

Application for a Permit to
Store Water in a Reservoir
 Alternate Review (ORS 537.409)



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
www.oregon.gov/OWRD

You may use this form for any reservoir storing less than 9.2 acre-feet or with a dam less than 10 feet high.

Use a separate form for each reservoir

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant

NAME ASCENSIONIST HOLDINGS, LLC C/O MIKE GETLIN			PHONE (HM) 503.597.9795
PHONE (WK) N/A	CELL N/A	FAX N/A	
MAILING ADDRESS 16418 S. BROCKWAY ROAD			
CITY OREGON CITY	STATE OR	ZIP 97045	E-MAIL * MICHAEL.GETLIN@GMAIL.COM

Organization

NAME N/A		PHONE	FAX
MAILING ADDRESS		CELL	
CITY	STATE	ZIP	E-MAIL *

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

AGENT / BUSINESS NAME ASPEN RURAL LAND CONSULTING C/O ERIC URSTADT, PE, PLS, CWRE		PHONE 971.250.1520	FAX N/A
MAILING ADDRESS 39290 NW MURTAUGH ROAD		CELL	
CITY NORTH PLAINS	STATE OR	ZIP 97133	E-MAIL * ERICURSTADT@HOTMAIL.COM

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Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot legally store water until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

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

Mike Getlin, agent

Applicant Signature

Print Name and Title if applicable

Date

SECTION 2: SOURCE OF WATER AND LOCATION OF RESERVOIR

Reservoir name:	Upper Reservoir				
Source*:	Exempt spring* (& runoff?)	Tributary:	Beaver Creek*		
County:	Clackamas				
Quantity:	0.36 Acre-Feet [surface area x maximum depth x 0.4]				
Reservoir Location:	Township (N or S)	Range (E or W)	Section	Quarter-Quarter	Tax Lot #
	4S	2E	2	NE-SW	1200
Maximum Height of Dam:	6 feet. If excavated write "zero feet." (Estimated from Dam Cross-section)				

* Note the spring is an exempt spring; both Amy Kim and Mike McCord of Water Resources Department (WRD) have stated this in emails; See Attachment "F". Also see water source document by Eric Urstadt in Attachment "G".

SECTION 3: WATER USE

Indicate the proposed use(s) of the stored water: Multipurpose

NOTE: You may wish to consider filing for "Multipurpose use" for your reservoir. Multipurpose use does not limit the types of future uses for the stored water. Multipurpose covers all uses including: stock water, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.

SECTION 4: PROPERTY OWNERSHIP

Do you own all the land where you propose to divert, transport, and use water?

☒ Yes (please check appropriate box below then skip to section 5)

☒ There are no encumbrances

☐ This land is encumbered by easements, right of way, roads of way, roads or other encumbrances

☐ No (Please check the appropriate box below)

☐ I have a recorded easement or written authorization permitting access.

☐ I do not currently have written authorization or easement permitting access.

☐ Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigated and/or domestic use only (ORS 274.040). (Do not check this box if you described your use as "Multipurpose" in #3 above.)

List the names and mailing addresses of all affected landowners:

N/A

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SECTION 5: ENVIRONMENTAL IMPACT

Channel: Is the Reservoir: ☐ in-stream or ☒ off channel?

Wetland: Is the project in a wetland? ☐ YES ☒ NO ☐ unknown

Existing: Is this an existing reservoir? ☒ YES ☐ NO

If YES, how long has it been in place? 20 or more years.

Fish Habitat: Is there a fish habitat upstream of the proposed structure? ☐ YES ☒ NO ☐ unknown

If YES, how much? N/A miles.

Existing: Have you been working with other agencies? ☒ YES ☐ NO

Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in this project. **We have been in communication Janna Stevens of ODF&W, 971.375.7672.**

SECTION 6: WITHIN A DISTRICT

☐ Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name: None Known		Address: N/A	
City: N/A	State: N/A	Zip: N/A	

SECTION 7: DESCRIPTION

Provide a short description of the design and operation of the proposed diversion, including a description of how live flow will be passed outside the authorized storage season. Use this space for narrative. You may also provide narrative and sketches on separate pages.

The proposed diversion appears to be a very small earthen dam. An emergency overflow exists on the southwest side of the dam. Very little surface runoff (if any) will contribute to the reservoir; however, live surface flow could be passed through the reservoir via a syphon and a pump.

The reservoir is filled from an exempt spring and a minor component of surface runoff (if any). The spring has been visited by Water Resources Department (WRD) personnel (Mike McCord and Amy Kim) has stated that the spring is "exempt" from the water right process – See attachments "F" and "G".

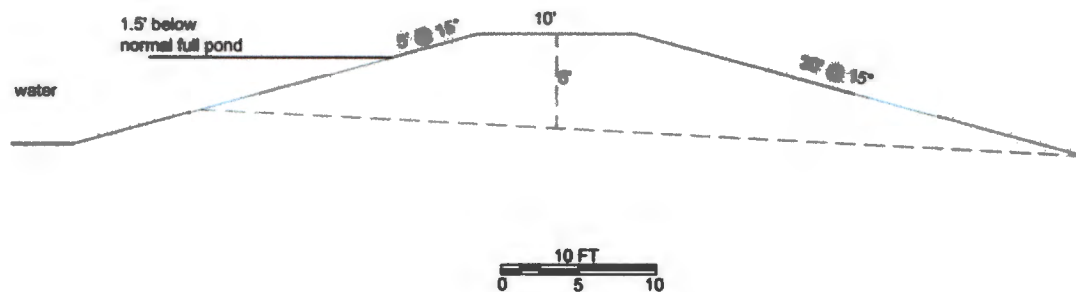
If the diversion involves a dam, use this space below for sketches of the diversion (e.g. cross-section of the dam with its dimensions, dimension and placement of outlet pipe, means of passing live flow outside of the authorized storage season, and means for providing fish passage).

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Upper Res X-Sect



C:\Users\Dirk United\Documents\1\Aspen\Accident Investigation\ACAD\A-Map\accident3A.dwg, 9/14/22 4:25 PM

Note that the owner has stated that he does not believe there is a dam. He did mention that the reservoir was reportedly hand dug. It appears to me that the pond likely was dug and the spoils were used to create the dam or amend the prior dam. This sketch is an estimate based on field measurements of the apparent maximum dam cross-section.

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ATTACH B1-1/4
(UPPER)

ODFW Alternate Reservoir Application Review Sheet

This portion to be completed by the applicant.

Applicant Name: ASCENSIONIST HOLDINGS, LLC

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Address: 16418 S. BROCKWAY ROAD

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Phone/Email: 503.597.9795 / MICHAEL.GETLIN@GMAIL.COM

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Reservoir Name: Upper ReservoirVolume (AF): 0.36Source: Spring and RunoffBasin Name: Beaver CreekTwp Rng Sec QQ: 4S 2E 2 NESW☐ in-channel☒ off-channel

Note: It is unlikely that ODFW will be able to complete this form while you wait, nevertheless we recommend making an appointment to submit the form so as to provide any necessary clarifications. See pg. 6 of Instructions for contact information.

This portion to be completed by Oregon Department of Fish and Wildlife (ODFW) staff.

- 1) Is the proposed project and AO¹ off channel?.....☒ YES* ☐ NO
(if yes then proceed to #4; if no then proceed to #2)

**Based on available information, the proposed use does not appear to involve instream structures that would create or maintain an artificial obstruction. However, if the applicant creates or maintains an artificial obstruction to fish passage for the proposed use, the applicant will need to address Oregon's fish passage laws.*

- 2) Is the proposed project or AO located where NMF² are or were historically present?.....☐ YES ☐ NO
(if yes then proceed to #3; if no then proceed to #4)

3) If NMF are or were historically present:

- a. Is there an ODFW-approved fish-passage plan?.....☐ YES ☐ NO
b. Is there an ODFW-approved fish-passage waiver or exemption?.....☐ YES ☐ NO

If fish passage is required under ORS 509.580 through .910, then either 3(a) or 3(b) must be "Yes" to move forward with the application. If responses to 3(a) and 3(b) are "No", then the proposed reservoir does not meet the requirements of Oregon Fish Passage Law and shall not be constructed as proposed.

- 4) Would the proposed project pose any other significant detrimental impact to an existing fishery resource locally or downstream?.....☒ YES ☐ NO

Explain below (for example, list STE species or other existing fishery resources that would be impacted negatively.)

- ☐ Any diversion or appropriation of water for storage during the period ____ through ____ poses a significant detrimental impact to existing fishery resources. (For example, if diversion of water for storage during a certain time period would cause a significant detrimental impact to an existing fishery resource, then ODFW should recommend conditions or limitations.) If NMF fish are present at the project site or point

¹ AO = Artificial Obstruction means any dam, diversion, culvert or other human-made device placed in waters of this state that precludes or prevents the migration of native migratory fish. ORS 509.580(1)

² NMF = Native Migratory Fish Species in Oregon as defined by OAR 635 - 412 - 0005 (32)

of water diversion then the applicant should be advised that a fish screen consistent with screening criteria will be required. B/-2/4

- ☐ This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam. ODFW has determined that additional diversions of water in this area pose a significant detrimental impact to existing fishery resources during the period April 15 through September 30.

Through discussion with the watermaster, the proposed source is from a spring that doesn't appear to have a clear and defined channel that leaves the landowners property. Because of this determination and the small size of the reservoir there are likely no impacts to nearby/adjacent surface water quantity.

If YES, can conditions be applied to mitigate the significant detrimental impact to an existing fishery resource?

☐ NO (explain) ☒ YES (select from Menu of Conditions on next page)

☒ See applicable conditions selected from "Menu of Conditions" on next page

ESA-listed fish (fall/spring chinook, winter steelhead), sensitive species (costal cutthroat trout and Pacific Lamprey), and other game fish (Coho Salmon and rainbow trout) are present in Bever creek and/or Buckner Creek to Milk Creek. Although there do not appear to be impacts to water quantity, ODFW reviewed available information (TMDL for Molalla-Pudding; DEQ) regarding temperature water quality impairment and determined that the proposed use would impair water quality that supports existing fishery resources (e.g., habitat) at or downstream of the Point of Diversion during May 1st through October 31st for any releases from reservoir to waters of the state (See water quality condition below).

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Janna L

Digitally signed by
Janna L Stevens

Date: 2022.12.21

13:50:45 -08'00'

ODFW Signature: Stevens

Print Name: Janna Stevens

ODFW Title: Water Planning Coordinator

Date: 12/21/2022

NOTE: This completed form must be returned to the applicant.

MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND ODA

Revised May 12, 2020, March 25, 2021

Use this menu to identify appropriate conditions to be included in the permit:

- ☒ **Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
- ☐ **b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.
- ☐ **b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.
- ☐ **b51a** The period of use has been limited to type here through type here.
- ☐ **b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point.
- ☐ **b58** Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- ☐ **b1v:** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.
- ☐ **Bypass Flows:** Per 690-410-0070 (2)(c), the following flows shall be bypassed or passed through the reservoir during the filling season:
- 1) When the biologically necessary flows identified below are not available immediately upstream of the impacted area, the permittee shall pass all live flow downstream at a rate equal to the inflow, minus the amount of mitigation water provided upstream, if applicable, and
 - 2) When the biologically necessary flows identified below are available immediately upstream of the impacted area, the permittee shall pass flow downstream at a rate equal to or greater than the biologically necessary flows.
- Once the reservoir has reached the permitted volume, all live flow shall be passed downstream at a rate equal to the inflow.
- The permittee shall quantify and document inflow and outflow and maintain the bypass flows for the life of the permit and subsequent certificate per the approved Bypass Plan. The bypass flow data shall be available upon request by the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, or Oregon Department of Agriculture.
- ☐ **Construction Activities:** For construction activities (clearing, grading, excavation, staging, and stockpiling) that will disturb one or more acres and may discharge to state waters, the permittee is required to obtain from DEQ a 1200-C NPDES Stormwater Construction Permit prior to project construction.
- ☐ **fence:** The stream and its adjacent riparian area shall be fenced to exclude livestock.
- ☐ **fishapprove:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
- ☐ **fishdiv33:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

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The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

- ☐ **fishmay:** Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.

B1-7/4

- ☐ **fishpass:** As required by ORS 509.585, a person owning or operating an artificial obstruction (AO) may not construct or maintain any AO across any waters of this state that are inhabited, or historically inhabited, by native migratory fish (NMF) without providing passage for NMF. A person owning or operating an AO shall, prior to construction, fundamental change in permit status or abandonment of the AO in any waters of this state, obtain a determination from ODFW as to whether NMF are or historically have been present in the waters. If ODFW determines that NMF are or historically have been present in the waters, the person owning or operating the AO shall either submit a proposal for fish passage to ODFW or apply for a waiver or exemption. Approval of the proposed fish-passage facility, waiver, or exemption must be obtained from the department prior to construction, permit modification or abandonment of the AO. Approved fish-passage plans, waivers, and exemptions shall maintain adequate passage of NMF at all times (ORS 509.601) as per the approved plan, waiver or exemption.
- ☐ **fishself:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.
- ☒ **Fish Stocking:** Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon need to have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. As part of the permitting process, the permittee must also screen the inlet and outlet of their pond to insure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.
- ☐ **futile call:** The use of water allowed herein may be made only at times when waters from the (NAME OF SURFACE WATER) would not otherwise flow into a tributary of the type here River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.
- ☐ **In-Water or Riparian Construction:** For in-water or riparian construction, permittee may be required to obtain additional permits from the Oregon Department of State Lands, the U.S. Army Corps of Engineers, and the DEQ Section 401 certification program prior to construction. The applicant must contact these agencies to confirm requirements.
- ☐ **In-Water Work:** Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of type here unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.
- ☐ **Live Flow:** Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.
- ☒ **Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.
- ☐ **On-Channel Reservoir:** The permittee shall design and operate the water storage facility such that all waters within and below the reservoir meet water quality criteria. The permittee shall develop a reservoir operations plan that details how water quality criteria and standards will be met. A Certified Water Rights Examiner shall verify that the reservoir operations are consistent with the plan before a certificate is issued. The reservoir operator shall maintain a copy of the plan and make it available for review upon request.
- ☒ **riparian:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.
- ☒ **Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.
- ☐ **wetland:** The permittee must submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation prior to disturbance or development of the point of diversion and/or diversion of water.
- ☐ **wq:** The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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Application Completeness Checklist

Applicants are encouraged to use this checklist before submitting a complete application to the Department.

1. ☒ Landowner name, mailing address and telephone number provided
2. ☒ Application signed – All parties noted as applicants must sign the application
3. ☒ Source and tributary listed.
4. ☒ Reservoir Location. TRSQQ and tax lot provided.
5. ☒ Dam height indicated, if applicable
6. ☒ Property ownership completed
7. ☒ If applicant does not own all the land, is the affected landowner's name and mailing address listed?
8. ☒ Environmental impact section completed?
9. ☒ **Completed Watermaster review sheet, signed and dated.** Note: Must be completed within last 6 months.
 - Will the reservoir injure an existing water right? ☐ YES ☐ NO
 - If YES, can conditions be applied to mitigate injury? ☐ YES ☐ NO
 - If NO, return the application.
10. ☒ **Completed ODFW review sheet, signed and dated.** Note: Must be completed within last 6 months.
 - Will the reservoir pose a significant detrimental impact to an existing fishery resource? ☐ YES ☐ NO
 - If YES, can conditions be applied to mitigate the impact? ☐ YES ☐ NO ☐ N/A
 - If NO, return the application.
11. ☒ **Completed Land-Use Form** or receipt signed by the appropriate planning department official enclosed?
 Note: Does the use on land-use form match the proposed use on the application? Must be completed within the last 12 months.
12. ☒ **Include a copy of a Legal Description** of all the property involved with this application. A copy of a deed, land sales contract, or title insurance to meet this requirement.
13. ☒ **Acceptable Map.** Note: Requirements set forth by the Commission; causes fatal flaw if not provided by the applicant.
 - ☒ Reservoir Location - noting Township, Range, Section, 1/4 1/4 and Tax Lot number(s)
 - ☒ Scale of the Map, even scale such as 1" = 400', 1" = 1000', or 1" = 1320'
 - ☒ Reference corner on map
 - ☒ North directional symbol
 - ☒ ¼'s clearly identified
 - ☒ Reservoir clearly identified **
 - ☒ Dam location identified, with measured distances from survey corner. If no dam, use coordinates to the center of reservoir.
 - ☒ If diverting water from a river or stream to a reservoir located off-channel, include measured distances from survey corner
14. **Fees:** Are the appropriate fees included? Use this fee calculator to determine the application fees:
https://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator/Permit_for_AltRes.aspx

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From: LANDVOIGT Amy J * WRD
Sent: Tuesday, January 17, 2023 11:52 AM
To: Eric Urstadt
Subject: RE: Ascensionist Water Right Apps. - Watermaster review needed

Hi Eric,

Attached is my review and the associated water availability printout. You should be able to use the review for both ponds. Please let me know if you have any questions.

Thanks,

Amy Landvoigt
Oregon Water Resources Department
District 20 Watermaster
(503) 312-1743
10722 SE Hwy 212
Clackamas, OR 97015



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From: Eric Urstadt <ericurstadt@hotmail.com>
Sent: Friday, January 13, 2023 10:06 AM
To: LANDVOIGT Amy J * WRD <Amy.J.LANDVOIGT@water.oregon.gov>
Cc: Michael Getlin <michael.getlin@gmail.com>
Subject: Ascensionist Water Right Apps. - Watermaster review needed

Amy,

Attached are two forms for applications to store water filled by the exempt spring.

I have attached the map for clarity. The upper reservoir is the North reservoir and the lower reservoir is the South reservoir. I believe you are familiar with the site and conditions.

These forms filled out before the applications can be submitted.

Feel free to call me if you have any questions. I have tried to call you in the recent past, but the number did not work. I know now that I have your correct phone number and hope the email is correct, too.

Respectfully,

Eric Urstadt, PE, PLS, CWRE

Aspen Rural Land Consulting

Water Rights – Forestry – Rural Land Engineering – Land Surveying

C-2/3

Watermaster Alternate Reservoir Application Review Sheet

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the Water Resources Department provides public notice, any person may submit detailed, legally obtained information in writing, requesting the Department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

Applicant's Name: Ascension Holdings, LLC		
1. Does the proposed reservoir have the potential to injure existing water rights? ☐ YES ☒ NO Explain:		
2. Can conditions be applied to mitigate the potential injury to existing water rights? ☐ YES ☐ NO Explain: N/A		
3. Is water available for the proposed reservoir? ☒ YES ☐ NO		
4. If yes, during what period? Beginning: Nov 1 End: May 31 Attach a WARS printout at 50% exceedance. If WARS does not cover the proposed location, make a recommendation for a storage season based upon regulation history and your knowledge of the location. (Water Availability for Reservoir Policy found under OAR 690-410-0070(2)(c))		
5. Did you meet with staff from another agency to discuss this application? ☐ YES ☒ NO		
Who:	Agency:	Date:
Who:	Agency:	Date:

Watermaster Name: Amy Landvoigt, WM District 20

Watermaster Signature: Amy Landvoigt

Digitally signed by Amy Landvoigt
DN: OU=Watermaster, O=OWRD, CN=Amy
Landvoigt, E=amy.j.landvoigt@water.oregon.gov
Reason: I am the author of this document
Location:
Date: 2023.01.17 11:28:56-08'00'
Foxit PDF Editor Version: 12.0.1

Date:

1/17/2023

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NOTE: This completed form must be returned to the applicant

DETAILED REPORT ON THE WATER AVAILABILITY CALCULATION

Watershed ID #: 131
Time: 11:50 AM

MILK CR > MOLALLA R - AT MOUTH
Basin: WILLAMETTE

Exceedance Level: 50
Date: 01/17/2023

Month	Natural Stream Flow	Consumptive Use and Storage	Expected Stream Flow	Reserved Stream Flow	Instream Requirements	Net Water Available
Monthly values are in cfs. Storage is the annual amount at 50% exceedance in ac-ft.						
JAN	267.00	2.49	265.00	0.00	85.00	180.00
FEB	230.00	2.37	228.00	0.00	85.00	143.00
MAR	198.00	2.07	196.00	0.00	85.00	111.00
APR	183.00	2.32	181.00	0.00	85.00	95.70
MAY	130.00	5.12	125.00	0.00	85.00	39.90
JUN	59.00	7.59	51.40	0.00	60.00	-8.59
JUL	22.40	12.80	9.58	0.00	40.00	-30.40
AUG	12.10	10.60	1.54	0.00	20.00	-18.50
SEP	14.50	4.74	9.76	0.00	20.00	-10.20
OCT	25.70	1.78	23.90	0.00	40.00	-16.10
NOV	115.00	1.63	113.00	0.00	85.00	28.40
DEC	298.00	2.59	295.00	0.00	85.00	210.00
ANN	93,600	3,400	90,200	0	46,700	48,600

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C-3/3

Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266503-986-0900
www.oregon.gov/OWRD

NAME MIKE GETLIN		PHONE (HM)	
PHONE (WK) 503.597.9795	CELL N/A	FAX N/A	RECEIVED FEB 21 2023 OWRD
MAILING ADDRESS 16418 S. BROCKWAY ROAD			
CITY OREGON CITY	STATE OR	ZIP 97045	E-MAIL* MICHAEL.GETLIN@GMAIL.COM

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:
4S	2E	2	N/A	1200	TBR	☒ Diverted	☒ Conveyed	☒ Used	Agric. timber.
_____	_____	_____	_____	_____	_____	☐ Diverted	☐ Conveyed	☐ Used	_____

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

Clackamas

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) mostly spring and some runoff

Estimated quantity of water needed: 1.01 ☐ 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 Multipurpose

Briefly describe:

The owner has two very small reservoirs that have existed for many years. They are for agricultural, forest firefighting, and rainwater collection that need review by the Water Resources Department. The stated quantity of water stored is for both reservoirs combined (1.01 = 0.36 + 0.65).

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.

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

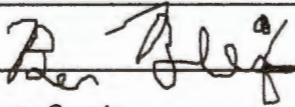
- ☒ Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s):
- ☐ Land uses to be served by the proposed water uses (including proposed construction) involve discretionary 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:	
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
	RECEIVED	☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
	FEB 21 2023	☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
	OWRD	☐ Obtained ☐ Denied	☐ Being Pursued ☐ 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.

the stated uses are allowed in the Timber (TBR) Zoning district, including agriculture uses and other accessory uses related to the home site.

Name: Ben Blessing Title: Sr. Planner

Signature:  Phone: 503-742-4521 Date: 2/14/2023

Government Entity: Clackamas County

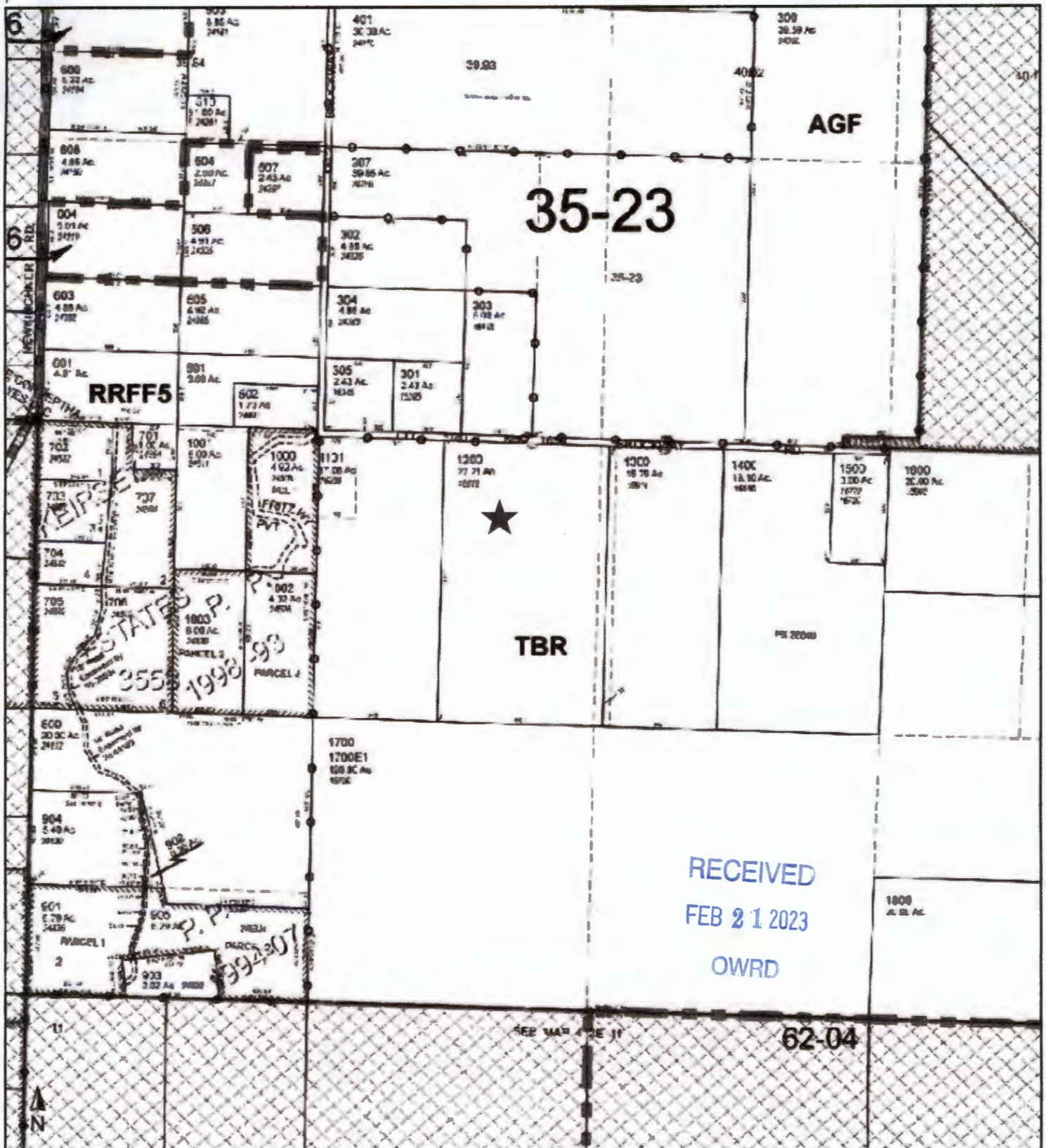
Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use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



TICOR TITLE COMPANY

ParcelID: 01022841

Tax Account #: 42E02 01200

16418 S Brockway Rd, Oregon City OR 97045

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

E-2/4

RECORDING REQUESTED BY:
Fidelity National Title
Company of Oregon

12809 SE 93rd Avenue
Clackamas, OR 97015

Clackamas County Official Records
Sherry Hall, County Clerk
2016-070948
10/14/2016 02:32:29 PM
D-D Cnt=1 Str=2 LESLIE
\$15.00 \$16.00 \$10.00 \$22.00 \$63.00

GRANTOR'S NAME:
Margaret Curtiss Tornblade

GRANTEE'S NAME:
Ascensionist Holdings LLC, an Oregon Limited Liability Company

AFTER RECORDING RETURN TO:
Ascensionist Holdings LLC, an Oregon Limited Liability Company
4591 Dogwood Drive
Lake Oswego, OR 97035

SEND TAX STATEMENTS TO:
Ascensionist Holdings LLC, an Oregon Limited Liability Company
4591 Dogwood Drive
Lake Oswego, OR 97035

16418 S. Brockway Road, Oregon City, OR 97045

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Margaret Curtiss NKA Margaret Curtiss Tornblade, Grantor, conveys and warrants to

Ascensionist Holdings LLC, an Oregon Limited Liability Company, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Clackamas, State of Oregon:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS THREE HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$396,500.00). (See ORS 93.030).

Subject to:

City liens, none as of recording.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

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Fidelity National Title of Oregon 45141629024-07

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STATUTORY WARRANTY DEED
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: October 14, 2016

Margaret Curtiss Tomblade
Margaret Curtiss Tomblade

State of Oregon

County of Clackamas

This instrument was acknowledged before me on October 14, 2016, by Margaret Curtiss Tomblade.

[Signature]
Notary Public - State of Oregon

My Commission Expires: 4-22-2019



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EXHIBIT "A"
Legal Description

A tract of land situated in the Northwest one-quarter of the Southeast one-quarter and the Northeast one-quarter of the Southwest one-quarter of Section 2, T. 4 S., R. 2 E., of the Willamette Meridian in the County of Clackamas, State of Oregon, described as follows:

Beginning at the Northwest corner of the Northeast one-quarter of the Southwest one-quarter of said Section 2; thence Easterly along the Northerly line of the Northeast one-quarter of the Southwest one-quarter of said Section 2, a distance of 576 feet; thence Southerly a distance of 30 feet to the Northwest corner of a tract of land described in Deed to Robert N. Doria, recorded April 10, 1978 as Recorder's Fee No. 78-14863, Film Records, and the true point of beginning of the tract of land herein to be described; thence Easterly along the Northerly line of said Doria tract, a distance of 767 feet to the Northwest corner of a tract of land described in Deed to William E. Imhoff, et ux, recorded July 20, 1978 as Recorder's Fee No. 78-31351, Film Records; thence Southerly along the Westerly line of said Imhoff tract a distance of 1290 feet, more or less, to the Southwest corner thereof; thence Westerly along the Southerly line of said Doria tract, a distance of 767 feet, more or less, to the Southwest corner thereof; thence Northerly along the Westerly line of said Doria tract a distance of 1290 feet to the true point of beginning.

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From: Michael Getlin
Sent: Saturday, September 3, 2022 6:57 AM
To: ericurstadt@hotmail.com
Subject: Fwd: FW: Alternate reservoirs at Getlins

----- Forwarded message -----

From: Bill Flatz <billflatz@stuntzner.com>
Date: Tue, Aug 30, 2022 at 3:46 PM
Subject: FW: Alternate reservoirs at Getlins
To: michael.getlin@gmail.com <michael.getlin@gmail.com>

Email #3

Bill Flatz - PE, CWRE, CESCL



Office: 503-357-5717

Fax: 503-357-5698

Cell: 503-939-8381

2318-B Pacific Avenue

Forest Grove, Or. 97116

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From: John Hoshall <johnhoshall@stuntzner.com>
Sent: Monday, August 29, 2022 4:49 PM
To: Bill Flatz <billflatz@stuntzner.com>
Subject: FW: Alternate reservoirs at Getlins

John Hoshall

Stuntzner Engineering & Forestry

2318-B Pacific Avenue

Forest Grove, Or 97116

Office-503-357-5717

Cell-503-407-2539

Fax-503-357-5698

From: KIM Amy J * WRD <Amy.J.Kim@oregon.gov>

Sent: Thursday, October 19, 2017 2:06 PM

To: Jeffrey Kee <jkee@stuntzner.com>

Subject: RE: Alternate reservoirs at Getlins

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Hi Jeffrey,

When we went out on the site visit, the landowner was only asking if the spring was exempt. We observed that the uppermost spring was exempt. The storage season applies to the non-exempt water only, including the exposed springs under the pond and other runoff into the pond. The exempt water may be used year-round. After the alternate reservoir permit is issued, then the applicant must apply for a secondary permit to irrigate from the reservoir. The secondary permit to use water from the reservoir may be approved for year-round use.

The language I used regarding injury to downstream owners is the same language used on all water availability statements, and the storage season is based on water availability in the Milk Creek Basin.

Again, there is nothing unusual about how this application is being processed, so I guess I am unclear on what the specific concerns are that affect your client.

Amy Kim

Oregon Water Resources Department

District 20 Watermaster

(503) 722-1410

10722 SE Hwy 212

Clackamas, OR 97015

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From: Jeffrey Kee [<mailto:jkee@stuntzner.com>]

Sent: Thursday, October 19, 2017 10:45 AM

To: KIM Amy J * WRD

Subject: Alternate reservoirs at Getlins

Amy, just checking in again to see if you could give me some more information on your determination of potential impact to existing water rights on the Alternate Reservoir applications for Ascensionist Holdings. Mr Getlin had a different perception of what Mike McChord said during the site visit.

Let me know, thanks

Jeffrey Kee

Certified Water Rights Examiner/Professional Land Surveyor/Certified Erosion Sediment Control Lead

NOTE: our new location is 2318 Pacific Avenue, Suite B, Forest Grove, Or 97116

Stuntzner Engineering & Forestry LLC

F-4/4

Office 503-357-5717

C phone 541-294-0179

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Rural Land Consulting

Water Resources, Water Rights, Land
Surveying, Engineering, Land Use Planning

ERICURSTADT@HOTMAIL.COM
971-250-1520 (MOBILE)

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

25 JAN 2023



Subject: Ascensionist Holdings, LLC water rights applications – opinion on source

Exp. Date: 30 JUN 2024

To Whom It May Concern,

EXECUTIVE SUMMARY

For practical purposes, the water stored in both reservoirs is filled by an exempt spring, and the storage and use of said waters is exempt from the water right process. A very small amount of surface runoff could get into the Lower reservoir, but the volume is negligible; however, if required, a ditch or berm could be constructed to eliminate the chance of this from happening.

INTRODUCTION

Aspen Rural Land Consulting (**Aspen**) has been engaged to assist Ascensionist Holdings, LLC (**Ascensionist**) in resolving water right issues that pertain to tax lot 1200 of Section 2, T4S, R2E, Clackamas County, Oregon which is owned Ascensionist; and this document records my opinion on the source(s) of the water for the two existing reservoirs on the property. Please note that I (Aspen) am not an attorney, so take my interpretation of Oregon law from that perspective. However, because an engineer's work often must interpret how various rules shall be applied to a particular situation, this document includes my interpretation of *both* the ground conditions and the Oregon law.

ANALYSIS

The methodology of resolving this situation started by reviewing the past communication between the Oregon Water Resources Department (**WRD**), Ascensionist, and a previous water right and engineering consultant. After that, a site visit was made by Aspen to observe the ground conditions. Then WRD documents were collected and analyzed. WRD personnel gave interpretations with adherence to one certain WRD document, but that document seems contrary to Oregon Revised Statutes (**ORS**) as well as some WRD documents. Unfortunately, the ORS for exempt springs is not exceptionally clear and this may be the source of misperceptions on this matter. To try to resolve this, Oregon Administrative Rules (**OAR**) as well as Oregon case law were researched and analyzed. The last step was to review past practices for both spring users and WRD to see if that would help resolve any confusion.

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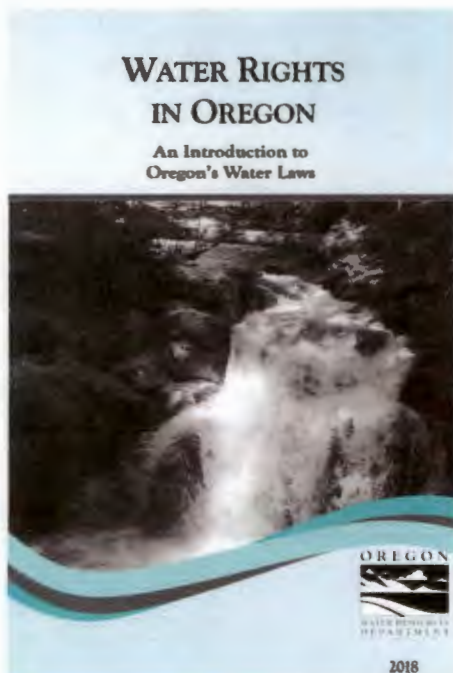
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PAST COMMUNICATION

WRD has stated via the local Watermaster, Amy (Kim) Landvoigt; and the Northwest Regional Director, Mike McCord, that both the (Ascensionist) Upper (North) and Lower (South) reservoirs need a WRD application to store water via an alternate process application. Because of that communication, Ascensionist hired the previous consultant, Stuntzner Engineering & Forestry, LLC, to work on the process around 2017. Because communication to Ascensionist from both the Watermaster and the consultant stopped, Ascensionist thought the water rights issue of 2017 had been resolved. Around August of 2022, Ascensionist was notified by the Watermaster that the water rights work had not been done and/or had not been resolved, and so Aspen has been contracted to do this work.

A few emails were obtained from the past consultant that pertained to the source of the reservoirs, which is a spring. In those emails both the Watermaster and the NW Regional Director of WRD stated that the subject spring is an "exempt spring" – see attachment F. The meaning of "exempt spring" in those emails is that the water associated with the subject spring is a source of water in Oregon that is exempt from the water right permitting process.

In my 30 years of experience in water rights, I have witnessed WRD change their opinion on what constitutes an "exempt spring". The opinions of WRD have varied by WRD personnel and through time. Nevertheless, the general test over the years has been basically the same as is written in WATER RIGHTS IN OREGON – An Introduction to Oregon's Water Laws, 2018. In that publication there is a list of uses of exempt *uses*. For some reason, it also includes an exempt *source*; which is exempt for *all* uses being as a "natural spring". This is shown below.



A few uses of surface water are exempt from the requirement to obtain a permit. These are called "exempt uses."

Exempt uses of surface water include:

1. **Natural springs:** use of a spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of the year.
2. **Stock watering:** use of water for stock watering from a permitted reservoir to a tank or trough, and, under certain conditions, use of water piped from a surface source to an off-stream livestock watering tank or trough.
3. **Fish protection:** egg incubation projects under the Salmon and Trout Enhancement Program (STEP) are exempt. Water used for fish screens, fishways, and bypass structures are also exempt.
4. **Fire control:** the withdrawal of water for emergency firefighting or certain non-emergency firefighting training.
5. **Forest management:** certain activities such as slash burning and mixing pesticides. To be eligible, a user must notify the Oregon Water Resources Department and the Oregon Department of Fish and Wildlife and must comply with any restrictions relating to the source of water that may be used.
6. **Certain land management practices:** where water use is not the primary intended activity.
7. **Rainwater:** collection and use of rainwater from an artificial impervious surface (like a building's roof).
8. **Reuse of water:** pursuant to a registration under ORS 537.132.

For more information, refer to ORS 537.141, 537.142, 537.800.

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The document says "Natural Springs: use of spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of year." Since this definition is stated in a document prepared by WRD, one would think it could be relied upon as being a valid statement of the WRD position. This definition has not been found in Oregon Revised Statutes (ORS) or in Oregon Administrative Rules (OAR); so therefore, the definition may have been developed from case law, discussed below.

My first task was to determine if there is a channel at the outflow of the spring or below it at the property boundary.

Law Insider defines a "stream channel" as "a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water". Therefore, in my site visit, it was taken that a "channel" must have banks (with vegetation) and a bed (devoid of vegetation); and if there is no streambank and associated streambed, then there is no channel.

For the subject spring, the outflow of this spring does not form a channel anywhere on the property and therefore *does not form a natural channel at all*. [I note here that a man-made channel has been constructed between the Upper and Lower reservoirs. It is lined with plastic and has rocks and bark inside the fabric. This man-made channel takes overflow from the Upper reservoir to fill the Lower reservoir with the spring water. This man-made channel should not affect the exempt spring issue.] The landowner said that even during the high runoff events the runoff (out of the Lower reservoir) goes underground before leaving the property. I walked down south to the lowest elevations below the spring and reservoirs down and past the property line and confirmed that no channel exists anywhere on the property. Furthermore, it does not appear that there has ever been a channel on the property below the reservoirs. Below is a picture of the low spot below the Lower reservoir where water will flow in high precipitation events. There is clearly no channel, and I saw no evidence of there ever being a channel.

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So, using the 2017 WRD opinions on exempt springs, both Aspen and WRD agree that **the Ascensionist spring is an exempt spring and is therefore exempt from any water right process, and the spring water can be used for any purpose, year-round without a water right.**

In attachment F, Amy (Kim) Landvoigt further states that “the storage season applies to the non-exempt water only, including the exposed springs under the pond and other [surface] runoff into the pond.” Ascensionist has told me that the Watermaster believes that (non-spring) surface runoff is also entering the reservoirs and that non-exempt groundwater is also entering the Upper reservoir via “exposed springs” encountered during excavation of the Upper reservoir.

The Watermaster is talking in terms of ground water and surface water, which are defined by WRD. Ground water (GW) is defined by WRD as water beneath the surface of the ground and surface water (SW) is defined as water above the surface of the ground. Although neither of these are mentioned in the ORS for exempt springs or case law, and this fact becomes important in the following discussion.

A different WRD perspective that apparently comes from “Technical Operations Manual” by WRD, 2009 (TOM) (sometimes called the “Watermaster Manual”) is reflected in the email from Amy (Kim) Landvoigt and from conversations with Mike McCord. TOM states that the exempt spring water is limited to be only the water that would naturally come out of the ground before such a spring was altered in any way or developed. TOM (on page 4 of 10) it states that “the rate at which water may be used under the exemption is limited to the amount which would emerge naturally from the ground.” TOM is saying that only water that would naturally flow overland out of the spring is exempt. This would be only the SW component of the spring. I agree that this is what TOM says and I understand that the Watermaster and NW Regional Director must follow guidance or jeopardize their job; however, this is contradictory to case law, past practices, logic, and eliminates seepage as mentioned in ORS 537.800.

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Although springs are, by definition, composed of both GW and SW (because without both GW and SW, you could not have a spring), TOM excludes the GW component of a spring (being seepage) from being exempt. See ORS 537.800(2) below for the definition of a spring. This is a critical part of these applications because Ascensionist contends, and that is my conclusion from my site observations, that both reservoirs are filled mainly by exempt water coming from the exempt spring's surface flow and seepage from the exempt spring. My reasoning for this is below.

OREGON REVISED STATUTES

The "exempt" spring concept is derived from Oregon Law being ORS 537.800 which is copied below.

ORS 537.800 Waste, spring and seepage waters

- 1) All ditches now or hereafter constructed, for the purpose of utilizing waste, spring or seepage waters, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the waters of running streams. However, the person upon whose lands the seepage or spring waters first arise shall have the right to the use of such waters.
- 2) As used in this section, "spring" means a point where water emerges naturally from the earth as a result of gravity flow or artesian pressure. [Formerly 537.710; 1989 c.939 §2; 1991c.200 §2; 1995 c.79 §303]

ORS 537.800 (1) states that all seepage and waters are owned by the landowner of the lands where they first arise, such *location* is further defined as a spring per ORS 537.800 (2). Because the landowner has the right to use such water per said ORS, WRD has correctly determined that no water right permit is necessary. The landowner has the right to the water via ORS and does not need to request from WRD to store or use the water.

One main question is "What is meant in ORS 537.800 (1) by "spring or seepage waters?"

Oxford Languages defines "seepage" as *"the slow escape of a liquid or gas through porous material or small holes"*.

Because the only porous material near a spring is the soil; seepage, in this case, must mean water flowing through the soil; seepage cannot refer to overland flow because overland flow is not flow through a porous material. So, the exempt water (per ORS) is clearly not intended to include *only* the natural flow on top of the soils where the spring emerges (SW), but is intended to include the *seepage* below the ground where the water emerges to form the spring (GW). TOM is in conflict with ORS for this point.

Furthermore, ORS does NOT state that the exempt spring water only includes the water that naturally comes out of the ground. The ORS states that the exempt water is the water at the point (or location or position) of the subject spring. As per the definition of a spring, both SW and GW are essential components of any spring. Therefore, it is my opinion that the exempt spring water per ORS include the flow of both water above (SW) and below the ground (GW) adjacent to and associated with the spring. I add "adjacent" to the water associated to the spring so to clarify that the spring development should not access or include groundwater from an entirely different aquifer than that of the spring location. For example, an exempt spring development should not intercept an entirely different aquifer of

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groundwater that would be naturally separated from the spring by impervious soils.] TOM also is in conflict with ORS for this point.

ORS 537.800(1) also mentions "ditches constructed, for the purpose of utilizing" such water. The statute specifically mentions "ditches" and such construction to use such waters. The statute clearly envisioned developing a spring via excavating below the surface of the ground; and that excavation and construction was foreseen and intended for the use of springs. Contrarily, TOM states that any development of the spring including digging, using perforated pipe, or building a cistern is NOT allowed. By the mentioning of ditches and construction, it is clear that the ORS intended to allow the water user to excavate to develop the spring in order to collect the spring water. TOM also is in conflict with ORS for this point.

I note here that the Ascensionist spring does not flow only at a "point" (if taken to mean a small dot) but instead flows out of the earth in "an area" such as is described in multiple case law examples. The Ascensionist spring seems to be like many springs and its exact location, flow, width, and depth changes over time and with differing weather conditions. For this reason, I believe that the word "point" in ORS is meant to be a "location on the earth" and not a "dot" or "a small opening in the earth". The Ascensionist spring flows at a point on the earth, but the spring does not flow out of a tiny hole in the earth.

The above conclusions are confirmed case law. The following is a summary of main points in a few of the cases that I have researched. I have researched to find as much case law as possible. Not all case law that was researched has been listed below, but rather just a few of the cases. The case law all seem to agree on the main points. No case law was found that contradicts these findings.

CASE LAW

Henrici v. Paulson, 1930:

- This case analyzes an exempt spring or seepage water issue and says "*In Boyce v. Cupper, supra, it was said: 'The rule is general that water percolating the soil beneath the surface, the course of which is unknown, and unascertainable, belongs to the realty on which it is found.'*" This clearly intends to include seepage water flowing beneath the surface of the ground with the exempt spring.
- This case also mentions "*In Hayes v. Adams, supra, referring to certain contentions of one of the parties with regard to subterranean percolating waters, the source of which was unknown and unascertainable, said: 'They invoke the rule recognized by all the authorities, that such waters are a constituent part of the land, and belong to the owner of the land, with the right in such owner to make any reasonable use thereof,'*"

The case analyzed an exempt spring. Subterranean percolating waters is seepage through the soil under the surface of the ground which is defined by WRD as GW. Therefore, GW is included in the exempt water connected with an exempt spring.

Beisel v. Wood, 1947:

- This case says "*The water of the spring involved in the present case does not pass from the tract of land upon which it arises, or becomes the source of any watercourse. It merely seeps or flows directly into a small marsh upon the same tract, having no perceptible outlet. Such a spring is not*

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subject to appropriation by any person other than the owner of such land. It is private water, a part of the land upon which it arises, and belongs to the owner of that land."

This case analyzes a spring in which water only flows through the ground via seepage, and it states that such water belongs to the owner of that land. In this case, the spring may have little or no overland flow (surface water per WRD), yet it determined the water is part of an exempt spring. Again, this case confirms both SW and GW are components of the exempt water connected with an exempt spring.

Morrison v. Officer, 1906:

- This case analyzes exempt spring water and describes a spring where *"the water does not usually appear on the surface, but, issuing from the spring on the side of a hill, it makes its way, without channel or banks, through brush and grass, moistening the ground for a space about 30 feet in width, the distance mentioned, and that where water cattle have made tracks in the damp soil, may be seen, but it does not flow until confined in a ditch"*.

This case analyzes an exempt spring where water does not usually appear on the surface and instead moistens the ground for a space 30 feet wide. This confirms that GW associated with the spring as well as the SW is exempt as is and owned by the landowner of the spring. The Ascensionist spring is such as this where it appears to moisten the soil about 20 or 30 feet wide. In this area, and in a wetter period of the year than when I visited (I visited after 6 weeks of drought), I expect that cattle would easily make tracks in the damp soil water and in these tracks water might be visible on the surface and puddle. The Ascensionist spring box is placed towards the west end of the spring and misses much of the seepage and much of the spring. The Lower reservoir was dug to capture and store more of the exempt spring water. The Lower reservoir has a plastic liner so it cannot access GW not associated with the exempt spring. The liner also minimizes losses due to seepage.

PAST AND CURRENT PRACTICES IN OREGON

Past and current practices for use of springs are basically opposite of TOM.

Most springs in practice in Oregon and all over the country are developed by using a ditch or some sort of excavation to catch the seepage and sometimes overland flow. As far as I know, there was never a mention that only overland flow (SW) can be diverted by a spring until more recently. I believe this is because everyone understood that seepage and underground flow was just part of all springs. In fact, overland flow is usually planned to be *eliminated* from spring water via spring development because it is a very likely source of pollutants and debris.

More recently, WRD personnel have stated that only the SW associated with an exempt spring can be utilized without a permit and accessing the GW associated with the spring is not allowed without a WRD permit. Any quick research to look up examples of spring development plans would find that all the water being accessed by a spring is GW. I have NEVER seen spring development plans for only SW being accessed. This would be nearly impossible to do in practice, and would have been especially difficult when the statute was written. This part of TOM is just illogical.

When WRD personnel are questioned about how to develop such a spring they suggested laying a plastic

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film on top of the ground just below where water comes out of the ground and ONLY collecting that water.

- When the statutes were written plastic and most impervious thin materials did not exist.
- The plastic mentioned by WRD personnel would need to be staked down in some way, and this would then change the flow from a natural flow.
- If one could do this, the plastic would also collect any surface runoff due to precipitation in the rainy season on the watershed above the spring. I do not see how it would be possible to keep the surface water *not coming* from the spring, separate from the water *coming* from the spring.
- In all my years, I have never seen or heard of a spring being developed in this manner.

In my experience, all springs have been developed with a "spring box" or "French drain" or "ditch" of some sort.

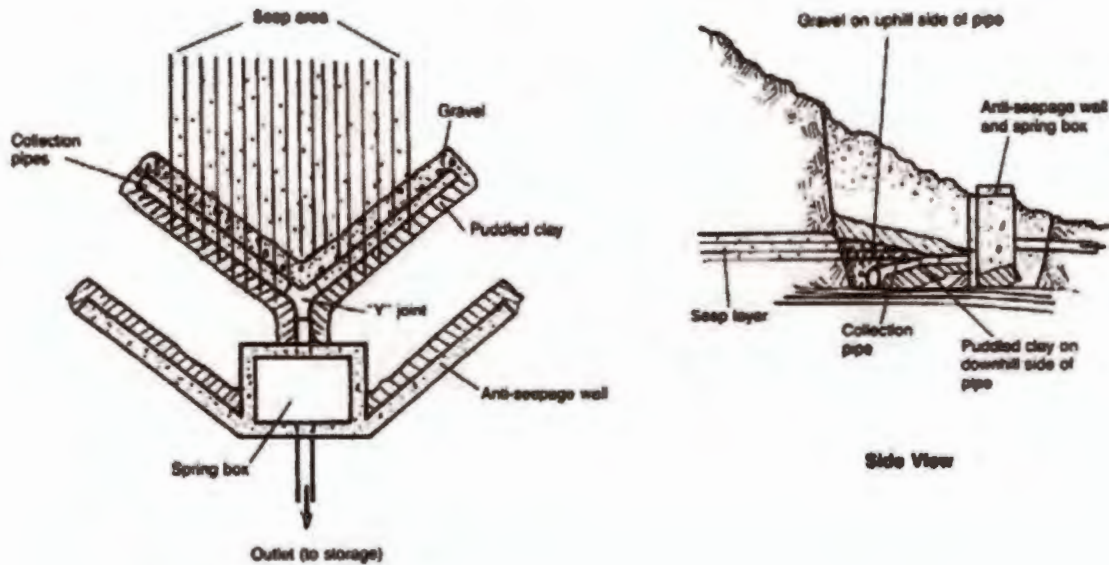
- A spring box is typically used for spring if it appears that the spring water comes out in a small location, or perhaps to catch the part of the spring where the flow is best and year-round. A spring box can be placed by digging upstream of the spring and intercepting the spring water underground. The water comes into the spring box usually sideways through some sort of filter being sand, gravel, or fabric to separate the fine soil from getting into the water. Sometimes the water is so clean that a filter is not needed. The top is typically (almost always) covered to prevent SW and associated pollutants from entering.
- A French drain might be used where the spring and seepage waters are in a wide area, and not just a point. (Although Ascensionist does have an old spring box, the Ascensionist spring comes out of the earth in a wide area and so therefore, the spring box does not collect a large amount of the spring water.) A French drain is a ditch that usually has a similar filter where water enters the ditch via seeping sideways through the soil. Again, the top is typically covered to keep pollutants from entering.
- Often ditches were excavated near where water was first observed to intersect a wide spring to intersect both surface flow and seepage underground. Ditches are sometimes extended to then divert water downward to a place of use using gravity.

Below is a typical spring development plan. There are many versions and varieties, but the plan has the main components of most springs. Some springs skip the pipe and just use gravel, some use fabric to keep very small soil particles out. Most have one thing in common, the spring GW is collected and the spring SW is excluded. Past WRD practices conflict with this newer interpretation by WRD and TOM.

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WRD and non-exempt springs:

In all cases of where a non-exempt spring is used for domestic use, WRD has required a water right to apply to use SW because SW *does not* have an exemption for a domestic use. A non-exempt spring must flow off the property in a well-defined channel, and therefore WRD has treated this spring water (and maybe all spring water as SW. But this convention does not make sense in the real world. It seems WRD has convolved the “test” or “definition” for a spring (does it flow off the property in a channel) with if the spring is made up SW and/or GW. The test being, “Does it flow of the property in a defined channel?”, does only involve SW because all water in a channel is obviously above the ground surface; however, this definition is the only the “test” for an exempt spring and not the definition of what a spring is comprised of. Again, springs are by definition a combination of both GW and SW. A spring is simply a location where GW changes to SW.

In the past, all water users have been allowed to develop their springs via a spring box or French drain or similar method, which means WRD has been allowing access to GW even though WRD has been requiring a SW permit. For this to make sense, WRD must have, at one time, concluded (correctly) that the very shallow GW that is adjacent to a spring is spring water and different from what is normally considered GW. GW was taken to be from a well and accessing water from an aquifer at least a few feet below the surface of the ground.

- For example, tiling is normally done by farmers to removed very shallow water from wet soils so that other crops can be grown. This water has never been considered GW by WRD. If it was, a GW right would be required to divert the water, for every tiling project. This has never been enforced by WRD.
- GW is exempt from as water right if used for a domestic purpose. But for any (non) exempt spring WRD required a SW right for the spring. However, since, in practice, most springs are developed

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(especially domestic springs) to include *only* GW and *exclude* SW, then why would WRD require a SW water right for a spring? Why wouldn't they just tell domestic users that the springs are all exempt because GW is exempt for domestic use?

- The only thing that makes sense is that WRD has previously concluded that the GW associated with a spring is just a component of any spring. The GW eventually becomes SW and for non-exempt springs which form channel; the GW eventually is part of the SW system.

Springs include both SW and GW and splitting spring water into SW and GW just is not practical; they are inherently combined. The terms SW and GW don't add clarification for springs, they cause confusion.

For all the above reasons, I conclude that ORS 537.800 was written intending to include both groundwater (seepage) and surface water for an exempt spring.

GROUND CONDITIONS

With all that said, the ground conditions of the site need to be discussed to determine what waters are used to fill the Upper and Lower reservoirs.

It is my understanding that WRD visited the site during a very high rain event. I expect they wanted to find if any surface runoff ran off the property to then determine that the spring was, in their mind, non-exempt. This weather event would be the highest chance for water flowing off the property. However, it is also my understanding that runoff even in that high precipitation event (and even though the flow certainly had water added to the spring flow from surface flow coming from the watershed above the reservoirs and on both sides of the spring), no water left the site because it went underground before leaving the property. Also, there is no channel that exists on the property below the Lower reservoir.

Contrarily, my observations on Sep 13, 2022 were after a drought of approximately 10 weeks (this timing was just by chance and not by design). It appears that the Upper reservoir has been spring fed throughout the summer as it is down only 1.5 feet from its normal full state even after removal of some water via irrigation (the owner has a small drip type irrigation system that he has used because he has always understood that the water is exempt from a water right).

A spring box on the west side of the spring and northwest side of the reservoir is just flowing a trickle; however, the spring box does not capture all the spring water flowing into the reservoir. The spring also flows into the north side of the reservoir, and green grass and green vegetation exists on that side of the reservoir due to seepage because of the spring.

In my experience with water rights and reservoirs, after 10 weeks of drought, most reservoirs are probably down around 3 feet due to seepage and evaporation without any water being removed for a secondary use such as irrigation. Because the reservoir is only down about 1.5 feet in elevation from its normal full level and irrigation has occurred, it is clear to me that although there is some surface flow that could fill the reservoir in high precipitation events, the reservoir is likely filled from the spring water before runoff from a rain event ever gets to it, and SW is a negligible contributor to the reservoir storage.

I add here that, I could not think of a practical way to eliminate surface runoff from entering the Upper reservoir without not also diverting spring water away from the reservoir with said runoff.

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Also, from my observations on Sep 13, 2022, I find that because the Lower reservoir is nearly full, it appears that the reservoir had been filled last winter but not likely added to over the summer. This reservoir is down 8" from its normal full state. In my experience, most reservoirs go down about 3 feet over a 10-week drought due to seepage and evaporation. However, this reservoir has a plastic liner, so seepage should not be occurring, and the 8" drawdown from evaporation matches my expectation for summer evaporation from a lined reservoir. The landowner has stated that he has not pumped any water from the Upper reservoir into the Lower reservoir and this matches my expectation from the ground conditions.

The Lower reservoir could also collect runoff from small watersheds on the sides of the reservoir. This runoff *could* be diverted with by constructing a ditch or berm around the reservoir if WRD wanted to require that. However, because the reservoir is already almost full after a drought, I would expect that this reservoir certainly would also be full before any significant runoff entered the reservoir. This is because the spring water would likely increase in flow after rains began, but before so much rain that surface runoff would occur, and therefore the spring water would likely fill both reservoirs before any surface runoff entered the either reservoir. Later in the rainy season, when surface runoff unrelated to the spring does enter the reservoirs, the reservoirs are expected to be full and so any volumes of surface runoff would then just pass out of the outlet of the Lower reservoir.

CONCLUSION

Therefore, it is my conclusion that both reservoirs are filled almost exclusively from the "exempt" spring with any inflows from other surface runoff being insignificant.

We submit the applications to "clear the air" and allow WRD to review these applications as a use of exempt spring water for the purpose of protecting Ascensionist and future landowners of the spring from potential claims by downstream water users. Similarly, any secondary use of water taken out of the reservoirs should be deemed exempt from the WRD process and any WRD limitations or requirements, because the waters are from an exempt spring.

Sincerely,

Aspen Rural Land Consulting, LLC

Eric Urstadt, PE, PLS, CWRE

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