishop questioned TID's compliance with public contracting laws, TID still entered the contract on June 10, 2014.

The TID/KCDG Irrigation Contract must be set aside because TID entered a public contract without undertaking a competitive sealed bidding process. If TID does not immediately respond to this letter and show that the contract has been set aside, Mr. and Mrs. Bishop will pursue all available legal remedies.

Sincerely,

GARVEY SCHUBERT BARER

By 

Jennifer Bragar

JB:dw
Attachment

cc: Ken Rieck (by email and certified mail)
Fran DeRock (by email)
Clients

PDX_DOCS:518797.5

Exhibit B
Page 2 of 2

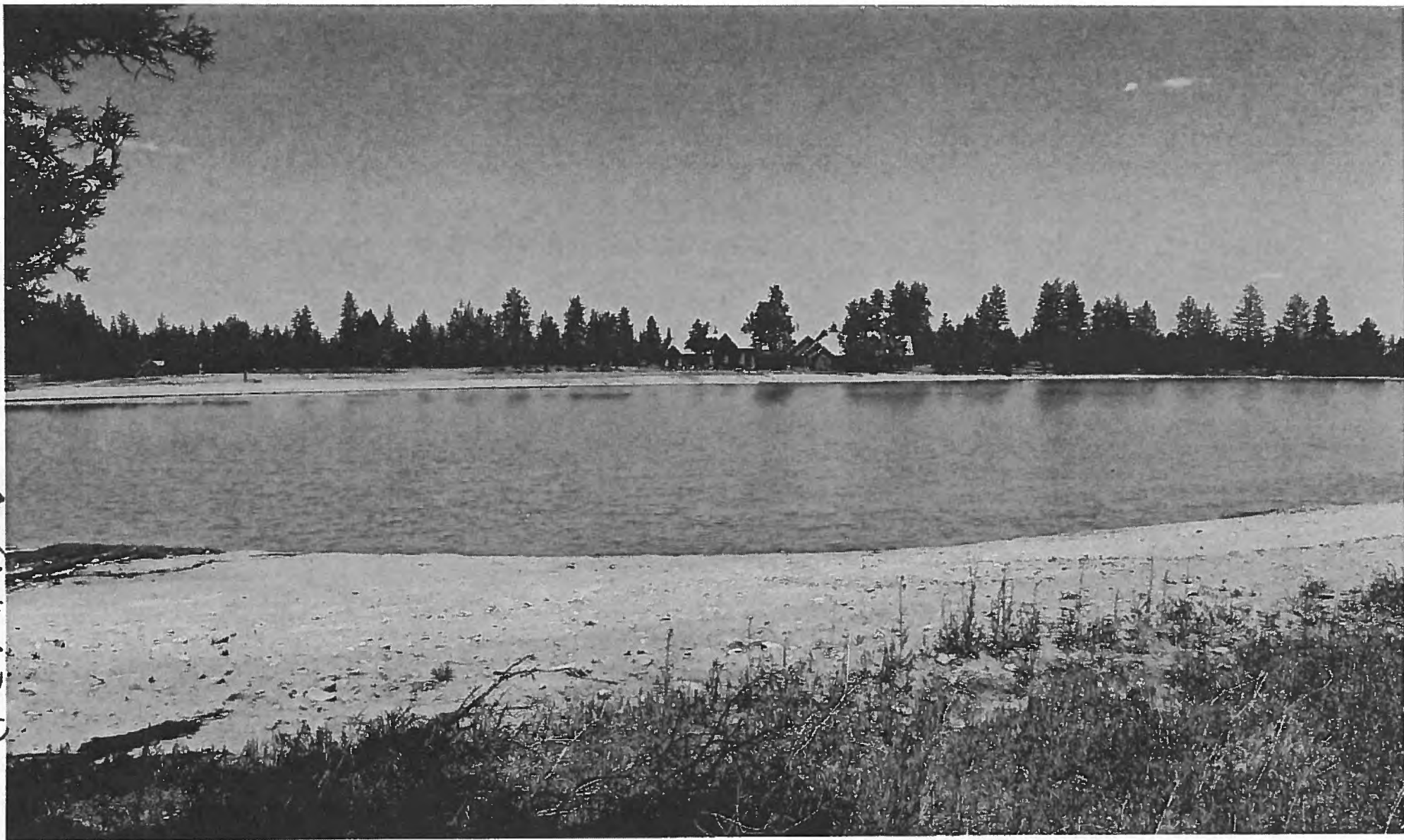
EXHIBIT C

Photographs of KCDG reservoir construction

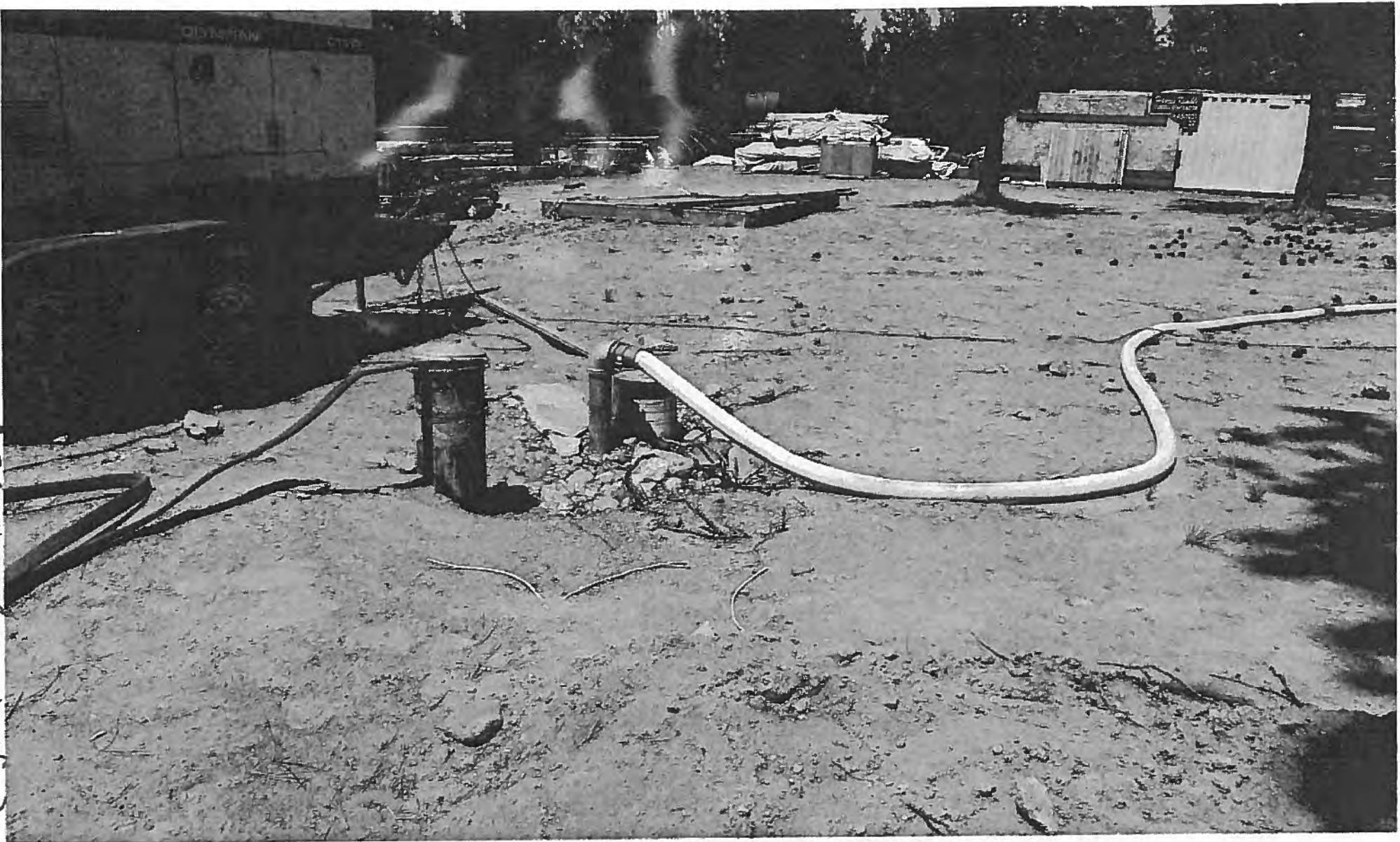


G-1 (Northside Pond)

D-2 (Northside Pond)

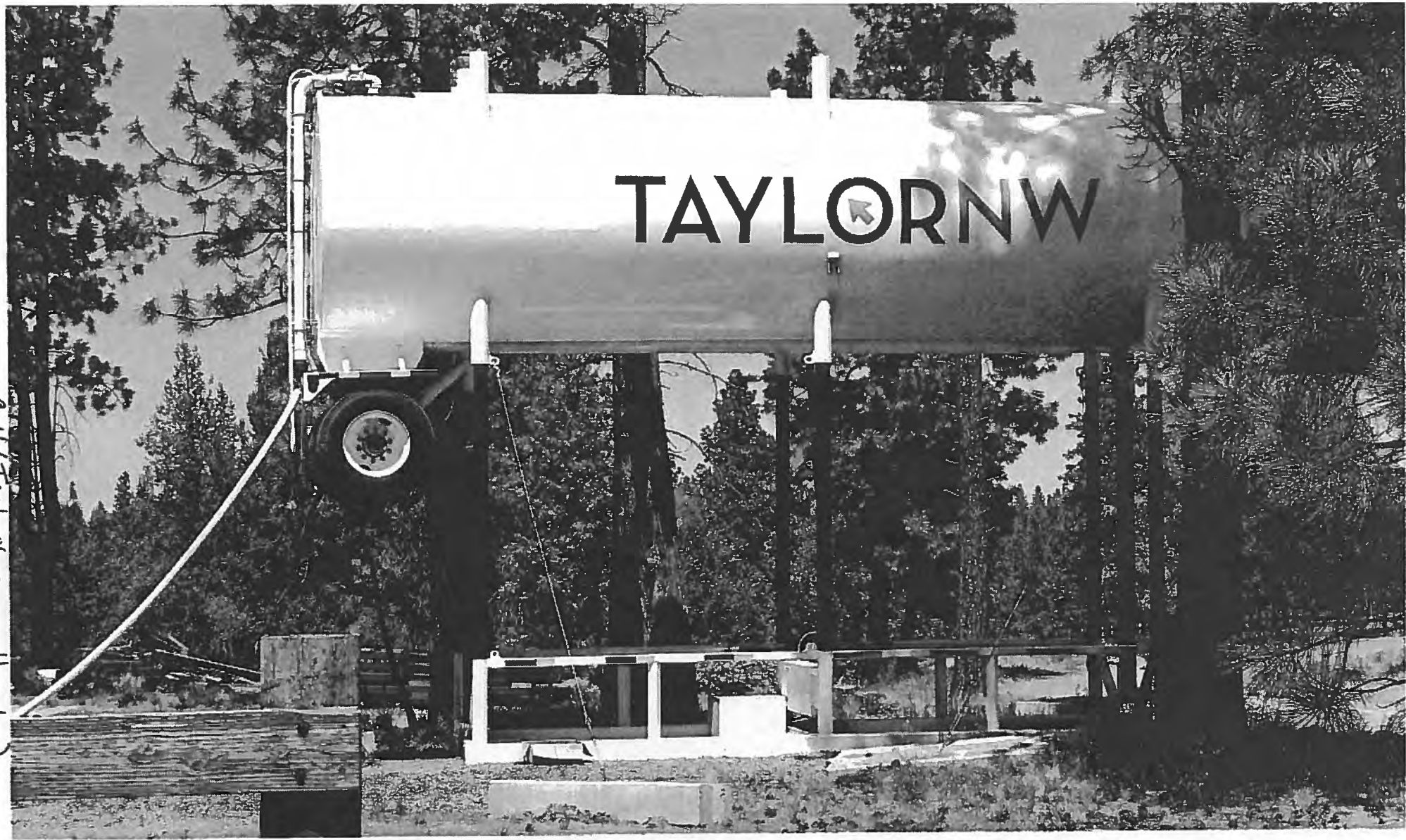


A-3/Well use for construction



TAYLORNW

C-4 (Tank storing well water)



2-5 (pond liner)





(Pond liner)



C-1 (construction of pond)



2-8 (construction of water ski lake)

D-9 (water seal lake)



C-10 (water ski lake)



(C-117 water ski lake)





U-12 (Filling water side lake)

G-13 (filling water) lake





C-14 (side to west side lake)

C-15 (WATER SLIP)





2-16 (construction equipment)



C-17 (Tanker Truck)

After Recording, Return to:
KC Development Group, LLC

68560 Johnson Rd
Bend OR 97701

No Changes to Tax Statements.

IRRIGATION CONTRACT

(WATER STORAGE EASEMENT AGREEMENT)

Tumalo Irrigation District, hereinafter referred to as "TID," is an Oregon Irrigation District established under ORS Chapter 545 Oregon Revised Statutes. KC Development Group, LLC, hereinafter referred to as "KCDG" is an Oregon limited liability company and the owner of real property described in "Exhibit A," attached hereto, and incorporated herein by this reference. Together, they are "Parties" to this Agreement.

RECITALS

WHEREAS, TID holds a valid water right pursuant to Oregon Water Resources Department Certificate Number *7664* ("Certificate") to store 1100 acre feet of surface water at what is commonly known as Upper Tumalo Reservoir in Deschutes County, Oregon; and

WHEREAS, KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property described herein in "Exhibit A" (Subject Property); and

WHEREAS TID is willing to allow KCDG to hold the Stored Water authorized to be stored under the Certificate in exchange for payment to TID;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. The above recitals are incorporated herein.
2. TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in "Exhibit A," particularly in the ponds (the "Ponds") described in "Exhibit B," attached hereto and by this reference incorporated herein. (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)

3. KCDG agrees to pay to TID certain consideration to hold the Stored Water on KCDG's Subject Property. Said consideration shall be made by payment of \$50.00 per acre foot of water right, per year, payable by check or other form of payment to TID on or before March 1st of each year, commencing on JUNE 10, 2014 for the first year, and to be paid by March 1st in each subsequent year for the following irrigation season. The initial charge of \$50.00 per acre foot shall be adjusted annually by the same percentage change made by TID in the total annual assessment and other account charges for each acre of land on TID's Certificate and entitled to irrigation pursuant to ORS 545.484, or by subsequent statute as that may be changed by Oregon's Legislature in the future. Payment is based on one acre feet of storage allowed under the storage right. Failure to make payment following 30 days written notice to KCDG is a default under this Agreement.

4. The obligations represented in this Agreement are contingent upon the Oregon Department of Water Resources ("OWRD") approval of the transfer of the desired portion of the storage rights under the Certificate to the Exhibit "B" ponds. The approval of and a new certificate issued by the OWRD) shall have the final proof submitted to OWRD by March 1, 2018. In the event OWRD does not approve the transfer of storage rights to the Ponds, this Agreement shall become null and void and of no further affect.

5. As further consideration for the transfer of the storage rights from Upper Tumalo Reservoir to the Ponds, KCDG shall pay all filing fees, engineering fees, reimburse TID for reasonable legal fees expended, staff time expended by TID personnel and any other costs or fees incurred by TID for the purpose of making the subject transfer or attempted transfer of storage rights from the certificate to the Ponds. Reimbursement to TID shall be made within 30 days of submission of the bill by TID to KCDG. Failure to make payment within 30 days of written notice is a default by KCDG under this Agreement. In the event OWRD does not approve said transfer, KCDG shall not be entitled to any refund of fees and costs paid to TID.

6. Upon execution of this Agreement and thereafter, and subject to approval of the transfer described in Paragraph 4, above, KCDG grants TID a perpetual Non-Exclusive Easement across the Subject Property and the Ponds for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement.

KCDG agrees to maintain the Ponds in acceptable condition to store the water allowed under the storage right. Maintenance of the Ponds, water conveyance lines, and any other construction necessary to accomplish the intent of this Agreement are to be borne by KCDG. Any repairs, adjustments or other construction deemed necessary by TID to comply with this agreement shall be performed by KCDG, or at KCDG's expense.

7. In the event KCDG fails to perform or is otherwise in default under this Agreement, upon 30 days written notice from TID or such longer period as it reasonably necessary to perform, TID shall be entitled to apply to OWRD to transfer the storage rights from the newly created certificate back to Upper Tumalo Reservoir, and KCDG hereby appoints TID its Attorney in Fact to consummate said transfer back to Upper Tumalo Reservoir.

2 - WATER STORAGE EASEMENT AGREEMENT

To effectuate this transfer, TID shall use a District temporary transfer under ORS 540.570. This temporary transfer will be good for a period of one year. If an additional year is necessary for KCDG to prove up and accomplish all items required for the transfer of the stored water to the Ponds, such additional one year temporary transfer as needed will be filed. In order to qualify for a permanent transfer, KCDG shall be required to:

A. Fill the ponds with 108 acre feet of water, and in the event the ponds will not hold at least said amount, the permanent transfers shall be reduced to the amount of acre feet of water actually held by the Ponds.

B. KCDG will transfer the surface irrigation water rights currently appurtenant to the Subject Property area of the Ponds, and will transfer the rights to another irrigable area. The irrigation rights, when transferred, shall be proven up and are a further condition that must be completed before TID is required to apply for a permanent transfer of the stored water.

8. TID will renew the temporary transfers on a yearly basis as long as KCDG is proceeding in good faith to complete the preceding items A. and B. Once items A. and B. are completed, then TID agrees to consent to the permanent transfer. If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, fails to beneficially apply water to land with the water rights to be serviced by said Ponds for a period of 5 years, fails to maintain the Ponds in a proper, safe condition, complying with all applicable Federal, State and Local Laws, Rules and Ordinances, or to comply with the By-Laws, Rules, Regulations or other requirements of Tumalo Irrigation District then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location.

9. This Agreement is binding upon the parties, their heirs, successors, and devisees.

10. The parties understand that the law firm of Carl W. Hopp, Jr., Attorney at Law, LLC, has served as legal counsel to Tumalo Irrigation District in the negotiation of the terms of this Agreement, and does not represent KCDG in connection with this Agreement.

11. The rule of construction that a written instrument is construed against the party preparing or drafting such written instrument shall specifically not be applicable to the interpretation of this Agreement, and any documents executed and delivered pursuant to, or in connection with this Agreement.

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Seller in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and

disbursements, the fees and expenses or expert witnesses in determining reasonable attorney fees pursuant to ORCP 68, the actual cost of a litigation or foreclosure report, and such sum as the court may determine to be reasonable for the prevailing party's attorney fees connected with the trial and any appeal and by petition for review thereof.

12. KCDG shall indemnify, defend, and hold harmless TID and its directors, officers, employees, agents and contractors for, from and against any and all losses, claims, actions, damages, liabilities, penalties, fines or expense, of whatsoever nature, arising from, related to, or in any way connected to this Agreement, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property arising from the use of the Subject Property, the Ponds, or adjoining areas, or from any activities contemplated by this Agreement, in each case undertaken by KCDG or any other person claiming by, through, or under KCDG. In the event litigation or proceedings brought against TID arising out of or in any way connected with any of the above events or claims, against which KCDG agrees to defend TID, KCDG will, on notice from TID, vigorously resist and defend such actions or proceedings in consultation with TID through legal counsel reasonably satisfactory to TID. The indemnity set forth in this paragraph shall be effective without regard to compliance or non-compliance with this Agreement by KCDG or TID.

13. TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect.

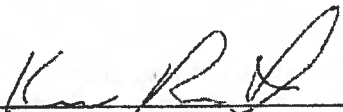
14. TID makes no representation that storage water will be available. Fees under this Agreement are due TID whether or not water is available. TID is not liable for any loss, damage, or claim which may be made for failure to supply storage water or the withdrawal of storage water.


15. KCDG and its successors shall require the purchasers/lessees at the time of purchase or lease of residential lots in the development to sign and record a document acknowledging that the purchaser/lessee has read and accepted this Contract.

DATED this 10th day of June, 2014.

TUMALO IRRIGATION DISTRICT

KC DEVELOPMENT GROUP, LLC

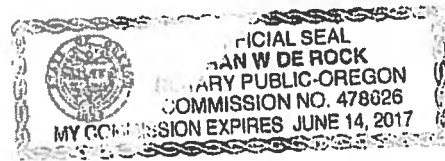
By 
Ken Reick, Manager

By 
Eric Catwell
Its managing member

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by Kenneth B. Rieck as
Manager and Secretary to the Board of Tumalo Irrigation District.

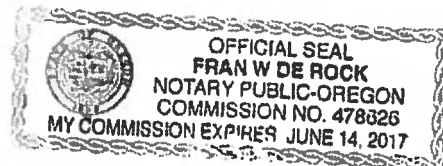
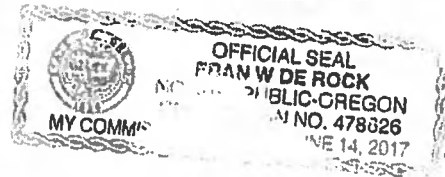
Fran W. DeRock
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by
ERIC CADWELL, of KC Development Group,
LLC.

Fran W. DeRock
NOTARY PUBLIC FOR OREGON



ATTACHMENT "A"

Subject Property located on the following lots

17-11-13-NE/NW-00819
17-11-13-NW/NE-00819
17-11-13-NW/NE-00820
17-11-13-NW/NE-00821
17-11-13-NW/NW-00822
17-11-13-NE/NW-00822
17-11-13-NE/NW-00823
17-11-13-NW/NE-00823
17-11-13-NW/SW-00823
17-11-13-SE/NW-00823
17-11-13-SW/NW-00823
17-11-13-NW/SW-00824
17-11-13-SE/NW-00824
17-11-13-SW/NW-00824
17-11-13-SW/NW-00828
17-11-13-NE/NW-00829
17-11-13-NW/NW-00829

ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828

NW/NE 00828

Pond #2

NW/SW 00824 & 00828

SE/NW 00824 & 00828

SW/NW 00824 & 00828

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

June 19, 2014

Nick Lelack
Community Development Director
Deschutes County
117 NW Lafayette Ave.
Bend, OR 97701

By U.S. Mail and email to Nick_Lelack@co.deschutes.or.us

Re: Tumalo Irrigation District Regulation Pond Storage Move to Klippel Acres Mining Pit

Dear Nick;

Tumalo Irrigation District (TID) has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir. The Reservoir was designed and built in the 1920's and does not adequately serve TID's needs. It is located far down in the District's points of delivery to intercept many of our deliveries, it is very shallow so encourages loss due to evaporation and allows solar heating of the water, and it leaks. The new site will be at the top of the system so will provide the ability for us to hold water in District for the entire distribution network, it will be deeper due to the mining pits already in place, and it will be lined so it will not suffer from appreciable leakage. In short, it will be a significant upgrade to operations and maintenance capability for the District.

We also anticipate that use of this storage site will enable us to reduce dependence on Tumalo Creek for our natural flow, an ongoing goal for both TID and the Deschutes Basin as a whole. The site will also continue to provide emergency water supplies for the District as well as for other Emergency Services responders, as it did during its trial period last week, when it was the primary source for both tanker and air fire suppression efforts in the Two Bulls fire immediately to the west.

We have received mail from an Attorney Bragar and an Attorney Newman on behalf of a Mr. Bishop, concerned that our choice to move our storage to the new location is not compliant with applicable law, including land use law. We have reviewed the County's code, and find that we are allowed to operate and maintain our system without land use approval from Deschutes County. The subject property is in the Rural Residential 10 acre minimum (RR 10) zone, which allows our operations to go forward as an outright use. Here are the applicable code provisions we rely upon:

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.020. Uses Permitted Outright.

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

Chapter 18.120. EXCEPTIONS

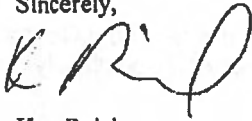
18.120.050. Fill and Removal Exceptions.

C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review. Please advise regarding this analysis.

Thank you, in advance, for your attention to this matter.

Sincerely,



Ken Reick
Tumalo Irrigation District Manager

Cc: Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site.

From: Receptionist at CW Hopp Attorney at Law [mailto:reception@cwhopp.com]
Sent: Monday, June 30, 2014 10:57 AM
To: Jennifer Bragar
Subject: Tumalo Irrigation District

Dear Ms. Bragar: This letter is in response to your letter of June 16, 2014 wherein you allege that the Agreement approved by the Tumalo Irrigation District Board of Directors with KC Development Group, LLC violates Oregon's Public Contracting laws. You are clearly in error. You allege that the irrigation contract is either a "(1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or storage right held by the District pursuant to Oregon Water Resources Department Certificate Number 76684.

First, TID has not disposed of an asset. TID has moved a portion of a storage right from one location to another. TID retains the right to use the stored water. The new location is deemed to be in the irrigation district's best interest as it is higher in the system and provides less water loss; thus providing a significant upgrade to TID's water delivery system.

Secondly, the Agreement is not for specific work to be performed for the District. The Agreement does not provide for TID to either perform work for a fee, or to have work performed for it for a fee.

Thirdly, it is a matter of urgency that the contract be executed.

In conclusion, I believe you are confused by the title "Irrigation Contract". The fact that it is termed a Contract does not make it a Public Contract as defined in ORS 279A.010(1)(z). Rather, an Irrigation Contract is specifically defined under ORS 552.618.

In summation, TID has not violated any public contracting laws. The copy of the Agreement you possess is a placeholder, as I am sure you are aware the Exhibits attached are not recordable. The final Agreement is being put together and will be recorded in the near future.

Sincerely,

Carl W. Hopp, Jr.
Attorney at Law, LLC
168 NW Greenwood Avenue
Bend, OR 97701
(541) 388-3606 Fax 541-330-1519
email:reception@cwhopp.com

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DOUTHIT Susan M

From: Janet Neuman <Janet.Neuman@tonkon.com>
Sent: Thursday, July 17, 2014 4:57 PM
To: DOUTHIT Susan M
Subject: Comments on T-11834: Please replace the version I sent you a few minutes ago [IWOV-PDX.FID840258]
Attachments: 5710904_1.pdf
Importance: High

Janet E. Neuman
Senior Counsel

Direct Dial: 503.802.5722
Direct Fax: 503.972.7422
janet.neuman@tonkon.com

July 17, 2014

VIA E-MAIL AND U.S. MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Comments on Transfer Application 11834

Dear Ms. Douthit:

As you know from my earlier communications, I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID" or "the District"). This letter contains comments on the District's Transfer Application 11834. (I have also submitted separate comments for the Bishops today on the District's Transfer Application 11833.)

It is somewhat difficult to provide appropriate comments on T-11834 separately from T-11833, because the two applications concern one unified project. In T-11833, the District requests a change in place of use to move some of the water currently stored at Upper Tumalo Reservoir to a new location (the "storage water"). That new location consists of two newly-constructed, privately-owned reservoirs designed and built to serve as water features for a planned (but not yet permitted) housing development on land owned by Harris Kimble, Eric Cadwell, and/or KC Development Group, LLC (collectively "KCDG"). In *this* application, T-11834, the District requests a change of place of use for irrigation rights that are appurtenant to the parcels of land underlying the new reservoirs, in order to move those rights to different parcels of non-inundated land (the "irrigation water"). The request here is thus dependent on approval of the transfer of storage rights requested in T-11833. If T-11833 is denied, the changes requested here in T-11834 are unnecessary.

My comments on T-11833 discussed in considerable detail why that transfer proceeding should be adjourned or the request denied, and why the KCDG reservoirs should be submitted to a full permit application process. For the same reasons, this transfer should also be

Ms. Susan M. Douthit
July 17, 2014
Page 2

adjourned or denied pending a full permit review of the KCDG water storage facilities. My T-11833 comments are therefore enclosed with this letter and incorporated herein. In the rest of this letter, I will briefly highlight the issues that are particularly pertinent to T-11834.

The District has signed an Agreement with KCDG whereby the District essentially cedes control of both the storage water and the irrigation water to KCDG. In particular, KCDG is allowed to move the irrigation water covered in this transfer "through" its facilities, which will also hold the storage water. However, KCDG is not supposed to store the irrigation water with the storage water. Neither transfer application provides any information at all about how the reservoirs will be managed to accomplish this separation of the two "buckets" of water. The Agreement does not contain any description of the "plumbing" by which the District can access the irrigation water (or the storage water) to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting water *to* KCDG's property and *into* the ponds. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands. Nor is it clear how and where irrigation return flows will be directed back to the rest of the District's system.

The Bishops' water rights are senior to both the irrigation rights and the storage rights at issue in T-11833 and T-11834. However, KCDG's diversion to its reservoirs is upstream of the Bishops. It is thus critical for the Bishops to have adequate information to determine how the District will meet its delivery obligations to them and thus to evaluate how they will be injured by this transfer. Part 1a, pages 11-13, and Part 2d of the attached incorporated comments further detail the inadequacy of the available information and how the Bishops and other water users are injured by this transfer as proposed. The Bishops reserve the right to provide additional comments when the Department has obtained information about the operation of the KCDG reservoirs sufficient to allow an evaluation of the impact of the proposed changes.

Sincerely,

Janet E. Neuman

Senior Counsel

Enclosure

DOUTHIT Susan M

From: Kimberley Priestley <kjp@waterwatch.org>
Sent: Thursday, July 17, 2014 12:12 PM
To: DOUTHIT Susan M
Cc: FRENCH Dwight W
Subject: T-11833, TID temporary District Transfer, WaterWatch comments in opposition
Attachments: TID comment attachments.pdf; tid temporary transfer final2 july 2014 pdf.pdf

Hi Susan,

Attached please find (1) WaterWatch's comments in opposition to TID's temporary district transfer application T-11833 and (2) supporting attachments.

If you have any problems opening the attachments please let me know.

Also, if you could confirm receipt I would appreciate it.

Thank you, Kimberley

--

Kimberley Priestley
WaterWatch of Oregon
213 SW Ash, Suite 208
Portland, OR 97204
ph: 503-295-4039, x 3
www.waterwatch.org

MEMO



**OREGON WATER
RESOURCES
CONGRESS**

TO: Chair Jenson
Members of the House Water Committee

FROM: Kristina McNitt
on behalf of the Oregon Water Resources Congress

RE: HB 3281— District Temporary Transfers & Pilot Project

April 17, 2003

For the record, my name is Kristina McNitt and I am representing the Oregon Water Resources Congress. Joining me this evening are Mr. Jay Chamberlin from the Owyhee Irrigation District in Nyssa Oregon (Malheur County) and Mr. Stephen Shrophire from the firm Jordan & Schrader.

HB 3282 was introduced by Representative Butler at the request of the Oregon Water Resources Congress and is one of three priorities for the Congress this session.

Amendments to HB 3282 establish a pilot program for 3 irrigation districts, which would provide flexibility for district managers to manage the water within their respective irrigation districts. Under this program, the managers will be able to move the water within the district to ensure the most effective beneficial use of the water so as to best serve the water user farmers within the districts. These three districts must meet six criteria:

1. have defined state irrigation district boundaries;
2. have a management structure to ensure that water is applied only where water use is authorized under this section of the statute;
3. the total irrigated area in an one irrigation season does not exceed the maximum acres allowed to be irrigated under the originating water right;
4. have full and accurate measurement of water diverted;
5. have available a accurate map identifying the location of authorized use (by priority date) for watermaster review upon request; and
6. have on file statements by any owners affected by the water right change indicating that they agree to the change.

These criteria are intended to ensure that the participating districts maintain control of the water and know where the water is being used at all times so that farmer patrons can rely on the water they are to receive and non-district users of water from the same source will not incur injury. Further, these criteria ensure the district manager of each participating district can and will be held accountable for meeting the statutory requirements and the terms of the water rights held or managed by their respective district.

The three districts initially selected to participate in this program, Owyhee Irrigation District, Talent Irrigation District, and Tualatin Valley Irrigation District, represent diversity in size, location and type of operation of irrigation districts. This diversity will provide a basis for the Water Resources Department, the Legislature, and irrigation districts in Oregon to evaluate the value of this type of water management for application elsewhere in Oregon.

x (503) 371-4926
Email owrc@owrc.org
Web Page <http://www.owrc.org>

1201 Court St. NE, Suite 303
Salem, OR 97301-4188
Phone (503) 363-0121

The remaining provisions in HB 3282 allow an irrigation district manager to make temporary transfers of water rights managed by the district paralleling those that an individual can make under the temporary transfer statutes in Oregon. These temporary transfers cannot be used to expand the acreage irrigated by the district and are subject to the requirement that the transfer not injury the rights of any other water right holder in the system. The temporary transfers are for one irrigation season only, after which the right reverts to the original conditions. These provisions simply allow the irrigation district manager to better manage the water rights to better serve the water users in the district and enable them to use their water in the best manner to produce the best crops given the soil, weather and water conditions that season.

Thank you for your consideration of HB 3282. Mr. Chamberlin is here tonight from the opposite side of the state to share with you why HB 3282 is so important to his farmers in Eastern Oregon. Following his presentation will be Mr. Shropshire. I hope we can shed light on this legislation and any questions the Committee may have. Thank you.

From: GIFFIN Jeremy T
To: Kenneth B. Rieck; rcochran@bendnet.com; Elmer McDaniels
Cc: Fran DeRock
Subject: RE: Tumalo Irrigation Water MisUse
Date: Thursday, March 20, 2014 8:27:03 AM

Ken,

The email below is factually inaccurate. The pond can be used for irrigation as a bulge in the system. The storage right that is being moved over cannot be changed to an irrigation right it can only be used to store water. Since the upper Tumalo reservoir is unable to store the full 1100 AF this transfer does two things, first it saves 108 af from potential abandonment and second it creates a revenue stream for the district (in perpetuity) where there was not one before. Mr. Niedzwiecke needs to realize that the storage right can never be transferred to irrigation (per transfer rules) and has to either remain in upper Tumalo reservoir or be transferred to another storage facility within the district. The stored water is for multipurpose use so the storage facility can be used for virtually anything (boating, aesthetics, or recreation). Everything that is proposed by this project is legal per Oregon water law and I am unaware of anyone that governs an irrigation district outside of the board of directors.

Look forward to seeing you next board meeting,

Jeremy Giffin
Deschutes Basin Watermaster

From: Kenneth B. Rieck [mailto:Ken@tumalo.org]
Sent: Thursday, March 20, 2014 7:56 AM
To: rcochran@bendnet.com; Elmer McDaniels
Cc: GIFFIN Jeremy T; Fran DeRock
Subject: RE: Tumalo Irrigation Water MisUse

Hello,

I have arranged for the state water master (Jeremy) to be on hand at the next board meeting to answer any questions. Fran would you please put it on the agenda list - Thanks.

Ken

----- Original Message -----

Subject: Tumalo Irrigation Water MisUse

Dear Directors,



July 17, 2014

Susan Douthit
Water Resources Department
725 Summer St NE, Ste A
Salem, OR 97301-1271

RE: Comments in opposition to District Temporary Transfer Application T-11833, Tumalo Irrigation District

Dear Ms. Douthit,

WaterWatch of Oregon opposes transfer application T-11833, in which Tumalo Irrigation District (TID) requests a district temporary transfer of storage for a total of 108 AF to two reservoirs.

WaterWatch is river conservation group dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation and other instream values. In commenting on this transfer application, WaterWatch is representing the general public interest in the water resources of this state, as well as the specific interest of WaterWatch's members and the organization itself. The interests represented by WaterWatch and its members are multifaceted and include, but are not limited to: (1) an interest in ensuring enforcement of the water laws; (2) an interest in the development and promotion of water policies that protect instream values, including fish, water quality, and recreation; and, (3) an interest in the long term implications that the WRD's decision on this transfer application will have on other transfer requests throughout the state. WaterWatch submits the following comments urging denial of T-11833.

Proposed Temporary District Transfer: TID is proposing to move 108 AF of water stored in Tumalo Reservoir under certificate 76684 to two new reservoirs built by KC Development Group (KCDG). One reservoir will support water skiing, the other will provide aesthetic features for luxury homes. These are permanent reservoirs. These two reservoirs do not have underlying reservoir permits. TID is seeking to effect this change via the temporary district transfer statute, asserting that the requested change is a "change in place of use".

The WRD should deny TID's temporary transfer application for the following reasons:

1. **The district temporary transfer statute does not allow for the transfer of a storage right as a change in "place of use":** The transfer statutes, as a whole, do not allow the transfer of storage rights as a loophole to existing 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.*

District place of use transfers, on the other hand, are limited to moving water from the original lands where the water was put to beneficial use under the terms of the permit to new lands. In other words, they are limited to changing the lands to which the water is applied to beneficial use. *See* ORS 540.570 (1).

Statutory construction makes clear that a “change in place of use” is intended to be limited to moving the right to use water on the lands in the original certificate to new, alternate lands. For instance, the temporary district transfer statute defines changes in place of use as allowing “transfer the place of use of water appurtenant to any land within legal boundaries to equal acreage elsewhere within legal boundaries of the district”. ORS 540.570(1). The statute further stipulates that a temporary transfer can only take place if “the rate, duty and total number of acres to which water will be applied under the transfer do not exceed existing limits on the water use subject to transfer”. ORS 540.570(1)(a). And that “the land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made”. *Id.* at (c).

Not only is the construct of the statute clear, but the legislative background makes this clear as well. The temporary district transfers were adopted by the Oregon Legislature in 2003 to grant flexibility to the Districts in applying irrigation water to different lands within their districts, for one season only. The Oregon Water Resources Congress was the sponsor of HB 3281, and according to a memo they delivered to Chair Jenson and the Members of the House Water Committee, the provisions of the bill “simply allow the irrigation district manager to better manage the water rights to better serve the water users in the district and enable them to use their water in the best manner to produce the best crops given the soil, weather and water conditions of that season.” *See* Memo, re: HB 3281—District Temporary Transfers & Pilot Project from Kristina McNitt, OWRC, to Chair Jenson and the House Water Committee, at 2. To use this process (which was designed to provide flexibility for crop production within irrigation districts) as a loophole to get water to an unpermitted new reservoir for a water skiing pond and another for aesthetic feature for luxury homes (uses that have absolutely nothing to do with usual and ordinary irrigation district functions), is not consistent with either the construct of the statute or the intent of the legislature in granting irrigation districts this flexibility.¹

Again, the storage right in and of itself cannot be transferred under the district temporary transfer statutes. The district’s reliance on the temporary district transfer statute to provide water to KCDG is in error. The WRD must deny this request.

¹ It is also not consistent with TID’s stated intent for the use of this water stored in Tumalo Reservoir. Certificate 76684 was originally granted to allow storage for irrigation only. In 2000 TID applied for a transfer of this water to a storage right for “multipurpose” storage. According to their application (T-8557) “The purpose of this transfer is to include in the allowable uses of Upper Tumalo Reservoir all of the usual and accustomed uses of water made in an irrigation district”. *See* transfer application T-8557. Supplying water for a water ski lake and a luxury home aesthetic feature is arguably not a usual and accustomed use of water made by an irrigation district.

2. **KCDG's unpermitted reservoirs need to obtain reservoir permits before water from Tumalo Reservoir can be used to fill them:** 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)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 or 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. KCDG must apply for reservoir rights for the two reservoirs at issue.³ If a reservoir right is granted, Tumalo Reservoir stored water could then be accessed via a secondary right to provide water to the new reservoirs. ORS 537.400.⁴

A temporary district transfer is not the correct process to make KCDG's two unpermitted reservoirs legal. To allow such a transfer would not only allow a new reservoir to be built without the benefit of the thorough public interest review that applies to new reservoir applications, but would also set incredibly damaging precedent statewide. Presumably if the theory being advanced by TID via their temporary 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 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.

3. **Even if a transfer of a storage reservoir under a "place of use" change were allowed by law, the TID request does not meet the statutory standards:** The district transfer statute makes it clear that for one irrigation season only, a district may temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to equal acreage elsewhere within the legal boundaries of that district. ORS 540.570(1). The statute further requires, among other things, that the land from which the water use is being transferred does not receive any water under

² It is our understanding that the WRD has allowed KCDG to fill the reservoirs in advance of a decision on the temporary transfer request. ORS 537.130(2) makes clear that except for limited exempt uses outlined in the statute (which this is not), a person may not use, store or divert any water until after the WRD issues a permit.

³ An email from Jeremy Giffin, 6/6/14 states that the smaller pond has been a "bulge" in the system for the 60 acres of water rights around the pond. There is no statutory authority for the concept of "bulges in the system". See arguments in #2.

⁴ The only exemption from this statutory requirement for secondary permits to access already stored water is "water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water permit or certificate for the reservoir" and water for emergency firefighting. OAR 690-340-0010(2)(d) and (3). Troughs are defined as "a long shallow often V-shaped receptacle for the drinking water or feed of domestic animals". See Webster's Third Dictionary. KCDG's reservoirs do not fall within the definition of trough and thus cannot utilize this exception.

the right being transferred during the irrigation season in which the change is made. *Id* at (c). TID is requesting a change in use for one year, not one irrigation season.⁵ TID is not proposing to transfer acreage under its application, rather they are proposing to transfer the supply of storage water at Tumalo Reservoir to two alternate, unpermitted, storage projects. TID is not proposing to deprive lands from which the water is being transferred from receiving any water, but rather is only proposing to decrease the amount stored in the existing statute by 108 AF. As such, TID's proposal does not meet the statutory requirements for a change in place of use, even if such a thing were allowed (which we do not believe it is).

4. **The WRD cannot protect against injury or enlargement:** The OWRD cannot approve a temporary district transfer application that will cause injury to another existing water right or enlarge the underlying water right. By rule, 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. OAR 690-380-0100(3). Enlargement means an expansion of a water right, including but not limited to, diverting more water than is legally available at the original point of diversion and failing to keep the original place of use from receiving water from the same source. *Id.* at (2).

The application file notes that WRD will be requiring a "staff plate" at both upper Tumalo Reservoir at each point of diversion (new and existing).⁶ See Transfer application, pg. 3, Measurement Condition Information for the Applicant. This in and of itself cannot protect against injury. While e-mails from the watermaster in the application file state that TID already measures the inflow and outflow of Tumalo Reservoir and will measure the inflow of the KCDG reservoirs, it is notable that there is no condition of use on either the original reservoir permit or proposed via the WRD (for the transfer) on the new reservoirs that would require measurement of both inflow and outflow of all three reservoirs. Moreover, while we appreciate the watermaster's representations about current measurement in this regard, we could find no reports in the WRD's reporting system for TID's Upper Tumalo Reservoir Storage Certificate 76684. Irrigation districts must measure and report their water use under each water right on an annual basis by statute and rule. ORS 573.098, OAR 690-085-0010.

Additionally, 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 attached e-mail from Jeremy Giffin, 3/20/14. It is unclear how this leakage affects availability in the reservoir, and/or supply of existing secondary rights that have access to Tumalo Reservoir water and how the proposed transfer of 108 af will affect those water right holders. Moreover, given lack of reporting to the WRD, it is unclear how much water TID is actually diverting and storing on an annual basis under its water right. If the transfer were to allow it to

⁵ TID contract with KCDG stipulates the agreement to supply water to KCDG is for one year, not one irrigation season.

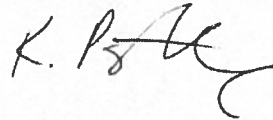
⁶ There was no detail provided in the file as to how this would achieve the desired result, nor was there any description of how WRD would ensure its accuracy (i.e. would they do a bathymetry or other study to determine whether a staff plate is adequate to determine the volume of the reservoir?).

store more water than it can currently, which it presumably would, then this would in fact constitute enlargement and would in fact cause injury to other water right holders who are currently relying on water from Tumalo Creek. WRD should investigate reservoir leakage and the effect on supply as part of its injury and enlargement analysis.

WaterWatch does not believe that the temporary district transfer statutes allow the proposed change. However, if WRD were to approve this transfer, to ensure that any action taken by TID with regard to supplying water to KCDG does not cause injury and/or enlargement, the WRD would need to require measurement and reporting of inflow and outflow at all three reservoirs, staff plates at all three reservoirs and documentation and accounting of reservoir leakage at Upper Tumalo Reservoir. Moreover, WRD should an affirmative commitment from TID to abide by the "one fill" doctrine that applies to storage in the state of Oregon. Additionally, as the district temporary transfers are restricted to one irrigation season, the WRD must order evacuation of the storage facilities at the end of the season (October 2014). This should be a condition of the transfer (if approved) so all are clear on this point, including KCDG. Without conditions of use that require all of these provisions, the WRD cannot protect against injury both to instream and out of stream rights of Tumalo Creek, and patron rights/use within the district. Nor can it protect against enlargement. Moreover, until TID is in compliance with existing law regarding measurement reports, WRD should not approve any changes that would make tracking TID water even more nebulous.

Conclusion: As noted above, temporary district transfer statutes do not allow for the change in place of use of an existing storage project. The proposed change is not only contrary to law, but it would set precedent that could have devastating effects across the state. It would also injure other water right holders and result in enlargement. The WRD should deny this application for the reasons outlined above.

Sincerely,



Kimberley Priestley
WaterWatch of Oregon

Cc: Dwight French, WRD

DOUTHIT Susan M

From: GORMAN Kyle G
Sent: Thursday, July 10, 2014 4:03 PM
To: DOUTHIT Susan M
Subject: notice

I rummaged around his desk as much as I felt comfortable and didn't see anything that looked like a district notice. I did see the puddle transfer.

Kyle

Kyle Gorman
Manager, South Central Region
Oregon Water Resources Department
231 SW Scalehouse Loop, Suite 103
Bend, OR 97702
541.306.6885

DOUTHIT Susan M

From: GORMAN Kyle G
Sent: Wednesday, July 09, 2014 10:27 AM
To: DOUTHIT Susan M
Subject: RE: follow up - AMG discussion

Thank you. I agree.
Kyle

From: DOUTHIT Susan M
Sent: Wednesday, July 09, 2014 10:19 AM
To: WOODCOCK Doug E
Cc: MCCORD Mike L; Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us); GORMAN Kyle G; FRENCH Dwight W
Subject: follow up - AMG discussion

Hi Doug,

I wanted to follow up w/you regarding the AMG discussion I referenced recently related to “does a new ‘hole’ need a new reservoir application/right when we’re transferring an existing storage right ‘into’ the hole?”

I chatted w/Mike McCord recently on this topic and he was sure that the conversation amongst the managers in attendance (he said you weren’t there) that in the particular case being discussed, there was NO NEED for a new reservoir application to be filed. This is consistent w/my understanding as well as Kelly Starnes.

~S

Susan Douthit
District Analyst
OR Water Resources
503-986-0858





T-11833

June 6, 2014

Doug Woodcock
Director of Field Operations Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Dwight French
Water Rights Administrator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: KC Development Group use of Tumalo Irrigation District Water

Dear Mr. Woodcock and Mr. French,

It has come to our attention that KC Development Group (KCDG) is seeking water from Tumalo Irrigation District (TID) to store water in two new reservoirs. As we understand it, KCGD is planning on entering a contract with TID to seek a temporary transfer of TID's Upper Tumalo reservoir right (cert. 76684) for the larger reservoir (104 AF) and are relying on the "Bulge in System" concept for the smaller reservoir. The smaller reservoir will serve as an aesthetic feature for some luxury homes, the larger is to serve as a water skiing reservoir.

is smaller
a BIS?

It has also come to our attention that the project is well underway, and that the smaller of the reservoirs has already received water from TID. We understand that TID is preparing to submit a temporary irrigation district transfer application for the larger reservoir to the WRD in the very near future.

both included

WaterWatch has a number of concerns regarding the legality of the proposed ponds/reservoirs. These concerns include but are not limited to:

- Bulges in the system are not allowed by law: There is no statutory authority for the concept of "bulges in the system". Under Oregon law all new ponds and reservoirs must have a permit. Oregon law allows for one very limited exception, but this only applies to reservoirs that store less than 9.2 af or have a dam height of less than 10 feet that were built before 1995 and registered with the WRD before 1997. ORS 537.405. If pond owners did not register by 1997, their ponds are illegal. Regardless, all reservoirs/ponds built after 1995 require a reservoir permit.

"hole inground"

- Even if "bulges" were legal, the KCDG "bulge" doesn't meet the WRD enforcement guidelines: Despite the fact that there is no statutory authority for the concept of "bulges" in the system, the OWRD has "contemplated" these in their enforcement manual as uses that "may" not need a permit. According to the state, these bulges must be (1) temporary, (2) store natural flow (under a surface water water right) that might not be there at a later date, (3) hold water as part of an irrigation or other water delivery system, (4) for periods of not to exceed 10 days for agricultural purposes or more than 72 hours for non-agricultural purposes, and (5) must be completely drained at the end of the season. WaterWatch does not believe "bulges" in the system are legal as there is no statutory authority for this concept, however, regardless, the use of water as contemplated by KCDG clearly does not fall within the sideboards considered by OWRD. This is permanent pond to serve year-round aesthetic purposes; it is not temporary by any stretch of the imagination. The water is coming from Tumalo Reservoir, not a live flow right held by KCDG. It is unlikely, given the use, that the water will be held for less than 72 hours and/or 10 days depending on the ultimate use of the water (if any). And, finally, it is unlikely that KCDG plans to drain the reservoir outside the irrigation season. KCDG's reservoir needs a reservoir permit.

- KC Development does not have a reservoir right for either reservoir: Regardless of the source of water that will fill the new ponds, the construction of a reservoir or pond of any size needs a reservoir permit issued by the OWRD. Depending on the size of the impoundment, KC Development needs to procure permits under the regular permitting statutes (ORS 537.400) or the alternative reservoir statutes (ORS 537.405). The OWRD's Water Right Information System shows no record of a storage application submitted by either KCDG or TID for these new ponds/reservoirs. We believe KCDG must go through the regular water right process, not a transfer process.

← knew w/R? give the res a new priority?

- Measurement and Reporting: By statute, irrigation districts must measure and report their water use under each water right on an annual basis. ORS 573.098, OAR 690-085-0010. We could find no reports in the WRD's system for TID's Upper Tumalo Reservoir Storage Certificate 76684. To ensure that any action taken by TID with regard to supplying water to KC Development does not cause injury and/or enlargement, the WRD should ensure that TID is reporting as required by statute. Oregon operates under the "one fill" doctrine, meaning TID cannot store more than a total of 1100 AF per year in Upper Tumalo Reservoir, regardless of leakage issues, transfers, secondary storage rights in excess of storage capacity, etc.

working on it

- Injury Issues: The OWRD cannot approve a transfer application that will cause injury to another existing water right. By rule, 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. OAR 690-380-0100(3). It is unclear at this time what measures the TID would undertake to ensure that there is no enlargement of the original right. At the very least, if the WRD were to allow a transfer, strict measurement and reporting should be required of the both TID's Upper Tumalo Reservoir and KCDG's reservoirs.

*no injury
cond. to
assure
no enlarge.*

- Competing water rights: Upper Tumalo Reservoir is filled by a storage right that is limited to 1100 AF. TID already has two secondary water rights to this stored water whose total is in excess of this amount.¹ Moreover, the right that allows for broad use of this stored water is limited to “supplement all uses and lands served by Tumalo Irrigation District”. We read this as being a “supplemental right”.² Supplemental rights can only be used to make up a deficiency of supply of a primary right. Thus, water under this secondary right can only serve as supplemental to a pond/reservoir that has a primary reservoir right and the source of that pond is insufficient to meet its needs. As noted, KCDG does not have a reservoir right for either pond. It is unclear at this time how KCDG’s request will interact with these other water rights.

No Secondary use (out of res use) is suggested in app.

WaterWatch anticipates reviewing the transfer application once it is noticed in the public notice. However, we wanted to submit our concerns to you in advance as the issues raised by the proposal are broader than those that will be addressed in any transfer and/or permit decision. We believe that the WRD should require KCDG to apply for two reservoir permits for their project. Moreover, KCDG should not be able to store water until they have valid permits in place. The WRD should also require that TID submit annual measurements reports to the WRD on all of their water rights, including Upper Tumalo Reservoir, regardless of the outcome of the KCDG issue.

agreed!
SP

Sincerely,



Kimberley Priestley
Sr. Policy Analyst

cc: Jeremy Giffin, District 11 Watermaster

¹ It is unclear how this was achieved as WRD cannot issue secondary rights for stored water that exceed the amount allowed to be stored under the original reservoir right. See Certificates 88894 (1100 af of supplement use, originally irrigation expanded to multiple uses) and 76106 (mix of live flow and storage for irrigation)

² The original permit for this water was for irrigation. It is unclear how the WRD was able to approve a transfer from irrigation to the multiple uses of irrigation, pond, industrial, domestic, supplemental irrigation etc. without running afoul of injury/enlargement prohibitions.

↓
CW

S½ SW¼
SECTION 33
TOWNSHIP 16 SOUTH, RANGE 11 EAST, W.M,

NE¼ NW¼
W½ NW¼
SECTION 4

NE¼
SECTION 5
TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M.

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use described.

The applicant proposes to change the use from storage for irrigation to storage for multiple purpose uses.

This change is to allow for the use of existing storage for additional beneficial purposes. No changes to the existing facilities are required. The change is complete and no time limit for completion of the change is necessary.

Certificate 75924 is canceled. A new certificate will be issued confirming the use which may be made of the stored water.

WITNESS the signature of the Water Resources Director,
affixed OCT 11 2000.



for Paul R. Cleary, Director

STATE OF OREGON

COUNTY OF DESCHUTES

ORDER APPROVING A CHANGE IN USE

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 8557 submitted by

TUMALO IRRIGATION DISTRICT
64697 COOK AVENUE
BEND, OREGON 97701.

The right to be modified, as evidenced by Certificate 75924, was perfected under Reservoir Permit R-2743 with a date of priority of DECEMBER 8, 1961. The right allows the STORAGE OF THE WATERS OF TUMALO CREEK, a tributary of THE DESCHUTES RIVER, IN UPPER TUMALO RESERVOIR, APPROPRIATED UNDER PERMIT 27840, for IRRIGATION. The amount of water entitled to be stored each year under this right shall not exceed 1,100 ACRE-FEET, if available at the authorized point of diversion: TUMALO CREEK - SE¼ NE¼, SECTION 23, T 17 S, R 11 E, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

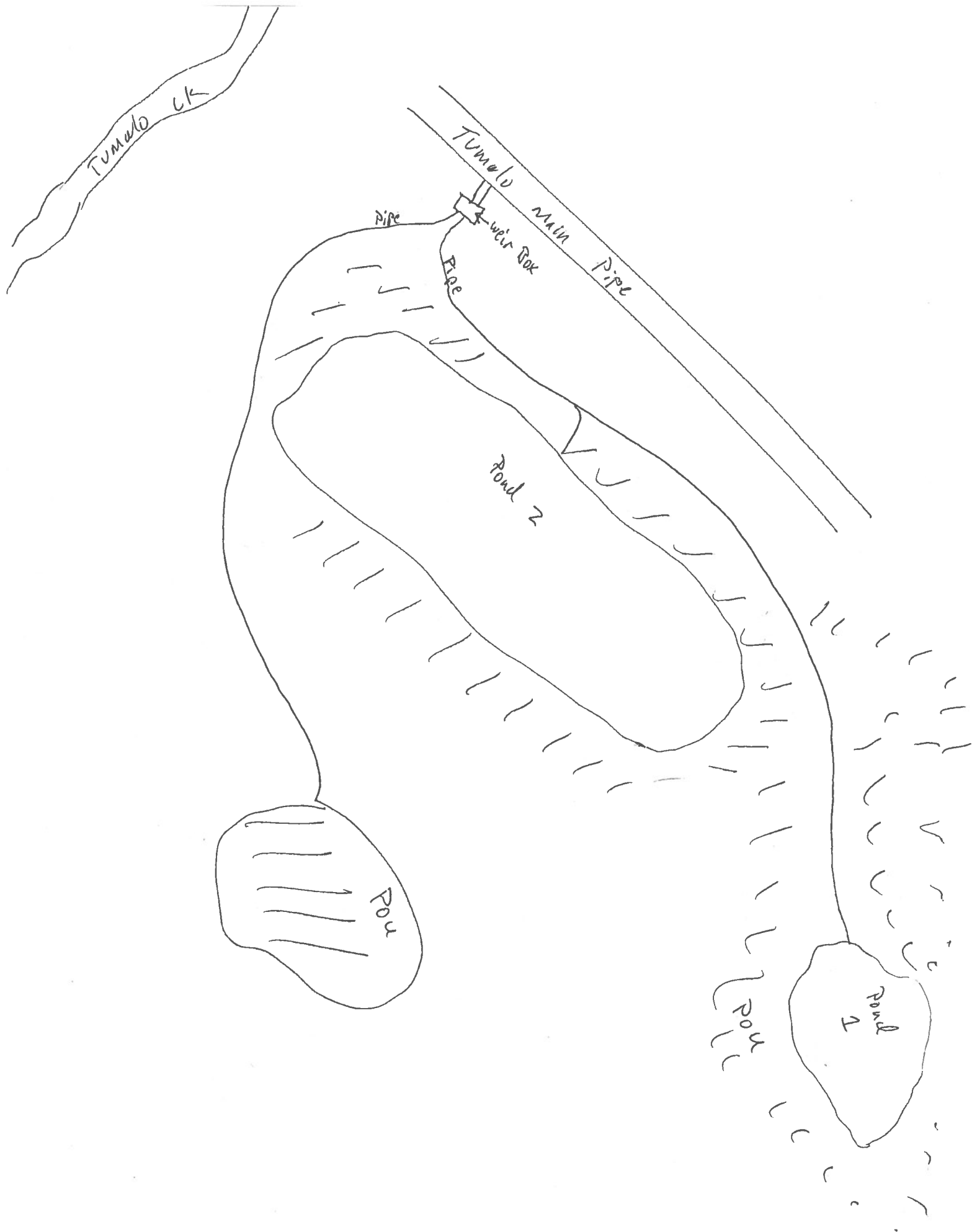
The reservoir is located as follows:

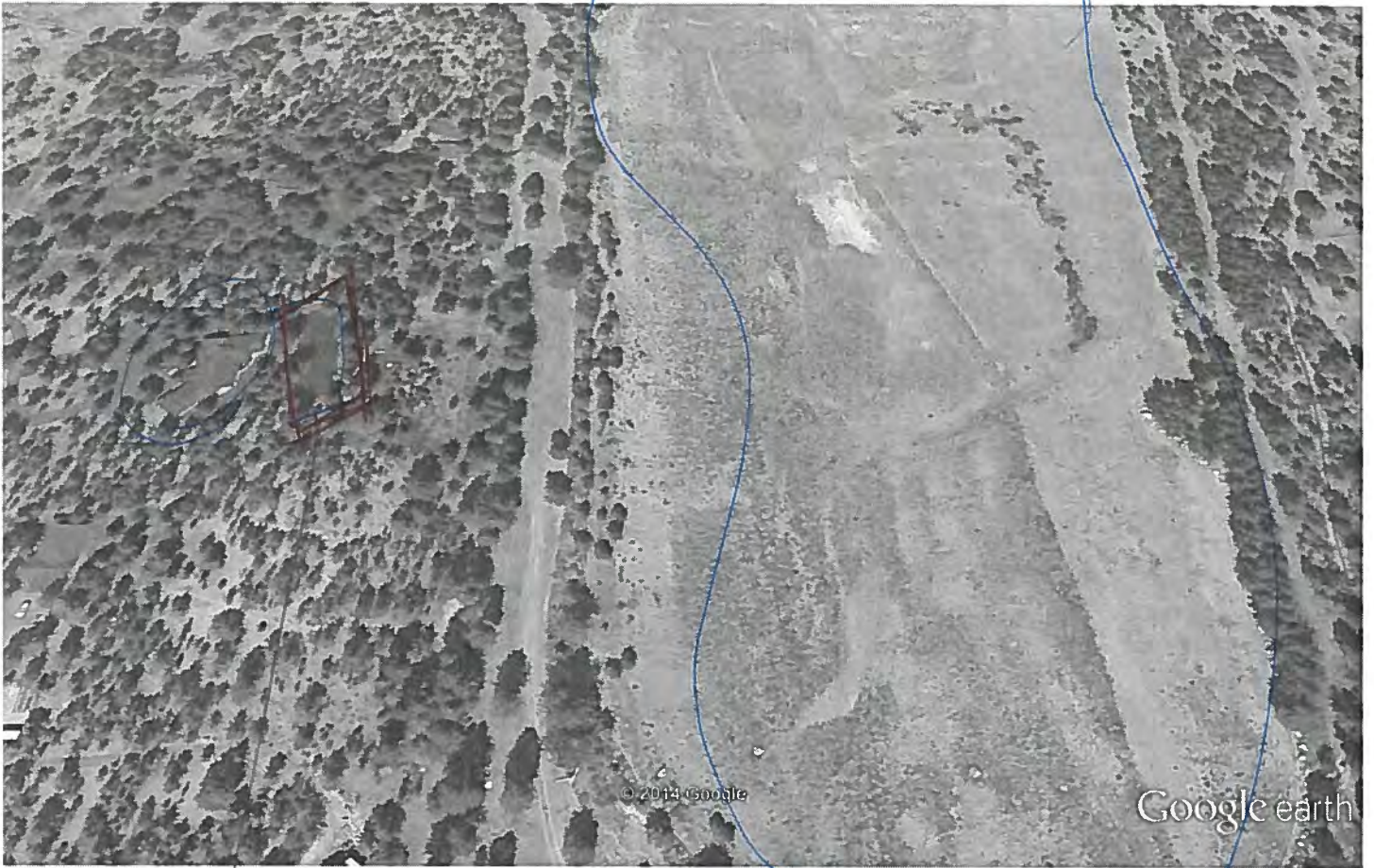
SE¼ SE¼
SECTION 32

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order.







Google earth

feet
meters



Pond?
Bishop's
residence

19020
Klippel Rd
Bend

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► The Oregon Administrative Rules contain OARs filed through May 15, 2014 ◀

QUESTIONS ABOUT THE CONTENT OR MEANING OF THIS AGENCY'S RULES?
CLICK HERE TO ACCESS RULES COORDINATOR CONTACT INFORMATION

WATER RESOURCES DEPARTMENT

DIVISION 5

COMPLIANCE WITH STATEWIDE PLANNING GOALS, COMPATIBILITY WITH COMPREHENSIVE PLANS, AND COORDINATION ON LAND USE MATTERS

690-005-0010

Purpose

As required by ORS 197.180, this rule establishes policies and procedures for: assuring agency compliance with statewide planning goals; assuring compatibility with local comprehensive land use plans; coordinating with local, state, and federal governments and special districts in land use matters; and resolving land use disputes.

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

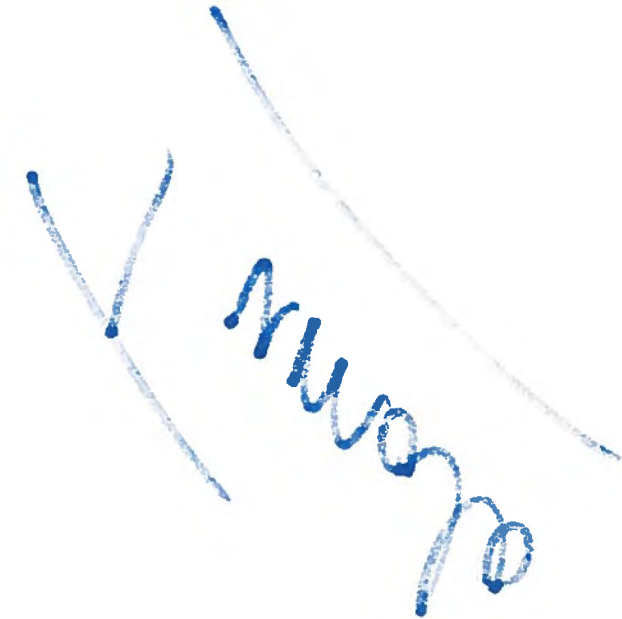
690-005-0015

Tumalo

Definitions

For the purposes of OAR 690-005-0010 through 690-005-0060:

- (1) "Affected Local Government" means a local government, as defined in section (9) of this rule, which is directly impacted by and specified in a proposed Department action; meanings specific to programs identified in OAR 690-005-0025 are defined in the rule divisions for those programs.
- (2) "Commission" means the Water Resources Commission.
- (3) "Department" means the Water Resources Department.
- (4) "Director" means the Director of the Water Resources Department.
- (5) "Land Use Approval" means a final decision or determination made by a local government that concerns the adoption, amendment, or application of: the goals; a comprehensive plan provision; implementing ordinance; or a new land use regulation. A land use approval does not include ministerial decisions of local governments (i.e., building permits) for which no right to hearing is provided. A land use approval is final when all corresponding appeal periods have expired.
- (6) "Land Use Dispute" means a disagreement between the Department and a local government regarding plans, programs, policies, actions, or other matters relating to land use which exists after the Department has:
 - (a) Applied appropriate provisions of:
 - (A) OAR 690-005-0030 (Compliance with Statewide Planning Goals);
 - (B) OAR 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans); and
 - (C) Rules identified in OAR 690-005-0025.
 - (b) Been informed by the planning director, other planning official or governing body of a local government, that the adoption, amendment, or implementation of a proposed Department land use program activity would not be allowable under, or would conflict with the policies or provisions of an acknowledged comprehensive plan; or
 - (c) Determined that the adoption, amendment, or implementation of a local government comprehensive plan does not conform to the Commission's state water resources policy, would harm existing rights, or would otherwise impair the public interest in water resources.



(7) "Land Use Planning Procedures Guide" means the non-rule text submitted by the Department as part of its SAC Program. This guide establishes criteria for the determination of land use programs and procedures for assuring comprehensive plan compatibility and coordinating with local governments.

(8) "Land Use Program" means an agency rule or program affecting land use, as defined by OAR 660-030-0005(2) and OAR 660-031-0012(2)(f), and determined using criteria established in the Department's certified state agency coordination program.

(9) "Local Government" means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(10) "Planning Department" means a local government department responsible for land use planning and the preparation, maintenance, and implementation of comprehensive plans.

(11) "Planning Director" means the director of a local government planning department, an appropriate designee, or other local government official responsible for carrying out land use planning functions.

(12) "Special Districts" means any unit of local government, other than a city, county, metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190 authorized and regulated by statute and includes, but is not limited to: Water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts. For the purposes of this rule, water use authorities formed under ORS 450.660 are considered special districts.

(13) "State Agency Coordination Program" means the submittal made by the Department to the Department of Land Conservation and Development pursuant to ORS 197.180(2)(a) - (d) and OAR Chapter 660, Division 30. The Commission's state agency coordination program consists of:

(a) Rules in this division;

(b) Rules identified or pertaining to programs listed in OAR 690-005-0025 and adopted pursuant to ORS 197.180; and

(c) The Department's Land Use Planning Procedures Guide.

(14) "Statewide Planning Goals" or "Goals" means the mandatory statewide standards adopted by the Land Conservation and Development Commission pursuant to ORS Chapters 196 and 197.

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0020

Policy

(1) Land use and water management are integrally related. Statewide planning goals require comprehensive plans to include inventories of, and mechanisms to protect, important local water resources. State water laws require the Commission to protect the public interest in all waters of the state. Recognizing the responsibilities vested in both state and local government to manage and protect water resources, the Commission places a high priority on complying with statewide planning goals and achieving compatibility with local comprehensive plans.

(2) In any action pursuant to a program identified in OAR 690-005-0025, the Commission and Department shall comply with the goals and be compatible with local comprehensive plans to the greatest extent possible, as required by and consistent with the full range of statutes governing land use and water management and as set forth in OAR 690-005-0030 (Compliance with Statewide Planning Goals) and 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0025

Applicability

The provisions of OAR 690-005-0010 through 690-005-0060 apply to actions taken by the Department pursuant to the following land use programs:

(1) Applications and Permits (OAR Chapter 690, Divisions 310 - 340).

(2) Appropriation and Use of Water for Hydroelectric Power Projects (OAR Chapter 690, Division 51).

380 & 385
(3) Water Right Transfers (OAR Chapter 690, Division 15) except for those:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) Which involve changes in place of use only;

(c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) Which involve irrigation water uses only.

(4) Water Exchanges.

(5) Applications for Uses in Addition to Classified Use (division 82).

(6) Use of Conserved Water (Division 18).

(7) Instream Water Rights and Reservations of Water for Economic Development (OAR Chapter 690, Division 77).

(8) Review of Applications for Minimum Perennial Streamflows (OAR Chapter 690, Division 76).

(9) Initiation of Proceedings for Determination of a Critical Ground Water Area (OAR Chapter 690, Division 10).

(10) Withdrawal of Water from Further Appropriation.

(11) Statewide Policy Formulation.

(12) Basin Planning.

(13) Payment for Public Benefits in Water Projects (OAR Chapter 690, Division 100).

(14) Water Development Loan Fund (OAR Chapter 690, Division 90).

(15) Scenic Waterway Coordination.

X (16) Any future Department program or activity which may reasonably be expected to significantly affect land use as prescribed by ORS 197.180, OAR chapter 660, divisions 30 and 31, and OAR chapter 690, division 5.

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0030

Compliance with Statewide Planning Goals

(1) All Commission and Department actions pursuant to a program identified in OAR 690-005-0025 shall comply with the statewide planning goals.

(2) Except as provided in section (3) of this rule, the Commission and Department shall comply with the statewide planning goals by taking actions which are compatible with acknowledged comprehensive plans, as required by OAR 660-030-0065(3) and provided in 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).

(3) The Commission and Department shall achieve goal compliance directly by satisfying the requirements of section (4) of this rule and by adopting written findings as provided in OAR 690-005-0040(4)(c), when one or more of the following situations, or other situations identified in 660-030-0065(3), exists:

(a) An acknowledged comprehensive plan does not contain:

(A) Requirements or conditions specifically applicable to a Commission or Department action;
or

(B) General provisions, purposes, or objectives which would be substantially affected by the action.

(b) The Commission or Department takes an action that is not compatible with an acknowledged comprehensive plan after implementing all applicable measures described in OAR 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).

(4) Prior to taking action pursuant to subsection (3)(a) of this rule, the Commission or Department shall notify the planning department of the affected local government:

(a) That, in the Department's assessment, the acknowledged comprehensive plan does not contain:

(A) Requirements or conditions specifically applicable to a Commission or Department action;
or

(B) General provisions, purposes, or objectives which would be substantially affected by the action.

(b) That the Department intends to achieve goal compliance directly, not through compatibility with the applicable comprehensive plan; and

(c) That the planning department shall have 30 days to respond to the notification with a request to initiate dispute resolution procedures as described in OAR 690-005-0040.

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0035

Compatibility with Acknowledged Comprehensive Plans

(1) Except as provided in section (5) of this rule, Commission or Department actions taken pursuant to a program identified in OAR 690-005-0025 shall be compatible with acknowledged comprehensive plans.

(2) The Department shall satisfy section (1) of this rule by applying:


(a) Provisions in the rule divisions identified in OAR 690-005-0025;

(b) Provisions of OAR 660-030-0070;

(c) Provisions of OAR 660-031-0026 and OAR 660-031-0035; or

(d) Procedures of the Department's Land Use Planning Procedures Guide.

(3) For water use approvals identified in OAR 690-005-0025(1) through (6), the Commission or Department shall satisfy compatibility requirements of ORS 197.180 by informing applicants that:

 (a) The Department's issuance of a permit or other approval is not a finding of land use compatibility; and

(b) A land use approval may be required from the affected local government.

(4) In processing water use approvals in OAR 690-005-0025(1) through (6), the Department or Commission shall:

(a) Require land use information be submitted with applications or requests, or as otherwise specified prior to taking action on the water use approval. The information shall be sufficient to assess compatibility as specified on forms contained in the department's Land Use Planning Procedures Guide;

(b) Except as provided in subsection (4)(c) of this rule, the Department or Commission shall only approve the proposed water use if:

(A) All requirements of statutes and rules governing Commission and Department actions are met;

(B) The land use served by the proposed water use is allowed outright or does not require discretionary land use approvals under the applicable comprehensive plan; or

(C) The applicant has already received necessary land use approvals for the land use served by the proposed water use.

(c) If local land use approvals are pending, place conditions on a permit or other approval to preclude use of water and any associated construction until the applicant obtains all required local land use approvals; or, withhold issuance of the water use permit or approval until the applicant obtains all required local land use approvals. The approval is allowed only if the use meets requirements in paragraph (4)(b)(A) of this rule. The Department may consider withholding water use approvals upon request by a local or state agency, or the applicant, or as otherwise warranted to serve the Department's needs; and

(d) Not issue water use approvals, except when taking action pursuant to section (5) of this rule if:

(A) The land use served by the proposed water use is not allowed by the comprehensive plan and the applicant is not pursuing necessary local land use approvals to the satisfaction of the planning department of the affected local government; or

(B) The land use served by the proposed water use is not allowed by the comprehensive plan and local approvals have already been denied.

(5) If the Commission or Department finds it necessary to take an action which is incompatible with an acknowledged comprehensive plan in order to meet statutory obligations, the dispute resolution procedures identified in OAR 690-005-0040 shall be implemented prior to taking such action.

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536
Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0040

Resolution of Land Use Disputes

(1) The Department shall attempt to prevent disputes over land-use-related issues through early and frequent coordination with local governments.

(2) Land use disputes as described in OAR 690-005-0015(6)(b) which involve water use approvals identified in OAR 690-005-0025(1) and (7) shall be:

(a) Recognized through the information submittal requirements and comment and protest opportunities of ORS Chapter 537; and

(b) Subject to the procedures of section (3) through (7) of this rule to the extent practical under the timelines and processes established in ORS Chapter 537.

(3) Except as described in section (2) of this rule, for any other land use dispute as described in OAR 690-005-0015(6)(b), the Department shall notify any affected Department applicant of the dispute and provide the following in writing to the planning director, other planning official, or the governing body of the affected local government:

(a) Reasons for the Department's proposed action;

(b) Those statutes, rules or land use planning goals authorizing the Department's action;

(c) Alternatives to the Department's action or modifications of the proposed action, if any, which would result in compatibility;

(d) A proposal to discuss and resolve the dispute; and

(e) A request that the planning director, other planning official, or the governing body of the affected local government provide the Department with written information relating to the land use dispute. The written information shall be submitted to the Department within 30 days, unless otherwise specified by the Director, and shall describe:

(A) The specific Department action which would not be compatible with an acknowledged comprehensive plan;

(B) Comprehensive plan policies or provisions, or land use regulations which the planning director, other planning official, or the local governing body believe specifically apply to and

preclude the Department action;

(C) General provisions, purposes, or objectives in the comprehensive plan which would be substantially affected by the Department action; and

(D) Changes or alternatives to the Department's action that would result in compatibility.

(4) Based on the results of activities described in sections (1) and (2) of this rule, the Department shall consider, and undertake as appropriate, one or more of the following to satisfy compatibility requirements and the Department's statutory mandates:

(a) Select an alternative action, including taking no action;

(b) Modify the proposed action to achieve compatibility;

(c) Apply for local land use approvals, including plan and land use regulation amendments, and explain why periodic review is not available to or sufficient for the Department in proposing the action;

(d) Appeal denial of local land use approvals to the appropriate bodies;

(e) Request necessary comprehensive plan amendments during periodic review;

(f) Request informal LCDC mediation, if subsections (3)(a) through (e) of this rule do not resolve the dispute; or

(g) Request formal LCDC determination of compatibility as provided in OAR 660-030-0070(7), if subsections (3)(a) through (e) of this rule do not resolve the dispute.

(5) If actions described in section (3) of this rule do not resolve the dispute, the Commission shall:

(a) Select an alternative action, including taking no action;

(b) Modify the action to achieve compatibility;

(c) Proceed with the action, adopting written findings which include the following:

(A) A description of the dispute and measures taken in attempting to resolve the dispute;

(B) A citation of those statutes and specific statewide planning goal requirements compelling the Department to take the disputed action; and

(C) A statement explaining how the action fulfills statutory obligations and complies with statewide land use planning goals.

(d) Inform the affected local government, any affected Department applicant, and the Department of Land Conservation and Development of the action taken, transmitting copies of any findings made under section (4)(c) of this rule.

(6) In the event of a land use dispute as provided in OAR 690-0050-015(6)(c), the Department shall:

(a) Notify the planning departments of affected local governments in writing of the conflict between a local action and Department policies, plans, or programs; and

(b) Cite the statutes and rules which apply to, or are substantially affected by, the local action;

(c) Suggest modifications or alternatives to the local action which would conform to Department policies, plans, or programs; and

(d) Offer to schedule discussions with the appropriate local planning official to resolve the dispute.

(7) If procedures described in section (5) of this rule do not resolve the dispute, the Department may:

(a) Request LCDC mediation or enforcement;

(b) Pursue local government conformance with Department policies, plans, or programs by:

(A) Applying for comprehensive plan amendments;

(B) Participating in periodic review; or

(C) Applying the provisions of ORS 536.360 through 536.400.

Stat. Auth.: ORS 197.180, ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 197 & ORS 536 - ORS 543

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 1-1996, f. & cert. ef. 1-31-96

690-005-0045

Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans

The Department has fulfilled its goal compliance and comprehensive plan compatibility obligations required by ORS 197.180 when it has:

- (1) Applied the provisions of OAR 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).
- (2) Applied provisions of rules identified or pertaining to programs listed in OAR 690-005-0025.
- (3) Followed compatibility procedures in its Land Use Planning Procedures Guide.
- (4) Taken action to comply directly with statewide planning goals, as necessary and as prescribed in OAR 690-005-0030.
- (5) Followed the dispute resolution procedures of OAR 690-005-0040, if necessary.

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0050

Assuring Goal Compliance and Acknowledged Plan Compatibility for New or Amended Land Use Programs

- (1) Except as provided in section (2) of this rule, the Department shall assure that new rules and programs which qualify as land use programs, or amendments to existing land use programs, comply with the statewide planning goals and are compatible with acknowledged comprehensive plans.
- (2) The Commission may choose not to apply this rule to the adoption of temporary rules and programs.
- (3) The Department shall examine new rules or programs to determine if they qualify as land use programs as defined by OAR 660-030-0005(2) and using criteria established in the Department's **Land Use Planning Procedures Guide**.
- (4) If new rules or programs are found to be land use programs, the Department or Commission shall amend OAR 690-005-0025, other sections of existing rule divisions pertinent to the program, and the Department's **Land Use Planning Procedures Guide** as needed to assure goal compliance and compatibility with acknowledged comprehensive plans.
- (5) Amendments to existing land use programs shall be examined to determine if:

(a) They affect land use as determined by the criteria established in the Department's **Land Use Planning Procedures Guide**;

(b) Provisions of OAR Chapter 690, Division 5 or the Department's **Land Use Planning Procedures Guide** are sufficient for assuring that actions allowed by the amendments comply with the goals and are compatible with comprehensive plans; or

(c) They modify the program so that it no longer qualifies as a land use program.

(6) If needed as determined after completing the examination prescribed in section (5) of this rule, the Department or Commission shall amend administrative rules and the Department's **Land Use Planning Procedures Guide** to assure goal compliance and compatibility with acknowledged comprehensive plans. If needed, considering the provisions of subsection (4)(c) of this rule, the program shall be deleted from OAR 690-005-0025 and the Department's **Land Use Planning Procedures Guide** amended accordingly.

(7) The Department shall provide written notice of any new rule or amendment determined to be a new land use program or affect the land use status of an existing land use program to the Department of Land Conservation and Development, persons on any Department mailing lists established for land use coordination purposes, and any local governments relying on the Department for goal compliance as described in OAR 660-030-0085. The notice shall include:

(a) The date, time, and location of the Department's proposed action;

(b) The manner in which written and oral comment on the proposed action can be submitted to the Department;

(c) An explanation of how the new rule or amendment qualifies as, or affects the land use status of, a land use program; and

(d) A description of any actions taken, or to be taken, pursuant to sections (3) through (6) of this rule.

(8) If no comment is received from the Department of Land Conservation and Development within the period specified in the notice described in section (7) of this rule, the Department may presume that the Department of Land Conservation and Development finds the new or amended rule or program to have satisfied requirements of ORS 197.180 and OAR Chapter 660, Divisions 30 and 31.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 197.180, ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 197 & ORS 536 - ORS 543
Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 1-1996, f. & cert. ef. 1-31-96

690-005-0055

Land Use Program Coordination with State and Federal Agencies and Special Districts

(1) The Department shall coordinate activities related to the programs identified in OAR 690-005-0025 with affected state and federal agencies and affected special districts by taking actions described in its **Land Use Planning Procedures Guide**.

(2) Beginning July 1, 1991, the Director shall transmit a report each biennium to the Water Resources Commission and the Director of the Department of Land Conservation and Development which includes:

(a) An assessment of the effectiveness of the Departments state agency coordination program during the preceding biennium;

(b) Recommendations for changes in Water Resources Department or Department of Land Conservation and Development rules and procedures to improve coordination between agencies and local governments;

(c) The status of any tasks identified for implementation in the certified state agency coordination program; or

(d) Discussion of any other subject relating to water resource management and land use.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 197 & ORS 536
Stats. Implemented: ORS 197 & ORS 536
Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-005-0060

Cooperation with and Technical Assistance to Local Governments

(1) The Commission and Department place a high priority on cooperating with and providing technical assistance to local governments.

(2) Cooperation with local governments shall include:

- (a) Informing planning departments or Department activities and local water resources issues;
- (b) Participating in periodic review;
- (c) Reviewing or pursuing comprehensive plan amendments; and
- (d) Reviewing project proposals.

(3) Technical assistance shall include:

- (a) Providing existing water resources data and studies;
- (b) Assisting local governments in interpreting water resources data and studies; and
- (c) Responding to questions, or undertaking research or monitoring projects, as requested by planning departments, as Department resources allow.

(4) Cooperation with and technical assistance to local governments and planning departments pursuant to sections (2) and (3) of this rule shall be guided and supplemented by procedures described in the Department's **Land Use Planning Procedures Guide**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 197 & ORS 536

Stats. Implemented: ORS 197 & ORS 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

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Oregon Secretary of State • 136 State Capitol • Salem, OR 97310-0722
Phone: (503) 986-1523 • Fax: (503) 986-1616 • oregon.sos@state.or.us

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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
janet.neuman@tonkon.com

July 17, 2014

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VIA E-MAIL AND U.S. MAIL

JUL 18 2014

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

SALEM, OR

Re: Supplemental Comments on Transfer Application 11833

Dear Ms. Douthit:

As you know from my earlier communications, I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID" or "the District").¹ I submitted brief comments on the Bishops' behalf on the District's Transfer Application 11833 on June 23rd. This letter contains additional and expanded comments relevant to this proposed transfer. (I have also submitted separate comments for the Bishops on the District's Transfer Application 11834.) For the reasons outlined in this letter, I urge the Water Resources Department (the "Department") to adjourn this transfer proceeding and/or deny the transfer application, to require a permit for the water storage facility which is the subject of this proceeding, and to pursue any and all appropriate enforcement action pertaining to this facility.

Since a picture can be worth a thousand words, I'd like to first direct your attention to the enclosed photographs (Exhibit C). Some of these photographs were taken by my

¹ The Bishops are also represented by Jennifer Bragar at the Garvey Schubert Barer firm on other aspects of this project, including land use issues and public contracting matters; we are coordinating our efforts on behalf of the Bishops. On June 4, 2014, Ms. Bragar filed a Code Enforcement Complaint with Deschutes County on the Bishops' behalf ("Code Complaint"). On June 16, 2014, Ms. Bragar served notice on TID of violations of the public contracting laws ("Public Contract Notice"). I have attached copies of these documents for the Department's information as Exhibits A and B, respectively, and I will refer to them when relevant later in this letter; to avoid duplicate reproduction of documents, I have omitted the attachments to these two exhibits.

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client, Tom Bishop; others were taken by his son, Gene Bishop, and by one of his neighbors. Taken from May to July, the photos show the construction of two substantial reservoirs on land owned by Harris Kimble, Eric Cadwell, and/or the KC Development Group, LLC (collectively, "KCDG") on land immediately adjacent to the Bishops' property. The photographs illustrate the scale and speed of this project and set the context for these comments.

In only a few months, from early spring to the beginning of July, KCDG built and filled two large water storage facilities without any kind of meaningful agency review of the project. KCDG does not have a water permit allowing construction and filling of the reservoirs, nor does it have any land use approval for the development of the property. KCDG constructed their ponds on property formerly used for mining rock; the property is now zoned for rural residential use with wildlife management and landscape management overlays. One of the ponds (identified as the northerly pond in photos C-1 and 2) is apparently intended as a recreational fishing pond to serve KCDG's proposed housing development. The other pond (identified as the water ski lake in photos C-8 through 15) is intended and designed for use as a water ski lake serving the development. A dozen or more heavy construction vehicles operated in full shifts for several weeks to construct these facilities, excavating, filling, and moving tens of thousands of cubic yards of material to create the ponds and build a road.² All of this activity was carried on without any review or approval other than a one-month rock crushing permit from Deschutes County.³ During construction, tens of thousands of gallons of water were pumped from a well on the property into an elevated water tank, and then used to fill tanker trucks for dust control and other construction purposes (see photos C-3 and 4).⁴ The northerly pond was filled with water during May and the water ski lake was filled beginning in the last week of June.

² Photo C-16 shows some of the construction equipment. The two ponds together were constructed to store a minimum of 108 acre feet of water, which is equivalent in volume to more than 174,000 cubic yards of material. Since the site was already partially excavated in places, the amount of material removed would be somewhat less than this figure, but still a very large volume.

³ The Bishops' Code Complaint (Ex. A) challenges the lack of county land use review for constructing the ponds and the road under the applicable zoning requirements.

⁴ Photos C-3 and 4 show water being pumped from a domestic well on the KCDG property into an elevated holding tank, which was then used to fill tanker trucks (photo C-17). I believe this well is Well Number 112224, drilled in February of 2014. When I questioned District 11 Watermaster Jeremy Giffin about this water use, he said that the onsite contractors told him they were filling a 3,000 gallon tanker truck one and one-half times per day and were thus covered by the 5,000 gallon per day industrial groundwater use exemption. Having observed the heavy traffic of the tanker trucks onsite in May and June, my clients question whether this water use was always kept within the limits of the exemption. Whether the amount of water use was excessive or not, this fact also speaks to the large scale of this operation.

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On numerous occasions during construction, my clients contacted Deschutes County officials, TID's management, the Department, and District 11 Watermaster, Jeremy Giffin, to object to the project's proceeding without any land use or water use approvals. The Bishops also attended District Board meetings to register their objections—both substantive and procedural—to the District's entering into a contract with KCDG. In spite of those objections, a parcel of land that consisted mostly of naturally vegetated ground in a winter wildlife migration zone a few months ago now contains two large artificial water bodies covering approximately 20 acres.⁵ My clients are astounded that these reservoirs have been completely built and filled, with resultant damage to the wildlife habitat and landscape, with no public review. The discussion below explains why we believe this to be wrong and in violation of applicable law.

1. *The KCDG reservoirs require an independent permit.*

Two water storage facilities of this magnitude should not have been constructed and filled with water without prior review by the Department. As I pointed out in my June 23rd letter, 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.) Section 2 of the same statute prohibits anyone from *using, storing, or diverting* any water "until after the department issues a permit." (Emphasis added.) 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).) And finally, ORS 537.400(1) restates that "all applications for reservoir permits shall be subject to the provisions of ORS 537.130."⁶

There can be no question that the KCDG structures are reservoirs. The two ponds together are designed to hold a minimum of 108 acre feet of water—the equivalent of nearly five million cubic feet and more than 35 million gallons of water. The two reservoirs have a combined surface area of approximately 20 acres. The larger of the two is designed specifically as a water ski lake for the residents of KCDG's contemplated development. It also contains two constructed islands to facilitate turns and a ski boat waiting area, and recently, KCDG submitted—but subsequently withdrew—an application to the County to build a boat house and an additional boat slip at this lake.

⁵ This size estimate is based on the District's application in Transfer 11834, where the District seeks to change the place of use for 21.4 acres of irrigation rights, in order to move the rights off the land now occupied by KCDG's reservoirs and road.

⁶ ORS 537.147 also provides for a secondary permit for use of stored water in certain circumstances; nonetheless, the application requirements and review process are substantially similar.

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Neither of these water reservoirs existed or stored water prior to KCDG's excavation and construction. Instead of requiring a permit to build and store water in these facilities, the Department has allowed them to be filled with water as if the reservoirs were already in existence—and already permitted—and thus can simply serve as a new place of use for irrigation district water previously stored elsewhere. In this case, "elsewhere" means the Tumalo Irrigation District's Upper Tumalo Reservoir. Thus, water belonging to the District and its members, that was stored in a District-owned facility, and provided both District and public benefits, has been moved to a private facility providing private benefits, with no agency or public review.

- a. *A permit review is necessary to develop critical information about the KCDG project.*

The two KCDG reservoirs are precisely the sort of significant water storage and use project that a full permit review is designed to consider. In my June 23rd letter, I listed a few of the issues that would be covered in a full permit review. I want to expand on that discussion here.

To obtain a new permit to construct and fill two reservoirs as part of a housing development, KCDG would be required to provide all of the detailed information described in ORS 537.140 and OAR 690-310-0040. This includes details about the reservoir structure and its operation (to enable review and evaluation of the design, construction, and geotechnical analysis) and information about the sources of water.⁷ In Transfer Application 11833, KCDG and TID have emphasized filling the ponds with water from the Upper Tumalo Reservoir. However, in addition to holding 108 acre feet of stored water in the two reservoirs on a permanent basis, KCDG also plans to "pass through the Ponds" enough water to irrigate approximately 55 acres of land (including the approximately 21 acres that are the subject of Transfer Application 11834), but, supposedly, not to store this water in the ponds or on the property.⁸ This irrigation water comes from different sources, including Tumalo Creek.⁹ Exactly how KCDG intends to manage this commingled water is completely unknown because the project has not been subjected to public review. Instead, the project has been proposed under two separate transfer applications as if the handling of the stored water and the handling of the irrigation water bear no relationship to each other, whereas KCDG ought to be required to

⁷ See, for example, ORS 537.140(1)(a)(B); OAR 690-310-0040(1)(a)(B).

⁸ Irrigation Contract (Water Storage Easement Agreement) between the KC Development Group, LLC, and the Tumalo Irrigation District, dated June 10, 2014 (the "Agreement"), at p. 1, Section 2. A copy of this Agreement is attached to this letter as Exhibit D.

⁹ These irrigation rights are involved in T-11834.

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explain how the reservoir will be managed to account for these two sources and different authorized uses of water.

In a new permit application, details about how the stored water would be used would also be required, including the plans to use one of the reservoirs principally as a water ski lake.¹⁰ The application would also require KCDG to provide justification for the amount of water to be stored and used, and how it would be measured.¹¹ Other information required includes "measures the applicant proposes to prevent damage to public uses of affected surface waters."¹² Upper Tumalo Reservoir serves several public uses, including wildlife habitat and recreation, and KCDG should be required to describe the impact of reducing the water authorized to be stored there by approximately 10%.

- b. The permit process is necessary to elicit critical information from other affected agencies, including whether the KCDG project is compatible with local land use laws.*

Another very important piece of information required for a new permit application is information about the project's compatibility with applicable land use laws.¹³ As described in the Bishops' Code Complaint (Ex. B), the status of these reservoirs under Deschutes County's land use ordinance is problematic. The KCDG property is zoned for Rural Residential use with overlying Wildlife Area Combining and Landscape Management Combining Zones. Neither the water storage facilities nor the proposed PUD or cluster development are allowed as outright uses in this zone. KCDG and the District apparently take the position that the facilities are allowed outright because they are part of the District's irrigation system. This argument is discussed further in Part 2a below.) The point for now is that the matter of land use compatibility is intended to be considered and resolved publicly as part of a water permit application process. Instead, the discussion of land use compatibility is occurring behind the scenes, out of public view.

Furthermore, when KCDG does finally request county approval for its further development of the site, the County's review will necessarily be influenced and potentially constrained by the amount of site development done so far. The fact that the site now contains a newly-constructed road and two completed water features, constructed at considerable expense, will be difficult to ignore. On June 13, KCDG applied for a permit to build a boat house on the

¹⁰ See, for example, ORS 537.140(1)(d); OAR 690-310-0040(1)(a)(E).

¹¹ OAR 690-310-0040(1)(a)(K).

¹² *Id.*

¹³ OAR 690-310-0040(1)(L). In fact, this information is also required for transfer applications, pursuant to 690-005-0025(3), but as far as my clients know, the information has not yet been provided.

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water ski lake, again prior to submission of any plan for the whole site.¹⁴ It is clear that KCDG wants to do everything it can to develop this property before submitting its request for approval of building houses on the site. The more developed the site, the harder it will be, as a practical matter, for the County (or the public) to influence KCDG's development plans or deny KCDG's request. And meanwhile, all of the work on site makes the development more attractive for potential lot purchasers, further allowing KCDG to get out ahead of the agency approval process.

The County is not the only agency that is allowed to weigh in on a permit application. The Department's statutes and rules require that other agencies receive notice of new applications.¹⁵ This notice allows agencies and Tribes to provide comments related to their jurisdiction and areas of expertise, including, among other issues: public safety; air, water, and noise pollution; fish and wildlife; land use; and transportation. These agencies are accustomed to reviewing new applications for areas of concern. On the other hand, they are unlikely to review transfer applications closely, because the issues involved in transfers are much more limited.

None of the information discussed in the prior pages has been required or considered for this project, because the project is proceeding under the guise of a transfer application. Furthermore, since the review is proceeding as a *district* transfer, the process is even more truncated. As a result, KCDG's reservoirs are already finished and filled with Tumalo Irrigation District water, without review of any of the important and detailed information discussed above.

c. Without a full permit review, the Department cannot fulfill its responsibilities 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 prior to committing water to any particular project. In particular, the Department must

¹⁴ Further communications between Jennifer Bragar and the County occurred regarding that application, and it appears that the application has been withdrawn for some reason.

¹⁵ OAR 690-310-0090 requires the Department to send its weekly notices to local, state and federal agencies and Indian tribes.

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conduct a full public interest review of new applications.¹⁶ In my June 23rd letter, I raised some of the public interest concerns that are pertinent to a permit review. I will expand on these issues here.

Department rules (OAR 690-310-0120) require WRD to consider the following 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, including supporting provisions such as public facilities plans.

This list of factors illustrates all the analysis missing here. With a proper reservoir permit application by KCDG, the Department would need to consider, at the very least: the impact of adding two new storage facilities on evaporative water losses or other forms of waste; the water quality impacts of using the ponds for water skiing and other recreational uses; the water quality impacts and other potential effects on domestic wells in the area; and the impacts to wildlife, such as the barriers to wildlife migration created by the reservoirs, roads, and other development. Furthermore, the permit process would force a full consideration of how these water storage facilities fit with local plans for land use, development, and recreation. Again, *none* of these issues are addressed at all in a transfer review.

The Department's failure to require a permit application from KCDG for its two reservoirs seriously undermines the provisions of the Water Code. The Department and other federal, state, and local agencies have been prevented from gaining a full understanding of this project and from appropriately exercising their statutory authorities. And the Bishops and other members of the public are being denied important procedural and substantive rights.

¹⁶ 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 appropriation.

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2. *Use of the district transfer statutes to bypass the clear language of the reservoir permit requirements distorts the facts of this project and misapplies the law.*
 - a. *This project is improperly characterized as a Tumalo Irrigation District project.*

The applicant inaccurately and disingenuously characterizes this proposal to move water to the KCDG reservoirs as a Tumalo Irrigation District project. This is KCDG's project, first and foremost. KCDG owns the land and the reservoirs and has, for some time, planned to build a luxury housing development on the site. Several years ago, these developers approached Jeremy Giffin, District 11 Watermaster, about obtaining a permit to construct ponds on the KCDG property, as part of its long-term development plan. KCDG decided not to apply for a water right, but to pursue obtaining water from the Tumalo Irrigation District instead. In fact, we understand that it may have been Mr. Giffin himself who suggested that the developers contact the District for water; in any event, it was not the District who approached KCDG about storing district water, but the other way around.

The District did not independently propose to move water from Upper Tumalo Reservoir to the KCDG property to serve District needs. The District did not look for alternative water storage facilities or locations. If the District had been truly interested in seeking out new storage facilities, as a matter of legitimate irrigation district business, it would have been proper for it to include the proposal in the regular district planning process, to discuss the needs with its members, to investigate alternative ways of meeting the needs, and to seek competitive storage proposals from its water users, other property owners with available land, or existing reservoir owners and operators. The District did not do any of those things, in spite of specific requests to do so from our clients and others.¹⁷

¹⁷ See Public Contract Notice, Exhibit B. Our clients and other district water users told the District that if it really wanted to find another location to store Tumalo Reservoir water, it should open the process to offers or bids from other property owners and take the offer that would maximize the financial return to the District (which in turn would benefit the members). Indeed, prior to the District entering into its contract with KCDG, Mr. Bishop offered the District \$10,000 per year to keep the water in the Upper Tumalo Reservoir rather than move it to KCDG's property. This amount is nearly twice as much as KCDG is paying the District to use the water in its development. Furthermore, this arrangement would have allowed the District to avoid the substantial risks (including potential tort liability) and uncertainties of having its water storage under control of a private party or the party's possible successors in interest—such as a future homeowners' association..

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The District completed two detailed and thoughtful Water Management and Conservation Plans in 2000 and 2005. These plans assessed water losses throughout the irrigation system (estimated at 60-70% historically), analyzed several alternatives to better manage and conserve water, and set forth a detailed plan to pipe all of the District's canals to eliminate most of the system's water loss. The Plans noted evaporation and leakage losses from Upper Tumalo Reservoir, but did not propose reducing the volume of water stored there or moving storage away from the reservoir.¹⁸

It was not until quite recently that the District began to describe the KCDG ponds project as if it were actually a *district* project. In a June 19, 2014 letter to Deschutes County, the District Manager, Ken Reick, said that the District "has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir."¹⁹ Mr. Reick refers to the new site only as the "Klippel Acres Mining Pit." The letter makes no mention of KCDG or its plans for the ponds and the intended surrounding development, except by way of copying the letter to "Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site." (Nor did the letter mention the application for a permit to build a boathouse and boat slip.) Mr. Reick describes detriments of the Upper Tumalo Reservoir site and benefits of the new site. The letter claims that "Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review" notwithstanding the fact that the District neither owns nor leases the land, and will not own or operate the reservoirs. Mr. Reick cites portions of the County Code which allow "operation, maintenance, and piping of *existing irrigation systems* operated by an Irrigation District" as an outright use in a rural residential zone. (Emphasis added.) Describing KCDG's extensive pond construction project—most of which was completed before the TID Board approved the Agreement with KCDG at its June 10, 2014 meeting—as part of the District's existing irrigation system is disingenuous and misleading at best, and just plain false at worst. Furthermore, as

¹⁸ The initial plan, prepared in 2000, included a brief discussion of reconstructing the Upper Tumalo Reservoir or storing water elsewhere within the pipe network, but in a very limited context, relating only to the prospects for storing water during peak demand periods in order to lessen the impact on other irrigation districts of TID's varying rates of diversion from the Deschutes River. The Plan dismissed these alternatives and instead suggested approaching the North Unit Irrigation District about adjusting its own operations to deal with the river flow variations expected after full implementation of TID's conservation project; this discussion apparently took place and was favorably received. Tumalo Irrigation District, Water Conservation Plan, pp. 5-5—5-6 (July 16, 2000). The 2005 Update noted the evaporation and seepage losses from the reservoir, but contained no further discussion about the reservoir. The discussion about storage during peak demand periods did not appear at all in the later Plan.

¹⁹ Letter from Ken Reick to Nick Lelack, Deschutes County Community Development Director, June 19, 2014, attached as Exhibit E.

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discussed further below, the District has essentially ceded its control of the water stored on KCDG's property to KCDG.

In fact, when the TID Board discussed the KCDG Agreement at its meetings on May 13, 2014, and June 10, 2014, the tenor of the discussion was considerably different. The project was not discussed as a District project, but rather the Board emphasized the fact that KCDG and the Watermaster had brought the proposal to the District.²⁰ The Agreement itself does not even describe this as a District project, saying instead: "Whereas KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property... and [w]hereas TID is willing to allow KCDG to hold the Stored Water" ²¹ Furthermore, the District points to its lack of ownership of the project to support its position that the public contracting laws do not apply to its transaction with KCDG.²² The District cannot have it both ways.

Instead of investigating available storage options and determining the best alternative for the District and its members, the District entered into a lopsided deal brought to it by KCDG. The Agreement approved on June 10, 2014, by the District's Board allows KCDG to take control of stored water belonging to the District and convert it to the developers' own private benefit. As noted, to begin with, the Agreement recites that KCDG desires to store water and the District is willing to allow KCDG to hold the stored water. The District agrees to use a district temporary transfer to move water to KCDG's ponds, to renew the temporary transfer on an annual basis as needed, and eventually to request a district *permanent transfer*. KCDG agrees to pay the District \$50 an acre foot per year for the stored water (for a total of \$5,400 annually), as well as to cover all of the costs of the transfer applications, and to submit final proof of the permanent transfer to the Department by March 1, 2018, in support of the issuance of a new certificate. The price to be paid to the District is far below the market value for KCDG's use of the water.

²⁰ Tom Bishop attended the May 13th meeting and Gene Bishop attended the June 10th meeting, along with a Garvey Schubert Barer lawyer, who took careful notes on the entire discussion, except the Executive Sessions. At the May meeting, after taking some public comment from Mr. Bishop and others, the Board tabled consideration of the contract. At the June meeting, the Board Chair said only that KCDG's lined reservoir would be superior to the Upper Tumalo Reservoir, and that the District had explored other potential storage sites, without providing any support for that statement. The Board approved the contract with only minor modifications to the version it considered in May.

²¹ Agreement, *supra* note 8, at p. 1, Recitals.

²² See June 30th email from Bill Hopp responding to the Public Contract Notice, attached hereto as Exhibit F.

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The Agreement does not explicitly state anywhere that the water in the ponds will belong to the District and/or its members, or will be subject to the District's exclusive management and control, as the water in Upper Tumalo Reservoir is now. KCDG agrees to grant the District an easement across KCDG's property, *but only* "for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement." The Agreement provides that "TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect." These provisions clearly limit the circumstances under which the District can access and use the water once it is on KCDG's property. If KCDG defaults on the agreement, the District's only remedy is to start another transfer proceeding to try to move the water back to Upper Tumalo Reservoir or another location.

The Agreement does not contain any description of the "plumbing" by which the District can access the ponds and the stored water to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting the water *to* KCDG's property and *into* the ponds. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands.

Two provisions in the Agreement are particularly troublesome. Earlier in these comments, I noted that the ponds are intended to receive more than the 108 acre feet of stored water. Paragraph 2 on page 1 of the Agreement says, in full:

"TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in Exhibit A, particularly in the ponds (the "Ponds") described in "Exhibit B," (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property, or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)"

This provision of the Agreement is at the very least confusing, and very likely misleading. How will KCDG assure that the irrigation water passes through the ponds without being stored there? Prior to the District's approval of the Agreement with KCDG on June 10, 2014, and prior to the submission of the District's two transfer applications on June 11, 2014, KCDG had already filled the northerly pond. KCDG apparently claimed a right to do so by permission of Watermaster Jeremy Giffin to store irrigation water as a "bulge-in-the-system" ("BIS").²³ The northerly pond has a capacity of approximately 41 acre feet. After several

²³ It does not appear that much irrigation, if any, is actually occurring on KCDG's property during this season, thus eliminating any justification for storing water as a BIS.

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communications and complaints to Mr. Giffin on behalf of the Bishops about the water being stored on site, Mr. Giffin investigated; he confirmed in a June 12th email that KCDG was storing more water than the 18.25 acre feet that he would allow as a BIS.²⁴ However, he also said that, as of June 11, he had received the District's transfer application to move water into the ponds, and therefore the BIS issue was no longer a concern, since the District was allowed to "operationally" move the water once it had submitted the application. In addition to our general concerns about this sequence of events, and about whether the BIS concept properly applied at all to KCDG, we question how the BIS concept will be integrated with this provision of the Agreement. KCDG has already abused the BIS concept once; what is to prevent it from doing so again? It seems very likely that KCDG will in fact hold its irrigation water in the ponds, contrary to the Agreement's terms.

In fact, language in paragraphs 7 and 8 of the Agreement adds to this concern. These two provisions make it clear that the transfer of storage rights and the transfer of irrigation rights are interrelated. Before the District will request (on KCDG's behalf) a permanent transfer of the storage rights to KCDG's property, KCDG must fill the ponds with 108 acre feet of water *and* complete a transfer of the irrigation rights now associated with the land under the ponds. Paragraph 8 says, in part, "If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, *fails to beneficially apply water to land with the water rights to be serviced by said Ponds* for a period of 5 years, . . . then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location." (Emphasis added.) It would certainly seem that as far as KCDG and the District are concerned, KCDG will use the ponds to store both Upper Tumalo Reservoir water and irrigation water from Tumalo Creek and other sources.

Why does this matter? First, these provisions further demonstrate that this is a KCDG project, and not a project for the good of the District. KCDG will exercise complete discretion and control over how it manages the ponds, as long as KCDG "uses" all the water provided to it under the Agreement.²⁵ The ponds will undoubtedly be operated for KCDG's benefit first and foremost, not for the benefit of the District or its other members. The Bishops

²⁴ On June 12, 2014, Mr. Giffin reported in an email to Jennifer Bragar and Janet Neuman that KCDG could only store 18.25 acre feet as a BIS.

²⁵ In fact, the Bishops and their neighbors have heard that the District gave KCDG the "keys" to control the diversion structures to direct water onto KCDG's land, even though these diversions also control and/or affect water to which other users are entitled, and even though District employees are supposed to be the only ones with the ability to lock and unlock diversions. I have not confirmed this claim with the District, however.

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and other water users will be injured by giving KCDG control over so much of the District's water, as further discussed below. These provisions also illustrate the impropriety of reviewing this project under two separate and limited irrigation district transfer processes instead of a regular permit review.

The 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 is adequately protected from such liabilities at these two new reservoirs which are intended for heavy recreational use.

To call this project simply a change in place of use for some of the District water currently stored in Upper Tumalo Reservoir completely obscures the true nature and purpose of the project. Allowing the project to proceed as a District transfer application provides KCDG with an unjustified means of obtaining water for its own private development purposes, under terms that are very unfavorable to the District members and expose the District to substantial risks and uncertainties, without going through a full public review of its water use proposal.

b. *Reviewing this project as a District transfer allows it to avoid important agency reviews and public comment.*

Part 1 above already described the many issues that will not receive appropriate airing and review because of the lack of a full permit review process for the KCDG reservoirs. In this section, I want to shift the focus slightly, to address more specifically the inherent limitations of a transfer review, and in particular the truncated nature of a transfer requested by an irrigation district.

Oregon law does not require a public interest review of transfer applications, although some other states do. The information required to be submitted with a transfer application is correspondingly much more limited than for a new permit application. An irrigation district applying for a temporary transfer to change the place of use of a water right is required to submit minimal information—essentially of the "name, rank, and serial number" variety. For instance, OAR 690-385-2000 requires that the application include a number of facts that are matters of public record, such as the details about the right that is the subject of the transfer proceeding (certificate number, source of water, priority date, authorized uses, authorized places of use and points of diversion, and so forth). For a change in place of use, the application must identify the location of the proposed place of use and submit a map as required by OAR 690-385-2200. The district manager must state that the right hasn't been forfeited, that

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the information in the application is true and correct, and that "each user affected by the transfer [i.e., KCDG here] has provided written authorization for the transfer . . ." OAR 690-385-3200(2) also requires a certification that "the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right." (These last two requirements are discussed further in Part c below.) That is essentially all that is required for a district temporary transfer of a place of use.

The Department's review of a transfer is limited by statute to an examination of whether the proposed change will result in enlargement and injury, as defined in OAR 690-385-0100 (4) and (6). The water right cannot be expanded by the change—for instance, the new place or type of use or new point of diversion cannot receive more water than the old locations did before the transfer. Nor can the change "result in another, existing water right not receiving previously available water to which it is legally entitled." Although non-district water users applying for a transfer must wait for Department approval before making the change, irrigation districts are allowed by OAR 690-385-3000(2) to go ahead and make their requested change as soon as they have submitted an application.²⁶

At the risk of being repetitive, I want to summarize again the sequence of events to highlight how a transfer review—and particularly an irrigation district transfer review—fails to get to the heart of this project. KCDG built a road without any agency review except for a temporary rock crushing permit. KCDG excavated many tons of dirt and rock to create two substantial water storage facilities, without any agency review. KCDG intends these facilities to be key components of their proposed housing development, which has not yet been applied for, reviewed, or—much less—approved by Deschutes County. KCDG used tens of thousands of gallons of water during construction, without any oversight of whether the amounts were excessive. KCDG filled one of the ponds with irrigation water several weeks ago, claiming permission as a "bulge in the system," even though the amount stored was clearly excessive and did not fit the Department's guidance for using BIS storage. All of this activity was carried out by KCDG before they even had any official agreement with the Tumalo Irrigation District to put District water in the reservoirs.

As soon as the District approved the KCDG Agreement on June 10th, two transfer applications were immediately submitted to the Department. Although the applications came under the name of the District, it is KCDG that is actually preparing, paying for, and handling the applications, as they are required to by the Agreement. Yet because the applications are nominally District applications, the Department has allowed the proposed

²⁶ Section (3) of this rule does allow the Department to revoke the change later if it finds enlargement or injury

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changes to be made pending the ongoing transfer review process. KCDG proceeded rapidly during the latter part of June to complete and line the water ski lake, dig new ditches and install new pipelines, and fill the lake with water coming out of the TID main canal pipeline. Voila—two brand new reservoirs have been built on private land, and they are now filled with irrigation district water. By flying this project under a district transfer flag, the project proponents have assured that no agency is reviewing the full project, and no agency can effectively say no to the project, for any reason other than enlargement of water use or injury to other water rights—and then, only after the fact. This limited, backwards review process is completely inappropriate for a project of this magnitude.

c. *The District transfer statutes cannot properly be interpreted to apply to this project.*

I have already described why it is wrong, from a factual point of view, to consider this a District project. It is also wrong from a legal point of view to review the KCDG pond project under the district transfer statutes and rules in ORS 540.570 and OAR 690-385. A close reading of the statute demonstrates that the transfer statutes are designed to accommodate changes in place of irrigation, not changes in place of storage. ORS 540.570(1) states that an irrigation district may temporarily transfer "the place of use of water appurtenant to any land within the legal boundaries of the district *to an equal acreage elsewhere* within the legal boundaries of that district" as long as "*the rate and duty, and the total number of acres to which water will be applied* under the transfer, do not exceed existing limits" The plain language of the statute refers to moving irrigation water from one parcel of land to another. This meaning is reinforced by other sections of the same statute noting that the temporary changes apply to "one irrigation season" only. Furthermore, the statute discusses "affected landowners" as those whose lands are directly involved in the change of place of irrigation (the "from" or "to" lands).

The Department's administrative rules support this interpretation. OAR 690-385-0100(16) defines "user" for the purpose of the district transfer rules as "an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred." The rules then go on to require that a district's application include statements that any users affected by the transfer have given their written authorization for the change.

There is no explicit reference in the applicable statutes or rules to changes in *place of use* for a storage right. OAR 690-385-3120 discusses temporary changes in the *type* of use of a storage right, but only when a district is leasing the water instream. The absence of any discussion of changing the place of storage makes sense. It is one thing to propose moving irrigation water from one place to another within a district, as in the District's application in T-

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11834. After all, irrigation districts are formed to provide irrigation water to the owners of the whole portfolio of irrigable lands within their boundaries, and Oregon law provides many examples of providing district managers with the flexibility to move water around in order to use the irrigation water completely and optimally. On the other hand, a storage right is by definition tied to a very particular location. 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. However, that is not the situation here, where the purported "to" reservoirs have been built from scratch by a private party without any reservoir permits, on private property not owned or leased by the District.

The district transfer statutes were intended to facilitate irrigation districts' on-the-ground operations of diverting and delivering irrigation water to district patrons. The statutes were not intended to allow private interests to assume the mantle of a district to create brand new private reservoirs.

I recently requested public records from the Department pertaining to other instances where transfers have been used to change the place of use of storage, and in particular, where district storage has been moved to private facilities. I will be surprised if there are any other examples of transfers to newly-built, unpermitted, private reservoirs.

d. The proposed change in place of use will cause injury to the Bishops and other water users.

The bulk of this letter has been devoted to challenging the use of the district transfer process for this project. However, I want to provide comments relative to the enlargement and injury analysis as well, in the event that the Department persists in reviewing this project as a district transfer.

In order for the Department to carry out even a proper transfer review, it must obtain (and make available to the public) more information about how the KCDG ponds are intended to be integrated with the rest of the District's delivery system. It is impossible to fully assess the impact of this change on the Bishops and other water users with the limited information available. Without additional detail about how the KCDG reservoirs have been constructed, how they are connected to other District facilities, and how they will be operated, we are not able to understand how the change will affect other water users. Therefore, the Bishops cannot fully assess and comment on the potential for injury. The Bishops reserve the right to expand their comments in this regard when the full information is obtained by the Department.

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Nonetheless, the fact that the District has ceded control of 108 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. As noted earlier, the District's Agreement with KCDG does not preserve sufficient access and control for the District to manage and deliver this water for its members. The Agreement provides the District with only a limited access easement to inspect the ponds. The Agreement only allows the District to pump water from the ponds for District use "in the event of drought or other emergencies." The application contains no information about how the KCDG ponds are to be operated in coordination with the rest of the District's delivery system so that the District's users receive water according to their priorities and location within the system. The Bishops' primary water rights are senior in priority date to the storage right, and also to KCDG's irrigation rights.²⁷ Yet KCDG's diversion to its ponds is upstream from the Bishops' property. Although in theory, the Bishops should still be able to call their water, it is not clear how that call will be met. Will KCDG bypass a portion of what it is allowed to store and "pass through" the ponds to satisfy senior users like the Bishops? Are the ponds "plumbed" to allow direct delivery to other users?

How will the addition of two more ponds, with a combined surface area of about 20 acres, affect the losses of water by evaporation within the District? 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.²⁸ Even though the volume of water stored in the Upper Tumalo 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 ponds. In fact, removing water from Upper Tumalo Reservoir may very well increase the rate of evaporation from the reservoir, which would constitute an enlargement.

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 ponds on this drinking water supply.

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

²⁷ The Bishops' rights have a priority date of 1900, whereas the rights appurtenant to KCDG's property have priority dates of 1907 and 1913, and the District's storage right has a priority date of 1961.

²⁸ TID 2005 Plan, p. 1-1.

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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, 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 ponds 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 to 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, causing TID to have to incur such costs in order to protect and maintain the storage of water at the site.

Although the injuries just described are broader than the typical injuries considered in a transfer review, they represent real risks to the Bishops and other water users within the Tumalo Irrigation District. These risks further demonstrate the impropriety of handling this project under the irrigation district transfer rules.

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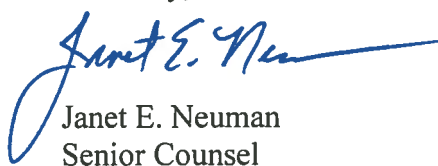
SALEM, OR

Ms. Susan M. Douthit
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3. *Conclusion*

These comments demonstrate that T-11833 should not be allowed to proceed. The Department should adjourn the proceeding or deny the transfer outright and should further require KCDG to obtain an independent permit for their reservoirs reflecting the actual use of the facilities. If the Department does not adjourn the transfer proceeding for the reasons discussed here, it should deny the transfer because it will cause enlargement of water use and injury to the Bishops and other water users. Thank you for your full consideration of these comments.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

GARVEY SCHUBERT BARER

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Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 4, 2014

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VIA EMAIL AND U.S. MAIL

JUL 18 2014

Mr. Tim Grundeman
Deschutes County Code Enforcement
117 NW Lafayette Avenue
Bend, OR 97701

SALEM, OR

Re: Code Enforcement Complaint -- Unpermitted Lakes at Tax Lots 1711130000828 and 1711130000824

Dear Mr. Grundeman:

Our office represents Thomas and Dorbina Bishop, who live at 63382 Fawn Lane, Bend, Oregon, adjoining tax lot 1711130000828. We also represent Eugene Bishop, who has first hand knowledge of the information set forth here. This letter is a follow-up to our conversation this morning and provides the details of the complaint in support of the attached Deschutes County Code Enforcement Complaint Form about unpermitted activities at tax lots 1711130000828 and 1711130000824 (the "subject property"). See Attachment 1 (the former is highlighted in yellow and the latter in orange).

Eric Cadwell, Harris Kimble, and/or KC Development Group, LLC (collectively, "KCDG") own the subject property. This complaint is related to KCDG's construction of two lakes on the property without obtaining land use approvals. While the Bishops understand the County takes the position that it has no grading ordinance to limit excavation and grading on the site, and no control over water use at the subject property, the County does have land use ordinances that limit a private property owner's development without appropriate permits, and the associated public review process. The Bishops' due process and property rights are being violated because the County has not provided the public review process under its land use ordinance – Deschutes County Code Chapter 18.

KCDG is currently developing two large lakes. One lake, the northerly lake, has been filled with water. See Attachment 2.¹ KCDG has indicated that the northerly lake will be used as a recreational pond. The southerly, larger lake is currently being lined in preparation for filling with water. See

¹ Mr. and Mrs. Bishop are separately undertaking enforcement action for the unpermitted water use to fill the northerly lake with the Oregon Water Resources Department ("OWRD"). Janet Neuman of the Tonkon Torp law firm is focusing on the OWRD and other aspects of this matter for the Bishops.



GARVEY SCHUBERT BARER

Mr. Tim Grundeman
June 4, 2014
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Attachment 3. KCDG has indicated that the southerly lake will be used as a water ski lake. Both lakes are intended to serve KCDG's planned unit or cluster development. KCDG has not obtained the necessary land use approval for either lake or the planned or cluster development.


The lakes do not qualify as uses permitted outright under Deschutes County Code ("DCC") 18.60.020 because the lakes do not meet any of the listed uses identified in that code section. The lakes may qualify as conditional uses as recreation-oriented facilities, or as the County is aware of KCDG's intent, as part and parcel with KCDG's ultimate intent to apply for a planned or cluster development, subject to DCC 18.60.010 - .090.² The land use process is designed to require KCDG to obtain the necessary conditional use permit approval and to allow public review of the project. Further, the subject property is part of the Wildlife Area Combining Zone and Landscape Management Combining Zone that would further constrain KCDG's unpermitted development.

On behalf of the Bishops, this office requests that the County immediately stop work at the site and require KCDG to obtain necessary land use approvals, require the deconstruction of the lakes with complete remediation of the site under DCC Chapter 18.144, and obtain any monetary relief available to the County as a result of these violations. If the County allows the development to move forward, whereby KCDG would flout the land use process, the Bishops will treat the County's action as allowing the use.

Thank you for your prompt attention to this matter and your immediate action to stop KCDG from continued construction activities at the subject property.

Sincerely,

GARVEY SCHUBERT BARER

By 
Jennifer Bragar

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JUL 18 2014

SALEM, OR

JB:tk

Enclosures

cc: Lori Furlong (by e-mail)
Laurie Craghead (by e-mail)
Jeremy Giffin (by e-mail)
Tumalo Irrigation District Board of Directors (by e-mail c/o Ken Rieck
Ken Rieck, Manager of Tumalo Irrigation District (by e-mail)
Oregon Water Resources Department (by US mail)
Clients

PDX_DOCS:518323.1 [39124 00100]

² In our conversation today, you indicated that you are aware that KCDG intends to use the large lake for waterskiing as the centerpiece of a planned or cluster development.



DESCHUTES COUNTY
COMMUNITY DEVELOPMENT
117 NW Lafayette Avenue, Bend, OR 97701
Telephone (541)388-6575, Fax (541)385-1764

CODE ENFORCEMENT COMPLAINT FORM

Instructions: In order for your complaint to be accepted, you must fill in all questions completely and sign on the back of this form. It is important that you supply as much detail as possible. If you have any questions, call code enforcement at 541-385-1707.

Date: June 4, 2014

Address of Violation(s): tax lots 1711130000828 and 1711130000824

City: Bend State: Oregon Zip: 97701

Nearest Cross Street: Between Buck Drive and Klippel Road

Subdivision: _____

Residents Name: Eric Cadwell & KC Development Group LLC Phone: _____

Owner of Property: Same (Agent: Eric Cadwell)

Address: 63564 Johnson Road

City: Bend State: OR Zip: 97701

Details of Complaint (be specific): See attached letter.

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SALEM, OR

ARE THERE ANY KNOWN OR SUSPECTED HAZARDS AT THIS LOCATION?

IE: Dangerous or unstable residents, dogs, criminal activity, etc.

() YES (X) NO () UNKNOWN

If yes, please identify the hazard in detail: _____

**** Continue on reverse side ****



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

OTHER OFFICES
beijing, china
new york, new york
seattle, washington
washington, d.c.
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Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 16, 2014

VIA EMAIL AND CERTIFIED MAIL

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Carl W. Hopp, Jr.
Attorney for Tumalo Irrigation District
Carl W. Hopp, Jr., LLC
168 NW Greenwood
Bend, OR 97701

JUL 18 2014

SALEM, OR

Re: Notice to Tumalo Irrigation District of Violation of Public Contracting Laws Pursuant to ORS 279B.420(3)

Dear Mr. Hopp:

Our office represents Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the Tumalo Irrigation District ("TID") boundaries. The Bishops' property receives irrigation water from the District pursuant to an appurtenant water right. This letter provides notice under ORS 279B.420(3)(e) that the Irrigation Contract awarded to KC Development Group, LLC ("KCDG") on June 10, 2014, violates Oregon's public contracting laws. To the extent that TID has adopted further administrative remedies or procedures for review of violations of the public contracting laws, consider this letter as a request for such further administrative review.¹

The Irrigation Contract is a public contract as defined in ORS 279A.010(1)(z):

"Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public contract" does not include grants.

The Irrigation Contract is either a (1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or water storage right held by the District pursuant to Oregon

¹ If further administrative review is available through TID's adopted procedures, please provide an explanation of that process and a copy of the adopted policy and/or procedures.



G A R V E Y S C H U B E R T B A R E R

Carl W. Hopp, Jr.
June 16, 2014
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Water Resources Department Certificate Number 76684. In consideration for storing a portion of TID's water on KCDG's property, KCDG contracted to pay \$50/acre feet of water annually, for up to 108 acre feet of water. See Attachment 1.

Under ORS 279B.050, TID may not award a public contract for its water storage rights without undertaking a competitive sealed bidding process. As noted above, ORS 279A.010(1)(z) defines a public contract to include both purchases and sales of goods and services. Despite numerous letters and testimony to TID in regards to the low value being received by TID for the KCDG contract, as well as notice that Mr. and Mrs. Bishop questioned TID's compliance with public contracting laws, TID still entered the contract on June 10, 2014.

The TID/KCDG Irrigation Contract must be set aside because TID entered a public contract without undertaking a competitive sealed bidding process. If TID does not immediately respond to this letter and show that the contract has been set aside, Mr. and Mrs. Bishop will pursue all available legal remedies.

Sincerely,

GARVEY SCHUBERT BARER

By

Jennifer Bragar

JB:dw
Attachment

cc: Ken Rieck (by email and certified mail)
Fran DeRock (by email)
Clients

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PDX_DOCS:518797.5

Exhibit B
Page 2 of 2

EXHIBIT C

Photographs of KCDG reservoir construction

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C-1 (Northernly Pond)



0-2 (Northhady Pond)



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2-3 (well use for construction)



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C-4 (Tank storing well water)



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2-5 (pond liner)



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Q-6 (Pond liner)



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C-7 (construction of pond)



2-8 (construction of water ski lake)



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D-9 (water side lake)



C-10 (water ski lake)



C-11 (water slide)



E-12 (filling watershed lake)



G-13 (filling water ski lake)





C-14 (Pipe to Watski Lake)

C-15 (water side lake)





c-16 (construction equipment)

C-17 (Tanker Truck)



After Recording, Return to:
KC Development Group, LLC

63560 Johnson Rd
Bend, OR 97701

No Changes to Tax Statements.

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JUL 18 2014

SALEM, OR

IRRIGATION CONTRACT

(WATER STORAGE EASEMENT AGREEMENT)

Tumalo Irrigation District, hereinafter referred to as "TID," is an Oregon Irrigation District established under ORS Chapter 545 Oregon Revised Statutes. KC Development Group, LLC, hereinafter referred to as "KCDG" is an Oregon limited liability company and the owner of real property described in "Exhibit A," attached hereto, and incorporated herein by this reference. Together, they are "Parties" to this Agreement.

RECITALS

WHEREAS, TID holds a valid water right pursuant to Oregon Water Resources Department Certificate Number 76684 ("Certificate") to store 1100 acre feet of surface water at what is commonly known as Upper Tumalo Reservoir in Deschutes County, Oregon; and

WHEREAS, KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property described herein in "Exhibit A" (Subject Property); and

WHEREAS TID is willing to allow KCDG to hold the Stored Water authorized to be stored under the Certificate in exchange for payment to TID;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. The above recitals are incorporated herein.
2. TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in "Exhibit A," particularly in the ponds (the "Ponds") described in "Exhibit B," attached hereto and by this reference incorporated herein. (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)

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3. KCDG agrees to pay to TID certain consideration to hold the Stored Water on KCDG's Subject Property. Said consideration shall be made by payment of \$50.00 per acre foot of water right, per year, payable by check or other form of payment to TID on or before March 1st of each year, commencing on JUNE 10, 2014 for the first year, and to be paid by March 1st in each subsequent year for the following irrigation season. The initial charge of \$50.00 per acre foot shall be adjusted annually by the same percentage change made by TID in the total annual assessment and other account charges for each acre of land on TID's Certificate and entitled to irrigation pursuant to ORS 545.484, or by subsequent statute as that may be changed by Oregon's Legislature in the future. Payment is based on one acre feet of storage allowed under the storage right. Failure to make payment following 30 days written notice to KCDG is a default under this Agreement.
4. The obligations represented in this Agreement are contingent upon the Oregon Department of Water Resources ("OWRD") approval of the transfer of the desired portion of the storage rights under the Certificate to the Exhibit "B" ponds. The approval of and a new certificate issued by the OWRD) shall have the final proof submitted to OWRD by March 1, 2018. In the event OWRD does not approve the transfer of storage rights to the Ponds, this Agreement shall become null and void and of no further affect.
5. As further consideration for the transfer of the storage rights from Upper Tumalo Reservoir to the Ponds, KCDG shall pay all filing fees, engineering fees, reimburse TID for reasonable legal fees expended, staff time expended by TID personnel and any other costs or fees incurred by TID for the purpose of making the subject transfer or attempted transfer of storage rights from the certificate to the Ponds. Reimbursement to TID shall be made within 30 days of submission of the bill by TID to KCDG. Failure to make payment within 30 days of written notice is a default by KCDG under this Agreement. In the event OWRD does not approve said transfer, KCDG shall not be entitled to any refund of fees and costs paid to TID.
6. Upon execution of this Agreement and thereafter, and subject to approval of the transfer described in Paragraph 4, above, KCDG grants TID a perpetual Non-Exclusive Easement across the Subject Property and the Ponds for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement.
KCDG agrees to maintain the Ponds in acceptable condition to store the water allowed under the storage right. Maintenance of the Ponds, water conveyance lines, and any other construction necessary to accomplish the intent of this Agreement are to be borne by KCDG. Any repairs, adjustments or other construction deemed necessary by TID to comply with this agreement shall be performed by KCDG, or at KCDG's expense.
7. In the event KCDG fails to perform or is otherwise in default under this Agreement, upon 30 days written notice from TID or such longer period as it reasonably necessary to perform, TID shall be entitled to apply to OWRD to transfer the storage rights from the newly created certificate back to Upper Tumalo Reservoir, and KCDG hereby appoints TID its Attorney in Fact to consummate said transfer back to Upper Tumalo Reservoir.

2 - WATER STORAGE EASEMENT AGREEMENT

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To effectuate this transfer, TID shall use a District temporary transfer under ORS 540.570. This temporary transfer will be good for a period of one year. If an additional year is necessary for KCDG to prove up and accomplish all items required for the transfer of the stored water to the Ponds, such additional one year temporary transfer as needed will be filed. In order to qualify for a permanent transfer, KCDG shall be required to:

A. Fill the ponds with 108 acre feet of water, and in the event the ponds will not hold at least said amount, the permanent transfers shall be reduced to the amount of acre feet of water actually held by the Ponds.

B. KCDG will transfer the surface irrigation water rights currently appurtenant to the Subject Property area of the Ponds, and will transfer the rights to another irrigable area. The irrigation rights, when transferred, shall be proven up and are a further condition that must be completed before TID is required to apply for a permanent transfer of the stored water.

8. TID will renew the temporary transfers on a yearly basis as long as KCDG is proceeding in good faith to complete the preceding items A. and B. Once items A. and B. are completed, then TID agrees to consent to the permanent transfer. If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, fails to beneficially apply water to land with the water rights to be serviced by said Ponds for a period of 5 years, fails to maintain the Ponds in a proper, safe condition, complying with all applicable Federal, State and Local Laws, Rules and Ordinances, or to comply with the By-Laws, Rules, Regulations or other requirements of Tumalo Irrigation District then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location.

9. This Agreement is binding upon the parties, their heirs, successors, and devisees.

10. The parties understand that the law firm of Carl W. Hopp, Jr., Attorney at Law, LLC, has served as legal counsel to Tumalo Irrigation District in the negotiation of the terms of this Agreement, and does not represent KCDG in connection with this Agreement.

11. The rule of construction that a written instrument is construed against the party preparing or drafting such written instrument shall specifically not be applicable to the interpretation of this Agreement, and any documents executed and delivered pursuant to, or in connection with this Agreement.

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Seller in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and

JUL 18 2014

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disbursements, the fees and expenses or expert witnesses in determining reasonable attorney fees pursuant to ORCP 68, the actual cost of a litigation or foreclosure report, and such sum as the court may determine to be reasonable for the prevailing party's attorney fees connect3ed with the trial and any appeal and by petition for review thereof.

12. KCDG shall indemnify, defend, and hold harmless TID and its directors, officers, employees, agents and contractors for, from and against any and all losses, claims, actions, damages, liabilities, penalties, fines or expense, of whatsoever nature, arising from, related to, or in any way connected to this Agreement, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property arising from the use of the Subject Property, the Ponds, or adjoining areas, or from any activities contemplated by this Agreement, in each case undertaken by KCDG or any other person claiming by, through, or under KCDG. In the event litigation or proceedings brought against TID arising out of or in any way connected with any of the above events or claims, against which KCDG agrees to defend TID, KCDG will, on notice from TID, vigorously resist and defend such actions or proceedings in consultation with TID through legal counsel reasonably satisfactory to TID. The indemnity set forth in this paragraph shall be effective without regard to compliance or non-compliance with this Agreement by KCDG or TID.

13. TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect.

14. TID makes no representation that storage water will be available. Fees under this Agreement are due TID whether or not water is available. TID is not liable for any loss, damage, or claim which may be made for failure to supply storage water or the withdrawal of storage water.


15. KCDG and its successors shall require the purchasers/lessees at the time of purchase or lease of residential lots in the development to sign and record a document acknowledging that the purchaser/lessee has read and accepted this Contract.

DATED this 10th day of June, 2014.

TUMALO IRRIGATION DISTRICT

KC DEVELOPMENT GROUP, LLC

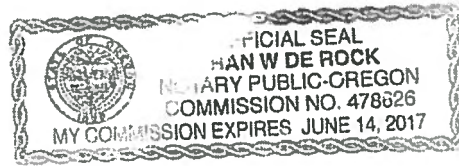
By 
Ken Reick, Manager

By 
Eric Catwell
Its managing member

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by Kenneth B. Rieck as
Manager and Secretary to the Board of Tumalo Irrigation District.

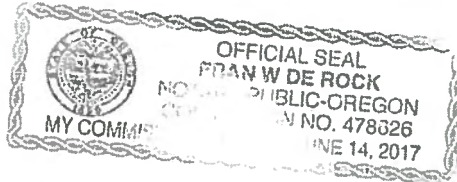
Fran W. DeRock
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by
ERIC CADWELL, of KC Development Group,
LLC.

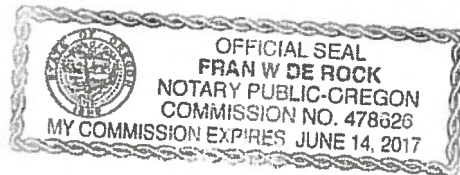
Fran W. DeRock
NOTARY PUBLIC FOR OREGON



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ATTACHMENT "A"

Subject Property located on the following lots

- 17-11-13-NE/NW-00819
- 17-11-13-NW/NE-00819
- 17-11-13-NW/NE-00820
- 17-11-13-NW/NE-00821
- 17-11-13-NW/NW-00822
- 17-11-13-NE/NW-00822
- 17-11-13-NE/NW-00823
- 17-11-13-NW/NE-00823
- 17-11-13-NW/SW-00823
- 17-11-13-SE/NW-00823
- 17-11-13-SW/NW-00823
- 17-11-13-NW/SW-00824
- 17-11-13-SE/NW-00824
- 17-11-13-SW/NW-00824
- 17-11-13-SW/NW-00828
- 17-11-13-NE/NW-00829
- 17-11-13-NW/NW-00829

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JUL 18 2014

SALEM, OR

ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828

NW/NE 00828

Pond #2

NW/SW 00824 & 00828

SE/NW 00824 & 00828

SW/NW 00824 & 00828

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TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

RECEIVED BY OWRD

JUL 18 2014

SALEM, OR

June 19, 2014

Nick Lelack
Community Development Director
Deschutes County
117 NW Lafayette Ave.
Bend, OR 97701

By U.S. Mail and email to Nick_Lelack@co.deschutes.or.us

Re: Tumalo Irrigation District Regulation Pond Storage Move to Klippel Acres Mining Pit

Dear Nick;

Tumalo Irrigation District (TID) has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir. The Reservoir was designed and built in the 1920's and does not adequately serve TID's needs. It is located far down in the District's points of delivery to intercept many of our deliveries, it is very shallow so encourages loss due to evaporation and allows solar heating of the water, and it leaks. The new site will be at the top of the system so will provide the ability for us to hold water in District for the entire distribution network, it will be deeper due to the mining pits already in place, and it will be lined so it will not suffer from appreciable leakage. In short, it will be a significant upgrade to operations and maintenance capability for the District.

We also anticipate that use of this storage site will enable us to reduce dependence on Tumalo Creek for our natural flow, an ongoing goal for both TID and the Deschutes Basin as a whole. The site will also continue to provide emergency water supplies for the District as well as for other Emergency Services responders, as it did during its trial period last week, when it was the primary source for both tanker and air fire suppression efforts in the Two Bulls fire immediately to the west.

We have received mail from an Attorney Bragar and an Attorney Newman on behalf of a Mr. Bishop, concerned that our choice to move our storage to the new location is not compliant with applicable law, including land use law. We have reviewed the County's code, and find that we are allowed to operate and maintain our system without land use approval from Deschutes County. The subject property is in the Rural Residential 10 acre minimum (RR 10) zone, which allows our operations to go forward as an outright use. Here are the applicable code provisions we rely upon:

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.020. Uses Permitted Outright.

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

Chapter 18.120. EXCEPTIONS

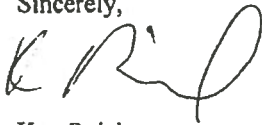
18.120.050. Fill and Removal Exceptions.

C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review. Please advise regarding this analysis.

Thank you, in advance, for your attention to this matter.

Sincerely,



Ken Reick
Tumalo Irrigation District Manager

Cc: Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site.

RECEIVED BY OWRD

JUL 18 2014

SALEM, OR

From: Receptionist at CW Hopp Attorney at Law [<mailto:reception@cwhopp.com>]
Sent: Monday, June 30, 2014 10:57 AM
To: Jennifer Bragar
Subject: Tumalo Irrigation District

Dear Ms. Bragar: This letter is in response to your letter of June 16, 2014 wherein you allege that the Agreement approved by the Tumalo Irrigation District Board of Directors with KC Development Group, LLC violates Oregon's Public Contracting laws. You are clearly in error. You allege that the irrigation contract is either a "(1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or storage right held by the District pursuant to Oregon Water Resources Department Certificate Number 76684.

First, TID has not disposed of an asset. TID has moved a portion of a storage right from one location to another. TID retains the right to use the stored water. The new location is deemed to be in the irrigation district's best interest as it is higher in the system and provides less water loss; thus providing a significant upgrade to TID's water delivery system.

Secondly, the Agreement is not for specific work to be performed for the District. The Agreement does not provide for TID to either perform work for a fee, or to have work performed for it for a fee.

Thirdly, it is a matter of urgency that the contract be executed.

In conclusion, I believe you are confused by the title "Irrigation Contract". The fact that it is termed a Contract does not make it a Public Contract as defined in ORS 279A.010(1)(z). Rather, an Irrigation Contract is specifically defined under ORS 552.618.

In summation, TID has not violated any public contracting laws. The copy of the Agreement you possess is a placeholder, as I am sure you are aware the Exhibits attached are not recordable. The final Agreement is being put together and will be recorded in the near future.

Sincerely,

Carl W. Hopp, Jr.
Attorney at Law, LLC
168 NW Greenwood Avenue
Bend, OR 97701
(541) 388-3606 Fax 541-330-1519
email:reception@cwhopp.com

RECEIVED BY OWRD

JUL 18 2014

SALEM, OR

THIS E-MAIL MAY INCLUDE CONFIDENTIAL INFORMATION AND IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY IT IS ADDRESSED TO. ANY PERSON OTHER THAN THE INTENDED RECIPIENT (OR OTHERS AUTHORIZED BY THE INTENDED RECIPIENT) IS PROHIBITED FROM READING, COPYING OR DISTRIBUTING THIS E-MAIL.



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

NOTICE OF DECISION

FILE NUMBER: 247-14-000238-PS

APPLICANT: Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701

OWNER: KC Development Group, LLC
63560 Johnson Road
Bend, OR 97701

REQUEST: Land Use Compatibility Statement Permit Sign-Off (PS) to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to Klippel Acres Mining Pit.

STAFF CONTACT: Nick Lelack, Community Development Director

I. APPLICABLE CRITERIA:

Title 22 of the Deschutes County Code, Development Procedures Ordinance
Chapter 22.16 Development Action Procedures

Title 18 of the Deschutes County Code, the County Zoning Ordinance:
Chapter 18.60, Rural Residential Zone District
Chapter 18.88, Wildlife Area Combining Zone
Chapter 18.120, Exceptions

II. BASIC FINDINGS:

- A. LOCATION:** The subject property is located at 63560 Johnson Road, Bend; and is further identified on County Assessor's Map 17-11-13 as Tax Lots 828 and 824.
- B. ZONING:** The subject property is zoned Rural Residential and is within the Wildlife Area Combining Zone.
- C. PROPOSAL:** Tumalo Irrigation District (TID) proposes to move its Regulation Pond storage from its current in-district storage at Tumalo Reservoir to Klippel Acres Mining

Pit. The new site will be upstream and located in a line storage facility to prevent leakage and make water available to its entire distribution network.

- D. REVIEW PERIOD:** File 247-14-000238-PS was submitted on August 4, 2014, and deemed complete by the Planning Division on August 6, 2014.

III. CONCLUSIONARY FINDINGS:

Title 22 of the Deschutes County Code, Development Procedures Ordinance

CHAPTER 22.16 DEVELOPMENT ACTION PROCEDURES

22.16.010, REVIEW OF DEVELOPMENT ACTION APPLICATIONS

- B. The Planning Director has the discretion to determine that for the purposes of DCC Title 22 a development action application should be treated as if it were a land use action application.**

FINDING: For the purposes of Title 22, TID's application for Land Use Compatibility Statement Permit Sign-Off shall be treated as if it were a land use application.

Title 18 of the Deschutes County Code, County Zoning

CHAPTER 18.60 RURAL RESIDENTIAL ZONE DISTRICT

18.60.020, USES PERMITTED OUTRIGHT

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.**

FINDING: According to information provided by Tumalo Irrigation District, TID "has decided to move its Regulation Pond storage to [the Klippel Mining Pit] a site upstream from our current in-district storage at the Tumalo Reservoir." TID states that the existing Reservoir "was designed and built in the 1920's and does not adequately serve TID's needs", and that the new site "will be a significant upgrade to operations and maintenance." The Planning Director finds that transferring in-district storage from the Tumalo Reservoir upstream to the Klippel Acres Mining Pit in order to improve the operations of TID's existing irrigation system is a use permitted outright in this zone.

CHAPTER 18.88 WILDLIFE AREA COMBINING ZONE

18.84.030 USES PERMITTED OUTRIGHT

In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

FINDING: The same outright permitted uses are allowed in the Rural Residential Zone District and the WA Combining Zone. Therefore, the "operation, maintenance, and piping of existing

irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050" is an outright permitted use.

CHAPTER 18.120. EXCEPTIONS

18.120.050, FILL AND REMOVAL EXCEPTIONS

- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.**

FINDING: This application does not propose to pipe existing canals and ditches within wetlands. This criterion is not applicable.

IV. DECISION:

APPROVAL of the Land Use Compatibility Statement Permit Sign-Off (PS) to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to Klippel Acres Mining Pit.

V. DURATION OF APPROVAL:

The applicant shall initiate the proposed use within two (2) years of the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a person or entity entitled to appeal a land use decision under Title 22 of the Deschutes County Code.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Nick Lelack, Community Development Director

Dated this 13th day of August, 2014

Mailed this 13th day of August, 2014

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

RECEIVED

JUN 24 2014

Deschutes County CDD

June 19, 2014

Nick Lelack
Community Development Director
Deschutes County
117 NW Lafayette Ave.
Bend, OR 97701

By U.S. Mail and email to Nick_Lelack@co.deschutes.or.us

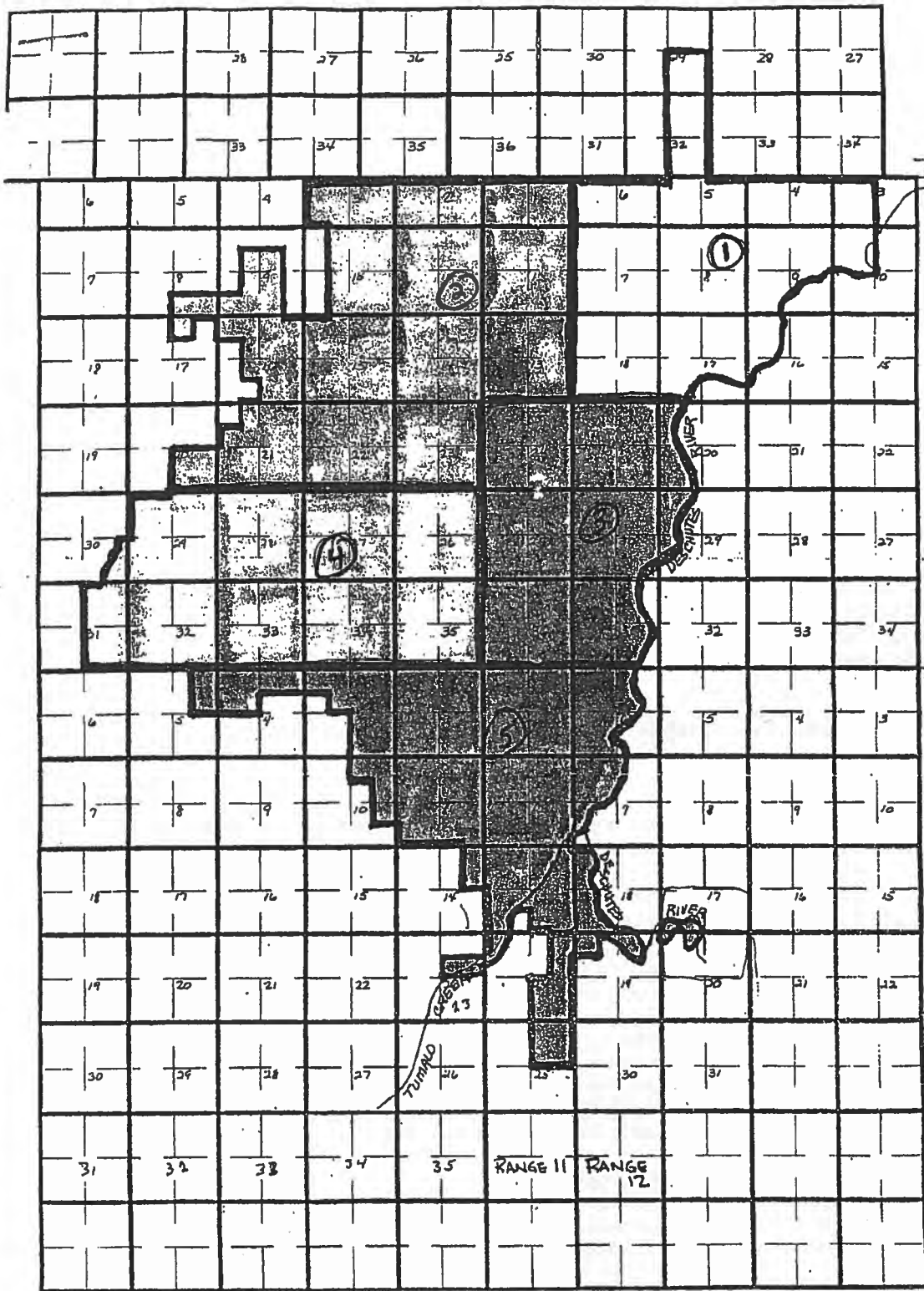
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- #1
- #2
- #3
- #4
- #5

TOWNSHIP 15
TOWNSHIP 16

TOWNSHIP 16
TOWNSHIP 17

RANGE 11 RANGE 12

TUMALO IRRIGATION DISTRICT BOUNDARY

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.020. Uses Permitted Outright.

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

Chapter 18.120. EXCEPTIONS

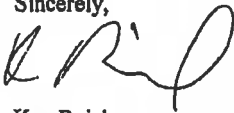
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We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review. Please advise regarding this analysis.

Thank you, in advance, for your attention to this matter.

Sincerely,



Ken Reick
Tumalo Irrigation District Manager

Cc: Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site.

DOUTHIT Susan M

From: FRENCH Dwight W
Sent: Wednesday, August 13, 2014 11:08 AM
To: DOUTHIT Susan M
Subject: FW: TID LUCS Decision

Your email to Bill was good.

Can we discuss on Friday the "what we do next" part.

I have concerns about the alleged lack of "out" infrastructure but they might not be done with that part of construction yet.

Dwight

Dwight French

Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@state.or.us
503-986-0819

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:50 AM
To: FRENCH Dwight W
Subject: FW: TID LUCS Decision

Meant to cc you the first time around.

~S

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:37 AM
To: bill@cwhopp.com
Subject: RE: TID LUCS Decision

As requested, this is confirmation that I have received the LUCS from Deschutes Co. I will be taking a look at this document to evaluate whether it addresses the Department's request. I'll be letting you know if additional information or clarification is required.

The deadline for submittal of this information appears to have been met.

More to follow asap.

~S

From: Nick Lelack [<mailto:Nick.Lelack@deschutes.org>]
Sent: Tuesday, August 12, 2014 12:00 PM
To: bill@cwhopp.com; Elizabeth A. Dickson (eadickson@hurley-re.com); Ken Katzaroff (jkkatzaroff@hurley-re.com); DOUTHIT Susan M; 'Dwight.w.french@state.or.us'
Cc: Anthony Raguine; Peter Gutowsky
Subject: TID LUCS Decision

Everyone,

Please find attached the Notice of Decision for the TID LUCS. The decision will be mailed tomorrow, August 13.

Senior Planner Anthony Raguine will be the staff planner and contact for this application going forward. I will continue to be involved.

Thank you.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 5:07 PM
To: GIFFIN Jeremy T; GORMAN Kyle G
Cc: FRENCH Dwight W
Subject: Tumalo's new storage facility

Hi,

I learned late this afternoon that the new storage facility has not received any water. I have been working on the erroneous assumption that following the discussion w/folks about "upon submission of the application" they'd begun filling the reservoir.

I wanted to chat you about this as I didn't want to overstep the "field folks" responsibilities/authority.

Give me a ring asap please.

~S

Susan Douthit
District Analyst
OR Water Resources
503-986-0858



DOUTHIT Susan M

From: FRENCH Dwight W
Sent: Wednesday, August 13, 2014 11:08 AM
To: DOUTHIT Susan M
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To: bill@cwhopp.com; Elizabeth A. Dickson (eadickson@hurley-re.com); Ken Katzaroff (jkkatzaroff@hurley-re.com); DOUTHIT Susan M; 'Dwight.w.french@state.or.us'
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Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

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

*from Desc Co
webpage*

*8/12/14
SN*

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.

NOTE TO LOCAL GOVERNMENTS

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.

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:
<u>17</u>	<u>11</u>	<u>13</u>	_____	<u>1711130 000828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	<u>storage</u>
<u>17</u>	<u>11</u>	<u>13</u>	_____	<u>1711130 000824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	<u>storage</u>
_____	_____	_____	_____	_____	_____	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	_____
_____	_____	_____	_____	_____	_____	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	_____

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 - ~~Storage~~
 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: _____ 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

Briefly describe:

This is an intra-district transfer in place of use of 108 a.f. of Tumalo Creek water. TID to TID (Storage water). The transfer of this storage water is necessary for the operations and maintenance of our irrigation system, and allowed as an outright use in the RR-10 zone. The current site was built in the 1920's and no longer serves TID's needs. The new site is a significant upgrade that will enable TID to reduce dependence on Tumalo Creek for natural flow, provide emergency water supplies for the District and Emergency Services responders, and provide increased efficiency in the operations and maintenance of the TID system overall.

Affected tax lots are 171113000828 and 171113000824. See attached for TID Boundary map.

[Empty rectangular box]



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 3. →

For Local Government Use Only

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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

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: _____

DOUTHIT Susan M

From: Nick Lelack <Nick.Lelack@deschutes.org>
Sent: Tuesday, August 12, 2014 12:00 PM
To: bill@cwhopp.com; Elizabeth A. Dickson (eadickson@hurley-re.com); Ken Katzaroff (jkkatzaroff@hurley-re.com); DOUTHIT Susan M; 'Dwight.w.french@state.or.us'
Cc: Anthony Raguine; Peter Gutowsky
Subject: TID LUCS Decision
Attachments: 247-14-000238-PS F & D.pdf

Everyone,

Please find attached the Notice of Decision for the TID LUCS. The decision will be mailed tomorrow, August 13.

Senior Planner Anthony Raguine will be the staff planner and contact for this application going forward. I will continue to be involved.

Thank you.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

DOUTHIT Susan M

From: Janet Neuman <Janet.Neuman@tonkon.com>
Sent: Friday, July 25, 2014 4:16 PM
To: 'DOUTHIT Susan M'
Subject: RE: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

Follow Up Flag: Follow up
Flag Status: Flagged

Sorry, I also meant to ask if you received a completed land use form on these transfers. Thanks!

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, Oregon 97204
503.802.5722 | FAX 503.972.7422
SSRN author page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=39591
janet.neuman@tonkon.com | www.tonkon.com

From: DOUTHIT Susan M [<mailto:susan.m.douthit@state.or.us>]
Sent: Friday, July 25, 2014 2:44 PM
To: Janet Neuman
Subject: RE: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

Just walked into the office.
I'm aware of comments from Water Watch but no others. If I discover there's been others I'll forward them along.
I've attached WW's comments.
~S

From: Janet Neuman [<mailto:Janet.Neuman@tonkon.com>]
Sent: Friday, July 25, 2014 2:09 PM
To: DOUTHIT Susan M
Subject: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

Have you scanned in the comments received on these two transfers? Could you provide me with the comments (other than mine)? Thanks.

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, Oregon 97204
503.802.5722 | FAX 503.972.7422
SSRN author page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=39591
janet.neuman@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.

DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Friday, July 25, 2014 4:57 PM
To: 'Janet Neuman'
Subject: RE: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

No problem.
While I haven't made it to the bottom of my inbox, I don't think I've received it yet.
Have a good weekend.
~S

From: Janet Neuman [<mailto:Janet.Neuman@tonkon.com>]
Sent: Friday, July 25, 2014 4:16 PM
To: 'DOUTHIT Susan M'
Subject: RE: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

Sorry, I also meant to ask if you received a completed land use form on these transfers. Thanks!

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, Oregon 97204
503.802.5722 | FAX 503.972.7422
SSRN author page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=39591
janet.neuman@tonkon.com | www.tonkon.com

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Sent: Friday, July 25, 2014 2:44 PM
To: Janet Neuman
Subject: RE: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

Just walked into the office.
I'm aware of comments from Water Watch but no others. If I discover there's been others I'll forward them along.
I've attached WW's comments.
~S

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Sent: Friday, July 25, 2014 2:09 PM
To: DOUTHIT Susan M
Subject: comments received on Transfers 11833 and 11834 [IWOV-PDX.FID840258]

Have you scanned in the comments received on these two transfers? Could you provide me with the comments (other than mine)? Thanks.

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, Oregon 97204
503.802.5722 | FAX 503.972.7422
SSRN author page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=39591
janet.neuman@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.

DOUTHIT Susan M

From: Janet Neuman <Janet.Neuman@tonkon.com>
Sent: Monday, August 11, 2014 10:57 AM
To: DOUTHIT Susan M (susan.m.douthit@state.or.us)
Cc: tom@bishoptrust.com; dorbinabishop (dorbinabishop@gmail.com); JBragar@gsblaw.com
Subject: Additional information concerning T-11833 and T-11834 [IWOV-PDX.FID840258]
Attachments: 5779346_1.pdf

As I have noted in previous correspondence with the Department, my clients, Thomas and Dorbina Bishop, are also represented by Jennifer Bragar of the Garvey Schubert Barer firm with regard to issues concerning the Bishops' membership in the Tumalo Irrigation District and with regard to land use matters in Deschutes County.

I am transmitting, for your information, a Tort Claim Notice that Ms. Bragar recently served on the Tumalo Irrigation District on behalf of the Bishops. Some of the grounds outlined in the Notice overlap to a certain degree with several of the issues raised by the comments I submitted for the Bishops on Transfers 11833 and 11834. In addition, the Tort Claim Notice specifically requests the District to void the June 10, 2014 contract with the KC Development Group, LLC. That contract is a key component of the two referenced transfers.

For these reasons, I feel it is appropriate to forward this Notice to you. Please let me know if you have any questions, and thank you for your attention to this matter.



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

OTHER OFFICES
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

G A R V E Y S C H U B E R T B A R E R

A PARTNERSHIP OF PROFESSIONAL CORPORATION

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

August 5, 2014

VIA U.S. CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Carl W. Hopp, Jr.
Attorney at Law
168 NW Greenwood
Bend, OR 97701

Certified Article Number

7196 9006 9111 0060 0321

SENDERS RECORD

Re: Notice of Claim under Oregon Tort Claims Act, ORS 30.275

Dear Mr. Hopp:

I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust, who live at 63382 Fawn Lane, Bend, Oregon, and are members of the Tumalo Irrigation District ("TID" or "District"). The purpose of this letter is to preserve the Bishops' rights by providing notice under the Oregon Tort Claims Act, ORS 30.275, of the Bishops' claim against the Tumalo Irrigation District and its Board Members for breach of fiduciary duty.

A. TID's Board Members owe fiduciary duties to all District members.

Under Oregon law, an irrigation district, such as TID, holds the District's water rights in trust for the benefit of all district members. *See Ft. Vannoy Irrigation District v. Water Resources Commission*, 345 Or 56 (2008). In *Ft. Vannoy*, the Court described that all property that the district holds in trust is "dedicated and set apart to the uses and purposes set forth in the Irrigation District Law." *Id.* at 86. Actions by a district and its board members that are detrimental to the district, or that benefit some district members while impairing the rights of other district members breach the fiduciary duties of care and loyalty owed to all district members. *Id.* at 85-87. Here, as explained in detail below, the District Board Members' decision to convey water storage rights to Harris Kimble, Eric Cadwell, and/or KC Development Group, LLC (collectively, "KCDG") is a breach of their fiduciary duties of care and loyalty. The District runs afoul of the trust relationship to permit a beneficiary, such as KCDG, to manage the trust property. *Id.* at 87.

B. The District's Board Members breached their fiduciary duties when they decided to convey water storage rights without competitive bidding or a valid planning process.

The District Board Members' decision to convey a valuable TID asset—its water storage right—without appraising the full fair market value and undertaking a valid planning process is a breach of fiduciary duties owed to the Bishops and other District members. KCDG owns property immediately to the east of the Bishops' property. In the space of only a few months, from early spring to the beginning of July, KCDG built and filled two large water storage facilities without meaningful agency review of the project. KCDG does not have a water permit allowing construction and filling of the reservoirs, nor does it have any land use approval for the



development of the property. KCDG constructed their reservoirs on property formerly used for mining rock; the property is now zoned for rural residential use with wildlife management and landscape management overlays. The northerly reservoir is apparently intended as a recreational pond to serve KCDG's proposed housing development. The other reservoir is intended and specifically designed for use as a water ski lake serving the proposed development. The northerly reservoir was filled with water during May and already is being used for recreational purposes by KCDG's members and is not available for use by the District or the District's members at this time. Filling of the water ski lake began in the last week of June. Construction of the foundation for a large boat house and boat slips on the water ski lake is ongoing. TID entered into a contract on June 10, 2014, to provide KCDG with water for the reservoirs (the "KCDG Agreement" or the "Agreement"). See Attachment A attached hereto.

The District did not independently propose to move water from the Upper Tumalo Reservoir to the KCDG property to serve District needs. The District did not look for alternative water storage facilities or locations. If the District had been truly interested in seeking out new storage facilities, as a matter of legitimate irrigation district business, it would have been proper for it to include the proposal in the regular district planning process, to discuss the needs with its members, to investigate alternative ways of meeting the needs, and to seek competitive storage proposals from its water users, other property owners with available land, or existing reservoir owners and operators. Our clients and other district water users notified the District that, if it really wanted to find another location to store Tumalo Reservoir water, it should open the process to offers or bids from other property owners and take the offer that would maximize the financial return to the District (which in turn would benefit the members). The District did not do any of those things, in spite of specific requests from our clients and others.

The District completed two detailed and thoughtful Water Management and Conservation Plans in 2000 and 2005. These plans assessed water losses throughout the irrigation system (estimated at 60-70% historically), analyzed several alternatives to better manage and conserve water, and set forth a detailed plan to pipe all of the District's canals to eliminate most of the system's water loss. The Plans noted evaporation and leakage losses from the Upper Tumalo Reservoir, but did not propose reducing the volume of water stored there or moving storage away from the reservoir.

Indeed, it was not until quite recently that the District began to describe the KCDG ponds project as if it were a district project. In a June 19, 2014, letter to Deschutes County, the District Manager, Ken Rieck, said that the District "has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir." See Attachment B attached hereto. Mr. Rieck refers to the new site only as the "Klippel Acres Mining Pit." The letter makes no mention of KCDG or its plans for the ponds and the intended surrounding development, except for copying the letter to "Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site." Mr. Rieck describes detriments of the Upper Tumalo Reservoir site and benefits of the new site, and the letter claims that "Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review . . ." notwithstanding the fact that the District neither owns nor leases the land, and will not own or operate the reservoirs. Mr. Rieck cites portions of the County Code which allow "operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District . . ." as an outright use in a rural residential zone. Describing KCDG's extensive reservoir construction project—most of which was completed before the TID Board approved the Agreement with KCDG at its June 10, 2014, meeting—as part of the District's existing irrigation system is disingenuous and misleading at best, and just plain false at worst.



C. The District Board Members breached their fiduciary duty when they approved the KCDG Agreement and failed to maintain control over the stored water for the benefit of District members.

The District ceded its control of the water stored on KCDG's property to KCDG. When the TID Board discussed the KCDG Agreement at its meetings on May 13, 2014, and June 10, 2014, the project was not discussed as a District project, but, rather, the Board emphasized the fact that KCDG and the Watermaster had brought the proposal to the District. The Agreement itself does not even describe this as a District project, saying instead: "Whereas KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property... and [w]hereas TID is willing to allow KCDG to hold the Stored Water" See Attachment A. Furthermore, the District points to its lack of ownership of the project to support its position that the public contracting laws do not apply to its transaction with KCDG. The District cannot have it both ways.

Instead of investigating available storage options and determining the best alternative for the District and its members, the District entered into a lopsided deal brought to it by KCDG. The Agreement approved on June 10, 2014 by the District's Board allows KCDG to take control of stored water belonging to the District and convert it to the developers' own private benefit. As noted, in its recitals, the Agreement states that KCDG desires to store water and the District is willing to allow KCDG to hold the stored water. The District agrees to use a district temporary transfer to move water to KCDG's ponds, to renew the temporary transfer on an annual basis as needed, and eventually to request a district permanent transfer. KCDG agrees to pay the District \$50 an acre foot per year for the stored water (for a total of \$5,400 annually), as well as to cover all of the costs of the transfer applications, and to submit final proof of the permanent transfer to the Department by March 1, 2018, in support of the issuance of a new certificate. The price to be paid to the District is far below the market value for KCDG's use of the water.

The Agreement does not explicitly state anywhere that the water in the reservoirs will belong to the District and/or its members, or will be subject to the District's exclusive management and control, as the water in Upper Tumalo Reservoir is now. KCDG agrees to grant the District an easement across KCDG's property, *but only* "for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement." The Agreement provides that "TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect." These provisions clearly limit the circumstances under which the District can access and use the water once it is on KCDG's property. If KCDG defaults on the Agreement, the District's only remedy is to start another transfer proceeding to try to move the water back to Upper Tumalo Reservoir or another location.

The Agreement does not contain any description of the "plumbing" by which the District can access the ponds and the stored water to provide it to other District users as appropriate. All of the on-site construction to date has been in aid of getting the water *to* KCDG's property and *into* the ponds. My clients and other neighbors have not seen evidence of any pipes or other means of getting the water *out* of the ponds to other District lands.



KCDG will exercise complete discretion and control over how it manages the ponds, as long as KCDG “uses” all the water provided to it under the Agreement.¹ The ponds will undoubtedly be operated for KCDG’s benefit first and foremost, not for the benefit of the District or its other members. The Bishops and other water users will be injured by giving KCDG control over so much of the District’s water, as further discussed below.

D. The Bishops are entitled to attorney fees and will seek the appointment of a special fiduciary.

My clients intend to fully pursue compensation for all damages caused by the breach of fiduciary duties by the District and its Board Members, as well as declaratory and injunctive relief voiding the District’s agreement with KCDG and seeking attorney fees. In addition, the pursuit of this claim will be brought on behalf of all the beneficiaries of the trust – i.e. on behalf of all members of Tumalo Irrigation District. Therefore, the Bishops will be entitled to recoup attorney fees under ORS 130.815 and the common fund theory.

Through their dealings with KCDG and the associated conveyance of TID’s water storage right, the District Board Members have shown they are not capable of managing the District’s assets for the benefit of all District members. Therefore, under ORS 130.800, the Bishops will seek the appointment of a special fiduciary to take possession of the District’s property and to administer the trust assets for the benefit of all District members.

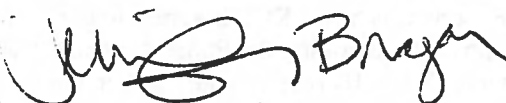
E. Conclusion.

The District and Board Members can avoid a suit only by immediately voiding its June 10, 2014, contract with KCDG and maintaining control over the water at issue for the use and benefit of all District members.

Thank you for your attention to this matter.

Sincerely,

GARVEY SCHUBERT BARER

By 

Jennifer Bragar

JB:tk
Enclosures
cc: Clients

PDX_DOCS:520611.4

¹ In fact, the Bishops and their neighbors have heard that the District gave KCDG the “keys” to control the diversion structures to direct water onto KCDG’s land, even though these diversions also control and/or affect water to which other users are entitled, and even though District employees are supposed to be the only ones with the ability to lock and unlock diversions. I have not confirmed this claim with the District, however.

After Recording, Return to:
KC Development Group, LLC

30700 E. 1st St.
Portland, OR 97201

No Changes to Tax Statements.

IRRIGATION CONTRACT

(WATER STORAGE EASEMENT AGREEMENT)

Tumalo Irrigation District, hereinafter referred to as "TID," is an Oregon Irrigation District established under ORS Chapter 545 Oregon Revised Statutes. KC Development Group, LLC, hereinafter referred to as "KCDG" is an Oregon limited liability company and the owner of real property described in "Exhibit A," attached hereto, and incorporated herein by this reference. Together, they are "Parties" to this Agreement.

RECITALS

WHEREAS, TID holds a valid water right pursuant to Oregon Water Resources Department Certificate Number 76684 ("Certificate") to store 1100 acre feet of surface water at what is commonly known as Upper Tumalo Reservoir in Deschutes County, Oregon; and

WHEREAS, KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property described herein in "Exhibit A" (Subject Property); and

WHEREAS TID is willing to allow KCDG to hold the Stored Water authorized to be stored under the Certificate in exchange for payment to TID;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. The above recitals are incorporated herein.
2. TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in "Exhibit A," particularly in the ponds (the "Ponds") described in "Exhibit B," attached hereto and by this reference incorporated herein. (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)

3. KCDG agrees to pay to TID certain consideration to hold the Stored Water on KCDG's Subject Property. Said consideration shall be made by payment of \$50.00 per acre foot of water right, per year, payable by check or other form of payment to TID on or before March 1st of each year, commencing on JUNE 10, 2014 for the first year, and to be paid by March 1st in each subsequent year for the following irrigation season. The initial charge of \$50.00 per acre foot shall be adjusted annually by the same percentage change made by TID in the total annual assessment and other account charges for each acre of land on TID's Certificate and entitled to irrigation pursuant to ORS 545.484, or by subsequent statute as that may be changed by Oregon's Legislature in the future. Payment is based on one acre feet of storage allowed under the storage right. Failure to make payment following 30 days written notice to KCDG is a default under this Agreement.

4. The obligations represented in this Agreement are contingent upon the Oregon Department of Water Resources ("OWRD") approval of the transfer of the desired portion of the storage rights under the Certificate to the Exhibit "B" ponds. The approval of and a new certificate issued by the OWRD) shall have the final proof submitted to OWRD by March 1, 2018. In the even OWRD does not approve the transfer of storage rights to the Ponds, this Agreement shall become null and void and of no further affect.

5. As further consideration for the transfer of the storage rights from Upper Tumalo Reservoir to the Ponds, KCDG shall pay all filing fees, engineering fees, reimburse TID for reasonable legal fees expended, staff time expended by TID personnel and any other costs or fees incurred by TID for the purpose of making the subject transfer or attempted transfer of storage rights from the certificate to the Ponds. Reimbursement to TID shall be made within 30 days of submission of the bill by TID to KCDG. Failure to make payment within 30 days of written notice is a default by KCDG under this Agreement. In the event OWRD does not approve said transfer, KCDG shall not be entitled to any refund of fees and costs paid to TID.

6. Upon execution of this Agreement and thereafter, and subject to approval of the transfer described in Paragraph 4, above, KCDG grants TID a perpetual Non-Exclusive Easement across the Subject Property and the Ponds for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement.

KCDG agrees to maintain the Ponds in acceptable condition to store the water allowed under the storage right. Maintenance of the Ponds, water conveyance lines, and any other construction necessary to accomplish the intent of this Agreement are to be borne by KCDG. Any repairs, adjustments or other construction deemed necessary by TID to comply with this agreement shall be performed by KCDG, or at KCDG's expense.

7. In the event KCDG fails to perform or is otherwise in default under this Agreement, upon 30 days written notice from TID or such longer period as it reasonably necessary to perform, TID shall be entitled to apply to OWRD to transfer the storage rights from the newly created certificate back to Upper Tumalo Reservoir, and KCDG hereby appoints TID its Attorney in Fact to consummate said transfer back to Upper Tumalo Reservoir.

To effectuate this transfer, TID shall use a District temporary transfer under ORS 540.570. This temporary transfer will be good for a period of one year. If an additional year is necessary for KCDG to prove up and accomplish all items required for the transfer of the stored water to the Ponds, such additional one year temporary transfer as needed will be filed. In order to qualify for a permanent transfer, KCDG shall be required to:

A. Fill the ponds with 108 acre feet of water, and in the event the ponds will not hold at least said amount, the permanent transfers shall be reduced to the amount of acre feet of water actually held by the Ponds.

B. KCDG will transfer the surface irrigation water rights currently appurtenant to the Subject Property area of the Ponds, and will transfer the rights to another irrigable area. The irrigation rights, when transferred, shall be proven up and are a further condition that must be completed before TID is required to apply for a permanent transfer of the stored water.

8. TID will renew the temporary transfers on a yearly basis as long as KCDG is proceeding in good faith to complete the preceding items A. and B. Once items A. and B. are completed, then TID agrees to consent to the permanent transfer. If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, fails to beneficially apply water to land with the water rights to be serviced by said Ponds for a period of 5 years, fails to maintain the Ponds in a proper, safe condition, complying with all applicable Federal, State and Local Laws, Rules and Ordinances, or to comply with the By-Laws, Rules, Regulations or other requirements of Tumalo Irrigation District then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location.

9. This Agreement is binding upon the parties, their heirs, successors, and devisees.

10. The parties understand that the law firm of Carl W. Hopp, Jr., Attorney at Law, LLC, has served as legal counsel to Tumalo Irrigation District in the negotiation of the terms of this Agreement, and does not represent KCDG in connection with this Agreement.

11. The rule of construction that a written instrument is construed against the party preparing or drafting such written instrument shall specifically not be applicable to the interpretation of this Agreement, and any documents executed and delivered pursuant to, or in connection with this Agreement.

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Seller in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and

3 - WATER STORAGE EASEMENT AGREEMENT

disbursements, the fees and expenses or expert witnesses in determining reasonable attorney fees pursuant to ORCP 68, the actual cost of a litigation or foreclosure report, and such sum as the court may determine to be reasonable for the prevailing party's attorney fees connected with the trial and any appeal and by petition for review thereof.

12. KCDG shall indemnify, defend, and hold harmless TID and its directors, officers, employees, agents and contractors for, from and against any and all losses, claims, actions, damages, liabilities, penalties, fines or expense, of whatsoever nature, arising from, related to, or in any way connected to this Agreement, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property arising from the use of the Subject Property, the Ponds, or adjoining areas, or from any activities contemplated by this Agreement, in each case undertaken by KCDG or any other person claiming by, through, or under KCDG. In the event litigation or proceedings brought against TID arising out of or in any way connected with any of the above events or claims, against which KCDG agrees to defend TID, KCDG will, on notice from TID, vigorously resist and defend such actions or proceedings in consultation with TID through legal counsel reasonably satisfactory to TID. The indemnity set forth in this paragraph shall be effective without regard to compliance or non-compliance with this Agreement by KCDG or TID.

13. TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect.

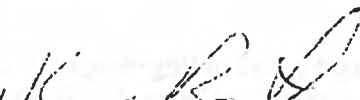
14. TID makes no representation that storage water will be available. Fees under this Agreement are due TID whether or not water is available. TID is not liable for any loss, damage, or claim which may be made for failure to supply storage water or the withdrawal of storage water.


15. KCDG and its successors shall require the purchasers/lessees at the time of purchase or lease of residential lots in the development to sign and record a document acknowledging that the purchaser/lessee has read and accepted this Contract.

DATED this 10th day of June, 2014.

TUMALO IRRIGATION DISTRICT

KC DEVELOPMENT GROUP, LLC

By 
Ken Reick, Manager

By 
E. J. Caldwell
Its managing member

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by Kenneth B. Rieck as
Manager and Secretary to the Board of Tumalo Irrigation District.

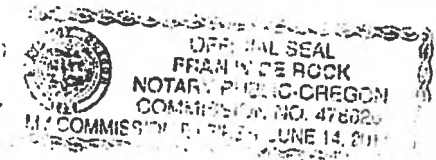
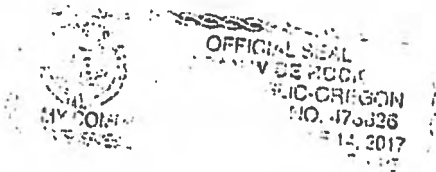
Kenneth B. Rieck
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by
KRIS ACWELL, of KC Development Group,
LLC.

Fran W. DeRock
NOTARY PUBLIC FOR OREGON



ATTACHMENT "A"

Subject Property located on the following lots

17-11-13-NE/NW-00819

17-11-13-NW/NE-00819

17-11-13-NW/NE-00820

17-11-13-NW/NE-00821

17-11-13-NW/NW-00822

17-11-13-NE/NW-00822

17-11-13-NE/NW-00823

17-11-13-NW/NE-00823

17-11-13-NW/SW-00823

17-11-13-SE/NW-00823

17-11-13-SW/NW-00823

17-11-13-NW/SW-00824

17-11-13-SE/NW-00824

17-11-13-SW/NW-00824

17-11-13-SW/NW-00828

17-11-13-NE/NW-00829

17-11-13-NW/NW-00829

ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828

NW/NE 00828

Pond #2

NW/SW 00824 & 00828

SE/NW 00824 & 00828

SW/NW 00824 & 00828

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

June 19, 2014

Nick Lelack
Community Development Director
Deschutes County
117 NW Lafayette Ave.
Bend, OR 97701

By U.S. Mail and email to Nick_Lelack@co.deschutes.or.us

Re: Tumalo Irrigation District Regulation Pond Storage Move to Klippel Acres Mining Pit

Dear Nick;

Tumalo Irrigation District (TID) has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir. The Reservoir was designed and built in the 1920's and does not adequately serve TID's needs. It is located far down in the District's points of delivery to intercept many of our deliveries, it is very shallow so encourages loss due to evaporation and allows solar heating of the water, and it leaks. The new site will be at the top of the system so will provide the ability for us to hold water in District for the entire distribution network, it will be deeper due to the mining pits already in place, and it will be lined so it will not suffer from appreciable leakage. In short, it will be a significant upgrade to operations and maintenance capability for the District.

We also anticipate that use of this storage site will enable us to reduce dependence on Tumalo Creek for our natural flow, an ongoing goal for both TID and the Deschutes Basin as a whole. The site will also continue to provide emergency water supplies for the District as well as for other Emergency Services responders, as it did during its trial period last week, when it was the primary source for both tanker and air fire suppression efforts in the Two Bulls fire immediately to the west.

We have received mail from an Attorney Bragar and an Attorney Newman on behalf of a Mr. Bishop, concerned that our choice to move our storage to the new location is not compliant with applicable law, including land use law. We have reviewed the County's code, and find that we are allowed to operate and maintain our system without land use approval from Deschutes County. The subject property is in the Rural Residential 10 acre minimum (RR 10) zone, which allows our operations to go forward as an outright use. Here are the applicable code provisions we rely upon:

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.020. Uses Permitted Outright.

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

Chapter 18.120. EXCEPTIONS

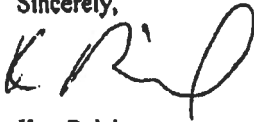
18.120.050. Fill and Removal Exceptions.

C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review. Please advise regarding this analysis.

Thank you, in advance, for your attention to this matter.

Sincerely,



Ken Reick
Tumalo Irrigation District Manager

Cc: Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site.

DOUTHIT Susan M

From: Juanita Hryciw <juanita.hryciw@tonkon.com>
Sent: Monday, August 04, 2014 3:41 PM
To: DOUTHIT Susan M
Cc: Thomas Eugene Bishop (tom@bishoptrust.com); Jennifer M. Bragar (jbragar@gsblaw.com); 'dwight.w.french@state.or.us'; Janet Neuman
Subject: Letter to Susan Douthit - Request to Reopen Public Comment period on T-11833 and T-11834 [IWOV-PDX.FID840258]
Attachments: 2014-8-4 Letter to Susan Douthit (OWRD) - Request to Reopen Public Comment Period on T-11833 and T-1.PDF

Please note that this e-mail is being sent on behalf of Janet E. Neuman:

Susan Douthit,

Attached is Janet Neuman's letter to you dated August 4, 2014.

Juanita

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, OR 97204
503.802.5722 | FAX 503.972.7422
janet.neuman@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.

Juanita



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
janet.neuman@tonkon.com

August 4, 2014

VIA E-MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Request to Reopen Public Comment Period on T-11833 and T-11834

Dear Ms. Douthit:

As you know from earlier correspondence, I represent Thomas and Dorbina Bishop, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID"). I previously submitted comments on my clients' behalf on TID's Transfer Applications 11833 and 11834. In T-11833, TID seeks a temporary change in place of use under Certificate 76684 to move water from the Upper Tumalo Reservoir to two private reservoirs constructed, owned, and controlled by Harris Kimble, Eric Cadwell, and/or the KC Development Group, LLC (collectively "KCDG") on land adjacent to my clients' property. In T-11834, TID seeks a permanent change in place of use under Certificates 74146 and 74147 to move irrigation water off the parcels of land now occupied by the two reservoirs and on to other KCDG lands. Our comments detailed the reasons that the KCDG reservoirs require reservoir permits and cannot be processed under the Irrigation District Transfer statute and rules.

The public comment period on these two transfer applications closed on July 17, 2014. The purpose of this letter is to request that the Department reopen public comment on these applications, for four reasons.¹

¹ As I explained in my earlier comments, the fact that TID has applied for two different transfers obscures the relationship between the two applications. The two transfers are essentially two phases of a single project, and Transfer 11834 is completely dependent on approval of Transfer 11833. The comment periods should thus be coextensive, and this request applies to both proceedings.

Ms. Susan M. Douthit
August 4, 2014
Page 2

First, although the public comment period has closed, additional information is being submitted to the Department that is pertinent to my clients' objections to proceeding with these transfers. Second, the Department is currently responding to a public records request submitted by my clients, and we expect that the materials we receive in response to that request will give rise to additional grounds for pertinent comments on the transfers. Third, my clients have active public records requests pending with both TID and Deschutes County that may produce additional relevant information. Fourth, it is important that the Department be informed of additional recent developments on the KCDG property.

1. Receipt of Additional Information by the Department. On July 30, 2014, we became aware of recent correspondence between your office and TID pertaining to T-11833's compatibility with Deschutes County land use regulations. I have attached a copy of a July 18th letter you sent to TID and its attorney Carl W. Hopp, Jr. and copied to Nick Lelack, Director of the Deschutes County Community Development Department, in which you ask TID to complete and submit a Land Use Information Form by August 18, 2014.² The question of whether the reservoirs and other associated activities that have occurred to date on the KCDG property (prior to any transfer approval) are in compliance with applicable Deschutes County land use ordinances—and of how TID and the County respond to your July 18th letter—are matters of considerable importance to my clients. As I noted in my earlier comments, my clients have filed a Code Enforcement Complaint with the County raising precisely this issue. The comments also explained how the interests of my clients, other water users, and the public have been harmed by the lack of both state and county review of this project. This harm will be compounded by the Department's receipt of additional information that is unavailable to my clients and the public for review and comment.

2. WRD Public Records Response. On July 14th, I submitted a public records request to WRD on behalf of the Bishops. Understandably, the Department is still in the process of responding to that request. In addition to broadly seeking information pertinent to T-11833 and T-11834, the request also asked for information outside the transfer files that is relevant to many of the issues raised in the comments we submitted on these two transfers. We expect that the materials we receive in response to our records request will give rise to additional important grounds for commenting on these transfers.

² In spite of active public records requests pending with both TID and Deschutes County, as discussed later in this letter, Mr. Bishop discovered this document himself during a review of "DIAL" files (County land use information) online; it had not been provided to him at that time by either the County or TID. The County provided the letter to the Bishops on July 31, 2014, and TID provided it to the Bishops on August 4, 2014.

Ms. Susan M. Douthit
August 4, 2014
Page 3

3. TID and Deschutes County Public Records Responses. The Bishops initially submitted a public records request to TID on May 9, 2014. The Bishops understood that the request would be treated as ongoing, with documents to be produced on a weekly basis. Upon the Bishops' discovery that TID had not provided the July 18, 2014 WRD letter as part of its agreement with respect to their original public records request, the Bishops became concerned that TID had not produced records pertinent to the request since sometime in mid-June, so they have now specifically requested updated documents. (See attached letter from Jennifer Bragar to Carl Hopp, August 4, 2014.) The Bishops need an opportunity to review TID documents that were not available to them prior to July 17 in spite of their best efforts to obtain all relevant documents. It would be unfair if TID were to gain any advantage in the transfer review process by delaying production of documents that might have been useful to my clients or others in commenting on the applications.

The Bishops initially submitted a public records request to Deschutes County on July 3, 2014. As noted above, Mr. Bishop discovered your correspondence with the County about land use compatibility on his own, not by receiving it from the County. We understand that the County's failure to produce this document was most likely inadvertent.³ However, the Bishops are nonetheless concerned that there may be other documents they have not received, in spite of their best efforts, and they are working closely with the County to be sure they have all relevant materials.

4. Recent Developments on the KCDG Property. Finally, the Bishops have discovered that three docks have been installed on the northerly KCDG reservoir, and that one of the docks is served by electricity. Additional construction has also occurred on the southerly water ski lake, including installation of numerous pilings and work on a boat waiting/boat storage area. We have not yet determined whether any County or other agency approvals were required or obtained for these structures. The important point for purposes of this letter is that this recent activity provides additional support for the argument we raised in our comments that the main purpose of the KCDG project really has nothing to do with TID and its irrigation storage or distribution system. Thus, the project should not be processed as an irrigation district transfer.

For these reasons, we ask that the Department reopen the public comment period on T-11833 and T-11834 for a sufficient length of time to allow for review and comment on: (1) any land use information requested and/or received by the Department from TID pertaining to these transfers; (2) the documents we receive from the Department in response to our public

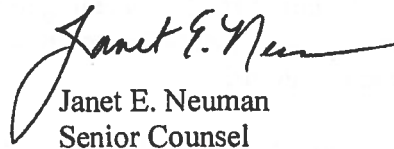
³ County Counsel did respond to the Bishops' complaint about the missing document with a copy of the July 18th letter on July 31, 2014.

Ms. Susan M. Douthit
August 4, 2014
Page 4

records request; (3) the documents we receive from TID and Deschutes County in response to our renewed public records requests; and (4) any additional materials submitted after July 17, 2014, by the applicant, other agencies, or members of the public pertaining to these two transfers. If the comment period is not reopened, the Department's decision making process will suffer, and my clients' procedural and substantive rights will be further harmed.

Thank you for your prompt attention and response to this request.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures

copy w/enc: Tom and Dorbina Bishop (by e-mail)
Jennifer Bragar (by e-mail)
Dwight French (by e-mail)

037351/00001/5763190v1



Oregon

John A. Kitzhaber, MD, Governor

RECEIVED

JUL 22 2014

Deschutes County CDD

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

July 18, 2014

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Carl (Bill) W. Hopp, Jr., Attorney at Law, LLC
168 NW Greenwood Ave.
Bend, OR 97701

Dear Mr. Rieck,

I was recently assigned temporary transfer application T-11833 filed by Tumalo Irrigation District. This temporary transfer proposes to move a portion of the authorized storage water from Upper Tumalo Reservoir (evidenced by Certificate 76684) into new storage facilities within T17S R11E, Section 13, W.M.

Because this change, unlike typical temporary district water right transfers, involves structural changes and/or the creation of new impoundment facilities, a completed Land Use Information Form is required. (See Oregon Administrative Rules 690-005-0025.)

During a recent telephone conversation with your legal representation, Mr. Hopp, it was mentioned the District originally submitted the Department's Land Use Information Form to Deschutes County, but later withdrew the request for completion of the form. I have since spoken with Mr. Nick Lelack, Community Development Director for Deschutes County, who stated the Planning Division of Deschutes County was prepared to sign the Department's Land Use Information Form noting that the proposed use is allowed outright.

In a subsequent conversation with Mr. Hopp, I was informed that Deschutes County will be crafting a letter, in addition to the completed land use form mention above, stating they believe the use is consistent with Deschutes County planning. I suggested that the letter be attached as an addendum to the properly filled out and appropriately signed land use form.

Because of the reasons outlined above, the Department requests submittal of an appropriating completed and signed Land Use Information Form. If the Land Use Information Form is not received by the Department by August 18, 2014, the Department may issue a Final Order denying the transfer application.

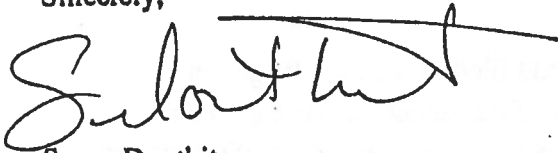
I have enclosed a Land Use Information Form for your convenience.



Finally, prudence dictates the District is reminded that all uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use upon expiration of the temporary transfer at the end of the irrigation season. Furthermore, should the transfer not be approved, the changes made upon submission of the transfer application must be reversed. (See OAR 690-385-3000(5))

Feel free to contact me by telephone at 503-986-0858 or via email at susan.m.douthit@wrp.state.or.us if you have any questions.

Sincerely,



Susan Douthit
Transfer and Conservation Section

Cc: Nick Lelack, Community Development Department, Director
Transfer File T-11833
Dwight French, Water Right Services Division Administrator
Doug Woodcock, Field Services Division Administrator
Kyle Gorman, Region Manager

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.

NOTE TO LOCAL GOVERNMENTS

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.

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: _____
First Last

Mailing Address: _____

_____ Daytime Phone: _____
City State Zip

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:
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

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

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: _____ 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 _____

Briefly describe:

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 3. →

For Local Government Use Only

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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

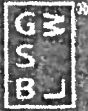
Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use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



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
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GARVEY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATION

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

August 4, 2014

VIA EMAIL AND U.S. MAIL

Carl W. Hopp Jr.
Attorney at Law
168 NW Greenwood
Bend, OR 97701

Re: New Public Records Request on behalf of the Bishops

Dear Mr. Hopp:

I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust, who live at 63382 Fawn Lane, Bend, Oregon and are members of the Tumalo Irrigation District ("TID" or "District"). I write this letter to follow-up on our recent exchange in regard to the Bishops' May 9, 2014 public records request. Despite the gentleman's agreement we entered into by telephone where you and the District staff agreed to treat the May 9th records request as ongoing discovery, and that newly responsive documents would be sent to me on a weekly basis, the District has not held up its end of the bargain.

I am in receipt of your e-mail of July 30, 2014 wherein you describe that the District has decided to hold responsive documents until "more materials" are available. *See Attachment A*. You state that the District staff's overload has resulted in its decision not to hold up its end of our agreement. Based on this information, the Bishops submit the following new public records request. This morning I received from TID a production of the OWRD request to TID and Deschutes County to provide a land use information form related to the water transfers to KC Development, LLC. However, in your July 30th e-mail you indicated that the document was being held to send along with other documents. If the District does not provide a response in a reasonable timeframe and complete documentation responsive to the public records request below, we may seek the Deschutes County District Attorney's assistance in obtaining copies of public records from the District.

Pursuant to ORS 192.410 *et seq.*, ORS 545.185 and TID's Policies and Procedures, this letter is a request for copies of the following public records in the possession or control of TID. For purposes of this request, the term "public record" shall have the meaning set forth in ORS 192.410.



1. All public records dated after May 9, 2014¹, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants that relate to the KC Development Contract and Transfers and item 9 -- the "KC Development (Kimble) Contract and Transfers approvals" -- of TID's Agenda for the May 13, 2014 Regular and Executive Board Meeting and such contract or transfers as approved by the TID Board of Directors at its June 10, 2014 meeting or to the negotiation and consideration of the terms thereof.
2. All public records dated after May 9, 2014, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants regarding KC Development Group LLC's ("KC Development's") efforts or ability to obtain an Oregon Water Resources Department permit in relation to the Contract and Transfer contemplated by TID or for TID to obtain an Oregon Water Resources Department permit to transfer some of TID's water storage rights to property owned or controlled by KC Development or any of its members. The latter includes all documents related to the District's Transfer Applications 11833 and 11834 or the contract that was executed on June 10, 2014 by TID with KC Development.
3. All public records dated after May 9, 2014, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants that relate to the analysis of TID's plans or ability to provide water service for existing customers in light of the proposed diversion to KC Development under the contemplated Contract and Transfers.
4. All public records dated after May 9, 2014, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants that TID has received from KC Development, or the Oregon Water Resources Department if not already covered in the above requests. For purposes of this request, KC Development includes its affiliates, present or former directors, officers, employees, members, managers, agents, attorneys, consultants, advisors, representatives and all other persons acting or purporting to act on KC Development's behalf.
5. A copy of the attachment to the May 2, 2014, e-mail from Mr. Rieck to Fran DeRock referred to as "DOC002b WATER STORAGE EASEMENT – Liz's changes.doc." The May 2nd e-mail is attached hereto as Attachment B for your reference. Although the Bishops requested copies of the attachments to e-mails provided in response to the Bishops' May 9, 2014 public records response, the above-referenced document was never provided in a form that could be viewed by the Bishops.
6. A copy of any appraisals that have been made of the water storage rights in their intended use by KC Development.

¹ The reference to May 9, 2014 is tied to the original request date. The Bishops do not need duplicates of responsive public records that have previously been provided by TID. The last document, prior to the receipt of the OWRD letter, provided by TID to the Bishops on June 26, 2014 in response to the May 9th public records request was dated June 19, 2014.



GARVEY SCHUBERT BARER

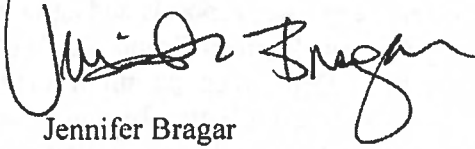
Carl W. Hopp Jr.
August 4, 2014
Page 3

Please do not reproduce any of the public records prepared by Garvey Schubert Barer or Tonkon Torp in this matter, as the Bishops have copies of their own submittals. If there are any questions concerning this request, please call me at (503) 228-3208. Your assistance and cooperation are greatly appreciated.

Sincerely,

GARVEY SCHUBERT BARER

By


Jennifer Bragar

Attachments

cc: Clients

PDX_DOCS:520641.1 [39124.00100]

Jennifer Bragar

From: Bill Hopp Attorney [bill@cwhopp.com]
Sent: Wednesday, July 30, 2014 5:20 PM
To: Jennifer Bragar
Cc: 'Ken Rieck'; 'Fran DeRock'
Subject: RE: Bishops Public Records Request Follow-up

Ms. Bragar

My client has cooperated on sending copious records on a regular basis. Holding a letter for a week or two until more materials are ready to send is not unreasonable. Finally, responding to your request is not the only item on the district staff's work load. They will continue to provide materials but it may not be immediate.

Carl W (Bill) Hopp Jr. Attorney at Law
168 NW Greenwood Ave
Bend, Oregon 97701
phone 541-388-3606 fax 541-330-1519
email bill@cwhopp.com

This email may include confidential information and is intended for the individual or entity it is addressed to. Any person other than the intended recipient (or others authorized by the intended recipient) is prohibited from reading, copying or distributing this email.

From: Jennifer Bragar [<mailto:JBragar@gsblaw.com>]
Sent: Wednesday, July 30, 2014 4:45 PM
To: bill@cwhopp.com
Cc: Ken Rieck; Fran DeRock
Subject: Bishops Public Records Request Follow-up

Bill,

Please see the attached letter. Thank you.

This e-mail is for the sole use of the intended recipient(s). It contains information that is confidential and/or legally privileged. If you believe that it has been sent to you in error, please notify the sender by reply e-mail and delete the message. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is prohibited.

JENNIFER M. BRAGAR

Associate | 503.228.3939 x 3208 Tel | 503.226.0259 Fax | jbragar@gsblaw.com

GARVEY SCHUBERT BARER | 11th Floor | 121 SW Morrison Street | Portland, OR 97204 | ► GSBLaw.com

► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

Fran DeRock

From: Kenneth B. Rieck
Sent: Friday, May 02, 2014 8:37 AM
To: Fran DeRock (Fran@tumalo.org)
Subject: for the board packet
Attachments: DOC002b WATER STORAGE EASEMENT-Liz's changes.doc

Kenneth B. Rieck
Tumalo Irrigation District
64697 Cook Ave
Bend, Oregon 97701
541-382-3053 office
541-815-9201 cell

DOUTHIT Susan M

From: Juanita Hryciw <juanita.hryciw@tonkon.com>
Sent: Monday, August 04, 2014 3:41 PM
To: DOUTHIT Susan M
Cc: Thomas Eugene Bishop (tom@bishoptrust.com); Jennifer M. Bragar (jbragar@gsblaw.com); 'dwight.w.french@state.or.us'; Janet Neuman
Subject: Letter to Susan Douthit - Request to Reopen Public Comment period on T-11833 and T-11834 [IWOV-PDX.FID840258]
Attachments: 2014-8-4 Letter to Susan Douthit (OWRD) - Request to Reopen Public Comment Period on T-11833 and T-1.PDF

Please note that this e-mail is being sent on behalf of Janet E. Neuman:

Susan Douthit,

Attached is Janet Neuman's letter to you dated August 4, 2014.

Juanita

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, OR 97204
503.802.5722 | FAX 503.972.7422
janet.neuman@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.

Juanita



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
janet.neuman@tonkon.com

August 4, 2014

VIA E-MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Request to Reopen Public Comment Period on T-11833 and T-11834

Dear Ms. Douthit:

As you know from earlier correspondence, I represent Thomas and Dorbina Bishop, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District ("TID"). I previously submitted comments on my clients' behalf on TID's Transfer Applications 11833 and 11834. In T-11833, TID seeks a temporary change in place of use under Certificate 76684 to move water from the Upper Tumalo Reservoir to two private reservoirs constructed, owned, and controlled by Harris Kimble, Eric Cadwell, and/or the KC Development Group, LLC (collectively "KCDG") on land adjacent to my clients' property. In T-11834, TID seeks a permanent change in place of use under Certificates 74146 and 74147 to move irrigation water off the parcels of land now occupied by the two reservoirs and on to other KCDG lands. Our comments detailed the reasons that the KCDG reservoirs require reservoir permits and cannot be processed under the Irrigation District Transfer statute and rules.

The public comment period on these two transfer applications closed on July 17, 2014. The purpose of this letter is to request that the Department reopen public comment on these applications, for four reasons.¹

¹ As I explained in my earlier comments, the fact that TID has applied for two different transfers obscures the relationship between the two applications. The two transfers are essentially two phases of a single project, and Transfer 11834 is completely dependent on approval of Transfer 11833. The comment periods should thus be coextensive, and this request applies to both proceedings.

Ms. Susan M. Douthit
August 4, 2014
Page 2

First, although the public comment period has closed, additional information is being submitted to the Department that is pertinent to my clients' objections to proceeding with these transfers. Second, the Department is currently responding to a public records request submitted by my clients, and we expect that the materials we receive in response to that request will give rise to additional grounds for pertinent comments on the transfers. Third, my clients have active public records requests pending with both TID and Deschutes County that may produce additional relevant information. Fourth, it is important that the Department be informed of additional recent developments on the KCDG property.

1. Receipt of Additional Information by the Department. On July 30, 2014, we became aware of recent correspondence between your office and TID pertaining to T-11833's compatibility with Deschutes County land use regulations. I have attached a copy of a July 18th letter you sent to TID and its attorney Carl W. Hopp, Jr. and copied to Nick Lelack, Director of the Deschutes County Community Development Department, in which you ask TID to complete and submit a Land Use Information Form by August 18, 2014.² The question of whether the reservoirs and other associated activities that have occurred to date on the KCDG property (prior to any transfer approval) are in compliance with applicable Deschutes County land use ordinances—and of how TID and the County respond to your July 18th letter—are matters of considerable importance to my clients. As I noted in my earlier comments, my clients have filed a Code Enforcement Complaint with the County raising precisely this issue. The comments also explained how the interests of my clients, other water users, and the public have been harmed by the lack of both state and county review of this project. This harm will be compounded by the Department's receipt of additional information that is unavailable to my clients and the public for review and comment.

2. WRD Public Records Response. On July 14th, I submitted a public records request to WRD on behalf of the Bishops. Understandably, the Department is still in the process of responding to that request. In addition to broadly seeking information pertinent to T-11833 and T-11834, the request also asked for information outside the transfer files that is relevant to many of the issues raised in the comments we submitted on these two transfers. We expect that the materials we receive in response to our records request will give rise to additional important grounds for commenting on these transfers.

² In spite of active public records requests pending with both TID and Deschutes County, as discussed later in this letter, Mr. Bishop discovered this document himself during a review of "DIAL" files (County land use information) online; it had not been provided to him at that time by either the County or TID. The County provided the letter to the Bishops on July 31, 2014, and TID provided it to the Bishops on August 4, 2014.

3. TID and Deschutes County Public Records Responses. The Bishops initially submitted a public records request to TID on May 9, 2014. The Bishops understood that the request would be treated as ongoing, with documents to be produced on a weekly basis. Upon the Bishops' discovery that TID had not provided the July 18, 2014 WRD letter as part of its agreement with respect to their original public records request, the Bishops became concerned that TID had not produced records pertinent to the request since sometime in mid-June, so they have now specifically requested updated documents. (See attached letter from Jennifer Bragar to Carl Hopp, August 4, 2014.) The Bishops need an opportunity to review TID documents that were not available to them prior to July 17 in spite of their best efforts to obtain all relevant documents. It would be unfair if TID were to gain any advantage in the transfer review process by delaying production of documents that might have been useful to my clients or others in commenting on the applications.

The Bishops initially submitted a public records request to Deschutes County on July 3, 2014. As noted above, Mr. Bishop discovered your correspondence with the County about land use compatibility on his own, not by receiving it from the County. We understand that the County's failure to produce this document was most likely inadvertent.³ However, the Bishops are nonetheless concerned that there may be other documents they have not received, in spite of their best efforts, and they are working closely with the County to be sure they have all relevant materials.

4. Recent Developments on the KCDG Property. Finally, the Bishops have discovered that three docks have been installed on the northerly KCDG reservoir, and that one of the docks is served by electricity. Additional construction has also occurred on the southerly water ski lake, including installation of numerous pilings and work on a boat waiting/boat storage area. We have not yet determined whether any County or other agency approvals were required or obtained for these structures. The important point for purposes of this letter is that this recent activity provides additional support for the argument we raised in our comments that the main purpose of the KCDG project really has nothing to do with TID and its irrigation storage or distribution system. Thus, the project should not be processed as an irrigation district transfer.

For these reasons, we ask that the Department reopen the public comment period on T-11833 and T-11834 for a sufficient length of time to allow for review and comment on: (1) any land use information requested and/or received by the Department from TID pertaining to these transfers; (2) the documents we receive from the Department in response to our public

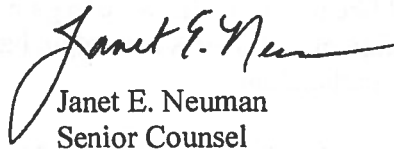
³ County Counsel did respond to the Bishops' complaint about the missing document with a copy of the July 18th letter on July 31, 2014.

Ms. Susan M. Douthit
August 4, 2014
Page 4

records request; (3) the documents we receive from TID and Deschutes County in response to our renewed public records requests; and (4) any additional materials submitted after July 17, 2014, by the applicant, other agencies, or members of the public pertaining to these two transfers. If the comment period is not reopened, the Department's decision making process will suffer, and my clients' procedural and substantive rights will be further harmed.

Thank you for your prompt attention and response to this request.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures

copy w/enc: Tom and Dorbina Bishop (by e-mail)
Jennifer Bragar (by e-mail)
Dwight French (by e-mail)

037351/00001/5763190v1



Oregon

John A. Kitzhaber, MD, Governor

RECEIVED

JUL 22 2014

Deschutes County CDD

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

July 18, 2014

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Carl (Bill) W. Hopp, Jr., Attorney at Law, LLC
168 NW Greenwood Ave.
Bend, OR 97701

Dear Mr. Rieck,

I was recently assigned temporary transfer application T-11833 filed by Tumalo Irrigation District. This temporary transfer proposes to move a portion of the authorized storage water from Upper Tumalo Reservoir (evidenced by Certificate 76684) into new storage facilities within T17S R11E, Section 13, W.M.

Because this change, unlike typical temporary district water right transfers, involves structural changes and/or the creation of new impoundment facilities, a completed Land Use Information Form is required. (See Oregon Administrative Rules 690-005-0025.)

During a recent telephone conversation with your legal representation, Mr. Hopp, it was mentioned the District originally submitted the Department's Land Use Information Form to Deschutes County, but later withdrew the request for completion of the form. I have since spoken with Mr. Nick Lelack, Community Development Director for Deschutes County, who stated the Planning Division of Deschutes County was prepared to sign the Department's Land Use Information Form noting that the proposed use is allowed outright.

In a subsequent conversation with Mr. Hopp, I was informed that Deschutes County will be crafting a letter, in addition to the completed land use form mention above, stating they believe the use is consistent with Deschutes County planning. I suggested that the letter be attached as an addendum to the properly filled out and appropriately signed land use form.

Because of the reasons outlined above, the Department requests submittal of an appropriating completed and signed Land Use Information Form. If the Land Use Information Form is not received by the Department by August 18, 2014, the Department may issue a Final Order denying the transfer application.

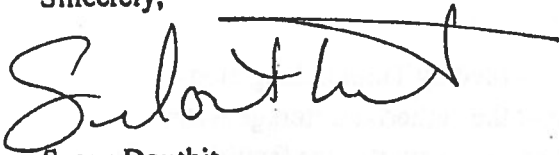
I have enclosed a Land Use Information Form for your convenience.



Finally, prudence dictates the District is reminded that all uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use upon expiration of the temporary transfer at the end of the irrigation season. Furthermore, should the transfer not be approved, the changes made upon submission of the transfer application must be reversed. (See OAR 690-385-3000(5))

Feel free to contact me by telephone at 503-986-0858 or via email at susan.m.douthit@wrд.state.or.us if you have any questions.

Sincerely,



Susan Douthit
Transfer and Conservation Section

Cc: Nick Lelack, Community Development Department, Director
Transfer File T-11833
Dwight French, Water Right Services Division Administrator
Doug Woodcock, Field Services Division Administrator
Kyle Gorman, Region Manager

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.

NOTE TO LOCAL GOVERNMENTS

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.

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: _____
First Last

Mailing Address: _____

_____ Daytime Phone: _____
City State Zip

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:
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

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

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: _____ 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 _____

Briefly describe:

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 3. →

For Local Government Use Only

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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

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: _____



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

GARVEY SCHUBERT BAKER

A PARTNERSHIP OF PROFESSIONAL CORPORATION

Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

August 4, 2014

VIA EMAIL AND U.S. MAIL

Carl W. Hopp Jr.
Attorney at Law
168 NW Greenwood
Bend, OR 97701

Re: New Public Records Request on behalf of the Bishops

Dear Mr. Hopp:

I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust, who live at 63382 Fawn Lane, Bend, Oregon and are members of the Tumalo Irrigation District ("TID" or "District"). I write this letter to follow-up on our recent exchange in regard to the Bishops' May 9, 2014 public records request. Despite the gentleman's agreement we entered into by telephone where you and the District staff agreed to treat the May 9th records request as ongoing discovery, and that newly responsive documents would be sent to me on a weekly basis, the District has not held up its end of the bargain.

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Pursuant to ORS 192.410 *et seq.*, ORS 545.185 and TID's Policies and Procedures, this letter is a request for copies of the following public records in the possession or control of TID. For purposes of this request, the term "public record" shall have the meaning set forth in ORS 192.410.



1. All public records dated after May 9, 2014¹, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants that relate to the KC Development Contract and Transfers and item 9 -- the "KC Development (Kimble) Contract and Transfers approvals" -- of TID's Agenda for the May 13, 2014 Regular and Executive Board Meeting and such contract or transfers as approved by the TID Board of Directors at its June 10, 2014 meeting or to the negotiation and consideration of the terms thereof.
2. All public records dated after May 9, 2014, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants regarding KC Development Group LLC's ("KC Development's") efforts or ability to obtain an Oregon Water Resources Department permit in relation to the Contract and Transfer contemplated by TID or for TID to obtain an Oregon Water Resources Department permit to transfer some of TID's water storage rights to property owned or controlled by KC Development or any of its members. The latter includes all documents related to the District's Transfer Applications 11833 and 11834 or the contract that was executed on June 10, 2014 by TID with KC Development.
3. All public records dated after May 9, 2014, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants that relate to the analysis of TID's plans or ability to provide water service for existing customers in light of the proposed diversion to KC Development under the contemplated Contract and Transfers.
4. All public records dated after May 9, 2014, including, without limitation, documents, writings, correspondence, e-mails, proposals and agreements, from or to TID, its employees, agents and consultants that TID has received from KC Development, or the Oregon Water Resources Department if not already covered in the above requests. For purposes of this request, KC Development includes its affiliates, present or former directors, officers, employees, members, managers, agents, attorneys, consultants, advisors, representatives and all other persons acting or purporting to act on KC Development's behalf.
5. A copy of the attachment to the May 2, 2014, e-mail from Mr. Rieck to Fran DeRock referred to as "DOC002b WATER STORAGE EASEMENT – Liz's changes.doc." The May 2nd e-mail is attached hereto as Attachment B for your reference. Although the Bishops requested copies of the attachments to e-mails provided in response to the Bishops' May 9, 2014 public records response, the above-referenced document was never provided in a form that could be viewed by the Bishops.
6. A copy of any appraisals that have been made of the water storage rights in their intended use by KC Development.

¹ The reference to May 9, 2014 is tied to the original request date. The Bishops do not need duplicates of responsive public records that have previously been provided by TID. The last document, prior to the receipt of the OWRD letter, provided by TID to the Bishops on June 26, 2014 in response to the May 9th public records request was dated June 19, 2014.



GARVEY SCHUBERT BARER

Carl W. Hopp Jr.

August 4, 2014

Page 3

Please do not reproduce any of the public records prepared by Garvey Schubert Barer or Tonkon Torp in this matter, as the Bishops have copies of their own submittals. If there are any questions concerning this request, please call me at (503) 228-3208. Your assistance and cooperation are greatly appreciated.

Sincerely,

GARVEY SCHUBERT BARER

By

Jennifer Bragar

Attachments

cc: Clients

PDX_DOCS:520641.1 [39124.00100]

Jennifer Bragar

From: Bill Hopp Attorney [bill@cwhopp.com]
Sent: Wednesday, July 30, 2014 5:20 PM
To: Jennifer Bragar
Cc: 'Ken Rieck'; 'Fran DeRock'
Subject: RE: Bishops Public Records Request Follow-up

Ms. Bragar

My client has cooperated on sending copious records on a regular basis. Holding a letter for a week or two until more materials are ready to send is not unreasonable. Finally, responding to your request is not the only item on the district staff's work load. They will continue to provide materials but it may not be immediate.

Carl W (Bill) Hopp Jr. Attorney at Law
168 NW Greenwood Ave
Bend, Oregon 97701
phone 541-388-3606 fax 541-330-1519
email bill@cwhopp.com

This email may include confidential information and is intended for the individual or entity it is addressed to. Any person other than the intended recipient (or others authorized by the intended recipient) is prohibited from reading, copying or distributing this email.

From: Jennifer Bragar [<mailto:JBragar@gsblaw.com>]
Sent: Wednesday, July 30, 2014 4:45 PM
To: bill@cwhopp.com
Cc: Ken Rieck; Fran DeRock
Subject: Bishops Public Records Request Follow-up

Bill,

Please see the attached letter. Thank you.

This e-mail is for the sole use of the intended recipient(s). It contains information that is confidential and/or legally privileged. If you believe that it has been sent to you in error, please notify the sender by reply e-mail and delete the message. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is prohibited.

JENNIFER M. BRAGAR

Associate | 503.228.3939 x 3208 Tel | 503.226.0259 Fax | jbragar@gsblaw.com

GARVEY SCHUBERT BARER | 11th Floor | 121 SW Morrison Street | Portland, OR 97204 | ► GSBLaw.com
► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

Fran DeRock

From: Kenneth B. Rieck
Sent: Friday, May 02, 2014 8:37 AM
To: Fran DeRock (Fran@tumalo.org)
Subject: for the board packet
Attachments: DOC0026 WATER STORAGE EASEMENT-Liz's changes.doc

Kenneth B. Rieck
Tumalo Irrigation District
64697 Cook Ave
Bend, Oregon 97701
541-382-3053 office
541-815-9201 cell

RECEIVED BY OWRD

JUL 21 2014

SALEM, OR

After Recording, Return to:
KC Development Group, LLC

63550 Johnson Rd
Beard, OR 97701

No Changes to Tax Statements.

IRRIGATION CONTRACT

(WATER STORAGE EASEMENT AGREEMENT)

Tumalo Irrigation District, hereinafter referred to as "TID," is an Oregon Irrigation District established under ORS Chapter 545 Oregon Revised Statutes. KC Development Group, LLC, hereinafter referred to as "KCDG" is an Oregon limited liability company and the owner of real property described in "Exhibit A," attached hereto, and incorporated herein by this reference. Together, they are "Parties" to this Agreement.

RECITALS

WHEREAS, TID holds a valid water right pursuant to Oregon Water Resources Department Certificate Number *7664* ("Certificate") to store 1100 acre feet of surface water at what is commonly known as Upper Tumalo Reservoir in Deschutes County, Oregon; and

WHEREAS, KCDG desires to assist in storing 108 acre feet of water (the "Stored Water") currently stored at upper Tumalo Reservoir, on its property described herein in "Exhibit A" (Subject Property); and

WHEREAS TID is willing to allow KCDG to hold the Stored Water authorized to be stored under the Certificate in exchange for payment to TID;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. The above recitals are incorporated herein.
2. TID will permit KCDG to store 108 acre feet of water in the ponds located on the Subject Property described in "Exhibit A," particularly in the ponds (the "Ponds") described in "Exhibit B," attached hereto and by this reference incorporated herein. (TID shall also deliver surface irrigation water to Subject Property, which water shall pass through the Ponds but shall not be stored on the Subject Property or in the Ponds, and such additional delivered water shall be used for irrigation in accordance with other irrigation rights held by KCDG, and not the subject of this Agreement.)

3. KCDG agrees to pay to TID certain consideration to hold the Stored Water on KCDG's Subject Property. Said consideration shall be made by payment of \$50.00 per acre foot of water right, per year, payable by check or other form of payment to TID on or before March 1st of each year, commencing on JUNE 10, 2014 for the first year, and to be paid by March 1st in each subsequent year for the following irrigation season. The initial charge of \$50.00 per acre foot shall be adjusted annually by the same percentage change made by TID in the total annual assessment and other account charges for each acre of land on TID's Certificate and entitled to irrigation pursuant to ORS 545.484, or by subsequent statute as that may be changed by Oregon's Legislature in the future. Payment is based on one acre feet of storage allowed under the storage right. Failure to make payment following 30 days written notice to KCDG is a default under this Agreement.

4. The obligations represented in this Agreement are contingent upon the Oregon Department of Water Resources ("OWRD") approval of the transfer of the desired portion of the storage rights under the Certificate to the Exhibit "B" ponds. The approval of and a new certificate issued by the OWRD) shall have the final proof submitted to OWRD by March 1, 2018. In the event OWRD does not approve the transfer of storage rights to the Ponds, this Agreement shall become null and void and of no further affect.

5. As further consideration for the transfer of the storage rights from Upper Tumalo Reservoir to the Ponds, KCDG shall pay all filing fees, engineering fees, reimburse TID for reasonable legal fees expended, staff time expended by TID personnel and any other costs or fees incurred by TID for the purpose of making the subject transfer or attempted transfer of storage rights from the certificate to the Ponds. Reimbursement to TID shall be made within 30 days of submission of the bill by TID to KCDG. Failure to make payment within 30 days of written notice is a default by KCDG under this Agreement. In the event OWRD does not approve said transfer, KCDG shall not be entitled to any refund of fees and costs paid to TID.

6. Upon execution of this Agreement and thereafter, and subject to approval of the transfer described in Paragraph 4, above, KCDG grants TID a perpetual Non-Exclusive Easement across the Subject Property and the Ponds for the purpose of examining the Ponds to assure itself of compliance by KCDG to this Agreement.

KCDG agrees to maintain the Ponds in acceptable condition to store the water allowed under the storage right. Maintenance of the Ponds, water conveyance lines, and any other construction necessary to accomplish the intent of this Agreement are to be borne by KCDG. Any repairs, adjustments or other construction deemed necessary by TID to comply with this agreement shall be performed by KCDG, or at KCDG's expense.

7. In the event KCDG fails to perform or is otherwise in default under this Agreement, upon 30 days written notice from TID or such longer period as it reasonably necessary to perform, TID shall be entitled to apply to OWRD to transfer the storage rights from the newly created certificate back to Upper Tumalo Reservoir, and KCDG hereby appoints TID its Attorney in Fact to consummate said transfer back to Upper Tumalo Reservoir.

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JUL 21 2014

To effectuate this transfer, TID shall use a District temporary transfer under ORS 540.570. This temporary transfer will be good for a period of one year. If an additional year is necessary for KCDG to prove up and accomplish all items required for the transfer of the stored water to the Ponds, such additional one year temporary transfer as needed will be filed. In order to qualify for a permanent transfer, KCDG shall be required to:

A. Fill the ponds with 108 acre feet of water, and in the event the ponds will not hold at least said amount, the permanent transfers shall be reduced to the amount of acre feet of water actually held by the Ponds.

B. KCDG will transfer the surface irrigation water rights currently appurtenant to the Subject Property area of the Ponds, and will transfer the rights to another irrigable area. The irrigation rights, when transferred, shall be proven up and are a further condition that must be completed before TID is required to apply for a permanent transfer of the stored water.

8. TID will renew the temporary transfers on a yearly basis as long as KCDG is proceeding in good faith to complete the preceding items A. and B. Once items A. and B. are completed, then TID agrees to consent to the permanent transfer. If water is available and KCDG fails to store the acre feet of water authorized for storage pursuant to the new storage water right certificate given by OWRD for a period of 5 irrigation seasons, fails to beneficially apply water to land with the water rights to be serviced by said Ponds for a period of 5 years, fails to maintain the Ponds in a proper, safe condition, complying with all applicable Federal, State and Local Laws, Rules and Ordinances, or to comply with the By-Laws, Rules, Regulations or other requirements of Tumalo Irrigation District then TID may proceed under ORS chapter 540 to have the water storage rights removed to another location.

9. This Agreement is binding upon the parties, their heirs, successors, and devisees.

10. The parties understand that the law firm of Carl W. Hopp, Jr., Attorney at Law, LLC, has served as legal counsel to Tumalo Irrigation District in the negotiation of the terms of this Agreement, and does not represent KCDG in connection with this Agreement.

11. The rule of construction that a written instrument is construed against the party preparing or drafting such written instrument shall specifically not be applicable to the interpretation of this Agreement, and any documents executed and delivered pursuant to, or in connection with this Agreement.

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Seller in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and

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disbursements, the fees and expenses or expert witnesses in determining reasonable attorney fees pursuant to ORCP 68, the actual cost of a litigation or foreclosure report, and such sum as the court may determine to be reasonable for the prevailing party's attorney fees connect3ed with the trial and any appeal and by petition for review thereof.

12. KCDG shall indemnify, defend, and hold harmless TID and its directors, officers, employees, agents and contractors for, from and against any and all losses, claims, actions, damages, liabilities, penalties, fines or expense, of whatsoever nature, arising from, related to, or in any way connected to this Agreement, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property arising from the use of the Subject Property, the Ponds, or adjoining areas, or from any activities contemplated by this Agreement, in each case undertaken by KCDG or any other person claiming by, through, or under KCDG. In the event litigation or proceedings brought against TID arising out of or in any way connected with any of the above events or claims, against which KCDG agrees to defend TID, KCDG will, on notice from TID, vigorously resist and defend such actions or proceedings in consultation with TID through legal counsel reasonably satisfactory to TID. The indemnity set forth in this paragraph shall be effective without regard to compliance or non-compliance with this Agreement by KCDG or TID.

13. TID reserves the right, in the event of drought or other emergencies, to pump out the Stored Water in the Ponds on KCDG's Subject Property for use by TID for as long as the drought or other emergency remains in effect.


14. TID makes no representation that storage water will be available. Fees under this Agreement are due TID whether or not water is available. TID is not liable for any loss, damage, or claim which may be made for failure to supply storage water or the withdrawal of storage water.


15. KCDG and its successors shall require the purchasers/lessees at the time of purchase or lease of residential lots in the development to sign and record a document acknowledging that the purchaser/lessee has read and accepted this Contract.

DATED this 10th day of June, 2014.

TUMALO IRRIGATION DISTRICT

KC DEVELOPMENT GROUP, LLC

By 
Ken Reick, Manager

By 
Eric Catwell
Its managing member

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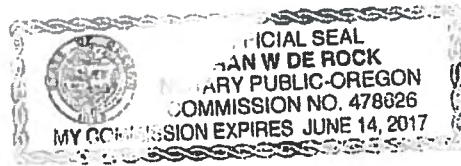
JUL 21 2014

SALEM, OR

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by Kenneth B. Rieck as
Manager and Secretary to the Board of Tumalo Irrigation District.

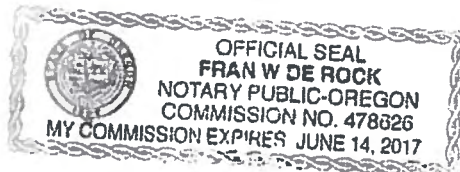
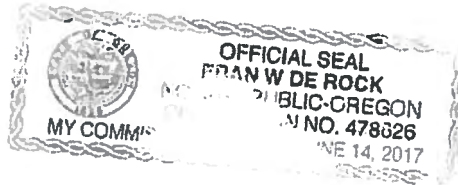
Fran W. DeRock
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on June 10, 2014 by
ERIC CADWELL, of KC Development Group,
LLC.

Fran W. DeRock
NOTARY PUBLIC FOR OREGON



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JUL 21 2014

SALEM, OR

ATTACHMENT "A"

Subject Property located on the following lots

17-11-13-NE/NW-00819

17-11-13-NW/NE-00819

17-11-13-NW/NE-00820

17-11-13-NW/NE-00821

17-11-13-NW/NW-00822

17-11-13-NE/NW-00822

17-11-13-NE/NW-00823

17-11-13-NW/NE-00823

17-11-13-NW/SW-00823

17-11-13-SE/NW-00823

17-11-13-SW/NW-00823

17-11-13-NW/SW-00824

17-11-13-SE/NW-00824

17-11-13-SW/NW-00824

17-11-13-SW/NW-00828

17-11-13-NE/NW-00829

17-11-13-NW/NW-00829

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JUL 21 2014

SALEM, OR

ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828

NW/NE 00828

Pond #2

NW/SW 00824 & 00828

SE/NW 00824 & 00828

SW/NW 00824 & 00828

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JUL 21 2014

SALEM, OR

TUMALO IRRIGATION DISTRICT

64697 Cook Ave.
Bend, OREGON 97701
Phone (541) 382-3053
FAX (541) 383-3287
Email: tid@tumalo.org
Web Page: www.tumalo.org

RECEIVED BY OWRC

JUL 21 2014

SALEM, OR

June 19, 2014

Nick Lelack
Community Development Director
Deschutes County
117 NW Lafayette Ave.
Bend, OR 97701

By U.S. Mail and email to Nick_Lelack@co.deschutes.or.us

Re: Tumalo Irrigation District Regulation Pond Storage Move to Klippel Acres Mining Pit

Dear Nick;

Tumalo Irrigation District (TID) has decided to move its Regulation Pond storage to a site upstream from our current in-district storage at the Tumalo Reservoir. The Reservoir was designed and built in the 1920's and does not adequately serve TID's needs. It is located far down in the District's points of delivery to intercept many of our deliveries, it is very shallow so encourages loss due to evaporation and allows solar heating of the water, and it leaks. The new site will be at the top of the system so will provide the ability for us to hold water in District for the entire distribution network, it will be deeper due to the mining pits already in place, and it will be lined so it will not suffer from appreciable leakage. In short, it will be a significant upgrade to operations and maintenance capability for the District.

We also anticipate that use of this storage site will enable us to reduce dependence on Tumalo Creek for our natural flow, an ongoing goal for both TID and the Deschutes Basin as a whole. The site will also continue to provide emergency water supplies for the District as well as for other Emergency Services responders, as it did during its trial period last week, when it was the primary source for both tanker and air fire suppression efforts in the Two Bulls fire immediately to the west.

We have received mail from an Attorney Bragar and an Attorney Newman on behalf of a Mr. Bishop, concerned that our choice to move our storage to the new location is not compliant with applicable law, including land use law. We have reviewed the County's code, and find that we are allowed to operate and maintain our system without land use approval from Deschutes County. The subject property is in the Rural Residential 10 acre minimum (RR 10) zone, which allows our operations to go forward as an outright use. Here are the applicable code provisions we rely upon:

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.020. Uses Permitted Outright.

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

Chapter 18.120. EXCEPTIONS

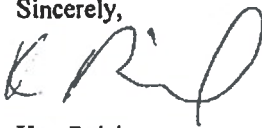
18.120.050. Fill and Removal Exceptions.

- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.

We read these provisions to mean that Tumalo Irrigation District is legally entitled to proceed with this improvement to our system without Deschutes County land use review. Please advise regarding this analysis.

Thank you, in advance, for your attention to this matter.

Sincerely,



Ken Reick
Tumalo Irrigation District Manager

Cc: Liz Dickson, attorney for KCDG, LLC, underlying property owners of new site.

RECEIVED BY OWRD

JUL 21 2014

SALEM, OR

From: Receptionist at CW Hopp Attorney at Law [<mailto:reception@cwhopp.com>]
Sent: Monday, June 30, 2014 10:57 AM
To: Jennifer Bragar
Subject: Tumalo Irrigation District

Dear Ms. Bragar: This letter is in response to your letter of June 16, 2014 wherein you allege that the Agreement approved by the Tumalo Irrigation District Board of Directors with KC Development Group, LLC violates Oregon's Public Contracting laws. You are clearly in error. You allege that the irrigation contract is either a "(1) the purchase or acquisition of water storage, or (2) the sale or other disposal of a portion of TID's water and/or storage right held by the District pursuant to Oregon Water Resources Department Certificate Number 76684.

First, TID has not disposed of an asset. TID has moved a portion of a storage right from one location to another. TID retains the right to use the stored water. The new location is deemed to be in the irrigation district's best interest as it is higher in the system and provides less water loss; thus providing a significant upgrade to TID's water delivery system.

Secondly, the Agreement is not for specific work to be performed for the District. The Agreement does not provide for TID to either perform work for a fee, or to have work performed for it for a fee.

Thirdly, it is a matter of urgency that the contract be executed.

In conclusion, I believe you are confused by the title "Irrigation Contract". The fact that it is termed a Contract does not make it a Public Contract as defined in ORS 279A.010(1)(z). Rather, an Irrigation Contract is specifically defined under ORS 552.618.

In summation, TID has not violated any public contracting laws. The copy of the Agreement you possess is a placeholder, as I am sure you are aware the Exhibits attached are not recordable. The final Agreement is being put together and will be recorded in the near future.

Sincerely,

Carl W. Hopp, Jr.
Attorney at Law, LLC
168 NW Greenwood Avenue
Bend, OR 97701
(541) 388-3606 Fax 541-330-1519
email:reception@cwhopp.com

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JUL 21 2014

SALEM, OR

THIS E-MAIL MAY INCLUDE CONFIDENTIAL INFORMATION AND IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY IT IS ADDRESSED TO. ANY PERSON OTHER THAN THE INTENDED RECIPIENT (OR OTHERS AUTHORIZED BY THE INTENDED RECIPIENT) IS PROHIBITED FROM READING, COPYING OR DISTRIBUTING THIS E-MAIL.



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

RECEIVED BY OWRD

AUG 15 2014

SALEM, OR

NOTICE OF DECISION

FILE NUMBER: 247-14-000238-PS

APPLICANT: Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701

OWNER: KC Development Group, LLC
63560 Johnson Road
Bend, OR 97701

REQUEST: Land Use Compatibility Statement Permit Sign-Off (PS) to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to Klippel Acres Mining Pit.

STAFF CONTACT: Nick Lelack, Community Development Director

I. APPLICABLE CRITERIA:

Title 22 of the Deschutes County Code, Development Procedures Ordinance
Chapter 22.16 Development Action Procedures

Title 18 of the Deschutes County Code, the County Zoning Ordinance:
Chapter 18.60, Rural Residential Zone District
Chapter 18.88, Wildlife Area Combining Zone
Chapter 18.120, Exceptions

II. BASIC FINDINGS:

A. LOCATION: The subject property is located at 63560 Johnson Road, Bend; and is further identified on County Assessor's Map 17-11-13 as Tax Lots 828 and 824.

B. ZONING: The subject property is zoned Rural Residential and is within the Wildlife Area Combining Zone.

C. PROPOSAL: Tumalo Irrigation District (TID) proposes to move its Regulation Pond storage from its current in-district storage at Tumalo Reservoir to Klippel Acres Mining

Pit. The new site will be upstream and located in a line storage facility to prevent leakage and make water available to its entire distribution network.

- D. **REVIEW PERIOD:** File 247-14-000238-PS was submitted on August 4, 2014, and deemed complete by the Planning Division on August 6, 2014.

III. **CONCLUSIONARY FINDINGS:**

Title 22 of the Deschutes County Code, Development Procedures Ordinance

CHAPTER 22.16 DEVELOPMENT ACTION PROCEDURES

22.16.010, REVIEW OF DEVELOPMENT ACTION APPLICATIONS

- B. **The Planning Director has the discretion to determine that for the purposes of DCC Title 22 a development action application should be treated as if it were a land use action application.**

FINDING: For the purposes of Title 22, TID's application for Land Use Compatibility Statement Permit Sign-Off shall be treated as if it were a land use application.

Title 18 of the Deschutes County Code, County Zoning

CHAPTER 18.60 RURAL RESIDENTIAL ZONE DISTRICT

18.60.020, USES PERMITTED OUTRIGHT

- I. **Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.**

FINDING: According to information provided by Tumalo Irrigation District, TID "has decided to move its Regulation Pond storage to [the Klippel Mining Pit] a site upstream from our current in-district storage at the Tumalo Reservoir." TID states that the existing Reservoir "was designed and built in the 1920's and does not adequately serve TID's needs", and that the new site "will be a significant upgrade to operations and maintenance." The Planning Director finds that transferring in-district storage from the Tumalo Reservoir upstream to the Klippel Acres Mining Pit in order to improve the operations of TID's existing irrigation system is a use permitted outright in this zone.

CHAPTER 18.88 WILDLIFE AREA COMBINING ZONE

18.84.030 USES PERMITTED OUTRIGHT

In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

FINDING: The same outright permitted uses are allowed in the Rural Residential Zone District and the WA Combining Zone. Therefore, the "operation, maintenance, and piping of existing

irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050" is an outright permitted use.

CHAPTER 18.120. EXCEPTIONS

18.120.050, FILL AND REMOVAL EXCEPTIONS

- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.**

FINDING: This application does not propose to pipe existing canals and ditches within wetlands. This criterion is not applicable.

IV. DECISION:

APPROVAL of the Land Use Compatibility Statement Permit Sign-Off (PS) to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to Klippel Acres Mining Pit.

V. DURATION OF APPROVAL:

The applicant shall initiate the proposed use within two (2) years of the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a person or entity entitled to appeal a land use decision under Title 22 of the Deschutes County Code.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Nick Lelack, Community Development Director

Dated this 13th day of August, 2014

Mailed this 13th day of August, 2014

RECEIVED BY OWRD

Aug 15 2014

SALEM, OR

DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:37 AM
To: bill@cwhopp.com
Subject: RE: TID LUCS Decision

As requested, this is confirmation that I have received the LUCS from Deschutes Co. I will be taking a look at this document to evaluate whether it addresses the Department's request. I'll be letting you know if additional information or clarification is required.

The deadline for submittal of this information appears to have been met.

More to follow asap.

~S

From: Nick Lelack [<mailto:Nick.Lelack@deschutes.org>]
Sent: Tuesday, August 12, 2014 12:00 PM
To: bill@cwhopp.com; Elizabeth A. Dickson (eadickson@hurley-re.com); Ken Katzaroff (jkkatzaroff@hurley-re.com); DOUTHIT Susan M; 'Dwight.w.french@state.or.us'
Cc: Anthony Raguine; Peter Gutowsky
Subject: TID LUCS Decision

Everyone,

Please find attached the Notice of Decision for the TID LUCS. The decision will be mailed tomorrow, August 13.

Senior Planner Anthony Raguine will be the staff planner and contact for this application going forward. I will continue to be involved.

Thank you.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

DOUTHIT Susan M

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:50 AM
To: FRENCH Dwight W
Subject: FW: TID LUCS Decision

Meant to cc you the first time around.
~S

From: DOUTHIT Susan M
Sent: Wednesday, August 13, 2014 10:37 AM
To: bill@cwhopp.com
Subject: RE: TID LUCS Decision

As requested, this is confirmation that I have received the LUCS from Deschutes Co. I will be taking a look at this document to evaluate whether it addresses the Department's request. I'll be letting you know if additional information or clarification is required.

The deadline for submittal of this information appears to have been met.

More to follow asap.

~S

From: Nick Lelack [<mailto:Nick.Lelack@deschutes.org>]
Sent: Tuesday, August 12, 2014 12:00 PM
To: bill@cwhopp.com; Elizabeth A. Dickson (eadickson@hurley-re.com); Ken Katzaroff (jkkatzaroff@hurley-re.com); DOUTHIT Susan M; 'Dwight.w.french@state.or.us'
Cc: Anthony Raguine; Peter Gutowsky
Subject: TID LUCS Decision

Everyone,

Please find attached the Notice of Decision for the TID LUCS. The decision will be mailed tomorrow, August 13.

Senior Planner Anthony Raguine will be the staff planner and contact for this application going forward. I will continue to be involved.

Thank you.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd



Oregon

John A. Kitzhaber, MD, Governor

11833
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

July 18, 2014

Tumalo Irrigation District
64697 Cook Ave.
Bend, OR 97701

Carl (Bill) W. Hopp, Jr., Attorney at Law, LLC
168 NW Greenwood Ave.
Bend, OR 97701

Dear Mr. Rieck,

I was recently assigned temporary transfer application T-11833 filed by Tumalo Irrigation District. This temporary transfer proposes to move a portion of the authorized storage water from Upper Tumalo Reservoir (evidenced by Certificate 76684) into new storage facilities within T17S R11E, Section 13, W.M.

Because this change, unlike typical temporary district water right transfers, involves structural changes and/or the creation of new impoundment facilities, a completed Land Use Information Form is required. (See Oregon Administrative Rules 690-005-0025.)

During a recent telephone conversation with your legal representation, Mr. Hopp, it was mentioned the District originally submitted the Department's Land Use Information Form to Deschutes County, but later withdrew the request for completion of the form. I have since spoken with Mr. Nick Lelack, Community Development Director for Deschutes County, who stated the Planning Division of Deschutes County was prepared to sign the Department's Land Use Information Form noting that the proposed use is allowed outright.

In a subsequent conversation with Mr. Hopp, I was informed that Deschutes County will be crafting a letter, in addition to the completed land use form mention above, stating they believe the use is consistent with Deschutes County planning. I suggested that the letter be attached as an addendum to the properly filled out and appropriately signed land use form.

Because of the reasons outlined above, the Department requests submittal of an appropriating completed and signed Land Use Information Form. If the Land Use Information Form is not received by the Department by August 18, 2014, the Department may issue a Final Order denying the transfer application.

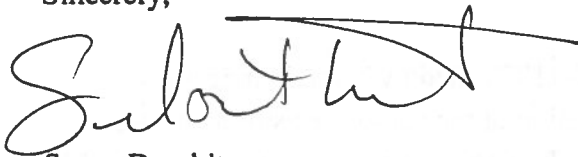
I have enclosed a Land Use Information Form for your convenience.



Finally, prudence dictates the District is reminded that all uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use upon expiration of the temporary transfer at the end of the irrigation season. Furthermore, should the transfer not be approved, the changes made upon submission of the transfer application must be reversed. (See OAR 690-385-3000(5))

Feel free to contact me by telephone at 503-986-0858 or via email at susan.m.douthit@wrд.state.or.us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Douthit", with a long horizontal flourish extending to the right.

Susan Douthit
Transfer and Conservation Section

Cc: Nick Lelack, Community Develeopment Department, Director
Transfer File T-11833
Dwight French, Water Right Services Division Administrator
Doug Woodcock, Field Services Division Administrator
Kyle Gorman, Region Manager

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.

NOTE TO LOCAL GOVERNMENTS

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.

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: _____
First Last

Mailing Address: _____

_____ Daytime Phone: _____
City State Zip

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:
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

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

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: _____ 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 _____

Briefly describe:

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 3. →

For Local Government Use Only

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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

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: _____

DOUTHIT Susan M

From: FRENCH Dwight W <dwight.w.french@state.or.us>
Sent: Friday, June 06, 2014 3:36 PM
To: DOUTHIT Susan M
Subject: FW: KC Development Group reservoirs and TID water

upate

Dwight French
Water Right Services Division Administrator Oregon Water Resources Department dwight.w.french@state.or.us
503-986-0819

-----Original Message-----

From: GIFFIN Jeremy T [<mailto:jeremy.t.giffin@state.or.us>]
Sent: Friday, June 06, 2014 2:53 PM
To: WOODCOCK Doug E; FRENCH Dwight W
Cc: Jeremy Giffin; GORMAN Kyle G
Subject: RE: KC Development Group reservoirs and TID water

Dwight/Doug,

Kyle and I have both talked with Kimberley (separately) about this issue and I think she misunderstood. Both of the reservoirs are being applied for in a district temporary transfer of storage for a total of 108 AF. I told the district and the applicant that only the small pond could remain full as a "bulge in the system" while the application process is in the works, as it has always been a bulge in the system for the 60 acres of water rights around the pond. I have worked through many of the potential issues with Susan Douthit and we had anticipated making a condition of the transfer a staff plate in upper Tumalo reservoir to ensure the district does not enlarge the right after the transfer. We already measure the water that goes into Upper Tumalo Reservoir because it is piped from the Tumalo Feed canal, which is operated by our gage and displayed on the Hydromet page. One of Kimberley's biggest concerns was the storage right versus a reservoir right. I told her they are one in the same but she argued that you get a reservoir right and then fill the reservoir with a storage right? Not in line with my understanding of the water right process.

The Tumalo board plans to approve the district temporary transfer in their board meeting on Tuesday morning and submit the transfer later that day and fill the larger reservoir when the Department receives the application.

Jeremy

-----Original Message-----

From: Kimberley Priestley [<mailto:kjp@waterwatch.org>]
Sent: Friday, June 06, 2014 2:24 PM
To: WOODCOCK Doug E; FRENCH Dwight W
Cc: Jeremy Giffin
Subject: KC Development Group reservoirs and TID water

Hi Doug and Dwight,

Attached please find WaterWatch's concerns regarding KC Development Group's use of TID water to fill two new reservoirs.

Thank you, Kimberley

--
Kimberley Priestley
WaterWatch of Oregon
213 SW Ash, Suite 208
Portland, OR 97204
ph: 503-295-4039, x 3
www.waterwatch.org



June 6, 2014

Doug Woodcock
Director of Field Operations Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Dwight French
Water Rights Administrator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: KC Development Group use of Tumalo Irrigation District Water

Dear Mr. Woodcock and Mr. French,

It has come to our attention that KC Development Group (KCDG) is seeking water from Tumalo Irrigation District (TID) to store water in two new reservoirs. As we understand it, KCGD is planning on entering a contract with TID to seek a temporary transfer of TID's Upper Tumalo reservoir right (cert. 76684) for the larger reservoir (104 AF) and are relying on the "Bulge in System" concept for the smaller reservoir. The smaller reservoir will serve as an aesthetic feature for some luxury homes, the larger is to serve as a water skiing reservoir.

It has also come to our attention that the project is well underway, and that the smaller of the reservoirs has already received water from TID. We understand that TID is preparing to submit a temporary irrigation district transfer application for the larger reservoir to the WRD in the very near future.

WaterWatch has a number of concerns regarding the legality of the proposed ponds/reservoirs. These concerns include but are not limited to:

- Bulges in the system are not allowed by law: There is no statutory authority for the concept of "bulges in the system". Under Oregon law all new ponds and reservoirs must have a permit. Oregon law allows for one very limited exception, but this only applies to reservoirs that store less than 9.2 af or have a dam height of less than 10 feet that were built before 1995 and registered with the WRD before 1997. ORS 537.405. If pond owners did not register by 1997, their ponds are illegal. Regardless, all reservoirs/ponds built after 1995 require a reservoir permit.

- Even if “bulges” were legal, the KCDG “bulge” doesn’t meet the WRD enforcement guidelines: Despite the fact that there is no statutory authority for the concept of “bulges” in the system, the OWRD has “contemplated” these in their enforcement manual as uses that “may” not need a permit. According to the state, these bulges must be (1) temporary, (2) store natural flow (under a surface water water right) that might not be there at a later date, (3) hold water as part of an irrigation or other water delivery system, (4) for periods of not to exceed 10 days for agricultural purposes or more than 72 hours for non-agricultural purposes, and (5) must be completely drained at the end of the season. WaterWatch does not believe “bulges” in the system are legal as there is no statutory authority for this concept, however, regardless, the use of water as contemplated by KCDG clearly does not fall within the sideboards considered by OWRD. This is permanent pond to serve year-round aesthetic purposes; it is not temporary by any stretch of the imagination. The water is coming from Tumalo Reservoir, not a live flow right held by KCDG. It is unlikely, given the use, that the water will be held for less than 72 hours and/or 10 days depending on the ultimate use of the water (if any). And, finally, it is unlikely that KCDG plans to drain the reservoir outside the irrigation season. KCDG’s reservoir needs a reservoir permit.
- KC Development does not have a reservoir right for either reservoir: Regardless of the source of water that will fill the new ponds, the construction of a reservoir or pond of any size needs a reservoir permit issued by the OWRD. Depending on the size of the impoundment, KC Development needs to procure permits under the regular permitting statutes (ORS 537.400) or the alternative reservoir statutes (ORS 537.405). The OWRD’s Water Right Information System shows no record of a storage application submitted by either KCDG or TID for these new ponds/reservoirs. We believe KCDG must go through the regular water right process, not a transfer process.
- Measurement and Reporting: By statute, irrigation districts must measure and report their water use under each water right on an annual basis. ORS 573.098, OAR 690-085-0010. We could find no reports in the WRD’s system for TID’s Upper Tumalo Reservoir Storage Certificate 76684. To ensure that any action taken by TID with regard to supplying water to KC Development does not cause injury and/or enlargement, the WRD should ensure that TID is reporting as required by statute. Oregon operates under the “one fill” doctrine, meaning TID cannot store more than a total of 1100 AF per year in Upper Tumalo Reservoir, regardless of leakage issues, transfers, secondary storage rights in excess of storage capacity, etc.
- Injury Issues: The OWRD cannot approve a transfer application that will cause injury to another existing water right. By rule, 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. OAR 690-380-0100(3). It is unclear at this time what measures the TID would undertake to ensure that there is no enlargement of the original right. At the very least, if the WRD were to allow a transfer, strict measurement and reporting should be required of the both TID’s Upper Tumalo Reservoir and KCDG’s reservoirs.

- Competing water rights: Upper Tumalo Reservoir is filled by a storage right that is limited to 1100 AF. TID already has two secondary water rights to this stored water whose total is in excess of this amount.¹ Moreover, the right that allows for broad use of this stored water is limited to “supplement all uses and lands served by Tumalo Irrigation District”. We read this as being a “supplemental right”.² Supplemental rights can only be used to make up a deficiency of supply of a primary right. Thus, water under this secondary right can only serve as supplemental to a pond/reservoir that has a primary reservoir right and the source of that pond is insufficient to meet its needs. As noted, KCDG does not have a reservoir right for either pond. It is unclear at this time how KCDG’s request will interact with these other water rights.

WaterWatch anticipates reviewing the transfer application once it is noticed in the public notice. However, we wanted to submit our concerns to you in advance as the issues raised by the proposal are broader than those that will be addressed in any transfer and/or permit decision. We believe that the WRD should require KCDG to apply for two reservoir permits for their project. Moreover, KCDG should not be able to store water until they have valid permits in place. The WRD should also require that TID submit annual measurements reports to the WRD on all of their water rights, including Upper Tumalo Reservoir, regardless of the outcome of the KCDG issue.

Sincerely,



Kimberley Priestley
Sr. Policy Analyst

cc: Jeremy Giffin, District 11 Watermaster

¹ It is unclear how this was achieved as WRD cannot issue secondary rights for stored water that exceed the amount allowed to be stored under the original reservoir right. See Certificates 88894 (1100 af of supplement use, originally irrigation expanded to multiple uses) and 76106 (mix of live flow and storage for irrigation)

² The original permit for this water was for irrigation. It is unclear how the WRD was able to approve a transfer from irrigation to the multiple uses of irrigation, pond, industrial, domestic, supplemental irrigation etc. without running afoul of injury/enlargement prohibitions.



July 17, 2014

Susan Douthit
Water Resources Department
725 Summer St NE, Ste A
Salem, OR 97301-1271

RE: Comments in opposition to District Temporary Transfer Application T-11833, Tumalo Irrigation District

Dear Ms. Douthit,

WaterWatch of Oregon opposes transfer application T-11833, in which Tumalo Irrigation District (TID) requests a district temporary transfer of storage for a total of 108 AF to two reservoirs.

WaterWatch is river conservation group dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation and other instream values. In commenting on this transfer application, WaterWatch is representing the general public interest in the water resources of this state, as well as the specific interest of WaterWatch's members and the organization itself. The interests represented by WaterWatch and its members are multifaceted and include, but are not limited to: (1) an interest in ensuring enforcement of the water laws; (2) an interest in the development and promotion of water policies that protect instream values, including fish, water quality, and recreation; and, (3) an interest in the long term implications that the WRD's decision on this transfer application will have on other transfer requests throughout the state. WaterWatch submits the following comments urging denial of T-11833.

Proposed Temporary District Transfer: TID is proposing to move 108 AF of water stored in Tumalo Reservoir under certificate 76684 to two new reservoirs built by KC Development Group (KCDG). One reservoir will support water skiing, the other will provide aesthetic features for luxury homes. These are permanent reservoirs. These two reservoirs do not have underlying reservoir permits. TID is seeking to effect this change via the temporary district transfer statute, asserting that the requested change is a "change in place of use".

The WRD should deny TID's temporary transfer application for the following reasons:

1. **The district temporary transfer statute does not allow for the transfer of a storage right as a change in "place of use":** The transfer statutes, as a whole, do not allow the transfer of storage rights as a loophole to existing 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.*

District place of use transfers, on the other hand, are limited to moving water from the original lands where the water was put to beneficial use under the terms of the permit to new lands. In other words, they are limited to changing the lands to which the water is applied to beneficial use. *See* ORS 540.570 (1).

Statutory construction makes clear that a “change in place of use” is intended to be limited to moving the right to use water on the lands in the original certificate to new, alternate lands. For instance, the temporary district transfer statute defines changes in place of use as allowing “transfer the place of use of water appurtenant to any land within legal boundaries to equal acreage elsewhere within legal boundaries of the district”. ORS 540.570(1). The statute further stipulates that a temporary transfer can only take place if “the rate, duty and total number of acres to which water will be applied under the transfer do not exceed existing limits on the water use subject to transfer”. ORS 540.570(1)(a). And that “the land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made”. *Id.* at (c).

Not only is the construct of the statute clear, but the legislative background makes this clear as well. The temporary district transfers were adopted by the Oregon Legislature in 2003 to grant flexibility to the Districts in applying irrigation water to different lands within their districts, for one season only. The Oregon Water Resources Congress was the sponsor of HB 3281, and according to a memo they delivered to Chair Jenson and the Members of the House Water Committee, the provisions of the bill “simply allow the irrigation district manager to better manage the water rights to better serve the water users in the district and enable them to use their water in the best manner to produce the best crops given the soil, weather and water conditions of that season.” *See* Memo, re: HB 3281—District Temporary Transfers & Pilot Project from Kristina McNitt, OWRC, to Chair Jenson and the House Water Committee, at 2. To use this process (which was designed to provide flexibility for crop production within irrigation districts) as a loophole to get water to an unpermitted new reservoir for a water skiing pond and another for aesthetic feature for luxury homes (uses that have absolutely nothing to do with usual and ordinary irrigation district functions), is not consistent with either the construct of the statute or the intent of the legislature in granting irrigation districts this flexibility.¹

Again, the storage right in and of itself cannot be transferred under the district temporary transfer statutes. The district’s reliance on the temporary district transfer statute to provide water to KCDG is in error. The WRD must deny this request.

¹ It is also not consistent with TID’s stated intent for the use of this water stored in Tumalo Reservoir. Certificate 76684 was originally granted to allow storage for irrigation only. In 2000 TID applied for a transfer of this water to a storage right for “multipurpose” storage. According to their application (T-8557) “The purpose of this transfer is to include in the allowable uses of Upper Tumalo Reservoir all of the usual and accustomed uses of water made in an irrigation district”. *See* transfer application T-8557. Supplying water for a water ski lake and a luxury home aesthetic feature is arguably not a usual and accustomed use of water made by an irrigation district.

2. **KCDG's unpermitted reservoirs need to obtain reservoir permits before water from Tumalo Reservoir can be used to fill them:** 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)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 or 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. KCDG must apply for reservoir rights for the two reservoirs at issue.³ If a reservoir right is granted, Tumalo Reservoir stored water could then be accessed via a secondary right to provide water to the new reservoirs. ORS 537.400.⁴

A temporary district transfer is not the correct process to make KCDG's two unpermitted reservoirs legal. To allow such a transfer would not only allow a new reservoir to be built without the benefit of the thorough public interest review that applies to new reservoir applications, but would also set incredibly damaging precedent statewide. Presumably if the theory being advanced by TID via their temporary 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 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.

3. **Even if a transfer of a storage reservoir under a "place of use" change were allowed by law, the TID request does not meet the statutory standards:** The district transfer statute makes it clear that for one irrigation season only, a district may temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to equal acreage elsewhere within the legal boundaries of that district. ORS 540.570(1). The statute further requires, among other things, that the land from which the water use is being transferred does not receive any water under

² It is our understanding that the WRD has allowed KCDG to fill the reservoirs in advance of a decision on the temporary transfer request. ORS 537.130(2) makes clear that except for limited exempt uses outlined in the statute (which this is not), a person may not use, store or divert any water until after the WRD issues a permit.

³ An email from Jeremy Giffin, 6/6/14 states that the smaller pond has been a "bulge" in the system for the 60 acres of water rights around the pond. There is no statutory authority for the concept of "bulges in the system". See arguments in #2.

⁴ The only exemption from this statutory requirement for secondary permits to access already stored water is "water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water permit or certificate for the reservoir " and water for emergency firefighting. OAR 690-340-0010(2)(d) and (3). Troughs are defined as "a long shallow often V-shaped receptacle for the drinking water or feed of domestic animals". See Webster's Third Dictionary. KCDG's reservoirs do not fall within the definition of trough and thus cannot utilize this exception.

the right being transferred during the irrigation season in which the change is made. *Id* at (c). TID is requesting a change in use for one year, not one irrigation season.⁵ TID is not proposing to transfer acreage under its application, rather they are proposing to transfer the supply of storage water at Tumalo Reservoir to two alternate, unpermitted, storage projects. TID is not proposing to deprive lands from which the water is being transferred from receiving any water, but rather is only proposing to decrease the amount stored in the existing statute by 108 AF. As such, TID's proposal does not meet the statutory requirements for a change in place of use, even if such a thing were allowed (which we do not believe it is).

4. **The WRD cannot protect against injury or enlargement:** The OWRD cannot approve a temporary district transfer application that will cause injury to another existing water right or enlarge the underlying water right. By rule, 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. OAR 690-380-0100(3). Enlargement means an expansion of a water right, including but not limited to, diverting more water than is legally available at the original point of diversion and failing to keep the original place of use from receiving water from the same source. *Id.* at (2).

The application file notes that WRD will be requiring a "staff plate" at both upper Tumalo Reservoir at each point of diversion (new and existing).⁶ See Transfer application, pg. 3, Measurement Condition Information for the Applicant. This in and of itself cannot protect against injury. While e-mails from the watermaster in the application file state that TID already measures the inflow and outflow of Tumalo Reservoir and will measure the inflow of the KCDG reservoirs, it is notable that there is no condition of use on either the original reservoir permit or proposed via the WRD (for the transfer) on the new reservoirs that would require measurement of both inflow and outflow of all three reservoirs. Moreover, while we appreciate the watermaster's representations about current measurement in this regard, we could find no reports in the WRD's reporting system for TID's Upper Tumalo Reservoir Storage Certificate 76684. Irrigation districts must measure and report their water use under each water right on an annual basis by statute and rule. ORS 573.098, OAR 690-085-0010.

Additionally, 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 attached e-mail from Jeremy Giffin, 3/20/14. It is unclear how this leakage affects availability in the reservoir, and/or supply of existing secondary rights that have access to Tumalo Reservoir water and how the proposed transfer of 108 af will affect those water right holders. Moreover, given lack of reporting to the WRD, it is unclear how much water TID is actually diverting and storing on an annual basis under its water right. If the transfer were to allow it to

⁵ TID contract with KCDG stipulates the agreement to supply water to KCDG is for one year, not one irrigation season.

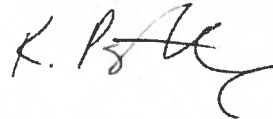
⁶ There was no detail provided in the file as to how this would achieve the desired result, nor was there any description of how WRD would ensure its accuracy (i.e. would they do a bathymetry or other study to determine whether a staff plate is adequate to determine the volume of the reservoir?).

store more water than it can currently, which it presumably would, then this would in fact constitute enlargement and would in fact cause injury to other water right holders who are currently relying on water from Tumalo Creek. WRD should investigate reservoir leakage and the effect on supply as part of its injury and enlargement analysis.

WaterWatch does not believe that the temporary district transfer statutes allow the proposed change. However, if WRD were to approve this transfer, to ensure that any action taken by TID with regard to supplying water to KCDG does not cause injury and/or enlargement, the WRD would need to require measurement and reporting of inflow and outflow at all three reservoirs, staff plates at all three reservoirs and documentation and accounting of reservoir leakage at Upper Tumalo Reservoir. Moreover, WRD should an affirmative commitment from TID to abide by the "one fill" doctrine that applies to storage in the state of Oregon. Additionally, as the district temporary transfers are restricted to one irrigation season, the WRD must order evacuation of the storage facilities at the end of the season (October 2014). This should be a condition of the transfer (if approved) so all are clear on this point, including KCDG. Without conditions of use that require all of these provisions, the WRD cannot protect against injury both to instream and out of stream rights of Tumalo Creek, and patron rights/use within the district. Nor can it protect against enlargement. Moreover, until TID is in compliance with existing law regarding measurement reports, WRD should not approve any changes that would make tracking TID water even more nebulous.

Conclusion: As noted above, temporary district transfer statutes do not allow for the change in place of use of an existing storage project. The proposed change is not only contrary to law, but it would set precedent that could have devastating effects across the state. It would also injure other water right holders and result in enlargement. The WRD should deny this application for the reasons outlined above.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Priestley", with a stylized flourish at the end.

Kimberley Priestley
WaterWatch of Oregon

Cc: Dwight French, WRD

From: [GIFFIN Jeremy T](#)
To: [Kenneth B. Rieck](#); rcochran@bendnet.com; [Elmer McDaniels](#)
Cc: [Fran DeRock](#)
Subject: RE: Tumalo Irrigation Water MisUse
Date: Thursday, March 20, 2014 8:27:03 AM

Ken,

The email below is factually inaccurate. The pond can be used for irrigation as a bulge in the system. The storage right that is being moved over cannot be changed to an irrigation right it can only be used to store water. Since the upper Tumalo reservoir is unable to store the full 1100 AF this transfer does two things, first it saves 108 af from potential abandonment and second it creates a revenue stream for the district (in perpetuity) where there was not one before. Mr. Niedzwiecke needs to realize that the storage right can never be transferred to irrigation (per transfer rules) and has to either remain in upper Tumalo reservoir or be transferred to another storage facility within the district. The stored water is for multipurpose use so the storage facility can be used for virtually anything (boating, aesthetics, or recreation). Everything that is proposed by this project is legal per Oregon water law and I am unaware of anyone that governs an irrigation district outside of the board of directors.

Look forward to seeing you next board meeting,

Jeremy Giffin
Deschutes Basin Watermaster

From: [Kenneth B. Rieck \[mailto:Ken@tumalo.org\]](mailto:Ken@tumalo.org)
Sent: Thursday, March 20, 2014 7:56 AM
To: rcochran@bendnet.com; [Elmer McDaniels](#)
Cc: [GIFFIN Jeremy T](#); [Fran DeRock](#)
Subject: RE: Tumalo Irrigation Water MisUse

Hello,

I have arranged for the state water master (Jeremy) to be on hand at the next board meeting to answer any questions. Fran would you please put it on the agenda list - Thanks.

Ken

----- Original Message -----

Subject: Tumalo Irrigation Water MisUse

Dear Directors,

MEMO



**OREGON WATER
RESOURCES
CONGRESS**

TO: Chair Jenson
Members of the House Water Committee

FROM: Kristina McNitt
on behalf of the Oregon Water Resources Congress

RE: HB 3281— District Temporary Transfers & Pilot Project

April 17, 2003

For the record, my name is Kristina McNitt and I am representing the Oregon Water Resources Congress. Joining me this evening are Mr. Jay Chamberlin from the Owyhee Irrigation District in Nyssa Oregon (Malheur County) and Mr. Stephen Shrophire from the firm Jordan & Schrader.

HB 3282 was introduced by Representative Butler at the request of the Oregon Water Resources Congress and is one of three priorities for the Congress this session.

Amendments to HB 3282 establish a pilot program for 3 irrigation districts, which would provide flexibility for district managers to manage the water within their respective irrigation districts. Under this program, the managers will be able to move the water within the district to ensure the most effective beneficial use of the water so as to best serve the water user farmers within the districts. These three districts must meet six criteria:

1. have defined state irrigation district boundaries;
2. have a management structure to ensure that water is applied only where water use is authorized under this section of the statute;
3. the total irrigated area in an one irrigation season does not exceed the maximum acres allowed to be irrigated under the originating water right;
4. have full and accurate measurement of water diverted;
5. have available a accurate map identifying the location of authorized use (by priority date) for watermaster review upon request; and
6. have on file statements by any owners affected by the water right change indicating that they agree to the change.

These criteria are intended to ensure that the participating districts maintain control of the water and know where the water is being used at all times so that farmer patrons can rely on the water they are to receive and non-district users of water from the same source will not incur injury. Further, these criteria ensure the district manager of each participating district can and will be held accountable for meeting the statutory requirements and the terms of the water rights held or managed by their respective district.

The three districts initially selected to participate in this program, Owyhee Irrigation District, Talent Irrigation District, and Tualatin Valley Irrigation District, represent diversity in size, location and type of operation of irrigation districts. This diversity will provide a basis for the Water Resources Department, the Legislature, and irrigation districts in Oregon to evaluate the value of this type of water management for application elsewhere in Oregon.

x (503) 371-4926
email owrc@owrc.org
Web Page <http://www.owrc.org>

1201 Court St. NE, Suite 303
Salem, OR 97301-4188
Phone (503) 363-0121

The remaining provisions in HB 3282 allow an irrigation district manager to make temporary transfers of water rights managed by the district paralleling those that an individual can make under the temporary transfer statutes in Oregon. These temporary transfers cannot be used to expand the acreage irrigated by the district and are subject to the requirement that the transfer not injury the rights of any other water right holder in the system. The temporary transfers are for one irrigation season only, after which the right reverts to the original conditions. These provisions simply allow the irrigation district manager to better manage the water rights to better serve the water users in the district and enable them to use their water in the best manner to produce the best crops given the soil, weather and water conditions that season.

Thank you for your consideration of HB 3282. Mr. Chamberlin is here tonight from the opposite side of the state to share with you why HB 3282 is so important to his farmers in Eastern Oregon. Following his presentation will be Mr. Shropshire. I hope we can shed light on this legislation and any questions the Committee may have. Thank you.



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
janet.neuman@tonkon.com

June 23, 2014

VIA E-MAIL

Ms. Susan M. Douthit
District Transfer Program Adviser
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RECEIVED BY OWRD

JUN 25 2014

SALEM, OR

Re: Transfer Application 11833

Dear Ms. Douthit:

I represent Thomas and Dorbina Bishop, trustees of the Bishop Family Trust dated December 3, 2003, who live at 63382 Fawn Lane, Bend, Oregon, within the boundaries of the Tumalo Irrigation District. I submit these comments on their behalf on Transfer Application 11833, included in the Department's public notice bulletin on June 17, 2014. The purpose of this letter is to register my clients' strong opposition to processing this transfer application and to allowing the District to make a change in its water use while the transfer application is pending. As explained below, the proposed water use cannot properly be handled as a transfer and instead requires a separate permit. My clients intend to pursue whatever legal remedies are available to them to stop this process from moving forward.

In this temporary transfer application, the Tumalo Irrigation District ("District") seeks to change the place of use of a portion of the storage right represented by Certificate 76684. The proposal is to move 108 acre feet of water from the District-owned Upper Tumalo Reservoir to two privately-owned reservoirs on private land. The reservoirs have been newly-constructed over the past few months on land adjacent to my clients' property by KC Development Group, LLC, and/or Harris Kimble and Eric Cadwell (collectively, "KCDG"). KCDG plans to develop the property for luxury homesites, with the larger of the two ponds serving as a water ski lake and the smaller pond apparently serving as a water feature.

On June 10, 2014, over the objection of my clients and others, the Tumalo Irrigation District Board approved and signed an "Irrigation Contract" committing the District to file a transfer application to move water to the KCDG property, and the application was filed the

Ms. Susan M. Douthit
June 23, 2014
Page 2

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JUN 25 2014

SALEM, OR

next day. You have told me that the District is now authorized to fill the ponds by virtue of OAR 690-385-3000(2), even though a final order on the application is still nearly a month away.

The District should not be allowed to use the transfer process to move stored water to KCDG's reservoirs, either temporarily or permanently. ORS 537.130 states unequivocally that:

(1) "Except for a use exempted under [citations omitted], any person intending to acquire the right to the beneficial use of any of the surface waters of this state, shall, before beginning construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the Water Resources Department for a permit to make the appropriation.

(2) Except for a use exempted under [citations omitted], a person may not use, store or divert any waters until after the department issues a permit to appropriate the waters."

Furthermore, ORS 537.400 says, regarding "ponds and reservoirs," that [a]ll applications for reservoir permits shall be subject to the provisions of ORS 537.130." Building two new reservoirs and storing 108 acre feet of water in them for the beneficial use of KCDG's planned housing development without a permit is flatly prohibited by Oregon law.¹ The District should not be allowed to abet KCDG in bypassing the clear permit requirement by calling the new reservoirs a "change in place of use" for District water currently stored in Upper Tumalo Reservoir. It is illogical to say that a primary reservoir right has a place of use that can be moved to a brand new, unpermitted reservoir through a transfer proceeding in the same way that the place of use for a non-storage right—such as irrigation of particular lands—can be changed to other lands through a transfer.

Treating this proposal as a transfer improperly limits the focus of public comment and the scope of the Department's review. A transfer is reviewed somewhat narrowly for issues of enlargement and injury, while a permit is subject to much broader review. If this transfer process continues, the Department, my clients, and others will not have a viable opportunity to

¹ Certain small reservoirs—those that store less than 9.2 acre feet of water or have an impoundment structure less than 10 feet in height—have less rigorous application requirements under 537.400(3), and those that were in existence on January 1, 1995, were grandfathered in as not requiring a permit, but subject only to a registration requirement. Other than that, all new ponds and reservoirs require a permit. KCDG's smaller pond holds approximately four times the exempt amount of water, and the water ski lake holds more than 6 times that amount.

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Ms. Susan M. Douthit
June 23, 2014
Page 3

JUN 25 2014

SALEM, OR

raise issues relevant to the public interest and other appropriate subjects of a permit review. The larger question of whether it is in the public interest for a public irrigation district to store water in reservoirs designed to provide private benefit will fall through the cracks. If this transfer goes forward, my clients will be deprived of any meaningful opportunity to raise important issues about the impacts of creating a private water ski lake right next to their property, filled with public irrigation water.

For example, a new permit application requires the following information:

- "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;"
- "information the applicant has 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;"
- "land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-005-0035(4) or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning Department."

An application to "store water and to construct a reservoir, or multiple reservoirs . . ." must also include "preliminary plans, specifications and supporting information" and other information. None of this information is included in the transfer application.

The lack of this information prevents my clients, other interested parties, and other agencies from commenting about important issues associated with new water storage facilities. Such issues include, among many other things: the public safety issues presented by the reservoirs; the noise, air, and water pollution to be generated by the water ski lake in an existing residential neighborhood; and the possibility for contamination of nearby groundwater, including domestic and municipal wells serving my clients and others. Without a full new permit review, the requirement for local land use compatibility is also short-circuited; Deschutes County has not yet received any land use applications with regard to this project. The reservoirs are located within a rural residential zone, with a landscape management and wildlife area overlay; the uses are not outright permitted uses. Once the transfer process is completed, these opportunities for public comment and agency assessment will be irrevocably lost. With the hard copy of this letter, I am enclosing two photographs of the water ski lake taken within the last few days. These photos demonstrate the significance of the facility that is being constructed under the auspices of a change in place of use proceeding.

Ms. Susan M. Douthit

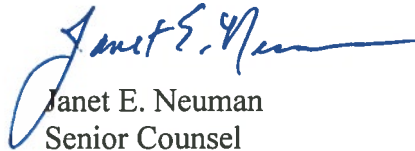
June 23, 2014

Page 4

Furthermore, if the transfer review proceeds, even the opportunities to comment on enlargement and injury are being thwarted by treating these two new reservoirs as simply a different "place of use." The transfer application provides no detail about how the KCDG facilities would be managed or operated so that the water will still be available to the District and its members, including my clients. Nor is there any information about how the facilities will properly manage the stored water that will still belong to the District once it is commingled with KCDG's irrigation water, which is also intended to move through the ponds. No information is provided about any encumbrances on the property where the water would be stored that might interfere with the District's claims. Given the limited information provided, it is very difficult for other water users to determine and comment on how their water rights and deliveries could be affected by this proposal.

On behalf of the Bishops, I ask the Department to stop its review of T-11833. Allowing the project envisioned by the District and KCDG to move forward without a permit is in direct contravention to the statutory permit requirements, and exceeds the Department's statutory authority. My clients intend to fully pursue all appropriate legal remedies, including any available action for mandamus or declaratory and injunctive relief, to redress these issues.

Sincerely,



Janet E. Neuman
Senior Counsel

JEN/jeh
Enclosures

037351/00001/5641663v1

RECEIVED BY OWRD

JUN 25 2014

SALEM, OR



**Ditch being constructed at southern end
of water ski lake @ KCDG Development
Bend, Oregon
Photo taken June 22, 2014**

RECEIVED BY OWFRD

JUN 25 2014

SALEM, OR



Water ski lake @ KCDG Development

Bend, Oregon

Photo taken June 22, 2014

Shows one of 2 "islands" in lake

RECEIVED BY OWRD

JUN 25 2014

SALEM, OR

ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828 ✓

NW/NE 00828 ✓

Pond #2

NW/SW 00824 & 00828 ✓

SE/NW 00824 & 00828 ✓

SW/NW 00824 & 00828 ✓

NE/SW 00824

Land Use Information Form

from Desch. Co. website 6/20/14



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

Applicant: Tumalo Irrigation District
First Last

Mailing Address: 64697 Cook Avenue

Bend OR 97701 Daytime Phone: 541-382-3053
City State Zip

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:
					see attached	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

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-storage
 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: 108
 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 _____

Briefly describe:

Inter-district transfer in place of use of 108 a.f. of Tumalo Creek water. TID to TID (Storage water)

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 3. →

For Local Government Use Only

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:	
		<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
		<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
		<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.

Name: _____ Title: _____

Signature: _____ Phone: _____ Date: _____

Government Entity: _____

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.



ATTACHMENT B

The Ponds located on the following tax lots

All are 17-11-13

Pond #1

NE/NW 00828 ✓

NW/NE 00828 ✓

Pond #2

NW/SW 00824 & 00828 ✓

SE/NW 00824 & 00828 ✓

SW/NW 00824 & 00828 ✓

NE/SW 00824

DOUTHIT Susan M

From: Janet Neuman <Janet.Neuman@tonkon.com>
Sent: Monday, June 16, 2014 4:52 PM
To: DOUTHIT Susan M
Subject: questions about TID transfer applications [IWOV-PDX.FID840258]

I left you a phone message about this earlier today, but since I won't be able to talk to you until tomorrow, I thought I'd send you this email with some more information about my question. The question (blue) and answer (red) below are from my email exchange with Jeremy Giffin. I'm trying to understand the source of authority for the district to "operationally move the water" immediately upon submitting the application, prior to full Department review, and public notice and comment. Thanks.

1. When you say "as of Tuesday morning I was petitioned by TID for the transfer of water into both of the facilities so they are covered by the temporary transfer of storage water for the 2014 irrigation season," does this mean that you've already approved the temporary transfer of place of use for Certificate 76684 under OAR 690-385-3000 and 3110 (including the no injury/enlargement determinations under 3000(1)(e)? Does that also mean that KCDG could completely fill its two ponds prior to the notice and 30-day comment period on the transfer? Is that approval in writing, and if so, would you send us a copy?

I do not have the jurisdiction to approve or deny transfers however upon submittal the district can operationally move the water. I did do my watermaster review finding that if staff plates are installed it would mitigate any injury concerns. The district has been made aware of the staff plate requirements and is in the process of installing them. As of the submittal on the 10th the district may fill the two ponds, prior to the 30 day comment period. We will not have an approved transfer order in writing for some time still.

Janet E. Neuman | Senior Counsel Attorney | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, Oregon 97204
503.802.5722 | FAX 503.972.7422
SSRN author page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=39591
janet.neuman@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.

Circular 230 Disclaimer: If any part of this communication is interpreted as providing federal tax advice, U.S. Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and you may not use it for that purpose.

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- Warnings/Notations
- Service Providers
- Development
 - Summary
 - Permits
 - Zoning Map
 - Documents
 - Transportation
 - Help

Development >> Documents **Print Report Print Page**

Documents for account # 264153

Account Information

Mailing Name: KC DEVELOPMENT GROUP LLC
 Map and Taxlot: 1711130000828
 Account: 264153
 Situs Address: 19210 KLIPPEL RD, BEND, OR 97701
 Tax Status: Assessable

Development Documents

Date	Document Type	Description
6/13/2014	Application Materials	App. Materials View Document (PDF)

*Tumalo
 from Deschutes Co
 website
 6/20/14
 [Signature]*

THE INFORMATION AND MAPS ACCESSED THROUGH THIS WEB SITE PROVIDE A VISUAL DISPLAY FOR YOUR CONVENIENCE. EVERY REASONABLE EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE MAPS AND ASSOCIATED DATA. DESCHUTES COUNTY MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE CONTENT, SEQUENCE, ACCURACY, TIMELINESS OR COMPLETENESS OF ANY OF THE DATA PROVIDED HEREIN. DESCHUTES COUNTY EXPLICITLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DESCHUTES COUNTY SHALL ASSUME NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES IN THE INFORMATION PROVIDED REGARDLESS OF HOW CAUSED. DESCHUTES COUNTY ASSUMES NO LIABILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN BY THE USER OF THIS INFORMATION OR DATA FURNISHED HEREUNDER.

11833



Deschutes County Property Information

Report Date: 6/20/2014 7:01:35 AM

*Porter
S Prop*

Disclaimer

The information and maps presented in this report are provided for your convenience. Every reasonable effort has been made to assure the accuracy of the data and associated maps. Deschutes County makes no warranty, representation or guarantee as to the content, sequence, accuracy, timeliness or completeness of any of the data provided herein. Deschutes County explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. Deschutes County shall assume no liability for any errors, omissions, or inaccuracies in the information provided regardless of how caused. Deschutes County assumes no liability for any decisions made or actions taken or not taken by the user of this information or data furnished hereunder.

Account Summary

Account Information

Mailing Name: KC DEVELOPMENT GROUP LLC
Map and Taxlot: 1711130000828
Account: 264153
Tax Status: Assessable
Situs Address: 19210 KLIPPEL RD, BEND, OR 97701

Property Taxes

Current Tax Year: \$112.15
Tax Code Area: 1003

Assessment

Subdivision:
Lot:
Block:
Assessor Acres: 63.45
Property Class: 400 – TRACT

Ownership

Mailing Address:
KC DEVELOPMENT GROUP LLC
63560 JOHNSON RD
BEND, OR 97701

Valuation

Real Market Values as of Jan. 1, 2013

Land \$69,410
Structures \$0
Total \$69,410

Current Assessed Values:

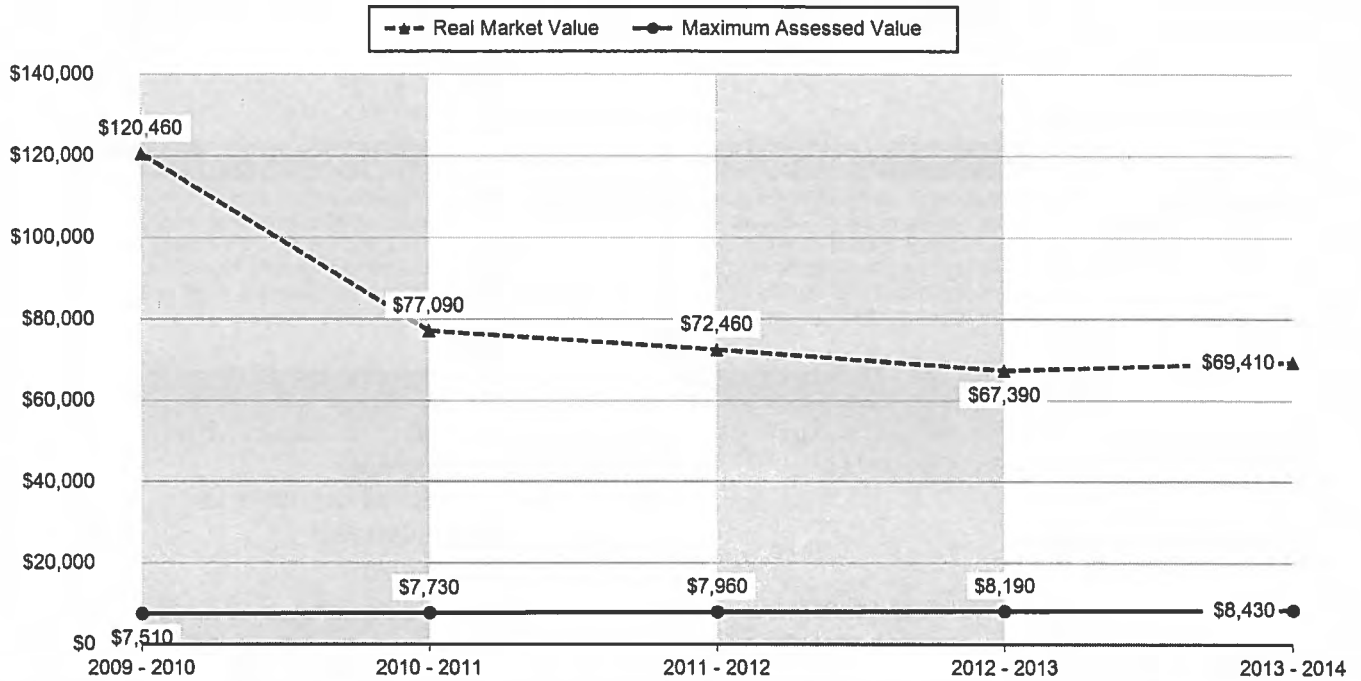
Maximum Assessed \$8,430
Assessed Value \$8,430
Veterans Exemption \$0.00

Warnings, Notations, and Special Assessments

Review of digital records maintained by the Deschutes County Assessor's Office, Tax Office, Finance Office, and the Community Development Department indicates that there are no special tax, assessment or property development related notations associated with this account. However, independent verification of the presence of other Deschutes County tax, assessment, development, and additional property related considerations is recommended. Confirmation is commonly provided by title companies, real estate agents, developers, engineering and surveying firms, and other parties who are involved in property transactions or property development. In addition, County departments may be contacted directly to discuss the information.

Valuation History *All values are as of January 1 of each year. Tax year is July 1st through June 30th of each year.*

	2009 - 2010	2010 - 2011	2011 - 2012	2012 - 2013	2013 - 2014
Real Market Value - Land	\$120,460	\$77,090	\$72,460	\$67,390	\$69,410
Real Market Value - Structures	\$0	\$0	\$0	\$0	\$0
Total Real Market Value	\$120,460	\$77,090	\$72,460	\$67,390	\$69,410
Maximum Assessed Value	\$7,510	\$7,730	\$7,960	\$8,190	\$8,430
Total Assessed Value	\$7,510	\$7,730	\$7,960	\$8,190	\$8,430
Veterans Exemption	\$0	\$0	\$0	\$0	\$0



Tax Payment History

Year	Date Due	Transaction Type	Transaction Date	As Of Date	Amount Received	Tax Due	Discount Amount	Interest Charged	Refund Interest
2013	11-15-2013	PAYMENT	11-08-2013	11-08-2013	\$108.79	(\$112.15)	\$3.36	\$0.00	\$0.00
2013	11-15-2013	IMPOSED	10-11-2013	11-15-2013	\$0.00	\$112.15	\$0.00	\$0.00	\$0.00
					Total:	\$0.00			
2012	11-15-2012	PAYMENT	07-05-2013	07-05-2013	\$129.44	(\$121.35)	\$0.00	\$8.09	\$0.00
2012	11-15-2012	IMPOSED	10-12-2012	11-15-2012	\$0.00	\$121.35	\$0.00	\$0.00	\$0.00
					Total:	\$0.00			
2011	11-15-2011	PAYMENT	07-05-2013	07-05-2013	\$145.58	(\$118.68)	\$0.00	\$26.90	\$0.00
2011	11-15-2011	IMPOSED	10-12-2011	11-15-2011	\$0.00	\$118.68	\$0.00	\$0.00	\$0.00
					Total:	\$0.00			

Sales History

Sale Date	Seller	Buyer	Sale Amount	Sale Type	Recording Instrument
10/24/2013	CADWELL,, ERIC M & BRIANNA L	KC DEVELOPMENT GROUP LLC	\$0	06-GRANTEE IS RELATED OR BUSINESS ASSOCIATES	2013-44756
07/02/2013	KIMBLE, HARRIS C	CADWELL,, ERIC M & BRIANNA L	\$1,800,000	35-MULTIPLE ACCOUNTS INVOLVED IN SALE	2013-28143

Structures

No Structures Found.

Land Characteristics

Land Description	Acres	Land Classification
RURAL TRACT	2.03	

Ownership

Name Type	Name	Ownership Type	Ownership Percentage
OWNER	KC DEVELOPMENT GROUP LLC,	OWNER	100.00%

Service Providers *Please contact districts to confirm.*

Category	Name	Phone	Address
COUNTY SERVICES	DESCHUTES COUNTY	(541) 388-6570	1300 NW WALL ST, BEND, OR 97701
POLICE SERVICES	DESCHUTES COUNTY SHERIFF'S OFFICE	(541) 693-6911	63333 HIGHWAY 20 WEST, BEND, OR 97701
FIRE DISTRICT	BEND RURAL FIRE	(541) 318-0459	1212 SW SIMPSON AVE, BEND, OR 97702
SCHOOL DISTRICT	BEND - LA PINE SCHOOL DISTRICT	(541) 355-1000	520 NW WALL ST, BEND, OR 97701
ELEMENTARY SCHOOL ATTENDANCE AREA	WILLIAM E. MILLER ELEMENTARY SCHOOL	(541) 355-2500	300 NW CROSBY DR, BEND, OR 97701
MIDDLE SCHOOL ATTENDANCE AREA	CASCADE MIDDLE SCHOOL	(541) 355-7000	19619 MOUNTAINEER WAY, BEND, OR 97702
HIGH SCHOOL ATTENDANCE AREA	SUMMIT HIGH SCHOOL	(541) 355-4000	2855 NW CLEARWATER DR, BEND, OR 97701
EDUCATION SERVICE TAX DISTRICT	HIGH DESERT EDUCATION SERVICE DISTRICT	(541) 693-5600	145 SE SALMON AVE, REDMOND, OR 97756
COLLEGE TAX DISTRICT	CENTRAL OREGON COMMUNITY COLLEGE	(541) 383-7700	2600 NW COLLEGE WAY, BEND, OR 97701
LIBRARY DISTRICT	DESCHUTES PUBLIC LIBRARY	(541) 617-7050	601 NW WALL ST, BEND, OR 97701
IRRIGATION DISTRICT	TUMALO IRRIGATION DISTRICT	(541) 382-3053	64697 COOK AVE, BEND, OR 97701
GARBAGE & RECYCLING SERVICE	BEND GARBAGE & RECYCLING	(541) 382 - 2263	20835 NE MONTANA WAY, BEND, OR 97709

Development Summary

Planning Jurisdiction:	Deschutes County	County Zone	RR10	Description	RURAL RESIDENTIAL - 10 ACRE MINIMUM
Urban Growth Boundary:	No	LM	WA	LANDSCAPE MANAGEMENT COMBINING ZONE	WILDLIFE AREA COMBINING ZONE
Urban Reserve Area:	No				

County Development Details

Legal Lot of Record:	Contact Community Development Department for information
Wetland (National or Local):	Not Within a Mapped Wetland
Conservation Easement:	No Conservation Easement Recorded
FEMA 100 Year Flood Plain:	Not Within 100 Year Flood Plain
TDC/PRC Restrictive Covenant:	No TDC/PRC Restrictive Covenant Found
Ground Snow Load:	25 #/sq. ft.

Deschutes County Permits

Permit ID	Permit Type	Applicant	Application Date	Status
247-14-003315-STR	Building	KC DEVELOPMENT GROUP LLC	06/17/2014	App Accepted/In Review
247-14-003315-ELEC-01	Electrical	KC DEVELOPMENT GROUP LLC	06/17/2014	App Submitted
LL1352	Land Use	HICKMAN, WILLIAMS & ASSOCIATES	11/26/2013	Finald
LL115	Land Use	HICKMAN WILLIAMS & ASSOCIATES; c/o PATRICK COLE	02/11/2011	Finald
LL116	Land Use	HICKMAN WILLIAMS & ASSOCIATES; c/o PATRICK COLE	02/11/2011	Finald

**REAL PROPERTY TAX STATEMENT
 JULY 1, 2013 TO JUNE 30, 2014
 DESCHUTES COUNTY, OREGON
 1300 NW WALL ST., SUITE 200
 BEND OR 97701**

ACCOUNT NO:
264153

PROPERTY DESCRIPTION

CODE: 1003
 MAP: 171113-00-00828
 CLASS: 400
 SITUS: 19210 KLIPPEL RD BEND

CADWELL,, ERIC M & BRIANNA L
 2226 SE WIND RIDER LN
 BEND, OR 97702

SCHOOL DISTRICT #1	40.16
HIGH DESERT ESD	0.81
C O C C	5.23
EDUCATION TOTAL:	46.20
DESCHUTES COUNTY	10.78
COUNTY LIBRARY	4.64
COUNTYWIDE LAW ENFORCEMENT	8.01
RURAL LAW ENFORCEMENT	11.80
COUNTY EXTENSION/4H	0.19
9-1-1	1.36
9-1-1 LOCAL OPTION 2013	1.69
RURAL FIRE DISTRICT #2	12.11
GENERAL GOVT TOTAL:	50.58
JAIL BOND	0.57
FAIRGROUNDS BOND	0.95
BEND LIBRARY	0.61
SCHOOL #1 BOND 1993	0.78
SCHOOL #1 BOND 1998	2.85
SCHOOL #1 BOND 2002	2.30
SCHOOL #1 BOND 2007	4.18
SCHOOL #1 BOND 2013	2.07
C O C C BOND	1.06
BONDS - OTHER TOTAL:	15.37

VALUES:	LAST YEAR	THIS YEAR
REAL MARKET (RMV)		
LAND	67,390	69,410
STRUCTURES	0	0
TOTAL RMV	67,390	69,410
MAXIMUM ASSESSED VALUE	8,190	8,430
TOTAL ASSESSED VALUE	8,190	8,430
EXEMPTIONS		
NET TAXABLE:	8,190	8,430
TOTAL PROPERTY TAX:	121.35	112.15

ASSESSMENT QUESTIONS (541) 388-6508
 TAX QUESTIONS (541) 388-6540

2013-14 TAX (Before Discount) 112.15

PAYMENT OPTIONS			
Date Due	3% Option	2% Option	Trimester Option
11/15/13	108.79	73.27	37.39
02/18/14			37.38
05/15/14		37.38	37.38
Total	108.79	110.65	112.15

TOTAL DUE (After Discount and Pre-payments) 108.79

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PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

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2013-2014 PROPERTY TAXES			DESCHUTES COUNTY REAL				ACCOUNT NO. 264153	
PAYMENT OPTIONS	Discount	Date Due	Amount	Date Due	Amount	Date Due	Amount	
Full Payment Enclosed	3%					11/15/13	108.79	
or 2/3 Payment Enclosed	2%	05/15/14	37.38			& 11/15/13	73.27	
or 1/3 Payment Enclosed	0%	05/15/14	37.38	& 02/18/14	37.38	& 11/15/13	37.39	

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE

Mailing address change on back

Enter Payment Amount
 \$

MAKE PAYMENT TO:

DESCHUTES COUNTY TAX COLLECTOR

3457 - 028808 - 11215
 CADWELL,, ERIC M & BRIANNA L
 2226 SE WIND RIDER LN
 BEND, OR 97702

09100002641530000003739000000732700000108792

Statement of Tax Account

DESCHUTES COUNTY TAX COLLECTOR
DESCHUTES SERVICES BUILDING
BEND OR 97701
(541) 388-6540

6/20/2014 7:01:44 AM

KC DEVELOPMENT GROUP LLC
63560 JOHNSON RD
BEND, OR 97701

Tax Account # 264153	Lender
Account Status Active	Loan #
Roll Type Real Property	Property ID 1003 171113-00-00828
Situs Address 19210 KLIPPEL RD, BEND 97701	Interest To Jun 20, 2014

Tax Summary

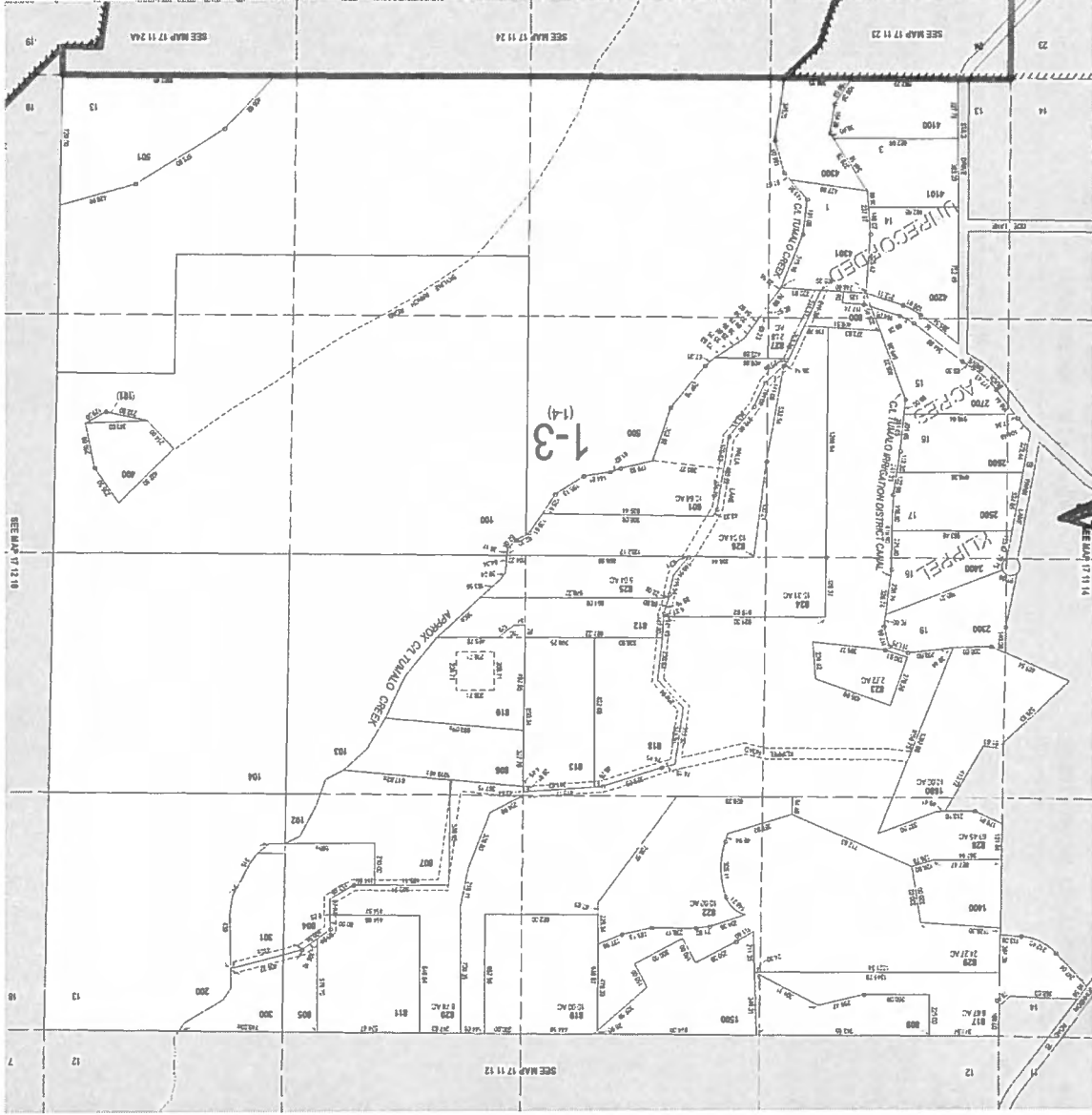
Tax Year	Tax Type	Total Due	Current Due	Interest Due	Discount Available	Original Due	Due Date
2013	ADVALOREM	0.00	0.00	0.00	0.00	112.15	Nov 15, 2013
2012	ADVALOREM	0.00	0.00	0.00	0.00	121.35	Nov 15, 2012
2011	ADVALOREM	0.00	0.00	0.00	0.00	118.68	Nov 15, 2011
2010	ADVALOREM	0.00	0.00	0.00	0.00	95.40	Nov 15, 2010
2009	ADVALOREM	0.00	0.00	0.00	0.00	91.59	Nov 15, 2009
Total		0.00	0.00	0.00	0.00		

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

2/16/2014

SECTION 13 T.17S. R.11E. W.M.
DESCHUTES COUNTY

1" = 400'



17 11 13

Cancelled Nos.
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1700 Bhu 2200
2500 Bhu 4000

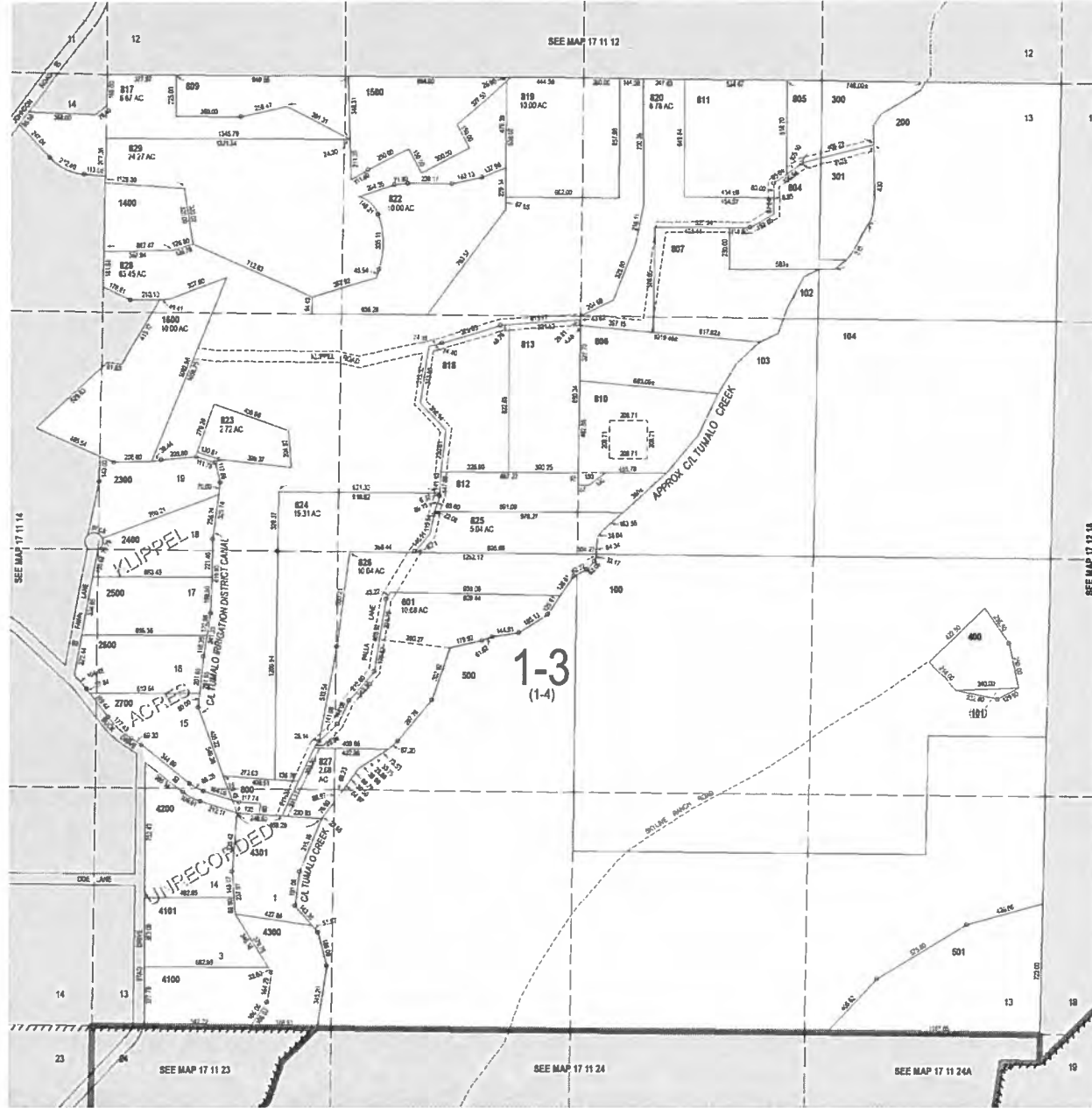
17 11 13

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

3/18/2014

SECTION 13 T.17S. R.11E. W.M.
DESCHUTES COUNTY
1" = 400'

17 11 13



DESCHUTES COUNTY ASSESSOR'S NAME LEDGER

6/20/2014 7:09:20 AM

Account ID 264153 **Township** 17 **Range** 11 **Section** 13 **1/4** 0 **1/16** 0 **Taxlot** 00828 **Special Interest**

Effective Date 18-Nov-2008 2:34 PM **Transaction ID** 2380780 **Entry Date** 13-Oct-2008 **Recorded Date** 09-Oct-2008 **Sale Price** \$0
Sale Date

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
2	2644290	2009	CLERK - BOR	WD	2008	41267	1			SEGREGATION - TO	1711130000822

SEG FOR MAPPING PURPOSES FROM TAX LOT 822
 CONSIDERED ONE PARCEL WITH TAX LOT 171114 11600

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	A	KIMBLE, HARRIS C	OWNER	OWNER	

Size Changes	Code	+ / - Size	Alternate Size	Code Area Deleted	Move to Acct	Move To Code
	1004	2.03 Acres	0			

Size Totals	Code	Acres	Sqft	Alternate Size
	1004	2.03		

Effective Date 27-Apr-2011 3:38 PM **Transaction ID** 3348114 **Entry Date** 27-Apr-2011 **Recorded Date** 27-Apr-2011 **Sale Date**

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
9	3727801	2009	ASSESSOR	CORR	2011	562	1			CODE CHANGE	

Size Totals	Code	Acres	Sqft	Alternate Size
	1004	2.03		

Effective Date 03-May-2011 8:19 AM **Transaction ID** 3348710 **Entry Date** 03-May-2011 **Recorded Date** 03-May-2011 **Sale Date**

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
9	3729002	2010	ASSESSOR	CORR	2011	735	1			CODE CHANGE	

Size Changes	Code	+ / - Size	Alternate Size	Code Area Deleted	Move to Acct	Move To Code
	1004	-2.03 Acres	0	DELETED		1003
	1003	2.03 Acres	0			

Size Totals	Code	Acres	Sqft	Alternate Size
	1003	2.03		

Account ID 264153 **Township** 17 **Range** 11 **Section** 13 **1/4** 0 **1/16** 0 **Taxlot** 00828 **Special Interest**

Sale Price \$1,800,000
Sale Date 02-Jul-2013

Effective Date 05-Aug-2013 12:01 PM **Transaction ID** 4567387 **Entry Date** 25-Jul-2013 **Recorded Date** 03-Jul-2013

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID #2	PID	Source ID	PT	Operation	To/From Map
2	5113365	2013	CLERK - BOR	WD	2013	28143	1		PT	NAME CHANGE	
VESTING: TBE											
			Name Changes	Status	Name				Name Type	Ownership Type	Ownership %
				D	KIMBLE, HARRIS C				OWNER	OWNER	
				A	CADWELL, ERIC M				OWNER	OWNER	100.0000
				A	CADWELL, BRIANNA L				OWNER	OWNER	100.0000
Size Totals		Code	Acres	Sqft	Alternate Size						
		1003	2.03								

Effective Date 20-Feb-2014 2:25 PM **Transaction ID** 4685626 **Entry Date** 30-Oct-2013 **Recorded Date** 28-Oct-2013 **Sale Date** 24-Oct-2013

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID #2	PID	Source ID	PT	Operation	To/From Map
2	5453322	2014	CLERK - BOR	WD	2013	44756	1			NAME CHANGE	
			Name Changes	Status	Name				Name Type	Ownership Type	Ownership %
				D	CADWELL, ERIC M				OWNER	OWNER	100.0000
				D	CADWELL, BRIANNA L				OWNER	OWNER	100.0000
				A	KC DEVELOPMENT GROUP LLC				OWNER	OWNER	100.0000
Size Totals		Code	Acres	Sqft	Alternate Size						
		1003	2.03								

Effective Date 26-Mar-2014 12:06 PM **Transaction ID** 4892567 **Entry Date** 24-Jan-2014 **Recorded Date** 10-Jan-2014 **Sale Price** \$0
Sale Date

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID #2	PID	Source ID	PT	Operation	To/From Map
2	5459379	2014	CLERK - BOR	DEED	2014	896	1			SIZE CHANGE	
LLA WITH TLS 823 & 829 (CONSIDERED ONE PARCEL WITH 171114 11401) DESCHUTES COUNTY LL-13-51 & 52 TAX LOT 828 IS CONSIDERED ONE PARCEL WITH TAX LOT 171114 11600											
Size Changes		Code	+ / - Size	Alternate Size	Code Area Deleted	Move to Acct	Move To Code				
		1003	57.82 Acres	0							
		1003	3.60 Acres	0							
Size Totals		Code	Acres	Sqft	Alternate Size						
		1003	63.45								

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
264153	17	11	13	0	0	00828	

Add: SEE LLA DEED 2014-896 (RESULTANT PARCEL LR 6)

[Dial Links:](#) [Dial Home](#) [Dial Help](#)[Deschutes County Links:](#) [Home](#) [Other Property Applications](#)[Other Online Applications](#)

Deschutes County Property Information

Warnings/Notations for account #264153

Account Information

Mailing Name: KC DEVELOPMENT GROUP LLC
Map and Taxlot: 1711130000828
Account: 264153
Situs Address: 19210 KLIPPEL RD, BEND, OR 97701
Tax Status: Assessable

Warnings/Notations

Review of digital records maintained by the Deschutes County Assessor's Office, Tax Office, Finance Office, and the Community Development Department indicates that there are no special tax, assessment or property development related notations associated with this account. However, independent verification of the presence of other Deschutes County tax, assessment, development, and additional property related considerations is recommended. Confirmation is commonly provided by title companies, real estate agents, developers, engineering and surveying firms, and other parties who are involved in property transactions or property development. In addition, County departments may be contacted directly to discuss the information.

THE INFORMATION AND MAPS ACCESSED THROUGH THIS WEB SITE PROVIDE A VISUAL DISPLAY FOR YOUR CONVENIENCE. EVERY REASONABLE EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE MAPS AND ASSOCIATED DATA. DESCHUTES COUNTY MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE CONTENT, SEQUENCE, ACCURACY, TIMELINESS OR COMPLETENESS OF ANY OF THE DATA PROVIDED HEREIN. DESCHUTES COUNTY EXPLICITLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DESCHUTES COUNTY SHALL ASSUME NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES IN THE INFORMATION PROVIDED REGARDLESS OF HOW CAUSED. DESCHUTES COUNTY ASSUMES NO LIABILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN BY THE USER OF THIS INFORMATION OR DATA FURNISHED HEREUNDER.

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Deschutes County Property Information

Service Providers for account # 264153

The information presented is intended to assist you in determining the likely providers of services. City information reflects current city boundaries. Other service district information is based on tax district boundaries effective July 1 of each year. Questions and confirmation regarding whether a property is provided service by an individual district should be directed to the service districts.

Account Information

Mailing Name: KC DEVELOPMENT GROUP LLC
Map and Taxlot: 1711130000828
Account: 264153
Situs Address: 19210 KLIPPEL RD, BEND, OR 97701
Tax Status: Assessable

Service Providers for this property

Service	Service Provider	Phone	Address	City/State	Zip
COUNTY SERVICES	DESCHUTES COUNTY	(541) 388-6570	1300 NW WALL ST	BEND, OR	97701
POLICE SERVICES	DESCHUTES COUNTY SHERIFF'S OFFICE	(541) 693-6911	63333 HIGHWAY 20 WEST	BEND, OR	97701
FIRE DISTRICT	BEND RURAL FIRE	(541) 318-0459	1212 SW SIMPSON AVE	BEND, OR	97702
SCHOOL DISTRICT	BEND - LA PINE SCHOOL DISTRICT	(541) 355-1000	520 NW WALL ST	BEND, OR	97701
ELEMENTARY SCHOOL ATTENDANCE AREA	WILLIAM E. MILLER ELEMENTARY SCHOOL	(541) 355-2500	300 NW CROSBY DR	BEND, OR	97701
MIDDLE SCHOOL ATTENDANCE AREA	CASCADE MIDDLE SCHOOL	(541) 355-7000	19619 MOUNTAINEER WAY	BEND, OR	97702
HIGH SCHOOL ATTENDANCE AREA	SUMMIT HIGH SCHOOL	(541) 355-4000	2855 NW CLEARWATER DR	BEND, OR	97701
EDUCATION SERVICE TAX DISTRICT	HIGH DESERT EDUCATION SERVICE DISTRICT	(541) 693-5600	145 SE SALMON AVE	REDMOND, OR	97756
COLLEGE TAX DISTRICT	CENTRAL OREGON COMMUNITY COLLEGE	(541) 383-7700	2600 NW COLLEGE WAY	BEND, OR	97701
LIBRARY DISTRICT	DESCHUTES PUBLIC LIBRARY	(541) 617-7050	601 NW WALL ST	BEND, OR	97701
IRRIGATION DISTRICT	TUMALO IRRIGATION DISTRICT	(541) 382-3053	64697 COOK AVE	BEND, OR	97701
GARBAGE & RECYCLING SERVICE	BEND GARBAGE & RECYCLING	(541) 382 - 2263	20835 NE MONTANA WAY	BEND, OR	97709

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Deschutes County Property Information

Development Summary for account #264153

The Deschutes County Community Development Department is responsible for land use and permits for properties in the County's jurisdiction. Contact this department if you need additional information or if you have questions.

Account Information

Mailing Name: KC DEVELOPMENT GROUP LLC
Map and Taxlot: 1711130000828
Account: 264153
Situs Address: 19210 KLIPPEL RD, BEND, OR 97701
Tax Status: Assessable

Property Details

Subdivision:
Lot: Block:
Acres: 63.45

Jurisdiction

Planning Jurisdiction: Deschutes County
Urban Growth Boundary: No
Urban Reserve Area: No

Zoning Designation

County Zone	Description	Link to County Code
RR10	RURAL RESIDENTIAL - 10 ACRE MINIMUM	View Document
LM	LANDSCAPE MANAGEMENT COMBINING ZONE	View Document
WA	WILDLIFE AREA COMBINING ZONE	View Document



County Development Details

Legal Lot of Record	Contact Community Development Department for information
Wetland (National or Local)	Not Within a Mapped Wetland
Conservation Easement	No Conservation Easement Recorded
FEMA 100 Year Flood Plain	Not Within 100 Year Flood Plain
TDC/PRC Restrictive Covenant	No TDC/PRC Restrictive Covenant Found
Ground Snow Load	25 #/sq. ft.

REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DESCHUTES COUNTY SHALL ASSUME NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES IN THE INFORMATION PROVIDED REGARDLESS OF HOW CAUSED. DESCHUTES COUNTY ASSUMES NO LIABILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN BY THE USER OF THIS INFORMATION OR DATA FURNISHED HEREUNDER.

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Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.010. Purposes.

18.60.020. Uses Permitted Outright.

18.60.030. Conditional Uses Permitted.

18.60.035. Destination Resorts.

18.60.040. Yard and Setback Requirements.

18.60.050. Stream Setback.

18.60.060. Dimensional Standards.

18.60.070. Limitations on Conditional Uses.

18.60.080. Rimrock Setback.

18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

18.60.010. Purposes.

The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards.

(Ord. 91-020 §1, 1995)

18.60.020. Uses Permitted Outright.

The following uses and their accessory uses are permitted outright.

- A. A single-family dwelling, or a manufactured home subject to DCC 18.116.070.
- B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.
- C. Community center, if shown and approved on the original plan or plat of the development.
- D. Agricultural use as defined in DCC Title 18.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- F. Class III road or street project.
- G. Noncommercial horse stables as defined in DCC Title 18, excluding horse events.
- H. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050. *fill or remove*
- J. Type 1 Home Occupation, subject to DCC 18.116.280.

(Ord. 2004-002 §7, 2004; Ord. 2001-039 §5, 2001; Ord. 2001-016 §2, 2001; Ord. 94-008 §12, 1994; Ord. 93-043 §8, 1993; Ord. 91-020 §1, 1991; Ord. 91-005 §§30 & 31, 1991)

18.60.030. Conditional Uses Permitted.

The following uses may be allowed subject to DCC 18.128:

- A. Public park, playground, recreation facility or community center owned and operated by a government agency or nonprofit community organization.
- B. Dude ranch.
- C. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
- D. Personal use landing strip for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal use landing strip as used in DCC 18.60.030 means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests. No aircraft may be based on a personal-use landing strip other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use landing strip lawfully existing as of September 1, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.
- E. Planned development.
- F. Cluster development.
- G. Recreation-oriented facility requiring large acreage such as off-road vehicle track or race track, but not including a rodeo grounds.
- H. Landfill when a written tentative approval by Department of Environmental Quality (DEQ) of the site is submitted with the application.
- I. Cemetery.
- J. Time-share unit or the creation thereof.
- K. Hydroelectric facility, subject to DCC 18.116.130 and 18.128.260.
- L. Bed and breakfast inn.
- M. Golf course.
- N. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and 18.128.270.
- O. Church.
- P. Public Uses.
- Q. Semipublic Uses.
- R. Commercial horse stables.
- S. Private or public school, including all buildings essential to the operation of such a school.
- T. Manufactured home park or recreational vehicle park on a parcel in use as a manufactured home park or recreational vehicle park prior to the adoption of PL-15 in 1979 and being operated as of June 12, 1996 as a manufactured home park or recreational vehicle park , including expansion, conversion and combination of such uses on the same parcel, as configured on June 12, 1996.
- U. The full or partial conversion from a manufactured home park or recreational vehicle park described in DCC 18.60.030 (T) to a manufactured home park or recreational vehicle park on the same parcel, as configured on June 12, 1996.
- V. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- W. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.

(Ord. 2009-018 § 2, 2009; Ord. 2004-002 §8, 2004; Ord. 2001-039 §5, 2001; Ord. 2001-016 §2, 2001; Ord. 97-063 §3, 1997; Ord. 97-017 §3, 1997; Ord. 96-038 §2, 1996; Ord. 96-021 §1, 1996; Ord. 94-008 §13, 1994; Ord. 93-043 §§8A and 8B, 1993; Ord. 92-004 §10, 1992; Ord. 91-038 §1,

1991; Ord. 91-020 §1, 1991; Ord. 91-005 §32, 1991; Ord. 90-014 §22, 1990; Ord. 86-018 §13, 1986; Ord. 83-033 §5, 1983)

18.60.035. Destination Resorts.

Destination resorts may be allowed as a conditional use, subject to all applicable standards of the DR Zone.

(Ord. 92-004 §11, 1992)

18.60.040. Yard and Setback Requirements.

In an RR-10 Zone, the following yard and setbacks shall be maintained.

- A. The front setback shall be a minimum of 20 feet from a property line fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way and 50 feet from an arterial right of way.
- B. There shall be a minimum side yard of 10 feet for all uses, except on the street side of a corner lot the side yard shall be 20 feet.
- C. The minimum rear yard shall be 20 feet.
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

(Ord. 95-075 §1, 1995; Ord. 94-008 §21, 1994; Ord. 91-020 §1, 1991; Ord. 83-037 §16, 1983)

18.60.050. Stream Setback.

To permit better light, air, vision, stream or pollution control, protect fish and wildlife areas and to preserve the natural scenic amenities and vistas along streams and lakes, the following setback shall apply:

- A. All sewage disposal installations, such as septic tanks or septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

(Ord. 91-020 §1, 1991)

18.60.060. Dimensional Standards.

In an RR-10 Zone, the following dimensional standards shall apply:

- A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.
- B. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- C. Minimum lot size shall be 10 acres, except planned and cluster developments shall be allowed an equivalent density of one unit per 7.5 acres. Planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five-acre minimum lot size

or equivalent density. For parcels separated by new arterial rights of way, an exemption shall be granted pursuant to DCC 18.120.020.

(Ord. 93-034 §1, 1993; Ord. 92-055 §6, 1992)

18.60.070. Limitations on Conditional Uses.

The following limitations shall apply to uses allowed by DCC 18.60.030:

- A. The Planning Director or Hearings Body may require establishment and maintenance of fire breaks, the use of fire resistant materials in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce fire hazards or prevent the spread of fire to surrounding areas.
- B. The Planning Director or Hearings Body may limit changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation in order to prevent or minimize erosion or pollution.

(Ord. 91-020 §1, 1991)

18.60.080. Rimrock Setback.

Setbacks from rimrock shall be as provided in DCC 18.116.160.

(Ord. 86-053 §13, 1986)

18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

- A. Uses Permitted Outright. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are allowed outright:
 - a. Agricultural use as defined in DCC Title 18.
 - b. Propagation or harvesting of a forest product.
 - c. Ground application of treated effluent.
- B. Uses Permitted Subject to Site Plan Review. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
 - a. Sewage Treatment Facility.
 - b. Treated Effluent Ponds.
- C. Uses Permitted Conditionally. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B), and their accessory uses are permitted conditionally subject to the applicable provisions of DCC 18.128, Conditional Uses.
- D. Definitions. For the purpose of this section, the use Sewage Treatment Facility includes any buildings or structures associated with the operations of a sewer treatment plant including, but not limited to, treatment station or pump station.
- E. Special Conditions. Pursuant to DCC Section 23.120.170, an application for site plan review to establish a sewage treatment facility must include a conservation easement and a plan of implementing the conservation easement that provides standards and implementation methods for managing the conservation easement, along with a recorded road maintenance agreement between Oregon Water Wonderland Unit 2 Sewer District and the Beaver Special Road District, with the site plan review application. The road maintenance agreement between the applicant and the Beaver Special Road District shall include Oregon Water Wonderland Unit 2 Sewer District's pro rata share for the maintenance cost of Foster Road through Section 25.

(Ord. 2010-016§1, 2010; Ord. 2003-012 §1, 2003)

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING ZONE - LM

- 18.84.010. Purpose.**
- 18.84.020. Application of Provisions.**
- 18.84.030. Uses Permitted Outright.**
- 18.84.040. Uses Permitted Conditionally.**
- 18.84.050. Use Limitations.**
- 18.84.060. Dimensional Standards.**
- 18.84.070. Application.**
- 18.84.080. Design Review Standards.**
- 18.84.085. Imposition of Conditions.**
- 18.84.090. Setbacks.**
- 18.84.095. Scenic Waterways.**
- 18.84.100. Repealed.**

18.84.010. Purpose.

The purposes of the Land Management Combining Zone are to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers or streams.

(Ord. 92-034 §2, 1992)

18.84.020. Application of Provisions.

The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.

(Ord. 92-034 §2, 1992)

18.84.030. Uses Permitted Outright.

Uses permitted in the underlying zone with which the LM Zone is combined shall be permitted in the LM Zone, subject to the provisions in DCC 18.84.

(Ord. 92-034 §2, 1992)

18.84.040. Uses Permitted Conditionally.

Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.

(Ord. 92-034 §2, 1992)

18.84.050. Use Limitations.

- A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to

construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.

- B. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.

(Ord. 2003-034 §1, 2003; Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991)

18.84.060. Dimensional Standards.

In an LM Zone, the minimum lot size shall be as established in the underlying zone with which the LM Zone is combined.

(Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991)

18.84.070. Application.

An application for site plan approval for development in the LM Zone shall be submitted to the Planning Division. The site plan application shall include the following:

- A. A plot plan, drawn to scale, showing:
 - 1. Location and dimensions of existing and proposed structures.
 - 2. Setbacks from lot lines (and river and rimrock, if present).
 - 3. Existing and proposed access.
 - 4. Existing and proposed exterior lighting.
- B. A drawing of the proposed structure elevations showing:
 - 1. Exterior appearance.
 - 2. Height, dimensions.
 - 3. Siding and roofing material and color.
 - 4. Location and size of windows, including skylights.
- C. A landscape plan drawn to scale, showing:
 - 1. Location, size and species of existing trees six inches in diameter or greater, or existing shrub vegetation higher than four feet, between the proposed development and the designated landscape management road, river or stream. Where a significant amount of vegetation exists, a landscape plan may be accepted which generalizes and explains how the existing trees and shrubs provide screening.
 - 2. Proposed location and species of introduced vegetation which will screen the proposed development from the designated landscape management road, river or stream.
- D. A minimum of two colored photographs taken from documented locations, orientated between the protected resource (river, stream or road) and the proposed development, showing the extent of existing vegetation or other screening.

(Ord. 2003-034 §1, 2003; Ord. 93-043 §12, 1993; Ord. 92-034 §2, 1992)

18.84.080. Design Review Standards.

The following standards will be used to evaluate the proposed site plan:

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.

- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.
- C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. This subsection shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.
- D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.84.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.
- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flagpoles or other projections from the roof of the structure. DCC 18.84.080 shall not apply to agricultural structures located at least 50 feet from a rimrock.
- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.
- G. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.
- H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged.
- I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.) are permitted.
- J. A conservation easement as defined in DCC 18.04.030 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Whychus Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.

(Ord. 97-068 §1, 1997; Ord. 93-043 §§12A and 12B 1993; Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991)

18.84.085. Imposition of Conditions.

The standards of DCC 18.84 may be met by the imposition of conditions drawn to ensure that the standards will be met.

(Ord. 92-034 §2, 1992)

18.84.090. Setbacks.

- A. Except as provided in DCC 18.84.090, minimum setbacks shall be those established in the underlying zone with which the LM Zone is combined.
- B. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road right-of-way unless the Planning Director or Hearings Body finds that:

1. A location closer to the designated road would more effectively screen the building from the road; or protect a distant vista; or
2. The depth of the lot makes a 100-foot setback not feasible; or
3. Buildings on both lots abutting the subject lot have front yard setbacks of less than 100 feet and the adjacent buildings are within 100 feet of the lot line of the subject property, and the depth of the front yard is not less than the average depth of the front yards of the abutting lots.

If the above findings are made, the Planning Director or Hearings Body may approve a less restrictive front yard setback which will be appropriate to carry out the purpose of the zone.

- C. River and Stream Setbacks. All new structures or additions to existing structures shall be set back 100 feet from the ordinary high water mark of designated streams and rivers or obtain a setback exception in accordance with DCC 18.120.030. For the purpose of DCC 18.84.090, decks are considered part of a structure and must conform with the setback requirement.

The placement of on-site sewage disposal systems shall be subject to joint review by the Planning Director or Hearings Body and the Deschutes County Environmental Health Division. The placement of such systems shall minimize the impact on the vegetation along the river and shall allow a dwelling to be constructed on the site as far from the stream or lake as possible. Sand filter systems may be required as replacement systems when this will allow a dwelling to be located further from the stream or to meet the 100-foot setback requirement.

- D. Rimrock Setback. New structures (including decks or additions to existing structures) shall be set back 50 feet from the rimrock in an LM Zone. An exception to this setback may be granted pursuant to the provisions of DCC 18.84.090(E).

- E. Rimrock Setback Exceptions. An exception to the 50-foot rimrock setback may be granted by the Planning Director or Hearings Body, subject to the following standards and criteria:

1. An exception shall be granted when the Planning Director or Hearings Body finds that:
 - a. A lesser setback will make the structure less visible or completely screened from the river or stream; or
 - b. The subject lot or parcel was a lot of record prior to the adoption of this ordinance; or
 - c. Dwellings (including decks) on both lots or parcels abutting the subject lot within 50 feet of the rimrock and the adjacent buildings are within 100 feet of the lot line of the subject property; or
 - d. Adherence to the 50-foot setback would prevent the structure from being sited on the lot.
2. A dwelling qualifying for a rimrock setback exception under the criteria set forth above shall be located as follows:
 - a. The structure shall be designed and sited to minimize the visual impact when viewed from the ordinary high water mark on the far side of the river. This shall be determined by viewing the property from the ordinary high water mark immediately across from the center of the river frontage on which the structure is proposed with like evaluations being made 300 feet upstream and downstream on either side of that point over the entire length of river frontage on which the structure is proposed.
 - b. Existing trees and shrubs which reduce the visibility of the proposed structure shall be retained.
 - c. The height of the structure shall not exceed the setback from the edge of the rimrock, except as described in the exception section (f), below.
 - d. No structure (including decks) shall be located closer than 20 feet from the edge of the rimrock unless the Planning Director or Hearings Body finds that the lesser setback will make the structure less visible or the structure is completely screened from the river or stream, except as described in the exception section (f), below.
 - e. Where multiple nonagricultural structures are proposed on a lot or parcel, the structures shall be grouped or clustered so as to maintain a general appearance of open landscape for the affected area. This shall require a maintenance of at least 65 percent open space along rimrocks within subject lots or parcels.
 - f. Exception: For vacant lots or parcels less than one-half acre, existing prior to the adoption of Ordinance 92-034,

with undulating rimrock, and where there are lawfully established residences within 100 feet of the lot line on the subject property on both of the abutting lots with rimrock setbacks less than the depth required in section (d) above, the residential structure setback shall meet the following criteria:

- 1) The setback shall be the average distance between the abutting houses as measured from the subject lot's front yard line to the furthest point of each abutting home facing the river or stream.
- 2) The height of the structure shall not exceed the height of the tallest abutting residence and in no case shall exceed 24 feet high, except for chimneys.
- 3) The highest ridgeline shall slope up and away from, and run parallel with, the river or stream
- 4) Dormers are prohibited on the riverside or streamside of the residence and allowed on the street-side of the residence with the height not exceeding the height of the ridgeline.
- 5) The setback for decks on the rimrock side of the dwelling shall be the average of the decks on the abutting lots or parcels as measured from the front yard line of the subject property and in no case shall extend and protrude over the rimrock.

(Ord. 2007-020 §5, 2007; Ord. 2005-002 §1, 2005; Ord. 2000-033 §3, 2000; Ord. 92-034 §2, 1992)

18.84.095. Scenic Waterways.

Approval of all structures in a State Scenic Waterway shall be conditional upon receipt of approval of the Oregon Department of Parks and Recreation.

(Ord. 2000-033 §4, 2000)

18.84.100. (Repealed by Ord. 98-066, 1998)

DOUTHIT Susan M

From: Fran DeRock <Fran@tumalo.org>
Sent: Thursday, June 12, 2014 3:15 PM
To: DOUTHIT Susan M
Cc: GIFFIN Jeremy T; Ken Rieck
Subject: Request for land use info
Attachments: 2014_06_12_15_06_22.pdf

Hi Susan,

I took the land use info sheet to the county planning dept. They receipted me for it, printed the permit sign off sheet and told me they would call me when the sign off is ready.....tomorrow or next week. They do not mail to Water Resources.

Attached is the receipt and planning application.

Fran

Fran DeRock
Office Manager
Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701
541-382-3053

T-11833
SN

DOUTHIT Susan M

From: GIFFIN Jeremy T
Sent: Thursday, June 12, 2014 2:41 PM
To: DOUTHIT Susan M
Subject: RE: OWRD: WR Transfer T 11833 (District Temporary Transfer) has been submitted for your District or Region. [WMR]

Sounds good I will let them know right away. The larger pond will be ready to take water in about two weeks.

Jeremy

From: DOUTHIT Susan M
Sent: Thursday, June 12, 2014 2:38 PM
To: GIFFIN Jeremy T
Subject: RE: OWRD: WR Transfer T 11833 (District Temporary Transfer) has been submitted for your District or Region. [WMR]

Hey-
Took a peek at this and think we may want to give folks a heads up about the staff plate PRIOR to me looking at the application. If they are indeed going to fill before an order is issued and you want a device on PRIOR to use, we'd better give them a heads up. Make sense?
~S

From: GIFFIN Jeremy T
Sent: Thursday, June 12, 2014 10:39 AM
To: HOLMES Codi N
Cc: DOUTHIT Susan M
Subject: FW: OWRD: WR Transfer T 11833 (District Temporary Transfer) has been submitted for your District or Region. [WMR]
Importance: High

Attached is the wm review for T-11833. I reviewed this transfer application and review with Kyle and since TID already measures the inflow and outflow out of Upper Tumalo Reservoir and the flow is measured by TID into the proposed facility in addition to the new requirement of staff plates we are fully confident that we can regulate against any enlargement or waste issues.

Jeremy

From: automated_email@wrd.state.or.us [mailto:automated_email@wrd.state.or.us]
Sent: Wednesday, June 11, 2014 6:00 PM
To: watermaster_district_11
Subject: OWRD: WR Transfer T 11833 (District Temporary Transfer) has been submitted for your District or Region. [WMR]
Importance: High

Water Master Review request for proposed water right transfer T 11833

Oregon Water Resources Department - Automated e-mail notice

Transfer Type: District Temporary Transfer
Notice Number: 1

Transfer Actions:

- POU - Place of Use change

Diversion Location:

County	Deschutes
TRSQQ	17.00S 11.00E 23 SENE
Source	TUMALO CR/UPPR TUM RIVER
Tributary To	DESCHUTES RIVER

To view the OWRD Web page for T 11833 please click the following link:

http://apps.wrd.state.or.us/apps/wr/wrinfo/wr_transfer_centric.aspx?transfer_nbr=11833&transfer_char=T

To view the Pending Reviews for your district or region and obtain Review Forms, click the following link.

http://apps.wrd.state.or.us/apps/wr/external_review/wmr_review.aspx?directory_id=122809

In the case of Instream Leases or Allocations of Conserved Water, please direct all reviews and questions about this request to Lanaya Blakely at 503 986-0898 or Lanaya.F.Blakely@wr.state.or.us. All other transfer reviews and questions about this request should be directed to Codi Holmes at 503 986-0883 or Codi.N.Holmes@wr.state.or.us T 11833

**This message has been generated automatically by an unmonitored email account.
Please do not "reply" to this message. Thank you.**

DOUTHIT Susan M

From: GIFFIN Jeremy T
Sent: Wednesday, June 11, 2014 2:51 PM
To: DOUTHIT Susan M; dwight.w.french@state.or.us
Cc: Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Subject: RE: Tumalo's res

Possibly, but it will be obvious per the CWRE map where the full level is due to docks and things. I think because of the tenacious nature of the opposition it may be a good idea to cover our bases.

Jeremy

From: DOUTHIT Susan M
Sent: Wednesday, June 11, 2014 2:47 PM
To: GIFFIN Jeremy T; dwight.w.french@state.or.us
Cc: Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Subject: RE: Tumalo's res

What about a plate at the new res or is that unnecessary? Could it address any concerns that they're storing more than 108 at the new facility?

~S

From: GIFFIN Jeremy T
Sent: Wednesday, June 11, 2014 2:41 PM
To: DOUTHIT Susan M; dwight.w.french@state.or.us
Cc: Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Subject: RE: Tumalo's res

Yes, I attended and was asked to explain the process at the board meeting yesterday (about 50 attendees at the meeting spoke about the transfer with about 90% in support of it) and I was petitioned this afternoon. The liner will be completed within the next two weeks and filled immediately thereafter as the storage right is a 1961 priority right out of Tumalo Creek and will likely not be met after late July. I did meet with TID today and let them know I will need a staff plate installed in upper Tumalo reservoir to ensure there is not enlargement to the right being transferred.

Jeremy

From: DOUTHIT Susan M
Sent: Wednesday, June 11, 2014 9:15 AM
To: dwight.w.french@state.or.us
Cc: GIFFIN Jeremy T; Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Subject: Tumalo's res

I understand that Tumalo's board approved the temporary transfer of the place of use for a portion of their storage right yesterday and dropped the application off w/Fed Ex yesterday.

~S

Susan Douthit
District Analyst
OR Water Resources
503-986-0858



DOUTHIT Susan M

From: GIFFIN Jeremy T
Sent: Monday, June 02, 2014 7:56 AM
To: DOUTHIT Susan M; FRENCH Dwight W; Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Subject: RE: transfer filed?

We are waiting for final board approval, should happen at next Tuesdays meeting then the application shortly thereafter.

J

From: DOUTHIT Susan M
Sent: Thursday, May 29, 2014 5:15 PM
To: FRENCH Dwight W; Kelly Starnes (patrick.k.starnes@state.or.us) (patrick.k.starnes@state.or.us)
Cc: GIFFIN Jeremy T
Subject: RE: transfer filed?

Funny you should mention this.

I believe this transfer will come in via the district program and be for a change in place of use only. I also believe it will be a temporary transfer "valid" for only a single year.

I suspect we'll see it arrival ~June 11.

~S

From: FRENCH Dwight W [<mailto:dwight.w.french@state.or.us>]
Sent: Thursday, May 29, 2014 3:53 PM
To: Kelly Starnes (bikeklein@yahoo.com); DOUTHIT Susan M
Subject: transfer filed?

Have we received a transfer to change the place of use on a reservoir location involving Tumalo I.D.? I heard one is coming. This smells like trouble and I want to know when it comes in. Then we'll need a meeting if it does come in.

Thanks,

Dwight

Dwight French

Water Right Services Division Administrator

Oregon Water Resources Department

dwight.w.french@state.or.us

503-986-0819

STATE OF OREGON

COUNTY OF DESCHUTES

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

TUMALO IRRIGATION DISTRICT
64697 COOK AVE
BEND, OREGON 97701

confirms the right to store the waters of TUMALO CREEK, a tributary of DESCHUTES RIVER, in UPPER TUMALO RESERVOIR, appropriated under Permit 27840, for MULTIPLE PURPOSES USES.

The right to store these waters was perfected under Reservoir Permit R-2743. The date of priority is DECEMBER 8, 1961. The amount of water entitled to be stored each year under this right is not more than 1100 ACRE-FEET.

The point of diversion for the off-channel reservoir is located:

TUMALO CREEK - SE 1/4 NE 1/4, SECTION 23, TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M.; 2080 FEET SOUTH AND 1310 FEET WEST FROM THE NE CORNER OF SECTION 23.

The reservoir is located as follows:

SE 1/4 SE 1/4
SECTION 32

S 1/2 SW 1/4
SECTION 33
TOWNSHIP 16 SOUTH, RANGE 11 EAST, W.M.

NE 1/4 NW 1/4
W 1/2 NW 1/4
SECTION 4

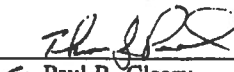
NE 1/4
SECTION 5
TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M.

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use described.

This certificate is issued to confirm a change in USE approved by an order of the Water Resources Director entered OCTOBER 11, 2000, and supersedes Certificate 75924, State Record of Water Right Certificates.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

WITNESS the signature of the Water Resources Director, affixed DECEMBER 15, 2000.



Paul R. Cleary

Recorded in State Record of Water Right Certificates numbered 76684.

T-8557



Planning
Building Application
 Permit Sign-Off - Other Agency
 New

DESCHUTES COUNTY
 117 NW Lafayette Avenue
 PO Box 6005
 Bend, OR 97708
 541-388-6575
 FAX: 541-385-1764

www.deschutes.org/cdd

247-14-000157-PS

cdd-webmaster@deschutes.org

***** PERMIT HAS NOT BEEN ISSUED *****

TYPE OF WORK

Type of Work:

Category of Construction:

Description of Work: TUMALO IRRIGATION DISTRICT WATER TRANSFER LUCS TO KC DEVELOPMENT PONDS

JOB SITE INFORMATION

Property Address:

19210 Klippel Rd, Bend, OR 97701
 63305 Palla Ln, Bend, OR 97701

Parcel:

1711130000828 - Primary
 1711130000824

Owner:

KC DEVELOPMENT GROUP

Address:

LLC
 63560 JOHNSON RD
 BEND OR 97701

LICENSED PROFESSIONAL INFORMATION

Business Name

License

Address

Phone

REQUIRED INSPECTIONS

The list of inspections below represents the inspections required for this project at the time of permit printing. Additional inspections may be required through the life of the project. You will receive notification of any additional inspection requirements for project completion. All required inspections must be completed and approved.

Schedule Inspections online at www.buildingpermits.oregon.gov or by calling: 1-888-299-2821

When calling for an inspection, use **IVR Number:**

PERMIT FEES

<u>Fee Description</u>	<u>Quantity</u>	<u>Amount</u>
New	1.00	\$55.00
Total Fees:		\$55.00

This application will expire if application acceptance cannot be achieved within 180 days.

All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

All persons or entities performing work under this application are required to be licensed unless exempted by ORS 701.010.

Receipt for Request for Land Use Information

Applicant name: Tumalo Irrigation District

City or County: Deschutes County Staff contact: Cynthia Smidt

Signature: Cynthia Smidt Phone: 541-388-6575 Date: 6/12/14

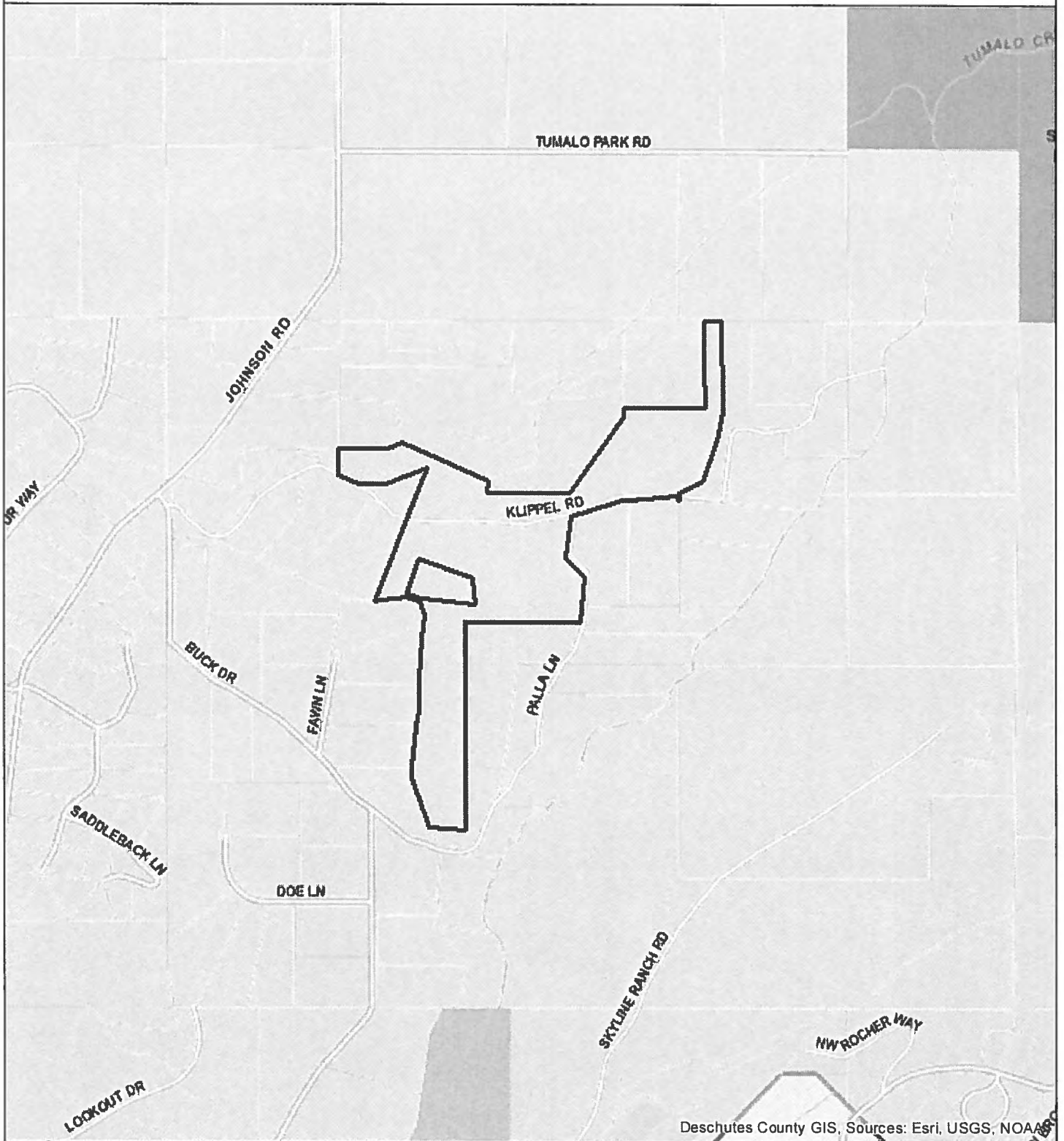
Revised 2/8/2010

Land Use Information Form - Page 3 of 3

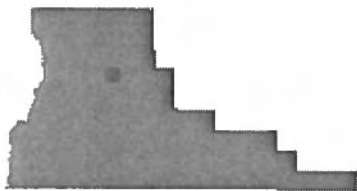
WR / FS

Deschutes County Property Information - Dial

Overview Map



Map and Taxlot: 1711130000828

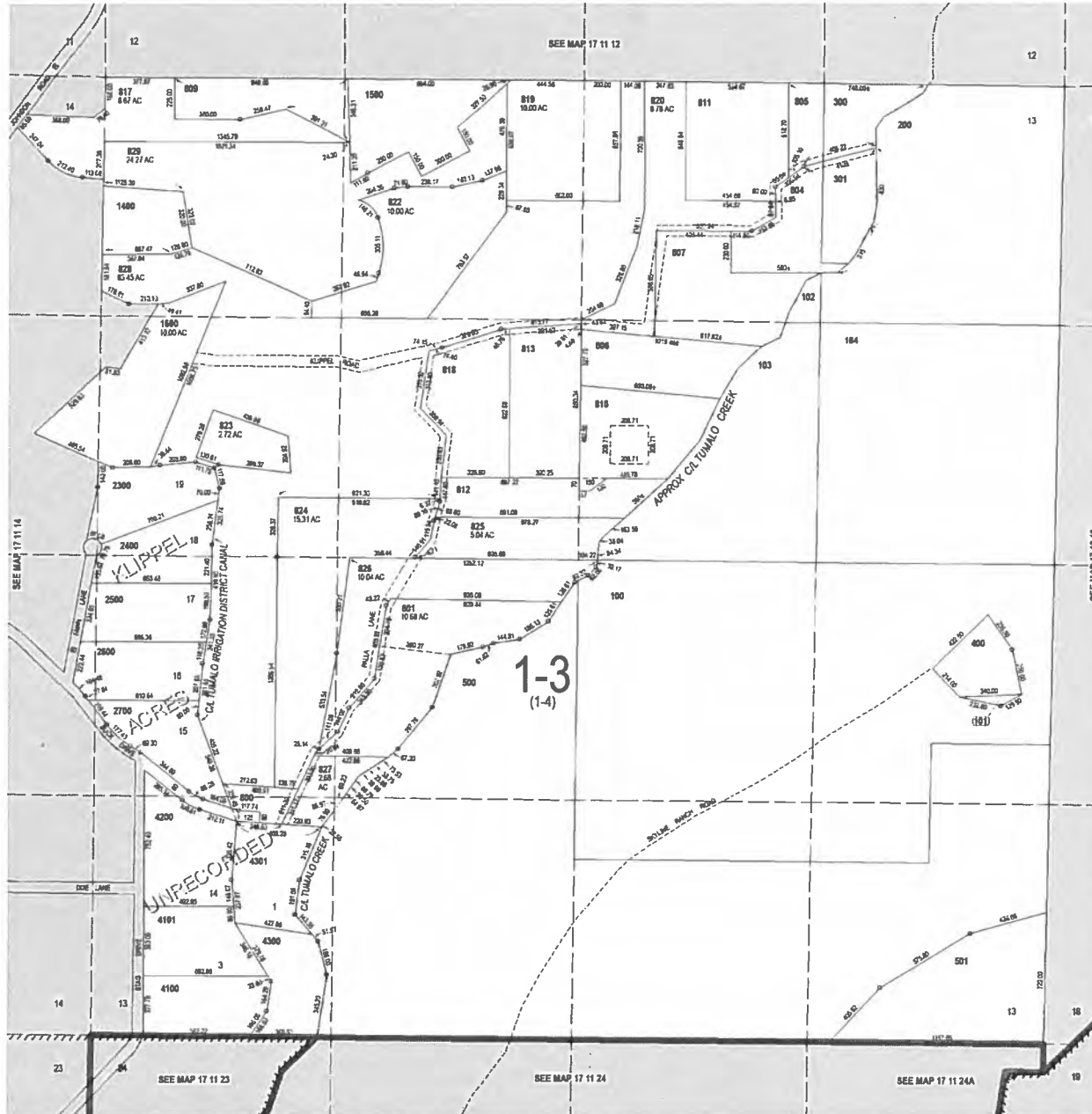


THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

3/18/2014

SECTION 13 T.17S. R.11E. W.M.
DESCHUTES COUNTY
1" = 400'

17 11 13



- Cancelled Nos.
99
200R1
300R1
301R1
500R1
501R1
800
800R1
801R1
700 thru 707
700R1
701R1
703R1 thru 706R1
801
802
803
808
814
815
816
821
800
1000
1100
1200
1300 thru 1305
1300R1 thru 1305R1
1401
1801
1802
1700 thru 2200
2800 thru 4000

17 11 13

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.

NOTE TO LOCAL GOVERNMENTS

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.

RECEIVED BY OWRD

AUG 18 2014

SALEM, OR

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:
<u>17</u>	<u>11</u>	<u>13</u>	—	<u>171113000828</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	<u>storage</u>
<u>17</u>	<u>11</u>	<u>13</u>	—	<u>171113000824</u>	<u>RR-10</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	<u>storage</u>
—	—	—	—	—	—	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	—
—	—	—	—	—	—	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	—

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 - ~~Storage~~
 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: _____ cubic feet per second
 gallons per minute
 acre-feet

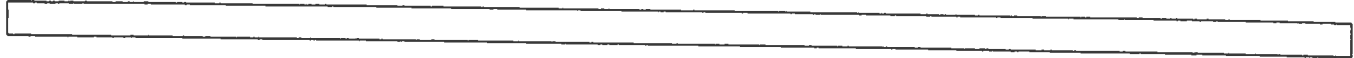
Intended use of water: Irrigation
 Commercial
 Industrial
 Domestic for _____ household(s)
 Municipal
 Quasi-Municipal
 Instream
 Other Storage

Briefly describe:

This is an intra-district transfer in place of use of 108 a.f. of Tumalo Creek water. TID to TID (Storage water). The transfer of this storage water is necessary for the operations and maintenance of our irrigation system, and allowed as an outright use in the RR-10 zone. The current site was built in the 1920's and no longer serves TID's needs. The new site is a significant upgrade that will enable TID to reduce dependence on Tumalo Creek for natural flow, provide emergency water supplies for the District and Emergency Services responders, and provide increased efficiency in the operations and maintenance of the TID system overall.

Affected tax lots are 171113000828 and 171113000824. See attached for TID Boundary map.

RECEIVED BY 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 3. →

RECEIVED BY OWRD

AUG 18 2014

SALEM, OR

AUG 18 2014

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): See attached decision.

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:	
		<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
		<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
		<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.

Name: Nick Lelack Title: Community Development Director

Signature: [Signature] Phone: 541-385-1708 Date: August 12, 2014

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: _____



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

NOTICE OF DECISION

FILE NUMBER: 247-14-000238-PS

APPLICANT: Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701

OWNER: KC Development Group, LLC
63560 Johnson Road
Bend, OR 97701

REQUEST: Land Use Compatibility Statement Permit Sign-Off (PS) to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to Klippel Acres Mining Pit.

STAFF CONTACT: Nick Lelack, Community Development Director

I. APPLICABLE CRITERIA:

Title 22 of the Deschutes County Code, Development Procedures Ordinance
Chapter 22.16 Development Action Procedures

Title 18 of the Deschutes County Code, the County Zoning Ordinance:
Chapter 18.60, Rural Residential Zone District
Chapter 18.88, Wildlife Area Combining Zone
Chapter 18.120, Exceptions

II. BASIC FINDINGS:

- A. LOCATION:** The subject property is located at 63560 Johnson Road, Bend; and is further identified on County Assessor's Map 17-11-13 as Tax Lots 828 and 824.
- B. ZONING:** The subject property is zoned Rural Residential and is within the Wildlife Area Combining Zone.
- C. PROPOSAL:** Tumalo Irrigation District (TID) proposes to move its Regulation Pond storage from its current in-district storage at Tumalo Reservoir to Klippel Acres Mining

Pit. The new site will be upstream and located in a line storage facility to prevent leakage and make water available to its entire distribution network.

- D. **REVIEW PERIOD:** File 247-14-000238-PS was submitted on August 4, 2014, and deemed complete by the Planning Division on August 6, 2014.

III. **CONCLUSIONARY FINDINGS:**

Title 22 of the Deschutes County Code, Development Procedures Ordinance

CHAPTER 22.16 DEVELOPMENT ACTION PROCEDURES

22.16.010, REVIEW OF DEVELOPMENT ACTION APPLICATIONS

- B. The Planning Director has the discretion to determine that for the purposes of DCC Title 22 a development action application should be treated as if it were a land use action application.

FINDING: For the purposes of Title 22, TID's application for Land Use Compatibility Statement Permit Sign-Off shall be treated as if it were a land use application.

Title 18 of the Deschutes County Code, County Zoning

CHAPTER 18.60 RURAL RESIDENTIAL ZONE DISTRICT

18.60.020, USES PERMITTED OUTRIGHT

- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

FINDING: According to information provided by Tumalo Irrigation District, TID "has decided to move its Regulation Pond storage to [the Klippel Mining Pit] a site upstream from our current in-district storage at the Tumalo Reservoir." TID states that the existing Reservoir "was designed and built in the 1920's and does not adequately serve TID's needs", and that the new site "will be a significant upgrade to operations and maintenance." The Planning Director finds that transferring in-district storage from the Tumalo Reservoir upstream to the Klippel Acres Mining Pit in order to improve the operations of TID's existing irrigation system is a use permitted outright in this zone.

CHAPTER 18.88 WILDLIFE AREA COMBINING ZONE

18.84.030 USES PERMITTED OUTRIGHT

In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

FINDING: The same outright permitted uses are allowed in the Rural Residential Zone District and the WA Combining Zone. Therefore, the "operation, maintenance, and piping of existing

irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050" is an outright permitted use.

CHAPTER 18.120. EXCEPTIONS

18.120.050, FILL AND REMOVAL EXCEPTIONS

- C. **Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.**

FINDING: This application does not propose to pipe existing canals and ditches within wetlands. This criterion is not applicable.

IV. DECISION:

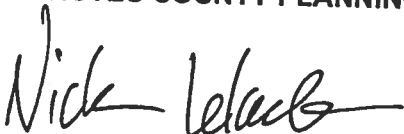
APPROVAL of the Land Use Compatibility Statement Permit Sign-Off (PS) to transfer in place 108 acre feet of Tumalo Creek water from Tumalo Reservoir to Klippel Acres Mining Pit.

V. DURATION OF APPROVAL:

The applicant shall initiate the proposed use within two (2) years of the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a person or entity entitled to appeal a land use decision under Title 22 of the Deschutes County Code.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Nick Leback, Community Development Director

Dated this 13th day of August, 2014

Mailed this 13th day of August, 2014



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-11833

Review Due Date: 7/11/14

Applicant Name: Tumalo Irrigation District

Proposed Changes: POU POD POA USE OTHER

Reviewer(s): Giffin

Date of Review: Jun. 12, 2014

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: We do split the instream water right requirements with TIDs diversion rights since many of these rights share the same priority date.
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: But only for the remaining 992 af of storage left in Upper Tumalo Reservoir.

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: A staff plate needs to be installed in both the new reservoirs and the existing upper tumalo reservoir to ensure that no more than 108 AF is stored in the two new reservoirs combined. In addition a staff plate in upper tumalo reservoir will ensure that the new level of 992 af is not exceeded.
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-11833

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 loop

City/State/Zip: Bend Oregon 97702

Phone: 541-306-4808

Email: Jeremy.T.GIFFIN@wrд.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



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

Application for District
Temporary Water Right
Transfer

Please type or print legibly in dark ink. If your application is incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "N/A" to indicate "Not Applicable." As you complete this form, please refer to notes and guidance included on the application. A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

Application for the 2014 irrigation season.
year

1. APPLICANT INFORMATION

RECEIVED
JUN 11 2014
OWRD

District: Tumalo Irrigation District

Address: 64697 Cook Avenue

City: Bend

State: OR

Zip: 97701

Phone: 541-382-3053

Fax: n/a

E-Mail address: fran@tumalo.org

2. PROPOSED CHANGE(S) TO WATER RIGHT(S)

- List all water rights to be affected by this transfer. Indicate the certificate, permit, decree or other identifying number(s) in the table below: If a certificate has been issued and reflects the current status of the water right, you need only list the certificate number. (Attach additional pages as necessary.)

Table with 4 columns: Application / Decree, Permit / Previous Transfer, Certificate. Row 1: Application / Decree: - / ; Permit / Previous Transfer: - / - ; Certificate: 76684. Rows 2-6 are empty.

- Check all proposed change(s) included in this transfer application:
[x] Place of Use [] Point of Diversion or Point of Appropriation
[] Surface Water source to Ground Water source
[] Character or Type of Use

3. CONSULTATION WITH STATE AGENCIES, LOCAL GOVERNMENTS, AND TRIBAL GOVERNMENTS

Is this transfer application for a change in point of diversion in response to an emergency?

Yes No

Has the district conferred with the Oregon Department of Fish and Wildlife, Division of State Lands, and affected local governments (e.g., county, city, municipal corporation), and tribal governments about the proposed point of diversion change? Yes No

If "Yes", for any of the above, list the agency or government name and the name and phone number of the appropriate contact person:

Agency/ Gov't Name: _____	Contact Name: _____	Phone: _____
Agency/ Gov't Name: _____	Contact Name: _____	Phone: _____
Agency/ Gov't Name: _____	Contact Name: _____	Phone: _____
Agency/ Gov't Name: _____	Contact Name: _____	Phone: _____
Agency/ Gov't Name: _____	Contact Name: _____	Phone: _____

4. CONSENT FOR A CHANGE IN TYPE OF USE OF A WATER RIGHT TO STORE WATER

Is this transfer application for a change in type of use of a water right to store water?

Yes No

Has the district received written consent to the change from the operator of the reservoir if different than the district, or from the appropriate federal agency if the water right to store water is issued in the name of a federal governmental agency? Yes No

If "Yes", for any of the above, label and attach a dated and signed copy of the written consent.

RECEIVED
JUN 11 2014
OWRD

RECEIVED
JUN 11 2014
OWRD

5. ATTACHMENTS

Check each of the following attachments included with this application. The application will be returned if all required attachments are not included.

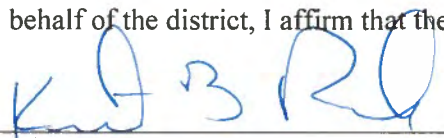
<p>Supplemental Form A –</p> <p>Description of Proposed Change(s) to a Water Right</p> <p><input checked="" type="checkbox"/> A separate Supplemental Form A is enclosed for each water right to be affected by this transfer.</p> <p>Map</p> <p><input checked="" type="checkbox"/> Temporary Transfer A map meeting the requirements of OAR 690-385-3300 must be included but need not be prepared by a Certified Water Right Examiner.</p> <p>Consent to Transfer</p> <p><input type="checkbox"/> A copy of the written consent, if applicable, for a change in type of use of a water right to store water.</p>	<p>Supplemental Water Right Statement</p> <p><input type="checkbox"/> A written statement, if applicable, identifying supplemental water rights that will not be transferred, but remain unexercised at the authorized place of use during the irrigation season.</p> <p>Water Well Reports/Well Logs:</p> <p><input type="checkbox"/> The application is for a change from surface water to ground water and copies of all water well reports are attached.</p> <p><input type="checkbox"/> Water well reports are not available and attached is a description of construction details including well depth, static water level, and information necessary to establish the ground water body developed or proposed to be developed.</p> <p><input checked="" type="checkbox"/> The application is for a surface water transfer and water well reports are not required.</p> <p>Fees:</p> <p><input checked="" type="checkbox"/> Amount enclosed: \$875.00 See the Department's Fee Schedule at www.wrd.state.or.us or call (503) 986-0900.</p>
--	---

6. SIGNATURES

The district certifies the following:

- (1) The water right(s) proposed for transfer is a water right(s) subject to transfer and has not been forfeited for nonuse under ORS 540.610;
- (2) Each user affected by the proposed transfer has provided written authorization for the transfer and such authorization is on file with the district; and
- (3) The district has notified each affected user that the Department may condition or reject the transfer at any time to the extent necessary to avoid injury to an existing water right, and that the use of water on lands from which the water right is transferred (authorized place of use) and at the proposed place of use during the same irrigation season or calendar year may subject both the user and district to civil penalties.

On behalf of the district, I affirm that the information contained in this application is true and accurate.



 District Manager signature

Kenneth B. Rieck
 name (print)

6-10-2014
 date

OR

 Authorized District Representative signature

 name (print)

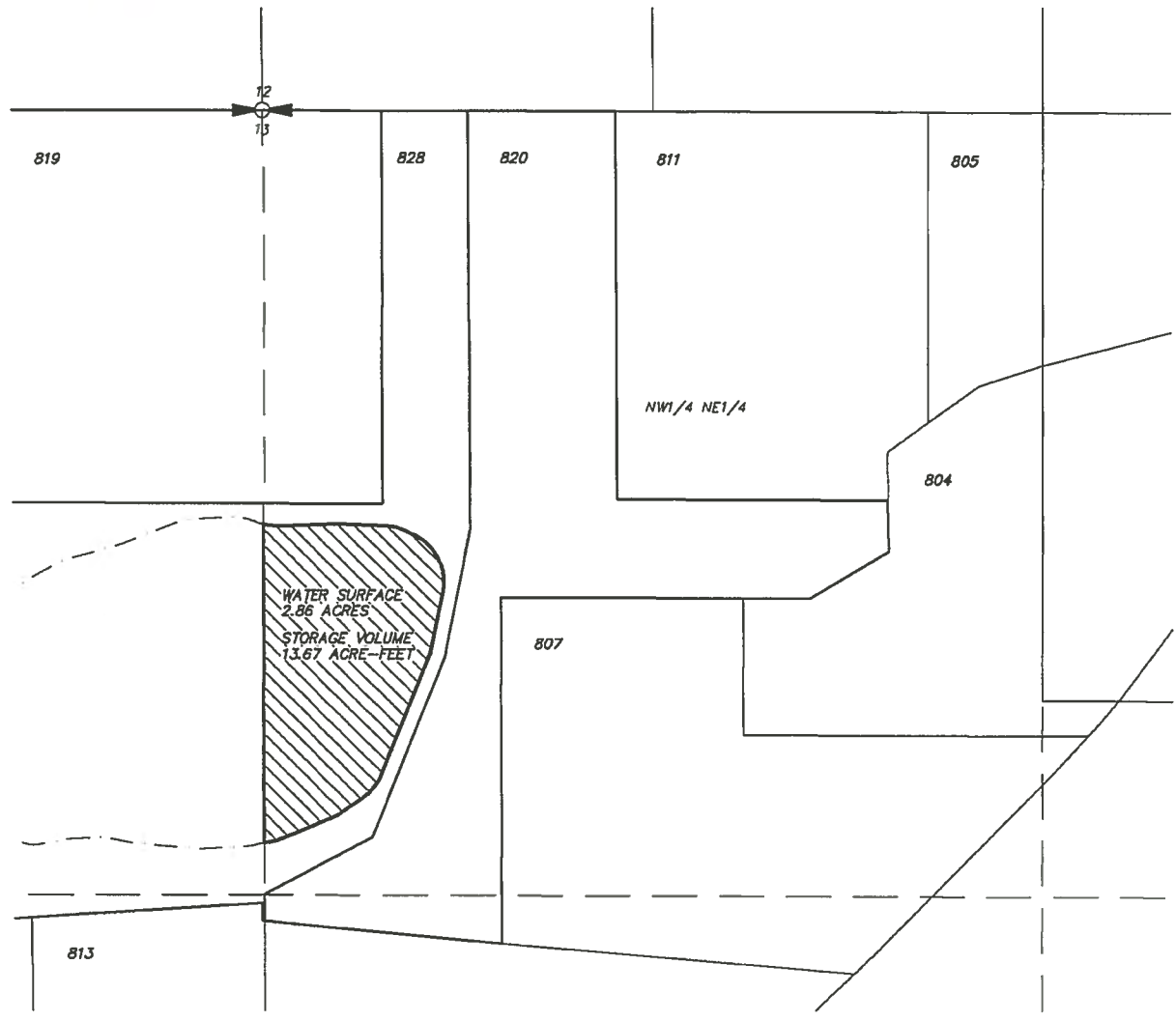
 date

<p><u>Before submitting your application to the Department, be sure you have:</u></p> <ul style="list-style-type: none"> • Answered each question completely. • Included all the required attachments. • Included a check payable to the Oregon Water Resources Department for the appropriate amount.
--

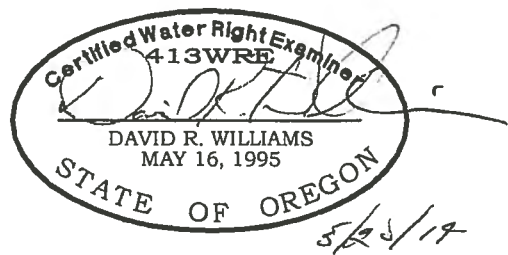
TT14.010

RECEIVED
JUN 11 2014
OWRD

DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.
NW 1/4 OF THE NE 1/4
SCALE: 1"=300'



STORAGE MAP



TAX LOT NO. 828: 13.67 ACRE-FEET



HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

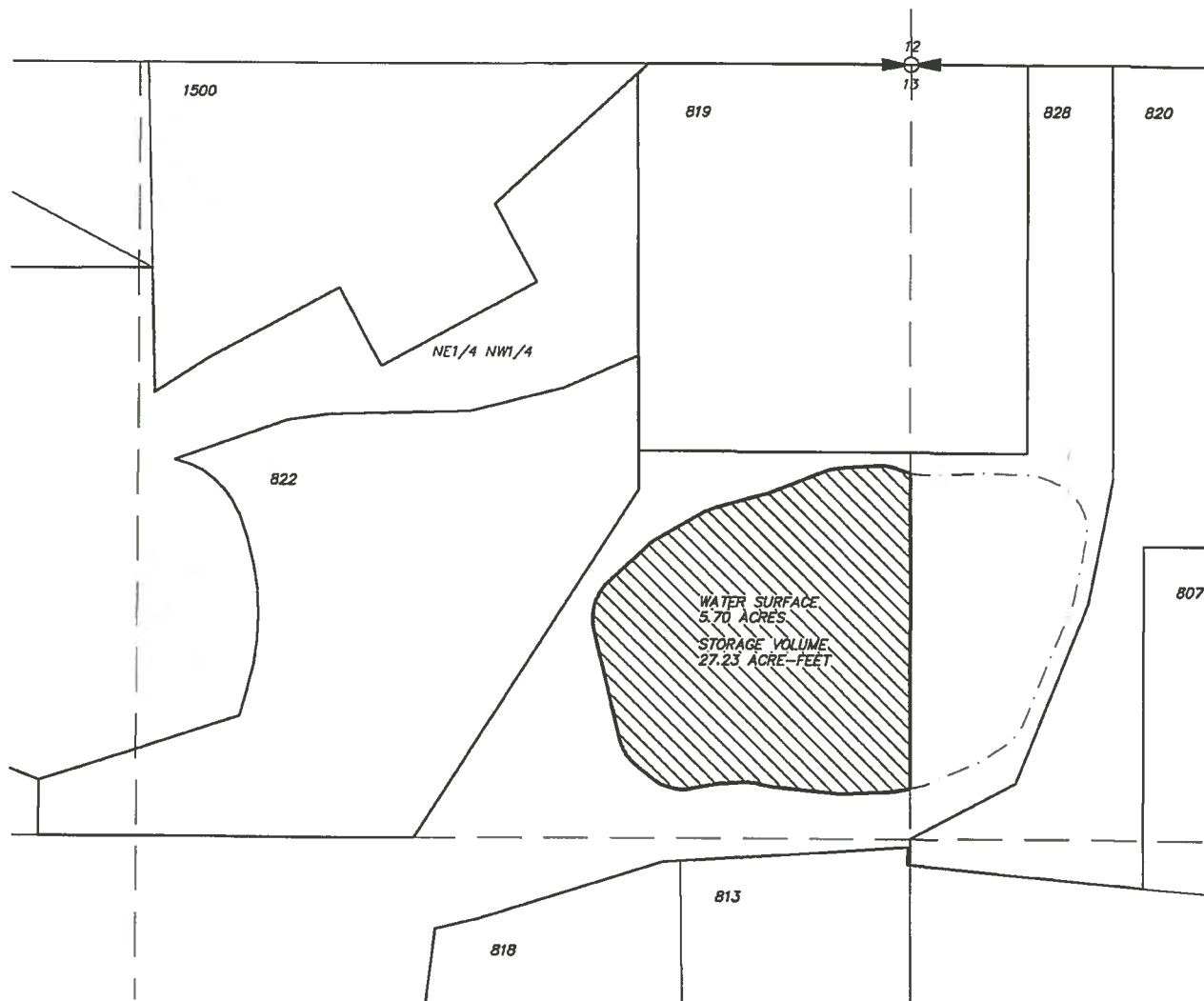
DATE: 5/20/2014

041125-WATER RIGHTS-OLDTAXLOTS.DWG

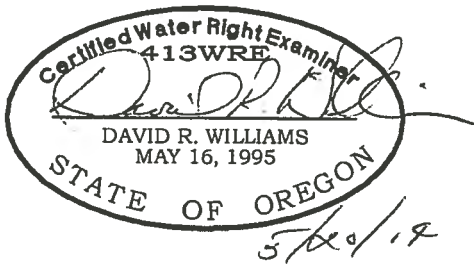
TT14.010

RECEIVED
JUN 11 2014
OWRD

DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.
NE 1/4 OF THE NW 1/4
SCALE: 1"=300'



STORAGE MAP



TAX LOT NO. 828: 27.23 ACRE-FEET



HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 5/20/2014

041125-WATER RIGHTS-OLDTAXLOTS.DWG

TT14.01C

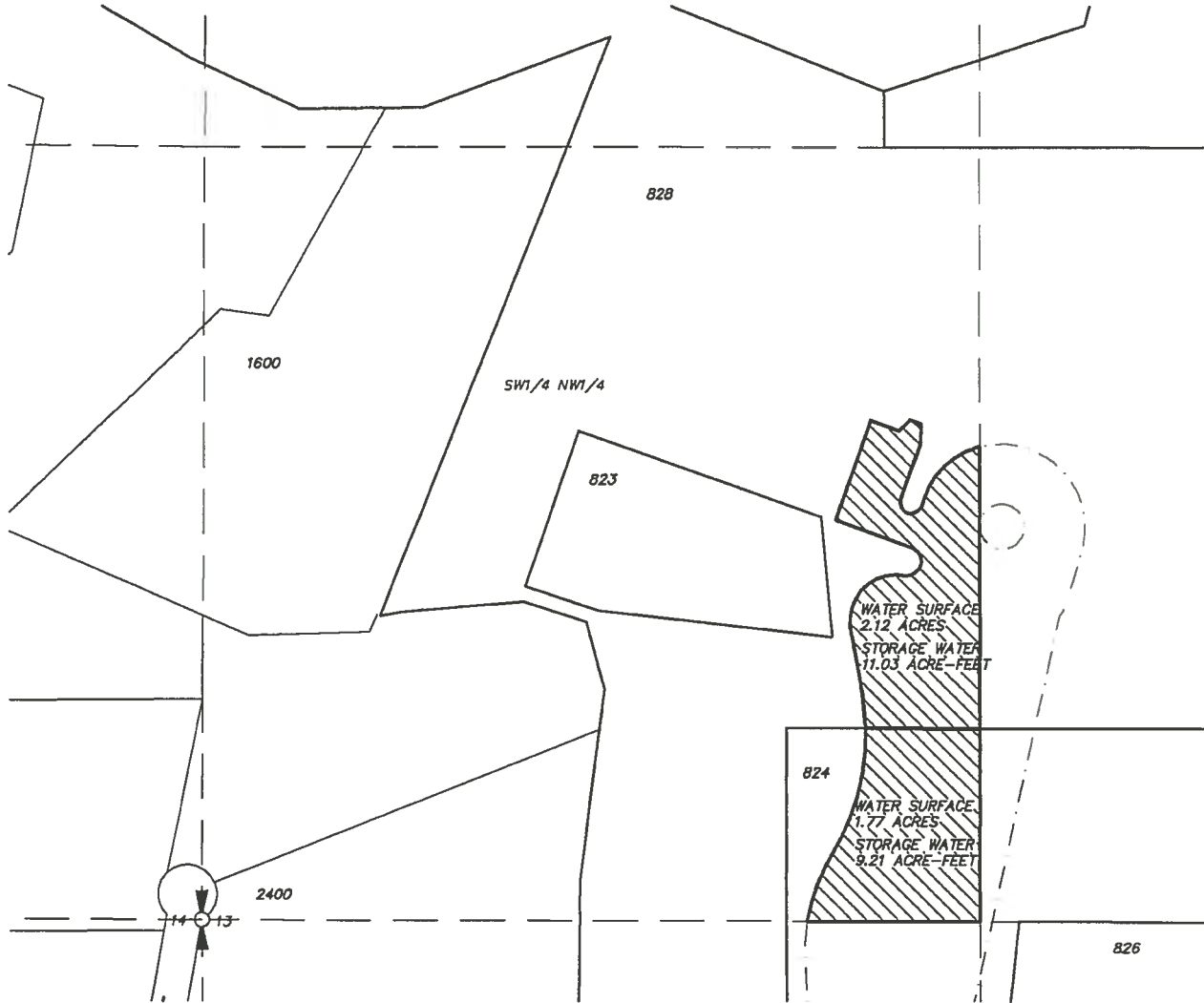
RECEIVED
JUN 11 2014
OWRD

DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.
SW 1/4 OF THE NW 1/4

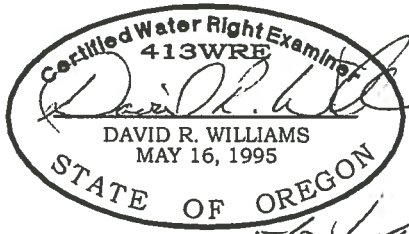


NORTH

SCALE: 1"=300'



STORAGE MAP



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



STORAGE RIGHT

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 5/20/2014

041125-WATER RIGHTS-OLDTAXLOTS.DWG

TT14.01C

RECEIVED

JUN 11 2014

OWRD

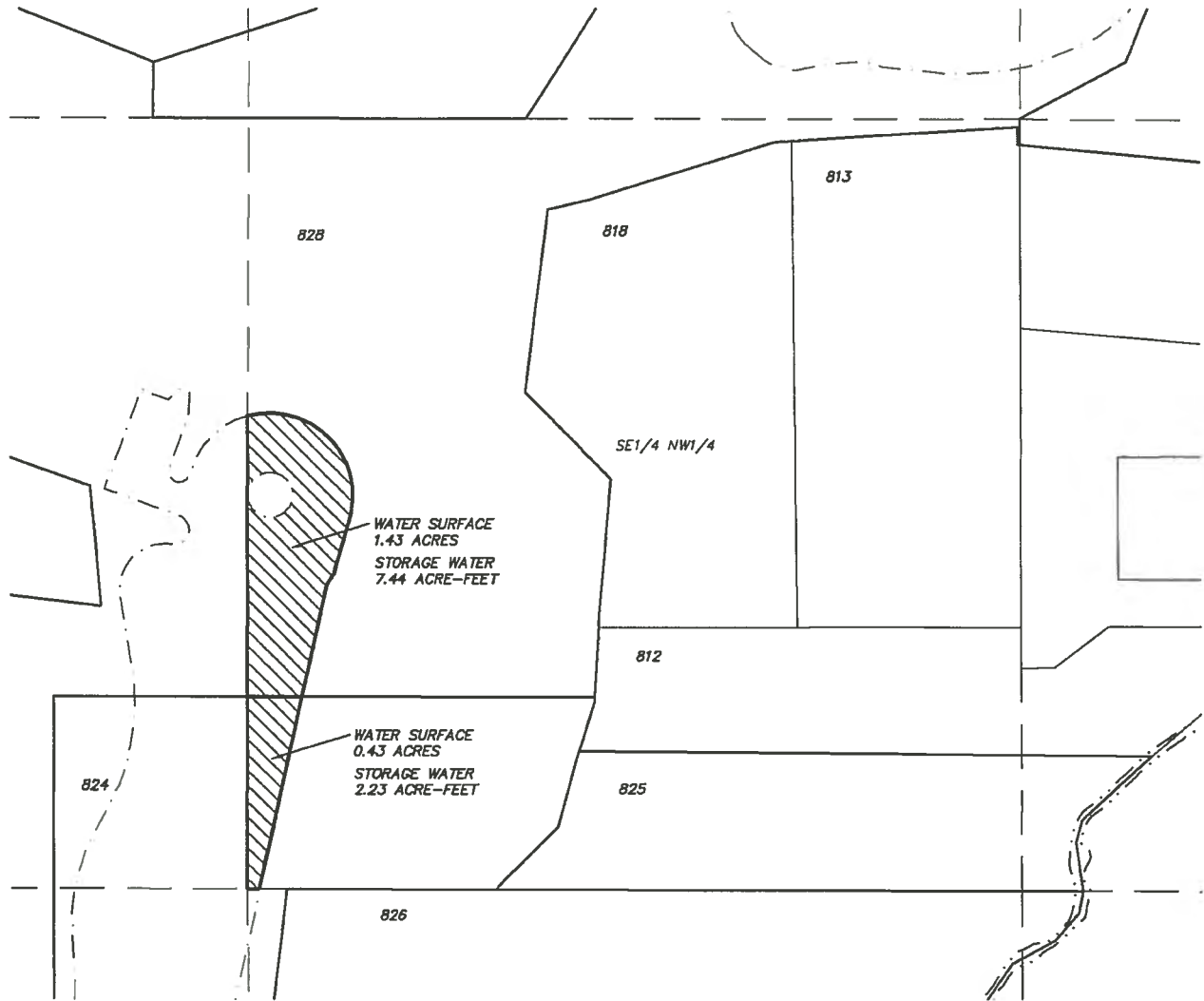
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

SE 1/4 OF THE NW 1/4

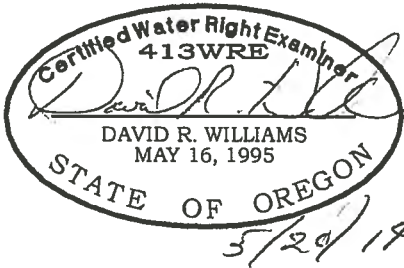
SCALE: 1"=300'



NORTH



STORAGE MAP



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



STORAGE RIGHT

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

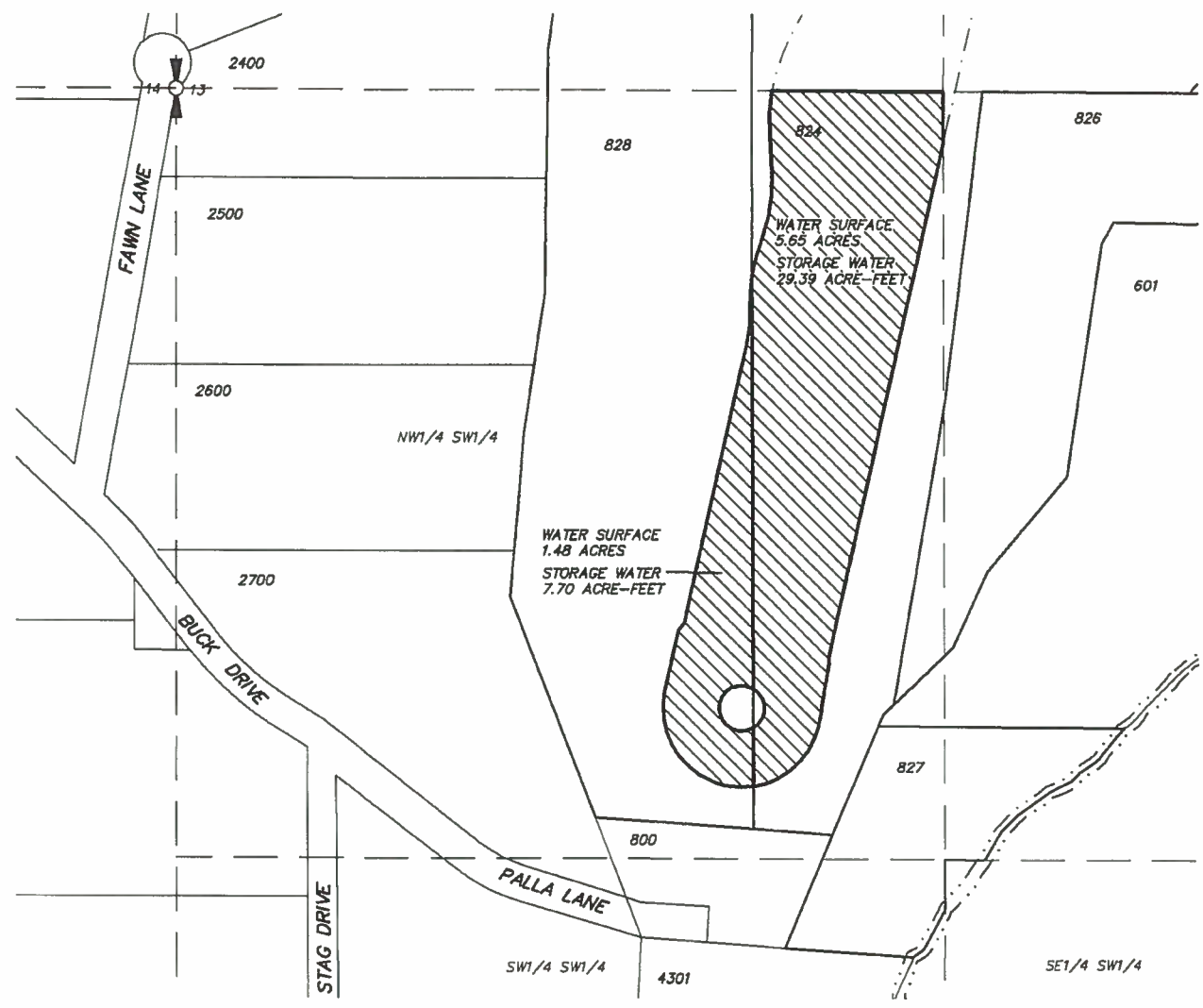
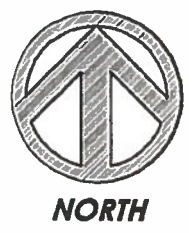
DATE: 5/20/2014

041125-WATER RIGHTS-OLDTAXLOTS.DWG

TT04.01

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JUN 11 2014
OWRD

DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.
NW 1/4 OF THE SW 1/4
SCALE: 1"=300'



STORAGE MAP

Certified Water Right Examiner
413WRE
David R. Williams
DAVID R. WILLIAMS
MAY 16, 1995
STATE OF OREGON
3/28/14

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

 STORAGE RIGHT

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 5/20/2014

041125-WATER RIGHTS-OLDTAXLOTS.DWG

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JUN 11 2014

OWRD

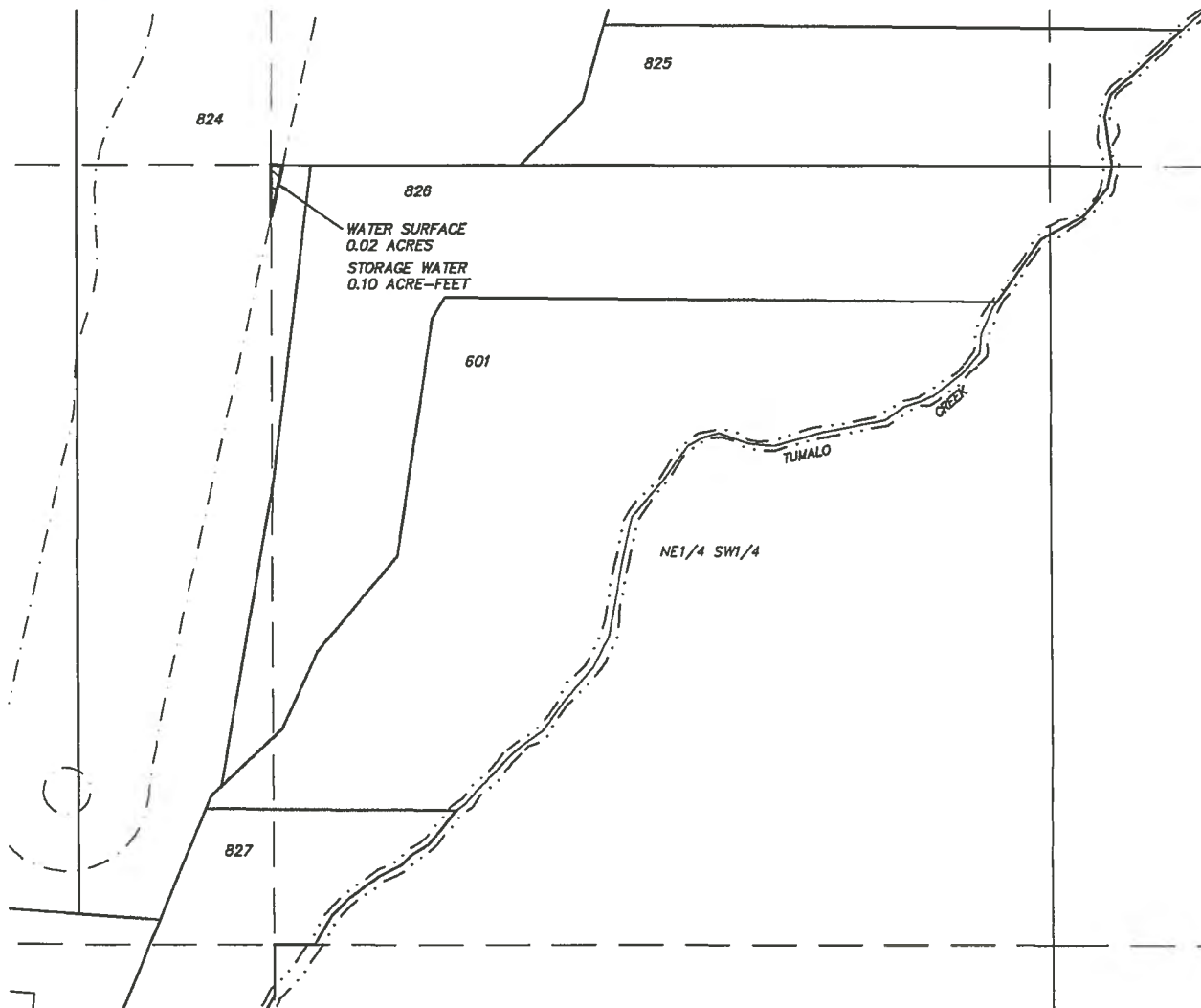
DESCHUTES COUNTY
SECTION 13 T17S R11E W.M.

NE 1/4 OF THE SW 1/4

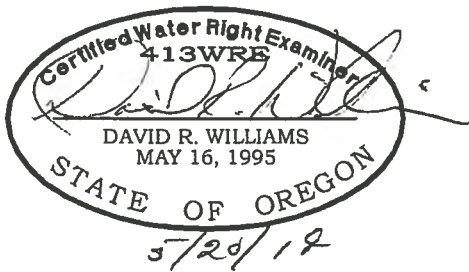
SCALE: 1"=300'



NORTH



STORAGE MAP



TAX LOT NO. 824: 0.10 ACRE-FEET



STORAGE RIGHT

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
1201 NW WALL STREET, SUITE 100
BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPLICATION FOR STORAGE RIGHT TRANSFER
KC DEVELOPMENT GROUP, LLC

DATE: 5/20/2014

041125-WATER RIGHTS-OLDTAXLOTS.DWG



**District Temporary Water Right Transfer Application
Supplemental Form A**

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OWRD

DESCRIPTION OF PROPOSED CHANGE(S) TO A WATER RIGHT

List only **one** water right per page. **A separate Supplemental Form A must be completed for each certificate, permit, decree, or other right involved in the proposed transfer.**

Attach additional copies of Supplemental Form A as needed to describe other certificates, permits, decrees or other rights involved in this transfer.

▪ Certificate Number or other identifying number: 76684

1. TYPE OF CHANGE(S) PROPOSED

(Check *all* that apply.)

Point of Diversion or Appropriation	Place of Use	Character of Use
<input type="checkbox"/> Change to facilitate a change in Place of Use (The old point of diversion or appropriation will <u>not</u> be used for the portion of the water right affected by the transfer.) <input type="checkbox"/> Surface Water to Ground Water (A new point of appropriation will be used <u>instead of</u> the old point of diversion. The old point of diversion will <u>not</u> be used.) <input type="checkbox"/> Change in Point of Diversion in Response to an Emergency	<input type="checkbox"/> <u>All of the right will be exercised at a different location than currently authorized</u> (Use of water at the current location will be discontinued.) <input checked="" type="checkbox"/> <u>Only a portion of the right will be exercised at a different location than currently authorized</u> (Use of water at the current location will be discontinued.)	Proposed new use: <input type="checkbox"/> Change a water right to Store Water <input type="checkbox"/> Diminish an irrigation water right (primary) to a supplemental water right

2. CURRENT WATER RIGHT INFORMATION

Water Right Subject to Transfer (check and complete **one** of the following):

<input checked="" type="checkbox"/> Certificated Right	76684	
	Certificate Number	Permit Number or Decree Name
<input type="checkbox"/> Adjudicated, Non-certificated Right		
	Name of Decree	Page Number
<input type="checkbox"/> Permit for which Proof has been Approved	-	
	Permit Number	Date Claim of Beneficial Use Submitted
<input type="checkbox"/> Transferred Right for which Proof has been Filed	-	
	Previous Transfer Number	Date Claim of Beneficial Use Submitted

- Name on Permit, Certificate, or Decree: Tumalo Irrigation District
- County: Deschutes
- Authorized Use(s) to be Affected by Transfer: Storage
- Priority Date(s): December 8, 1961

*If there are **multiple Priority Dates** identified on the water right, any information provided on **pages 3 through 6** of this form **must identify** which priority date is associated with each of the authorized and proposed points of diversion or appropriation and places of use.*

- Source(s) of Water to be Affected by Transfer: Tumalo Creek

Tributary to: Deschutes River

*If there are **multiple Sources** listed on the water right, any information provided on **pages 3 through 6** of this form **must identify** which source is associated with each of the authorized and proposed points of diversion or appropriation and places of use.*

For applications proposing a Change in Place of Use or Character of Use:

- Are there **Other Water Rights**, Permits or Ground Water Registrations associated with this land?
 - Yes No N/A – No Change in Place of Use or Character of Use

If "Yes", what are the Permit, Registration or Certificate Numbers? _____

*Pursuant to ORS 540.510, any "layered" water use or a right that is supplemental to a primary right proposed for transfer **must be included in the transfer or be cancelled**, except as provided in OAR 690-380-2240(5).*

▪ Certificate Number or other identifying number: 76684

The following information **must be provided** only for those points of diversion or appropriation that **are involved in the transfer** (i.e., **list only the portion of the water right you propose to transfer.**) Attach additional pages as necessary.

A Point of Diversion (POD) describes the location of diversion from a surface water source.

A Point of Appropriation (POA) describes the location of appropriation from a ground water source or well.

If a point of diversion or appropriation is not numbered on the decree or water right certificate or permit, assign it a unique number in the following table (e.g. POD #1 or POA(well) #1). Use the number to refer to the point of diversion or appropriation serving the place of use described in Table I (Authorized Place of Use) and Table II (Proposed Place of Use).

Location of Existing Authorized Point(s) of Diversion or Appropriation to be Changed:

(i.e., the allowed point(s) of diversion or appropriation listed on the water right that will be affected by the proposed transfer, the "OFF or FROM" point(s) of diversion or appropriation)

Government lot(GOV'T LOT) and donation land claim numbers (DLC) must be included in the table below **only** if the information is reflected on the existing water right.

IF POA, OWRD WELL LOG ID NO. (OR WELL ID TAG NO. L-)	POD# or POA#	TWP	RNG	SEC	QQ	DLC	GOV'T LOT	MEASURED DISTANCES
	3P							See Attachment A

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▪ Certificate Number or other identifying number: 76684

▪ Does the water right being transferred involve a ground water source(s)?

Yes No (Surface water source only.)

If “Yes”, for each authorized point of appropriation (well) involved, you must either:

A. Supply a copy of the well log(s) for each point of appropriation that is **clearly labeled** and associated with the corresponding well in the table above and on the accompanying application map. (NOTE: You may search for well logs on the Department’s web page at: <http://www.wrd.state.or.us>)

or

B. If a well log is **not** available, you must describe the construction of the authorized point of appropriation by completing the table below. Attach additional copies as necessary.

Construction of Existing Authorized Point(s) of Appropriation – (Only needed if no well log is available.)

Wells in this listing must be **clearly tied** to corresponding well location(s) described in the table above and shown on the accompanying application map.

OWRD WELL NO. AS IDENTIFIED IN TABLE ABOVE	DIAMETER	TYPE AND SIZE OF CASING	NO. OF FEET OF CASING	INTERVALS CASING IS PERFORATED (IN FEET)	SEAL DEPTH	EST. DEPTH TO WATER	EST. DEPTH TO WATER BEARING STRATUM	TYPE OF ACCESS PORT OR MEASURING DEVICE	TOTAL WELL DEPTH



	TOTAL:	
--	---------------	--

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OWPRD

- Certificate Number or other identifying number: 76684

3. PROPOSED CHANGES TO THE WATER RIGHT

Describe proposed changes to the water right involving point(s) of diversion and/or appropriation necessary to facilitate a change in place of use. Measured distances described below should accurately correspond to the points shown on the accompanying application map. Attach additional pages as necessary.

Location of Proposed Point(s) of Diversion or Appropriation:

(i.e., the "ON or TO" point(s) of diversion or appropriation)

(NOTE: Complete this table only if a Change in Point of Diversion or Appropriation is being proposed to facilitate a Change in Place of Use.)

IF POA, OWRD WELL LOG ID NO. (OR WELL ID TAG NO. L-)	POD# or POA#	TWP	RNG	SEC	QQ	DLC	GOV'T LOT	MEASURED DISTANCES
		0						

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OWPRD

▪ Certificate Number or other identifying number: 76684

If there are proposed point(s) of appropriation (wells) listed in the table above, are the well(s) already constructed?

Yes No N/A – No proposed well(s) listed above.

If “Yes”, attach and clearly label the corresponding well log(s) for each proposed well, or if well log(s) are **not** available, describe the construction of the well(s) using the table below. (NOTE: You may search for well logs on the Department’s web page at: <http://www.wrd.state.or.us>)

If “No”, describe the anticipated construction for the proposed well(s) in the following table:

Construction of Proposed Point(s) of Appropriation or Well(s)

Wells in this listing must be clearly tied to corresponding well location(s) described in the table above and shown on the accompanying application map.

OWRD WELL NO. AS IDENTIFIED IN TABLE ABOVE	DIAMETER	TYPE AND SIZE OF CASING	NO. OF FEET OF CASING	INTERVALS CASING IS PERFORATED (IN FEET)	SEAL DEPTH	EST. DEPTH TO WATER	EST. DEPTH TO WATER BEARING STRATUM	TYPE OF ACCESS PORT OR MEASURING DEVICE	TOTAL WELL DEPTH

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Attachment A		TU MALO IRRIGATION DISTRICT CERTIFICATES	
		SOURCE/POINT OF DIVERSION	
ID #	Primary Cert. #	Source	Location
1P	74146 <i>Tumalo Decree V1, P135 & V16, P188.</i>	Tumalo Creek, tributary to the Deschutes River <i>8/5/1900, Sept. 1900, 4/28/1905, 5/27/1907 & 6/1/1907</i>	17S 11E W.M. 23 SW/NE - Tumalo Feed Canal - N 70° 21' W.; 1550 feet from East 1/4 corner of Section 23 (Tumalo Creek POD #1) 18S 10E W.M. 2 NW/SW - N. 14° 02' E.; 1713 feet from South 1/4 corner of Section 2 (Tumalo Creek POD #2)
2P	74147 <i>Permit #19628</i>	Tumalo Creek, tributary to the Deschutes River <i>10/29/1913</i>	17S 11E W.M. 23 SW/NE - Tumalo Feed Canal (Tumalo Creek POD #1) - N. 70° 21' W.; 1550 feet from East 1/4 corner of Section 23
3P	76106 <i>Permit #27840</i>	Tumalo Creek and Upper Tumalo Reservoir, constructed under Permit R-2743, tributaries of the Deschutes River <i>12/8/1961</i>	17S 11E W.M. 23 SE/NE - Tumalo Creek - 2080 feet South and 1310 feet West from NE Corner of Section 23 16S 11E W.M. 33 SE/SW - Upper Tumalo Reservoir
9P	83571	TID Bend Feed Canal <i>10/31/1900</i>	2050 Feet West from NE Corner of Section 32 (POD #9)
Supp. Cert. #			
1S	74147 to 74146 <i>Permit #19628</i>	Tumalo Creek, tributary to the Deschutes River <i>10/29/1913</i>	17S 11E W.M. 23 SW/NE - Tumalo Feed Canal (Tumalo Creek POD #1) - N 70° 21' W.; 1550 feet from East 1/4 corner of Section 23
2S	74148 to 74146, 74147, 74149 <i>Permit #624</i>	Crescent Lake Reservoir, constructed under Permit R-102, tributary to Crescent Creek <i>4/7/1911</i>	24S 6E W.M. 11 SE/SW and SW/SE
3S	74149 to 74146, 74147, 76106 <i>Duffy Decree V9, P362</i>	Deschutes River, tributary to the Columbia River <i>1905</i>	17S 12E W.M. 32 NW/NE - Bend Feed Canal - 100 feet South and 550 feet East from N1/4 corner of Section 32
4S	76520 to 74146, 74147, 74148 74149, 76106 <i>Permit #27841</i>	Crescent Lake Reservoir, constructed under Permit R-2744, tributary to Crescent Creek and the Little Deschutes River <i>12/8/1961</i>	17S 12E W.M. 32 NW/NE - Deschutes River (Tumalo ID Bend Feed Canal) - 2050 feet West from NE corner of Section 32 24S 6E W.M. 11 SE/SW - Crescent Lake Reservoir
11S	76714	Crane Prairie Reservoir, constructed under Permit R-1687, tributary of Deschutes River <i>2/28/1913</i>	COID North Canal: 850 Feet North and 630 feet West from the E1/4 Corner of Section 29 (POD #11)

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JUN 11 2014
OWBD



Oregon

John A. Kitzhaber, MD, 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

June 11, 2014

TUMALO IRRIGATION DISTRICT
64697 COOK AVE
BEND OR 97701

Reference: District Transfer 11833

On June 11, 2014 we received your district transfer application requesting place of use for use of water from TUMALO CR/UPPR TUM RIVER, tributary to DESCHUTES RIVER. The application was accompanied by \$875.00. Our receipt 112334 is enclosed.

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

Your application will be examined to determine if additional information is needed. You will be contacted following this examination.

We will notify you if additional information or corrections to the application or map are required.

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

cc: Watermaster # 11 (*via email*)

enclosure





Oregon

John A. Kitzhaber, MD, Governor

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

**Notice of Application for
Water Right Transfer, Temporary Transfer, or Permit Amendment**
June 17, 2014

The Department seeks comment on the recently-filed application listed below. Any person may comment on the application. Comments must be received by the Department within 30 days of the date of this notice. The Director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days of this notice.

County: DESCHUTES
Transfer: 11833
Water Right: CERT 76684
Priority Date: DECEMBER 8, 1961
Name: TUMALO IRRIGATION DISTRICT
64697 COOK AVE BEND, OR 97701
Change: place of use
Source: TUMALO CR/UPPR TUM RIVER

The holder of a water right may apply to permanently change an existing water use subject to transfer. A transfer application may involve any of the following changes: Point of diversion or appropriation (POD; POA); Additional point of diversion or appropriation (APOD; APOA); Historic POD (HIST); Place of use (POU); Character of use (USE); Instream (ISWR); Substitution (SUB); or Exchange (EXCH).

The holder of a water right subject to transfer may request to temporarily change the place of use of the water for up to 5 years and, if necessary to convey the water, to temporarily change the point of diversion or appropriation.

The holder of a water right permit may apply to change a point of diversion (POD) or appropriation (POA) or to change the place of use (POU).

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. Comments should be sent to the Transfers Section at the Department's Salem office.

Water Right Transfer Cover Sheet

Transfer T-11833

Transfer Specialist: _____

Transfer Type: District Temporary Transfer

Applicant Name/Address: TUMALO IRR DISTRICT 64697 COOK AVE BEND, OR 97701	Agent Name/Address: UNAVAILABLE	Rec Landowner Name/Address:
CWRE Name/Number:	Irr. District Name/Address:	Affected Gov'ts Name/Address:
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"/>			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: June 11, 2014	Proposed Action(s): place of use	
Fees Pd: 875.00	WM District: 11	ODFW District: na
Initial Notice: June 17, 2014	WM Review sent: 6/11/14	ODFW Review sent: na
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 _____

bulge @ 40.9 AF²
8.56 ac
~4.75 feet deep
no dam

Don't know
max depth

621

67.1 AF

12.98 ac

~av. 5.16 feet deep

don't know
max depth

Vendor ID: OWRD Vendor Name: Oregon Water Resources

Invoice No. TT14.010 Date 06/09/14 Invoice Amount 875.00 Amount Paid 875.00 Discounts Taken 0.00 Credits Taken 0.00 Net Amount 875.00

Net Check Amt 875.00

RECEIVED JUN 11 2014 OWRD

RECEIVED

STATE OF OREGON WATER RESOURCES DEPARTMENT

RECEIPT # 112334 INVOICE # 725 Summer St. N.E. Ste. A SALEM, OR 97301-4172 (503) 986-0900 / (503) 986-0904 (fax)

RECEIVED FROM: Tumalo Irrigation District BY: APPLICATION PERMIT TRANSFER 7-11833 TOTAL DEDU \$ 875.00

4170 WRD MISC CASH ACCT 0407 COPIES \$ OTHER: (IDENTIFY) \$ 0243 I/S Lease 0244 Muni Water Mgmt. Plan 0245 Cons. Water

4370 WRD OPERATING ACCT MISCELLANEOUS 0407 COPY & TAPE FEES 46110 \$ 0410 RESEARCH FEES \$ 0408 MISC REVENUE: (IDENTIFY) \$ TC162 DEPOSIT LIAB. (IDENTIFY) \$ 0240 EXTENSION OF TIME \$ WATER RIGHTS: 0201 SURFACE WATER \$ 0202 \$ 0203 GROUND WATER \$ 0204 \$ 0205 TRANSFER \$ 975.00 WELL CONSTRUCTION 0218 WELL DRILL CONSTRUCTOR \$ 0219 \$ LANDOWNER'S PERMIT \$ 0220 \$ OTHER (IDENTIFY)

4470 WRD WELL CONST START FEE 0211 WELL CONST START FEE \$ 0210 MONITORING WELLS \$ OTHER (IDENTIFY)

4470 WRD HYDRO ACCT LICENSE 0233 POWER LICENSE FEE (FW/WRD) \$ 0231 HYDRO LICENSE FEE (FW/WRD) \$ HYDRO APPLICATION \$

RECEIVED OVER THE COUNTER FUND TITLE OBJ. CODE VENDOR # DESCRIPTION \$

RECEIPT: 112334 DATED: 6/11/14 BY: CHANGATE

Name TUMALO IRR DIST

Address 64697 COOK AVE
BEND OR 97701

Change in POU

Date Filed 6/11/14

Initial notice date 6/17/14

DPD issued date _____

PD issued date _____

PD notice date _____

Date of FO _____ Vol _____ Page _____

C-Date _____

COBU due date _____

COBU Received date _____

Certificate issued _____

DESCRIPTION OF WATER RIGHT(s)

Name of Stream TUMALO CR

Trib. of DESCHUTES R

Use MULTI PURPOSE County DESCHUTES

Quantity of water (CFS) _____ No. of Acres _____

Name of ditch _____

App # R 37824 Per # R 2743 Cert # 76684 PR Date 12/01/96

App # _____ Per # _____ Cert # _____ PR Date _____

App # _____ Per # _____ Cert # _____ PR Date _____

App # _____ Per # _____ Cert # _____ PR Date _____

App # _____ Per # _____ Cert # _____ PR Date _____

FEES PAID		
Date	Amount	Receipt #
<u>6/11/14</u>	<u>875.00</u>	<u>112334</u>

FEES REFUNDED		
Date	Amount	Receipt#

Assignments: _____

Irrigation District _____

Agent _____

CWRE _____

CC's list _____

- Oversized map - Location _____