

Application No. S-89170

FEES PAID

Date	Amount	Receipt No.
10-14-2021	\$2110.00	1366212
	Cert. Fee	

Name S-89170
 By Brian & Duane, LLC
 Address 7385 Howell Prairie Rd NE
Silverton OR 97381

Permit No. _____
 Certificate No. _____

Date

DENIED _____

MISFILED _____

Volume | Page

WITHDRAWN _____

CANCELLED _____

FEES REFUNDED

Date	Amount	Receipt No.

Priority 10-14-2021

County Umatilla WM# 5

RELATED FILES

ASSIGNMENTS

Date	To Whom	Address

DEVELOPMENT

Date

Completion _____

Extended to _____

Final Proof received _____

Proposed Cert. Mailed _____

REMARKS

MAP LOCATION _____

From: [FRENCH Kim R * WRD](#)
To: [GRAHAM Elisabeth A * WRD](#)
Subject: FW: Application - S-89170 - WM Review
Date: Thursday, December 1, 2022 11:21:13 AM
Attachments: [S-89170 Brian and Duane LLC.pdf](#)

Here is a WM review from Greg. Not sure why he sent it to the Transfers review email, but I wanted to make sure you got it. I have another one that I'll forward too.

Thanks!

Kim French | Water Rights Transfer Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-9607 Email: kim.r.french@water.oregon.gov
Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

Life is too short to spend one minute unhappy! Be Happy!

The Salem office re-opened to the public on May 1, 2022. Given that many staff will continue teleworking remotely or have job duties that take them into the field on a regular basis, availability of staff in the office is not guaranteed 8 a.m. - 5 p.m. every day.

Customers and visitors are encouraged to schedule an appointment in advance if they wish to meet in person with specific staff members. Alternative methods for meeting, such as by phone or virtually via Teams, are also available.

From: SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Sent: Thursday, December 1, 2022 11:05 AM
To: WRD_DL_transferreviews <WRD_DL_transferreviews@water.oregon.gov>
Subject: Application - S-89170 - WM Review

Greg Silbernagel - Watermaster, District 5
Oregon Water Resources Department
116 SE Dorion Ave.
Pendleton, OR 97801
(541) 969-1677

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WATER RESOURCES DEPARTMENT

DIVISION 519

COLUMBIA RIVER BASIN PROGRAM

690-519-0000

Classifications

(1) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Columbia River from the Oregon-Washington border near river mile 309 to the confluence with the Pacific Ocean and the attainment of an integrated and coordinated program for the benefit of the state will be furthered through utilization of the aforementioned waters only for instream use for power development, navigation, recreation, wildlife and fish life, and the waters of the Columbia River are hereby so classified with the following exception: The maximum economic development of this state, the attainment of the highest and best use of 30 million acre-feet annually of natural flows of the Columbia River, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, mining, industrial, **agricultural use, irrigation**, recreation, power development, pollution abatement, wildlife and fish life uses, and the 30 million acre-feet annually of natural flows of the Columbia River are hereby so classified and reserved for exclusive use within the State of Oregon.

From: [FRENCH Kim R * WRD](#)
To: [RATCLIFFE Katie S * WRD](#); [GRAHAM Elisabeth A * WRD](#); [KOWITZ Chris C * WRD](#)
Subject: RE: S-89170 & S-89171 Brian and Duane Superseding IR - review request
Date: Friday, August 12, 2022 8:20:16 AM

Ok, thank you.

Kim French | Water Rights Program Analyst

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov
Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

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From: RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>
Sent: Friday, August 12, 2022 8:17 AM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>; GRAHAM Elisabeth A * WRD <Elisabeth.A.GRAHAM@water.oregon.gov>; KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Subject: RE: S-89170 & S-89171 Brian and Duane Superseding IR - review request

Hi Kim,

The modifications and explanation look good to me; thank you. I think these documents are ready for issuance.

[Katie Ratcliffe](#)

Water Rights Section Manager
Oregon Water Resources Department
Phone 971-338-8105 (work cell)
katie.s.ratcliffe@water.oregon.gov

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From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Friday, August 5, 2022 12:10 PM
To: GRAHAM Elisabeth A * WRD <Elisabeth.A.GRAHAM@water.oregon.gov>; KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>
Subject: S-89170 & S-89171 Brian and Duane Superseding IR - review request

Let me know if you'd like to see any changes.

Thank you,

Kim French | Water Rights Program Analyst

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STANDARD APPLICATION CHECKLIST

Application #: S-89170	Applicant: BRIAN AND DUANE LLC	
Basin # 7	Priority Date: October 14, 2021	WM#: 5

INITIAL REVIEW		
PR	CW	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	ORS 538 prohibits use? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (stop processing and return app and fees)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Requested Use/Rate/Season: IR (raise soil moisture) 0.80 CFS; 156.1 AC; 10/1-4/14
		Limit: Duty:
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Allowed Use/Rate/Season: IR (rsm) 0.80 CFS; 156.1 AC; 10/1-4/14
		Limit: Duty:

Use		
PR	CW	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Use is <input checked="" type="checkbox"/> Allowed <input type="checkbox"/> Not Allowed <input type="checkbox"/> Limited
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Per <input type="checkbox"/> Compact <input checked="" type="checkbox"/> OAR: 690- 519-0000(1)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	POU Conflict? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Supplemental? <input type="checkbox"/> NA <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, Limits
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Conservation Methods? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes

Land Use		
PR	CW	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Allowed Outright <input type="checkbox"/> Not Allowed <input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued <input type="checkbox"/> Decision Obtained
		<input type="checkbox"/> Receipt Only <input type="checkbox"/> NA

Groundwater		
PR	CW	<input checked="" type="checkbox"/> NA
<input type="checkbox"/>	<input type="checkbox"/>	Well construction meets minimum stds? <input type="checkbox"/> Yes <input type="checkbox"/> No (deny) <input type="checkbox"/> NA (proposed well)
<input type="checkbox"/>	<input type="checkbox"/>	GW Rev: <input type="checkbox"/> will likely be available <input type="checkbox"/> will likely not be available <input type="checkbox"/> will, if properly conditioned
<input type="checkbox"/>	<input type="checkbox"/>	GW Conditions:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> No PSI <input type="checkbox"/> well Has PSI with
<input type="checkbox"/>	<input type="checkbox"/>	PSI caused from <input type="checkbox"/> ¼ mile <input type="checkbox"/> > 5 CFS <input type="checkbox"/> Instream Q <input type="checkbox"/> > 1% of 80% <input type="checkbox"/> Interference > 25%
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Reduce rate to avoid PSI

Well Name(s)	
Notes:	

Surface Water Availability		
PR	CW	<input type="checkbox"/> NA
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> 80% <input type="checkbox"/> 50% Available: JAN-DEC WID:
		<input checked="" type="checkbox"/> Use DWF's 6/21/05 non-standard W/A memo if the source is: trib to Drews Res, Snake R, Columbia R, North Umpqua R below Rock Cr, or within drainages of Lost R, Chehalem Cr, or Champoeg Cr (including Mission Cr and Case Cr)

Reservoir Information			
PR	CW	<input checked="" type="checkbox"/> NA	
<input type="checkbox"/>	<input type="checkbox"/>	Reservoir Name:	
<input type="checkbox"/>	<input type="checkbox"/>	Use(s) of stored water:	
<input type="checkbox"/>	<input type="checkbox"/>	Statutory?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Plans/Specs required – include DAMENG and DAMSTD in conditions

Scenic Waterway					
PR	CW				
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Is POD within/above a SWW?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Above <input type="checkbox"/> Within	Name:	
<input type="checkbox"/>	<input type="checkbox"/>	If GW, is there P of E?	<input type="checkbox"/> NA <input type="checkbox"/> No <input type="checkbox"/> Yes	If interference, check and print WARS tables	
<input type="checkbox"/>	<input type="checkbox"/>	If GW, Add condition <input type="checkbox"/> 7J	<input type="checkbox"/> NA	MUST ADD 7J CONDITION IF WITHIN OR ABOVE A SWW	

Division 33			
PR	CW		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Subject to Division 33?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
<input type="checkbox"/> UPPER COLUMBIA OAR 690-033-0120 (DIV331) (not allowed 4/15 - 9/30)		<input checked="" type="checkbox"/> UPPER COLUMBIA AND STATEWIDE (DIV334) (not allowed 4/15 - 9/30)	
<input type="checkbox"/> LOWER COLUMBIA OAR 690-033-0220 (DIV332)		<input type="checkbox"/> LOWER COLUMBIA AND STATEWIDE (DIV335)	
<input type="checkbox"/> STATEWIDE ONLY OAR 690-033-0330 (DIV333)			

Measurement, Recording, and Reporting Conditions		
PR	CW	
<input type="checkbox"/>	<input type="checkbox"/>	Small < 0.1 CFS, < 9.2 AF
<input type="checkbox"/>	<input type="checkbox"/>	Medium > 0.1 CFS but < 0.25 CFS, > 9.2 AF but < 100 AF
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Large > 0.25 CFS, > 100 AF
		<ul style="list-style-type: none"> use at least Medium for: Siltcoos Lake, stored water contract, and Sandy Basin GW. use Large for: Tenmile Lake, NU or other temp control, and gov. entities, HC exceptions; and if GW in South Salem Hills, or 10+ acres in Stage Gulch CGWA; Large-7g, Large-7i for 7g/7i.

Other Information			
PR	CW		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Is App within a District boundary?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes cc: EID and Echo ID
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Municipal Use?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> If yes, change complete application finding to 20 years (construction 5 yrs)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Form M reviewed	<input checked="" type="checkbox"/> NA <input type="checkbox"/> Yes Recommendations:
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	POD is within North Umpqua or Tenmile Lake for DO and spreadsheet was updated	<input checked="" type="checkbox"/> NA <input type="checkbox"/> Yes
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Forms included	<input checked="" type="checkbox"/> NA <input type="checkbox"/> HC Exception (receipts/well logs attached) <input type="checkbox"/> Spring Description <input type="checkbox"/> Form M
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	App/Map meet minimum requirements	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Missing?
<input type="checkbox"/>	<input type="checkbox"/>		

IR Signatures	
Caseworker: Kim R. French	Date: 11/2/21
Peer Reviewer: Lisa G	Date: 11/3/21

Application #: S-89170	Applicant: BRIAN AND DUANE LLC
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PROPOSED FINAL ORDER						
PR	CW					
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	IR Date: 11/12/21	Noticed On: 11/16/21		Comment Deadline: 12/16/21	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Elec/Written comments?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	Add commenter to mailing list	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Comment Evaluation:	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> NA	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	IR Requested add'l info?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes		
<input type="checkbox"/>	<input type="checkbox"/>	Add'l info received?	<input type="checkbox"/> No	<input type="checkbox"/> Yes	Date Rec'd:	
<input type="checkbox"/>	<input type="checkbox"/>	Changes from IR determinations:				
<input type="checkbox"/>	<input type="checkbox"/>					
<input type="checkbox"/>	<input type="checkbox"/>					
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Surface Water	Will the use impair or be detrimental to the public interest?		<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
<input type="checkbox"/>	<input type="checkbox"/>	If yes, why?	<input type="checkbox"/> Not allowed in basin program	<input type="checkbox"/> Water is not available	<input type="checkbox"/> Use will injure other rights	<input type="checkbox"/> Does not comply with other rules of the Commission
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Groundwater	Will the use ensue preservation of public welfare, safety and health?		<input type="checkbox"/> No	<input type="checkbox"/> Yes
<input type="checkbox"/>	<input type="checkbox"/>	If no, why?	<input type="checkbox"/> Not allowed in basin program	<input type="checkbox"/> Water is not available	<input type="checkbox"/> Use will injure other rights	<input type="checkbox"/> Does not comply with other rules of the Commission
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Is the presumption established?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	If no, is it overcome?	<input type="checkbox"/> No <input type="checkbox"/> Yes
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Req'd before permit	<input checked="" type="checkbox"/> NA	<input type="checkbox"/> recording fee	<input type="checkbox"/> LU	<input type="checkbox"/> easement <input type="checkbox"/> plans/specs
			<input type="checkbox"/> storage contract			

Summary of Conditions		
PR	CW	
<input type="checkbox"/>	<input type="checkbox"/>	Small < 0.1 CFS, < 9.2 AF
<input type="checkbox"/>	<input type="checkbox"/>	Medium > 0.1 CFS but < 0.25 CFS, > 9.2 AF but < 100 AF
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Large > 0.25 CFS, > 100 AF
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> NA GW Conditions:
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> NA ODFW Division 33 Conditions: fsh scrn; Dec-Apr 14; chum
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> NA DEQ Division 33 Conditions: WQ2; ag wq;
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> NA WM Division 33 Conditions: na

PFO Signatures	
Caseworker: Kim R. French	Date: 7/26/22
Peer Reviewer: Lisa	Date: 7/26/22

Application #: S-89170	Applicant: BRIAN AND DUANE LLC
-------------------------------	---------------------------------------

FINAL ORDER

<input type="checkbox"/>	<input type="checkbox"/>	PFO Date:	Protest Period Ended:
<input type="checkbox"/>	<input type="checkbox"/>	Name and/or address changed or assignment received?	<input type="checkbox"/> No <input type="checkbox"/> Yes
<input type="checkbox"/>	<input type="checkbox"/>	PFO requires modification?	<input type="checkbox"/> No <input type="checkbox"/> Yes
<input type="checkbox"/>	<input type="checkbox"/>	If so,	
<input type="checkbox"/>	<input type="checkbox"/>	If PFO requires modification, include modified Hearing Rights	<input type="checkbox"/> No <input type="checkbox"/> Yes
<input type="checkbox"/>	<input type="checkbox"/>	Was a standing paid for?	<input type="checkbox"/> No <input type="checkbox"/> Yes
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> FO w/ Permit	<input type="checkbox"/> FO w/Draft Permit; still need
		Permit #	<input type="checkbox"/> Recording Fees <input type="checkbox"/> Land Use Approval
			<input type="checkbox"/> Easement <input type="checkbox"/> Approved Dam Plans/Specs
			<input type="checkbox"/> Storage Contract
			<input type="checkbox"/> FO to deny: Refund \$

FO Signatures

Caseworker: Kim R. French	Date:
Peer Reviewer:	Date:

PERMIT ISSUED AFTER FO

<input type="checkbox"/>	<input type="checkbox"/>	Permit #
<input type="checkbox"/>	<input type="checkbox"/>	Received required information Date:
		<input type="checkbox"/> Recording Fees
		<input type="checkbox"/> Easement
		<input type="checkbox"/> Storage Contract
		<input type="checkbox"/> Land Use Approval
		<input type="checkbox"/> Approved Dam Plans/Specs
<input type="checkbox"/>	<input type="checkbox"/>	Prepared cover letter?

Permit Signatures

Caseworker: Kim R. French	Date:
Peer Reviewer:	Date:

Fees						
PR	CW					
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	0.8	CFS	Base	1090	
			AF	Up to 1 CFS \$350/\$410	410	
				Add'l CFS @ \$350/\$410/CFS		
				Up to 20 AF @ \$35/\$41/AF		
				Add'l AF @ \$1.20/\$1.40/AF		
		1	Well(s)/POD(s)	Add'l POD/POA \$350/\$410 ea		
		1	Use(s)	Add'l Use \$350/\$410 ea		
				Exam Fee Req'd	1500	Rec Fee Req'd 610
				Exam Fee Paid	1500	Rec Fee Paid 610
				Still Owed/Refund	0	Pay before Permit 0

Mailing List		
PR	CW	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Applicant - dean@gvfusa.com
		<input checked="" type="checkbox"/> Authorized Agent - lolly.anderson@andersonschultz.com michael.schultz@andersonschultz.com
		<input checked="" type="checkbox"/> Watermaster #55
		<input checked="" type="checkbox"/> SW Section (if SW, GW with PSI, or SWW. If SWW, include copy of yellow sheet)
		<input checked="" type="checkbox"/> ALO GEHRKE, 34718 OLD HWY 320, ECHO OR 97826-9614
		<input type="checkbox"/> ALO
		<input type="checkbox"/> CWRE
		<input checked="" type="checkbox"/> District – if POU is within a District - Notification at IR only EID & ECHO ID
		<input checked="" type="checkbox"/> Division 33 – If Lower and/or Statewide – ODFW and DEQ only. If Upper – use DIV33MAIL autotext
		<input type="checkbox"/> DSL (if reservoir)
		<input type="checkbox"/> Any appropriate local government
		<input type="checkbox"/> Commenter(s)
		<input type="checkbox"/> Kerri Cope if MU or QM (PERMIT ONLY)
		<input type="checkbox"/> Ann Reece if applicant is an Irrigation District (FO ONLY)

Notes:



Place of Use Conflict Report

The following rights have acreage in the same quarter-quarter as App: S 89170 *

Right	Name	Decree	App	Permit	Cert	Priority	Status	Use
CERT:94238 CF (RR) *	STANFIELD IRRIGATION DISTRICT	UMATILLA RIVER (S)			94238	3/8/1905	NC	DO 04.C IR 04.C LV 04.C
CERT:94240 CF (RR) *	U.S. BUREAU OF RECLAMATION; PACIFIC NORTHWEST REGION		S-9668	S-7400	94240	7/1/2024	NC	IS 04.C
APP: S 87472 *	STANFIELD IRRIGATION DISTRICT		S-87472			9/22/2009	NC	AG 04.C IS 04.C
PERMIT: S 55114 *	EAST IMPROVEMENT DISTRICT		S-88206	S-55114		4/8/2016	NC	IR 04.C IR 04.C IR 04.C IR 04.C
PERMIT: S 55263 *	EAST IMPROVEMENT DISTRICT		S-88286	S-55263		9/12/2016	NC	IR 04.C IR 04.C IR 04.C IR 04.C
PERMIT: S 55167 *	EAST IMPROVEMENT DISTRICT		S-88287	S-55167		9/12/2016	NC	IR 04.C IR 04.C IR 04.C IR 04.C
PERMIT: S 55262 *	EAST IMPROVEMENT DISTRICT		S-88290	S-55262		9/12/2016	NC	IR 04.C IR 04.C IR 04.C IR 04.C



Water Right Application Initial Review

November 12, 2021

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Reference: Application S-89170

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 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 Water Resources Department has made the following preliminary determinations:

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

1. The application proposes the diversion of 0.80 cubic foot per second (CFS) of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres October 1 through April 14 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Soil preparation is a use defined under nursery use. As defined in OAR 690-500, nursery use is included in irrigation, which is allowed under the Columbia Basin Program (OAR 690-519-0000(1)). Therefore, soil preparation (raising the soil moisture content) is allowed.
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary of Preliminary Determinations

The diversion of 0.80 CFS of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres is allowable October 1 through April 14 of each year.

Because of the favorable determinations described herein, Application S-89170 can move to the next phase of the water-rights application review process, which includes a public interest review.

Public Comment & Further Review:

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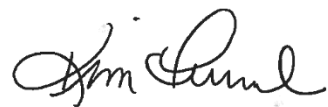
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 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the device in good working order.
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For Further Information:

Feel free to contact me at Kim.R.French@oregon.gov or 503-979-3168 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: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

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Kim French
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
S-89170
WAB: No WAB
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: S-89170

Applicant: BRIAN AND DUANE LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, 5, NCR

Priority Date: OCTOBER 14, 2021

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: RAISE THE SOIL MOISTURE CONTENT ON 156.1 ACRES

Rate: 0.80 CUBIC FOOT PER SECOND

Basin Name & Number: Umatilla, # 7

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	34	NE SE	40.6
4 N	29 E	WM	34	NW SE	35.5
4 N	29 E	WM	34	SW SE	40.7
4 N	29 E	WM	34	SE SE	39.3

PUBLIC NOTICE DATE: November 16, 2021

14 DAY STOP PROCESSING DEADLINE DATE: November 26, 2021

30 DAY COMMENT DEADLINE DATE: December 16, 2021

Mailing List for IR Copies

Application S-89170

IR Date: November 12, 2021

Original and map mailed to applicant:

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Sent via auto email:

1. Applicant - dean@gvfusa.com
2. Agent – Lolly Anderson - lolly.anderson@andersonschultz.com
3. Agent – Michael Schultz - michael.schultz@andersonschultz.com
4. WRD – Watermaster District #5, Gregory M. Silbernagel
5. WRD – Chris Kowitz NCR
6. WRD – SW Section
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Application Specialist: Kim French

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>On: _____ (DATE)</p>

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 web site at www.wrd.state.or.us

1. *Pre-application considerations*

- Follow instructions in the application packet.
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FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

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Signature _____ Date _____

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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.

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November 26, 2021

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271



Water Right Application Initial Review

November 12, 2021

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Reference: Application S-89170

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 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 Water Resources Department has made the following preliminary determinations:

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

1. The application proposes the diversion of 0.80 cubic foot per second (CFS) of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres October 1 through April 14 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Soil preparation is a use defined under nursery use. As defined in OAR 690-500, nursery use is included in irrigation, which is allowed under the Columbia Basin Program (OAR 690-519-0000(1)). Therefore, soil preparation (raising the soil moisture content) is allowed.
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary of Preliminary Determinations

The diversion of 0.80 CFS of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres is allowable October 1 through April 14 of each year.

Because of the favorable determinations described herein, Application S-89170 can move to the next phase of the water-rights application review process, which includes a public interest review.

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Oregon Water Resources Department

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WAB: No WAB
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OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271



Oregon DEQ Division 33 Review Summary Sheet

Application Information

Applicant Name:	Brian and Duane LLC	Application Number:	S-89170
Basin & Sub-basin:	Mid-Columbia Lake Walulla, Umatilla	Requested Water Amount:	0.8 CFS
Nearest Surface Water:	Columbia River	Nearest Receiving Waterbody:	Pacific Ocean
Proposed Use:	Irrigation	Requested Period of Use:	October 1 to April 14

Division 33 Geographic Area

<input type="checkbox"/> Lower Columbia <input checked="" type="checkbox"/> Upper Columbia <input type="checkbox"/> Statewide	
Upper and Lower Columbia Basins only: Based upon the review completed below, does the proposed use comply with existing state and federal water quality standards or may conditions be applied to bring the use into compliance?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Insufficient data
Statewide: Will the proposed use result in water quality impacts that will cause either "loss" or "net loss" of essential habitat of sensitive threatened or endangered (ST&E) fish species? (Note: the presence of ST&E fish species is determined by Oregon Department of Fish and Wildlife.)	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Insufficient data

Recommended Pre-Proposed Final Order Actions

Mitigation Obligation <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Prior to issuance of a Proposed Final Order, the applicant shall submit a mitigation proposal that is of no less volume and rate than the permitted use. The proposal shall include water that is sourced upstream of the point of diversion or appropriation, or the uppermost point on the stream at which the potential for surface water interference occurs. If a surface water right is used for mitigation, it shall be transferred instream for the [month – month] time period and of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options. Flow mitigation is site-specific, therefore DEQ recommends written approval of the mitigation proposal by DEQ prior to issuance of a proposed final order.

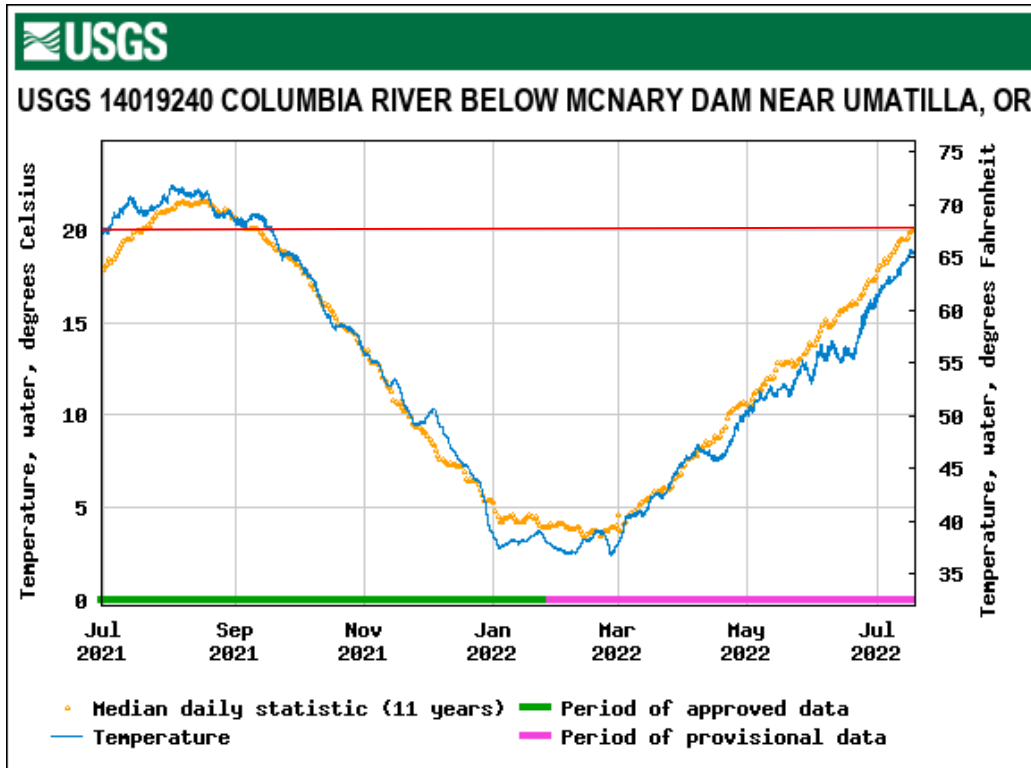
Recommended Permit Conditions

1. Before water use may begin under this permit, the permittee shall install a continuous water temperature measurement device at the proposed pump location, and not withdraw at any time when the 7-day average is above 20C. The permittee shall maintain the device in good working order.
2. 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. Permittee is responsible for obtaining any necessary state and federal permits.
3. Herbicide Applications: When herbicide application is within three feet of water, the permittee is responsible for ensuring that herbicide application laws are met, and that they obtain from DEQ any necessary pesticide application permits, including the 2300-A Pesticide General Permit or the 2000-J NPDES General Permit. Polluted return flows are not allowed to enter waters of the state per ORS 468B.025(1).
4. 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.

5. Flow Restrictor: The permittee shall install a flow control valve on the diversion system to limit use to the permitted rate. The valve shall be in place, functional, and verified by the Certified Water Rights Examiner before a certificate is issued. The valve or a suitable replacement shall remain in place for the life of the water right.

6. Limit Period of Use: In order to not further impair the Columbia River 303(d) listing for temperature, the seven-day average maximum may not exceed 20 degrees C. Temperatures decline through the late summer and fall and were generally lower than 20 deg. C by October 1 in the fall. There would be no delay in diversion if the water temperature was below the criterion on October 1.



Seasonal Limitations

Reason for limitation	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
TMDL: Critical period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WAB: 20% flow threshold exceeded	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional Reviewer comments No Yes

[Use this space to describe any of the following: reasoning to substantiate permit conditions; examples of additional information that may allow or disallow the use; and why any variations to the standard Division 33 review process were necessary. Designate conditions related to Division 310 with an asterisk.]

There are water quality impairments in the reach (Lake Wallula [upstream from McNary, OR]) at the POD for temperature and dissolved gas. These impairments are listed in the 2018/2020 DEQ integrated report (303(d) listings). Stream temperatures that exceed the standards (20 degrees C) can disrupt the life cycle of a sensitive, threatened, or endangered fish species and may even cause death. In waterbodies where temperatures exceed

standards, additional water withdrawals will reduce the stream's heat capacity and cause greater fluctuation in daytime and nighttime stream temperatures. This will result in the diminution of habitat of sensitive, threatened, or endangered fish species. In addition, the Columbia River is already known to be impaired for total dissolved gas. An increase in the rate or volume of release will increase the total dissolved gas concentration in this waterbody and result in the diminution of water quality for the habitat of sensitive, threatened, or endangered fish species.

The individual impacts of withdrawals on the Columbia River are generally not measurable. Given its large discharge as it enters Oregon and the many large tributary inflows in the Oregon reach, and no water availability data, it is difficult to assess potential impacts of individual withdrawals. However, impacts from cumulative withdrawals may negatively affect surface water quantity and quality. Thus, reducing withdrawals after in-stream temperatures have dipped below 20 degrees C is critical. On the graph above, temperatures begin to drop below the 20 degrees C line as early as the beginning of October. **However, if the 7 day average of daily maximum temperatures exceeds the water quality criterion of 20 degrees C then their will be a hold placed on diversion until the 7 day average drops below 20 degrees C. A temperature logger will be conditioned to be placed at the POD for continuous temperature logging.**

Interagency consultation: [Describe any substantial interagency consultation. Who was contacted and what was discussed?]

DEQ review prepared by: Cole Hendrickson **Date complete:** 6/29/2022

Antidegradation Policy:

The purpose of DEQ's Antidegradation Policy (OAR 340-041-0004(1)) is to guide decisions that affect water quality to prevent unnecessary further degradation from new or increased point and nonpoint sources of pollution, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. Oregon's Antidegradation Policy allows exemptions and conditions for new or increased water use.

1. Temporary Use or Net Benefit

Does the applicant propose a temporary use in response to an emergency, a restoration activity that the DEQ has determined provides a net ecological benefit, or a temporary (lasting less than six months) use to protect human health and welfare, for which the applicant has demonstrated that they will minimize adverse effects to threatened and endangered species? No Yes

If yes, recommend approval of the application and identify conditions necessary to protect water quality for the habitat of ST&E fish species. You may skip to Question 7.

2. Outstanding Resource Water

Does the applicant propose withdrawing directly from an **Outstanding Resource Water** with critical habitat for ST&E fish species? No Yes

If yes, then prior to permit issuance, the applicant must provide suitable flow mitigation. You may skip to question 7.

3. Water Quality Limited

Is this source **Water Quality Limited** or a tributary to a water quality limited water body? Note: limit downstream review to 6th field HUC for parameters that diminished flow can affect (temperature, dissolved oxygen, pH, etc.). No Yes

Integrated Report 303(d) List Summary Table

Assessment Unit Name	Assessment Unit Description	Parameter	Status*	Beneficial Uses
Columbia River	Lake Wallula (upstream from McNary, OR)	Temperature- Year Round	5	Fishing; Private Domestic Water Supply; Public Domestic Water Supply; Fish and Aquatic Life
		Total Dissolved gas	4A	Fishing; Private Domestic Water Supply; Public Domestic Water Supply; Fish and Aquatic Life

*Integrated Report Category

Category 4 - Data indicate that at least one designated use is not supported, but a TMDL is not needed to address the pollutant

Category 4A - Clean-up plans (also called TMDLs) that will result in the waterbody meeting water quality standards and supporting its beneficial uses have been approved

Category 4B - Other pollution control requirements are expected to address pollutant of concern and will result in attainment of water quality standards

Category 4C - The impairment is caused by pollution, not a pollutant. For example, flow, or lack of flow, are not considered pollutants, but may be affecting the waterbody's beneficial uses

Category 5 - Data indicate a designated use is not supported or a water quality standard is not attained and a TMDL is needed. This category constitutes the Section 303(d) list that EPA will approve or disapprove under the Clean Water Act

Analysis: [If the answer to question 3 is yes, then describe how the use does or does not comply with existing state and federal water quality standards, and how the use may affect ST&E fish species habitat.]

Temperature

The Columbia River does not meet Oregon's stream temperature standards. Oregon's stream temperature standards are based on the life cycle needs of salmonids and other resident fish and aquatic life. Water temperatures are influenced by solar radiation, stream shade, ambient air temperatures, channel morphology, groundwater inflows, and stream velocity, volume, and flow. Surface water temperatures may also be warmed by anthropogenic activities such as discharging heated water, changing stream width or depth, reducing stream shading, and water withdrawals. Stream temperatures that exceed the standards can disrupt the life cycle of a sensitive, threatened, or endangered fish species and may even cause death. In waterbodies where temperatures exceed standards, additional summertime water withdrawals will reduce the stream's heat capacity and cause greater fluctuation in daytime and nighttime stream temperatures. This will result in the diminution of habitat of sensitive, threatened, or endangered fish species.

Total Dissolved Gas

When water is released from a dam it drags air bubbles into the water below. The air bubbles dissolve and increase the concentration of atmospheric gases in the water. When a waterbody is 100% saturated, the concentration of dissolved gases in the waterbody is in equilibrium with atmospheric pressure. When the concentration of dissolved gases increases to above 100% the waterbody is supersaturated. At saturation levels exceeding 110%, fish and aquatic life become susceptible to gas bubble disease. Gas bubble disease occurs when the dissolved gases come out of solution inside an organism's blood stream, damaging tissues or causing death. The Columbia River is already known to be impaired for total dissolved gas. An increase in the rate or volume of release will increase the total dissolved gas concentration in this waterbody and result in the diminution of water quality for the habitat of sensitive, threatened, or endangered fish species.

Recommended Conditions: [Consider if water quality can be protected by limiting the rate and quantity of water used, period of use, or by including other permit conditions.]

Water Quality

4. Total Maximum Daily Load Summary

Are there TMDLs established for parameters identified as being affected by flow modification? No Yes

ORS 468B.025 prohibits pollution of waters of the state. Are there additional water quality impairments that would result from this proposed use by degrading surface water or groundwater quality?

No

Yes

If water quality can be protected by applying permit conditions, then select all appropriate conditions from the standardized menu of conditions.

Recommended conditions: [List conditions]

Herbicide Applications, Agricultural Water Quality Management Area Rule

PRE-PROPOSED FINAL ORDER ACTIONS

DEQ recommends that the applicant provide suitable replacement water as mitigation for anticipated impacts to water quality and more specifically the habitat of sensitive, threatened, and endangered fish species. Additional mitigation may be required from other Interagency Review Team members (for example: OWRD may require mitigation for periods when water is not available). Surface water flow mitigation is unlikely to provide the same benefit that groundwater can provide to gaining stream reaches. However, if groundwater mitigation is unavailable within the same aquifer, surface water mitigation may provide suitable mitigation.

Flow Mitigation Obligation:

Prior to issuance of a Proposed Final Order, the applicant shall submit a mitigation proposal that is of no less volume and rate than the permitted use. The proposal shall include water that is sourced upstream of the point of diversion or appropriation, or the uppermost point on the stream at which the potential for surface water interference occurs. If a surface water right is used for mitigation, it shall be instream for the *month - month time period* and of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.

Riparian: If the riparian area is disturbed in the process of developing, modifying or repairing a point of diversion under this water use permit, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's Habitat Mitigation Policy described in Oregon Administrative Rule OAR Chapter 635-415. Prior to development, modification or repairs at the point of diversion, the permittee shall submit, to the Oregon Water Resources Department, either a Riparian Mitigation Plan approved in writing by Oregon Department of Fish and Wildlife (ODFW) or a written declaration from ODFW that riparian mitigation is not necessary. The permittee shall maintain the riparian area for the life of the permit and subsequent certificate per the approved Riparian Mitigation Plan. The permittee is hereby directed to contact the local Oregon Department of Fish and Wildlife Fish Biologist prior to development of the point of diversion.

Water Storage Construction: The applicant shall locate the reservoir outside of the stream's natural channel. *Identify waterbody and set back to prevent stream capture and justification for distance selected.*

(Note to reviewer: The 1200C permit requires a 50-foot setback, which is cited from the National General Construction Permit OAR-660-023-0090(5). Requiring the storage reservoir to be outside of the mapped 100 year floodway may also be a protective buffer.)

Construction Activities: 1200-C NPDES Stormwater Construction permit coverage is required from DEQ or Agent for construction activities (clearing, grading, excavation, grubbing, stumping, demolition, staging, stockpiling and other land disturbing activities) that will disturb one or more acres, or that will disturb less than one acre of land but is part of a common plan of development or sale that will ultimately disturb one or more acres of land and have the potential to discharge to surface waters or to a conveyance system that leads to surface waters of the state.

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.

Herbicide Applications: When herbicide application is within three feet of water, the permittee is responsible for ensuring that herbicide application laws are met, and that they obtain from DEQ any necessary pesticide application permits, including the 2300-A Pesticide General Permit or the 2000-J NPDES General Permit. Polluted return flows are not allowed to enter waters of the state per ORS 468B.025(1).

STANDARDIZED MENU OF CONDITIONS

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. Permittee is responsible for obtaining any necessary state and federal permits.

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.

Flow Restrictor: The permittee shall install a flow control valve on the diversion system to limit use to the permitted rate. The valve shall be in place, functional, and verified by the Certified Water Rights Examiner before a certificate is issued. The valve or a suitable replacement shall remain in place for the life of the water right.

Limit Rate: Water withdrawal shall be limited to *Enter CFS or AF for the defined period, or a month by month rate or volume.*

Limit Period of Use: Water use shall be limited to the period: *start date through end date.*

(Note to reviewer: Do not split the irrigation season. Require mitigation if water is not available during the requested time period.)

Limit Diversion: The permittee shall not divert water under this water use permit unless streamflow in the *waterbody name* is at or above *CFS* cubic foot per second, as determined at Gaging Station ID _____.

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.

Restrict Reservoir Release: To prevent pollution downstream, the permittee shall not release water from the reservoir when the flow at Gaging Station ID _____ (*gage name*) is below the Mean Daily Discharge of *CFS* (discharge which was equaled or exceeded for 90% percent of the time) except when the release is directed by the State Engineer to prevent dam failure.

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.

Lining: The permittee shall line the reservoir with *include material or allowable infiltration rate* to minimize seepage and protect groundwater quality per Oregon Administrative Rule 340-040. The liner is to be in place,

inspected, and approved by the Certified Water Rights examiner prior to storage of water.* If the liner fails, the water user shall replace it within one calendar year.

Site-Specific Condition: The permittee shall

* OAR 690-410-0010(2)(a), OAR 690-310-0120, OAR 690-310-0140

Appendix: General Overview, Instructions for Water Availability Analysis, and Process Flow Chart

General Overview

The purpose of OAR Chapter 690, Division 33 is to aid the Oregon Water Resources Department (OWRD) in determining whether a proposed use will impair or be detrimental to the public interest with regard to listed sensitive, threatened, or endangered (ST&E) fish species. Oregon's stream temperature, dissolved oxygen (DO), pH and several other water quality standards are based on the life cycle needs of salmonids and other resident fish and aquatic life. Exceeding the standards can disrupt the life cycle of a ST&E fish species and may cause death. In addition, OWRD must consider water quality impacts as part of a public interest review, OAR 690-310-0120. Water quality impacts and conditions unrelated to ST&E species should be noted as "Division 310" in the recommendations to OWRD. The DEQ's Water Right Application Review Procedures document contains a full description of the review process.

The two main categories of Division 33 reviews are based on the geographic distribution of ST&E fish species:

- **For Proposed Uses in the Columbia River Basin**, reviews must determine whether a proposed use complies with existing state and federal water quality standards. Upper Columbia applications specifically require applicants to provide evidence that the proposed use complies with existing state and federal water quality standards. Geographic scope: Columbia River Basin (includes all waters that ultimately drain into the Columbia River).
- **For Proposed Uses Statewide**, review is conducted under the "Statewide review" procedure. Statewide reviews must determine whether a proposed use may affect ST&E fish species habitat. The statewide review procedure is intended to identify permit conditions that can prevent the "loss" or "net loss" of essential habitat of ST&E fish species. When permit conditions cannot be identified that meet this standard, then the DEQ recommends denial of the permit. Geographic scope: all areas outside the Columbia River Basin where OWRD determines ST&E fish species are present.

Instructions for Populating the Water Availability Summary Table using data from OWRD's WAB (Section 5)

- Open OWRD's Water Availability Reporting System.
- Search for the water availability basin of interest. Select 50% exceedance. The 50% exceedance stream flow is the stream flow that occurs at least half of the time.
- The water availability analysis will display a nested list of watersheds that contain the POD. Select the highest nesting order WAB that contains the POD.
- Download to an Excel spreadsheet. Percent of flow is calculated using this equation:

$$\text{Percent of Flow} = \frac{\text{Consumptive Use}}{\text{Natural Stream Flow}} * 100$$

You may choose to add the proposed rate (or storage amount) to the consumptive use.

Instructions for Water Availability Analysis

To complete Section 6, review and consider the cumulative impact of consumptive withdrawals using the [OWRD WAB](#). All water withdrawals and the following factors should be considered when conducting a water availability analysis.

- **Instream Flow:** Consider the percent of natural flow removed from the stream in each month (see right-most column in Water Availability and Cumulative Impacts Summary Table). Based on best professional judgment, evaluate if the cumulative withdrawal is likely to cause impairment to aquatic life or water quality. Water quality standards are established to protect aquatic life. In scientific literature, researchers have identified ecological harm occurring when flows are reduced by **>6-35% of daily flow**¹. Consider the seasonality of any listings and season of withdrawal to determine impact for each month of the year.
- **Antidegradation:** Rule 340-041-0004 applies: withdrawals cannot cumulatively increase a waterbody's temperature by more than 0.5 degrees Fahrenheit or cause a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach so long as it has no adverse effects on threatened and endangered species. See OAR [340-041-0004\(3\)-\(5\)](#) for a description in rule of activities that do not result in lowering of water quality.
- **Flow modification:** Consider if cumulative withdrawals are contributing to flow modification and a likely limiting factor in the waterbody at certain times of the year. Temperature and dissolved oxygen are flow-related parameters. When streamflow is reduced, assimilative capacity is reduced. As a waterbody heats up, dissolved oxygen concentrations decline. Reduced stream flows (including groundwater inputs to streamflow), exacerbate temperature and/or dissolved oxygen impairments.
- **Temperature:** Increases in temperature or a reduction in dissolved oxygen adversely impacts ST&E fish. Fish require different temperature and concentrations of dissolved oxygen based on species and life history stage. Oregon's temperature and dissolved oxygen limits are based on the most sensitive species and the life history stage of those species at the location and season of concern. Additional heat or reduction in dissolved oxygen concentrations will further impact these species habitat. Reduced flows can also increase the concentrations of phosphorous, bacteria, pesticides and metals.

Instructions for Calculating "Limit Diversion" Rate

This condition is selected to limit withdrawals once the cumulative withdrawals in the watershed have exceeded the protective threshold of 20 percent and/or the ISWR is not fully protective of aquatic life. A different value can be selected, but the reviewer should state why a particular percent was selected.

"Natural stream flow" is obtained from OWRD's Water Availability Reporting System. The condition is applied on a monthly timeframe based on OWRD's data.

"Natural stream flow" – (percent of flow * "natural stream flow") = Expected Stream Flow

The applicant would have to stop using when instream flows drop below the Expected Stream Flow.

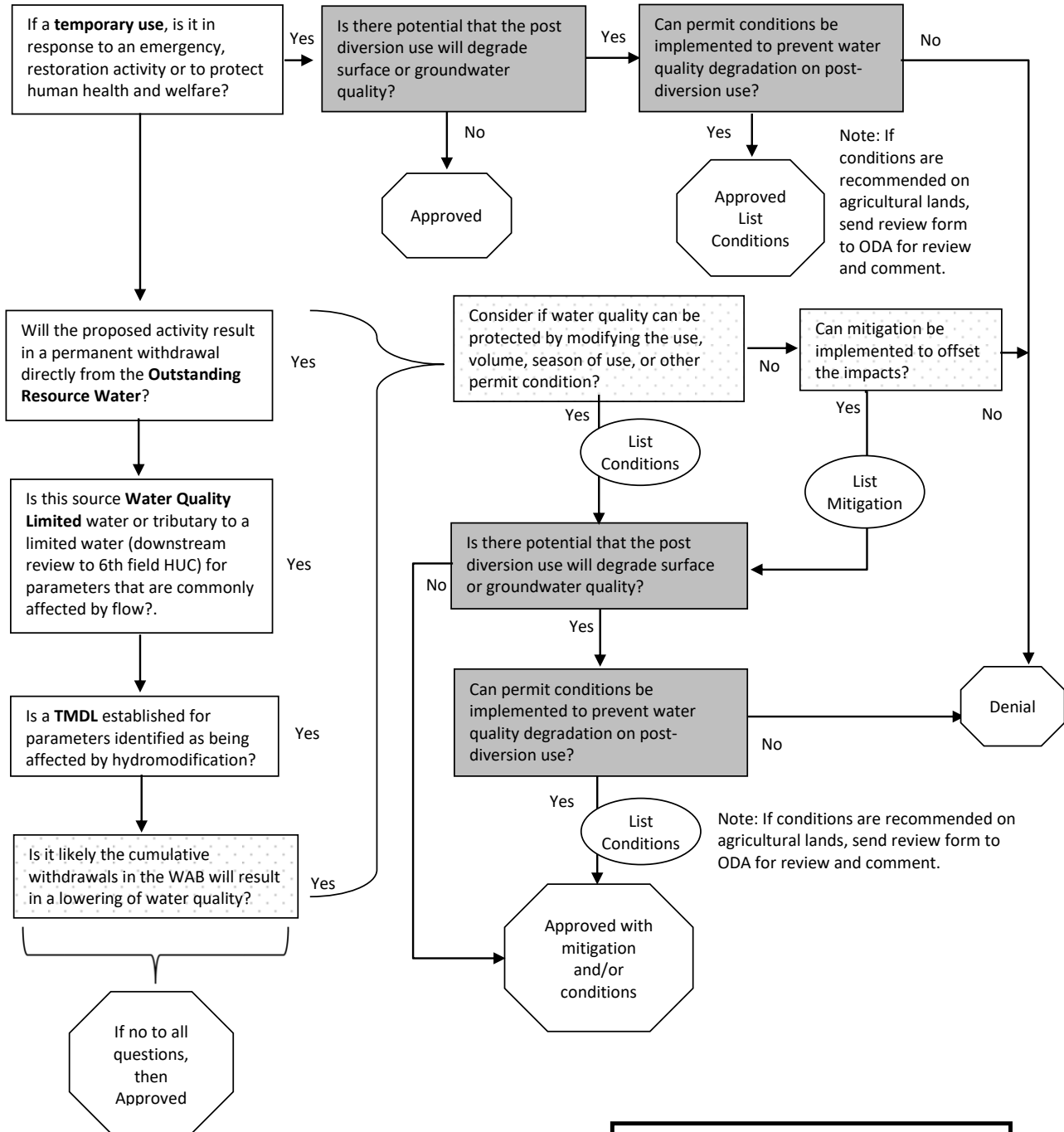
Example:

Natural stream flow for a particular month = 1200 CFS

1200 CFS – (.2 * 1200 CFS) = 960 CFS

¹ Richter BD, Davis MM, Apse C, Konrad C. 2011. *Short Communication, A Presumptive Standard For Environmental Flow Protection*. River Research and Applications. Published online in Wiley Online Library (wileyonlinelibrary.com), DOI: 10.002/rra.1551

DEQ Water Right Review Flow Chart



Each yes will need to be explained by how the use does not comply with existing state and federal water quality standards and how the use may affect sensitive, threatened or endangered fish species habitat.

Note: Review based on DEQ's anti-degradation rule (340-041-0004).

	Best Professional Judgment and Data
	Data
	Best Professional Judgment

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov
Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

Life is too short to spend one minute unhappy! Be Happy!

The Salem office re-opened to the public on May 1, 2022. Given that many staff will continue teleworking remotely or have job duties that take them into the field on a regular basis, availability of staff in the office is not guaranteed 8 a.m. - 5 p.m. every day.

Customers and visitors are encouraged to schedule an appointment in advance if they wish to meet in person with specific staff members. Alternative methods for meeting, such as by phone or virtually via Teams, are also available.

From: [MATHER Amanda L * WRD](#)
To: [SILBERNAGEL Greg M * WRD](#)
Cc: [RATCLIFFE Katie S * WRD](#); [KOWITZ Chris C * WRD](#)
Subject: RE: Question regarding potential permit condition for S-89170 & S-89171
Date: Friday, January 6, 2023 4:13:00 PM
Attachments: [image001.png](#)

Hi Greg,

Thanks for your reply. If these two applications move forward towards approval, I can prepare a simplified version of the below language for this condition and work with you to ensure we end up with something that hopefully can be understood by the permittee and achieves the limitations desired by ODFW.

Best Regards,
Amanda

Amanda Mather, PhD

Water Right Caseworker
Oregon Water Resources Department
725 Summer St NE Suite A | Salem OR 97301 | Phone: (971) 718-7937

From: SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Sent: Thursday, January 5, 2023 1:52 PM
To: MATHER Amanda L * WRD <Amanda.L.MATHER@water.oregon.gov>
Cc: RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>; KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Subject: RE: Question regarding potential permit condition for S-89170 & S-89171

Thank you for asking. That is far too much detail, most likely written by a fish biologist, and it is confusing, especially for a permittee.

If we need to do the 7 day rolling average requirement, we should just say that and maybe leave out all the details on why. I would drop it all together if possible.

There are things we can discuss in a meeting if needed. Greg

From: MATHER Amanda L * WRD <Amanda.L.MATHER@water.oregon.gov>
Sent: Thursday, January 5, 2023 12:10 PM
To: SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Cc: RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>; KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Subject: Question regarding potential permit condition for S-89170 & S-89171

Hi Greg,

I am the caseworker for the recent application related to winter irrigation to raise soil moisture ([S-89302](#)), and as part of determining what the Initial Review determinations might be, I have been reviewing existing similar applications.

While there are many ongoing questions related to beneficial use, my inquiry here is related to a potential permit condition for the similar apps [S-89170](#) and [S-89171](#). Below is the language for a “Chum” condition requested by ODFW (attached) related to pumping during October and November. What are your thoughts on the language of this condition, and is this something you feel you could enforce?

Thanks,
Amanda

Chum Condition:

During the months of October and November each year, the permittee shall monitor the 7-day rolling average of the mean daily gauge height below Bonneville Dam beginning on the date that the Technical Management Team (TMT; comprised of NOAA and the Corps of Engineers, among others) begin operations to maintain water levels in the Ives/Pierce Island complex to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. The permittee should contact the Army Corps of Engineers representative of the TMT to verify the start date of when the Columbia River is actively being managed to meet chum elevations and to obtain the tailwater stage target (call the Columbia Basin Water Management Division, Northwestern Division, U.S. Army Corps of Engineers at 503-808-3929).

To monitor mean daily stage at this location, the permittee will use the official project tailwater elevation gage (USGS gage station #14128870 Columbia River below Bonneville Dam, OR). Real-time data from this station is available online at the United States Geological Survey website:

http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw.

The permittee shall maintain a spreadsheet of the 7-day rolling average of the mean daily gage height for the period when the permittee is required to monitor during October 1–November 30, which will be available to OWRD upon request.

In addition to monitoring mean daily gage height, the permittee shall do one of the following:

1. Prior to issuance of the proposed final order, provide proof to OWRD that permanent mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured for October and November. Any mitigation provided for the period October 1-November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. If mitigation is secured, the permittee is not required to track the 7-d rolling average or cease pumping during chum operations.
2. Cease pumping for any days during October and November when the Army Corps of Engineers is managing the Columbia River to meet chum targets AND the 7-day rolling average of the mean daily gage height below Bonneville Dam (USGS gage station #14128870) is less than the stage target set that year by the TMT for protection of chum salmon. The permittee shall discontinue pumping for the duration of time the 7-day rolling average remains below the stage target. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

Provide proof to OWRD that real-time mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured and is available for this use during the anticipated period that the 7-day rolling average will remain below the target established for October and November of that year. Any mitigation provided for the period October 1-November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. The permittee is not required to track the 7-day rolling average or cease pumping during chum

operations during periods mitigation has been secured. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

Amanda Mather, PhD

Water Right Caseworker

Oregon Water Resources Department

725 Summer St NE Suite A | Salem OR 97301 | Phone: (971) 718-7937



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WATERMASTER APPLICATION REVIEW

Application #: S-89170

Applicant's Name: Brian and Duane LLC

- 1) Would the proposed allocation have the potential for injury to existing rights?
 Yes No

- 2) If the proposed allocation will cause injury, can it be conditioned to avoid injury?
 Yes No If Yes, please list conditions:
N/A

- 3) Have you spoken with persons from other state agencies about this application?
 Yes No If yes, whom and why?

- 4) Please select the appropriate measurement, recording and reporting condition for this application.
 Small < 0.1 CFS, < 9.2 AF
 Medium > 0.1 CFS but < 0.25 CFS, > 9.2 AF but < 100 AF
 Large > 0.25 CFS, > 100 AF
 Require a staff gage if source is runoff or if the reservoir is located in-channel.
 Require an in-line flow restrictor.

- 5) Please provide any additional information or conditions that you believe are necessary for this application.

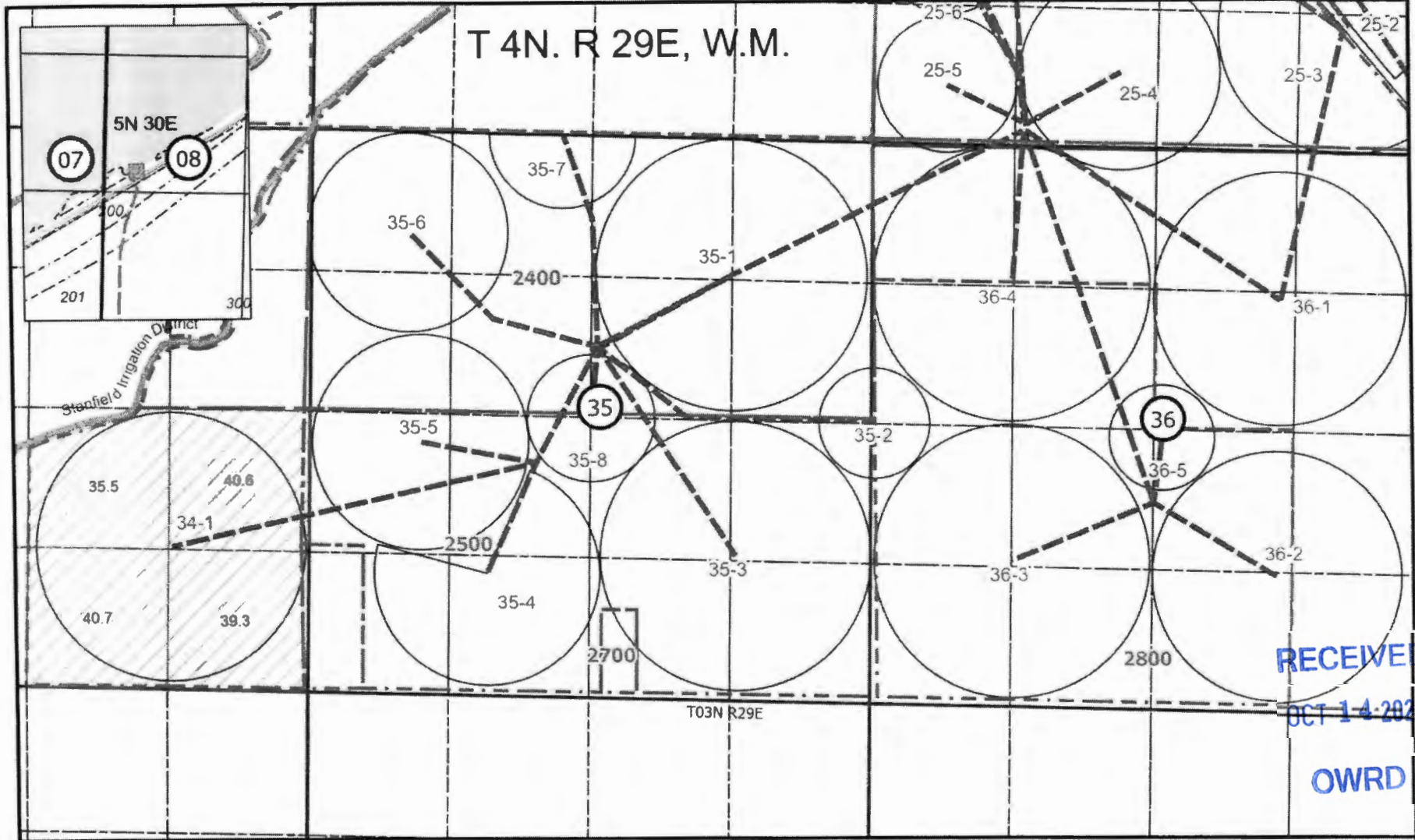
Watermaster Name: Greg Silbernagel

Watermaster Signature:

Date: 12/1/2022

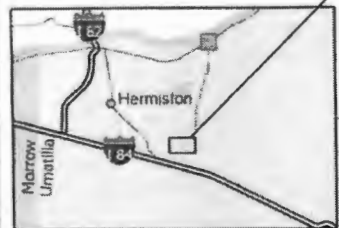
WRD Caseworker: Kim French

Ph: 503-986-0900/ Fax: 503-986-0901



RECEIVED
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 OWRD

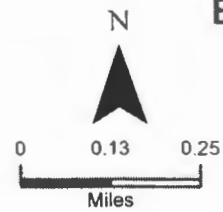
Date Exported: 9/8/2021 1:47 PM



Projection: UTM Zone 11
 Datum: NAD 1983
 Date: June 2021
 Data Sources: IRZ; PLS; Umatilla County

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimension or locations of property ownership lines.

- Legend
- EID Pipeline
 - Farm Pipeline
 - Tax Lots
 - Proposed Area



BRIAN & DUANE, LLC
 Surface Water Rights Application
 October 1 to April 15
 OPTION



September 22, 2022

Via Email

Kim French
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271
Kim.R.French@oregon.gov

**RE: IR 99695 AND IR 99696
REQUESTS FOR ADDITIONAL INFORMATION ON BENEFICIAL USE.**

Kim:

This response is submitted to Oregon Water Resources Department ("OWRD") on behalf of Brian & Duane LLC ("Applicant"). OWRD has published two Superseding Initial Reviews IR 99695 and IR 99696 ("Initial Reviews") requesting that the Applicant provide information that "indicates how water can be used beneficially October 1 through April 14."

Under the Oregon Administrative Rules, the proposed use is a beneficial use. The proposed use of soil preparation (raising the soil moisture content) is an approved beneficial use under the Columbia River Basin Program. The CRBP rules define "Irrigation Use" to mean "the use of water for agricultural water use, cranberry use, irrigation, nursery operations use, or temperature control as defined in OAR 690-011-0010." OAR 690-500-020(4). "Nursery Operations Use" includes soil preparation under OAR 690-300-010(30).

Practically, the addition of water to cropland during October 1 through April 14 is a beneficial use because by the end of harvest in July of each year, annual crops such as Soft White Winter Wheat have consumed the available soil moisture. Before the Applicant can grow a crop over the next season, sufficient moisture must be returned to the soil to germinate and sustain plant life. Use of water from October 1 through April 14 of each year will allow the Applicant to build the soil moisture profile necessary to begin the next crop. In this instance, the Applicant will divert and convey water under the proposed water right through existing waterworks (as detailed on the application maps) and apply the water with center-pivots located on the subject properties. This application of water from October 1 through April 14 will allow the Applicant to grow annual crops such as Soft White Winter Wheat and Hard Spring Wheat on the places of use.

Thank you for your time and assistance in this matter.

Sincerely,

Lolly Anderson

LOLLY ANDERSON
TEL: 619.995.1057
EMAIL: LOLLY.ANDERSON@ANDERSONSCHULTZ.COM

P.O. Box 42427
PORTLAND, OR 97242

Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SUMMARY SHEET



Threatened and/or Endangered Species (Section 4)

Upper Columbia Basin (above Bonneville Dam)

Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program?

YES; see details in Section 4.1 NO

NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Lower Columbia Basin (below Bonneville Dam)

Is the proposed use detrimental to the protection or recovery of a threatened and/or endangered fish species?

YES; see details in Section 4.2 NO

NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Statewide

Will the proposed use result in a loss of essential habitat of a threatened and/or endangered fish species?

YES; see details in Section 4.3 NO

NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Sensitive Species (Section 5)

Will the proposed use result in a net loss of essential habitat of a sensitive species?

YES; see details in Section 5 NO

NOT APPLICABLE; sensitive fish will not be impacted by the proposed use.

Public Interest (Section 6)

Will the proposed use impair or be detrimental to the public interest (in addition to that identified under Division 33)?

YES; see details in Section 6 NO

Conditions (Section 3 and 6)

ODFW recommends the following conditions, along with any mitigation outlined in Section 7, to overcome impairment or detrimental impacts to sensitive, threatened, and/or endangered fish species, non-listed fish species, wildlife, or habitat (see REVIEW SHEET for additional information):

Section 3.1 Identification of Biologically Necessary Flows

"Mitigation Plan" [A] "Mitigation" [A] "Measurement Device" [A] "Bypass Plan" [C] "Bypass Flow" [C]

Section 3.2 Biological Flow Availability

"Maintain Flow" [A] "Mitigation Plan" [A] "Mitigation" [A] "Measurement Device" [A] "Chum" [A]

Section 3.3 Fish Passage and Screening

"Passage" [A] "Maintain Passage" [A] "Screen" [B] "Future Protection" [B]

Section 3.4 Other Ecological Functions

"Wetland" [A] "Riparian Plan" [A] "Riparian" [A] "In-water Work" type months here [A] "Fish Stocking" [A]

Site-specific condition(s), including, but not limited to, any identified in Section 6: type here

Comments: Ongoing surveys indicate the importance of maintaining water levels in the Ives/Pierce Island complex below Bonneville Dam to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. As tailwater elevations below Bonneville Dam are directly correlated with the amount of chum spawning habitat available, the Federal Columbia River Power System Biological Opinion set targets for chum salmon spawning, incubation, and emergence (typically from November, or when chum arrive, through early April). In accordance, ODFW recommends the tailwater elevation set annually by the Technical Management Team (TMT) as the minimum necessary to support chum migration, spawning, incubation, and emergence.

The volume of unregulated flow into the Columbia River upstream of Bonneville Dam aides in meeting recommended water elevations for chum salmon migration, spawning, incubation, and emergence. Based on an annual assessment of the 7-day rolling average of the mean daily gage height (i.e., tailwater elevation) below Bonneville Dam, the minimum tailwater elevation is typically NOT MET the majority of the time in October and November.

Mitigation (Section 7)

Is ODFW recommending mitigation in addition to any conditions identified?

- YES; see recommended Mitigation Obligation in Section 7
- YES; contact ODFW if the applicant is interested in pursuing mitigation
- NO

Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SHEET



The Oregon Department of Fish and Wildlife (ODFW) provides the following recommendations to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. Mitigation recommendations are consistent with the goals and standards in ODFW's OAR 635-415 (Fish and Wildlife Habitat Mitigation Policy) and other applicable law. The information is requested by the Oregon Department of Water Resources (OWRD) for the purposes of consultation pursuant to OAR 690-33 (Additional Public Interest Standards for New Appropriations), OAR 690-310 (Water Rights Application Processing), OAR 690-400 (State Water Resources Policy), and OAR 690-410 (Statewide Water Resource Management). ODFW recommendations herein are to be utilized in coordination with the Oregon Department of Environmental Quality's (ODEQ) recommendations regarding impacts to aquatic life due to impaired water quality.

Section 1: Proposed Use

Basin: Columbia

Stream: Columbia River Tributary to: Pacific Ocean

TRSQQ: 5.00N-30.00E-8-SW NW (optional)

Proposed period of use (from application, if available): October 1 – April 14 (to raise soil moisture content)

Requested amount (cfs or AF): 0.8 cfs

OWRD's Initial Review Determination:

- Allowable October 1 – April 14 NOT Allowable; Water is not available type months here
 NOT Allowable; type other reason here

Section 2: Fish Species Present

- A) No fish species will be impacted by the proposed use based on parameters assessed by ODFW. (Skip to Section 6)
- B) The following fish species of primary concern are present at the location of the proposed use or will be impacted by the proposed use:

Species	Listing Status				Life Stage Present		
	Sensitive	Threatened	Endangered	Not Listed*	Spawning	Rearing	Migration
Snake River Sockeye	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Upper Col. Sp. Chinook	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lower Col. Chinook	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Snake R. Chinook Sp/S	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Snake R. Fall Chinook	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Columbia River Chum	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lower Col. R. Steelhead	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Mid. Col. Steelhead	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Upper Col. Steelhead	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Snake R. Steelhead	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Pacific Lamprey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

*Impacts to species not listed as sensitive, threatened, and/or endangered are addressed in Section 6.

Section 3: Potential Impacts to Fish Species

Note: Impacts identified below are determined by professional judgment and/or best available science. Recommended mitigation for identified impacts is outlined in Section 7. See Section 8 for recommended "condition" language.

3.1 Identification of Biologically Necessary Flows

A) ODFW has not identified biologically necessary flows within the impacted reach.

"Measurement Device"

However, based on best professional judgment, impacts to fish from the proposed reduction in flow are expected to be **inconsequential** or there is insufficient information at this time to determine if the proposed use will impair biologically necessary flows for fish. Therefore, no mitigation for a reduction in flow is recommended. ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded. (Skip to Section 3.3)

"Mitigation Plan," "Mitigation," and "Measurement Device"

However, based on OWRD's Water Availability Reporting System, **water is not available** entirely or partially for the proposed use. A further reduction of flow during type here would be harmful to fish.

ODFW recommends the season of use be restricted to type here if the applicant can show beneficial use during this time (OAR 690-300-0010(57)(b)) or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. (Skip to Section 3.3)

ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order. (Skip to Section 3.3)

B) ODFW recommends the following biologically necessary flows to support the biological needs of fish species:

Instream Water Right certificates and pending applications at the point of impact and/or downstream

Other biologically necessary flows (*see comment):

JAN	type here cfs	APR	type here cfs	JUL	type here cfs	OCT	type here cfs
FEB	type here cfs	MAY	type here cfs	AUG	type here cfs	NOV	type here cfs
MAR	type here cfs	JUN	type here cfs	SEP	type here cfs	DEC	type here cfs

Source: ODFW Regional Flow Target Assessment

based on list BIR here

type other source here

C) "Bypass Plan" and "Bypass Flow" (for reservoirs that directly divert from surface water)

Per 690-410-0070 (2)(c), ODFW recommends the following biologically necessary flows, minus any amount that the applicant may provide as mitigation, be bypassed (passed through) the reservoir **during the filling season**.

JAN	type here cfs	APR	type here cfs	JUL	type here cfs	OCT	type here cfs
FEB	type here cfs	MAY	type here cfs	AUG	type here cfs	NOV	type here cfs
MAR	type here cfs	JUN	type here cfs	SEP	type here cfs	DEC	type here cfs

D) Comments concerning biologically necessary flows: Ongoing surveys indicate the importance of maintaining water levels in the Ives/Pierce Island complex below Bonneville Dam to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. As tailwater elevations below Bonneville Dam are directly correlated with the amount of chum spawning habitat available, the Federal Columbia River Power System Biological Opinion set targets for chum salmon spawning, incubation, and emergence (typically from November, or when chum arrive, through early April). In accordance, ODFW recommends the tailwater elevation set annually by the Technical Management Team

(TMT) as the minimum necessary to support chum migration, spawning, incubation, and emergence.

3.2 Biological Flow Availability

A) Based on parameters assessed by ODFW, are the recommended biologically necessary flows (identified in Section 3.1, Question B) available within the impacted reach during the period of impact?

YES; "Maintain Flow" and "Measurement Device"

A further reduction in flow from the proposed use will not impair biologically necessary flows for fish as long as the recommended flows remain satisfied real time within and downstream of the point of impact. ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded.

NO; "Mitigation Plan," "Mitigation," and "Measurement Device" + "Chum"

The proposed use **will impair** biologically necessary flows for fish entirely or partially during the period of impact.

Water is only available to support biologically necessary flows within the impacted reach during December – April 14. ODFW recommends the season of use be restricted to coincide with this period if the applicant can show beneficial use during this time (OAR 690-300-0010(57)(b)) or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period.

Water is not available to support biologically necessary flows within the impacted reach year-round. ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order.

UNKNOWN; "Mitigation Plan," "Mitigation," and "Measurement Device"

There is insufficient information on instream flow availability (e.g., no Water Availability Basin or gage) to determine if the proposed use will impair biologically necessary flows for fish. Therefore, ODFW assumes impairment and recommends the proposed use be mitigated prior to issuance of a Proposed Final Order unless the applicant provides sufficient evidence to ODFW that the biologically necessary flows are available and can be maintained within the impacted reach.

NOT APPLICABLE; "Measurement Device"

ODFW has determined that impacts to fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on parameters assessed. Therefore, ODFW does not recommend mitigation for a reduction in flow at this time. However, ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded.

B) Comments concerning availability of biologically necessary flows: The volume of unregulated flow into the Columbia River upstream of Bonneville Dam aides in meeting recommended water elevations for chum salmon migration, spawning, incubation, and emergence. Based on an annual assessment of the 7-day rolling average of the mean daily gage height (i.e., tailwater elevation) below Bonneville Dam, the minimum tailwater elevation is typically NOT MET the majority of the time in October and November.

3.3 Fish Passage and Screening

A) Would the proposed use potentially create or maintain an artificial obstruction¹ to fish passage for native migratory fish currently or historically present *at the point of diversion* per ORS 509.585?

YES; "Passage"

NO

NO; "Maintain Passage"

¹ "Artificial obstruction" means any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

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 prior to diversion of water.

B) Would fish species benefit from fish screening per ORS 498.306?

YES; "Screen"

NO

"Future Protection"

Fish screening will not currently benefit fish species but may be beneficial in the future if conditions within the watershed change. Please describe current conditions within the watershed: [type here](#)

C) Comments concerning fish passage or screening: [type here](#)

3.4 Other Ecological Functions

A) Are there other impacts to ecological functions important to fish during the period of impact?

YES; A "condition" will be identified below or mitigation will be recommended in Section 7.4.

The proposed project may impair or be detrimental to the public interest through impairment of a wetland providing fish habitat. "Wetland"

Development of the proposed project may disturb the riparian area that provides habitat to fish. "Riparian" and "Riparian Plan"

To have the least impact on fish and habitat resources, ODFW recommends any in-water work related to construction, development, or maintenance of the proposed use be conducted during the preferred work period of [type here](#) "In-water Work"

The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. "Fish Stocking"

Other impacts to fish: [type here](#)

NO

B) Other comments concerning ecological functions important to fish: [type here](#)

Section 4: ODFW Findings Regarding Threatened and/or Endangered Fish Species

NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use. Skip to Section 5.

4.1 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Upper Columbia Rules (above Bonneville Dam)

The Upper Columbia rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:

Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program?

YES; ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions important to protection or recovery of threatened and/or endangered fish (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** based on parameters assessed (Section 3.1, Question A; Section 3.2, Question A).

NO; Based on ODFW's knowledge, the proposed use is **inconsistent** with the Northwest Power and Conservation

Council's Columbia River Basin Fish and Wildlife Program² due to impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or to impacts to ecological functions important to threatened and/or endangered fish (Section 3.4).

Overarching Question 2:

Can the use be conditioned or mitigated to achieve consistency with the Fish and Wildlife Program?

- YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
- ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended below and in Section 3, to compensate for any potential impact from the proposed use.
- In addition, ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.

Comments: type here

4.2 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Lower Columbia Rules (below Bonneville Dam)

- The Lower Columbia rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:

Is the proposed use detrimental to the protection or recovery of a threatened and/or endangered fish species?

- YES; Based on knowledge of recovery plans, the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program², and regional restoration programs, ODFW found the use to be detrimental to the protection or recovery of a threatened and/or endangered species due to impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or to impacts to ecological functions important to threatened and/or endangered fish (Section 3.4).
- NO; ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions important to protection or recovery of threatened and/or endangered fish (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** based on parameters assessed (Section 3.1, Question A; Section 3.2, Question A).

² The Columbia River Basin Fish and Wildlife Program (WRD's document number 94-2) states: "In determining whether a proposed diversion or transfer would be consistent with salmon and steelhead needs, consult with fish and wildlife agencies and Indian tribes to determine whether the proposed use would cause any reduction in the quantity or productivity of salmon and steelhead habitat" (7.8G.1). In addition, the document includes a recommendation to "halt further issuance of consumptive water rights unless a finding can be made, in consultation with fish agencies and tribes, that existing instream flows meet anadromous fish needs for all life-stages" (Recommendation No.: 7-2).

Overarching Question 2:
Can the use be conditioned or mitigated to avoid the detriment to a threatened and/or endangered fish species?

- YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
 - ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended below and in Section 3, to compensate for any potential impact from the proposed use.
 - In addition, ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.

Comments: type here

4.3 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Statewide Rules

- The Statewide rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:
Will the proposed use result in a loss of essential habitat of a threatened and/or endangered fish species?
Note: For impacts to non-essential habitat for threatened and/or endangered species under Habitat Categories 3-6, skip to Section 6.

- YES; Based on parameters assessed, ODFW has found impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or impacts to ecological functions (Section 3.4) essential to threatened and/or endangered fish species during the period of impact.
- NO; Based on parameters assessed, ODFW finds the use will either not impair biologically necessary flows (Section 3.2, Question A) and ecological functions essential to threatened and/or endangered fish species (Section 3.4) or the proposed reduction in flow is expected to be inconsequential or de Minimis (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:
Can the use be conditioned to result in no loss of essential habitat of a threatened and/or endangered fish species?

- YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
 - ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended from Sections 3, to compensate for any potential impact from the proposed use.
 - In addition, ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered

fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: [type here](#)

Section 5: ODFW Findings Regarding Sensitive Fish Species (under OWRD's Division 33 Statewide Rules)

- Sensitive species will not be impaired by the proposed use. **Skip to Section 6.**

Overarching Question 1:

Will the proposed use result in a net loss of essential habitat of a sensitive fish species?

Note: For impacts to non-essential habitat for sensitive species under Habitat Categories 3-6, skip to Section 6.

- YES; Based on parameters assessed, ODFW has found impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or impacts to ecological functions (Section 3.4) essential to sensitive fish species during the period of impact.
- NO; Based on parameters assessed, ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions essential to sensitive fish species (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de minimis** (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:

Can the use be conditioned to result in no net loss of essential habitat of a sensitive fish species?

- YES; ODFW recommends the conditions and mitigation recommended in Sections 3, 4, and 7 to compensate for any potential impact from the proposed use.
- ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended from Sections 3 and 4, to compensate for any potential impact from the proposed use.
- In addition, ODFW recommends the following site-specific condition(s): [type here](#)
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a sensitive fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: [type here](#)

Section 6: ODFW's Public Interest Findings (under OWRD's Division 310)

Note: Comment on fish or wildlife species not already discussed in Sections 4 or 5 and impacts to non-essential habitat of STE fish.

Overarching Question 1:

Will the proposed use impair or be detrimental to the public interest?

- YES; In addition to those previously identified in Sections 4 and 5, the proposed use will impair or be detrimental to the following public interest(s) under ORS 537.170(8):
Reduced flow may impair the commercial and/or recreation fisheries for White Sturgeon, Coho Salmon, Unlisted Spring, Summer and Fall Chinook and Unlisted Steelhead.
- NO; Impairment or detriment to public interests, in addition to those previously identified in Sections 4 and 5, will be inconsequential from the proposed use or has not been assessed at this time. **Skip to Section 7.**

Overarching Question 2:

Can the proposed use be conditioned to overcome the impairment or detriment to the public interest?

- YES;
- The same conditions and mitigation as outlined in Sections 3, 4, and 7 apply.
- ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: type here

Section 7: ODFW's Recommended Mitigation Obligation

- NOT APPLICABLE; ODFW is not recommending mitigation. (Sign and STOP here)

ODFW Representative's Signature: _____ Date: type here

Name: type here

Phone: type here

Email: type here

Mitigation Obligation

ODFW's assessment reveals flows within the impacted reach are or are assumed to be entirely or partially below those essential to support the biological needs of fish, wildlife, or habitats and/or the proposed use will otherwise impact habitat, so the proposed use may diminish physical habitat and alter the flow regime to which fish and wildlife are naturally adapted. These changes will negatively affect their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water use would impair or be detrimental to fish, wildlife, and/or their habitat without appropriate mitigation. ODFW recommends the applicant contact the caseworker to schedule a consultation with ODFW concerning the following recommended Mitigation Obligation, if questions arise.

Choose One:

- A) Water is not available to support biologically necessary flows at the POD and/or downstream year-round. ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use

outside this period will impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. 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 through purchasing or transferring an existing water right.

- B) Water is only available to support biologically necessary flows at the POD and/or downstream during December – April 14. ODFW recommends the season of use be restricted to coincide with this period or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period will impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. 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 through purchasing or transferring an existing water right.
- C) There is insufficient information on instream flow availability (e.g., no Water Availability Basin or gage) to determine if the proposed use will impair biologically necessary flows for fish. Therefore, ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order unless the applicant provides sufficient evidence to ODFW that the biologically necessary flows are available and can be maintained within the impacted reach. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period may impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. 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 through purchasing or transferring an existing water right.
- D) Mitigation is not an option. ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.
- E) Based on ODFW's knowledge of applicable Subbasin Plans, Recovery Plans, Regional Restoration Plans, or other documents, the proposed use appears inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program³, impairs essential habitat, or is otherwise detrimental to the protection and/or recovery of sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. Therefore, ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation (consistent with the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations) as outlined in this section(s), as **well as other conditions recommended in Sections 3-6**. ODFW recommends the Proposal include an assessment of options using the following actions listed in order of priority:
- (1) avoiding the impact altogether,
 - (2) minimizing the impact by limiting the degree or magnitude of the action,
 - (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
 - (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action and by monitoring and taking appropriate corrective measures, and

³ Water Resources Department's document number 94-2

(5) compensating for the impact by replacing or providing comparable substitute resources or environments. Because the mitigation is site- and species-specific, ODFW recommends written approval of the Proposal by ODFW prior to issuance of a Proposed Final Order (see Section 9).

7.1 Identification of Habitat Category

Habitat Category⁴ for the Primary Species of Concern During the Period of Impact:

Month	Primary Species of Concern	Habitat Category
January	type here	type here
February	type here	type here
March	type here	type here
April	type here	type here
May	type here	type here
June	type here	type here

Month	Primary Species of Concern	Habitat Category
July	type here	type here
August	type here	type here
September	type here	type here
October	type here	type here
November	type here	type here
December	type here	type here

7.2 Flow Mitigation

- If the applicant chooses to pursue water use during type here, when biologically necessary flows are not met or water is not available, ODFW recommends the applicant provide water-for-water mitigation that is **legally protected and maintained as an instream water right** for the life of the permit and subsequent certificate, as outlined below.
 - In lieu of mitigation, the applicant may provide evidence that the biologically necessary flows are available and can be maintained within the impacted reach.
- ODFW recommends WRD's "Normal Mitigation," including any site-specific options addressed below.

A) Water Quantity: type here (cfs or AF; equals amount requested)

- plus a net benefit (for Habitat Category 2)

B) Months: type here

C) Location of Mitigation (based on the Habitat Category):

- at or above the point of impact
- at or above the point of impact is preferred, but may occur within the watershed/home range of the impacted population(s)
- within a high priority reach⁵ within the watershed/home range of the impacted species or population
- within the watershed/home range of the impacted population(s)
- benefitting the impacted population(s) and/or higher priority species: list species here

D) Additional comments: type here

7.3 Habitat Restoration Mitigation

Does the Mitigation Goal also allow a habitat restoration project as a mitigation option (i.e., impacts to Habitat Categories 3 – 6)?

- YES; In lieu of providing "water-for water", ODFW's Habitat Mitigation Policy allows the applicant the option of

⁴ see ODFW Habitat Mitigation Policy, OAR 635-415-0025

⁵ see ODFW's Aquatic Habitat Priority maps

providing mitigation through a habitat restoration project that recreates similar habitat structure and function to that existing prior to the development action. If the applicant is interested in pursuing this option, please contact ODFW for further information.

NO; Skip to Part 4, if applicable.

7.4 Other Ecological Functions Mitigation

Not applicable

ODFW recommends the applicant provide the following mitigation, including, but not limited to, mitigation for "Other Impacts to Ecological Functions" or impacts to wildlife.

Note: Copy and paste the template below for each habitat type in need of replacement.

A) Habitat Structure and Function in Need of Replacement: type here

B) Describe the habitat quantity and quality to be replaced: type here

C) Months:

In Perpetuity

Other: type here

D) Location of Mitigation:

at or above the point of impact

at or above the point of impact is preferred, but may occur within the watershed/home range of the impacted population(s)

within a high priority reach⁵ within the home range of the impacted species or population

within the watershed/home range of the impacted population(s)

anywhere benefitting the impacted population(s) and/or higher priority species: list species here

E) Additional comments: type here

ODFW Representative's Signature: _____ Date: 5-6-22

Name: Danette Faucera

Phone: 503-947-6092

Email: danette.l.faucera@odfw.oregon.gov

Section 8: ODFW's Recommended Condition Language

List A Conditions

(to be addressed by applicant prior to issuance of the Proposed Final Order)

Bypass Plan (for reservoirs that directly divert from surface water)

Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Bypass Plan which describes the method the permittee shall bypass the recommended flows, as outlined in Section 3.1, C and how the permittee will quantify and document inflow and outflow.

Mitigation Plan

Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations), as outlined in Section 7, to compensate for any potential impacts to fish, wildlife, or habitats from the proposed use.

Riparian Plan

If development of the point of diversion includes disturbance of the riparian area, the applicant shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's (ODFW) Fish and Wildlife Habitat Mitigation Policy described in OAR 635-415. Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Riparian Plan approved in writing by ODFW, unless ODFW provides documentation that a Riparian Plan is not necessary. The applicant is hereby directed to contact ODFW.

Wetland

Prior to issuance of the Proposed Final Order, the applicant must submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation. The offsite determination will identify waters of this state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990) that may be needed prior to disturbance or development of the point of diversion.

List B Conditions

(included in permit and "maintenance" language carried through to certificate)

Bypass Flows (for reservoirs that directly divert from surface water)

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 by the permittee, 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.

{copy table from Section 3.1, Question C}

Chum

During the months of October and November each year, the permittee shall monitor the 7-day rolling average of the mean daily gauge height below Bonneville Dam beginning on the date that the Technical Management Team (TMT; comprised of NOAA and the Corps of Engineers, among others) begin operations to maintain water levels in the Ives/Pierce Island complex to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. The permittee should contact the Army Corps of Engineers representative of the TMT to verify the start date of when the Columbia River is actively being managed to meet chum elevations and to obtain the tailwater stage target (call the Columbia Basin Water Management Division, Northwestern Division, U.S. Army Corps of Engineers at 503-808-3929).

To monitor mean daily stage at this location, the permittee will use the official project tailwater elevation gage (USGS gage station #14128870 Columbia River below Bonneville Dam, OR). Real-time data from this station is available online at the United States Geological Survey website: http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw. The permittee shall maintain a spreadsheet of the 7-day rolling average of the mean daily gage height for the period when the permittee is required to monitor during October 1 – November 30, which will be available to OWRD upon request.

In addition to monitoring mean daily gage height, the permittee shall do one of the following:

- 1) Prior to issuance of the proposed final order, provide proof to OWRD that permanent mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured for October and November. Any mitigation provided for the period October 1 - November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. If mitigation is secured, the permittee is not required to track the 7-d rolling average or cease pumping during chum operations.
- 2) Cease pumping for any days during October and November when the Army Corps of Engineers is managing the Columbia River to meet chum targets AND the 7-day rolling average of the mean daily gage height below Bonneville Dam (USGS gage station #14128870) is less than the stage target set that year by the TMT for protection of chum salmon. The permittee shall discontinue pumping for the duration of time the 7-day rolling average remains below the stage target. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

Provide proof to OWRD that real-time mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured and is available for this use during the anticipated period that the 7-day rolling average will remain below the target established for October and November of that year. Any mitigation provided for the period October 1 - November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. The permittee is not required to track the 7-day rolling average or cease pumping during chum operations during periods mitigation has been secured. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

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.

Future Protection

The permittee may be required in the future to install, maintain, and operate fish screening per ORS 498.306 to prevent harm to fish from the proposed diversion. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification from ODFW that a fish screen is required. Once installed, the water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards.

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 (insert dates identified in Section 3.4) unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.

Maintain Flow

The biologically necessary flows shown in the following table shall be maintained real time within and downstream of the point of impact or the use may be regulated until the flows are available.

{copy table from Section 3.1, Question B}

Maintain Passage

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).

Measurement Device

The permittee shall install, maintain, and operate a water use control and/or measuring device, as identified by OWRD. The device shall be installed, functional, and approved by the local Watermaster, prior to diversion of water.

Mitigation

The permittee shall comply with terms of the associated Mitigation Plan to compensate for detrimental impacts to fish, wildlife, and/or their habitat. The Mitigation Plan is fully incorporated into the requirements of this permit and may only be altered by written mutual agreement of all parties. The mitigation shall be legally protected and maintained for the life of the permit and subsequent certificate.

Passage

The permittee shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585) without obtaining approval for the artificial obstruction from the Oregon Department of Fish and Wildlife (ODFW).

The permittee shall submit a proposal for fish passage to ODFW or apply for a fish passage waiver or exemption. Approval of the proposed fish passage facility, waiver, or exemption shall be obtained prior to construction of any in-channel obstruction or prior to diversion of water that may create an artificial obstruction due to low flow. The permittee shall submit proof to ODFW that fish passage has been implemented per the plan, waiver, or

exemption prior to diversion of water.

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) as per the approved plan, waiver, or exemption. The permittee is hereby directed to schedule a consultation with an ODFW Fish Passage Coordinator.

Riparian

The permittee shall restore or enhance the riparian area per the approved Riparian Plan prior to diversion of water and maintain the riparian area for the life of the permit and subsequent certificate per the approved Riparian Plan.

Screen

The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards or submit documentation that ODFW has determined fish screening is not necessary or is exempted. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place, functional, and approved in writing by ODFW prior to diversion of water. The water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards. The permittee is hereby directed to schedule a consultation with an ODFW Fish Screening Coordinator.

Section 9: ODFW's Review of the Mitigation Proposal

Because the mitigation is site- and species-specific, ODFW recommends written approval of the Proposal by ODFW prior to issuance of a Proposed Final Order. ODFW finds the following:

ODFW **supports** the Mitigation Proposal with the following condition(s):

"Mitigation"

Site-specific condition(s): type here

Additional information:

A Fish Passage Waiver or Exemption has been granted for the proposed POD that fulfills the fish passage requirements for this use.

Comments: type here

ODFW **cannot support** the Mitigation Proposal because it is not consistent with the criteria in OAR 635-415.

The proposed mitigation is inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program⁶, impairs essential habitat, or is otherwise detrimental to the protection and/or recovery of sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife.

Habitat goals and standards not met: list here and explain why not met

ODFW Representative's Signature: _____ Date: type here

Name: type here

Phone: type here

Email: type here

⁶ Water Resources Department's document number 94-2



Water Right Application Superseding Initial Review

August 19, 2022

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Reference: Application S-89170

Issuance of this Superseding Initial Review is being done to clarify the use, to correct the determination regarding allowable use and to ask for more information regarding beneficial use. Please refer to determination #3 below and the Additional Required Information section.

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 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 Water Resources Department has made the following preliminary determinations:

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

1. The application proposes the diversion of 0.80 cubic foot per second (CFS) of water from Columbia River, tributary to Pacific Ocean, for irrigation of 156.1 acres October 1 through April 14 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation is allowed under the Columbia Basin Program (OAR 690-519-0000(1)).
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. See **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
The diversion of 0.80 CFS of water from Columbia River, tributary to Pacific Ocean, for irrigation of 156.1 acres is not allowable October 1 through April 14 of each year, unless additional required information is submitted. See below for more details.

Additional Required Information

The application proposes irrigation during the non-irrigation season. It is unclear if beneficial use of water can be made during the period of use requested, being October 1 through April 14.

Please provide information no later than **September 22, 2022**, that indicates how water can be used beneficially October 1 through April 14, and the Department will take this into consideration.

If we do not receive additional information to evaluate by September 22, 2022, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

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 September 2, 2022**. 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, the permittee shall install a totalizing flow meter at each point of diversion. 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 diverted each month, and shall submit a report which includes water-use 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.

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 web site at <http://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 Kim.R.French@oregon.gov or 503-979-3168 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: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French
Water Right Program Analyst
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
S-89170
WAB: No WAB
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: S-89170

Applicant: BRIAN AND DUANE LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, 5, NCR

Priority Date: OCTOBER 14, 2021

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: IRRIGATION OF 156.1 ACRES

Rate: 0.80 CUBIC FOOT PER SECOND

Basin Name & Number: Umatilla, # 7

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	34	NE SE	40.6
4 N	29 E	WM	34	NW SE	35.5
4 N	29 E	WM	34	SW SE	40.7
4 N	29 E	WM	34	SE SE	39.3

PUBLIC NOTICE DATE: August 23, 2022

14 DAY STOP PROCESSING DEADLINE DATE: September 2, 2022

30 DAY COMMENT DEADLINE DATE: September 22, 2022

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 web site at www.wrd.state.or.us

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0801.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- 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.
- Contact the Caseworker if you have questions about the IR.
- 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.
- An **administrative hold** may be requested in writing by Applicant.

4. Proposed Final Order (PFO)

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

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

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 **S-89170**.

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:

September 2, 2022

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271

Mailing List for IR Copies

Application S-89170

IR Date: August 19, 2022

Original and map mailed to applicant:

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Sent via auto email:

1. Applicant - dean@gvfusa.com
2. Agent – Lolly Anderson - lolly.anderson@andersonschultz.com
3. WRD – Watermaster District #5, Gregory M. Silbernagel
4. WRD – Chris Kowitz NCR
5. WRD – SW Section
6. ODFW
7. DEQ

Copies sent to:

1. WRD – File S-89170
2. ALO – Merle A. Gehrke & Patsy M. Gehrke, TTEs of the Merle and Pat Gehrke Trust, 34718 Old Hwy 320, Echo, OR 97826-9614
3. East Improvement District, 84186 Hwy 37, Hermiston, OR 97838
4. Echo Irrigation District, 73120 Hwy 207, Echo, OR 97826
5. Stanfield Irrigation District,

Application Specialist: Kim French

Copies Mailed
By: <u>TM</u> (SUPPORT STAFF)
On: <u>8/19/2022</u> (DATE)



Water Right Application Initial Review

November 12, 2021

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Reference: Application S-89170

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 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 Water Resources Department has made the following preliminary determinations:

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

1. The application proposes the diversion of 0.80 cubic foot per second (CFS) of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres October 1 through April 14 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Soil preparation is a use defined under nursery use. As defined in OAR 690-500, nursery use is included in irrigation, which is allowed under the Columbia Basin Program (OAR 690-519-0000(1)). Therefore, soil preparation (raising the soil moisture content) is allowed.
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary of Preliminary Determinations

The diversion of 0.80 CFS of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres is allowable October 1 through April 14 of each year.

Because of the favorable determinations described herein, Application S-89170 can move to the next phase of the water-rights application review process, which includes a public interest review.

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 26, 2021**. For your convenience you may use the enclosed "STOP PROCESSING" form.

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

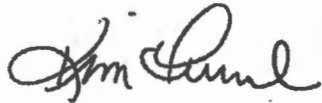
1. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. 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 diverted each month, and shall submit a report which includes water-use 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.

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 web site at <http://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 Kim.R.French@oregon.gov or 503-979-3168 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: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: **Application Process Description and Stop Processing Request Form**
S-89170
WAB: No WAB
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: S-89170

Applicant: BRIAN AND DUANE LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, 5, NCR

Priority Date: OCTOBER 14, 2021

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: RAISE THE SOIL MOISTURE CONTENT ON 156.1 ACRES

Rate: 0.80 CUBIC FOOT PER SECOND

Basin Name & Number: Umatilla, # 7

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	34	NE SE	40.6
4 N	29 E	WM	34	NW SE	35.5
4 N	29 E	WM	34	SW SE	40.7
4 N	29 E	WM	34	SE SE	39.3

PUBLIC NOTICE DATE: November 16, 2021

14 DAY STOP PROCESSING DEADLINE DATE: November 26, 2021

30 DAY COMMENT DEADLINE DATE: December 16, 2021

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 web site at www.wrd.state.or.us

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0801.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- 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.
- Contact the Caseworker if you have questions about the IR.
- 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.
- An **administrative hold** may be requested in writing by Applicant.

4. Proposed Final Order (PFO)

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

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 .

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 **S-89170**.

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 26, 2021

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271

Mailing List for IR Copies

Application S-89170

IR Date: November 12, 2021

Original and map mailed to applicant:

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Sent via auto email:

1. Applicant - dean@gvfusa.com
2. Agent – Lolly Anderson - lolly.anderson@andersonschultz.com
3. Agent – Michael Schultz - michael.schultz@andersonschultz.com
4. WRD – Watermaster District #5, Gregory M. Silbernagel
5. WRD – Chris Kowitz NCR
6. WRD – SW Section
7. ODFW
8. DEQ

Copies sent to:

1. WRD – File S-89170
2. ALO – Merle A. Gehrke & Patsy M. Gehrke, TTEs of the Merle and Pat Gehrke Trust, 34718 Old Hwy 320, Echo, OR 97826-9614
3. East Improvement District, 84186 Hwy 37, Hermiston, OR 97838
4. Echo Irrigation District, 73120 Hwy 207, Echo, OR 97826

Application Specialist: Kim French

Copies Mailed
By: <u>TM</u> (SUPPORT STAFF)
On: <u>11/12/2021</u> (DATE)

Oregon Water Resources Department

Date	Type	Reference	Original Amt.	Balance Due	9/28/2021 Discount	Payment
9/13/2021	Bill	Option Application	2,110.00	2,110.00		2,110.00
					Check Amount	2,110.00

RECEIVED

OCT 14 2021

OWRD

Checking - Banner LP - Option Application

2,110.00

Water-Use Permit Application Processing Steps

Oregon Water Resources Department

Standard Process for a Surface Water Application:

1. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$310.00. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

2. Public Notice

Within 7 days of the mailing of the Initial Review, the Department gives public notice of the application in the weekly notice published by the Department at www.oregon.gov/owrd. The public comment period is 30 days from publication in the weekly notice.

3. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened, or endangered fish species. Within 60 days of completion of the Initial Review, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit and may request additional information or outstanding fees required prior to permit issuance.

4. Public Notice & Protest Opportunity

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. A protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$480.00 for the applicant and \$950.00 for non-applicants. Protests are filed on approximately 10 percent of Proposed Final Orders. If a protest is filed the Department will attempt to settle the protest but will schedule a contested case hearing, if necessary.

5. Final Order Issued

If no protests are filed, the Department can issue a Final Order within 60 days of the close of the period for receiving protest. If the application is approved, a permit is issued. The permit will specify the details of the authorized use and any terms, limitations, or conditions that the Department deems appropriate.

Expedited Process for a Surface Water Application:

Note: The expedited process only applies to an application using stored water only under ORS 537.147.

The expedited process allows the Department to process an application within several weeks in cases where no public interest concerns are identified. It does not provide an opportunity to protest the Department's recommendation unless public interest issues are identified, in which case the Department will then evaluate the application using the standard process and a protest opportunity will be available. For expedited applications, the Department issues a Final Order only. Once accepted by the Department, these applications are published in the weekly public notice every Tuesday and a 30-day public comment period begins. Following the public comment period, the Department can issue the Final Order.



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

October 22, 2021

Brain & Duane, LLC
7385 Howell Prairie Rd NE
Silverton OR 97381

Dear Applicants:

The Oregon Water Resources Department has received your surface water application for a water use permit. Your application has been assigned file number **S-89170**. Please refer to this number when contacting the Department. Should you have any questions about your application, please contact the following Water Rights Specialist assigned to your application:

Kim French, Water Rights Specialist	Phone: 503-979-3168
	Email: kim.r.french@oregon.gov

A description of the steps that are used for processing a surface water application are shown on the reverse side of this letter. Surface water applications that propose to use stored water exclusively are reviewed using an expedited process and contain slightly different processing steps.

The Department's goal is to process applications within statutory deadlines. The first step in the process is issuance of an Initial Review, which summarizes the Department's preliminary determinations. Surface water applications typically receive an Initial Review in approximately two to three months. Copies of the Initial Review, Proposed Final Order, and Final Order will be mailed to you. Applications proposing to use stored water only under the expedited process will receive a Final Order.

Please note that your application is subject to review and comment from other state agencies and interested parties.

Sincerely,

Judy Ferrell
Customer Service Representative
Oregon Water Resources Department

cc: File S-89170

Oregon

Water Resources Department

Water Right Services Division

725 Summer St NE Ste A

Salem, OR 97301-1266

ADDRESS SERVICE REQUESTED

S-89170

Lolly Anderson

PO Box 42427

Portland OR 97242



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

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Oregon

Water Resources Department

Water Right Services Division

725 Summer St NE Ste A

Salem, OR 97301-1266

ADDRESS SERVICE REQUESTED

S-89170

Brian & Duane, LLC

7385 Howell Prairie Rd NE

Silverton OR 97381



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

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This map was prepared for Assessment & Taxation purposes only and was NOT prepared nor is it suitable for legal, engineering or surveying purposes.

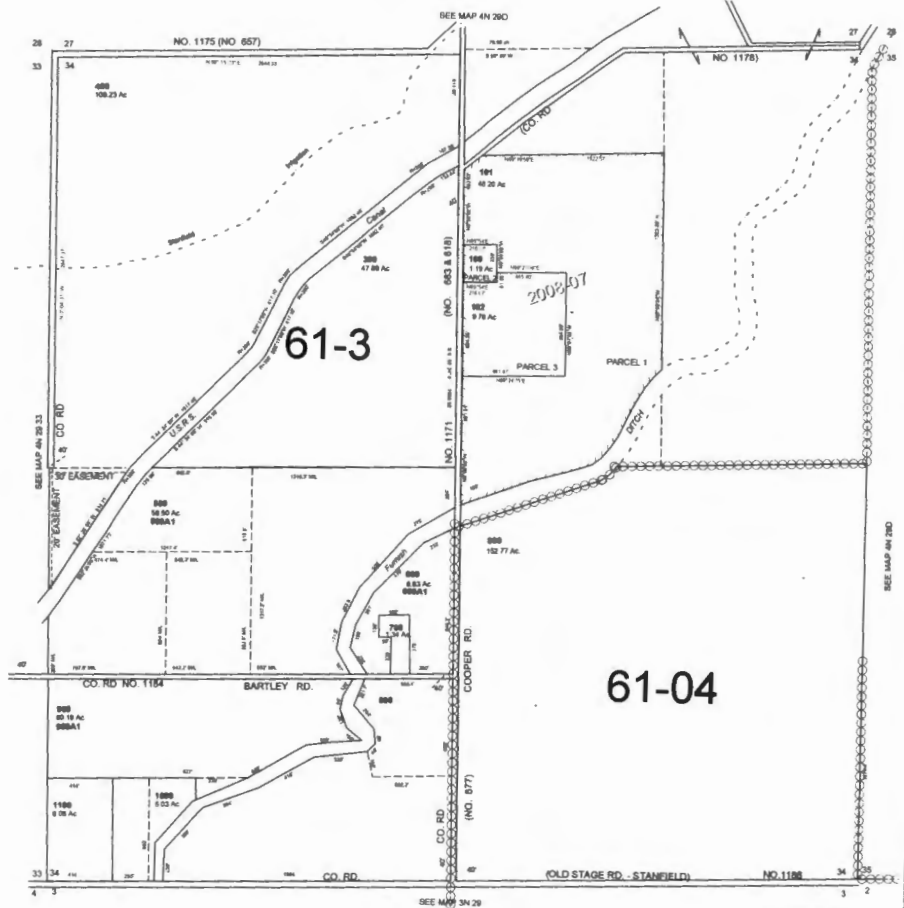


SEC 34 T4N R29E WM UMATILLA COUNTY

SCALE: 1" = 400'

4N 29 34

AERIAL PHOTO NO. NZ-2P-15-17 & 47-50



Revised 4/15/14

4N 29 34

MONEY SLIP

DATE: 10-14-2021	RECEIPT #: 136612
-------------------------	--------------------------

RECEIVED FROM: Golden Valley East, LLC	APPLICATION
	PERMIT
	TRANSFER

CASH <input type="checkbox"/>	CHECK # <input checked="" type="checkbox"/> 25211	OTHER (IDENTIFY) <input type="checkbox"/>
		TOTAL REC'D \$ 2110.00

1083 TREASURY	4170 MISC CASH ACCT.
----------------------	-----------------------------

0407 COPIES	\$
OTHER: (IDENTIFY) _____	\$

0243 Instream Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

1083 TREASURY	4270 WRD OPERATING ACCT.
----------------------	---------------------------------

MISCELLANEOUS		
0407	COPY & TAPE FEES	\$
0410	RESEARCH FEES	\$
0408	MISC REVENUE (IDENTIFY) _____	\$
TC162	DEPOSIT LIAB. (IDENTIFY) _____	\$
0240	EXTENSION OF TIME _____	\$

WATER RIGHTS		EXAM FEE		RECORD FEE
0201	SURFACE WATER	\$	0202	\$
0203	GROUND WATER	\$	0204	\$
0205	TRANSFER	\$		

WELL CONSTRUCTION		EXAM FEE		RECORD FEE
0218	WELL DRILL CONSTRUCTOR	\$	0219	\$
	LANDOWNER'S PERMIT		0220	\$
	OTHER (IDENTIFY) _____			

0607 TREASURY	0467 HYDROELECTRIC
----------------------	---------------------------

0233 POWER LICENSE FEE (FW/WRD)	LIC NUMBER
0231 HYDRO LICENSE FEE (FW/WRD)	\$
	\$
_____ HYDRO APPLICATION	\$

SPECIAL INSTRUCTIONS:

RETURN TO APPLICANT - LETTER ATTACHED

E-2 App

- Yes
 No

Standard Application Completeness Checklist**Groundwater and Surface Water Applications Only**

Minimum Application Requirements (OAR 690-310-0040 &-0050)

For use by WRD staff only

Application #:	S-89170	Receipt #:	136612
Applicant Name:	Brian & Duane, LLC	Amount Requested:	.80 CFS
Priority Date:	October 14, 2021	Proposed Use:	IR
County:	Umatilla	POD's TRS &TL:	4N/29E/34/NW-SE/800
WM #:	5-Greg Silbernagel	Caseworker:	<input checked="" type="checkbox"/> KF <input type="checkbox"/> LG
Reviewed by:	Judy	Reviewed Date:	10/21/2021

- Applicant/Organization Name and Mailing Address
- Signature of **all** applicants (include title or authority of representative if applicant is an organization or corporation). Note: Applicant's agent may NOT sign the application on behalf of the applicant.
- Property Ownership: Does the applicant own all the land for the proposed project? Yes No
- If No:
- The affected landowner's name(s) and mailing address(s) must be listed.
- A signed statement declaring the existence of either written authorization or an easement permitting access to land crossed by the proposed ditch canal or other work must be submitted.
- For a SW Application:** Source of water must be indicated.
- If the source is stored water, is the stored water component filled out and does the applicant own the reservoir or include a non-expired agreement for stored water? (ORS 537.400)
- If for stored water, is the source authorized under a permit, certificate, or decree?
- Permit or Certificate issued: Y N Permit or Certificate #:
- NOTE:** An expedited secondary (E2) application and a reservoir application cannot be filed at the same time. The reservoir must be legally authorized first, under an existing water right, in order to accept and process an E2 application.
- For a GW Application:** Well development table completed and a well log report included (if existing)
- Division 33 (Sensitive, Threatened, Endangered, Fish Species)
- Proposed Water Use:
- Amount of water from *each* source in GPM, CFS, or AF
- Period of use indicated
- If for supplemental irrigation, primary acreage or underlying permit or certificate number listed.
(Note: Primary and Supplemental Irrigation counts as 2 uses)
- Water Management Section
- Resource Protection Section

- Project schedule. (Note: If system is already completed, indicates "existing.", (Note: Estimates are okay if the water system has not been designed))
- Supplemental data sheets enclosed (if needed)
 - Form M (Municipal or Quasi-Municipal)
- A completed **Land-Use Form** or receipt signed and dated by the appropriate planning department. Please be certain that the Land-Use form lists all lands involved and all uses proposed. Date of signature must be within the past 12 months.
- A **Legal Description** of all the properties involved where water is diverted, conveyed, and used. The legal description includes a metes and bounds or other government survey description. A copy of the deed, land sales contract or title insurance policy can provide this information, or applicant may submit a lot book report prepared by a title company. Copies of tax bills are not acceptable
- The proposed source IS IS NOT restricted or withdrawn from further appropriation. **NOTE:** If it is withdrawn under ORS 538, reject/return application and fees.
- The **map** must meet all the minimum requirements of OAR 690-310-0050.
 - Township, Range, Section
 - Location of main canals, ditches, pipelines or flumes (if POA/POD is outside of POU)
 - Place of use, 1/4-1/4's and tax lot clearly identified
 - Even map scale not less than 4" = 1 mile (1"= 1320 ft.); examples: 1" = 100 ft., 1" = 200 ft.
 - Location of **each** diversion point or well by reference to a recognized public land survey corner.
 - Multiple wells shall be uniquely labeled, and identified on well logs, if existing.
 - Reference corner on map
 - North directional symbol
 - Number of acres per 1/4 1/4 if for irrigation, nursery, or agriculture
- Fees:** Amount of Water Requested: .80 CFS Name on Check: Golden Valley East LLC

Exam Fee Due:	\$ 1,500.00	
Exam Fee Submitted:	\$ 1,500.00	
Difference:	\$ 0.00	
Recording Fee Paid?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 610.00
Total:	\$ 2,110.00	

Application for a Permit to Use Surface Water



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

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant

NAME BRIAN & DUANE, LLC		PHONE (HM)	
PHONE (WK)	CELL (503) 932-9851		FAX
ADDRESS 7385 HOWELL PRAIRIE RD NE			
CITY SILVERTON	STATE OR	ZIP 97381	E-MAIL * DEAN@GVFUSA.COM

Organization

NAME SAME AS ABOVE		PHONE	FAX
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 LOLLY ANDERSON, ANDERSON SCHULTZ LLP		PHONE (619) 995-1057	FAX
ADDRESS PO BOX 42427			CELL
CITY PORTLAND	STATE OR	ZIP 97242	E-MAIL * LOLLY.ANDERSON@ANDERSONSCHULTZ.COM

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 proposed and final order documents will also be mailed.)

RECEIVED

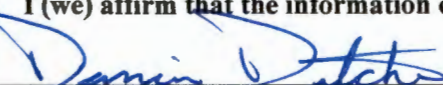
OCT 14 2021

OWRD

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 use water until the Water Resources Department issues a permit.
- The Department encourages all applicants to wait for a permit to be issued before beginning construction of any proposed diversion. Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- If I receive 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 receive water to which they are entitled.

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


Applicant Signature

Darrin Ditcher, member
Print Name and Title if applicable

9/29/2021
Date

Applicant Signature

Print Name and Title if applicable

Date

SECTION 2: PROPERTY OWNERSHIP

OWRD

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- YES, there are no encumbrances.
- YES, the land is encumbered by easements, rights of way, roads or other encumbrances.
- NO, I have a recorded easement or written authorization permitting access.
- NO, I do not currently have written authorization or easement permitting access.
- NO, 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 irrigation and/or domestic use only (ORS 274.040).
- NO, because water is to be diverted, conveyed, and/or used only on federal lands.

Affected Landowners: List the names and mailing addresses of all owners of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work, even if the applicant has obtained written authorization or an easement from the owner. *(Attach additional sheets if necessary).*

Please see Exhibit A.

Legal Description: You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3. Any property on which the water is to be used as depicted on the map.

SECTION 3: SOURCE OF WATER

A. Proposed Source of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into (if unnamed, say so), and the locations of the point of diversion (POD):

Source 1: Columbia River	Tributary to: Pacific Ocean
TRSQQ of POD: T5N R30E W.M. S8 SWNW, located 2,910 feet North and 120 feet East from the SW corner of Section 8.	
Source 2:	Tributary to:
TRSQQ of POD:	

If any source listed above is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume, page and/or decree name).

B. Applications to Use Stored Water

Do you, or will you, own the reservoir(s) described in Section 3A above?

- Yes.
- No. (Enclose a copy of your written notification to the operator of the reservoir of your intent to file this application, which should have been mailed or delivered to the operator.)

If *all* sources listed in Section 3A are stored water, the Department will review your application using the expedited process provided in ORS 537.147, unless you check the box below. Please see the instruction booklet for more information.

By checking this box, you are requesting that the Department process your application under the standard process outlined in ORS 537.150 and 537.153, rather than the expedited process provided by ORS 537.147. To file an application under the standard process, you must enclose the following:

- A copy of a signed non-expired contract or other agreement with the owner of the reservoir (if not you) to impound the volume of water you propose to use in this application.
- A copy of your written agreement with the party (if any) delivering the water from the reservoir to you.

SECTION 4: SENSITIVE, THREATENED OR ENDANGERED FISH SPECIES PUBLIC INTEREST INFORMATION

This information must be provided for your application to be accepted as complete. The Water Resources Department will determine whether the proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened or endangered fish species.

To answer the following questions, use the map provided in Attachment 3 or the link below to determine whether the proposed point of diversion (POD) is located in an area where the Upper Columbia, the Lower Columbia, and/or the Statewide public interest rules apply.

For more detailed information, click on the following link and enter the T,R,S,QQ or the Lat/Long of a POD and click on "Submit" to retrieve a report that will show which section, if any, of the rules apply:
https://apps.wrd.state.or.us/apps/misc/lkp_trsqq_features/

If you need help to determine in which area the proposed POD is located, please call the customer service desk at (503) 986-0801.

Upper Columbia - OAR 690-033-0115 thru -0130

Is the POD located in an area where the Upper Columbia Rules apply?

Yes No

If yes, you are notified that the Water Resources Department will consult with numerous federal, state, local and tribal governmental entities so it may determine whether the proposed use is consistent with the "Columbia River Basin Fish and Wildlife Program" adopted by the Northwest Power Planning Council in 1994 for the protection and recovery of listed fish species. The application may be denied, heavily conditioned, or if appropriate, mitigation for impacts may be needed to obtain approval for the proposed use.

If yes,

- I understand that the proposed use does not involve appropriation of direct streamflow during the time period April 15 to September 30, except as provided in OAR 690-033-0140.
- I understand that I will install, operate and maintain a fish screen and fish passage as listed in ORS 498.301 through 498.346, and 509.580 through 509.910, to the specifications and extent required by Oregon Department of Fish and Wildlife, prior to diversion of water under any permit issued pursuant to this application.

For Department Use: App. Number: _____

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- I understand that the Oregon Department of Environmental Quality will review my application to determine if the proposed use complies with existing state and federal water quality standards.
- I understand that I will install and maintain water use measurement and recording devices as required by the Water Resources Department, and comply with recording and reporting permit condition requirements.

Lower Columbia - OAR 690-033-0220 thru -0230

Is the POD located in an area where the Lower Columbia rules apply?

Yes No

If yes, you are notified that that the Water Resources Department will determine, by reviewing recovery plans, the Columbia River Basin Fish and Wildlife Program, and regional restoration programs applicable to threatened or endangered fish species, in coordination with state and federal agencies, as appropriate, whether the proposed use is detrimental to the protection or recovery of a threatened or endangered fish species and whether the use can be conditioned or mitigated to avoid the detriment.

If a permit is issued, it will likely contain conditions to ensure the water use complies with existing state and federal water quality standards; and water use measurement, recording and reporting required by the Water Resources Department. The application may be denied, or if appropriate, mitigation for impacts may be needed to obtain approval of the proposed use.

If yes, provide the following information (the information must be provided with the application to be considered complete).

Yes No The proposed use is for more than **one** cubic foot per second (448.8 gpm) and is not subject to the requirements of OAR 690, Division 86 (Water Management and Conservation Plans).

If yes, provide a description of the measures to be taken to assure reasonably efficient water use:

Statewide - OAR 690-033-0330 thru -0340

Is the POD located in an area where the Statewide rules apply?

Yes No

If yes, the Water Resources Department will determine whether the proposed use will occur in an area where endangered, threatened or sensitive fish species are located. If so, the Water Resources Department, Department of Fish and Wildlife, Department of Environmental Quality, and the Department of Agriculture will recommend conditions required to achieve “no loss of essential habitat of threatened and endangered (T&E) fish species,” or “no net loss of essential habitat of sensitive (S) fish species.” If conditions cannot be identified that meet the standards of no loss of essential T & E fish habitat or no net loss of essential S fish habitat, the agencies will recommend denial of the application unless they conclude that the proposed use would not harm the species.

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SECTION 5: WATER USE

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):
(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

SOURCE	USE	PERIOD OF USE	AMOUNT
Columbia River	Primary - Out of season application to raise soil moisture content	Oct 1- April 14	.80 <input checked="" type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

Please indicate the number of primary and supplemental acres to be irrigated.
 Primary: 156.1 Acres Supplemental: Acres
 If supplemental acres are listed, provide the Permit or Certificate number of the underlying primary water right(s):

 Indicate the maximum total number of acre-feet you expect to use in an irrigation season:

- If the use is **municipal or quasi-municipal**, attach **Form M**
- If the use is **domestic**, indicate the number of households:
- If the use is **mining**, describe what is being mined and the method(s) of extraction:

SECTION 6: WATER MANAGEMENT

A. Diversion and Conveyance

What equipment will you use to pump water from your source?

- Pump (give horsepower and type): See Exhibit C
- Other means (describe):

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.
See Exhibit D.

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)
Center pivots with handlines for corners.

C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to public uses of affected surface waters.

For Department Use: App. Number:

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The right to apply a 2 af duty would allow applicant to build the soil water profile outside of the irrigation season, thereby offsetting the total crop demand for irrigation water during the irrigation season. The offset would benefit the applicant by increasing the amount of water available to crops and benefit other users by decreasing demand during the irrigation season. Damage to surface waters will be prevented by diverting during the winter season when water is available and by recording and reporting use data from the flow meters.

SECTION 7: RESOURCE PROTECTION

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources:

- Diversion will be screened per ODFW specifications in ORS 498.301 through 498.346 to prevent uptake of fish and other aquatic life.
Describe planned actions: The East Improvement District controls the point of diversion and, as required by its water right permits, has installed and maintains fish screens.

- Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.
Note: If disturbed area is more than one acre, applicant should contact the Department of Environmental Quality to determine if a 1200C permit is required.
Describe planned actions and additional permits required for project implementation: The East Improvement District has constructed the facilities at the point of diversion in accordance with state and federal requirements.

- Operating equipment in a water body will be managed and timed to prevent damage to aquatic life. Describe planned actions and additional permits required for project implementation: The East Improvement District controls the point of diversion and is responsible for all maintenance at that point. All other facilities for conveying water are piped.

- Water quality will be protected by preventing erosion and run-off of waste or chemical products.
Describe planned actions: The East Improvement District controls the point of diversion and is responsible for all maintenance at that point. All other facilities for conveying water are piped.

- List other federal and state permits or contracts to be obtained, if a water right permit is granted.
The applicant will not be required to obtain any additional state or federal permits to use or convey water under this permit.

SECTION 8: PROJECT SCHEDULE

- a) Date construction will begin: _____
- b) Date construction will be completed: Construction is completed.
- c) Date beneficial water use will begin: Applicant will use water as soon as the permit is issued.

SECTION 9: WITHIN A DISTRICT

For Department Use: App. Number: _____

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

Irrigation District Name See Exhibit E	Address	
City	State	Zip

SECTION 10: REMARKS

Use this space to clarify any information you have provided in the application. (*Attach additional sheets if necessary*).

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For Department Use: App. Number: _____

Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.140)

Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

Please submit the original application and signatures to the Water Resources Department. Applicants are encouraged to keep a copy of the completed application.

- SECTION 1: Applicant Information and Signature
- SECTION 2: Property Ownership
- SECTION 3: Source of Water
- SECTION 4: Sensitive, Threatened or Endangered Fish Species Public Interest Information
- SECTION 5: Water Use
- SECTION 6: Water Management
- SECTION 7: Resource Protection
- SECTION 8: Project Schedule
- SECTION 9: Within a District
- SECTION 10: Remarks

Include the following additional items:

- Land Use Information Form with approval and signature of local planning department (*must be an original*) or signed receipt.
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- Fees - Amount enclosed: \$ 2110.00
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.
- Map that includes the following items:
 - Permanent quality and drawn in ink
 - Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
 - North Directional Symbol
 - Township, Range, Section, Quarter/Quarter, Tax Lots
 - Reference corner on map
 - Location of each diversion, by reference to a recognized public land survey corner (distances north/south and east/west)
 - Indicate the area of use by Quarter/Quarter and tax lot identified clearly.
 - Number of acres per Quarter/Quarter and attaching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
 - Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)

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Water-Use Permit Application Processing

1. Completeness Determination

The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050. The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$260. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

3. Public Notice

Within 7 days of the mailing of the initial review, the Department gives public notice of the application in the weekly notice published by the Department at www.oregon.gov/owrd. The public comment period is 30 days from publication in the weekly notice.

4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$410.00 for the applicant and \$810.00 for non-applicants. Protests are filed on approximately 10 percent of Proposed Final Orders. If a protest is filed the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

6. Final Order Issued

If no protests are filed, the Department can issue a Final Order within 60 days of the close of the period for receiving protest. If the application is approved, a permit is issued. The permit specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.

For Department Use: App. Number: _____

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Surface Water — Page 9
Rev. 06-18

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OWRD

October 12, 2021

Via U.S. Mail

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

RE: Application for Surface Water Right

Enclosed please find Brian & Duane, LLC's application for a surface water right.

Enclosed please find the following application documents:

1. Signed Application with Signed Land Use Form;
2. Application Fee of \$2,110.00;
3. Application Exhibits;
4. Application Map.

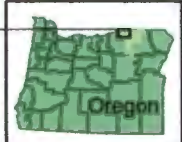
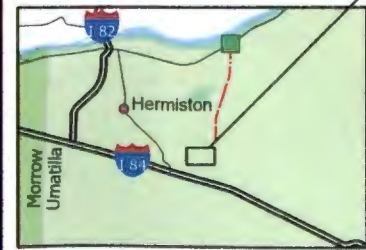
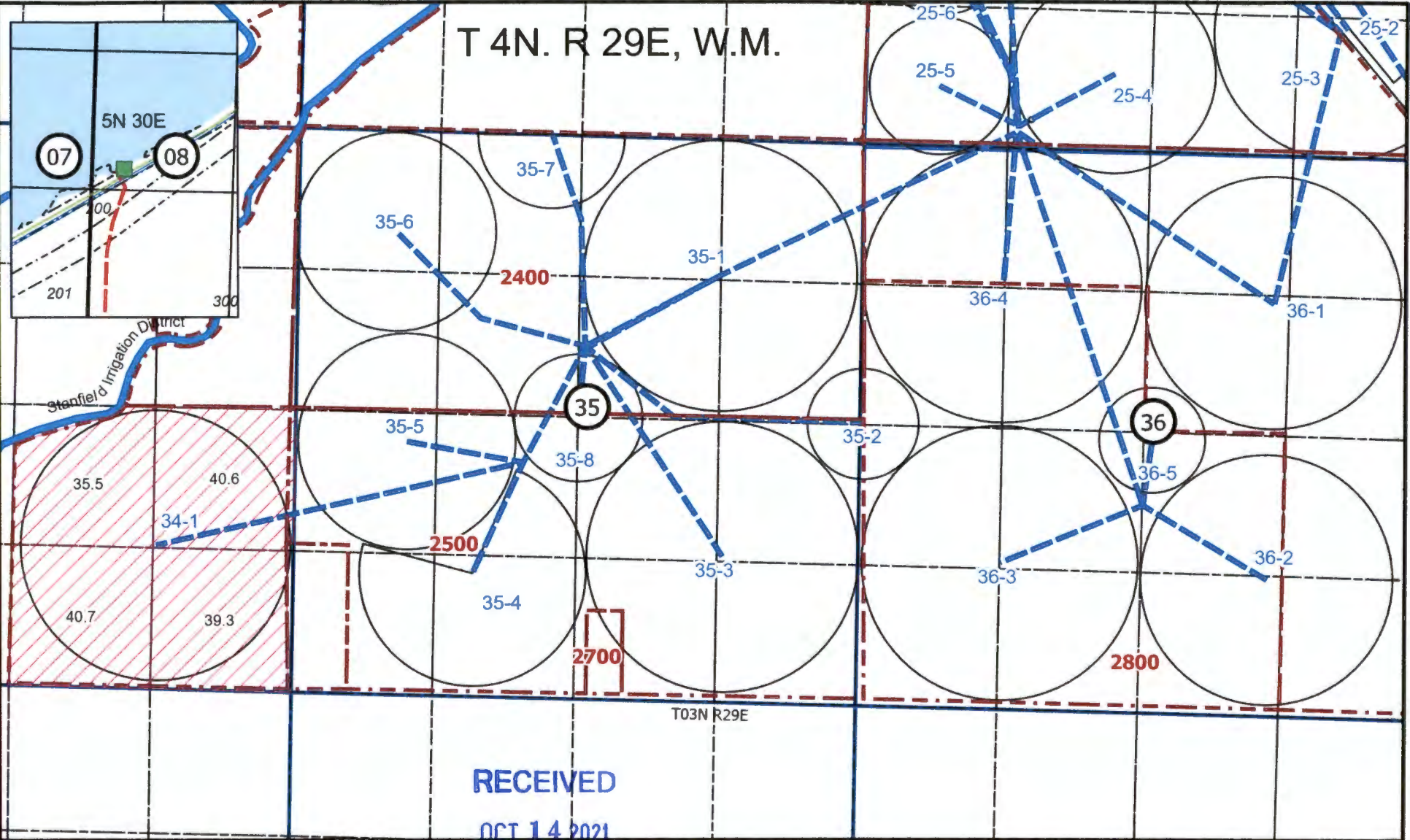
Please feel free to contact me directly if you have any questions or need additional information or documentation. Thank you for your assistance in this matter.

Sincerely,



Lolly Anderson

T 4N. R 29E, W.M.



Projection: UTM Zone 11
 Datum: NAD 1983
 Date: June 2021.
 Data Sources: IRZ; PLS; Umatilla County

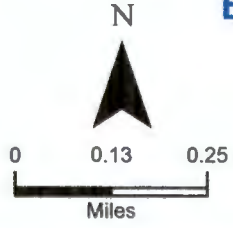
This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimension or locations of property ownership lines.

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Legend

- EID Pipeline
- Farm Pipeline
- Tax Lots
- Proposed Area



BRIAN & DUANE, LLC

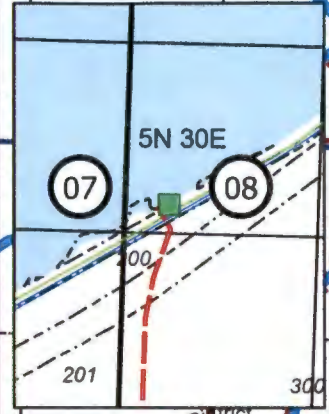
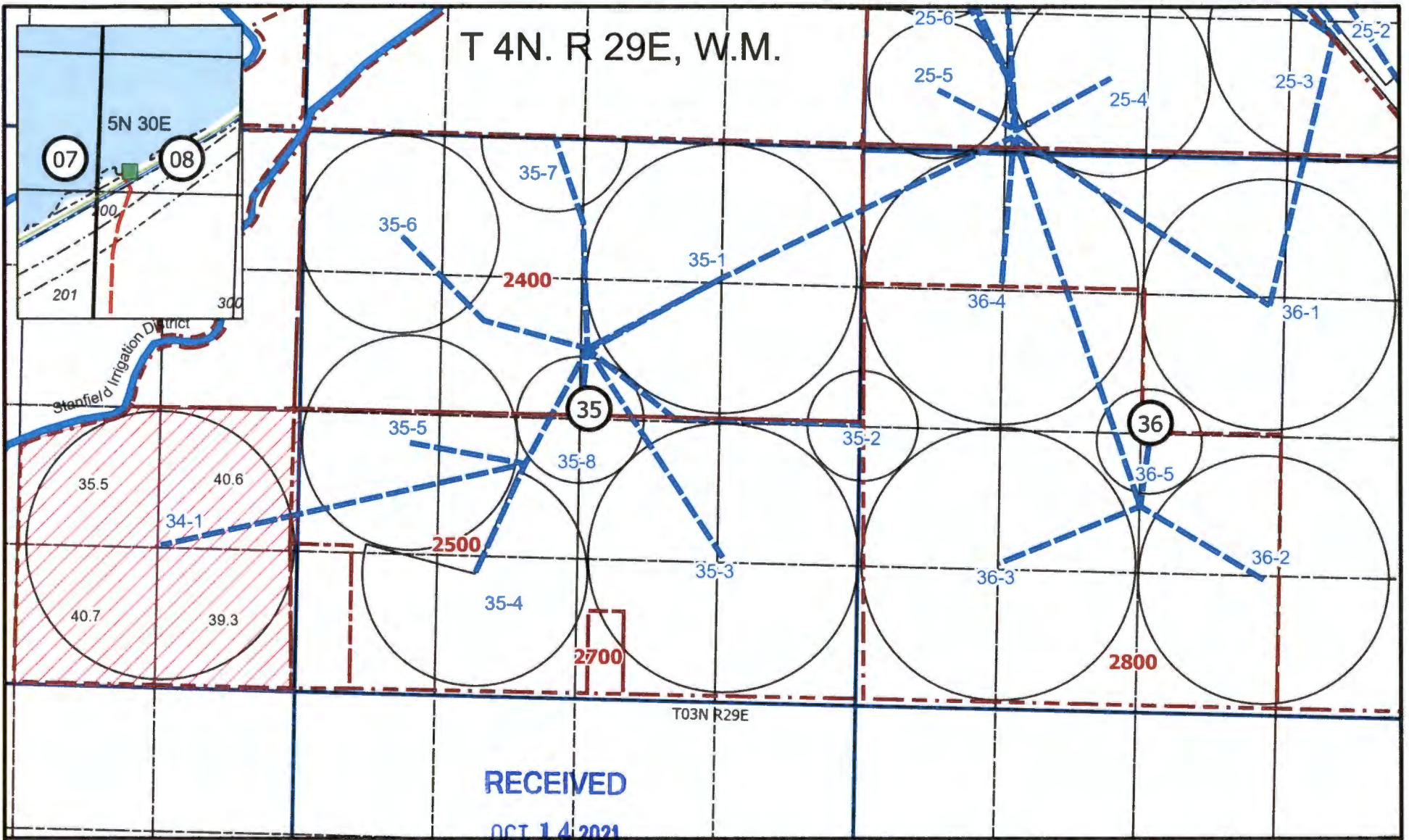
Surface Water Rights Application
 October 1 to April 15

OPTION



Date Exported: 9/8/2021 1:47 PM

T 4N. R 29E, W.M.



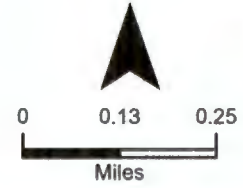
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Legend

- EID Pipeline
- Farm Pipeline
- Tax Lots
- Proposed Area

N



BRIAN & DUANE, LLC

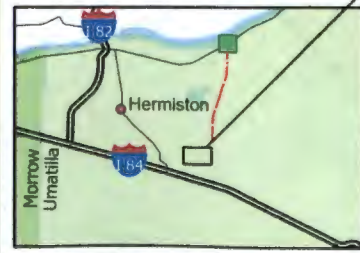
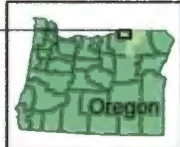
Surface Water Rights Application
October 1 to April 15

OPTION



Projection: UTM Zone 11
 Datum: NAD 1983
 Date: June 2021.
 Data Sources: IRZ; PLS; Umatilla County

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimension or locations of property ownership lines.



Date Exported: 9/8/2021 1:47 PM

**BRIAN & DUANE, LLC (GEHRKE)
SURFACE WATER APPLICATION**

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EXHIBIT A – Landowners

The names and mailing addresses of all affected landowners are as follows:

1. Point of Diversion. The East Improvement District, 84186 Highway 37, Hermiston, OR 97838, will hold the easement for the pump station on the Columbia River.
2. Delivery System. The East Improvement District will deliver Applicant's water from the Point of Diversion to the EID delivery points. The affected landowners from the EID delivery points to the Applicant's places of use are:
 - a. Applicant (Brian & Duane, LLC), 7385 Howell Prairie Road NE, Silverton, OR 97381
3. Places of Use. The affected landowners are:
 - a. Merle A. Gehrke & Patsy M. Gehrke, Trustees of the Merle And Pat Gehrke Trust, 34718 Old Hwy 320, Echo OR 97826-9614.

**BRIAN & DUANE, LLC (GEHRKE)
SURFACE WATER APPLICATION**

EXHIBIT B - Legal Descriptions

1. Point of Diversion: T5N R30E W.M. S8 SW NW, Located 2,910 feet North and 120 feet East from the SW Corner of Section 8.

2. Conveyance System: The East Improvement District will deliver Applicant's water from the Point of Diversion to the delivery point on Applicant's farm. Applicant's delivery system will then transport the water to the Places of Use.
 - a. The conveyance system from the EID point of delivery to the Places of Use impacts the following lands:
 - i. Landowner: Applicant (Brian & Duane, LLC)

T	R	S	Tax Lot
4N	29E	25	200
4N	29E	36	4800

- ii. Landowner: Merle A. Gehrke & Patsy M. Gehrke, Trustees of the Merle And Pat Gehrke Trust

T	R	S	Tax Lot
4N	29E	35	5000
4N	29E	35	5192

3. Places of Use.

- i. Landowner: Merle A. Gehrke & Patsy M. Gehrke, Trustees of the Merle And Pat Gehrke Trust

Township Range Section	QQ	ACRES
4N 29E 34	NWSE	35.5
	NESE	40.6
	SESE	39.3
	SWSE	40.7

BRIAN & DUANE, LLC (GEHRKE)
SURFACE WATER APPLICATION

EXHIBIT C - Pumps

A. Point of Diversion Pumps:

The East Improvement District's Columbia River pump station utilizes eight (8) 2,000 horsepower pumps. A ninth 2,000 horsepower pump serves as a standby in the event one of the eight needs to be serviced during peak operation. Each 2,000 horsepower pump has a capacity of 11,220 GPM at a TDH of 600 feet. The pumps are 1,180 RPM and the motors are rated for 4,160 Volts. The motors are high-efficiency and two are inverter duty rated.

B. Applicant System Pumps:

The Applicant System will utilize existing pumps to move water from the East Improvement District's points of delivery to the places of use.

a. EID Booster station to CL-25-3

6RB 100 HP Pump
10RB 125 HP Pump
10 RB 200 HP Pump

b. At Cluster CL-25-3 to Gehrke Farm

5RB 75 HP Pump
6RB 125 HP Pump
6RB 125 HP Pump

BRIAN & DUANE, LLC (GEHRKE)
SURFACE WATER APPLICATION

EXHIBIT D – System Design

A. Summary.

The point of diversion is a Columbia River pump station. The East Improvement District has constructed the pump station, main pipeline, and delivery take offs (“EID System”).

Applicant will utilize existing pipeline joined to the EID System to the places of use (“Applicant System”).

B. EID System.

The EID pump station is located immediately adjacent to the existing St. Hilaire Brothers pump station at river mile 301.7 of the Columbia River (Lake Wallula).

The pipeline from the River Pump Station to the first Delivery Point is 78-inches in diameter, to the third Delivery Point is 72-inches in diameter, and to the fourth Delivery Points is 66-inches in diameter. There is approximately 3,600 feet of 78-inch pipe, 32,100 feet of 72-inch pipe, and 10,900 feet of 66-inch pipe. The pressure class of pipe used varies along the length of the pipeline based on elevation.

C. Applicant System Overview.

The Applicant System directly connects to the EID System and is detailed on the attached map.

**BRIAN & DUANE, LLC (GEHRKE)
SURFACE WATER APPLICATION**

EXHIBIT E – Irrigation Districts

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Section 9: Within an Irrigation District

1. East Improvement District, 84186 HWY 37, Hermiston, OR 97838
2. Echo Irrigation District, 73120 Hwy 207, Echo, OR 97826

Land Use Information Form



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

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Applicant

OWRD

NAME BRIAN & DUANE, LLC		PHONE (HM)	
PHONE (WK)	CELL 503) 932-9851	FAX	
ADDRESS 7385 HOWELL PRAIRIE RD NE			
CITY SILVERTON	STATE OR	ZIP 97381	E-MAIL* DEAN@GVFUSA.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:
The water will be diverted and conveyed entirely within the service area for the East Improvement District.					EFU	<input checked="" type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
					EFU	<input type="checkbox"/> Diverted <input checked="" type="checkbox"/> Conveyed <input type="checkbox"/> Used	
4N	29E	34	All of the SE quarter east of the Stanfield irrigation ditch	800	EFU	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input checked="" type="checkbox"/> Used	Irrigation
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input checked="" type="checkbox"/> Used	Irrigation

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

Umatilla County

B. Description of Proposed Use

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

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

Source of water: Reservoir/Pond Groundwater Surface Water (name) Columbia River

Estimated quantity of water needed: .8 cfs cubic feet per second gallons per minute acre-feet

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

Briefly describe:

Applicant is requesting out of season irrigation water to raise soil moisture for crops. East Improvement District (EID) will convey the water from the EID POD through EID conveyance system to the farm's conveyance system.

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.

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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): UCDC 152-051(A)
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. (Please attach documentation of applicable land use approvals which have already been obtained. Record of Action/land use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

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

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

NAME <u>CARDI JOHNSON</u>	TITLE: <u>Planner</u>
SIGNATURE <u><i>Cardi Johnson</i></u>	DATE: <u>09/28/2021</u>
PHONE: <u>541-278-6252</u>	
GOVERNMENT ENTITY <u>Umatilla County</u>	

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

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

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**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **136612**

INVOICE # _____

RECEIVED FROM: Golden Valley East, LLC
BY: _____

APPLICATION	5-89170
PERMIT	
TRANSFER	

CASH: CHECK:# X 25211 OTHER: (IDENTIFY)

TOTAL REC'D \$ 2110.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$
____ OTHER: (IDENTIFY) \$
0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS 46111

0407 COPY & TAPE FEES \$
0410 RESEARCH FEES \$
0408 MISC REVENUE: (IDENTIFY) \$
TC162 DEPOSIT LIAB. (IDENTIFY) \$
0240 EXTENSION OF TIME \$

WATER RIGHTS:

EXAM FEE		RECORD FEE
\$ <u>1500.00</u>	0202	\$ <u>610.00</u>
\$	0204	\$
\$		
EXAM FEE		LICENSE FEE
\$	0219	\$
	0220	\$

0201 SURFACE WATER
0203 GROUND WATER
0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR
LANDOWNER'S PERMIT
____ OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$
0210 MONITORING WELLS \$
____ OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD) \$
0231 HYDRO LICENSE FEE (FW/WRD) \$
____ HYDRO APPLICATION \$

TREASURY OTHER / RDX

FUND _____ TITLE _____
OBJ. CODE _____ VENDOR # _____
DESCRIPTION _____ \$

RECEIPT: **136612**

DATED: 10-14-2021 BY: Mindy Carlson

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **136612**

INVOICE # _____

RECEIVED FROM: Golden Valley East, LLC

APPLICATION 5-89170

BY: _____

PERMIT _____

CASH: CHECK: # 25011 OTHER: (IDENTIFY)

TRANSFER _____

TOTAL REC'D \$ 2110.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ _____
 _____ OTHER: (IDENTIFY) _____ \$ _____

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$ _____
 0410 RESEARCH FEES \$ _____
 0408 MISC REVENUE: (IDENTIFY) _____ \$ _____
 TC162 DEPOSIT LIAB. (IDENTIFY) _____ \$ _____
 0240 EXTENSION OF TIME _____ \$ _____

WATER RIGHTS:

0201 SURFACE WATER \$ 1500.00 0202 _____
 0203 GROUND WATER \$ _____ 0204 _____
 0205 TRANSFER \$ _____

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR \$ _____ 0219 _____
 LANDOWNER'S PERMIT \$ _____ 0220 _____
 _____ OTHER (IDENTIFY) _____

EXAM FEE	
\$ <u>1500.00</u>	0202
\$ _____	0204
\$ _____	
EXAM FEE	
\$ _____	0219
\$ _____	0220

RECORD FEE	
\$ <u>610.00</u>	
\$ _____	

LICENSE FEE	
\$ _____	
\$ _____	

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ _____ CARD# _____
 0210 MONITORING WELLS \$ _____ CARD# _____
 _____ OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD) \$ _____
 0231 HYDRO LICENSE FEE (FW/WRD) \$ _____
 _____ HYDRO APPLICATION \$ _____

TREASURY OTHER / RDX

FUND _____ TITLE _____
 OBJ. CODE _____ VENDOR # _____
 DESCRIPTION _____ \$ _____

RECEIPT: **136612**

DATED: 10-14-2001 BY: Mindy Carlson

Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SUMMARY SHEET



Threatened and/or Endangered Species (Section 4)

Upper Columbia Basin (above Bonneville Dam)

Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program?

- YES; see details in Section 4.1 NO
 NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Lower Columbia Basin (below Bonneville Dam)

Is the proposed use detrimental to the protection or recovery of a threatened and/or endangered fish species?

- YES; see details in Section 4.2 NO
 NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Statewide

Will the proposed use result in a loss of essential habitat of a threatened and/or endangered fish species?

- YES; see details in Section 4.3 NO
 NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Sensitive Species (Section 5)

Will the proposed use result in a net loss of essential habitat of a sensitive species?

- YES; see details in Section 5 NO
 NOT APPLICABLE; sensitive fish will not be impacted by the proposed use.

Public Interest (Section 6)

Will the proposed use impair or be detrimental to the public interest (in addition to that identified under Division 33)?

- YES; see details in Section 6 NO

Conditions (Section 3 and 6)

ODFW recommends the following conditions, along with any mitigation outlined in Section 7, to overcome impairment or detrimental impacts to sensitive, threatened, and/or endangered fish species, non-listed fish species, wildlife, or habitat (see REVIEW SHEET for additional information):

Section 3.1 Identification of Biologically Necessary Flows

- "Mitigation Plan" [A] "Mitigation" [A] "Measurement Device" [A] "Bypass Plan" [C] "Bypass Flow" [C]

Section 3.2 Biological Flow Availability

- "Maintain Flow" [A] "Mitigation Plan" [A] "Mitigation" [A] "Measurement Device" [A] "Chum" [A]

Section 3.3 Fish Passage and Screening

- "Passage" [A] "Maintain Passage" [A] "Screen" [B] "Future Protection" [B]

Section 3.4 Other Ecological Functions

- "Wetland" [A] "Riparian Plan" [A] "Riparian" [A] "In-water Work" type months here [A] "Fish Stocking" [A]

- Site-specific condition(s), including, but not limited to, any identified in Section 6: type here

- Comments: Ongoing surveys indicate the importance of maintaining water levels in the Ives/Pierce Island complex below Bonneville Dam to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. As tailwater elevations below Bonneville Dam are directly correlated with the amount of chum spawning habitat available, the Federal Columbia River Power System Biological Opinion set targets for chum salmon spawning, incubation, and emergence (typically from November, or when chum arrive, through early April). In accordance, ODFW recommends the tailwater elevation set annually by the Technical Management Team (TMT) as the minimum necessary to support chum migration, spawning, incubation, and emergence.

The volume of unregulated flow into the Columbia River upstream of Bonneville Dam aides in meeting recommended water elevations for chum salmon migration, spawning, incubation, and emergence. Based on an annual assessment of the 7-day rolling average of the mean daily gage height (i.e., tailwater elevation) below Bonneville Dam, the minimum tailwater elevation is typically NOT MET the majority of the time in October and November.

Mitigation (Section 7)

Is ODFW recommending mitigation in addition to any conditions identified?

- YES; see recommended Mitigation Obligation in Section 7
- YES; contact ODFW if the applicant is interested in pursuing mitigation
- NO

Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SHEET



The Oregon Department of Fish and Wildlife (ODFW) provides the following recommendations to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. Mitigation recommendations are consistent with the goals and standards in ODFW's OAR 635-415 (Fish and Wildlife Habitat Mitigation Policy) and other applicable law. The information is requested by the Oregon Department of Water Resources (OWRD) for the purposes of consultation pursuant to OAR 690-33 (Additional Public Interest Standards for New Appropriations), OAR 690-310 (Water Rights Application Processing), OAR 690-400 (State Water Resources Policy), and OAR 690-410 (Statewide Water Resource Management). ODFW recommendations herein are to be utilized in coordination with the Oregon Department of Environmental Quality's (ODEQ) recommendations regarding impacts to aquatic life due to impaired water quality.

Section 1: Proposed Use

Basin: Columbia

Stream: Columbia River Tributary to: Pacific Ocean

TRSQQ: 5.00N-30.00E-8-SW NW (optional)

Proposed period of use (from application, if available): October 1 – April 14 (to raise soil moisture content)

Requested amount (cfs or AF): 0.8 cfs

OWRD's Initial Review Determination:

- Allowable October 1 – April 14 **NOT** Allowable; Water is not available type months here
 NOT Allowable; type other reason here

Section 2: Fish Species Present

- A) No fish species will be impacted by the proposed use based on parameters assessed by ODFW. **(Skip to Section 6)**
- B) The following fish species of primary concern are present at the location of the proposed use or will be impacted by the proposed use:

Species	Listing Status				Life Stage Present		
	Sensitive	Threatened	Endangered	Not Listed*	Spawning	Rearing	Migration
<u>Snake River Sockeye</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Upper Col. Sp. Chinook</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Lower Col. Chinook</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Snake R. Chinook Sp/S</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Snake R. Fall Chinook</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Columbia River Chum</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Lower Col. R. Steelhead</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Mid. Col. Steelhead</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Upper Col. Steelhead</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Snake R. Steelhead</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Pacific Lamprey</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

*Impacts to species not listed as sensitive, threatened, and/or endangered are addressed in Section 6.

Section 3: Potential Impacts to Fish Species

Note: Impacts identified below are determined by professional judgment and/or best available science. Recommended mitigation for identified impacts is outlined in Section 7. See Section 8 for recommended "condition" language.

3.1 Identification of Biologically Necessary Flows

A) ODFW has not identified biologically necessary flows within the impacted reach.

"Measurement Device"

However, based on best professional judgment, impacts to fish from the proposed reduction in flow are expected to be **inconsequential** or there is insufficient information at this time to determine if the proposed use will impair biologically necessary flows for fish. Therefore, no mitigation for a reduction in flow is recommended. ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded. **(Skip to Section 3.3)**

"Mitigation Plan," "Mitigation," and "Measurement Device"

However, based on OWRD's Water Availability Reporting System, **water is not available** entirely or partially for the proposed use. A further reduction of flow during type here would be harmful to fish.

ODFW recommends the season of use be restricted to type here if the applicant can show beneficial use during this time (OAR 690-300-0010(57)(b)) or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. **(Skip to Section 3.3)**

ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order. **(Skip to Section 3.3)**

B) ODFW recommends the following biologically necessary flows to support the biological needs of fish species:

Instream Water Right certificates and pending applications at the point of impact and/or downstream

Other biologically necessary flows (*see comment):

JAN	type here cfs	APR	type here cfs	JUL	type here cfs	OCT	type here cfs
FEB	type here cfs	MAY	type here cfs	AUG	type here cfs	NOV	type here cfs
MAR	type here cfs	JUN	type here cfs	SEP	type here cfs	DEC	type here cfs

Source: ODFW Regional Flow Target Assessment

based on list BIR here

type other source here

C) "Bypass Plan" and "Bypass Flow" (for reservoirs that directly divert from surface water)

Per 690-410-0070 (2)(c), ODFW recommends the following biologically necessary flows, minus any amount that the applicant may provide as mitigation, be bypassed (passed through) the reservoir **during the filling season**.

JAN	type here cfs	APR	type here cfs	JUL	type here cfs	OCT	type here cfs
FEB	type here cfs	MAY	type here cfs	AUG	type here cfs	NOV	type here cfs
MAR	type here cfs	JUN	type here cfs	SEP	type here cfs	DEC	type here cfs

D) Comments concerning biologically necessary flows: Ongoing surveys indicate the importance of maintaining water levels in the Ives/Pierce Island complex below Bonneville Dam to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. As tailwater elevations below Bonneville Dam are directly correlated with the amount of chum spawning habitat available, the Federal Columbia River Power System Biological Opinion set targets for chum salmon spawning, incubation, and emergence (typically from November, or when chum arrive, through early April). In accordance, ODFW recommends the tailwater elevation set annually by the Technical Management Team

(TMT) as the minimum necessary to support chum migration, spawning, incubation, and emergence.

3.2 Biological Flow Availability

- A) Based on parameters assessed by ODFW, are the recommended biologically necessary flows (identified in Section 3.1, Question B) available within the impacted reach during the period of impact?
- YES; **“Maintain Flow” and “Measurement Device”**
A further reduction in flow from the proposed use will **not** impair biologically necessary flows for fish as long as the recommended flows remain satisfied real time within and downstream of the point of impact. ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded.
- NO; **“Mitigation Plan,” “Mitigation,” and “Measurement Device” + “Chum”**
The proposed use **will impair** biologically necessary flows for fish entirely or partially during the period of impact.
- Water is only available to support biologically necessary flows within the impacted reach during **December – April 14**. ODFW recommends the season of use be restricted to coincide with this period if the applicant can show beneficial use during this time (OAR 690-300-0010(57)(b)) or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period.
- Water is not available to support biologically necessary flows within the impacted reach year-round. ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order.
- UNKNOWN; **“Mitigation Plan,” “Mitigation,” and “Measurement Device”**
There is insufficient information on instream flow availability (e.g., no Water Availability Basin or gage) to determine if the proposed use will impair biologically necessary flows for fish. Therefore, ODFW assumes impairment and recommends the proposed use be mitigated prior to issuance of a Proposed Final Order unless the applicant provides sufficient evidence to ODFW that the biologically necessary flows are available and can be maintained within the impacted reach.
- NOT APPLICABLE; **“Measurement Device”**
ODFW has determined that impacts to fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on parameters assessed. Therefore, ODFW does not recommend mitigation for a reduction in flow at this time. However, ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded.

- B) Comments concerning availability of biologically necessary flows: **The volume of unregulated flow into the Columbia River upstream of Bonneville Dam aides in meeting recommended water elevations for chum salmon migration, spawning, incubation, and emergence. Based on an annual assessment of the 7-day rolling average of the mean daily gage height (i.e., tailwater elevation) below Bonneville Dam, the minimum tailwater elevation is typically NOT MET the majority of the time in October and November.**

3.3 Fish Passage and Screening

- A) Would the proposed use potentially create or maintain an artificial obstruction¹ to fish passage for native migratory fish currently or historically present *at the point of diversion* per ORS 509.585?
- YES; **“Passage”**
- NO
- NO; **“Maintain Passage”**

¹ “Artificial obstruction” means any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

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 prior to diversion of water.

B) Would fish species benefit from fish screening per ORS 498.306?

YES; **"Screen"**

NO

"Future Protection"

Fish screening will not currently benefit fish species but may be beneficial in the future if conditions within the watershed change. Please describe current conditions within the watershed: [type here](#)

C) Comments concerning fish passage or screening: [type here](#)

3.4 Other Ecological Functions

A) Are there other impacts to ecological functions important to fish during the period of impact?

YES; A **"condition"** will be identified below or mitigation will be recommended in Section 7.4.

The proposed project may impair or be detrimental to the public interest through impairment of a wetland providing fish habitat. **"Wetland"**

Development of the proposed project may disturb the riparian area that provides habitat to fish. **"Riparian" and "Riparian Plan"**

To have the least impact on fish and habitat resources, ODFW recommends any in-water work related to construction, development, or maintenance of the proposed use be conducted during the preferred work period of [type here](#) **"In-water Work"**

The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. **"Fish Stocking"**

Other impacts to fish: [type here](#)

NO

B) Other comments concerning ecological functions important to fish: [type here](#)

Section 4: ODFW Findings Regarding Threatened and/or Endangered Fish Species

NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use. **Skip to Section 5.**

4.1 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Upper Columbia Rules (above Bonneville Dam)

The Upper Columbia rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:

Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program?

YES; ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions important to protection or recovery of threatened and/or endangered fish (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** based on parameters assessed (Section 3.1, Question A; Section 3.2, Question A).

NO; Based on ODFW's knowledge, the proposed use is **inconsistent** with the Northwest Power and Conservation

Council's Columbia River Basin Fish and Wildlife Program² due to impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or to impacts to ecological functions important to threatened and/or endangered fish (Section 3.4).

Overarching Question 2:

Can the use be conditioned or mitigated to achieve consistency with the Fish and Wildlife Program?

- YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
- ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended below and in Section 3, to compensate for any potential impact from the proposed use.
- In addition, ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.

Comments: type here

4.2 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Lower Columbia Rules (below Bonneville Dam)

- The Lower Columbia rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:

Is the proposed use detrimental to the protection or recovery of a threatened and/or endangered fish species?

- YES; Based on knowledge of recovery plans, the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program², and regional restoration programs, ODFW found the use to be detrimental to the protection or recovery of a threatened and/or endangered species due to impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or to impacts to ecological functions important to threatened and/or endangered fish (Section 3.4).
- NO; ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions important to protection or recovery of threatened and/or endangered fish (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** based on parameters assessed (Section 3.1, Question A; Section 3.2, Question A).

² The Columbia River Basin Fish and Wildlife Program (WRD's document number 94-2) states: "In determining whether a proposed diversion or transfer would be consistent with salmon and steelhead needs, consult with fish and wildlife agencies and Indian tribes to determine whether the proposed use would cause any reduction in the quantity or productivity of salmon and steelhead habitat" (7.8G.1). In addition, the document includes a recommendation to "halt further issuance of consumptive water rights unless a finding can be made, in consultation with fish agencies and tribes, that existing instream flows meet anadromous fish needs for all life-stages" (Recommendation No.: 7-2).

Overarching Question 2:**Can the use be conditioned or mitigated to avoid the detriment to a threatened and/or endangered fish species?**

- YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
- ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended below and in Section 3, to compensate for any potential impact from the proposed use.
- In addition, ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.

Comments: type here**4.3 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Statewide Rules**

- The Statewide rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:**Will the proposed use result in a loss of essential habitat of a threatened and/or endangered fish species?**

Note: For impacts to non-essential habitat for threatened and/or endangered species under Habitat Categories 3-6, skip to Section 6.

- YES; Based on parameters assessed, ODFW has found impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or impacts to ecological functions (Section 3.4) essential to threatened and/or endangered fish species during the period of impact.
- NO; Based on parameters assessed, ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions essential to threatened and/or endangered fish species (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:**Can the use be conditioned to result in no loss of essential habitat of a threatened and/or endangered fish species?**

- YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
- ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended from Sections 3, to compensate for any potential impact from the proposed use.
- In addition, ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered

fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: [type here](#)

Section 5: ODFW Findings Regarding Sensitive Fish Species (under OWRD's Division 33 Statewide Rules)

- Sensitive species will not be impaired by the proposed use. **Skip to Section 6.**

Overarching Question 1:

Will the proposed use result in a net loss of essential habitat of a sensitive fish species?

Note: For impacts to non-essential habitat for sensitive species under Habitat Categories 3-6, skip to Section 6.

- YES; Based on parameters assessed, ODFW has found impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or impacts to ecological functions (Section 3.4) essential to sensitive fish species during the period of impact.
- NO; Based on parameters assessed, ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions essential to sensitive fish species (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de minimis** (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:

Can the use be conditioned to result in no net loss of essential habitat of a sensitive fish species?

- YES; ODFW recommends the conditions and mitigation recommended in Sections 3, 4, and 7 to compensate for any potential impact from the proposed use.
- ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended from Sections 3 and 4, to compensate for any potential impact from the proposed use.
- In addition, ODFW recommends the following site-specific condition(s): [type here](#)
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a sensitive fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: [type here](#)

Section 6: ODFW's Public Interest Findings (under OWRD's Division 310)

Note: Comment on fish or wildlife species not already discussed in Sections 4 or 5 and impacts to non-essential habitat of STE fish.

Overarching Question 1:

Will the proposed use impair or be detrimental to the public interest?

- YES; In addition to those previously identified in Sections 4 and 5, the proposed use will impair or be detrimental to the following public interest(s) under ORS 537.170(8):
Reduced flow may impair the commercial and/or recreation fisheries for White Sturgeon, Coho Salmon, Unlisted Spring, Summer and Fall Chinook and Unlisted Steelhead.
- NO; Impairment or detriment to public interests, in addition to those previously identified in Sections 4 and 5, will be inconsequential from the proposed use or has not been assessed at this time. **Skip to Section 7.**

Overarching Question 2:

Can the proposed use be conditioned to overcome the impairment or detriment to the public interest?

- YES;
- The same conditions and mitigation as outlined in Sections 3, 4, and 7 apply.
- ODFW recommends the following site-specific condition(s): type here
- NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: type here

Section 7: ODFW's Recommended Mitigation Obligation

- NOT APPLICABLE; ODFW is not recommending mitigation. (**Sign and STOP here**)

ODFW Representative's Signature: _____ **Date:** type here

Name: type here

Phone: type here

Email: type here

Mitigation Obligation

ODFW's assessment reveals flows within the impacted reach are or are assumed to be entirely or partially below those essential to support the biological needs of fish, wildlife, or habitats and/or the proposed use will otherwise impact habitat, so the proposed use may diminish physical habitat and alter the flow regime to which fish and wildlife are naturally adapted. These changes will negatively affect their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water use would impair or be detrimental to fish, wildlife, and/or their habitat without appropriate mitigation. ODFW recommends the applicant contact the caseworker to schedule a consultation with ODFW concerning the following recommended Mitigation Obligation, if questions arise.

Choose One:

- A) Water is not available to support biologically necessary flows at the POD and/or downstream year-round. ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use

outside this period will impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. 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 through purchasing or transferring an existing water right.

- B) Water is only available to support biologically necessary flows at the POD and/or downstream during **December – April 14**. ODFW recommends the season of use be restricted to coincide with this period or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period will impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. 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 through purchasing or transferring an existing water right.
- C) There is insufficient information on instream flow availability (e.g., no Water Availability Basin or gage) to determine if the proposed use will impair biologically necessary flows for fish. Therefore, ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order unless the applicant provides sufficient evidence to ODFW that the biologically necessary flows are available and can be maintained within the impacted reach. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period may impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. 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 through purchasing or transferring an existing water right.
- D) Mitigation is not an option. ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.
- E) Based on ODFW's knowledge of applicable Subbasin Plans, Recovery Plans, Regional Restoration Plans, or other documents, the proposed use appears inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program³, impairs essential habitat, or is otherwise detrimental to the protection and/or recovery of sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. Therefore, ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation (consistent with the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations) as outlined in this section(s), **as well as other conditions recommended in Sections 3-6**. ODFW recommends the Proposal include an assessment of options using the following actions listed in order of priority:
- (1) avoiding the impact altogether,
 - (2) minimizing the impact by limiting the degree or magnitude of the action,
 - (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
 - (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action and by monitoring and taking appropriate corrective measures, and

³ Water Resources Department's document number 94-2

(5) compensating for the impact by replacing or providing comparable substitute resources or environments. **Because the mitigation is site- and species-specific, ODFW recommends written approval of the Proposal by ODFW prior to issuance of a Proposed Final Order (see Section 9).**

7.1 Identification of Habitat Category

Habitat Category⁴ for the Primary Species of Concern During the Period of Impact:

Month	Primary Species of Concern	Habitat Category
January	type here	type here
February	type here	type here
March	type here	type here
April	type here	type here
May	type here	type here
June	type here	type here

Month	Primary Species of Concern	Habitat Category
July	type here	type here
August	type here	type here
September	type here	type here
October	type here	type here
November	type here	type here
December	type here	type here

7.2 Flow Mitigation

- If the applicant chooses to pursue water use during type here, when biologically necessary flows are not met or water is not available, ODFW recommends the applicant provide water-for-water mitigation that is **legally protected and maintained as an instream water right** for the life of the permit and subsequent certificate, as outlined below.
 - In lieu of mitigation, the applicant may provide evidence that the biologically necessary flows are available and can be maintained within the impacted reach.

- ODFW recommends WRD's "Normal Mitigation," including any site-specific options addressed below.

A) Water Quantity: type here (cfs or AF; equals amount requested)

- plus a net benefit** (for Habitat Category 2)

B) Months: type here

C) Location of Mitigation (based on the Habitat Category):

- at or above** the point of impact
- at or above the point of impact is preferred, but may occur within the watershed/home range of the impacted population(s)
- within a high priority reach⁵ within the watershed/home range of the impacted species or population
- within the watershed/home range of the impacted population(s)
- benefitting the impacted population(s) and/or higher priority species: list species here

D) Additional comments: type here

7.3 Habitat Restoration Mitigation

Does the Mitigation Goal also allow a habitat restoration project as a mitigation option (i.e., impacts to Habitat Categories 3 – 6)?

- YES; In lieu of providing "water-for water", ODFW's Habitat Mitigation Policy allows the applicant the option of

⁴ see ODFW Habitat Mitigation Policy, OAR 635-415-0025

⁵ see ODFW's Aquatic Habitat Priority maps

providing mitigation through a habitat restoration project that recreates similar habitat structure and function to that existing prior to the development action. If the applicant is interested in pursuing this option, please contact ODFW for further information.

NO; Skip to Part 4, if applicable.

7.4 Other Ecological Functions Mitigation

Not applicable

ODFW recommends the applicant provide the following mitigation, including, but not limited to, mitigation for "Other Impacts to Ecological Functions" or impacts to wildlife.

Note: Copy and paste the template below for each habitat type in need of replacement.

A) Habitat Structure and Function in Need of Replacement: type here

B) Describe the habitat quantity and quality to be replaced: type here

C) Months:

In Perpetuity

Other: type here

D) Location of Mitigation:

at or above the point of impact

at or above the point of impact is preferred, but may occur within the watershed/home range of the impacted population(s)

within a high priority reach⁵ within the home range of the impacted species or population

within the watershed/home range of the impacted population(s)

anywhere benefitting the impacted population(s) and/or higher priority species: list species here

E) Additional comments: type here

ODFW Representative's Signature: _____ **Date:** 5-6-22

Name: Danette Faucera

Phone: 503-947-6092

Email: danette.l.faucera@odfw.oregon.gov

Section 8: ODFW's Recommended Condition Language

List A Conditions

(to be addressed by applicant prior to issuance of the Proposed Final Order)

Bypass Plan (for reservoirs that directly divert from surface water)

Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Bypass Plan which describes the method the permittee shall bypass the recommended flows, as outlined in Section 3.1, C and how the permittee will quantify and document inflow and outflow.

Mitigation Plan

Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations), as outlined in Section 7, to compensate for any potential impacts to fish, wildlife, or habitats from the proposed use.

Riparian Plan

If development of the point of diversion includes disturbance of the riparian area, the applicant shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's (ODFW) Fish and Wildlife Habitat Mitigation Policy described in OAR 635-415. **Prior to issuance of the Proposed Final Order**, the applicant shall submit, to the application caseworker at OWRD, a Riparian Plan approved in writing by ODFW, unless ODFW provides documentation that a Riparian Plan is not necessary. The applicant is hereby directed to contact ODFW.

Wetland

Prior to issuance of the Proposed Final Order, the applicant must submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation. The offsite determination will identify waters of this state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990) that may be needed prior to disturbance or development of the point of diversion.

List B Conditions

(included in permit and "maintenance" language carried through to certificate)

Bypass Flows (for reservoirs that directly divert from surface water)

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 by the permittee, 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.

{copy table from Section 3.1, Question C}

Chum

During the months of October and November each year, the permittee shall monitor the 7-day rolling average of the mean daily gauge height below Bonneville Dam beginning on the date that the Technical Management Team (TMT; comprised of NOAA and the Corps of Engineers, among others) begin operations to maintain water levels in the Ives/Pierce Island complex to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. The permittee should contact the Army Corps of Engineers representative of the TMT to verify the start date of when the Columbia River is actively being managed to meet chum elevations and to obtain the tailwater stage target (call the Columbia Basin Water Management Division, Northwestern Division, U.S. Army Corps of Engineers at 503-808-3929).

To monitor mean daily stage at this location, the permittee will use the official project tailwater elevation gage (USGS gage station #14128870 Columbia River below Bonneville Dam, OR). Real-time data from this station is available online at the United States Geological Survey website:

http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw. The permittee shall maintain a spreadsheet of the 7-day rolling average of the mean daily gage height for the period when the permittee is required to monitor during October 1 – November 30, which will be available to OWRD upon request.

In addition to monitoring mean daily gage height, the permittee shall do one of the following:

- 1) Prior to issuance of the proposed final order, provide proof to OWRD that permanent mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured for October and November. Any mitigation provided for the period October 1 - November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. If mitigation is secured, the permittee is not required to track the 7-d rolling average or cease pumping during chum operations.
- 2) Cease pumping for any days during October and November when the Army Corps of Engineers is managing the Columbia River to meet chum targets AND the 7-day rolling average of the mean daily gage height below Bonneville Dam (USGS gage station #14128870) is less than the stage target set that year by the TMT for protection of chum salmon. The permittee shall discontinue pumping for the duration of time the 7-day rolling average remains below the stage target. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

Provide proof to OWRD that real-time mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured and is available for this use during the anticipated period that the 7-day rolling average will remain below the target established for October and November of that year. Any mitigation provided for the period October 1 - November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. The permittee is not required to track the 7-day rolling average or cease pumping during chum operations during periods mitigation has been secured. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

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.

Future Protection

The permittee may be required in the future to install, maintain, and operate fish screening per ORS 498.306 to prevent harm to fish from the proposed diversion. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification from ODFW that a fish screen is required. Once installed, the water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards.

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 {insert dates identified in Section 3.4} unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.

Maintain Flow

The biologically necessary flows shown in the following table shall be maintained real time within and downstream of the point of impact or the use may be regulated until the flows are available.

{copy table from Section 3.1, Question B}

Maintain Passage

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).

Measurement Device

The permittee shall install, maintain, and operate a water use control and/or measuring device, as identified by OWRD. The device shall be installed, functional, and approved by the local Watermaster, **prior to diversion of water**.

Mitigation

The permittee shall comply with terms of the associated Mitigation Plan to compensate for detrimental impacts to fish, wildlife, and/or their habitat. The Mitigation Plan is fully incorporated into the requirements of this permit and may only be altered by written mutual agreement of all parties. The mitigation shall be legally protected and maintained for the life of the permit and subsequent certificate.

Passage

The permittee shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585) without obtaining approval for the artificial obstruction from the Oregon Department of Fish and Wildlife (ODFW).

The permittee shall submit a proposal for fish passage to ODFW or apply for a fish passage waiver or exemption. Approval of the proposed fish passage facility, waiver, or exemption shall be obtained **prior to construction** of any in-channel obstruction or **prior to diversion of water** that may create an artificial obstruction due to low flow. The permittee shall submit proof to ODFW that fish passage has been implemented per the plan, waiver, or

exemption **prior to diversion of water**.

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) as per the approved plan, waiver, or exemption. The permittee is hereby directed to schedule a consultation with an ODFW Fish Passage Coordinator.

Riparian

The permittee shall restore or enhance the riparian area per the approved Riparian Plan **prior to diversion of water** and maintain the riparian area for the life of the permit and subsequent certificate per the approved Riparian Plan.

Screen

The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards or submit documentation that ODFW has determined fish screening is not necessary or is exempted. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place, functional, and approved in writing by ODFW **prior to diversion of water**. The water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards. The permittee is hereby directed to schedule a consultation with an ODFW Fish Screening Coordinator.

Section 9: ODFW's Review of the Mitigation Proposal

Because the mitigation is site- and species-specific, ODFW recommends written approval of the Proposal by ODFW prior to issuance of a Proposed Final Order. ODFW finds the following:

ODFW **supports** the Mitigation Proposal with the following condition(s):

"Mitigation"

Site-specific condition(s): type here

Additional information:

A Fish Passage Waiver or Exemption has been granted for the proposed POD that fulfills the fish passage requirements for this use.

Comments: type here

ODFW **cannot support** the Mitigation Proposal because it is not consistent with the criteria in OAR 635-415.

The proposed mitigation is inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program⁶, impairs essential habitat, or is otherwise detrimental to the protection and/or recovery of sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife.

Habitat goals and standards not met: list here and explain why not met

ODFW Representative's Signature: _____ Date: type here

Name: type here

Phone: type here

Email: type here

⁶ Water Resources Department's document number 94-2

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-89170

SOURCE OF WATER: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

PURPOSE OR USE: **RAISE THE SOIL MOISTURE CONTENT** ON 156.1 ACRES

MAXIMUM RATE: 0.80 CUBIC FOOT PER SECOND

PERIOD OF USE: **DECEMBER 1 THROUGH APRIL 14**

DATE OF PRIORITY: OCTOBER 14, 2021

AUTHORIZED POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

AUTHORIZED PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	34	NE SE	40.6
4 N	29 E	WM	34	NW SE	35.5
4 N	29 E	WM	34	SW SE	40.7
4 N	29 E	WM	34	SE SE	39.3

PERMIT SPECIFIC CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. 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 diverted each month, and shall submit a report which includes water-use 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.

3. Fish Screen:

The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards or submit documentation that ODFW has determined fish screening is not necessary or is exempted. Fish screening is to prevent fish from entering the proposed diversion. 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 shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards. The permittee is hereby directed to schedule a consultation with an ODFW Fish Screen Coordinator.

4. **Water Use During October and November:**

The permittee shall cease pumping for any days during October and November when the U.S. Army Corps of Engineers is managing the Columbia River to meet chum targets **AND** the 7-day rolling average of the mean daily gage height below Bonneville Dam (USGS gage station #14128870) is less than the stage target set that year by the Technical Management Team for protection of chum salmon. The permittee shall discontinue pumping for the duration of time the 7-day rolling average remains below the stage target. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

The permittee may pump water during times when the stage target is not met during November each year, provided that real-time mitigation that meets the goals and standards of OAR 635-415-

0025 (ODFW Habitat Mitigation Recommendations) has been secured during the pumping period, and proof of mitigation has been provided to the Water Resources Department. The permittee is not required to track the 7-day rolling average or cease pumping during periods when mitigation has been secured.

Any mitigation provided for the period October 1 - November 30 shall be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146.

5. 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.

6. 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, 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.

STANDARD CONDITIONS

1. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
2. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
3. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
4. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

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. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
3. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued _____

DRAFT - THIS IS NOT A PERMIT

Katherine Ratcliffe
Water Rights Section Manager, for
Douglas E. Woodcock~~Thomas M. Byler~~, Acting Director
Oregon Water Resources Department

FINDINGS OF FACT

Application History

1. On October 14, 2021, Brian and Duane LLC filed a complete application for the following water use:

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN
Use: RAISE THE SOIL MOISTURE CONTENT ON 156.1 ACRES
Rate/Volume: 0.80 CUBIC FOOT PER SECOND (CFS)
Period of Use: OCTOBER 1 THROUGH APRIL 14
County: UMATILLA COUNTY
Place of Use: SECTION 34, TOWNSHIP 4 NORTH, RANGE 29 EAST, W.M.

2. On November 12, 2021, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 0.80 CFS of water from Columbia River, tributary to Pacific Ocean, to raise the soil moisture content on 156.1 acres is allowable October 1 through April 14 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.

3. On November 16, 2021, the Department provided notice of the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

4. Super IR... Info requested

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3-5. Info received...

Presumption Criteria (a) Consistency with Basin Program

4-6. Soil preparation is a use defined under nursery use. As defined in OAR 690-500, nursery use is included in irrigation, which is allowed under the Columbia Basin Program (OAR 690-519-0000(1)). Therefore, soil preparation (raising the soil moisture content) is allowed.

Commented [MAL*W1]: Change this. Where is ORS/OAR ref?

Presumption Criteria (b) Water Availability

5-7. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available. ORS 537.153(2); OAR 690-310-0150(2)(c)

Commented [MAL*W2]: This sentence needs revision.

Presumption Criteria (c) Injury Determination

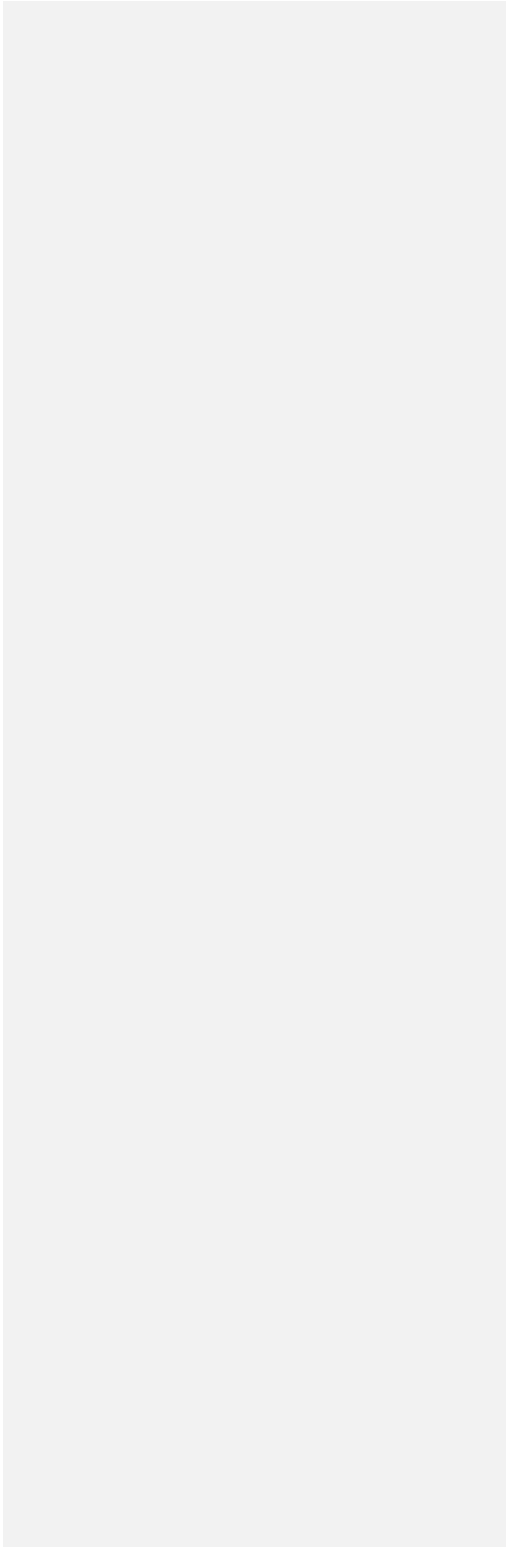
6-8. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

Presumption Criteria (d) Whether the Use Complies with Rules of the Commission

7-9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(2)(b); OAR 690-310-0150(2)(b)

8-10. The proposed use is in an area of the state in which OAR 690-033-0115 thru -0140 and OAR 690-033-0310 thru -0340 apply. These rules establish definitions, 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 fish species.



OAR 690-033-0115 Upper Columbia Rules (Above Bonneville Dam)

- A. The proposed use is not consistent with the Fish and Wildlife Program (Program).
- B. The proposed use can be conditioned to be consistent with the Program.
- C. The application, as conditioned, is not presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)
- D. The applicant has provided information to show compliance with the following standards: OAR 690-003-0120(1)(a)
 - a. The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140;

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OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs ~~occur~~ in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
- D. The interagency review team was convened to review the application and recommended limitations and conditions as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). As a result of this review, diversion has been limited to December 1 through April 14 of each year and Permit Specific Conditions #3 through #6 have been included in the draft permit.

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Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

9-11. No comments were received by the close of the comment period. OAR 690-310-0120(3)

10-12. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

11-13. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826.

~~12-14.~~ The amount requested, 0.80 CFS, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)

~~13-15.~~ The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and prevent damage to public uses of any affected surface waters. These measures are adequate at this time. OAR 690-310-0150(2)(j)

~~14-16.~~ The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project.

PROPOSED ORDER

The Department recommends approval of Application S-89170 and issuance of a permit consistent with the attached draft permit.

DATED August 30, 2022

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Katherine Ratcliffe
Water Rights Section Manager, for
Douglas E. Woodcock, Acting Director
~~Thomas M. Byler, Director~~
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. If you wish to submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline specified. Protests must be received by the Water Resources Department no later than **October 14, 2022**.

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Protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest, ORS 537.153(6) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170(8) would be impaired or be adversely affected;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **October 14, 2022**. Requests for standing must be in writing, and must include the following:

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- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and

- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

-
- If you have any questions about statements contained in this document, please contact **Kim French** at Kim.R.French@water.oregon.gov or 503-979-3168.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-979-9160.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to:-
Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
-

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Mailing List for PFO/Draft Permit Copies

Application S-89170

PFO Date August 30, 2022

Original mailed via CERTIFIED MAIL to applicant:

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Sent via auto email:

1. Applicant — dean@gvfusa.com
2. Agent – Lolly Anderson - lolly.anderson@andersonschultz.com
3. WRD – Watermaster District #5, Gregory M. Silbernagel
4. WRD — Chris Kowitz NCR
5. WRD – SW Section

Copies sent to:

1. WRD – File # S-89170

Application Specialist: Kim French

Copies Mailed
By: _____
(SUPPORT STAFF)
on: _____

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Point of Diversion Characteristics

Right:	App: S 89170 *
Name:	BRIAN AND DUANE LLC

TRSQQ: 05.00N-30.00E-08-SWNW

County: Umatilla
 Basin:
 WM District: 5
 WM Region: NC
 Withdrawn Area:
 WAB:
 Priority WAB:
 Rule 4D: Rules apply
 Groundwater Restricted Area:
 Scenic Water Way:
 Division 33: Statewide, Upper Columbia
 Water Quality Limited: Yes



Water Right Application Superseding Initial Review

August 19, 2022

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Reference: Application S-89170

Issuance of this Superseding Initial Review is being done to clarify the use, to correct the determination regarding allowable use and to ask for more information regarding beneficial use. Please refer to determination #3 below and the Additional Required Information section.

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 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 Water Resources Department has made the following preliminary determinations:

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

1. The application proposes the diversion of 0.80 cubic foot per second (CFS) of water from Columbia River, tributary to Pacific Ocean, for irrigation of 156.1 acres October 1 through April 14 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation is allowed under the Columbia Basin Program (OAR 690-519-0000(1)).
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. See **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
The diversion of 0.80 CFS of water from Columbia River, tributary to Pacific Ocean, for irrigation of 156.1 acres is not allowable October 1 through April 14 of each year, unless additional required information is submitted. See below for more details.

Additional Required Information

The application proposes irrigation during the non-irrigation season. It is unclear if beneficial use of water can be made during the period of use requested, being October 1 through April 14.

Please provide information no later than **September 22, 2022**, that indicates how water can be used beneficially October 1 through April 14, and the Department will take this into consideration.

If we do not receive additional information to evaluate by September 22, 2022, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

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 **September 2, 2022**. 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, the permittee shall install a totalizing flow meter at each point of diversion. 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 diverted each month, and shall submit a report which includes water-use 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.

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 web site at <http://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 Kim.R.French@oregon.gov or 503-979-3168 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: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim French". The signature is fluid and cursive, with the first name "Kim" and last name "French" clearly distinguishable.

Kim French
Water Right Program Analyst
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
S-89170
WAB: No WAB
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: S-89170

Applicant: BRIAN AND DUANE LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, 5, NCR

Priority Date: OCTOBER 14, 2021

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: IRRIGATION OF 156.1 ACRES

Rate: 0.80 CUBIC FOOT PER SECOND

Basin Name & Number: Umatilla, # 7

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	34	NE SE	40.6
4 N	29 E	WM	34	NW SE	35.5
4 N	29 E	WM	34	SW SE	40.7
4 N	29 E	WM	34	SE SE	39.3

PUBLIC NOTICE DATE: August 23, 2022

14 DAY STOP PROCESSING DEADLINE DATE: September 2, 2022

30 DAY COMMENT DEADLINE DATE: September 22, 2022

Mailing List for IR Copies

Application S-89170

IR Date: August 19, 2022

Original and map mailed to applicant:

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Sent via auto email:

1. Applicant - dean@gvfusa.com
2. Agent – Lolly Anderson - lolly.anderson@andersonschultz.com
3. WRD – Watermaster District #5, Gregory M. Silbernagel
4. WRD – Chris Kowitz NCR
5. WRD – SW Section
6. ODFW
7. DEQ

Copies sent to:

1. WRD – File S-89170
2. ALO – Merle A. Gehrke & Patsy M. Gehrke, TTEs of the Merle and Pat Gehrke Trust, 34718 Old Hwy 320, Echo, OR 97826-9614
3. East Improvement District, 84186 Hwy 37, Hermiston, OR 97838
4. Echo Irrigation District, 73120 Hwy 207, Echo, OR 97826
5. Stanfield Irrigation District,

Application Specialist: Kim French

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>On: _____ (DATE)</p>

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 web site at www.wrd.state.or.us

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0801.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- 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.
- Contact the Caseworker if you have questions about the IR.
- 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.
- **An administrative hold** may be requested in writing by Applicant.

4. Proposed Final Order (PFO)

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

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

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 **S-89170**.

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:

September 2, 2022

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271

Memo

Oregon Water Resources Department Water Rights Section

To: Caseworkers and other interested persons June 21, 2005

From: Dwight French, Water Rights Section Manager *DWF*

RE: Water Availability Determinations other than standard

Caseworkers need to have reminder notes on your checklists for the following areas.

This memo supercedes any previous water availability memos for the water sources listed below.

Use this cover memo, along with the appropriate attached pages, for water availability documentation for the following areas:

Tributaries to Drews Reservoir (Goose and Summer Lakes Basin)

Notwithstanding the data from our Water Availability Report System (WARS). The Department has determined that there is no water availability above Drews Reservoir (In the Goose & Summer Lake Basin). This determination is based on the fact that Drews Reservoir (footnote file, permit, cert, priority date) often does not fill. Thus, the issuance of new storage rights would exacerbate a regulatory problem in the area. Drews Reservoir is located in the middle of WAB number 70487 in the Goose and Summer Lakes Basin.

Snake and Columbia Rivers

Water is available at 50% and 80% exceedence for the mainstems of the Snake and Columbia Rivers. WARS does not cover these large rivers. Use the attached USGS printouts as documentation for water availability for these sources.

Lost River Basin (Klamath Basin)

Use the attached tables that reference the Lost River provided by the Department's Water Availability experts Rick Cooper and Ken Stahr. These tables cannot be accessed through WARS.

Chehalem, Champoeg, Mission and Case Creeks (Willamette Basin)

Use the attached tables that reference Champoeg Creek and Chehalem Creek provided by the Department's Water Availability experts Rick Cooper and Ken Stahr. These tables cannot be accessed through WARS.

Continued on next page.

North Umpqua River (from Rock Creek to Little River)

Use the attached table to assess water availability for applications for domestic uses (including domestic expanded and human consumption), irrigation and agriculture uses, and commercial and industrial uses within the specified reach of the North Umpqua River (main stem only). A copy of the attached table should be placed in the file to document our assessment of water availability.

In this table, the flows protected by the new instream water right have been added back to the equation. (The WAB also includes an upstream scenic waterway that does not apply to this reach; the SWW flows have been removed because they do not become applicable unless the POD is above Rock Creek.) The net result is that water is available in the entire reach, up to the rates and for the uses allowed by the instream water right certificates. Use the tracking spreadsheets in the Resource Center to determine whether the limits allowed by the certificates have been reached. Once the limit has been reached in the spreadsheet for the use applied for, begin using the standard water availability printout.

North Umpqua River (from Little River to the mouth)

Use the attached table to assess water availability for applications for domestic uses (including domestic expanded and human consumption), irrigation and agriculture uses, and commercial and industrial uses within the specified reach of the North Umpqua River (main stem only). A copy of the attached table should be placed in the file to document our assessment of water availability. A copy of the attached table should be placed in the file to document our assessment of water availability.

In this table, the flows protected by the new instream water right have been added back to the equation. The net result is that water is available in the entire reach, up to the rates and for the uses allowed by the instream water right certificates. Use the tracking spreadsheets in the Resource Center to determine whether the limits allowed by the certificates have been reached. Once the limit has been reached in the spreadsheet for the use applied for, begin using the standard water availability printout.

WATER AVAILABILITY
FOR

COLUMBIA + SNAKE R. AVERAGE MONTHLY DISCHARGES AND CHANGES IN STORAGE IN CFS

FOR THE 25-YEAR BASE PERIOD, WATER-YEARS 1961-85, INCLUSIVE

THE ATTACHED TABLE CONTAINS AVERAGE DISCHARGES AND CHANGES IN STORAGE FOR SELECTED GAGING STATIONS AND RESERVOIRS IN THE PACIFIC NORTHWEST FOR A 25-YEAR PERIOD, WATER YEARS 1961-85, INCLUSIVE. THE AVERAGES ARE BASED ON OBSERVED RECORDS EXCEPT FOR THOSE STATIONS MARKED (ADJ), WHICH ARE ADJUSTED FOR UPSTREAM STORAGE AND DIVERSIONS AS INDICATED BY FOOTNOTES (COLUMN F), AND EXPLAINED ON THE FINAL PAGE. AVERAGE CHANGES IN STORAGE FOR RESERVOIRS BUILT AFTER OCTOBER 1960 ARE BASED ON ACTUAL MONTHLY CHANGES THAT WERE DIVIDED BY THE YEARS OF RECORD. FOR DUNCAN AND ARROW LAKES, NATURAL STORAGE PRIOR TO DAM CONSTRUCTION WAS INCLUDED TO COMPLETE THE 25-YEAR AVERAGE. FOR RESERVOIRS WITH LESS THAN 25 YEARS OF RECORD, THE DATE STORAGE BEGAN IS SHOWN BY FOOTNOTES. THE STATIONS ARE IN DOWNSTREAM ORDER, IDENTIFIED BY USGS NUMBERS. THE EIGHT-DIGIT STATION NUMBERS WERE ASSIGNED FOR THIS PROJECT AND ARE NOT OFFICIAL IDENTIFIERS.

A 25-YEAR BASE PERIOD WAS CHOSEN BY THE COLUMBIA RIVER WATER MANAGEMENT GROUP FOR COMPARISON OF HISTORICAL AVERAGES WITH CURRENT HYDROMETEOROLOGICAL CONDITIONS. IT IS ANTICIPATED THAT THIS BASE PERIOD WILL BE UPDATED IN FIVE YEARS TO A 30-YEAR BASE FOR THE PERIOD 1961-90.

THE AVERAGES CONTAINED HEREIN ARE BASED ON RECORDS FROM REPORTS AND FILES OF THE U.S. GEOLOGICAL SURVEY, WATER SURVEY OF CANADA, U.S. BUREAU OF RECLAMATION, OR RECORDS FURNISHED BY ORGANIZATIONS AS INDICATED BY THE FOOTNOTES.

COLUMBIA RIVER WATER MANAGEMENT GROUP
DEPLETIONS TASK FORCE
JANUARY 1987

ADJ = ADJUSTED FOR STORAGE

AVERAGE DISCHARGE OR CHANGE IN STORAGE IN CFS

F STA NO	STATION NAME	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
*13351000	PALOUSE R AT HOOPER, WASH	69	139	471	1110	1742	1648	1264	624	250	76	32	42
★94*13353000	SNAKE R BL ICE HARBOR DAM, WASH	27378	31971	38506	44426	50714	58560	76421	113070	120665	46660	23358	25778
95*13353000	SNAKE R BL ICE HARBOR DAM (ADJ)	26992	30337	35650	40002	47911	56452	80177	123489	127139	46270	22767	23252
*14010000	SF WALLA WALLA R NR MILTON, OREG	112	138	180	206	209	216	268	305	208	126	113	110
*14018500	WALLA WALLA R NR TOUCHET, WASH	71	277	889	1257	1338	1228	1082	674	276	46	21	42
★96*14019201	MCHARY DAM OUTFLOW	107952	117370	133768	150471	164129	174557	197585	285400	356193	223501	140740	109400
★97*14019201	MCHARY DAM OUTFLOW (ADJ)	82525	84386	89359	91844	108742	127525	207070	421394	508568	266038	139770	95931
*14020000	UMATILLA R AB MCHM C NR GIBSON, CR	58	122	258	317	352	380	504	439	197	65	50	50
*14021000	UMATILLA R AT PENOLETON, OREG	71	213	619	804	900	1012	1222	862	314	74	44	50
*14022500	MCKAY C NR PILOT ROCK, OREG	5	36	137	215	210	253	266	117	35	4	1	2
*14032000	BUTTER C NR PINE CITY, OREG	4	10	31	56	61	77	78	51	17	4	2	2
*14033500	UMATILLA R NR UMATILLA, OREG	79	228	636	918	1066	1109	1116	546	101	14	11	25
*14037500	STRAWBRY C AB SL C NR PR CTY, OR	3	4	4	4	4	4	7	32	59	26	8	4
*14042500	CAMAS C NR UKIAH, OREG	8	26	63	100	114	181	303	209	70	14	6	6
*14044000	MF JOHN DAY R AT RITTER, OREG	47	81	144	212	274	471	710	767	423	95	37	37
*14046000	MF JOHN DAY R AT MONUMENT, OREG	179	378	923	1315	1645	2408	3468	3846	1986	466	157	146
*14046500	JOHN DAY R AT SERVICE CREEK, OREG	367	694	1495	2130	2687	3730	5040	5250	2810	681	214	227
*14048000	JOHN DAY R AT McDONALD FERRY, OREG	365	725	1698	2409	3136	4121	5355	5513	3068	772	226	224
98*14048005	LK UMATILLA AT JOHN DAY DAM, OREG	-1900	-345	-443	140	529	-38	1383	-490	2297	738	277	185
*14050000	DESCHUTES R BL SNW C NR LAPINE, CR	182	150	132	116	106	100	102	127	156	178	226	218
99*14053000	CR PRAIRIE RES NR LAPINE, OR-INFL	253	231	212	169	148	133	141	230	290	262	293	284
38*14053500	CRANE PRAIRIE RES NR LAPINE, OREG	41	126	104	49	39	30	-14	-66	-96	-107		
38*14056000	WICKIUP RES NR LAPINE, OREG	354	496	414	346	304	289	13	-373	-528	-651		
38*14059500	CRESCENT LK NR CRESCENT, OREG	35	64	72	51	39	28	27	43	-9	-127		
*14060000	CRESCENT C NR CRESCENT, OREG	16	10	12	16	16	16	14	53	112	171		
100*14060000	CRESCENT C NR CRESCENT (ADJ)	51	74	85	67	55	44	42	96	103	44		
*14063000	L DESCHUTES R NR LAPINE, OREG	87	123	188	198	219	220	273	373	349	258		
100*14063000	L DESCHUTES R NR LAPINE (ADJ)	122	187	260	249	258	247	301	416	340	131		
*14064500	DESCHUTES R AT BNHM FLLS NR BND, OR	1069	741	844	904	931	935	1284	1908	2214	2345		
101*14072500	COL SOUTHERN CA NR TUMALO, OREG	8	4	1	0	1	2	8	78	115	92		
*14073001	TUMALO C+COL SUTHRN CA NR BEND, OR	67	75	81	75	79	71	80	158	233	142		
*14075000	SQUAW C NR SISTERS, OREG	63	77	90	84	80	65	68	128	226	184		
38*14080400	PRINEVILLE RES NR PRINEVILLE, OREG	-113	-1	45	45	158	416	318	-27	-134	-216	-226	-189
*14080500	CROOKED R NR PRINEVILLE, OREG	162	150	288	391	514	591	839	610	265	239	229	200
102*14080500	CROOKED R NR PRINEVILLE (ADJ)	53	150	333	436	673	1007	1158	584	131	23	3	11
38*14085100	CHOCO RES NR PRINEVILLE, OREG	-9	9	48	60	81	84	85	-5	-61	-125	-96	-45
103*14085100	FIVE RES IN DESCHUTES BASIN, OREG	314	694	683	550	620	846	429	-428	-829	-1226	-948	-491
104*14092100	LK BILLY CHINOOK NR METOLIUS, OR	24	-17	-82	-123	258	94	93	80	37	32	28	-6
*14101500	WHITE R BL TYGH VALLEY, OREG	141	249	537	695	730	610	601	640	419	185	129	122
*14103000	DESCHUTES R AT MOODY NR BIGGS, OR	4704	5481	6800	7437	7475	7192	6745	6010	5388	4673	4441	4484

AVERAGE DISCHARGE OR CHANGE IN STORAGE IN CFS

F STA NO	STATION NAME	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
*14191000	WILLAMETTE R AT SALEM, OREG	13859	31114	52192	49059	37209	30175	23562	19088	13219	7479	7208	9819
119*14191000	WILLAMETTE R AT SALEM (ADJ)	7181	27586	51486	50440	42664	36008	29233	22338	13737	6142	3854	4255
*14209000	OAK GROVE PK AB PNRPLANT INTAKE, OR	397	496	589	615	593	572	558	613	471	335	312	343
*14209500	CLACKAMAS R AB THREE LYNX C, OREG	1059	2298	3415	3268	2986	2562	2540	2698	1784	950	768	804
*14210000	CLACKAMAS R AT ESTACADA, OREG	1373	3283	4986	4795	4235	3581	3515	3641	2354	1204	911	973
120*14211720	WILLAMETTE RIVER AT PORTLAND, OREG	16660	42572	76355	74437	59071	47886	36488	27777	17972	9667	8414	11301
119*14211720	WILLAMETTE RIVER AT PORTLAND (ADJ)	9982	39044	75349	75817	64527	53719	42158	31026	18491	8330	5060	5738
*14217600	SWIFT RES NR COUGAR, WASH	-637	-446	-524	-281	-156	-393	887	1240	380	97	10	-199
*14218500	YALE RES NR YALE, WASH	-265	130	55	-129	21	-6	268	180	197	-8	-4	-479
*14220000	LK MERWIN AT ARIEL, WASH	6	-104	-29	-34	-20	138	39	140	53	40	-27	-126
*14220000	SWIFT, YALE AND MERWIN RES, WASH	-896	-421	-498	-444	-155	-261	1195	1559	630	130	-21	-805
*14220500	LEWIS R AT ARIEL, WASH	3183	7007	9451	8746	7721	6469	4719	4269	3533	1910	1304	2179
121*14220500	LEWIS R AT ARIEL (ADJ)	2287	6586	8953	8302	7566	6209	5914	5828	4163	2040	1283	1374
95*14234800	RIFFE LAKE NR MOSSYROCK, WASH	-1828	-1766	-1004	-658	-107	-307	1820	4284	2154	-585	-502	-782
122*14237800	MAYFIELD RES NR SILVER CREEK, WASH	13	15	-19	12	-7	30	40	39	-4	21	-2	-48
*14238000	COWLITZ R BL MAYFIELD DAM, WASH	3846	7624	10896	9978	8547	6840	5902	6188	7184	4599	2605	2564
123*14238000	COWLITZ R BL MAYFIELD DAM (ADJ)	2615	6439	10196	9542	8468	6658	7251	9311	8731	4198	2241	1955
*14243000	COWLITZ R AT CASTLE ROCK, WASH	5045	11276	16871	16010	13636	10972	9353	8915	9179	5730	3327	3334
123*14243000	COWLITZ R AT CASTLE ROCK (ADJ)	3814	10089	16171	15573	13557	10790	10702	12037	10726	5328	2963	2725
105*14280000	COLUMBIA R AT THE MOUTH	148764	210480	288152	300140	293318	283760	283128	347528	412680	263908	165084	138564
★ 124*14280000	COLUMBIA R AT THE MOUTH (ADJ)	113241	172126	241538	242107	243512	242092	301822	491100	549405	305367	160576	118250
*14301000	NEHALEM R NR FOSS, OREG	772	3913	6638	6629	5276	4522	2612	1201	612	273	151	236
*14301500	WILSON R NR TILLAMOOK, OREG	508	1895	2719	2589	2120	1772	1101	596	339	170	109	165
*14305500	SILETZ R AT SILETZ, OREG	540	2430	3548	3327	2670	2276	1414	768	484	223	140	194
*14306500	ALSEA R NR TIDEWATER, OREG	304	1874	3681	3575	3004	2600	1509	777	401	190	118	132
*14313000	LEMOLO LK NR TOKETEE FALLS, OREG	-63	-23	-7	-19	-5	-8	36	89	11	5	2	-19
*14313501	N UMPQUA NR T FLS & LEMOLO 1 PC, OR	445	432	452	455	429	440	408	484	559	419	370	381
125*14313501	N UMPQUA NR T FLS & LEMOLO 1 (ADJ)	345	372	407	397	391	397	412	526	518	387	340	328
*14321000	UMPQUA R NR ELKTON, OREG	1852	8625	16850	16709	13763	12749	9470	6293	3318	1611	1179	1214
*14359000	ROGUE R AT RAYGOLD, OREG	1522	2763	4993	4985	4229	4282	4015	3731	2691	1867	1665	1523
126*14359000	ROGUE R AT RAYGOLD, OREG (ADJ)	1463	2759	5113	5127	4624	4542	4144	3818	2661	1581	1331	1337

261.0
267.



WATERMASTER APPLICATION REVIEW

Application #: S-89170

Applicant's Name: Brian and Duane LLC

1) Would the proposed allocation have the potential for injury to existing rights?

Yes No

2) If the proposed allocation will cause injury, can it be conditioned to avoid injury?

Yes No If Yes, please list conditions:

N/A

3) Have you spoken with persons from other state agencies about this application?

Yes No If yes, whom and why?

4) Please select the appropriate measurement, recording and reporting condition for this application.

Small < 0.1 CFS, < 9.2 AF

Medium > 0.1 CFS but < 0.25 CFS, > 9.2 AF but < 100 AF

Large > 0.25 CFS, > 100 AF

Require a staff gage if source is runoff or if the reservoir is located in-channel.

Require an in-line flow restrictor.

5) Please provide any additional information or conditions that you believe are necessary for this application.

Watermaster Name: Greg Silbernagel

Watermaster Signature:

Date: 12/1/2022

WRD Caseworker: Kim French

Ph: 503-986-0900/ Fax: 503-986-0901

From: [FRENCH Kim R * WRD](#)
To: [KOWITZ Chris C * WRD](#); [SILBERNAGEL Greg M * WRD](#)
Subject: FW: IR 99695 AND IR 99696
Date: Thursday, September 22, 2022 3:42:00 PM
Attachments: [Letter to OWRD 22SEP22.pdf](#)

I received this today (before I sent her the info from our meeting).

Does this work?

Kim French | Water Rights Application Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov
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From: Lolly Anderson <lolly.anderson@andersonschultz.com>
Sent: Thursday, September 22, 2022 12:02 PM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Subject: IR 99695 AND IR 99696

Kim,

As discussed, attached is the response to OWRD's requests for additional information on Brian & Duane LLC's two water right applications. Please contact me if you have any questions.

Thank you,
Lolly

Lolly Anderson
Anderson Schultz LLP
PO Box 42427
Portland, OR 97242
T: 619.995.1057

From: [Lolly Anderson](#)
To: [FRENCH Kim R * WRD](#)
Subject: IR 99695 AND IR 99696
Date: Thursday, September 22, 2022 12:02:30 PM
Attachments: [Letter to OWRD 22SEP22.pdf](#)

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From: [MARKOS Peter * DEQ](#)
To: [FRENCH Kim R * WRD](#)
Subject: Question S-89170 and S-89171
Date: Thursday, May 12, 2022 1:41:25 PM

Hi Kim,

I reviewed the WRD page that lists applications awaiting DEQ reviews ([link here](#)) to make sure I had all reviews awaiting . I found a couple in the Columbia River region that I didn't have on my list. Do S-89170 and S-89171 still need a review?

Thank you for speaking with me yesterday about reviews. I have just one more question will reservoir reviews be treated the same way as other reviews when there isn't water available?

Thank you, and I hope you feel better soon!

Best,

Pete

Peter Markos (he/him)
Integrated Water Resource Specialist
Oregon Department of Environmental Quality
4026 Fairview Industrial Drive SE
Salem, OR 97302
Cell: 541.972.5520

From: [SILBERNAGEL Greg M * WRD](#)
To: [FRENCH Kim R * WRD](#); [KOWITZ Chris C * WRD](#)
Subject: RE: Initial Reviews - S-89170 and S-89171
Date: Friday, September 16, 2022 9:06:30 AM

Hi Kim,

Chris and I will collaborate and we will have you something by Wednesday.

Greg

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Friday, September 16, 2022 8:09 AM
To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Subject: FW: Initial Reviews - S-89170 and S-89171
Importance: High

Hello!

I sent the email below about the additional information you needed for off-season irrigation for these two Brian and Duane LLC applications. (the original email had the incorrect application numbers in the subject line).

Please give me an idea of what kind of information you are looking for on these applications. I think this will probably set a precedent on off-season irrigation and asking for additional information (at least on the Columbia), so we want to make sure to get it right (or as right as we can on the first go-around 😊)

We have a couple of other applications for off-season irrigation from the Columbia, so I'm hoping, when we know what information we are looking for, we can change our language for the IR and add that information.

If you want to set up a Teams meeting to talk about this, just let me know.

Thanks so much!

Kim French | Water Rights Application Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov
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wish to meet in person with specific staff members. Alternative methods for meeting, such as by phone or virtually via Teams, are also available.

From: FRENCH Kim R * WRD

Sent: Tuesday, August 23, 2022 7:18 AM

To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>

Subject: FW: Initial Reviews - 99695 and 99696

Importance: High

Hi Chris and Greg,

Please see the email below from the agent for Brian and Duane LLC. This is for the two applications that we just issued the superseding IRs on, asking for more information on how they plan to beneficially use water in the winter.

I'm not sure how much/what kind of specific information you are looking for. Can you either send me what you would like to see, or respond to Lolly?

Thank you!

Kim French | Water Rights Application Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov

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From: Lolly Anderson <lolly.anderson@andersonschultz.com>

Sent: Monday, August 22, 2022 12:55 PM

To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Subject: Initial Reviews - 99695 and 99696

Hi Kim,

This is in regards to the two Brian & Duane LLC applications requesting water for raising soil moisture October through April. The superseding IRs that were just issued are proposing to deny and request information on how they plan to beneficially use the water.

Are you looking for a crop plan and overview of why additional winter moisture is beneficial? This wasn't an issue with the prior round of raising soil moisture applications, so I wanted to check in with you and make sure I'm addressing OWRD's concerns before I prepare a response.

Thank you,
Lolly

Lolly Anderson
Anderson Schultz LLP
PO Box 42427
Portland, OR 97242
T: 619.995.1057

From: [SILBERNAGEL Greg M * WRD](#)
To: [FRENCH Kim R * WRD](#); [KOWITZ Chris C * WRD](#)
Subject: RE: IR 99695 AND IR 99696
Date: Thursday, September 22, 2022 4:24:12 PM

I am in agreement with Chris. You are doing great Kim. Thanks for your work! Greg

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, September 22, 2022 4:22 PM
To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Subject: RE: IR 99695 AND IR 99696

We identified that it was clearly irrigation in the superseding IR, so I'm not sure if they didn't see that or what.

I will do a conflict check to make sure we aren't duplicating rights on the same lands. I'll let you know what I find.

Thanks,

Kim French | Water Rights Application Specialist

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From: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Sent: Thursday, September 22, 2022 4:07 PM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Subject: RE: IR 99695 AND IR 99696

This is not nursery operations use so I don't think the argument works, at least from my perspective. If the applicant needs water to grow winter wheat, then the application should clearly state that this water is needed for irrigation. I would just want to make sure we're not adding another Col River right on lands that are already covered by an existing irrigation right (as we discussed today).

Greg may have more to add, but those are my initial thoughts.

Thanks Kim!!
Chris

[Chris Kowitz](#)

North Central Region Manager
Oregon Water Resources Department
116 SE Dorion Ave | Pendleton, OR 97801
Office: 541-278-5456 | Direct: 541-561-0553 | Cell: 971-600-6137



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From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, September 22, 2022 3:43 PM
To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Subject: FW: IR 99695 AND IR 99696

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Does this work?

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From: Lolly Anderson <lolly.anderson@andersonschultz.com>
Sent: Thursday, September 22, 2022 12:02 PM

To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Subject: IR 99695 AND IR 99696

Kim,

As discussed, attached is the response to OWRD's requests for additional information on Brian & Duane LLC's two water right applications. Please contact me if you have any questions.

Thank you,

Lolly

Lolly Anderson
Anderson Schultz LLP
PO Box 42427
Portland, OR 97242
T: 619.995.1057

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To: [KOWITZ Chris C * WRD](#); [SILBERNAGEL Greg M * WRD](#)
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Chris

[Chris Kowitz](#)

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To: [SILBERNAGEL Greg M * WRD](#); [KOWITZ Chris C * WRD](#)
Subject: RE: IR 99695 AND IR 99696
Date: Tuesday, September 27, 2022 12:46:00 PM

So if we identify that these rights will only be for irrigation of winter wheat (or whatever they're growing in the winter), and limit them to the 1/80 standard limit for irrigation and we're not layering any irrigation rights over what is currently there for the standard irrigation season, can I move forward with the PFO?

Kim French | Water Rights Application Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov
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From: SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Sent: Thursday, September 22, 2022 4:24 PM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>; KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Subject: RE: IR 99695 AND IR 99696

I am in agreement with Chris. You are doing great Kim. Thanks for your work! Greg

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, September 22, 2022 4:22 PM
To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Subject: RE: IR 99695 AND IR 99696

We identified that it was clearly irrigation in the superseding IR, so I'm not sure if they didn't see that or what.

I will do a conflict check to make sure we aren't duplicating rights on the same lands. I'll let you know what I find.

Thanks,

Kim French | Water Rights Application Specialist

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From: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Sent: Thursday, September 22, 2022 4:07 PM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>
Subject: RE: IR 99695 AND IR 99696

This is not nursery operations use so I don't think the argument works, at least from my perspective. If the applicant needs water to grow winter wheat, then the application should clearly state that this water is needed for irrigation. I would just want to make sure we're not adding another Col River right on lands that are already covered by an existing irrigation right (as we discussed today).

Greg may have more to add, but those are my initial thoughts.

Thanks Kim!!
Chris

[Chris Kowitz](#)

North Central Region Manager
Oregon Water Resources Department
116 SE Dorion Ave | Pendleton, OR 97801
Office: 541-278-5456 | Direct: 541-561-0553 | Cell: 971-600-6137



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From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Sent: Thursday, September 22, 2022 3:43 PM

To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; SILBERNAGEL Greg M * WRD <Greg.M.SILBERNAGEL@water.oregon.gov>

Subject: FW: IR 99695 AND IR 99696

I received this today (before I sent her the info from our meeting).

Does this work?

Kim French | Water Rights Application Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov

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From: Lolly Anderson <lolly.anderson@andersonschultz.com>

Sent: Thursday, September 22, 2022 12:02 PM

To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Subject: IR 99695 AND IR 99696

Kim,

As discussed, attached is the response to OWRD's requests for additional information on Brian & Duane LLC's two water right applications. Please contact me if you have any questions.

Thank you,

Lolly

Lolly Anderson
Anderson Schultz LLP
PO Box 42427
Portland, OR 97242
T: 619.995.1057

From: [FAUCERA Danette L * ODFW](#)
To: [FRENCH Kim R * WRD](#); [HENDRICKSON Cole * DEQ](#); [BRANDT Jason R * ODFW](#); [SAUTER Sarah * DEQ](#)
Subject: RE: S-89170 & S-89171 Brian and Duane LLC
Date: Friday, August 5, 2022 12:37:44 PM

ODFW has also submitted a review. It is unclear whether the additional information would alter our review, so please keep us informed.

Thanks!

Danette

****note new phone number****

Danette Faucera
Water Policy Coordinator
Oregon Department of Fish and Wildlife
Cell: **971-280-3773**
4034 Fairview Industrial Drive SE
Salem, OR 97302

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From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Friday, August 5, 2022 11:48 AM
To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>; FAUCERA Danette L * ODFW <Danette.L.FAUCERA@odfw.oregon.gov>; BRANDT Jason R * ODFW <Jason.R.BRANDT@odfw.oregon.gov>; SAUTER Sarah * DEQ <Sarah.SAUTER@deq.oregon.gov>
Subject: RE: S-89170 & S-89171 Brian and Duane LLC

Great! thanks Cole!

Kim French | Water Rights Program Analyst
Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
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From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Sent: Friday, August 5, 2022 11:03 AM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>; FAUCERA Danette L * ODFW <Danette.L.FAUCERA@odfw.oregon.gov>; BRANDT Jason R * ODFW <Jason.R.BRANDT@odfw.oregon.gov>; SAUTER Sarah * DEQ <Sarah.SAUTER@deq.oregon.gov>
Subject: RE: S-89170 & S-89171 Brian and Duane LLC

Thanks Kim,

I submitted a review and revised review for this application already. So I will serve as the DEQ contact on this.

Cole Hendrickson
he/him/his
Integrated Water Resources Specialist
Department of Environmental Quality
Eastern Region (Bend Office)
Cole.Hendrickson@DEQ.Oregon.Gov
Cell: 458-256-9155

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Friday, August 5, 2022 10:50 AM
To: FAUCERA Danette L * ODFW <Danette.L.FAUCERA@odfw.oregon.gov>; BRANDT Jason R * ODFW <Jason.R.BRANDT@odfw.oregon.gov>; SAUTER Sarah * DEQ <Sarah.SAUTER@deq.oregon.gov>; HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Subject: S-89170 & S-89171 Brian and Duane LLC

Hi all,

This is on the line between east and west, so I wasn't sure who would get it, so I'm including all of you!

I just wanted to let you know that I will be issuing a superseding IR on this one. It will show "proposed to deny" in WRIS. We are asking for more information on beneficial use for winter water.

Thanks!

Kim French | Water Rights Program Analyst

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From: [FRENCH Kim R * WRD](#)
To: [SILBERNAGEL Greg M * WRD](#); [KOWITZ Chris C * WRD](#)
Subject: RE: S-89170 & S-89171 Brian and Duane LLC
Date: Friday, September 23, 2022 9:14:00 AM

Hi there,

After doing conflict checks on both of these applications, I found that there are multiple primary rights under East Improvement District's permits S-55114, S-55263, S-55167, and S-55262, however these rights authorized the use of water for irrigation 3/1-10/31. Additionally, these all have the same POU as the applications we spoke about yesterday for Mid-Columbia Water Commission, but they are also requesting to use water during the irrigation season (3/1-11/1).

These two applications are requesting to use water during the off-season (10/1-4/14), so it appears that there isn't a conflict.

Thanks!

Kim French | Water Rights Application Specialist

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Subject: RE: IR 99695 AND IR 99696

I am in agreement with Chris. You are doing great Kim. Thanks for your work! Greg

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We identified that it was clearly irrigation in the superseding IR, so I'm not sure if they didn't see that or what.

I will do a conflict check to make sure we aren't duplicating rights on the same lands. I'll let you know what I find.

Thanks,

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Subject: RE: IR 99695 AND IR 99696

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Greg may have more to add, but those are my initial thoughts.

Thanks Kim!!

Chris

[Chris Kowitz](#)

North Central Region Manager

Oregon Water Resources Department

116 SE Dorion Ave | Pendleton, OR 97801

Office: 541-278-5456 | Direct: 541-561-0553 | Cell: 971-600-6137



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Subject: FW: IR 99695 AND IR 99696

I received this today (before I sent her the info from our meeting).

Does this work?

Kim French | Water Rights Application Specialist

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From: Lolly Anderson <lolly.anderson@andersonschultz.com>
Sent: Thursday, September 22, 2022 12:02 PM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Subject: IR 99695 AND IR 99696

Kim,

As discussed, attached is the response to OWRD's requests for additional information on Brian & Duane LLC's two water right applications. Please contact me if you have any questions.

Thank you,
Lolly

Lolly Anderson
Anderson Schultz LLP

PO Box 42427
Portland, OR 97242
T: 619.995.1057

From: [Lolly Anderson](#)
To: [FRENCH Kim R * WRD](#)
Subject: Re: S-89170 & S-89171 Brian and Duane LLC
Date: Friday, September 16, 2022 9:39:02 AM

Thank you, Kim. You have a good weekend as well!

Lolly Anderson
Anderson Schultz LLP
PO Box 42427
Portland, OR 97242
T: 619.995.1057

On Sep 16, 2022, at 8:33 AM, FRENCH Kim R * WRD
<Kim.R.FRENCH@water.oregon.gov> wrote:

Hi Lolly,

Just wanted to let you know that I sent the regional manager and watermaster another email requesting what kind of additional information they are looking for, as requested in the Superseding Initial Review.

I'll let you know what I hear.

Have a great weekend!

Kim French | Water Rights Application Specialist

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov

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From: [KOWITZ Chris C * WRD](#)
To: [FRENCH Kim R * WRD](#)
Subject: RE: S-89170 & S-89171 Brian and Duane Superseding IR - review request
Date: Friday, August 12, 2022 8:24:10 AM

They look good to me, thanks Kim!!

Chris

[Chris Kowitz](#)

North Central Region Manager
Oregon Water Resources Department
116 SE Dorion Ave | Pendleton, OR 97801
Office: 541-278-5456 | Direct: 541-561-0553 | Cell: 971-600-6137



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From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Friday, August 12, 2022 8:21 AM
To: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>
Subject: FW: S-89170 & S-89171 Brian and Duane Superseding IR - review request

Chris, did you have anything to add to these two IRs?

Kim French | Water Rights Program Analyst

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From: FRENCH Kim R * WRD

Sent: Friday, August 5, 2022 12:10 PM

To: GRAHAM Elisabeth A * WRD <Elisabeth.A.GRAHAM@water.oregon.gov>; KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>; RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>

Subject: S-89170 & S-89171 Brian and Duane Superseding IR - review request

Let me know if you'd like to see any changes.

Thank you,

Kim French | Water Rights Program Analyst

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
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From: [HENDRICKSON Cole * DEQ](#)
To: [FRENCH Kim R * WRD](#)
Subject: RE: S-89170 and S-89171 Division 33 Review
Date: Thursday, July 7, 2022 10:31:36 AM

Hi Kim,

I completely understand. Let me confer with my team and I will get back to you.

Thank you,

Cole Hendrickson
he/him/his
Integrated Water Resources Specialist
Department of Environmental Quality
Eastern Region (Bend Office)
Cole.Hendrickson@DEQ.Oregon.Gov
Cell: 458-256-9155

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, July 7, 2022 10:04 AM
To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

In Smita's first review (7/15/19), she did recommend mitigation, but on 8/5/21, the review was revised and the mitigation requirement was taken out to remain consistent with all the other reviews.

I'm concerned because these two applications should be processed the same as the other 6, and mitigation was not required on those. We added a "chum condition" that was vetted by WRD, ODFW and, I assume, DEQ, that was used in the place of mitigation (see condition #4 in the permit).

Kim French | Water Rights Program Analyst

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From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Sent: Thursday, July 7, 2022 9:53 AM

To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Subject: RE: S-89170 and S-89171 Division 33 Review

Hi Kim,

Thank you for your follow up on these applications. I am the only reviewer now for all of Eastern Region, so Smita will not be handling any reviews moving forward, unless I need assistance. Danette and I discussed her review, which contains mitigation, and based on our mitigation criteria, this application falls under mitigation. Is that the condition you are concerned about? If you could please provide more clarity as to the issue with my submitted review we can work to potentially make changes to it.

Thanks,

Cole Hendrickson

he/him/his

Integrated Water Resources Specialist

Department of Environmental Quality

Eastern Region (Bend Office)

Cole.Hendrickson@DEQ.Oregon.Gov

Cell: 458-256-9155

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Sent: Thursday, July 7, 2022 9:33 AM

To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>

Subject: RE: S-89170 and S-89171 Division 33 Review

Hi Cole,

I don't know if you knew this when you did these two reviews, but we issued permits for this applicant for the same PODs in December 2021 (Applications S-88648 - S-88653). It took forever for all the agencies (WRD, ODFW and DEQ) to come up with conditions to make this use possible. The applicant was under the understanding that these two applications would be processed with the same conditions. Smita prepared the reviews for the other apps and, when the applicant submitted the two new applications, I assumed she would again process the reviews, so they would be the same as the others.

I have attached one of the previous reviews and one of the permits (so you can see all of the conditions). Can you take a look at these and let me know if you can revise your review to match these?

Thanks,

Kim French | Water Rights Program Analyst

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From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>

Sent: Tuesday, July 5, 2022 9:41 AM

To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Subject: S-89170 and S-89171 Division 33 Review

Good Morning Kim,

Attached is the Division 33 Review for S-89170 and S-89171 for Brian and Duane LLC in the Columbia River Basin. Please let me know if you have any questions.

Mitigation is being requested from October 1st to April 14th in order to prevent further 303(d) listing impacts to the Columbia River, for both applications.

Thank you,

Cole Hendrickson

he/him/his

Integrated Water Resources Specialist

Department of Environmental Quality

Eastern Region (Bend Office)

Cole.Hendrickson@DEQ.Oregon.Gov

Cell: 458-256-9155

From: [HENDRICKSON Cole * DEQ](#)
To: [FRENCH Kim R * WRD](#)
Subject: RE: S-89170 and S-89171 Division 33 Review
Date: Thursday, July 7, 2022 9:53:09 AM

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Cole.Hendrickson@DEQ.Oregon.Gov
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From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, July 7, 2022 9:33 AM
To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

Hi Cole,

I don't know if you knew this when you did these two reviews, but we issued permits for this applicant for the same PODs in December 2021 (Applications S-88648 - S-88653). It took forever for all the agencies (WRD, ODFW and DEQ) to come up with conditions to make this use possible. The applicant was under the understanding that these two applications would be processed with the same conditions. Smita prepared the reviews for the other apps and, when the applicant submitted the two new applications, I assumed she would again process the reviews, so they would be the same as the others.

I have attached one of the previous reviews and one of the permits (so you can see all of the conditions). Can you take a look at these and let me know if you can revise your review to match these?

Thanks,

Kim French | Water Rights Program Analyst

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Phone: 503 979-3168 Email: kim.r.french@water.oregon.gov
Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

Life is too short to spend one minute unhappy! Be Happy!

The Salem office re-opened to the public on May 1, 2022. Given that many staff will continue teleworking remotely or have job duties that take them into the field on a regular basis, availability of staff in the office is not guaranteed 8 a.m. - 5 p.m. every day. **Customers and visitors are encouraged to schedule an appointment in advance if they wish to meet in person with specific staff members.** Alternative methods for meeting, such as by phone or virtually via Teams, are also available.

From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Sent: Tuesday, July 5, 2022 9:41 AM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Subject: S-89170 and S-89171 Division 33 Review

Good Morning Kim,

Attached is the Division 33 Review for S-89170 and S-89171 for Brian and Duane LLC in the Columbia River Basin. Please let me know if you have any questions.

Mitigation is being requested from October 1st to April 14th in order to prevent further 303(d) listing impacts to the Columbia River, for both applications.

Thank you,

Cole Hendrickson
he/him/his
Integrated Water Resources Specialist
Department of Environmental Quality
Eastern Region (Bend Office)
Cole.Hendrickson@DEQ.Oregon.Gov
Cell: 458-256-9155

From: [HENDRICKSON Cole * DEQ](#)
To: [FRENCH Kim R * WRD](#)
Subject: RE: S-89170 and S-89171 Division 33 Review
Date: Thursday, July 7, 2022 3:36:49 PM

Hi Kim,

This issue seems a lot bigger than I had anticipated. I will probably need to consult with Danette as well once she returns from vacation. I believe she will be back next week. Will that work for you?

Thanks,

Cole Hendrickson
he/him/his
Integrated Water Resources Specialist
Department of Environmental Quality
Eastern Region (Bend Office)
Cole.Hendrickson@DEQ.Oregon.Gov
Cell: 458-256-9155

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, July 7, 2022 10:35 AM
To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

Awesome! thank you!

Kim French | Water Rights Program Analyst

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From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Sent: Thursday, July 7, 2022 10:32 AM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

Hi Kim,

I completely understand. Let me confer with my team and I will get back to you.

Thank you,

Cole Hendrickson
he/him/his
Integrated Water Resources Specialist
Department of Environmental Quality
Eastern Region (Bend Office)
Cole.Hendrickson@DEQ.Oregon.Gov
Cell: 458-256-9155

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, July 7, 2022 10:04 AM
To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

In Smita's first review (7/15/19), she did recommend mitigation, but on 8/5/21, the review was revised and the mitigation requirement was taken out to remain consistent with all the other reviews.

I'm concerned because these two applications should be processed the same as the other 6, and mitigation was not required on those. We added a "chum condition" that was vetted by WRD, ODFW and, I assume, DEQ, that was used in the place of mitigation (see condition #4 in the permit).

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From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Sent: Thursday, July 7, 2022 9:53 AM
To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

Hi Kim,

Thank you for your follow up on these applications. I am the only reviewer now for all of Eastern

Region, so Smita will not be handling any reviews moving forward, unless I need assistance. Danette and I discussed her review, which contains mitigation, and based on our mitigation criteria, this application falls under mitigation. Is that the condition you are concerned about? If you could please provide more clarity as to the issue with my submitted review we can work to potentially make changes to it.

Thanks,

Cole Hendrickson
he/him/his
Integrated Water Resources Specialist
Department of Environmental Quality
Eastern Region (Bend Office)
Cole.Hendrickson@DEQ.Oregon.Gov
Cell: 458-256-9155

From: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Sent: Thursday, July 7, 2022 9:33 AM
To: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>
Subject: RE: S-89170 and S-89171 Division 33 Review

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From: HENDRICKSON Cole * DEQ <Cole.HENDRICKSON@deq.oregon.gov>

Sent: Tuesday, July 5, 2022 9:41 AM

To: FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>

Subject: S-89170 and S-89171 Division 33 Review

Good Morning Kim,

Attached is the Division 33 Review for S-89170 and S-89171 for Brian and Duane LLC in the Columbia River Basin. Please let me know if you have any questions.

Mitigation is being requested from October 1st to April 14th in order to prevent further 303(d) listing impacts to the Columbia River, for both applications.

Thank you,

Cole Hendrickson

he/him/his

Integrated Water Resources Specialist

Department of Environmental Quality

Eastern Region (Bend Office)

Cole.Hendrickson@DEQ.Oregon.Gov

Cell: 458-256-9155

From: [HENDRICKSON Cole * DEQ](#)
To: [FRENCH Kim R * WRD](#)
Subject: S-89170 and S-89171 Division 33 Review
Date: Tuesday, July 5, 2022 9:41:43 AM
Attachments: [S-89170 Columbia Duane.5.23.22.CH.pdf](#)
[S-89171 Columbia Duane.5.23.22.CH.pdf](#)

Good Morning Kim,

Attached is the Division 33 Review for S-89170 and S-89171 for Brian and Duane LLC in the Columbia River Basin. Please let me know if you have any questions.

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Thank you,

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Cell: 458-256-9155

From: [HENDRICKSON Cole * DEQ](#)
To: [FRENCH Kim R * WRD](#)
Subject: S-89170 and S-89171 Division 33 Review
Date: Monday, July 25, 2022 10:18:54 AM
Attachments: [S-89170 Columbia Duane.5.23.22.Revised.CH.pdf](#)
[S-89171 Columbia Duane.5.23.22.CH.Revised.pdf](#)

Good Morning Kim,

Attached is the Division 33 Review for S-89170 and S-89171 for Brian and Duane LLC in the Columbia River Basin. Please let me know if you have any questions.

Thus, reducing withdrawals after in-stream temperatures have dipped below 20 degrees C is critical. On the graph above, temperatures begin to drop below the 20 degrees C line as early as the beginning of October. **However, if the 7-day average of daily maximum temperatures exceeds the water quality criterion of 20 degrees C then there will be a hold placed on diversion until the 7-day average drops below 20 degrees C. A temperature logger will be conditioned to be placed at the POD for continuous temperature logging.**

Thank you,

Cole Hendrickson
he/him/his
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