



Oregon

Tina Kotek, Governor

Water Resources Department

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www.oregon.gov/owrd

Water Right Application Initial Review

October 20, 2023

US FISH AND WILDLIFE SERVICES
911 NE 11TH AVE
PORTLAND OR 97232

Reference: Application R-89400

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

Preliminary Determinations under Oregon Administrative Rule (OAR) 690-310-0080:

1. The application proposes the diversion of 247.5 acre-feet (AF) of water from runoff, tributary to the Tualatin River, for storage, being 177.4 AF in Pond 1P and 70.1 AF in Pond 2P, for wetland enhancement, January 1 through December 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Storage for wetland enhancement is allowable under the Willamette Basin Program (OAR 690-502-0040(4)(a)) from November 1 to June 30 of each year.
4. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established surface water is available for the proposed use from November 1 through June 30 of each year.
5. The proposed use is not located within or above any state scenic waterway.
6. The application was submitted by a US Government agency for use on federal land, therefore no demonstration of land-use compatibility is necessary.

7. The proposed storage place of use under this application is in conflict with an existing wetland enhancement water right evidenced by Certificate 96648. Please see the **Conflict Resolution Information** section below for details.

Summary of Preliminary Determinations

The diversion of 247.5 AF of water from runoff, tributary to the Tualatin River, for storage, being 177.4 AF in Pond 1P and 70.1 AF in Pond 2P, for wetland enhancement from November 1 through June 30 of each year, may be allowable, contingent upon conflict resolution.

Conflict Resolution Information:

A proposed storage place of use under this application is in conflict with an existing wetland enhancement water right evidenced by Certificate 96648. If this application is approved, prior to issuance of permit, the Department must receive:

- a. A completed *Affidavit of Voluntary Cancellation or Diminution of a Water Right Certificate* authorizing partial cancellation of the conflicting portions of the existing right, along with any additional attachments described in that affidavit. This voluntary partial cancellation of water right Certificate 96648 will only be processed concurrently with any permit issued under Application R-89400.

To ensure timely processing of your application, please submit the enclosed Affidavit no later than December 15, 2023. If you are unable to meet this deadline, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

Public Comment & Further Review:

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

Division 33 Review – The Department’s Division 33 administrative rules (OAR 690-033) establish additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered (STE) fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will now undergo an additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be required to mitigate for potential impacts identified in the review.

Mitigation for impacts to STE Species – Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to STE fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$790 required with any mitigation proposal submitted.

At this time, you must decide whether to proceed or to withdraw the application.

- To Proceed - If you choose to proceed with the application, you do not have to notify the Department. The application will be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.
- To Withdraw - You may withdraw the application and receive a refund (minus a \$310 processing fee per application). You must notify the Department **in writing by November 3, 2023**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If a permit is issued, it will likely include the following conditions:

1. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. The watermaster may determine an alternate measuring device is suitable. The permittee shall maintain the device in good working order.
 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The permittee shall keep a complete record of the volume of water stored each month, and shall submit a report which includes water-storage measurements to the Department annually (or more frequently as may be required by the Director). Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

DAM CONDITIONS

1. Routine maintenance or repair of the dam, its spillway, and all appurtenant structures shall be performed to include, but not be limited to, removal of woody or high vegetation from the embankment, abutments and spillway; removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.
2. Repair or replacement of defective or worn out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe. If the dam is enlarged, modified, or otherwise altered, this work must be based on design plans and specifications prepared by a Registered Professional Engineer licensed in Oregon. These plans must be submitted to and approved by the State Engineer prior to such alterations of the dam, its spillway, or any appurtenant structure(s). No water shall be stored until the Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications.
3. No valve shall be installed at the downstream end of the low level conduit, and the low level conduit shall not be operated in a pressurized condition unless the dam has been designed for pressurized operation by the design engineer. There must be an operations manual for the dam that describes pressurized operation, and necessary inspections of pressurized conduits for the dam.
4. If used, flashboards shall be maintained in good condition, replaced as needed, and removed as necessary prior to potential winter storms, or unusual rainfall or snowmelt events at any time of the year.
5. Failure to comply with any portion of Oregon Revised Statue 540.443 through 540.491 and Oregon Administrative Rules Chapter 690 Division 20 may result in action including, but not limited to, restrictions on use, civil penalties, or cancellation of the permit.

RESERVOIR CONDITIONS

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
2. The permittee shall pass all live flow outside the storage season described above.
3. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

4. 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.
5. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

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

For Further Information:

Feel free to contact me at Adam.M.Frederick@water.oregon.gov or 971-707-8400 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Adam Frederick, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

Adam Frederick

Adam Frederick
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description
Stop Processing Request Form
Affidavit of Voluntary Cancellation or Diminution of a Water Right Certificate

R-89400
WAB: 30201006
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: R-89400

Applicant: US FISH AND WILDLIFE SERVICES

County: WASHINGTON

Watermaster: JAKE CONSTANS, #18, NWR

Priority Date: SEPTEMBER 14, 2023

Source: RUNOFF, TRIBUTARY TO TUALATIN RIVER

Purpose or Use of the stored water: WETLAND ENHANCEMENT

Storage Facility Name: POND 1P AND POND 2P

Maximum Dam Height: POND 1P 12.0 FEET AND POND 2P 13.2 FEET

Volume: 247.5 ACRE-FEET (AF), BEING 177.4 AF IN POND 1P AND 70.1 AF IN POND 2P

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Basin Name & Number: WILLAMETTE, #2

WAB: TUALATIN R > WILLAMETTE R - AT GAGE 14207500

Dam Locations:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height (Feet)	Area (Acres)
POND 1P	2 S	1 W	WM	20	SW NE	1480 FEET SOUTH AND 5030 FEET EAST FROM NW CORNER, DLC 41	12.0	51.6
POND 2P	2 S	1 W	WM	20	NW SE	2640 FEET SOUTH AND 4250 FEET EAST FROM NW CORNER, DLC 41	13.2	14.9

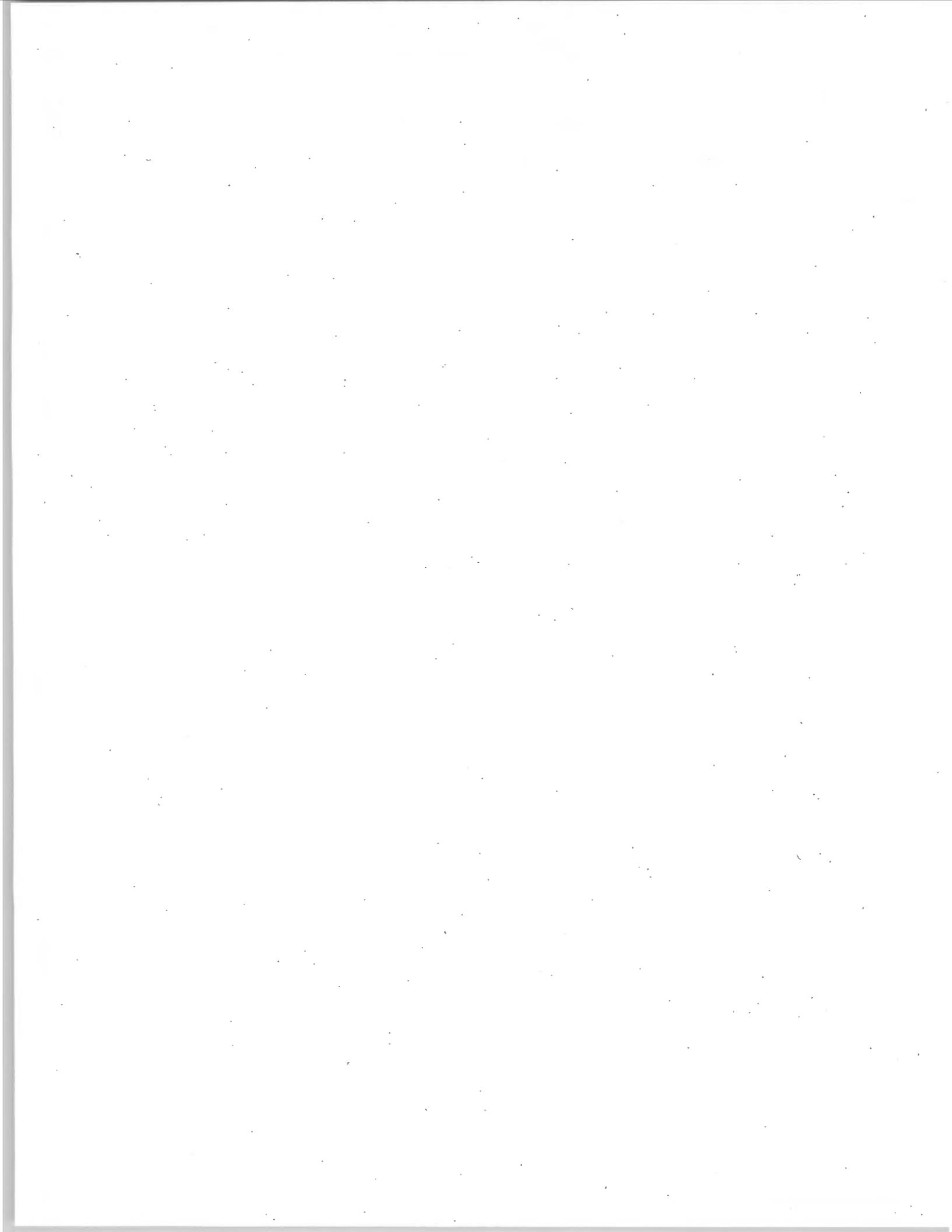
The Area to be submerged by the Reservoirs:

Twp	Rng	Mer	Sec	Q-Q
2 S	1 W	WM	20	NW NE
2 S	1 W	WM	20	SW NE
2 S	1 W	WM	20	SE NW
2 S	1 W	WM	20	NE SW
2 S	1 W	WM	20	SE SW
2 S	1 W	WM	20	NW SE
2 S	1 W	WM	20	SW SE

PUBLIC NOTICE DATE: October 24, 2023

14 DAY STOP PROCESSING DEADLINE DATE: November 3, 2023

30 DAY COMMENT DEADLINE DATE: November 23, 2023



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

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our website at: www.oregon.gov/owrd

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0900.

2. Application filing

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

3. Initial Review (IR)

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.

4. Proposed Final Order (PFO)

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

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

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

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is issued.

Permit holder responsibilities

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

STOP PROCESSING REQUEST FORM

FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **R-89400**.

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$310 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application.

Signature _____ Date _____

Signature _____ Date _____

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$310 processing fee) be returned.

- This notice must be received at Water Resources Department by:

November 3, 2023

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1266



Affidavit of Voluntary Cancellation or Diminution of a Water Right Certificate

VOLUNTARY CANCELLATION is how the legal holder(s) of a water right certificate may cancel an abandoned water right or an abandoned portion of a water right. Abandonment means water use has or will have ceased under the cancellation. A cancellation can apply to an entire certificate or to a specific place of use and acreage. The rate of water must be proportionately cancelled to match the portion of the right being cancelled. If a certificate is partially cancelled, a remaining water right certificate will be issued describing the uncanceled portion.

[see also Oregon Revised Statute (ORS) 540.621 and Administrative Rule (OAR) 690-017-0100.]

VOLUNTARY DIMINUTION is how the legal holder(s) of a water right certificate may diminish an entire water right or a portion of it from a primary purpose to a supplemental purpose. The overall authorized rate of water on the certificate will remain the same, but the proportions between primary use and supplemental use will change. In the diminution process, the originating water right will be cancelled, and a new water right will be issued describing the diminution. [see also Oregon Administrative Rule (OAR) 690-330-0040.]

Describe in your own words what you want to accomplish with this affidavit:

Certificate of Water Right Information:

Certificate Number: _____.

Issued for use within the State of Oregon, County of _____.

Issued in the name of: _____.

Date of priority: _____.

Rate or Volume on entire certificate: _____ (cubic foot per second **or** gallons per minute **or** acre-feet).

Source(s) of water on certificate: _____.

Use(s) of water listed on certificate: _____ (purposes),

If for irrigation (IR), total number of acres on certificate for primary IR _____, supplemental IR _____.

Statements of Oath:

I/We (or authorized agent), _____,

residing at _____,

with a mailing address of (if different) _____,

and a telephone number of _____, being first duly sworn depose and say:

Affidavit for the VOLUNTARY CANCELLATION or DIMINUTION of a Water Right Certificate

1. I/We are the legal owners of property appurtenant to all **or** a portion (check one box) of the water right described above. My/Our property is described on a recorded property deed in my/our/an entity name(s). The property is located within the following legal description [must include at a minimum, township(s), range(s), section number(s), quarter- quarter(s) and tax lot number(s)].

Examples:

- Township 3 South, Range 5 East, Section 12, NW¼, NW¼ SW¼ & SW¼ SW¼; Section 13 NWNW, SWNW, all within Tax Lot 700.
- T16S, R18E, Sec18, SWSE & SESE, TL 1700
- T6N, R35E, Sec 27, S½, TL 1100

2. I/We are requesting a [check one box - the affidavit will be returned if more than one box is checked]:

- voluntary cancellation of and have abandoned any and all interest in the ENTIRE water right Certificate # _____.
- voluntary cancellation of and have abandoned any and all interest a PORTION of water right Certificate # _____.
- voluntary diminution of the ENTIRE water right Certificate # _____.
- voluntary diminution of a PORTION of water right Certificate # _____.

3. The appurtenant water right is **or** is not (check one box) located within the boundaries of an irrigation, drainage, water improvement, or water control district, or federal reclamation project (district). If the right is located within a district or reclamation project, name it here:

_____);

a. The water right, or portion thereof, being cancelled **or** diminished (check one box) is in the name of or served by a district. The signature of district manager on the line below documents the concurrence of the district to the changes to the water right specified in this affidavit, for the portion of the water right in the name of or served by the district.

Signature of district manager Printed Name Date

4. Complete this item (#4) only if this is a CANCELLATION for a PORTION of the water right.

I/We have abandoned any and all interest in and wish to cancel the following portion(s) of the water right certificate number listed in Item #2, above:

- A place of use, or use.
 - For the use of (specify irrigation, domestic, etc.) _____
 - IF FOR IRRIGATION OR NURSERY USE: Total number of acres to be cancelled _____
 - In the amount of _____ cubic foot per second
 - From the water source (s) _____

Affidavit for the VOLUNTARY CANCELLATION or DIMINUTION of a Water Right Certificate

- At the following location(s) (attach a larger table if needed):

ABANDONED PORTION TO BE CANCELLED										
Township	N or S	Range	E or W	Mer	Section #	DLC #	G-LOT #	Quarter-Quarter	Acres	Tax Lot #
				WM						
				WM						
				WM						
				WM						

- Locations of the place of use or acres being cancelled are clearly identified on a copy of the certificate map of record (decree map, final proof map, or claim of beneficial use map); or, if there is no certificate map of record, then an alternate map is being submitted with information sufficient to determine the lands on which the right is to be cancelled)
- Locations of the place of use or acres **NOT** being cancelled are clearly identified on a copy of the certificate map of record; or if there is no certificate map of record, then an alternate map is being submitted with information sufficient to determine the lands on which the right is NOT to be cancelled.

AND/OR (less common)

- One or more of the authorized points of diversion (surface water) or points of appropriation (groundwater) authorized under the certificate.
- For the use of (specify irrigation, domestic, etc.) _____
 - From the water source (s) _____
 - Located within the Township _____ N or S , Range _____ E or W , Section _____; Q-Q _____
 - Location Description (if given on the certificate) _____

5. Complete this section (Item #5a-c) for a DIMINUTION of ALL or a PORTION of the water right.

- I/We have found a more dependable source of primary water, and therefore request the water right certificate in its entirety, **or** as described in Item #6, below, (check one box) be diminished from a right for primary use to a right for supplemental use.
- I/We agree that if this change is approved, it is permanent and the right to the use of water from _____ (source) cannot be changed back to the primary use unless otherwise provided by law.
- I/We also agree that so long as there is sufficient water available from the new primary source, I am/we are not entitled to use any water from _____ (source of water) for primary use on these lands.

6. Complete this item (#6) for a DIMINUTION of a PORTION of the water right.

I/We, being the legal owners of the property described below are requesting a partial diminution of the water right certificate (identified in Item #2 above in the amount of _____ (cfs) from _____ (sources) for irrigation (if applicable) of _____ acres at the following location(s) as listed on the certificate (attach a larger table if needed):

--table next page--

Affidavit for the VOLUNTARY CANCELLATION or DIMINUTION of a Water Right Certificate

PORTION TO BE DIMINISHED										
Township	N or S	Range	E or W	Mer	Section #	DLC #	G-LOT #	Quarter-Quarter	Acres	Tax Lot #
				WM						
				WM						
				WM						
				WM						

Signatures and Notary:

 Signature of legal owner as listed on deed, or authorized agent
 Printed Name _____

 Date

 Signature of legal co-owner as listed on deed (if applicable)
 Printed Name _____

 Date

Subscribed and Sworn to Before Me this _____ day of _____, 20_____.

 Notary Public for Oregon

My Commission Expires _____

REQUIRED ATTACHMENTS (LEGIBLE COPIES):

- 1) A recorded property deed which lists landowner(s) and includes a legal description of lands affected by this affidavit of cancellation or diminution.
- 2) An adjudication map, water right final proof map, or a tax lot map that clearly shows:
 - a. Location and acreages within each township, range and quarter-quarter of the lands described on the water right being cancelled or diminished, and
 - b. the remaining locations and acreages within each township, range and quarter-quarter of the lands described on entire water right NOT being cancelled or diminished, if any.
- 3) A list of names and addresses of other property owners with lands appurtenant to portions of the water right certificate not legally owned by the person(s) signing the affidavit.
- 4) If acting as an authorized agent, include a copy of the Power of Attorney or other documents granting authority to act on behalf of legal owner(s) as listed on the deed.

MISSING ATTACHMENTS WILL RESULT IN THE AFFIDAVIT BEING RETURNED, AND NO ACTION TAKEN ON THE AFFIDAVIT.