

Name Rick and Jody Hale R-88574
 By 73426 Hwy 207
 Address Echo, OR 97826

Priority APRIL 12, 2018
 County WHEELER WM# 4

RELATED FILES

LL - 1908

DEVELOPMENT

Date

Completion _____

Extended to _____

Final Proof received _____

Proposed Cert. Mailed _____

Application No. R-88574

Permit No. _____

Certificate No. _____

Date

DENIED _____

MISFILED _____

WITHDRAWN _____

CANCELLED _____

Volume Page

FEES PAID

Date	Amount	Receipt No.
4/12/18	2,597.60	126398
6-29-23	\$480.00	141033

Cert. Fee

FEES REFUNDED

Date	Amount	Receipt No.

ASSIGNMENTS

Date

To Whom

Address

REMARKS

MAP LOCATION _____



RECEIVED

JUN 29 2023

OWRD

Date Received (Date Stamp Here)

OWRD Over-the-Counter Submission Receipt

Applicant Name(s) & Address: Rick Hale

73426 Hwy 207, Echo OR 97826

Transaction Type: Protest

Fees Received: \$ 480.00

☐ Cash

☒ Check

Check No. 953452

Name(s) on Check: Steel River, LLC

Thank you for your submission. Oregon Water Resources Department (Department) staff will review your submittal as soon as possible.

If your submission is determined to be complete, you will receive a receipt for the fees paid and an acknowledgement letter stating your submittal is complete.

If determined to be incomplete, your submission and the accompanying fees will be returned with an explanation of deficiencies that must be addressed in order for the submittal to be accepted.

If you have any questions, please feel free to contact the Department's Customer Service staff at 503-986-0801 or 503-986-0810.

Sincerely,

OWRD Customer Service Staff

Submission received by: Corie Courrien
(Name of OWRD staff)

Instructions for OWRD staff:

- Complete this Submission Receipt and make two (2) copies. Place one copy with the check/cash; and place the other copy with the submission (i.e., the application or other document).
- Date-stamp all pages. (NOTE: Do not stamp check.)
- Give this original Submission Receipt to the applicant.
- Record Submission Receipt Information on the "RECEIVED OVER THE COUNTER" log sheet.
- Fold and put one copy of the Submission Receipt with check/cash into the Safe slot. Place the other copy of the Submission Receipt with submission (application/other document) in the box drawer.



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If you have any questions, please feel free to contact the Department's Customer Service staff at 503-986-0801 or 503-986-0810.

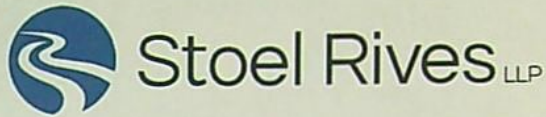
Sincerely,

OWRD Customer Service Staff

Submission received by: Corie Lourien
(Name of OWRD staff)

Instructions for OWRD staff:

- Complete this Submission Receipt and make two (2) copies. Place one copy with the check/cash; and place the other copy with the submission (i.e., the application or other document).
- Date-stamp all pages. (NOTE: Do not stamp check.)
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- Fold and put one copy of the Submission Receipt with check/cash into the Safe slot. Place the other copy of the Submission Receipt with submission (application/other document) in the top drawer of filing cabinet.



June 28, 2023

VIA UPS/OVERNIGHT DELIVERY

State of Oregon Water Resources Department
Attn: Doug Woodcock, Interim Director
725 Summer St. NE, Suite A
Salem, OR 97301

Re: Protest of Rick Hale (Application No. R-88574)

Dear Mr. Woodcock:

Enclosed please find an original and one copy of Protest of Rick Hale (Application No. R-88574, Request for Contested Case Hearing), the associated Protest exhibits, and a check in the amount of \$480 for the protest fee.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David E. Filippi', is written over a horizontal line.

David E. Filippi

Enclosures:

- R-88574 Protest
- Exhibit A – R-88574 PFO
- Exhibit B – R-88574 Application
- Check for \$480 addressed to the Oregon Water Resources Department

cc (w/encls): Patricia McCarty, Protest Program Coordinator
Client

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JUN 29 2023
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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 # **141033** INVOICE # _____

RECEIVED FROM: Steel Rives LLP APPLICATION R-88574
BY: _____ PERMIT _____
CASH: ☐ CHECK: # 953452 OTHER: (IDENTIFY) _____ TRANSFER _____
TOTAL REC'D \$ 480.00

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 47235
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 LICENSE FEE
0218 WELL DRILL CONSTRUCTOR \$ 0219 \$ _____
LANDOWNER'S PERMIT 0220 \$ _____
0223 OTHER (IDENTIFY) Protest \$ 480.00

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 \$ _____

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OVER THE COUNTER

RECEIPT: **141033** DATED 6-29-23 BY: [Signature]
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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)

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FUND _____ TITLE _____
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DESCRIPTION \$ _____

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Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

RECEIVED
JUN 29 2023
OWRD

INVOICE NUMBER	INVOICE DATE	INVOICE DESCRIPTION	AMOUNT PAID
SR062623	06/26/2023	R-88574 Application	\$480.00
TOTAL:			\$480.00

Steel Rives, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-7705
accounts@steelrives.com

SUPPLIER: State of Oregon Water Resources Department
SUPPLIER NUMBER 16765
CHECK NUMBER 953452
CHECK DATE 06/28/2023

STATE OF OREGON
WATER RESOURCES DEPARTMENT
WATER RIGHTS DIVISION

Before the Director of the Water Resources Department

In the Matter of Water Right	)	PROTEST OF RICK HALE;
Application Number R-88574	)	REQUEST FOR CONTESTED CASE
	)	HEARING

On May 16, 2023, the Oregon Water Resources Department (the "Department") issued a proposed final order ("PFO") recommending approval of water right application R-88574 (the "Application") filed by Rick and Jody Hale on April 12, 2018, subject to certain conditions. The PFO is attached hereto as Exhibit A, and the Application is attached hereto as Exhibit B. Pursuant to ORS 537.153(7) and OAR 690-310-0160, Mr. Hale protests the PFO and requests a contested case hearing.

1. Protestant's Name, Address, and Telephone Number

The Protestant's contact information is as follows:

Rick Hale
73426 Hwy 207
Echo, OR 97826
(541) 571-3669 (telephone)

Orders, notices, and other correspondence concerning this matter should be sent to legal counsel representing Mr. Hale in this matter as follows:

David E. Filippi
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, Oregon 97205
(503) 294-9529 (telephone)
david.filippi@stoel.com (email)

2. Protestant's Interest in PFO

The Application proposes the diversion of water from Runoff, Springs, and Brown Creek, tributaries to Lone Rock Creek, for storage of 35.21-acre feet ("AF") in four reservoirs as follows: 19.48 AF in Reservoir 1; 7.11 AF in Reservoir 2; 7.35 AF in Reservoir 4, and 1.27 AF in Reservoir 6. Reservoirs 1 and 2 were enlarged under Certificate 70284 and Reservoirs 4 and 6 were enlarged under Certificate 70285. Water proposed for storage under the Application would be used for fire protection, livestock, and wildlife, which are allowed uses under the John Day Basin Program. See OAR 690-506-0040(8)(b).

As an applicant, Mr. Hale has a direct and immediate interest in the PFO. Mr. Hale has a critical need for water storage throughout the year, and the PFO, among other things, recommends approval of the Draft Permit with either inapplicable or unduly burdensome conditions.

3. Argument

The Department must approve an application for a water use permit if the proposed use will not impair or be detrimental to the public interest. *See* ORS 537.170(6). If the following four criteria are satisfied, then the proposed use is presumed to neither impair nor be detrimental to the public interest:

- 1) the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- 2) if water is available;
- 3) if the proposed use will not injure other water rights; and
- 4) if the proposed use complies with rules of the Water Resources Commission.

ORS 537.153(2); OAR 690-310-0110(1).

The PFO concludes that the Application satisfies all four criteria. *See* PFO, at 2. First, the PFO recognizes that fire protection, livestock, and wildlife are all permitted uses under the John Day River's Middle Mainstem Subbasin Program. *See* OAR 690-506-0040(8)(b). Second, the PFO concludes that surface water is available during the period of February 1 through March 31 of each year. *See* ORS 537.153(3)(c); OAR 690-310-0150(2)(c). Third, the PFO finds that the proposed use would not injure other water rights. *See* ORS 537.153(3)(d); OAR 690-310-0150(2)(e). Finally, the PFO confirms that documentation has been submitted from the relevant land use planning jurisdiction to indicate the proposed use is allowed outright. PFO, at 3.

Consequently, this protest objects to certain language and several conditions included in the Draft Permit conditions,¹ as follows:

a. Authorized Points of Diversion

The Draft Permit incorrectly identifies an area labeled "Seepage Area from Res 1 to Res 2" as an authorized point of diversion. The seepage area is not a point of diversion because no water is diverted from this area. It is simply a wet area that Mr. Hale and his consultant believe contributes water to Reservoir 2. Since Reservoir 2 is filled through infiltration from surrounding areas, no diversion is necessary to maintain the water level in the reservoir. Consequently, Mr. Hale requests that this area not be labeled a formal, authorized point of diversion. As discussed

¹ This protest cites the conditions as they are numbered in the PFO, even though the conditions were misnumbered. In particular, there are two Permit Specific Conditions numbered as Condition 1. Consequently, Permit Specific Condition 2 should actually be Condition 3, and so forth. We request that the Department correct the numbering of the conditions in any final permit.

below, the Department's labeling of this area as a point of diversion has resulted in several confusing and inappropriate conditions being included in the Draft Permit.

b. Permit Specific Condition 2.C

As an initial note, the word "being" in the first sentence should be replaced with the word "begin."

Turning to the substance of the condition, Permit Specific Condition 2.C requires the installation of lower conduits with bank access valve controls on Reservoirs 1, 2, and 4 to pass inflow. During the pendency of the Application, in addition to existing water rights, Mr. Hale has been storing water in the reservoirs first under limited license LL-1683, followed by limited license LL-1908. During the time that water has been stored under the limited licenses, the watermaster has been satisfied with the operation of portable pumps, maintained in good working condition, as a means of passing flow. Mr. Hale would request that the Department modify Permit Specific Condition 2.C to allow the continued use of these portable pumps to pass flow if and when required by the watermaster, in lieu of installing lower conduits with bank access valve controls. Mr. Hale and his consultant believe that such installation could unnecessarily risk damage to the reservoir's structural integrity. In sum, Mr. Hale requests that Permit Specific Condition 2.C's language be amended to allow for the continued use of portable pumps as an alternative to the installation of lower conduits in the embankments of the reservoirs.

c. Permit Specific Condition 2.E

It appears that the first sentence of Permit Specific Condition 2.E is missing key wording, as it is not a complete sentence. The sentence fragment reads: "water diverted, and may require the permittee to report water-use on a periodic schedule as established by the Direct." Moreover, water use reporting may not be appropriate terminology here, as this application is for storage only, and does not include secondary use of stored water use beyond the storage itself. Mr. Hale reserves the rights to provide further argument after the Department provides the language that is clearly missing from the condition.

d. Permit Specific Conditions 3 and 4

Mr. Hale requests two changes to Permit Specific Conditions 3 and 4, which govern fish screens and fish passage. First, the language in Permit Specific Conditions 3 and 4 should be modified to clarify that the conditions only apply to the Brown Creek Diversion. As discussed above, the seepage area from Reservoir 1 to Reservoir 2 should not be classified as a formal diversion point, and as such, fish passage infrastructure is neither necessary nor feasible in this location.

Furthermore, the Oregon Department of Fish and Wildlife ("ODFW") has already approved a fish screen and bypass for the Brown Creek Diversion. Consequently, in light of the existing fish facilities that effectuate the goals of Permit Specific Conditions 3 and 4, Mr. Hale requests that Permit Specific Conditions 3 and 4 both be modified to state that if the permittee

has not already done so, the permittee is directed to work with ODFW to design and install ODFW appropriate fish screens and bypasses.

e. Permit Specific Condition 6

Mr. Hale supports the purpose of Permit Specific Condition 6 and requests that the language be amended to allow the permittee to release stored water without direction of the state engineer during emergency conditions. Mr. Hale is willing to work with the Department to delineate what constitutes emergency conditions. In short, Mr. Hale requests that this language be amended to allow for emergency releases by the permittee.

f. Permit Specific Condition 7

Permit Specific Condition 7 imposes restrictions on the diversion of water into storage based on minimum scenic waterway flows in the John Day River at McDonald Ferry, Oregon, gage 14048000. Mr. Hale strongly objects to this condition on several grounds.

First, this proposed condition was not mentioned in the Initial Review for the Application, and quite frankly, it was never raised in the over four years of discussions between the applicant and the Department since the submission of the Application in 2018. The first time this proposed condition appeared in any of the correspondence or other materials surrounding the Application was in the Draft Permit. The Department's process for considering and evaluating likely permit conditions was completely ignored with respect to this condition. The Department acted in an arbitrary and capricious manner by including the proposed restrictions without providing any notice, justification, or rationale for the proposed restrictions.

Second, the imposition of Permit Condition 7 has the potential of making the permit useless. Under the flow level limits listed in Permit Specific Condition 7, historical data indicates that diversions would be severely limited during what is proposed as the allowable fill period of February 1 through March 31. During this two-month period in the years 2019 through 2023, there would have been limitations on diversions every year. *See John Day River at McDonald Ferry, OR, gauge 14048000, USGS (Feb. 1-Mar. 31, 2019-2023)*. In 2023, for example, diversions would have been limited for the entirety of February and half of March under this condition. *See id.* (Feb. 1-Mar. 31, 2023).

Finally, there is no discussion or analysis that the diversion of water as proposed would have anything more than a *de minimis* impact on the John Day Scenic Waterway flows of 1000 cubic feet per second ("cfs") in February or 2000 cfs in March, or that regulation of Mr. Hale's diversion might be viewed as futile. Further, we are aware of no analysis or justification in the record for McDonald Ferry being the point of compliance, and no justification in the record to leave it to the discretion of the Director to change the location and nature of streamflow monitoring at his or her discretion. In short, Mr. Hale does not believe the record in any way supports the imposition of the condition as proposed, failing to meet the requirement of ORS 537.153(3)(b), which provides that the PFO must include "[a] brief statement that explains the criteria considered relevant to the decision." It remains unclear to Mr. Hale why the criteria

setting minimum flows at McDonald Ferry at the 1000 and 2000 cfs thresholds are required by Department regulations or are otherwise required to protect John Day River scenic flows.

For these reasons, this protest requests that Permit Condition 7 be removed in entirety.

g. Reservoir Condition 1 (first)²

As discussed above, for purposes of water evacuation, Mr. Hale would request that the means for water evacuation already approved by the watermaster for storage of water under the referenced limited licenses be deemed approved in the final permit. This condition should be modified accordingly.

h. Reservoir Condition 1 (second)

Mr. Hale requests that this condition only apply to the Brown Creek diversion. As discussed above, the seepage area between Reservoirs 1 and 2 does not constitute a diversion and there is no "live flow" running through this area.

i. Reservoir Condition 2

Under present conditions there is no measurable live overland flow into Reservoir 4. Furthermore, since Reservoir 4 fills primarily from underground seepage, the feasibility of measuring seepage inflow is unclear. Mr. Hale requests language clarifying that Reservoir Condition 2 applies only to overland flow, preferably by amending the existing language to state: "The Director may require the user to measure overland inflow and outflow from Reservoir 4, ~~above and below the reservoir respectively~~, to ensure flow is not impeded outside the storage season." Alternatively, Mr. Hale requests that the condition be clarified as to how the Department will require measuring seepage inflow.

j. Water Availability Assumptions

As a final point, the PFO assumes that water availability is limited during the requested months of November and December, due to a long-pending protested instream water right application, as well as a reservation for future use by the Oregon Department of Agriculture (RN80605A), which is reflected in the John Day Basin Program. *See* OAR 690-506-0060. While Mr. Hale does not agree with how the Department has taken these two items into account in determining water availability under the PFO, Mr. Hale looks forward to pursuing a further application to store water once the Department is in a position to accommodate requests to utilize the reservation. Mr. Hale believes that this issue, along with the deficiencies in the current Draft Permit, would benefit from further discussions. However, with the PFO issued, Mr. Hale felt that he had no choice but to file this protest to preserve his objections and concerns with the current Draft Permit.

² In the same way that the Draft Permit includes two separate Permit Specific Conditions numbered as Condition 1, the Draft Permit also includes two separate Reservoir Conditions numbered as Condition 1. To avoid further confusion, this protest distinguishes them by labeling the first as "Condition 1 (first)" and the second as "Condition 1 (second)." We request that the Department correct the numbering of these conditions in any final permit.

4. Protest Filing Requirements

Mr. Hale's protest is timely filed. Any person may submit a protest against a PFO within 45 days after publication of notice of the proposed final order in the Department's weekly notice. ORS 537.153(6), (7). The Department published notice of the PFO on May 16, 2023. Therefore, any protests of the PFO must be submitted on or before June 30, 2023.

Mr. Hale has included with this Protest the protest fee of \$480. *See* ORS 536.050(j)(B).

Mr. Hale has complied with the provisions of OAR 690-310-0160. The Protest is in writing and includes:

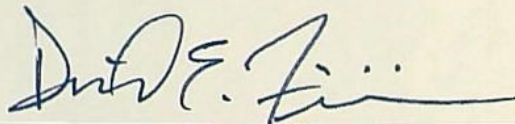
- (a) The name, address and telephone number of the protestant;
- (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
- (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
- (e) Any citation of legal authority supporting the protest, if known; and
- (f) For persons other than the applicant, the protest fee required under ORS 536.050.

OAR 690-310-0160(1).

5. Conclusion and Request for Contested Case Hearing

For the reasons set forth above, the Department should issue a revised order approving the Application. If for any reason the Department cannot or does not issue an order so-revised, Mr. Hale respectfully protests the PFO and requests a contested case hearing.

DATED: June 28, 2023



David E. Filippi, OSB No. 965095
Of Attorneys for Rick Hale

CERTIFICATE OF FILING AND SERVICE

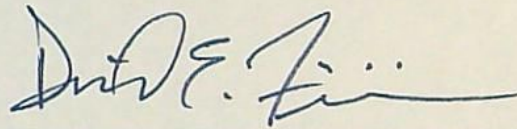
I hereby certify that on June 28, 2023, I caused the original of the foregoing **Protest of Rick Hale (Application No. R-88574); Request for Contested Case Hearing** to be filed by UPS OVERNIGHT DELIVERY to the following address:

Acting Director Doug Woodcock
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1271

I hereby certify that on June 28, 2023, I caused one copy of the foregoing **Protest of Rick Hale (Application No. R-88574); Request for Contested Case Hearing** to be filed by UPS OVERNIGHT DELIVERY to the following address:

Jody Hale
1112 E Saddle Mountain Road
Scottsdale, Arizona 85086

DATED: June 28, 2023



David E. Filippi, OSB No. 965095
Of Attorneys for Rick Hale

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JUN 29 2023

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**Oregon Water Resources Department
Water Right Services Division**

Water Right Application R-88574 in the)
name of RICK HALE and JODY HALE)
)

PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application R-88574 and a permit consistent with the attached draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the John Day Basin Program (OAR 690-506). These statutes and rules can be viewed on the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>.

The Department's main website can be found at: <https://www.oregon.gov/OWRD>.

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission.

ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a Proposed Final Order recommending issuance of the permit subject to any appropriate modifications or conditions.

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FINDINGS OF FACT

Application History

1. On April 12, 2018, Rick Hale and Jody Hale filed a complete application for the following water use:

Source: RUNOFF, SPRINGS, AND BROWN CREEK, TRIBUTARIES TO LONE ROCK CREEK

Use: FIRE PROTECTION, LIVESTOCK, AND WILDLIFE

Rate/Volume: 35.21 ACRE-FEET (AF), BEING 19.48 AF IN RESERVOIR 1 AND 7.11 AF IN RESERVOIR 2, ENLARGEMENT OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70284; AND 7.35 AF IN RESERVOIR 4 AND 1.27 AF IN RESERVOIR 6, ENLARGEMENT OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70285

Period of Use: JANUARY 1 THROUGH DECEMBER 31

County: WHEELER COUNTY

Place of Use: SECTIONS 9 AND 16, TOWNSHIP 6 SOUTH, RANGE 24 EAST, W.M.

2. On May 18, 2018, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 35.2 AF of water for storage, being 19.48 AF in Reservoir 1, 7.11 AF in Reservoir 2, enlargement of reservoirs constructed under Certificate 70284, and 7.35 AF in Reservoir 4 and 1.26 AF in Reservoir 6, enlargement of reservoirs constructed under Certificate 70285, from runoff and Brown Creek, tributaries to Lone Rock Creek, for fire protection, livestock, and wildlife is allowable February 1 through March 31 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On May 22, 2018, 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. The Department's continuing evaluation revealed that the following correction to the Initial Review is necessary to accurately reflect the application for a Permit. A numerical error occurred on the Initial Review which showed 1.26 AF of storage in Reservoir 6, when it should be 1.27 AF. The total storage volume should be 35.21 AF and not the 35.2 AF described in the initial review.

Presumption Criterion (a) Consistency with Basin Program

5. Fire protection, livestock, and wildlife use is allowed under the John Day Basin Program (OAR 690-506-0040(8)(b)). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criterion (b) Water Availability

6. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established that surface water is available during the period February 1 through March 31 of each year. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criterion (c) Injury Determination

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

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

8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(3)(b); OAR 690-310-0150(2)(b)
9. The proposed use is in an area of the state in which OAR 690-033-0115 through -0140 and OAR 690-033-0310 through -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 consistent with the Fish and Wildlife Program (Program).
- B. The application is not presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)
- C. The application, as conditioned and modified, would comply with the following OAR 690-033-0120(2) standards:
 - a. The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30;
 - b. The proposed use is conditioned to comply with screen design, installation, operation specifications and passage requirements as listed in ORS 498.301 through 498.346 and 509.580 through 509.910;
 - c. The proposed use complies with existing state and federal water quality standards; and
 - d. The proposed use is conditioned to comply with water use measurement, recording and reporting required by the Director.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs 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 conditions as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). As a result of this review, Permit Specific Conditions #3 through #8 have been included in the draft permit.
10. The proposed use is located above the John Day Scenic Waterway, as designated under ORS 390.826.

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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

11. No comments were received by the close of the comment period. OAR 690-310-0120(3)
12. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-310-0120(3)(a); OAR 690-310-0150(2)(i)

Other Criteria and Requirements

13. The amount requested, 35.2 acre-feet AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
14. The applicant proposed measures to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 4 and 5 of the application. OAR 690-310-0150(2)(j)
15. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

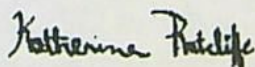
1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

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 R-88574, and issuance of a permit consistent with the attached draft permit.

DATED May 16, 2023



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

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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 **June 30, 2023**.

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 effect 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 interest under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public interest under ORS 537.170(8) would be impaired or be detrimentally 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 **June 30, 2023**. Requests for standing must be in writing, and must include the following:

- 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

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- 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 timely file a protest or timely request a hearing, 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. OAR 137-003-0670.

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 Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - 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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Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1271
(503) 986-0900
www.wrd.state.or.us

Application for a Permit to Store Water in a Reservoir (Standard Review)

Standard Review Process (ORS 537): You must use this form for any reservoir storing more than 9.2 acre-feet and with a dam more than 10 feet high.

Use a separate form for each reservoir. However, to obtain authorization for multiple reservoirs, multiple forms may be combined into one application if filed at the same time.

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml

1. APPLICANT INFORMATION

Applicant: Rick and Jody Hale
First Last

Mailing Address: 73426 Hwy 207

Echo Oregon 97826
City State Zip
Phone: 1 541 571 3669 426
Home Work Other
Fax: _____ E-Mail Address*: _____

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

We make application for a permit to construct 4 reservoirs and store the following described waters of the State of Oregon. The name of the reservoirs are **Res 1, Res 2, Res 4, and Res 6.** Existing certificates 70284 and 70285 authorize storage of water in these reservoirs. This application is for storage for the total storage capacity of the reservoirs with the intention that it be in addition to (stacked on) the storage previously authorized for these reservoirs by the existing certificates.

The applicant is concurrently submitting an Application for a Permit to Use Groundwater in Reservoirs Res 1, Res 2, and Res 6. The intent is that water to fill these reservoirs can be either surface water or ground water or a combination of surface water and groundwater, with the total amount not to exceed the capacity of the reservoirs.

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The applicant recommends Salem OWRD staff assigned to this application also be assigned to the Application for a Permit to Use Groundwater or at least familiarize themselves with the other application. While preparing this application the applicant's consultant, conferred with OWRD District #21 Water master, Ken Thiemann, and OWRD North Central Region, Regional Manager, Mike Ladd. These OWRD staff members requested the applicant request the Salem OWRD staff member assigned to this application to contact them while processing the application.

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2. **SOURCE OF WATER** for the proposed use: The source of water is winter runoff water, and surface water from Brown Creek a tributary of Lone Rock Creek.

Is the proposed use an enlargement of an existing dam/reservoir?

No

This application is for storage in existing reservoirs. No enlargement of the existing reservoirs are to be made.

If the reservoir is not in channel of a stream, state how it is to be filled:

Three of the four reservoirs, Res 1, Res 2, and Res 6 are constructed off channel. This application is for winter runoff water and surface water diverted directly from Brown Creek to fill Res 1, Res 2, and Res 6. There is one diversion point where water will be diverted directly from Brown Creek. From the Brown Creek diversion point water will be conveyed overland directly to Res 6. Brown Creek water in Res 6 may travel to Res 1 through a buried pipeline and may further travel from Res 1 to Res 2 by way of seepage.

Res 4, is located in the upper reach of a ravine. The source for Res 4 in this application is surface water from winter runoff and spring water. Refer to the table below:

Quantity of Water to be Stored

RESERVOIR #	STORAGE QUANTITY AC FT	WINTER RUNOFF & SPRING WATER AC FT	WINTER RUNOFF & SURFACE WATER DIVERTED FROM BROWN CREEK AC FT
Res 1	22.61		22.61*
Res 2	8.79		8.79*
Res 4	9.00	9.00	
Res 6	1.76		1.76*
Totals	42.16	9.00	33.16

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* The quantity of water to be stored under this application, together with the quantity of groundwater to be stored under a groundwater application being submitted concurrently with this application, shall not exceed the reservoir storage quantity stated in column 2.

For Department Use		
App. No. _____	Permit No. _____	Date _____

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3. DAM HEIGHT AND COMPOSITION

The maximum height of the structures will be 13 feet above streambed or ground surface at the centerline of the crest of the dam.

Attach preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area.

Note: If your dam height is greater than or equal to 10.0' above land surface AND your reservoir will store equal to or greater than 9.2 acre-feet, engineered plans and specifications must be approved prior to storage of water.

Summary of Reservoir Plans, Specifications, & Information

RES#	DAM HEIGHT FT±	WIDTH FT±	CREST WIDTH FT±	SURFACE AREA ACRES±	RES CAPACITY AC FT
Res 1*	13.0	645	20	3.3	22.61
Res 2	10.2	720	14	1.9	8.79
Res 4	9	540	13	2.0	9.00
Res 6	10	360	5	0.8	1.76
Totals				8.00	42.16

Refer to attached Exhibit A. for a typical cross section through the dams.

* This is an existing reservoir that was constructed in the late 1940s. There are no original design drawings of the reservoir. It is of a size and has a dam height such that it requires engineered plans and specifications. The applicant is working with Keith Mills, P.E., G.E., State Engineer for Water Resources in developing the necessary technical information required for this reservoir.

The dams will be (check one): ☒ Earthfill

If "other" give description:

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4. PRIMARY OUTLET WORKS

Describe the location and the dimensions of the outlet conduit through the dam:

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All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s and have been in operation since that time.

The outlet works for each reservoir consist of a conduit installed along the base of the embankment at the low point in the reservoir bottom.

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EXHIBIT B
Page 3 of 15
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Reservoir 1 has a 12" corrugated metal pipe outlet. There is a canal gate installed on the upstream end of the pipe.

Reservoir 2 has a 10" corrugated metal pipe outlet. There is a canal gate installed on the upstream end of the pipe.

Reservoir 4 has a 12" corrugated metal pipe outlet. There are two 6" butterfly valves on the downstream end of the pipe at the toe of the reservoir embankment. One of the butterfly valves can be used to discharge water into the natural ravine. The other valve can be used to discharge water into a pipe that extends northeasterly to Reservoir 1.

Reservoir 6 has a 4" PVC outlet pipe. The pipe has a ball valve at the toe of the embankment on the downstream side. This pipe extends down gradient 1580± feet to Reservoir 1. The 4" ball valve on this outlet is normally open allowing water accumulating in this reservoir to flow to Reservoir 1 and further flow to Res 2 as seepage from Res 1. In the event the 4" outlet pipe is not sufficient to empty or bypass water around the reservoir the owner has a portable drainage pump that can be used for this purpose.

NOTE: Most dams across a natural stream channel will need an outlet conduit having a minimum diameter of 8 inches or greater.

5. EMERGENCY SPILLWAY

Describe the location and the dimensions of the spillway channel:

With the exception of Reservoir 4, all the reservoirs are constructed off channel and do not have natural channeled streams or storm runoff that flow into the reservoirs. The surrounding topography, for the most part, is such that runoff from the up-gradient watersheds flows naturally around the reservoir sites. Reservoir 4 is constructed in the upper reach of a small ravine.

The overflow for Reservoir 1 is a 12" PVC pipe. It is located on the easterly side of the reservoir near the southeast corner.

The overflow for Reservoir 2 is an 8" corrugated metal pipe. It is located near the northerly corner of the reservoir.

The overflow for Reservoir 4 is an elliptical (24" high x 30" wide) corrugated metal culvert pipe. It is located near the northwesterly corner of the reservoir.

Reservoir 6 has a 12" PVC pipe overflow. It is located on the easterly side of the reservoir. This reservoir also has a shallow channel constructed around the northwesterly end of the embankment.

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EXHIBIT B
Page 4 of 15

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17-000-20

6. **THE USE(s)** of the impounded water will be:

The impounded water will be used for livestock, wildlife, and fire protection.

7. **THE AMOUNT OF WATER** to be stored is: 42.16 acre-feet in 4 small reservoirs. The area submerged by all of the reservoirs, when filled, will be: 8.00 acres. (See Table under Section 3).

8. PROJECT SCHEDULE: (List Month and Year)

Proposed date construction work will begin: All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s and have been operational since that time.

Proposed date construction work will be completed: All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s.

Proposed date water use will be completed: Water Use (storage) will be completed within 5 years of issuance of the permit.

Is this project fully or partially funded by the American Recovery and Reinvestment Act? (Federal stimulus dollars). NO

No federal funds have been or are anticipated to be used in construction, operation or maintenance of the reservoirs. The owner will provide all funding for the project.

9. PROPERTY OWNERSHIP

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

Yes (Please check appropriate box below then skip to section 10)

☒ There are no encumbrances

This land is encumbered by easements, rights of way, roads or other encumbrances (please provide a copy of the recorded deed(s))

☒ (Please check the appropriate box below)

I have a recorded easement or written authorization permitting access.

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

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).

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.

List the names and mailing addresses of all affected landowners:

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EXHIBIT B
Page 5 of 15

P-2023-76

Storage Water/5

10. WITHIN A DISTRICT

This section is Not Applicable to this permit application.

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

Irrigation District Name Not Applicable	Address	
City	State	Zip

11. MAP REQUIREMENTS The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section and quarter/quarter section of the proposed reservoir location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

See attached application map.

12. SIGNATURE

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 packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

I certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge:

Applicant:

Signature (If more than one applicant, all must sign.)

Date

Applicant:

Signature (If more than one applicant, all must sign.)

Date

Before you submit your application be sure to: • Answer each question completely. • Attach a legible map that includes township, range, section, quarter/quarter and tax lot. • Include a Land Use Information Form or receipt stub signed by a local official. • Include the legal description of all the property involved with this application. You may include a copy of your deed land sales contract or title insurance policy to meet this requirement. • Include a check payable to the Oregon Water Resources Department for the appropriate amount. The Department's fee schedule can be found at www.wrd.state.or.us or call (503) 986-0900.
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Until a change is requested all tax statements
should be sent to the following address:
RICK HALE & JOHANNA HALE
73426 HWY 207
ECHO, OR 97826

After Recording Please Return to:
MID-COLUMBIA TITLE COMPANY
P.O. BOX 290
BOARDMAN, OR 97818

WHEELER COUNTY, OREGON 2011-0006
D-WD
Cnt=1 Pgs=2 TERESAG 01/04/2011 02:31:23 PM
\$10.00 \$11.00 \$15.00 \$10.00 Total:\$46.00



00000984201100000060020021

I, Barbara S. Sifton, County Clerk for Wheeler County,
Oregon certify that the instrument identified herein was
recorded in the Clerk's records.

Barbara S. Sifton - County Clerk

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT, STEVEN E. SHERRELL, Grantor herein, does
hereby grant, bargain, sell and convey unto RICK HALE AND JOHANNA HALE, husband and
wife, as tenants by the entirety, Grantees, the following described tract of land in the
County of Wheeler, and State of Oregon, more particularly described as follows:

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO.

TO HAVE AND TO HOLD the granted premises unto the said Grantees, its heirs and assigns forever.

And the Grantors do covenant that they are lawfully seized in fee simple of the above granted premises free
from all encumbrances except all those items of record, if any, as of the date of this deed and those shown
below, if any, and that they will, and their successors heirs executors and administrators shall Warrant and
forever defend the granted premises, against the lawful claims and demands of all persons, except as stated
below: For encumbrances see Exhibit "A" attached hereto--

THE TRUE AND ACTUAL CONSIDERATION IS \$775,000.00.

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

Dated this 3 day of January, 2011

STEVEN E. SHERRELL

STATE OF OREGON
COUNTY OF UMATILLA

This instrument was acknowledged before me this 3 day of January, 2011 by STEVEN E.
SHERRELL.

Notary Public for the State of OREGON
My Commission Expires: JUNE 7, 2014



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R-88574

Land Use Information Form



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

NOTE TO APPLICANTS

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

This form is NOT required if:

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

NOTE TO LOCAL GOVERNMENTS

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

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
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Original in Ground water App.

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Land Use Information Form



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

Applicant(s): Rick and Jody Hale

Mailing Address: 73426 Hwy 207

City: Echo

State: OR

Zip Code: 97826

Daytime Phone: 1 541 571 3669

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:
T6S	R24E	09	NESE	400	EFU	☒ Diverted	☒ Conveyed	☐ Used	EFU
T6S	R24E	09	NWSE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SWSE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SESE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SENE	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	15	NWNW	400	EFU	☒ Diverted	☒ Conveyed	☐ Used	EFU
T6S	R24E	16	NENE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NWNE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	SWNE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NENW	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NWNW	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	SENE	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU

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

Wheeler

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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): WCZO 3.1(3) a, o
- ☐ Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) If approvals have been obtained but all appeal periods have not ended, check "Being pursued."

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

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

Name: N. Lynn Morley Title: Wheeler County Judge
 Signature: N. Lynn Morley Phone: 541-763-3460 Date: 4-2-18
 Government Entity: Wheeler County

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

Receipt for Request for Land Use Information

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

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DGV Consulting, PLLC

2141 South Lyle, Kennewick, WA 99337

April 4, 2018

1084.001

Oregon Water Resources Dept.
725 Summer Street NE, Suite A
Salem Oregon 97301-1271

Re: Rick Hale GW Permit Application and Application to Store Water in a Reservoir

To Whom it may concern:

I am assisting Rick Hale with preparation of documents associated with two permit applications. One is an Application for a Permit to Use Ground Water and the other is an Application for a Permit to Store Water in a Reservoir. Both permit applications are associated with existing reservoirs located on property in Wheeler County Oregon. The reservoirs are in Sections 9 and 16, T6S, R24E, W.M. The applicant is currently storing water in these reservoirs under certificates 70248 and 70285, as well as limited license LL- 1683. The applications is are being submitted to satisfy Condition 9 of the limited license.

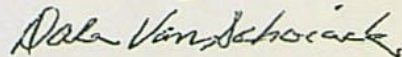
Certificates 70248 and 70285 allow for storage of water that fills a portion of the total storage capacity of the reservoirs. The new permit applications are, in part, for public ground water, and public surface water when it is available to be used to fill and maintain water in the existing reservoirs. The applications are for the total storage capacity of the reservoirs and are requested to be in addition to or stacked on the existing storage rights which will allow for more than one-time fill in the same season. The ground water permit application also involves an irrigation component.

The documents included with this letter are:

Application for a Permit to Use Ground Water
Permit Application Map for Use of Ground Water
Land Use Form
Copy of Deed
Check in the amount of \$5236.80 for the permit application and recording fee.

Minimum Requirements Checklist
Application for a Permit to Store Water in a Reservoir (Standard Review) (Multiple Reservoirs)
Application Map
Land Use Form
Copy of Deed
Check in the amount of \$2597.60 for the permit application and recording fee.

Sincerely,
DGV Consulting, PLLC



Dale VanSchoiack, P.E., CWRE
Consulting Engineer

Cc Rick Hale, Dave Filippi, OWRD LL-1683 file

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Phone 509 627 8717

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Email dalevconsulting@gmail.com

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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.

- | | |
|---|---|
| ☒ SECTION 1: applicant information | ☒ SECTION 7: the amount of water to be stored |
| ☒ SECTION 2: source of water | ☒ SECTION 8: project schedule |
| ☒ SECTION 3: dam height and composition | ☒ SECTION 9: property ownership |
| ☒ SECTION 4: primary outlet works | ☒ SECTION 10: within a district |
| ☒ SECTION 5: emergency spillway | ☒ SECTION 11: map requirements |
| ☒ SECTION 6: the use of the impounded water | ☒ SECTION 12: signature |

Attachments:

- ☒ Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- ☒ Provide the legal description of: (1) the property on which the water is to be stored, and (2) any property crossed by the proposed ditch, canal or other work
- ☒ Fees - Amount enclosed: \$ 2597.60
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.
- ☒ Preliminary plans and specifications including dam height, width, crest width and surface area for each reservoir

Provide a map and check that each of the following items is included:

- ☒ Map must be prepared by Certified Water Rights Examiner
- ☒ Permanent quality and drawn in ink
- ☒ Even map scale not less than 4" = 1 mile (examples: 1" = 400 ft, 1" = 1320 ft,)
- ☒ North Directional Symbol
- ☒ Township, Range, Section, Quarter/Quarter, Tax Lots
- ☒ Reference public-land survey corner on map
- ☒ Location of each dam if applicable, by reference to a recognized public-land survey corner (distances north/south and east/west)
- ☒ ~~NA~~ Indicate the area of use by Quarter/Quarter and tax lot identified clearly
- ☒ ~~NA~~ Number of acres per Quarter/Quarter and hachuring 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)
- ☒ Other See accompanying application for Groundwater

*Please note a secondary application is necessary if there will be out-of-reservoir uses associated with this application.

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Oregon Water Resources Department

Permit to Appropriate Surface Water for Storage -Standard Reservoir Application

[Main](#)[Help](#)[Return](#)[Contact Us](#)

Today's Date: Friday, April 13, 2018

Base Application Fee.		\$930.00
Number of acre feet to be diverted for Storage.	42.16	\$727.60
Number of reservoirs.	4	\$420.00
Permit Recording Fee. ***		\$520.00
*** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.		Recalculate
Estimated cost of Permit Application		\$2,597.60

OWRD Fee Schedule

Fee Calculator Version: B20170117

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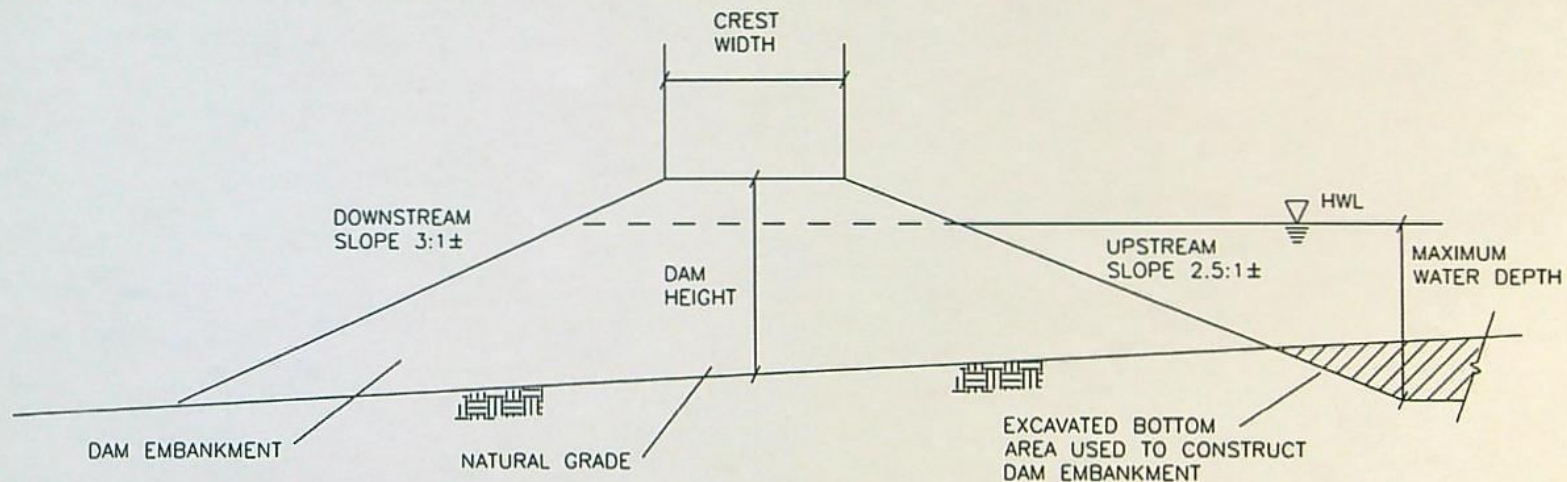
Application for a Permit to Store Water in a Reservoir
Applicant: Rick and Jody Hale

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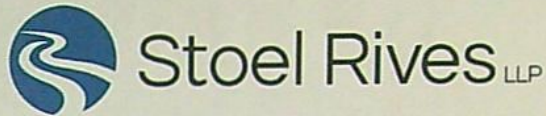
Exhibit A.
Attachment to:
Section 3. Dam Height and Composition



TYPICAL CROSS SECTION THROUGH DAMS

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17-588-2



June 28, 2023

VIA UPS/OVERNIGHT DELIVERY

State of Oregon Water Resources Department
Attn: Doug Woodcock, Interim Director
725 Summer St. NE, Suite A
Salem, OR 97301

Re: Protest of Rick Hale (Application No. R-88574)

Dear Mr. Woodcock:

Enclosed please find an original and one copy of Protest of Rick Hale (Application No. R-88574, Request for Contested Case Hearing), the associated Protest exhibits, and a check in the amount of \$480 for the protest fee.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David E. Filippi', is written over a horizontal line.

David E. Filippi

Enclosures:

- R-88574 Protest
- Exhibit A – R-88574 PFO
- Exhibit B – R-88574 Application
- Check for \$480 addressed to the Oregon Water Resources Department

cc (w/encls): Patricia McCarty, Protest Program Coordinator
Client

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STATE OF OREGON
WATER RESOURCES DEPARTMENT
WATER RIGHTS DIVISION

Before the Director of the Water Resources Department

In the Matter of Water Right	)	PROTEST OF RICK HALE;
Application Number R-88574	)	REQUEST FOR CONTESTED CASE
	)	HEARING

On May 16, 2023, the Oregon Water Resources Department (the "Department") issued a proposed final order ("PFO") recommending approval of water right application R-88574 (the "Application") filed by Rick and Jody Hale on April 12, 2018, subject to certain conditions. The PFO is attached hereto as Exhibit A, and the Application is attached hereto as Exhibit B. Pursuant to ORS 537.153(7) and OAR 690-310-0160, Mr. Hale protests the PFO and requests a contested case hearing.

1. Protestant's Name, Address, and Telephone Number

The Protestant's contact information is as follows:

Rick Hale
73426 Hwy 207
Echo, OR 97826
(541) 571-3669 (telephone)

Orders, notices, and other correspondence concerning this matter should be sent to legal counsel representing Mr. Hale in this matter as follows:

David E. Filippi
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, Oregon 97205
(503) 294-9529 (telephone)
david.filippi@stoel.com (email)

2. Protestant's Interest in PFO

The Application proposes the diversion of water from Runoff, Springs, and Brown Creek, tributaries to Lone Rock Creek, for storage of 35.21-acre feet ("AF") in four reservoirs as follows: 19.48 AF in Reservoir 1; 7.11 AF in Reservoir 2; 7.35 AF in Reservoir 4, and 1.27 AF in Reservoir 6. Reservoirs 1 and 2 were enlarged under Certificate 70284 and Reservoirs 4 and 6 were enlarged under Certificate 70285. Water proposed for storage under the Application would be used for fire protection, livestock, and wildlife, which are allowed uses under the John Day Basin Program. See OAR 690-506-0040(8)(b).

As an applicant, Mr. Hale has a direct and immediate interest in the PFO. Mr. Hale has a critical need for water storage throughout the year, and the PFO, among other things, recommends approval of the Draft Permit with either inapplicable or unduly burdensome conditions.

3. Argument

The Department must approve an application for a water use permit if the proposed use will not impair or be detrimental to the public interest. *See* ORS 537.170(6). If the following four criteria are satisfied, then the proposed use is presumed to neither impair nor be detrimental to the public interest:

- 1) the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- 2) if water is available;
- 3) if the proposed use will not injure other water rights; and
- 4) if the proposed use complies with rules of the Water Resources Commission.

ORS 537.153(2); OAR 690-310-0110(1).

The PFO concludes that the Application satisfies all four criteria. *See* PFO, at 2. First, the PFO recognizes that fire protection, livestock, and wildlife are all permitted uses under the John Day River's Middle Mainstem Subbasin Program. *See* OAR 690-506-0040(8)(b). Second, the PFO concludes that surface water is available during the period of February 1 through March 31 of each year. *See* ORS 537.153(3)(c); OAR 690-310-0150(2)(c). Third, the PFO finds that the proposed use would not injure other water rights. *See* ORS 537.153(3)(d); OAR 690-310-0150(2)(e). Finally, the PFO confirms that documentation has been submitted from the relevant land use planning jurisdiction to indicate the proposed use is allowed outright. PFO, at 3.

Consequently, this protest objects to certain language and several conditions included in the Draft Permit conditions,¹ as follows:

a. Authorized Points of Diversion

The Draft Permit incorrectly identifies an area labeled "Seepage Area from Res 1 to Res 2" as an authorized point of diversion. The seepage area is not a point of diversion because no water is diverted from this area. It is simply a wet area that Mr. Hale and his consultant believe contributes water to Reservoir 2. Since Reservoir 2 is filled through infiltration from surrounding areas, no diversion is necessary to maintain the water level in the reservoir. Consequently, Mr. Hale requests that this area not be labeled a formal, authorized point of diversion. As discussed

¹ This protest cites the conditions as they are numbered in the PFO, even though the conditions were misnumbered. In particular, there are two Permit Specific Conditions numbered as Condition 1. Consequently, Permit Specific Condition 2 should actually be Condition 3, and so forth. We request that the Department correct the numbering of the conditions in any final permit.

below, the Department's labeling of this area as a point of diversion has resulted in several confusing and inappropriate conditions being included in the Draft Permit.

b. Permit Specific Condition 2.C

As an initial note, the word "being" in the first sentence should be replaced with the word "begin."

Turning to the substance of the condition, Permit Specific Condition 2.C requires the installation of lower conduits with bank access valve controls on Reservoirs 1, 2, and 4 to pass inflow. During the pendency of the Application, in addition to existing water rights, Mr. Hale has been storing water in the reservoirs first under limited license LL-1683, followed by limited license LL-1908. During the time that water has been stored under the limited licenses, the watermaster has been satisfied with the operation of portable pumps, maintained in good working condition, as a means of passing flow. Mr. Hale would request that the Department modify Permit Specific Condition 2.C to allow the continued use of these portable pumps to pass flow if and when required by the watermaster, in lieu of installing lower conduits with bank access valve controls. Mr. Hale and his consultant believe that such installation could unnecessarily risk damage to the reservoir's structural integrity. In sum, Mr. Hale requests that Permit Specific Condition 2.C's language be amended to allow for the continued use of portable pumps as an alternative to the installation of lower conduits in the embankments of the reservoirs.

c. Permit Specific Condition 2.E

It appears that the first sentence of Permit Specific Condition 2.E is missing key wording, as it is not a complete sentence. The sentence fragment reads: "water diverted, and may require the permittee to report water-use on a periodic schedule as established by the Direct." Moreover, water use reporting may not be appropriate terminology here, as this application is for storage only, and does not include secondary use of stored water use beyond the storage itself. Mr. Hale reserves the rights to provide further argument after the Department provides the language that is clearly missing from the condition.

d. Permit Specific Conditions 3 and 4

Mr. Hale requests two changes to Permit Specific Conditions 3 and 4, which govern fish screens and fish passage. First, the language in Permit Specific Conditions 3 and 4 should be modified to clarify that the conditions only apply to the Brown Creek Diversion. As discussed above, the seepage area from Reservoir 1 to Reservoir 2 should not be classified as a formal diversion point, and as such, fish passage infrastructure is neither necessary nor feasible in this location.

Furthermore, the Oregon Department of Fish and Wildlife ("ODFW") has already approved a fish screen and bypass for the Brown Creek Diversion. Consequently, in light of the existing fish facilities that effectuate the goals of Permit Specific Conditions 3 and 4, Mr. Hale requests that Permit Specific Conditions 3 and 4 both be modified to state that if the permittee

has not already done so, the permittee is directed to work with ODFW to design and install ODFW appropriate fish screens and bypasses.

e. Permit Specific Condition 6

Mr. Hale supports the purpose of Permit Specific Condition 6 and requests that the language be amended to allow the permittee to release stored water without direction of the state engineer during emergency conditions. Mr. Hale is willing to work with the Department to delineate what constitutes emergency conditions. In short, Mr. Hale requests that this language be amended to allow for emergency releases by the permittee.

f. Permit Specific Condition 7

Permit Specific Condition 7 imposes restrictions on the diversion of water into storage based on minimum scenic waterway flows in the John Day River at McDonald Ferry, Oregon, gage 14048000. Mr. Hale strongly objects to this condition on several grounds.

First, this proposed condition was not mentioned in the Initial Review for the Application, and quite frankly, it was never raised in the over four years of discussions between the applicant and the Department since the submission of the Application in 2018. The first time this proposed condition appeared in any of the correspondence or other materials surrounding the Application was in the Draft Permit. The Department's process for considering and evaluating likely permit conditions was completely ignored with respect to this condition. The Department acted in an arbitrary and capricious manner by including the proposed restrictions without providing any notice, justification, or rationale for the proposed restrictions.

Second, the imposition of Permit Condition 7 has the potential of making the permit useless. Under the flow level limits listed in Permit Specific Condition 7, historical data indicates that diversions would be severely limited during what is proposed as the allowable fill period of February 1 through March 31. During this two-month period in the years 2019 through 2023, there would have been limitations on diversions every year. *See John Day River at McDonald Ferry, OR, gauge 14048000*, USGS (Feb. 1-Mar. 31, 2019-2023). In 2023, for example, diversions would have been limited for the entirety of February and half of March under this condition. *See id.* (Feb. 1-Mar. 31, 2023).

Finally, there is no discussion or analysis that the diversion of water as proposed would have anything more than a *de minimis* impact on the John Day Scenic Waterway flows of 1000 cubic feet per second ("cfs") in February or 2000 cfs in March, or that regulation of Mr. Hale's diversion might be viewed as futile. Further, we are aware of no analysis or justification in the record for McDonald Ferry being the point of compliance, and no justification in the record to leave it to the discretion of the Director to change the location and nature of streamflow monitoring at his or her discretion. In short, Mr. Hale does not believe the record in any way supports the imposition of the condition as proposed, failing to meet the requirement of ORS 537.153(3)(b), which provides that the PFO must include "[a] brief statement that explains the criteria considered relevant to the decision." It remains unclear to Mr. Hale why the criteria

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setting minimum flows at McDonald Ferry at the 1000 and 2000 cfs thresholds are required by Department regulations or are otherwise required to protect John Day River scenic flows.

For these reasons, this protest requests that Permit Condition 7 be removed in entirety.

g. Reservoir Condition 1 (first)²

As discussed above, for purposes of water evacuation, Mr. Hale would request that the means for water evacuation already approved by the watermaster for storage of water under the referenced limited licenses be deemed approved in the final permit. This condition should be modified accordingly.

h. Reservoir Condition 1 (second)

Mr. Hale requests that this condition only apply to the Brown Creek diversion. As discussed above, the seepage area between Reservoirs 1 and 2 does not constitute a diversion and there is no "live flow" running through this area.

i. Reservoir Condition 2

Under present conditions there is no measurable live overland flow into Reservoir 4. Furthermore, since Reservoir 4 fills primarily from underground seepage, the feasibility of measuring seepage inflow is unclear. Mr. Hale requests language clarifying that Reservoir Condition 2 applies only to overland flow, preferably by amending the existing language to state: "The Director may require the user to measure overland inflow and outflow from Reservoir 4, ~~above and below the reservoir respectively~~, to ensure flow is not impeded outside the storage season." Alternatively, Mr. Hale requests that the condition be clarified as to how the Department will require measuring seepage inflow.

j. Water Availability Assumptions

As a final point, the PFO assumes that water availability is limited during the requested months of November and December, due to a long-pending protested instream water right application, as well as a reservation for future use by the Oregon Department of Agriculture (RN80605A), which is reflected in the John Day Basin Program. See OAR 690-506-0060. While Mr. Hale does not agree with how the Department has taken these two items into account in determining water availability under the PFO, Mr. Hale looks forward to pursuing a further application to store water once the Department is in a position to accommodate requests to utilize the reservation. Mr. Hale believes that this issue, along with the deficiencies in the current Draft Permit, would benefit from further discussions. However, with the PFO issued, Mr. Hale felt that he had no choice but to file this protest to preserve his objections and concerns with the current Draft Permit.

² In the same way that the Draft Permit includes two separate Permit Specific Conditions numbered as Condition 1, the Draft Permit also includes two separate Reservoir Conditions numbered as Condition 1. To avoid further confusion, this protest distinguishes them by labeling the first as "Condition 1 (first)" and the second as "Condition 1 (second)." We request that the Department correct the numbering of these conditions in any final permit.

4. Protest Filing Requirements

Mr. Hale's protest is timely filed. Any person may submit a protest against a PFO within 45 days after publication of notice of the proposed final order in the Department's weekly notice. ORS 537.153(6), (7). The Department published notice of the PFO on May 16, 2023. Therefore, any protests of the PFO must be submitted on or before June 30, 2023.

Mr. Hale has included with this Protest the protest fee of \$480. *See* ORS 536.050(j)(B).

Mr. Hale has complied with the provisions of OAR 690-310-0160. The Protest is in writing and includes:

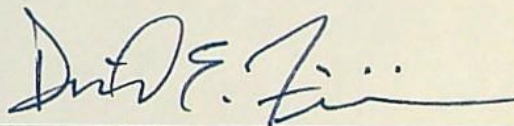
- (a) The name, address and telephone number of the protestant;
- (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
- (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
- (e) Any citation of legal authority supporting the protest, if known; and
- (f) For persons other than the applicant, the protest fee required under ORS 536.050.

OAR 690-310-0160(1).

5. Conclusion and Request for Contested Case Hearing

For the reasons set forth above, the Department should issue a revised order approving the Application. If for any reason the Department cannot or does not issue an order so-revised, Mr. Hale respectfully protests the PFO and requests a contested case hearing.

DATED: June 28, 2023



David E. Filippi, OSB No. 965095
Of Attorneys for Rick Hale

CERTIFICATE OF FILING AND SERVICE

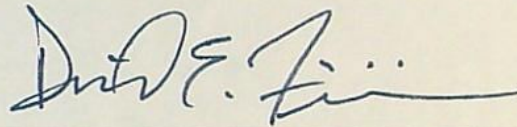
I hereby certify that on June 28, 2023, I caused the original of the foregoing **Protest of Rick Hale (Application No. R-88574); Request for Contested Case Hearing** to be filed by UPS OVERNIGHT DELIVERY to the following address:

Acting Director Doug Woodcock
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1271

I hereby certify that on June 28, 2023, I caused one copy of the foregoing **Protest of Rick Hale (Application No. R-88574); Request for Contested Case Hearing** to be filed by UPS OVERNIGHT DELIVERY to the following address:

Jody Hale
1112 E Saddle Mountain Road
Scottsdale, Arizona 85086

DATED: June 28, 2023



David E. Filippi, OSB No. 965095
Of Attorneys for Rick Hale

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**Oregon Water Resources Department
Water Right Services Division**

Water Right Application R-88574 in the)
name of RICK HALE and JODY HALE)
)

PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application R-88574 and a permit consistent with the attached draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the John Day Basin Program (OAR 690-506). These statutes and rules can be viewed on the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>.

The Department's main website can be found at: <https://www.oregon.gov/OWRD>.

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission.

ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a Proposed Final Order recommending issuance of the permit subject to any appropriate modifications or conditions.

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FINDINGS OF FACT

Application History

1. On April 12, 2018, Rick Hale and Jody Hale filed a complete application for the following water use:

Source: RUNOFF, SPRINGS, AND BROWN CREEK, TRIBUTARIES TO LONE ROCK CREEK

Use: FIRE PROTECTION, LIVESTOCK, AND WILDLIFE

Rate/Volume: 35.21 ACRE-FEET (AF), BEING 19.48 AF IN RESERVOIR 1 AND 7.11 AF IN RESERVOIR 2, ENLARGEMENT OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70284; AND 7.35 AF IN RESERVOIR 4 AND 1.27 AF IN RESERVOIR 6, ENLARGEMENT OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70285

Period of Use: JANUARY 1 THROUGH DECEMBER 31

County: WHEELER COUNTY

Place of Use: SECTIONS 9 AND 16, TOWNSHIP 6 SOUTH, RANGE 24 EAST, W.M.

2. On May 18, 2018, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 35.2 AF of water for storage, being 19.48 AF in Reservoir 1, 7.11 AF in Reservoir 2, enlargement of reservoirs constructed under Certificate 70284, and 7.35 AF in Reservoir 4 and 1.26 AF in Reservoir 6, enlargement of reservoirs constructed under Certificate 70285, from runoff and Brown Creek, tributaries to Lone Rock Creek, for fire protection, livestock, and wildlife is allowable February 1 through March 31 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On May 22, 2018, 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. The Department's continuing evaluation revealed that the following correction to the Initial Review is necessary to accurately reflect the application for a Permit. A numerical error occurred on the Initial Review which showed 1.26 AF of storage in Reservoir 6, when it should be 1.27 AF. The total storage volume should be 35.21 AF and not the 35.2 AF described in the initial review.

Presumption Criterion (a) Consistency with Basin Program

5. Fire protection, livestock, and wildlife use is allowed under the John Day Basin Program (OAR 690-506-0040(8)(b)). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criterion (b) Water Availability

6. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established that surface water is available during the period February 1 through March 31 of each year. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criterion (c) Injury Determination

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

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

8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(3)(b); OAR 690-310-0150(2)(b)
9. The proposed use is in an area of the state in which OAR 690-033-0115 through -0140 and OAR 690-033-0310 through -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 consistent with the Fish and Wildlife Program (Program).
- B. The application is not presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)
- C. The application, as conditioned and modified, would comply with the following OAR 690-033-0120(2) standards:
 - a. The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30;
 - b. The proposed use is conditioned to comply with screen design, installation, operation specifications and passage requirements as listed in ORS 498.301 through 498.346 and 509.580 through 509.910;
 - c. The proposed use complies with existing state and federal water quality standards; and
 - d. The proposed use is conditioned to comply with water use measurement, recording and reporting required by the Director.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs 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 conditions as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). As a result of this review, Permit Specific Conditions #3 through #8 have been included in the draft permit.
10. The proposed use is located above the John Day Scenic Waterway, as designated under ORS 390.826.

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

11. No comments were received by the close of the comment period. OAR 690-310-0120(3)
12. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-310-0120(3)(a); OAR 690-310-0150(2)(i)

Other Criteria and Requirements

13. The amount requested, 35.2 acre-feet AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
14. The applicant proposed measures to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 4 and 5 of the application. OAR 690-310-0150(2)(j)
15. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

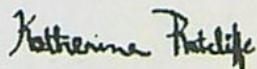
1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

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 R-88574, and issuance of a permit consistent with the attached draft permit.

DATED May 16, 2023



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

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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 **June 30, 2023**.

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 effect 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 interest under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public interest under ORS 537.170(8) would be impaired or be detrimentally 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 **June 30, 2023**. Requests for standing must be in writing, and must include the following:

- 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 timely file a protest or timely request a hearing, 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. OAR 137-003-0670.

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 Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - 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
-



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1271
(503) 986-0900
www.wrd.state.or.us

Application for a Permit to Store Water in a Reservoir (Standard Review)

Standard Review Process (ORS 537): You must use this form for any reservoir storing more than 9.2 acre-feet and with a dam more than 10 feet high.

Use a separate form for each reservoir. However, to obtain authorization for multiple reservoirs, multiple forms may be combined into one application if filed at the same time.

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml

1. APPLICANT INFORMATION

Applicant: Rick and Jody Hale
First Last

Mailing Address: 73426 Hwy 207

Echo Oregon 97826
City State Zip
Phone: 1 541 571 3669 426
Home Work Other

Fax: _____ E-Mail Address*: _____

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

We make application for a permit to construct 4 reservoirs and store the following described waters of the State of Oregon. The name of the reservoirs are Res 1, Res 2, Res 4, and Res 6. Existing certificates 70284 and 70285 authorize storage of water in these reservoirs. This application is for storage for the total storage capacity of the reservoirs with the intention that it be in addition to (stacked on) the storage previously authorized for these reservoirs by the existing certificates.

The applicant is concurrently submitting an Application for a Permit to Use Groundwater in Reservoirs Res 1, Res 2, and Res 6. The intent is that water to fill these reservoirs can be either surface water or ground water or a combination of surface water and groundwater, with the total amount not to exceed the capacity of the reservoirs.

The applicant recommends Salem OWRD staff assigned to this application also be assigned to the Application for a Permit to Use Groundwater or at least familiarize themselves with the other application. While preparing this application the applicant's consultant, conferred with OWRD District #21 Water master, Ken Thiemann, and OWRD North Central Region, Regional Manager, Mike Ladd. These OWRD staff members requested the applicant request the Salem OWRD staff member assigned to this application to contact them while processing the application.

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EXHIBIT B
Page 1 of 15

2. **SOURCE OF WATER** for the proposed use: The source of water is winter runoff water, and surface water from Brown Creek a tributary of Lone Rock Creek.

Is the proposed use an enlargement of an existing dam/reservoir?

No

This application is for storage in existing reservoirs. No enlargement of the existing reservoirs are to be made.

If the reservoir is not in channel of a stream, state how it is to be filled:

Three of the four reservoirs, Res 1, Res 2, and Res 6 are constructed off channel. This application is for winter runoff water and surface water diverted directly from Brown Creek to fill Res 1, Res 2, and Res 6. There is one diversion point where water will be diverted directly from Brown Creek. From the Brown Creek diversion point water will be conveyed overland directly to Res 6. Brown Creek water in Res 6 may travel to Res 1 through a buried pipeline and may further travel from Res 1 to Res 2 by way of seepage.

Res 4, is located in the upper reach of a ravine. The source for Res 4 in this application is surface water from winter runoff and spring water. Refer to the table below:

Quantity of Water to be Stored

RESERVOIR #	STORAGE QUANTITY AC FT	WINTER RUNOFF & SPRING WATER AC FT	WINTER RUNOFF & SURFACE WATER DIVERTED FROM BROWN CREEK AC FT
Res 1	22.61		22.61*
Res 2	8.79		8.79*
Res 4	9.00	9.00	
Res 6	1.76		1.76*
Totals	42.16	9.00	33.16

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* The quantity of water to be stored under this application, together with the quantity of groundwater to be stored under a groundwater application being submitted concurrently with this application, shall not exceed the reservoir storage quantity stated in column 2.

For Department Use		
App. No. _____	Permit No. _____	Date _____

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3. DAM HEIGHT AND COMPOSITION

The maximum height of the structures will be 13 feet above streambed or ground surface at the centerline of the crest of the dam.

Attach preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area.

Note: If your dam height is greater than or equal to 10.0' above land surface AND your reservoir will store equal to or greater than 9.2 acre-feet, engineered plans and specifications must be approved prior to storage of water.

Summary of Reservoir Plans, Specifications, & Information

RES#	DAM HEIGHT FT±	WIDTH FT±	CREST WIDTH FT±	SURFACE AREA ACRE±	RES CAPACITY AC FT
Res 1*	13.0	645	20	3.3	22.61
Res 2	10.2	720	14	1.9	8.79
Res 4	9	540	13	2.0	9.00
Res 6	10	360	5	0.8	1.76
Totals				8.00	42.16

Refer to attached Exhibit A. for a typical cross section through the dams.

* This is an existing reservoir that was constructed in the late 1940s. There are no original design drawings of the reservoir. It is of a size and has a dam height such that it requires engineered plans and specifications. The applicant is working with Keith Mills, P.E., G.E., State Engineer for Water Resources in developing the necessary technical information required for this reservoir.

The dams will be (check one): ☒ Earthfill

If "other" give description:

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4. PRIMARY OUTLET WORKS

Describe the location and the dimensions of the outlet conduit through the dam:

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All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s and have been in operation since that time.

The outlet works for each reservoir consist of a conduit installed along the base of the embankment at the low point in the reservoir bottom.

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Reservoir 1 has a 12" corrugated metal pipe outlet. There is a canal gate installed on the upstream end of the pipe.

Reservoir 2 has a 10" corrugated metal pipe outlet. There is a canal gate installed on the upstream end of the pipe.

Reservoir 4 has a 12" corrugated metal pipe outlet. There are two 6" butterfly valves on the downstream end of the pipe at the toe of the reservoir embankment. One of the butterfly valves can be used to discharge water into the natural ravine. The other valve can be used to discharge water into a pipe that extends northeasterly to Reservoir 1.

Reservoir 6 has a 4" PVC outlet pipe. The pipe has a ball valve at the toe of the embankment on the downstream side. This pipe extends down gradient 1580± feet to Reservoir 1. The 4" ball valve on this outlet is normally open allowing water accumulating in this reservoir to flow to Reservoir 1 and further flow to Res 2 as seepage from Res 1. In the event the 4" outlet pipe is not sufficient to empty or bypass water around the reservoir the owner has a portable drainage pump that can be used for this purpose.

NOTE: Most dams across a natural stream channel will need an outlet conduit having a minimum diameter of 8 inches or greater.

5. EMERGENCY SPILLWAY

Describe the location and the dimensions of the spillway channel:

With the exception of Reservoir 4, all the reservoirs are constructed off channel and do not have natural channeled streams or storm runoff that flow into the reservoirs. The surrounding topography, for the most part, is such that runoff from the up-gradient watersheds flows naturally around the reservoir sites. Reservoir 4 is constructed in the upper reach of a small ravine.

The overflow for Reservoir 1 is a 12" PVC pipe. It is located on the easterly side of the reservoir near the southeast corner.

The overflow for Reservoir 2 is an 8" corrugated metal pipe. It is located near the northerly corner of the reservoir.

The overflow for Reservoir 4 is an elliptical (24" high x 30" wide) corrugated metal culvert pipe. It is located near the northwesterly corner of the reservoir.

Reservoir 6 has a 12" PVC pipe overflow. It is located on the easterly side of the reservoir. This reservoir also has a shallow channel constructed around the northwesterly end of the embankment.

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JUN 29 2023

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EXHIBIT B
Page 4 of 15

6. **THE USE(s)** of the impounded water will be:

The impounded water will be used for livestock, wildlife, and fire protection.

7. **THE AMOUNT OF WATER** to be stored is: 42.16 acre-feet in 4 small reservoirs. The area submerged by all of the reservoirs, when filled, will be: 8.00 acres. (See Table under Section 3).

8. PROJECT SCHEDULE: (List Month and Year)

Proposed date construction work will begin: All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s and have been operational since that time.

Proposed date construction work will be completed: All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s.

Proposed date water use will be completed: Water Use (storage) will be completed within 5 years of issuance of the permit.

Is this project fully or partially funded by the American Recovery and Reinvestment Act? (Federal stimulus dollars). NO

No federal funds have been or are anticipated to be used in construction, operation or maintenance of the reservoirs. The owner will provide all funding for the project.

9. PROPERTY OWNERSHIP

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

Yes (Please check appropriate box below then skip to section 10)

☒ There are no encumbrances

This land is encumbered by easements, rights of way, roads or other encumbrances (please provide a copy of the recorded deed(s))

☒ (Please check the appropriate box below)

I have a recorded easement or written authorization permitting access.

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

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).

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.

List the names and mailing addresses of all affected landowners:

10. WITHIN A DISTRICT

This section is Not Applicable to this permit application.

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

Irrigation District Name Not Applicable	Address	
City	State	Zip

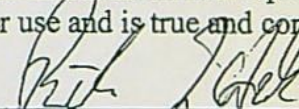
11. MAP REQUIREMENTS The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section and quarter/quarter section of the proposed reservoir location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.
See attached application map.

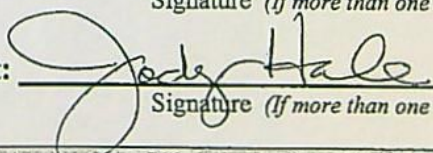
12. SIGNATURE

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 packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

I certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge:

Applicant:  4/10/18
Signature (If more than one applicant, all must sign.) Date

Applicant:  4/10/18
Signature (If more than one applicant, all must sign.) Date

Before you submit your application be sure to: • Answer each question completely. • Attach a legible map that includes township, range, section, quarter/quarter and tax lot. • Include a Land Use Information Form or receipt stub signed by a local official. • Include the legal description of all the property involved with this application. You may include a copy of your deed land sales contract or title insurance policy to meet this requirement. • Include a check payable to the Oregon Water Resources Department for the appropriate amount. The Department's fee schedule can be found at www.wrd.state.or.us or call (503) 986-0900.	RECEIVED APR 12 2018 OWRD RECEIVED JUN 29 2023 OWRD
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R-88574

Until a change is requested all tax statements
should be sent to the following address:
RICK HALE & JOHANNA HALE
73426 HWY 207
ECHO, OR 97826

After Recording Please Return to:
MID-COLUMBIA TITLE COMPANY
P.O. BOX 290
BOARDMAN, OR 97818

WHEELER COUNTY, OREGON 2011-0006
D-WD
Cnt=1 Pgs=2 TERESAG 01/04/2011 02:31:23 PM
\$10.00 \$11.00 \$15.00 \$10.00 Total:\$46.00



00000984201100000060020021
I, Barbara S. Sifton, County Clerk for Wheeler County,
Oregon certify that the instrument identified herein was
recorded in the Clerk's records.
Barbara S. Sifton - County Clerk

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT, STEVEN E. SHERRELL, Grantor herein, does hereby grant, bargain, sell and convey unto RICK HALE AND JOHANNA HALE, husband and wife, as tenants by the entirety, Grantees, the following described tract of land in the County of Wheeler, and State of Oregon, more particularly described as follows:

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO.

TO HAVE AND TO HOLD the granted premises unto the said Grantees, its heirs and assigns forever.

And the Grantors do covenant that they are lawfully seized in fee simple of the above granted premises free from all encumbrances except all those items of record, if any, as of the date of this deed and those shown below, if any, and that they will, and their successors heirs executors and administrators shall Warrant and forever defend the granted premises, against the lawful claims and demands of all persons, except as stated below: For encumbrances see Exhibit "A" attached hereto--

THE TRUE AND ACTUAL CONSIDERATION IS \$775,000.00.

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

Dated this 3 day of January, 2011

STEVEN E. SHERRELL

STATE OF OREGON
COUNTY OF UMATILLA

This instrument was acknowledged before me this 3 day of January, 2011 by STEVEN E. SHERRELL.

Notary Public for the State of OREGON
My Commission Expires: June 7, 2014



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R-88574

Statutory Warranty Deed

Page 1

2011-0006 pg. 1 of 2
EXHIBIT B
Page 7 of 15

Land Use Information Form



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

NOTE TO APPLICANTS

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

This form is NOT required if:

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

NOTE TO LOCAL GOVERNMENTS

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

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APR 12 2018

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Land Use Information Form



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

NOTE TO APPLICANTS

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

This form is NOT required if:

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

NOTE TO LOCAL GOVERNMENTS

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

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Original in Ground water App.

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Land Use Information Form



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

Applicant(s): Rick and Jody Hale

Mailing Address: 73426 Hwy 207

City: Echo

State: OR

Zip Code: 97826

Daytime Phone: 1 541 571 3669

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:
T6S	R24E	09	NESE	400	EFU	☒ Diverted	☒ Conveyed	☐ Used	EFU
T6S	R24E	09	NWSE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SWSE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SESE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SENE	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	15	NWNW	400	EFU	☒ Diverted	☒ Conveyed	☐ Used	EFU
T6S	R24E	16	NENE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NWNE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	SWNE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NENW	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NWNW	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	SENE	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU

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

Wheeler

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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): WCZO 3.1(3) a, o

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

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

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

Name: N. Lynn Morley Title: Wheeler County Judge

Signature: N. Lynn Morley Phone: 541-763-3460 Date: 4-2-18

Government Entity: Wheeler County

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

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

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DGV Consulting, PLLC

2141 South Lyle, Kennewick, WA 99337

April 4, 2018

1084.001

Oregon Water Resources Dept.
725 Summer Street NE, Suite A
Salem Oregon 97301-1271

Re: Rick Hale GW Permit Application and Application to Store Water in a Reservoir

To Whom it may concern:

I am assisting Rick Hale with preparation of documents associated with two permit applications. One is an Application for a Permit to Use Ground Water and the other is an Application for a Permit to Store Water in a Reservoir. Both permit applications are associated with existing reservoirs located on property in Wheeler County Oregon. The reservoirs are in Sections 9 and 16, T6S, R24E, W.M. The applicant is currently storing water in these reservoirs under certificates 70248 and 70285, as well as limited license LL- 1683. The applications are being submitted to satisfy Condition 9 of the limited license.

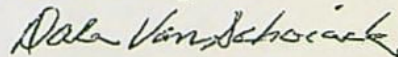
Certificates 70248 and 70285 allow for storage of water that fills a portion of the total storage capacity of the reservoirs. The new permit applications are, in part, for public ground water, and public surface water when it is available to be used to fill and maintain water in the existing reservoirs. The applications are for the total storage capacity of the reservoirs and are requested to be in addition to or stacked on the existing storage rights which will allow for more than one-time fill in the same season. The ground water permit application also involves an irrigation component.

The documents included with this letter are:

Application for a Permit to Use Ground Water
Permit Application Map for Use of Ground Water
Land Use Form
Copy of Deed
Check in the amount of \$5236.80 for the permit application and recording fee.

Minimum Requirements Checklist
Application for a Permit to Store Water in a Reservoir (Standard Review) (Multiple Reservoirs)
Application Map
Land Use Form
Copy of Deed
Check in the amount of \$2597.60 for the permit application and recording fee.

Sincerely,
DGV Consulting, PLLC



Dale VanSchoiack, P.E., CWRE
Consulting Engineer

Cc Rick Hale, Dave Filippi, OWRD LL-1683 file

Phone 509 627 8717

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Email dalevconsulting@gmail.com

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.

- | | |
|---|---|
| ☒ SECTION 1: applicant information | ☒ SECTION 7: the amount of water to be stored |
| ☒ SECTION 2: source of water | ☒ SECTION 8: project schedule |
| ☒ SECTION 3: dam height and composition | ☒ SECTION 9: property ownership |
| ☒ SECTION 4: primary outlet works | ☒ SECTION 10: within a district |
| ☒ SECTION 5: emergency spillway | ☒ SECTION 11: map requirements |
| ☒ SECTION 6: the use of the impounded water | ☒ SECTION 12: signature |

Attachments:

- ☒ Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- ☒ Provide the legal description of: (1) the property on which the water is to be stored, and (2) any property crossed by the proposed ditch, canal or other work
- ☒ Fees - Amount enclosed: \$ 2597.60
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.
- ☒ Preliminary plans and specifications including dam height, width, crest width and surface area for each reservoir

Provide a map and check that each of the following items is included:

- ☒ Map must be prepared by Certified Water Rights Examiner
- ☒ Permanent quality and drawn in ink
- ☒ Even map scale not less than 4" = 1 mile (examples: 1" = 400 ft, 1" = 1320 ft,)
- ☒ North Directional Symbol
- ☒ Township, Range, Section, Quarter/Quarter, Tax Lots
- ☒ Reference public-land survey corner on map
- ☒ Location of each dam if applicable, by reference to a recognized public-land survey corner (distances north/south and east/west)
- ☒ ~~NA~~ Indicate the area of use by Quarter/Quarter and tax lot identified clearly
- ☒ ~~NA~~ Number of acres per Quarter/Quarter and hachuring 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)
- ☒ Other See accompanying application for Groundwater

*Please note a secondary application is necessary if there will be out-of-reservoir uses associated with this application.

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Oregon Water Resources Department

Permit to Appropriate Surface Water for Storage -Standard Reservoir Application

[Main](#)[Help](#)[Return](#)[Contact Us](#)

Today's Date: Friday, April 13, 2018

Base Application Fee.		\$930.00
Number of acre feet to be diverted for Storage.	42.16	\$727.60
Number of reservoirs.	4	\$420.00
Permit Recording Fee. ***		\$520.00
*** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.	Recalculate	
Estimated cost of Permit Application		\$2,597.60

OWRD Fee Schedule

Fee Calculator Version: B20170117

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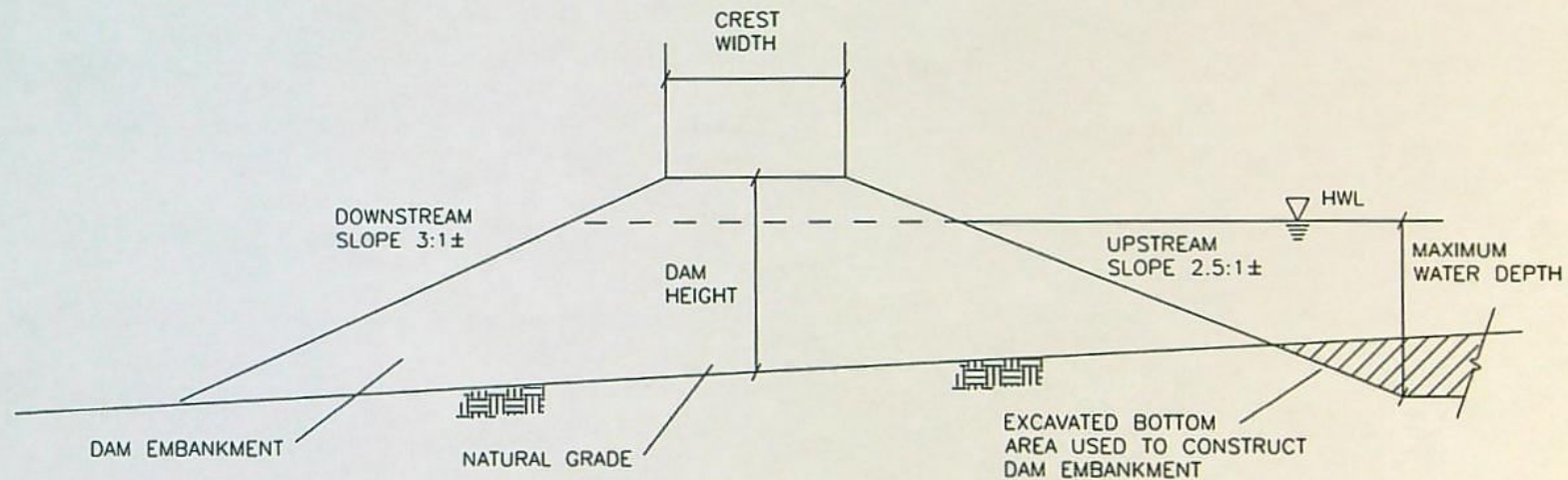
Application for a Permit to Store Water in a Reservoir
Applicant: Rick and Jody Hale

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Exhibit A.
Attachment to:
Section 3. Dam Height and Composition



TYPICAL CROSS SECTION THROUGH DAMS

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17588-2

Mailing List for FO Copies

Application R-88574

Permit R-15607

Original mailed to applicant:

RICK HALE
JODY HALE
73426 HWY 207
ECHO OR 97826

Sent via auto email:

1. Agent – Stoel Rives LLP, David Filippi - david.filippi@stoel.com
1. WRD – Watermaster District #21, Kenneth C. Thiemann
2. WRD – Chris Kowitz, NCR

Copies sent to:

1. WRD – File # R-88574
2. WRD – SW Section

Application Specialist: Adam Frederick

Copies Mailed

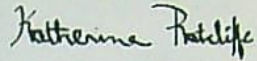
By: _____
(SUPPORT STAFF)

On: _____
(DATE)

ORDER

Application R-88574 is approved and Permit R-15607 is issued.

DATED _____



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

-
- If you have any questions about statements contained in this document, please contact Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
-

STATE OF OREGON

COUNTY OF WHEELER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

RICK HALE
JODY HALE
73426 HWY 207
ECHO OR 97826

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

APPLICATION FILE NUMBER: R-88574

SOURCES OF WATER: RUNOFF, SPRINGS, AND BROWN CREEK, TRIBUTARIES TO LONE ROCK CREEK

PURPOSE OR USE: FIRE PROTECTION, LIVESTOCK AND WILDLIFE

MAXIMUM VOLUME AND DAM HEIGHT:

Storage Facility	Volume	Maximum Dam Height	Enlargement of Certificate
RESERVOIR 1	19.48 AF	13.0 FEET	70284
RESERVOIR 2	7.11 AF	10.2 FEET	70284
RESERVOIR 4	7.35 AF	9.0 FEET	70285
RESERVOIR 6	1.27 AF	10.0 FEET	70285
Total Maximum Volume	35.21 AF		

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: FEBRUARY 1 THROUGH MARCH 31

DATE OF PRIORITY: APRIL 12, 2018

AUTHORIZED POINTS OF DIVERSION:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
SEEPAGE AREA FROM RES 1 TO RES 2	6 S	24 E	WM	9	NW SE	1710 FEET NORTH AND 1860 FEET WEST FROM SE CORNER, SECTION 9
BROWN CREEK POD	6 S	24 E	WM	15	NW NW	1000 FEET SOUTH AND 460 FEET EAST FROM NW CORNER, SECTION 15

RESERVOIR LOCATIONS:

Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
RES 1	6 S	24 E	WM	9	SW SE	1190 FEET NORTH AND 1700 FEET WEST FROM SE CORNER, SECTION 9
RES 2	6 S	24 E	WM	9	NW SE	2170 FEET NORTH AND 2000 FEET WEST FROM SE CORNER, SECTION 9
RES 4	6 S	24 E	WM	16	NE NW	950 FEET SOUTH AND 1750 FEET EAST FROM NW CORNER, SECTION 16
RES 6	6 S	24 E	WM	16	NE NE	320 FEET SOUTH AND 470 FEET WEST FROM SW CORNER, SECTION 16

THE AREAS TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
6 S	24 E	WM	9	NW SE
6 S	24 E	WM	9	SW SE
6 S	24 E	WM	16	NE NE
6 S	24 E	WM	16	NE NW

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. This permit does not authorize expanding the capacity of the impoundment structures.
3. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a lockable headgate at the Brown Creek point of diversion. The permittee shall maintain the device in good working order.
 - B. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in Reservoir 1. If no dead-pool, the gage must measure the full depth of the reservoir. The permittee shall maintain the device in good working order.
 - C. Before water use may begin under this permit, the permittee shall install lower conduits with bank access valve controls or other means, as approved by the watermaster, on Reservoirs 1, 2, and 4, to pass inflow. The permittee shall maintain the devices in good working order.
 - D. The permittee shall allow the watermaster access to these devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.

- E. The Director may require the permittee to keep and maintain a record of the volume of water diverted, and may require the permittee to report water-use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
- F. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

4. 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.

5. Fish 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.

6. Riparian Area Restoration:

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

7. Off-Channel Stored Water Releases:

The permittee shall not release polluted water from the off-channel reservoirs (Reservoirs 1, 2, and 6) into waters of the state except when the release is directed by the State Engineer to prevent dam failure.

8. Scenic Waterway Flows:

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 14048000, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows are subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

John Day Scenic Waterway	
Month	Minimum Flow (CFS)
February	1000
March	2000

RESERVOIR CONDITIONS

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
2. The permittee shall pass all live flow outside the storage season described above.
3. The Director may require the user to measure inflow and outflow from Reservoir 4, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
4. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
5. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir

purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

DAM SAFETY CONDITIONS

The following conditions apply to Reservoir 1:

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

STANDARD CONDITIONS

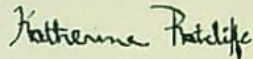
1. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

2. 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.
3. 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. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, 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 storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued _____



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

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application R-88574 in the
name of RICK HALE and JODY HALE

)
)
)

PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application R-88574 and a permit consistent with the attached draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the John Day Basin Program (OAR 690-506). These statutes and rules can be viewed on the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>.

The Department's main website can be found at: <https://www.oregon.gov/OWRD>.

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission.

ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a Proposed Final Order recommending issuance of the permit subject to any appropriate modifications or conditions.

FINDINGS OF FACT

Application History

1. On April 12, 2018, Rick Hale and Jody Hale filed a complete application for the following water use:

Source: RUNOFF, SPRINGS, AND BROWN CREEK, TRIBUTARIES TO LONE ROCK CREEK

Use: FIRE PROTECTION, LIVESTOCK, AND WILDLIFE

Rate/Volume: 35.21 ACRE-FEET (AF), BEING 19.48 AF IN RESERVOIR 1 AND 7.11 AF IN RESERVOIR 2, ENLARGEMENT OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70284; AND 7.35 AF IN RESERVOIR 4 AND 1.27 AF IN RESERVOIR 6, ENLARGEMENT OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70285

Period of Use: JANUARY 1 THROUGH DECEMBER 31

County: WHEELER COUNTY

Place of Use: SECTIONS 9 AND 16, TOWNSHIP 6 SOUTH, RANGE 24 EAST, W.M.

2. On May 18, 2018, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 35.2 AF of water for storage, being 19.48 AF in Reservoir 1, 7.11 AF in Reservoir 2, enlargement of reservoirs constructed under Certificate 70284, and 7.35 AF in Reservoir 4 and 1.26 AF in Reservoir 6, enlargement of reservoirs constructed under Certificate 70285, from runoff and Brown Creek, tributaries to Lone Rock Creek, for fire protection, livestock, and wildlife is allowable February 1 through March 31 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On May 22, 2018, 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. The Department's continuing evaluation revealed that the following correction to the Initial Review is necessary to accurately reflect the application for a Permit. A numerical error occurred on the Initial Review which showed 1.26 AF of storage in Reservoir 6, when it should be 1.27 AF. The total storage volume should be 35.21 AF and not the 35.2 AF described in the initial review.

Presumption Criterion (a) Consistency with Basin Program

5. Fire protection, livestock, and wildlife use is allowed under the John Day Basin Program (OAR 690-506-0040(8)(b)). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criterion (b) Water Availability

6. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established that surface water is available during the period February 1 through March 31 of each year. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criterion (c) Injury Determination

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

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

8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(3)(b); OAR 690-310-0150(2)(b)
9. The proposed use is in an area of the state in which OAR 690-033-0115 through -0140 and OAR 690-033-0310 through -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 consistent with the Fish and Wildlife Program (Program).
- B. The application is not presumed to impair or be detrimental to the public interest. OAR 690-033-0120(1)
- C. The application, as conditioned and modified, would comply with the following OAR 690-033-0120(2) standards:
 - a. The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30;
 - b. The proposed use is conditioned to comply with screen design, installation, operation specifications and passage requirements as listed in ORS 498.301 through 498.346 and 509.580 through 509.910;
 - c. The proposed use complies with existing state and federal water quality standards; and
 - d. The proposed use is conditioned to comply with water use measurement, recording and reporting required by the Director.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs 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 conditions as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b). As a result of this review, Permit Specific Conditions #3 through #8 have been included in the draft permit.
10. The proposed use is located above the John Day Scenic Waterway, as designated under ORS 390.826.

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

11. No comments were received by the close of the comment period. OAR 690-310-0120(3)
12. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-310-0120(3)(a); OAR 690-310-0150(2)(i)

Other Criteria and Requirements

13. The amount requested, 35.2 acre-feet AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
14. The applicant proposed measures to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 4 and 5 of the application. OAR 690-310-0150(2)(j)
15. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

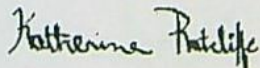
1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

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 R-88574, and issuance of a permit consistent with the attached draft permit.

DATED May 16, 2023



Katherine Ratcliffe
Water Rights Section Manager, for
Douglas E. Woodcock, Acting 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 **June 30, 2023**.

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 effect 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 interest under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public interest under ORS 537.170(8) would be impaired or be detrimentally 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 **June 30, 2023**. Requests for standing must be in writing, and must include the following:

- 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 timely file a protest or timely request a hearing, 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. OAR 137-003-0670.

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 Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - 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
-

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF WHEELER

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

RICK HALE
JODY HALE
73426 HWY 207
ECHO OR 97826

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

APPLICATION FILE NUMBER: R-88574

SOURCE OF WATER: RUNOFF, SPRINGS, AND BROWN CREEK, TRIBUTARIES TO LONE ROCK CREEK

PURPOSE OR USE: FIRE PROTECTION, LIVESTOCK AND WILDLIFE

MAXIMUM VOLUME AND DAM HEIGHT:

Storage Facility	Volume	Maximum Dam Height	Enlargement of Certificate
RESERVOIR 1	19.48 AF	13.0 FEET	70284
RESERVOIR 2	7.11 AF	10.2 FEET	70284
RESERVOIR 4	7.35 AF	9.0 FEET	70285
RESERVOIR 6	1.27 AF	10.0 FEET	70285
Total Maximum Volume	35.21 AF		

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: FEBRUARY 1 THROUGH MARCH 31

DATE OF PRIORITY: APRIL 12, 2018

AUTHORIZED POINTS OF DIVERSION:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
SEEPAGE AREA FROM RES 1 TO RES 2	6 S	24 E	WM	9	NW SE	1710 FEET NORTH AND 1860 FEET WEST FROM SE CORNER, SECTION 9
BROWN CREEK POD	6 S	24 E	WM	15	NW NW	1000 FEET SOUTH AND 460 FEET EAST FROM NW CORNER, SECTION 15

RESERVOIR LOCATIONS:

Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
RES 1	6 S	24 E	WM	9	SW SE	1190 FEET NORTH AND 1700 FEET WEST FROM SE CORNER, SECTION 9
RES 2	6 S	24 E	WM	9	NW SE	2170 FEET NORTH AND 2000 FEET WEST FROM SE CORNER, SECTION 9
RES 4	6 S	24 E	WM	16	NE NW	950 FEET SOUTH AND 1750 FEET EAST FROM NW CORNER, SECTION 16
RES 6	6 S	24 E	WM	16	NE NE	320 FEET SOUTH AND 470 FEET WEST FROM SW CORNER, SECTION 16

THE AREA TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
6 S	24 E	WM	9	NW SE
6 S	24 E	WM	9	SW SE
6 S	24 E	WM	16	NE NE
6 S	24 E	WM	16	NE NW

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.
1. This permit does not authorize expanding the capacity of the impoundment structures.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a lockable headgate at the Brown Creek point of diversion. The permittee shall maintain the device in good working order.
 - B. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in Reservoir 1. If no dead-pool, the gage must measure the full depth of the reservoir. The permittee shall maintain the device in good working order.
 - C. Before water use may begin under this permit, the permittee shall install lower conduits with bank access valve controls or other means, as approved by the watermaster, on Reservoirs 1, 2, and 4, to pass inflow. The permittee shall maintain the devices in good working order.
 - D. The permittee shall allow the watermaster access to these devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - E. water diverted, and may require the permittee to report water-use on a periodic schedule

as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.

- F. 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. Fish 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.

5. Riparian Area Restoration:

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

6. Off-Channel Stored Water Releases:

The permittee shall not release polluted water from the off-channel reservoirs (Reservoirs 1, 2, and 6) into waters of the state except when the release is directed by the State Engineer to prevent dam failure.

7. Scenic Waterway Flows:

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 14048000, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows are subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

John Day Scenic Waterway	
Month	Minimum Flow (CFS)
February	1000
March	2000

RESERVOIR CONDITIONS

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
1. The permittee shall pass all live flow outside the storage season described above.
2. The Director may require the user to measure inflow and outflow from Reservoir 4, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
3. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
4. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

DAM SAFETY CONDITIONS

The following conditions apply to Reservoir 1:

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

STANDARD CONDITIONS

1. 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.
2. 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.
3. 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.
1. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
2. Within one year after storage of water, 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, Acting Director
Oregon Water Resources Department



WATERMASTER APPLICATION REVIEW

Application #: R-88574

Applicant's Name: Rick and Jody Hale

- 1) Would the proposed allocation have the potential for injury to existing rights?
☐ Yes ☒ No
- 2) Have you spoken with persons from other state agencies about this application?
☐ Yes ☒ No If yes, whom and why?
- 3) 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.
- 4) Please provide any additional information or conditions that you believe are necessary for this application.
See attached.

Watermaster Name: Ken Thiemann

Watermaster Signature: *Keneth C. Thiemann Jr.*

Date: 3/14/2019

WRD Caseworker:

503-986-0900/ Fax 503-986-0901

Rick & Jody Hale Surface Water application Watermaster availability review and Conditions on 3/14/2019 completed by Ken Thiemann.

Season:

Contingent on water being available, with no injury to other water users downstream, I recommend the water user can fill the reservoirs from Dec. 1 to Mar. 31. This water use authorization has no priority date and is subject to regulation by the Watermaster if downstream senior water rights are deficient at any time.

To install and maintain:

I would like staff gages installed in Res. 1 and Res. 3 as described by Certificate 70284 to be approved and coordinated by the Watermaster to be installed in early spring of 2019 to help determine the production of the springs after April 1 (the beginning of the Irrigation Season) and access to the property with one days' notice, to verify compliance.

I would like headgate to be lockable control valves on the diversion from Brown Creek to reservoir 6 as described by Certificate 70284 to be approved and coordinated by the Watermaster to be installed in early spring of 2019

Additionally reservoirs, 1, 2 and 4 shall have lower conduits with bank access valve controls or other means, as approved by the Watermaster, to pass inflow.

Mailing List for PFO/Draft Permit Copies

Application R-88574

PFO Date May 16, 2023

Original mailed via CERTIFIED MAIL to applicant:

RICK HALE
JODY HALE
73426 HWY 207
ECHO OR 97826

Copies Mailed	
By:	<u>KMWF</u>
	(SUPPORT STAFF)
On:	<u>5-16-2023</u>
	(DATE)

Sent via auto email:

1. Agent – Stoel Rives LLP, David Filippi - david.filippi@stoel.com
2. WRD – Watermaster District #21, Kenneth C. Thiemann
3. WRD – Chris Kowitz, NCR
4. WRD – SW Section
5. WRD – Dam Safety, Keith Mills
6. DSL – Wetlands Specialist

Copies sent to:

1. WRD – File # R-88574

Application Specialist: Adam Frederick

4/23/22

P

MUCKEN Alyssa M * WRD

From: FRENCH Kim R * WRD
Sent: Monday, April 11, 2022 10:21 AM
To: MUCKEN Alyssa M * WRD; WOODCOCK Douglas E * WRD
Cc: BJORK Mary F * WRD
Subject: RE: Please review LL 1908 DRAFT (Rick and Judy Hale)

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Kim - I saved this same email on the ADPS directory, although you sent the last email about it in April 2022 to Doug + Dwight regarding reservations.
 -Alyssa

We have a written process for requesting water from a reservation and I created a new application for back in 2016 (with edits from ODFW and ODA), but the application form was never signed off by management (Tim) and was never put on the website.

If anyone wants to help me continue the process of getting the new application published, I'd be happy to send it to you. If we get that part completed, I can respond to Dave F. to let him know of the process for requesting reserved water.

Thank you,

Kim French | Water Rights Application 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!

This is just a friendly reminder that the Salem office is still closed to the public, per the Governor's executive order ([click here for the press release from last March](#)). We encourage everyone to use FedEx, UPS and the postal service to submit documents, but if an in-person meeting is absolutely necessary, please [set up an appointment time](#) with staff in the Salem office.

From: MUCKEN Alyssa M * WRD <Alyssa.M.MUCKEN@water.oregon.gov>
Sent: Friday, April 8, 2022 3:47 PM
To: WOODCOCK Douglas E * WRD <Douglas.E.WOODCOCK@water.oregon.gov>; FRENCH Dwight W * WRD <Dwight.W.FRENCH@water.oregon.gov>
Cc: BJORK Mary F * WRD <Mary.F.BJORK@water.oregon.gov>; FRENCH Kim R * WRD <Kim.R.FRENCH@water.oregon.gov>
Subject: Please review LL 1908 DRAFT (Rick and Judy Hale)
Importance: High

Hi Dwight and Doug, I'm providing you an opportunity to review a draft order for LL 1908, specifically the water availability finding. Recall that we met, along with Mary, on March 1 to learn more about the John Day basin "reservations" in response to David Filippi's emailed questions about the water availability determination. Our group agreed to allow a storage season of Jan, Feb, and March, which would be the resulting months available if the reservation values were removed from WARS. David had asked for December to be considered, but as a reminder, December is negative because of the pending reservation and a protested ISWR application received in the 1990's.

The findings in the order are simple. We've also drafted a file memo to state why January is allowable for this limited license. Strictly looking at WARS, only Feb & March show as available.

As a reminder, the applicant, Rick and Judy Hale, have a pending reservoir application, R-88574. We also agreed that the limited license decision does not apply to that application and further discussions are necessary, likely with ODA. Kim French is assigned to that application and has been briefed on the issue. David emailed a couple weeks ago inquiring about how to access the reservation through the proper forms, notification, etc. It went to several of us, and I haven't seen a reply.

Please send any edits to Mary.
Have a nice weekend,

Alyssa Mucken

Basin Coordinator | NW Region
Oregon Water Resources Department
Cell: 503-871-6964

From: BJORK Mary F * WRD <Mary.F.BJORK@water.oregon.gov>
Sent: Thursday, April 07, 2022 2:46 PM
To: MUCKEN Alyssa M * WRD <Alyssa.M.MUCKEN@water.oregon.gov>
Cc: BJORK Mary F * WRD <Mary.F.BJORK@water.oregon.gov>
Subject: RE: review complete: 1908-ord-license-FINAL DRAFT-3-29-2022_v4amm edits.docm
Importance: High

Thanks so much Alyssa! Please find attached a clean copy of the final order. I proofed it again myself just to confirm. I really appreciate all your help on this and offer to forward it to Dwight and Doug. I'm attaching the memo here too.

Mary

Mary F. Bjork

Water Rights Program Analyst
Oregon Water Resources Department
725 Summer St NE, Suite A, Salem OR 97301 | Cell 503-979-9895



Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

From: MUCKEN Alyssa M * WRD <Alyssa.M.MUCKEN@water.oregon.gov>
Sent: Thursday, April 07, 2022 8:01 AM
To: BJORK Mary F * WRD <Mary.F.BJORK@water.oregon.gov>
Subject: review complete: 1908-ord-license-FINAL DRAFT-3-29-2022_v4amm edits.docm
Importance: High

Hi Mary, looks good. Just a few edits and one question about the storage season requested. But, I see on the app they requested year-round, so never mind.

If you have the time to make a clean copy for Doug and Dwight's review, I can write the email and send it to them. I'm in interviews all day, but I can try to squeeze in an email during breaks.

This doc is also saved on the s/drive.

Alyssa

DEQ Water Right ReviewBasin & Subbasin: *John Day River Basin, Lower John Day Subbasin*What are the names of the surface water source and the nearest receiving waterbody? *Runoff, springs, Brown Creek, Lone Rock Creek*Requested water amount: *35.2 AF*Requested time period: *February 1st to March 31st*

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, pH and several other standards are based on the life cycle needs of salmonids and other resident fish and aquatic life. Exceedances of the standards can disrupt the life cycle of a ST&E fish species and may even cause death. Refer to DEQ's Water Right Application Review Procedures document for additional information. In addition, OWRD must consider water quality impacts as part of a public interest review, OAR 690-310-0120. Note: Water quality impacts and conditions unrelated to ST&E species should be noted as "Division 310" in the recommendations to OWRD.

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 require applicants to provide evidence, when they apply, that the proposed use complies with existing state and federal water quality standards. Geographic scope: Columbia River Basin and any waterbody that ultimately drains into the Columbia River.

For Proposed Uses outside of the Columbia River Basin, reviews must determine whether a proposed use may affect ST&E fish species habitat. Geographic scope: all other areas outside the Columbia River Basin geographic scope where OWRD determines ST&E fish species are present.

Upper and Lower Columbia

Based on 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? ☐ No ☒ Yes

List the conditions, mitigation or restrictions required for the proposed use to comply with existing state and federal water quality standards whenever possible; if no conditions can be recommended to meet the standards, write "none":

Pond releases: *Permittee shall not release polluted off-channel stored water into waters of the state, unless under emergency situations. For routine maintenance, the Permittee shall land apply stored water or provide treatment prior to releasing it February 1-March 31. Permittee shall comply with OAR 340-041 and ensure that water-quality standards are not violated by releases from storage.*

Statewide

Will the proposed use result in water quality impacts that will cause either "loss" or "net loss" of essential habitat of ST&E fish species? ☐ No ☐ Yes

What conditions are recommended so that the proposed use will not result in "loss" or "net loss" of essential habitat of ST&E fish species? If conditions cannot be recommended to protect water quality to meet the standards of either "loss" or "net loss", write "none".

DEQ review prepared by: *Sa. 14, 224K* Date prepared: *12/24/18 1/14/19*

ODA review requested: ☐ No ☒ Yes Date review sent to ODA: *12/24/18*

ODA reviewer: *Mike Powers, Margaret Matter* ODA review date: *1/3/19* Comments: *Ok with permit condition language.*

THE SECTION BELOW IS FOR DEQ INTERNAL USE ONLY

1. DEQ's antidegradation policy (OAR 340-041-0004) is designed to protect water from further degradation from new or increased sources of pollution and protects, maintains, and enhances surface water quality to protect existing beneficial uses. Oregon's Antidegradation rule states that certain uses are allowed without an antidegradation review.

Is the proposed activity a temporary use in response to an emergency, a restoration activity that the Department of Environmental Quality has determined provides a net ecological benefit, or a temporary use to protect human health and welfare (less than six months), for which the applicant has demonstrated that they will minimize adverse effects to threatened and endangered species?

☒ No. ☐ Yes. Approve application and identify conditions necessary to protect the water quality for the habitat of ST&E fish species.

2. Will the proposed activity result in a permanent withdrawal directly from the Outstanding Resource Water with critical habitat for ST&E fish species?

☒ No. ☐ Yes. 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. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation is likely needed to maintain ORW.

3. Is this source **Water Quality Limited** water or tributary to a water quality limited water (limit downstream review to 6th field HUC) for parameters that are commonly affected by flow (temperature, dissolved oxygen, pH, etc.)?

☐ No ☒ Yes. 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. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation is likely needed to maintain water quality conditions during season of impairment.

Biological Criteria

Oregon's biological criteria standards are based on the assemblage of species needed to maintain a healthy resident biological community. Resident biological communities are the local food webs that support fish. Reduced flows and increased temperatures will degrade the biological community and therefore result in the diminution of habitat of sensitive, threatened, or endangered fish species.

Sedimentation

While sediment is an essential part of healthy functioning stream systems, excessive sediment loads can have severe negative impacts on a stream ecosystem. Many fish species are adapted to high suspended sediment levels that occur for short periods of time, but longer exposure to high levels of suspended sediment can interfere with feeding behavior, damage gills, reduce available food, and reduce growth rates. Deposition and sedimentation (when sediment falls out of the water column and

deposits on the streambed) can smother eggs and fry in the substrate and fill in pools within the stream channel (reducing or eliminating cold water refugia important to cold water aquatic life during periods of high water temperature). Because bacteria, nutrients and other chemical substances are often attached to sediment particles, excessive sediment loading can also increase nutrient and toxics concentrations and contribute to decreased dissolved oxygen in both the water column and the spawning gravels. A reduction in streamflow will lead to locally increased deposition and sedimentation. It will also result in an increased rate of evaporation in warm weather, which in turn can increase nutrient and toxic concentrations in the stream. This would result in the diminution of water quality for the habitat of sensitive, threatened, or endangered fish species.

Temperature

Oregon's stream temperature standards are based on the life cycle needs of salmonids. Stream temperatures that exceed the standards can disrupt the life cycle of a sensitive, threatened, or endangered fish species and may even cause death. Temperatures are already known to exceed standards in Brown Creek in the summer. Summertime withdrawals from the stream will reduce the stream's heat capacity and cause greater fluctuation in daytime and nighttime stream temperatures. Non-summer withdrawals will reduce floodplain recharge from high flow events, thus reducing the volume of cool water released from floodplain storage into the stream throughout the year. This will result in the diminution of habitat of sensitive, threatened, or endangered fish species.

Table 1: Integrated Report/ 303(d) listings

Water Body (Stream/Lake)	River Miles	Parameter	Season	Criteria	Beneficial Uses	Status
Brown Creek	0-9.4	Biological Criteria	Year Round	Waters of the state must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.	Aquatic Life	Category 5, TMDL needed
Brown Creek	0-9.5	Sedimentation	Year Round	The formation of appreciable bottom or sludge deposits or the formation of any organic or inorganic deposits deleterious to fish or other aquatic life or injurious to public health, recreation, or industry may not be allowed.	Fish, aquatic life, public health, recreation, industry	Category 5, TMDL needed
Brown Creek	0-9.5	Temperature	Year Round (non- spawning)	18.0 degrees Celsius 7-day-average maximum	Salmon and trout rearing and migration	Category 4, TMDL approved

To determine, select the effective Integrated Report at: <http://www.oregon.gov/deq/wq/Pages/2012-Integrated-Report.aspx> and under Listing Status, select "Water Quality Limited – All (Categories 3B, 4, and 5)". May also document existing water quality data that may not be included in the integrated report.

4. Is a **Total Maximum Daily Load** established for parameters identified as being affected by hydromodification?

☒ No ☐ Yes.

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. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation is likely needed to maintain water quality conditions during season of impairment.

5. Is it likely that the cumulative withdrawals in the Water Availability Basins (WAB), including the proposed activity, will result in a lowering of water quality that will impair ST&E species habitat?

☒ No ☐ Yes. 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. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation may be considered.

Consider the cumulative impact of consumptive withdrawals in the OWRD WAB.

- Open OWRD's Water Availability Reporting System.
- Search for the water availability basin of interest. Select 50% exceedance, this represents that the calculated mean monthly flow, "natural flow", will be available 50% of the time.
- After the water availability report is generated, select the highest nesting order WAB that contains the POD.
- Download to Excel. To calculate "percent of flow" divide the "consumptive use" by the "natural stream flow" and multiply by 100. You may choose to add the consumptive portion or storage amount of the proposed use.

Table 2. Percent of natural flow. Monthly flow in Cubic Feet per Second (CFS). Annual flow in Acre Feet (AF).

Watershed ID	Exceedance Level	Month	Natural Stream Flow	Consumptive Use	Expected Stream Flow	Instream Requirement	Net Water Available	Percent of Flow
30620427	50	JAN	29.6	0.01	29.6	0	29.6	0%
30620427	50	FEB	60.7	0.251	60.4	0	60.4	0%
30620427	50	MAR	91.5	4.85	86.6	0	86.6	5%
30620427	50	APR	68.6	2.12	66.5	0	66.5	3%
30620427	50	MAY	30.4	5.39	25	0	25	18%
30620427	50	JUN	10.9	4.35	6.55	0	6.55	40%
30620427	50	JUL	2.5	1.45	1.05	0	1.05	58%
30620427	50	AUG	1.2	0.58	0.62	0	0.62	48%
30620427	50	SEP	1.2	0.3	0.9	0	0.9	25%
30620427	50	OCT	2.2	0.14	2.06	0	2.06	6%
30620427	50	NOV	7.3	0.01	7.29	0	7.29	0%
30620427	50	DEC	15.4	0	15.4	0	15.4	0%
30620427	50	ANN	19300	1180	18100	0	18100	

In making the determination, all water withdrawals in a water availability basin should be considered. Consider the percent of natural flow left instream in each month (see right-most column in Table 1). 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.

Antidegradation rule applies, 340-041-0004: 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.

In scientific literature, researchers have identified ecological harm occurring when flows are reduced by >6-35% of daily flow¹. Consider the seasonality of any listings and season of withdrawal to determine impact for each month of the year.

Consider if hydromodification, due to cumulative withdrawals, is likely a 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. By reducing stream flows (or groundwater recharge and resulting streamflow), it is likely to exacerbate the temperature and/or dissolved oxygen impairments.

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.

6. Is the use in compliance or can compliance with state and federal water quality standards be assured and ST&E habitat loss prevented by modifying the amount diverted, season of use, or by imposing permit condition(s)?

☐ No. ☒ Yes. Select appropriate condition from the conditions list.

If no, can flow mitigation be implemented to ensure compliance with state and federal water quality standards and prevent loss of ST&E habitat?

☐ No. ☐ Yes.

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: 10.1002/rra.1551

7. ORS 468B.025 prohibits pollution of waters of the state. Is there potential that the post diversion use (handling or water management) will degrade surface water or groundwater quality? (Example: release of thermally degraded stored water.) Or are there additional water-quality impairments that would result from this proposed use?

☐ No ☒ Yes. Provide basis for conclusion and note if the impacts would impact fish habitat: *These small ponds have the potential to trap sediment and warm in the summer. A release of warm, sediment laden water can degrade fish habitat, especially when flows are low.*

8. Can permit conditions be implemented to prevent water quality degradation?

☒ Yes. Select conditions from the conditions list. Send review to ODA if conditions are recommended for agricultural use. *See Pond Releases condition*

☐ No. Provide basis for conclusion:

CONDITIONS

Reviewer may modify stock condition language to meet site and project needs.

Flow Mitigation. DEQ recommends that the applicant mitigate anticipated impacts to water quality for the habitat of ST&E fish species by providing suitable replacement water. Additional mitigation may be required from other IRT members (example: OWRD may require mitigation for periods when water is not available). Surface flow mitigation is unlikely to provide the same benefit groundwater provides to gaining stream reaches. However, if groundwater mitigation is unavailable within the same aquifer, surface water mitigation will provide suitable mitigation.

Mitigation obligation: Prior to issuance of a permit, the applicant shall provide mitigation water that is of no less volume than the permitted use. Mitigation water shall be sourced upstream of the point of appropriation, or the uppermost point on the stream at which Potential for Surface water Interference occurs. If surface water 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.

Reduced Withdrawal: Water withdrawal is limited to *Enter CFS or AF for the defined period, or a month by month rate or volume.*

Period of Use: Water withdrawal is limited to the period: *start date through end date.*

Limit Withdrawal: No water shall be diverted under this right unless the flow in the *waterbody name* is at or above *CFS* cubic foot per second, as determined at Gaging Station ID

Riparian If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. Prior to diversion of water, the permittee shall submit a Riparian Mitigation Plan approved in writing by ODFW unless ODFW provides documentation that riparian mitigation is not necessary. The permittee is hereby directed to contact the local ODFW Fish Biologist prior to diverting water.

Pond releases: Permittee shall not release polluted off-channel stored water into waters of the state, unless under emergency situations. For routine maintenance, the Permittee shall land apply stored water or provide treatment prior to releasing it *February 1-March 31*. Permittee shall comply with OAR 340-041 and ensure that water-quality standards are not violated by releases from storage.

Pond construction: Permittee must construct pond off channel, *identify waterbody and set back to prevent stream capture and justification for distance selected.*

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

Lining: Permittee must line the pond with *include material or allowable infiltration rate* to minimize seepage and protect groundwater quality per OAR 340-040. The liner is to be in place and inspected and approved in writing by the DEQ prior to storage of water.* If the liner fails, it must be replaced within one calendar year.

Water Quality: The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water-quality standards.

Prohibited Activities: Permittee may not cause pollution of any waters of the state, or 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, per ORS 468B.025(1). If the Department of Environmental Quality determines that pollution of waters of the state is occurring, the permit holder is not in compliance with ORS 468B.025(1), DEQ shall notify OWRD of the violation.

Agricultural Water Quality Management Area Rules: Permittee must comply with basin-specific Agricultural Water Quality Management Area Rules in OAR 603-095. Livestock management and cropping must protect riparian areas on the property, allowing site capable vegetation along streams to establish and grow to provide the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff. Active management of livestock and/or a livestock exclusion fence is needed to protect riparian areas and provide the required functions.

Live Flow: Once the allocated volume has been stored, all live flow must be passed downstream at a rate equal to that of the inflow in a method that protects instream water quality.

Site-Specific Condition:

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

Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SHEET Upper Columbia Basin (Above Bonneville Dam)

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 to be 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).

Section 1: Proposed Use

Proposed period of use (from application): Year round

Basin: John Day

Stream: Brown Creek

Tributary to: Lone rock Creek

TRSQQ: 6S 24E (optional)

Section 2: Sensitive, Threatened, and/or Endangered (STE) Fish Species Present

- A) x No STE fish species are present at the location of the proposed use nor will be impacted by the proposed use. (Skip to Section 6) Res 4 source is from a spring runoff that is non-fish bearing.
- B) x The following STE fish species are present at the location of the proposed use or will be impacted by the proposed use: Res 1, 2, and 6 are located off channel but will divert from Brown Creek which is designated as steelhead distribution.

STE Species	Listing Status			Life Stage Present		
	Sensitive	Threatened	Endangered	Egg	Juvenile	Adult
<u>Mid C summer steelhead</u>	☐	x	☐	x	x	x
<u>Redband trout</u>	x	☐	☐	x	x	x
<u>type here</u>	☐	☐	☐	☐	☐	☐
<u>type here</u>	☐	☐	☐	☐	☐	☐
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Section 3: Potential Impacts to STE Fish Species

Note: Impacts identified below may be determined by professional judgment. Recommended mitigation for identified impacts is outlined in Section 7. See Section 8 for complete "condition" language.

3.1 Instream Flow

Note: Supporting information can be found in the associated Excel file for this application.

- A) ☐ ODFW has not identified biologically necessary flows within the impacted reach. However, based on best professional judgment, impacts to STE fish habitat from the proposed reduction in flow are expected to be inconsequential, and no compensation for a reduction in flow is recommended. (Skip to Section 3.2)
- B) ☐ There is an instream water right(s) (ISWR) that supports biological base flows for STE fish species at the Point of Diversion or downstream.
Certificate(s): type here
- C) ☐ ODFW has identified biologically necessary flows not captured in an instream water right (e.g., flows in a Basin Investigation Report, Persistence Flow Determination, Seasonally Varying Flow prescription, or other flow analysis) that would benefit STE fish species at the Point of Diversion or downstream.
Source: type here
- D) Are the biologically necessary flows identified above (Questions B and C) **available**¹ during the period of impact (see Tables 1 and 2 in the associated Excel file for supporting information)?
- ☐ YES; "Maintain Flow"
A further reduction in flow from the proposed use will not impair the identified biologically necessary flows for STE fish as long as the identified biologically necessary flows remain satisfied.
Note: Mitigation for a reduction in biologically necessary flows [Section 7, Part 1 and 2] is unnecessary, but mitigation may be recommended [Section 7, Part 3] for other impacts identified in Section 3.3.
- ☐ NO; The proposed use **will impair** the identified biologically necessary flows for STE fish wholly or partially during the period of impact.

3.2 Fish Passage and Screening

- A) Would the proposed use potentially create or maintain an artificial obstruction² to fish passage for STE native migratory fish currently or historically present *at the point of diversion* per ORS 509.585?
x YES; "Passage"
☐ NO
- B) Would STE fish species benefit from fish screening per ORS 498.306?
x YES; "Screen"
☐ NO

¹ Based on information WRD's Water Availability Reporting System (WARS)

² "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.

☐ "Future Protection"

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

3.3 Other Ecological Functions Important to STE Fish

Are there other impacts to ecological functions important to STE fish during the period of impact (see Table 3 in the associated Excel file for supporting information)?

☐ YES; Mitigation will be recommended in Section 7, Part 3.

☐ The proposed dam or reservoir will detrimentally inundate a wetland.

☒ Development of the point of diversion may reduce/degrade the riparian area.

☐ The proposed use will limit access to or directly impair cold-water refuges.

☐ Other impacts to STE fish: type here

☐ NO

Section 4: ODFW Findings Regarding Threatened and Endangered Fish Species (under OWRD's Division 33 Upper Columbia Rules)

Overarching Question 1:

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

☐ Not applicable; threatened and endangered fish are not present at the location of the proposed use nor will be impacted by the proposed use. Skip to Section 5.

☒ YES: ODFW did not identify impairment of biologically necessary flows (Page 2, Section 3.1, Question D), impacts to ecological functions important to protection or recovery of threatened and endangered fish (Page 3, Section 3.3), or impacts to threatened and endangered fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on best professional judgment.

☐ 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 Program³ due to impairment of biologically necessary flows (Page 2, Section 3.1, Question D) or to impacts to ecological functions important to threatened and endangered fish (Page 3, Section 3.3).

³ 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 achieve consistency with the Fish and Wildlife Program?**

- ☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened 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.

Note: This finding may prohibit the application from moving forward as proposed, so consult with the Water Quality/Quantity Program Manager prior to making this recommendation. Check Box A on page 8 and sign the document on page 11 prior to submitting the review to WRD.

☐ YES:

- ☐ Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of threatened or endangered fish and/or the proposed use will otherwise impact habitat or ecological functions important to threatened or endangered fish. Without appropriate mitigation, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to threatened or endangered fish. 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 (from Section 3 and 4), to compensate for any potential impact from the proposed use.

- ☐ In addition to conditions identified in Section 3 and mitigation outlined in Section 7, ODFW recommends the following:

Flow

1) Inconsequential or De Minimis Uses

☐ "Restrictor"

ODFW has determined that compensation for a reduction in flow is not necessary. However, a restrictor valve should be placed on the diversion system to ensure the permitted amount is not exceeded.

2) Surface Water or Groundwater Uses

☐ "Biologically Necessary Flows"

To protect beneficial uses, ODFW recommends the biologically necessary flows identified in Section 3.1 B or C [see OAR 690-410-0070(2)(h)] be met or the use mitigated for (see Recommended Mitigation Obligation in Section 7) prior to diversion of water.

Note: Mitigation may be also be recommended [Section 7, Part 3] for impacts identified in Section 3.3.

3) Reservoir Uses

Note: Specific mitigation for a reduction in biologically necessary flows [Section 7, Part 1 and 2] is not being recommended beyond the following condition, but mitigation may be recommended [Section 7, Part 3] for other impacts identified in Section 3.3.

- ☐ "Bypass Flows" (pass-through flows for reservoirs that directly divert from surface water)
- ☐ plus a net benefit (for reservoirs that directly divert from Habitat Category 2)

Other Ecological Functions☐ "Riparian"☐ Site-specific condition(s), including those related to Other Ecological Functions Important to STE Fish (Section 3.3): type here**Section 5: ODFW Findings Regarding Sensitive Fish Species (under OWRD's Division 33 Statewide Rules)****Overarching Question 1:****Will the proposed use result in no net loss of essential habitat of a sensitive fish species?**

- ☐ Not applicable; sensitive fish are not present at the location of the proposed use nor will be impacted by the proposed use. Skip to Section 6.
- ☒ **YES:** ODFW did not identify impairment of biologically necessary flows (Page 2, Section 3.1, Question D), impacts to ecological functions essential to sensitive fish (Page 3, Section 3.3), or the impacts to essential fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on best professional judgment.
- ☐ NO; ODFW has found impairment of biologically necessary flows (Page 2, Section 3.1, Question D) or impacts to ecological functions (Page 3, Section 3.3) essential to sensitive fish species during the period of impact.
- Note: For impacts to habitat identified as non-essential (i.e., Habitat Categories 3B-6), impacts may be identified in Section 6.*

Overarching Question 2:**Can the use be conditioned to result in no net loss of essential habitat of a sensitive fish species?**

- ☐ 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.
- Note: This finding may prohibit the application from moving forward as proposed, so consult with the Water Quality/Quantity Program Manager prior to making this recommendation. Check Box A on page 8 and sign the document on page 11 prior to submitting the review to WRD.*

☒ **YES:**☒ Same conditions and mitigation as outlined in Sections 3, 4, and 7.☐ In addition to conditions identified in Section 3 (and 4) and mitigation outlined in Section 7, ODFW

recommends the following:

Flow

- ☐ "Maintain Flow"
- ☐ "Restrictor"
- ☐ "Biologically Necessary Flows"
- ☐ "Bypass Flows"
- ☐ plus a net benefit
- ☐ Site-specific condition(s): type here

Passage and Screening

- ☐ "Passage"
- ☐ "Screen"
- ☐ "Future Protection"

Other Ecological Functions [Section 3.3]

- ☐ "Riparian"
- ☐ Site-specific condition(s): type here

Overarching Question 1:

Will the proposed use impair or be detrimental to the public interest, welfare, safety and health in regards to protection of commercial and game fishing, fish, wildlife, or recreation, or any other beneficial use to which the water may be applied for which it may have a special value to the public?

Note: Comment on STE wildlife species or other fish or wildlife species not already discussed.

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

X YES:

- ☐ Fish or wildlife not yet addressed in this review in Sections 1 – 5 are present during the period of impact.
Wildlife species present: type here
Additional fish species present: Redside shiner, Dace species, Sculpin species, Sucker species, and Pacific Lamprey
Additional comments: The majority of the proposed use is within threatened Mid-C summer steelhead distribution.
- ☐ Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of fish or wildlife, and/or the proposed use will otherwise impact habitat, commercial and game fishing, or recreation. Without appropriate mitigation, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to fish, wildlife, and/or their habitat.
- ☐ There are other impacts to ecological functions important to fish or wildlife during the period of impact that have not been addressed (see Table 3 in the associated Excel file for supporting information).
Mitigation will be recommended in Section 7, Part 3.
- ☐ The proposed dam or reservoir will detrimentally inundate a wetland.
- ☐ Development of the point of diversion may reduce/degrade the riparian area.
- ☐ The proposed use will limit access to or directly impair cold-water refugia.
- ☐ Other impacts to STE fish: type here
- ☐ NO; Additional commercial and game fishing, fish, wildlife, or recreation will not be affected by the proposed use.

Overarching Question 2:**Can the proposed use be conditioned to overcome the impairment or detriment?**

- ☐ NO; 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.

Note: This finding may prohibit the application from moving forward as proposed, so consult with the Water Quality/Quantity Program Manager prior to making this recommendation. Check Box A on page 8 and sign the document on page 11 prior to submitting the review to WRD.

- ☒ YES; ODFW recommends the following:

- ☒ The next steps and recommended conditions provided in this review thus far (i.e., Findings under WRD's Division 33) compensate for habitat impacts for the fish and/or wildlife species present. Additional conditions are **NOT** necessary.

In addition to conditions identified in Section 3 (and 4 and mitigation outlined in Section 7, ODFW recommends the following to protect commercial and game fishing, fish, wildlife, or recreation:

Flow

- ☐ "Maintain Flow"
☐ "Restrictor"
☐ "Biologically Necessary Flows"
☐ "Bypass Flows"

☐ plus a net benefit

- ☐ Site-specific condition(s): type here

Passage and Screening

- ☐ "Passage"
☐ "Screen"
☐ "Future Protection"

Other Ecological Functions [Section 3.3]

- ☐ "Riparian"

- ☐ Site-specific condition(s): type here

Section 7: ODFW Mitigation Recommendations

ODFW's Recommended Mitigation Obligation

Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of fish, wildlife, or habitats and/or the proposed use will otherwise impact habitat. The proposed use may diminish physical habitat and alter the flow regime to which fish and wildlife are naturally adapted, negatively impacting their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to fish, wildlife, and/or their habitat without appropriate mitigation.

ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation outlined below (consistent with the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations), 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
- (5) compensating for the impact by replacing or providing comparable substitute resources or environments.

ODFW recommends the applicant contact the caseworker to schedule a consultation with the local ODFW Fish Biologist concerning the recommended Mitigation Obligation if questions arise.

Choose A, B, or C:

- A) ☐ 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.
- B) ☐ Impacts to fish and/or wildlife habitat from the proposed use are expected to be inconsequential. Therefore, ODFW has determined that mitigation is not necessary.
- C) ☐ 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 Program⁴ or would otherwise be detrimental to the protection and/or recovery of STE fish species, non-listed fish species, or wildlife. Therefore, ODFW recommends the mitigation obligation, consistent with OAR 635-415, outlined below. To meet the goals outlined in ODFW's Mitigation Policy, ODFW recommends the mitigation provided be available within the mitigation reach and legally protected and maintained for the life of the permit and subsequent certificate.

⁴ Water Resources Department's document number 94-2

Part 1: Flow Mitigation

ODFW's MO, Page 1

Reservoir Uses

- ☐ ODFW has recommended a bypass flow condition for the proposed reservoir, but not a specific mitigation obligation. However, the applicant may propose mitigation, as outlined below, based on a specified fill rate which will become part of the permit and subsequent certificate.

Surface Water or Groundwater Uses

- ☐ ODFW recommends the applicant provide water-for-water mitigation, as outlined below.

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

- ☐ plus a net benefit (for Habitat Category 2)
- ☐ The applicant may show that replacement of only the consumptive use portion achieves no net loss of habitat quality or quantity. However, the applicant must agree to maintain the consumptive portion as proposed for the life of the permit and subsequent certificate.
- ☐ The applicant may propose an amount less than the requested use or equivalent % PSI if the benefit is greater than the impact (e.g., a smaller amount of water protected for a longer distance).

B) Months (when biologically-necessary flows are not met during the period of impact): type here

C) Location of Mitigation:

- ☐ within the watershed at or above the point of diversion
- ☐ at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)
- ☐ within the watershed of the impacted population(s)
- ☐ benefitting the impacted population(s) and/or higher priority species: list species here

D) Additional comments: type here

Part 2: Habitat Restoration

ODFW's MO, Page 2

Does the Mitigation Goal also allow habitat restoration as a mitigation option?

- ☐ YES; In lieu of providing "water-for water", ODFW's Habitat Mitigation Policy allows the applicant the option of providing mitigation, as outlined below, through a habitat restoration project that recreates similar habitat structure and function to that existing prior to the development action.
- ☐ NO; Skip to Part 3, if applicable.

A) Habitat Structure and Function in Need of Replacement:

- ☐ spawning ☐ rearing ☐ migration
- ☐ other: 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:

Note: If water for water mitigation is not provided within the impacted reach, the proposed use may trigger requirements for fish passage (ORS 509.585) by creating an artificial obstruction due to low flow.

- ☐ within the watershed at or above the point of diversion
- ☐ at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)
- ☐ within the watershed of the impacted population(s)
- ☐ anywhere benefitting the impacted population(s) and/or higher priority species: list species here

E) Additional comments: type here

Part 3: Other Ecological Functions Mitigation

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

Concern 1

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:

- ☐ within the watershed at or above the point of diversion
- ☐ at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)
- ☐ within the watershed of the impacted population(s)
- ☐ within the home range of the impacted population(s): type here
- ☐ anywhere benefitting the impacted population(s) and/or higher priority species: list species here

E) Additional comments: type here

ODFW's MO, Page 3

Concern 2

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:

☐ within the watershed at or above the point of diversion

☐ at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)

☐ within the watershed of the impacted population(s)

☐ within the home range of the impacted population(s): type here

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

E) Additional comments: type here

Concern 3

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:

☐ within the watershed at or above the point of diversion

☐ at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)

☐ within the watershed of the impacted population(s)

☐ within the home range of the impacted population(s): type here

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

E) Additional comments: type here

ODFW Representative's Signature: Brent Smith

Date: 7/13/18

Name: Brent Smith

Phone: 541-575-1167

Email: Brentton.a.smith@state.or.us

ODFW's MO, Page 4

Section 8: ODFW's Recommended Condition Language

Biologically Necessary Flows

To protect beneficial uses [OAR 690-410-0070(2)(h)], the Oregon Department of Fish and Wildlife recommends the biologically necessary flows identified in Section 3.1 be met or the use mitigated for prior to diversion of water.

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

The Oregon Department of Fish and Wildlife (ODFW) recommends 1) all live flow be passed downstream at a rate equal to the inflow anytime the biologically necessary flows identified in Section 3.1 are not available immediately upstream of the impacted area or 2) bypass (pass-through) flows be passed downstream at a minimum equal to the biologically necessary flows identified in Section 3.1 when live flow immediately upstream of the impacted area is greater than or equal to the biologically necessary flows identified in Section 3.1 [OAR 690-410-0070(2)(c)] (plus a net benefit to the resource for Habitat Category 2, if identified). Once the facility has reached the permitted capacity, ODFW recommends all live flow be passed downstream at a rate equal to the inflow. If a water right with a senior priority date is purchased upstream and legally protected and maintained instream down to the reservoir to augment any portion of the biologically necessary flows identified in Section 3.1 not available, ODFW recommends the permittee store water at a rate equal to inflow minus the amount of water purchased. ODFW recommends the permittee submit a Bypass Proposal to the Oregon Water Resources Department for its approval prior to diversion of water, which describes the method by which the permittee will bypass the recommended flows and how the permittee will quantify and document inflow and outflow. ODFW also recommends the bypass flow data be available upon request by ODFW, WRD, DEQ, or ODA.

Future Protection

The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screening is not necessary at the time of permit issuance, but 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. 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. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

Maintain Flow

To protect beneficial uses [see OAR 690-410-0070(2)(h)], the Oregon Department of Fish and Wildlife recommends the biologically necessary flows identified in Section 3.1 be maintained at the point of diversion or the use be regulated until the identified flows are available.

Mitigation

The Oregon Department of Fish and Wildlife (ODFW) recommends the permittee comply with terms of the associated Mitigation Proposal on file at the Water Resources Department to compensate for detrimental impacts to fish, wildlife, and/or their habitat. The Mitigation Proposal is fully incorporated into the requirements of this permit and may only be altered by written mutual agreement of all parties. ODFW recommends (1) the mitigation provided be legally protected and maintained for the life of the permit and subsequent certificate and (2) regulation of the use and/or cancellation of the permit or subsequent certificate(s) if the required mitigation is not maintained.

Passage

As required by ORS 509.585, the permittee shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of this state that are inhabited, or were historically inhabited, by native migratory fish without obtaining approval from the Oregon Department of Fish and Wildlife (ODFW). The permittee shall either submit a proposal for fish passage to ODFW or apply for a waiver or exemption. Approval of the proposed fish passage facility, waiver, or exemption must be obtained prior to construction of any in-channel obstruction or prior to diversion of water that may create an artificial obstruction due to low flow, and 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 509.601) as per the approved plan, waiver, or exemption. If ODFW determines adequate passage of native migratory fish is not being provided, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that adequate fish passage is being provided. The permittee is hereby directed to schedule a consultation with an ODFW Fish Passage Coordinator.

Restrictor

The permittee shall install, maintain, and operate a restrictor valve on the diversion system to limit use to the permitted amount. The valve shall be in place and functional, and approved by the local Watermaster, prior to diversion of water.

Riparian

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. Prior to diversion of water, the permittee shall submit a Riparian Mitigation Plan approved in writing by ODFW unless ODFW provides documentation that riparian mitigation is not necessary. The permittee is hereby directed to contact the local ODFW Fish Biologist prior to diverting water.

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. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly. 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 will result in a net loss of essential habitat for: list species here

☐ Habitat goals and standards not met: type here and explain why not met

ODFW Representative's Signature: _____ Date: _____

Name: Phone: Email:

[Print Report](#)**Oregon Water Resources Department
Attribute Report**

Report Date: May 4, 2018

General:

TRSQQ: WM6.00S24.00E9NWSE
DLC: -
Latitude: 45.0600327079
Longitude: -119.8588054036
Buffer (ft): 1
Elevation (ft): 3091
Basin Name: John Day
Basin Plan: 6-Lower
County: Wheeler
Indian Res.: -
WM District: 21
WM Region: NORTH CENTRAL
ODFW Region, District: Northeast Region, John Day District
Irrigation District AOI: -
Irrigation District, Other: -
Dams (Permit): -
Water Rights: [Platcard for WM6.00S24.00E9](#)
Well Logs: [Logs for WM6.00S24.00E9](#)

Rules:

Withdrawn Authority: -
Groundwater Restricted: -
GW Restricted Subunit: -
GW ODEQ Management Area: -
GW Umatilla Muni Wells (5mile): -
Rule 4D: Rules apply
Division 33 (Area, Watershed, species): UPPER COLUMBIA, Upper Rock Creek, Steelhead, Redband Trout

Irrigation Season of Use: John Day River
Adj. Status: Adjudicated
Subarea: undefined
Irr. Season: Apr 1 to Sept 30
Duty: NaN
Rate: 1/40 prior to June 1; 1/80 remainder of season

Water Quality Limited Pollutant 2012: -

Fish Habitat 2014: Species: Redband trout
Anad. Run: NA
Life History: AnadRes
Habitat Use: ResidentMultipleUses
Basis: IndivProfOpinion
Stream: Brown Creek
Origin: Native
Pop. Sustained: WildNatural
Source Agcy: ODFW

Species: Steelhead
Anad. Run: Summer
Life History: Anadromous
Habitat Use: Spawning
Basis: ConcurProfOpinion

Stream: Brown Creek
 Origin: Native
 Pop. Sustained: Native
 Source Agcy: ODFW

Is in Deschutes Study Area: -
 Deschutes Zone Impact: -
 Deschutes Zone Overlay: -
 Scenic Water Way: The John Day Scenic Waterway 390.826 (7)(a) John Day River
 from its confluence with Parrish Creek downstream to
 Tumwater Falls
 Status: ABOVE

Hydrography:

OWRD Streamcode: -
 Waterbody Name: -
 HUC 10: 1707020411
 HUC Watershed: Upper Rock Creek
 WAB Wshed Order: 5
 WAB Analysis: ROCK CR > JOHN DAY R - AB WALLACE CAN
 Streamflow: OWRD Opportunities: Good
 ODFW Needs: Moderate
 Combined Priority: Not a priority

Gaging Station Data: -

Sources:**General**

Oregon Public Land Survey Quarter-quarters. Bureau of Land Management, Oregon Water Resources Department.. n.d. 1:24,000.

Donated Land Claims. Oregon Water Resources Department. January 1, 1995. 1:100,000.

Elevation. ESRI World Elevation. February 2000. 1:121,000.

OWRD Administrative Basins. Oregon Water Resources Department. January 1, 1995.

Oregon Counties. Bureau of Land Management (BLM), Oregon State Office.. January 1, 2008.

wrd_sdc.SDE.adm_indian_reservation. Unknown. n.d.

OWRD Watermaster Districts. Oregon Water Resources Department. March 31, 2014.

OWRD Regions. Oregon Water Resources Department. January 1, 1995.

ODFW Districts and Regions. Oregon Department of Fish and Wildlife. August 28, 2012.

Water Organizations Oregon Water Resources Department. April 1, 2013. 1:24,000.

Large Dams Inventory. Oregon Water Resources Department. August 12, 2014. 1:24,000.

Rules

Withdrawn Authority Areas. Oregon Water Resources Commission. January 1, 2007.

OWRD Groundwater Restricted Areas. Oregon Water Resources Department. October 5, 2016.

OWRD Groundwater Restricted Areas - Subunits. Oregon Water Resources Department. April 1, 2009.

ODEQ Groundwater Management Areas (GWMAs). Oregon Department of Environmental Quality. April 21, 2008.

Groundwater Umatilla Municipal Wells 5-mile buffer. Oregon Water Resources Department. June 28, 2012.

National Marine Fisheries Service (NMFS) 4(d) Rule. National Marine Fisheries Service. January 1, 2007.

OAR Chapter 690, Division 33 - HUC 10. Oregon Department of Fish & Wildlife. April 20, 2010.

Irrigation Season of Use. Oregon Water Resources Department, 2017.. March 24, 2017.

Oregon Water Quality Assessment 2012. This data set was assembled by the Oregon Department of Environmental Quality, Water Quality Division,

Standards and Assessments Section.. December 4, 2014. 1:2,500,000.

Oregon Fish Habitat 2014. Oregon Department of Fish and Wildlife. Numerous fisheries biologists from ODFW as well as other natural resource agencies and tribes have contributed toward the development of these data. Data originator names are attributed at the feature level.. n.d. 1:24,000.

Deschutes USGS Groundwater Study Area. Water Resources Commission, U.S. Geological Survey (USGS) Water Resources Division (Portland, OR), Oregon Water Resources Department.. January 1, 2001. 1:100,000.

Deschutes Zones of Impact. Oregon Water Resources Department.. October 25, 2007.

Deschutes Zones Overlay. Oregon Water Resources Department. October 25, 2007.

Oregon State Scenic Waterway areas. Oregon Water Resources Department, Oregon Parks and Recreation Department.. January 1, 2007.

Hydrography

Routed OWRD Streamcodes (conflated to the NHD). Oregon Water Resources Dept.. August 11, 2014.

OWRD Lake Streamcodes (conflated to the NHD). Oregon Water Resources Dept.. August 7, 2015.

Watershed Boundary Dataset (WBD), 10-digit (watershed). Pacific Northwest Hydrography Framework, U.S. Geological Survey (USGS), National Resources Conservation Service (NRCS).. June 11, 2014. 1:24,000.

Water Availability Basins. Oregon Water Resources Department.. n.d. 1:100,000.

Priority Watersheds for Streamflow Restoration. Oregon Water Resources Dept. and the Oregon Dept. of Fish & Wildlife.. January 15, 2004.

Stream Gage Stations. Oregon Water Resources Department and US Geological Survey. n.d.

[close](#)

[Print Report](#)

Application Number: R-88574

Standard Reservoir Application Completeness Checklist

Minimum Requirements
This is the checklist used by WRD staff

County: Wheeler Township: 6S Range: 24E Section: 9, 15, 16
Amount: 42.16 Af Use: LIVESTOCK WILDLIFE FIRE PROTECTION WM Dist # 4
Applicant Name: Rick and Jody Hale
Receipt Number: 126398 Case Worker: LISA KIM

- ☒ Applicant/Organization Name, Mailing Address, and Telephone Number.
- ☒ All applicants or the applicant's authorized agent (include title or authority if for an organization or corporation), must sign the application in ink. *Signature must be an original "wet" signature. Copies cannot be accepted.*
- ☒ Source of water.
- ☒ The proposed source is or is not (circle one) withdrawn from further appropriation. If it is withdrawn under ORS 538, then return application and fees. If it is withdrawn by other means, accept the application and a negative IR will be issued.
- ☒ Property ownership indicated.
- ☒ N/A If applicant does not own all the land, the affected landowner's name and mailing address must be listed.
- ☒ N/A If applicant does not own all the land, 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.
- ☒ Proposed use of stored water.
- ☒ Amount of water from each source in gallons per minute (GPM), cubic feet per second (CFS), or acre feet (AF)
- ☒ Project schedule (If system is already completed, indicate "existing").
- ☒ Preliminary plans and specifications including dam height, width, crest width and surface area for each reservoir for all standard reservoir applications

☒ You must include a Legal description of all the properties involved where water is diverted, crossed, 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 you may submit a lot book report prepared by a title company. The Department will not accept a copy of the tax bill.

☒ A completed Land-Use Form or receipt signed and dated by the appropriate planning department officials. *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. Signature must be an original "wet" signature. Copies cannot be accepted.*

☒ A map prepared by a CWRE for a standard reservoir application proposing to store more than 9.2 acre feet and having a dam height of more than 10 feet

☒ 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 (example: 1" = 100 ft, 1" = 200 ft, etc.)
- ☒ Location of **each** diversion point, well or dam 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
- ☒ Other _____

Fees: Amount of water requested 42.16

Base Fee \$ \$930.00

1st CFS/AF _____

____ Addtnl CFS/ AF @ _____ = _____

____ Addtnl POD/POA @ _____ = _____

____ Addtnl Use @ _____ = _____

Total Exam Fees \$

Permit Recording Fees \$ 520.00

Total Paid \$ 2,592.60

Amount Due \$ 0

Amount Returned \$ _____

Reviewed by: E.G. / T.S.

Date: 4/13/18



Water Right Application Initial Review

May 18, 2018

RICK HALE
JODY HALE
73426 HWY 207
ECHO OR 97826

Reference: Application R-88574

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:

Initial Review Preliminary Determinations (Oregon Administrative Rules (OAR) 690-310-0080)

1. The application proposes the diversion of 35.2 acre-feet (AF) of water for storage, being 19.48 AF in Reservoir 1, 7.11 AF in Reservoir 2, enlargement of reservoirs constructed under Certificate 70284; and 7.35 AF in Reservoir 4 and 1.26 AF in Reservoir 6, enlargement of reservoirs constructed under Certificate 70285, from runoff and Brown Creek, tributaries to Lone Rock Creek, for year-round fire protection, livestock, and wildlife.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Storage for fire protection, livestock, and wildlife is an allowable use under the John Day Basin Program (690-506-0040).
4. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System (WARS). A copy of this assessment is in the application file. For this application, and for most reservoir applications, the Department uses WARS at 50% exceedance for determining water availability to provide a consistent method of avoiding periods of the year when flows are low and seldom exceed the needs of water rights and when additional flows are needed to support public uses. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established surface water is available February 1 through March 31 of each year. Oregon Revised Statute (ORS) 537.153(3)(b); OAR 690-310-0180(1)(b)

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 located above the John Day Scenic Waterway, as designated under Oregon Revised Statute 390.826.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary

The diversion of 35.2 AF of water for storage, being 19.48 AF in Reservoir 1, 7.11 AF in Reservoir 2, enlargement of reservoirs constructed under Certificate 70284, and 7.35 AF in Reservoir 4 and 1.26 AF in Reservoir 6, enlargement of reservoirs constructed under Certificate 70285, from runoff and Brown Creek, tributaries to Lone Rock Creek, for fire protection, livestock, and wildlife is allowable February 1 through March 31 of each year.

Because of the favorable determinations described herein, Application R-88574 can move to the next phase of the water-rights application review process, which includes a public interest review.

This initial review does not address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

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

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.

Withdraw

You may withdraw the application and receive a refund (minus a \$260 processing fee per application). You must notify the Department in writing by **June 1, 2018**. 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. **Measurement Devices and Recording/Reporting of Annual Water Storage Conditions:**
 - 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 Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and 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. All construction shall be performed under the supervision by the engineer of record. If the engineer of record cannot supervise construction, the Water Resources Department Dam Safety Engineer must be notified in writing, prior to construction activity, with the name of the engineer supervising construction.
 4. No embankment fill shall be placed until preparation of the foundation and the excavation of the core trench has been completed and examined in entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both.
 5. The constructed works shall conform to the approved plans and specification on file with the Water Resources Dam Safety Program. The engineer of record shall notify the Water Resources Dam Safety Program before making any significant change to the approved design prior to or during construction.
 6. No water shall be stored until the Water Resources Department receives written confirmation from the engineer of record that construction has been completed in accordance with the approved plans and specifications. Or, if final construction deviates from the approved design a set re producible as constructed drawings, including a revised reservoir capacity graph or table, must accompany the engineer's letter of completion.
 7. Routine maintenance or repair of the dam, its spillway and all appurtenant structures shall be performed to include, but not limited to, removal of woody or high vegetation from the embankment, abutments and spillway, removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.
 8. Repair or replacement of defective or worn out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe.
 9. If the dam is enlarged, modified or otherwise altered, this work must be based on design plans and specification prepared by a Registered Professional Engineer licensed in Oregon. These plans must be approved by the Water Resources Dam Safety Program prior such alterations of the dam, its spillway or any appurtenant structure(s).
 10. No valve shall be installed at the downstream end of the low level conduit, and the low level conduit shall not be operated in a pressurized condition unless the dam has been designed for pressurized

operation by the design engineer. There must be an operations manual for the dam that describes pressurized operation and necessary inspections of pressurized conduits for the dam.

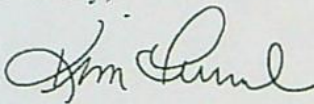
11. If used, flashboards shall be maintained in good condition, replaced as needed and removed as necessary prior to potential winter storms, or unusual rainfall or snowmelt events at any time of the year.
12. Prior to commencing construction activity, all design reports, drawings of the dam and critical appurtenant structures, specifications, and plans for construction administration must be approved by the State Engineer as indicated by the State Engineer's stamp and a written letter of approval from the State Engineer.

The proposed use is in an area of the state in which OAR 690-033-0115 thru -0140 applies. 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.

If you have any questions:

Feel free to contact me at Kim.R.French@oregon.gov or 503-986-0816 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 503-986-0801. 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
R-88574
WAB: 6-30620427

APPLICATION FACT SHEET

Application File Number: R-88574

Applicant: RICK HALE AND JODY HALE

County: WHEELER

Watermaster: KEN THIEMANN, 21, NCR

Priority Date: APRIL 12, 2018

Source: RUNOFF AND BROWN CREEK, TRIBUTARIES TO LONE ROCK CREEK

Purpose or Use of the stored water: FIRE PROTECTION, LIVESTOCK, WILDLIFE

Storage Facility Names: RESERVOIR 1 AND RESERVOIR 2, ENLARGEMENTS OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70284; AND RESERVOIR 4 AND RESERVOIR 6, ENLARGEMENTS OF RESERVOIRS CONSTRUCTED UNDER CERTIFICATE 70285

Volume: 35.2 ACRE-FEET, BEING 19.48 AF IN RESERVOIR 1; 7.11 AF IN RESERVOIR 2; 7.35 AF IN RESERVOIR 4; AND 1.26 AF IN RESERVOIR 6

Basin Name & Number: John Day, # 6

WAB: ROCK CR > JOHN DAY R - AB WALLACE CAN

Points of Diversion:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
RES 6 BROWN CR. POD	6 S	24 E	WM	15	NW NW	1000 FEET SOUTH AND 460 FEET EAST FROM NW CORNER, SECTION 15
RESERVOIR 4 SPRING	6 S	24 E	WM	16	NE NW	950 FEET SOUTH AND 1750 FEET EAST FROM NW CORNER, SECTION 16

Dam Locations:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height	Area Acres
RESERVOIR 1	6 S	24 E	WM	9	SW SE	1190 FEET NORTH AND 1700 FEET WEST FROM SE CORNER, SECTION 9	13.0	3.3
RESERVOIR 2	6 S	24 E	WM	9	NW SE	2170 FEET NORTH AND 2000 FEET WEST FROM SE CORNER, SECTION 9	10.2	1.9
RESERVOIR 4	6 S	24 E	WM	16	NE NW	950 FEET SOUTH AND 1750 FEET EAST FROM NW CORNER, SECTION 16	9.0	2.0
RESERVOIR 6	6 S	24 E	WM	16	NE NE	320 FEET SOUTH AND 470 FEET WEST FROM NE CORNER, SECTION 16	10.0	0.8

The Area to be submerged by the Reservoirs:

Twp	Rng	Mer	Sec	Q-Q
6 S	24 E	WM	9	NW SE
6 S	24 E	WM	9	SW SE
6 S	24 E	WM	16	NE NE
6 S	24 E	WM	16	NE NW

PUBLIC NOTICE DATE: May 22, 2018

14 DAY STOP PROCESSING DEADLINE DATE: June 1, 2018

30 DAY COMMENT DEADLINE DATE: June 21, 2018

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 **R-88574**.
- After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$260 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 \$260 examination fee) be returned.
- This notice must be received at Water Resources Department by:

June 1, 2018

- 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 R-88574

IR Date: May 18, 2018

Original and map mailed to applicant:

RICK HALE
JODY HALE
73426 HWY 207
ECHO OR 97826

Copies Mailed

By: SP
(SUPPORT STAFF)

On: 5-18-18
(DATE)

SENT VIA AUTO EMAIL:

1. WRD – Watermaster Ken Thiemann # 21
2. ODFW
3. DEQ
4. Agent - Dale VanSchoiack – dalevconsulting@gmail.com

Copies sent to:

5. WRD – Dam Safety, Keith Mills
6. WRD – Hydrographics
7. WRD - File R-88574
8. WRD - Mike Ladd NCR

SPECIALIST: Kim French

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **126398**

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # _____

RECEIVED FROM:

BY:

CASH:

CHECK: #

OTHER: (IDENTIFY)

☐

☒ **3529**

☐

APPLICATION

PERMIT

TRANSFER

TOTAL REC'D

\$ 2597.60

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

EXAM FEE

\$ **2077.60**

0202

0203 GROUND WATER

\$

0204

0205 TRANSFER

\$

RECORD FEE

\$ **520.00**

\$

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

EXAM FEE

\$

0219

LANDOWNER'S PERMIT

0220

LICENSE FEE

\$

\$

OTHER (IDENTIFY)

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: **126398**

DATED: **4/12/18**

BY: **C. W. H. H. H.**



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1271
(503) 986-0900
www.wrd.state.or.us

Application for a Permit to Store Water in a Reservoir (Standard Review)

Standard Review Process (ORS 537): You must use this form for any reservoir storing more than 9.2 acre-feet and with a dam more than 10 feet high.

Use a separate form for each reservoir. However, to obtain authorization for multiple reservoirs, multiple forms may be combined into one application if filed at the same time.

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml

1. APPLICANT INFORMATION

Applicant: Rick and Jody Hale
First Last

Mailing Address: 73426 Hwy 207

Echo Oregon 97826
City State Zip
Phone: 1 541 571 3669 426
Home Work Other
Fax: _____ E-Mail Address*: _____

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

We make application for a permit to construct 4 reservoirs and store the following described waters of the State of Oregon. The name of the reservoirs are Res 1, Res 2, Res 4, and Res 6. Existing certificates 70284 and 70285 authorize storage of water in these reservoirs. This application is for storage for the total storage capacity of the reservoirs with the intention that it be in addition to (stacked on) the storage previously authorized for these reservoirs by the existing certificates.

The applicant is concurrently submitting an Application for a Permit to Use Groundwater in Reservoirs Res 1, Res 2, and Res 6. The intent is that water to fill these reservoirs can be either surface water or ground water or a combination of surface water and groundwater, with the total amount not to exceed the capacity of the reservoirs.

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The applicant recommends Salem OWRD staff assigned to this application also be assigned to the Application for a Permit to Use Groundwater or at least familiarize themselves with the other application. While preparing this application the applicant's consultant, conferred with OWRD District #21 Water master, Ken Thiemann, and OWRD North Central Region, Regional Manager, Mike Ladd. These OWRD staff members requested the applicant request the Salem OWRD staff member assigned to this application to contact them while processing the application.

R-88574

2. **SOURCE OF WATER** for the proposed use: The source of water is winter runoff water, and surface water from Brown Creek a tributary of Lone Rock Creek.

Is the proposed use an enlargement of an existing dam/reservoir?

No

This application is for storage in existing reservoirs. No enlargement of the existing reservoirs are to be made.

If the reservoir is not in channel of a stream, state how it is to be filled:

Three of the four reservoirs, Res 1, Res 2, and Res 6 are constructed off channel. This application is for winter runoff water and surface water diverted directly from Brown Creek to fill Res 1, Res 2, and Res 6. There is one diversion point where water will be diverted directly from Brown Creek. From the Brown Creek diversion point water will be conveyed overland directly to Res 6. Brown Creek water in Res 6 may travel to Res 1 through a buried pipeline and may further travel from Res 1 to Res 2 by way of seepage.

Res 4, is located in the upper reach of a ravine. The source for Res 4 in this application is surface water from winter runoff and spring water. Refer to the table below:

Quantity of Water to be Stored

RESERVOIR #	STORAGE QUANTITY AC FT	WINTER RUNOFF & SPRING WATER AC FT	WINTER RUNOFF & SURFACE WATER DIVERTED FROM BROWN CREEK AC FT
Res 1	22.61		22.61*
Res 2	8.79		8.79*
Res 4	9.00	9.00	
Res 6	1.76		1.76*
Totals	42.16	9.00	33.16

19.48 AF
7.11 AF
7.35 AF
1.26 AF

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* The quantity of water to be stored under this application, together with the quantity of groundwater to be stored under a groundwater application being submitted concurrently with this application, shall not exceed the reservoir storage quantity stated in column 2.

For Department Use

App. No. _____

Permit No. _____

Date _____

R-88574

3. DAM HEIGHT AND COMPOSITION

The maximum height of the structures will be 13 feet above streambed or ground surface at the centerline of the crest of the dam.

Attach preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area.

Note: If your dam height is greater than or equal to 10.0' above land surface AND your reservoir will store equal to or greater than 9.2 acre-feet, engineered plans and specifications must be approved prior to storage of water.

Summary of Reservoir Plans, Specifications, & Information

RES #	DAM HEIGHT FT±	WIDTH FT±	CREST WIDTH FT±	SURFACE AREA ACRES±	RES CAPACITY AC FT
Res 1*	13.0	645	20	3.3	22.61
Res 2	10.2	720	14	1.9	8.79
Res 4	9	540	13	2.0	9.00
Res 6	10	360	5	0.8	1.76
Totals				8.00	42.16

Refer to attached Exhibit A. for a typical cross section through the dams.

* This is an existing reservoir that was constructed in the late 1940s. There are no original design drawings of the reservoir. It is of a size and has a dam height such that it requires engineered plans and specifications. The applicant is working with Keith Mills, P.E., G.E., State Engineer for Water Resources in developing the necessary technical information required for this reservoir.

The dams will be (check one): ☒ Earthfill

If "other" give description:

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4. PRIMARY OUTLET WORKS

Describe the location and the dimensions of the outlet conduit through the dam:

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All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s and have been in operation since that time.

The outlet works for each reservoir consist of a conduit installed along the base of the embankment at the low point in the reservoir bottom.

Reservoir 1 has a 12" corrugated metal pipe outlet. There is a canal gate installed on the upstream end of the pipe.

Reservoir 2 has a 10" corrugated metal pipe outlet. There is a canal gate installed on the upstream end of the pipe.

Reservoir 4 has a 12" corrugated metal pipe outlet. There are two 6" butterfly valves on the downstream end of the pipe at the toe of the reservoir embankment. One of the butterfly valves can be used to discharge water into the natural ravine. The other valve can be used to discharge water into a pipe that extends northeasterly to Reservoir 1.

Reservoir 6 has a 4" PVC outlet pipe. The pipe has a ball valve at the toe of the embankment on the downstream side. This pipe extends down gradient 1580± feet to Reservoir 1. The 4" ball valve on this outlet is normally open allowing water accumulating in this reservoir to flow to Reservoir 1 and further flow to Res 2 as seepage from Res 1. In the event the 4" outlet pipe is not sufficient to empty or bypass water around the reservoir the owner has a portable drainage pump that can be used for this purpose.

NOTE: Most dams across a natural stream channel will need an outlet conduit having a minimum diameter of 8 inches or greater.

5. EMERGENCY SPILLWAY

Describe the location and the dimensions of the spillway channel:

With the exception of Reservoir 4, all the reservoirs are constructed off channel and to not have natural channeled streams or storm runoff that flow into the reservoirs. The surrounding topography, for the most part, is such that runoff from the up-gradient watersheds flows naturally around the reservoir sites. Reservoir 4 is constructed in the upper reach of a small ravine.

The overflow for Reservoir 1 is a 12" PVC pipe. It is located on the easterly side of the reservoir near the southeast corner.

The overflow for Reservoir 2 is an 8" corrugated metal pipe. It is located near the northerly corner of the reservoir.

The overflow for Reservoir 4 is an elliptical (24" high x 30" wide) corrugated metal culvert pipe. It is located near the northwesterly corner of the reservoir.

Reservoir 6 has a 12" PVC pipe overflow. It is located on the easterly side of the reservoir. This reservoir also has a shallow channel constructed around the northwesterly end of the embankment.

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12-00574

6. **THE USE(s)** of the impounded water will be:

The impounded water will be used for livestock, wildlife, and fire protection.

7. **THE AMOUNT OF WATER** to be stored is: 42.16 acre-feet in 4 small reservoirs. The area submerged by all of the reservoirs, when filled, will be: 8.00 acres. (See Table under Section 3).

8. PROJECT SCHEDULE: (List Month and Year)

Proposed date construction work will begin: All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s and have been operational since that time.

Proposed date construction work will be completed: All of the dams/reservoirs are existing structures. They were reportedly constructed during the late 1940s through the early 1960s.

Proposed date water use will be completed: Water Use (storage) will be completed within 5 years of issuance of the permit.

Is this project fully or partially funded by the American Recovery and Reinvestment Act? (Federal stimulus dollars). NO

No federal funds have been or are anticipated to be used in construction, operation or maintenance of the reservoirs. The owner will provide all funding for the project.

9. PROPERTY OWNERSHIP

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

Yes (Please check appropriate box below then skip to section 10)

X There are no encumbrances

This land is encumbered by easements, rights of way, roads or other encumbrances (please provide a copy of the recorded deed(s))

NA (Please check the appropriate box below)

I have a recorded easement or written authorization permitting access.

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

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).

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.

List the names and mailing addresses of all affected landowners:

R-88574

Storage Water/5

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10. WITHIN A DISTRICT

This section is Not Applicable to this permit application.

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

Irrigation District Name Not Applicable	Address	
City	State	Zip

11. MAP REQUIREMENTS The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section and quarter/quarter section of the proposed reservoir location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

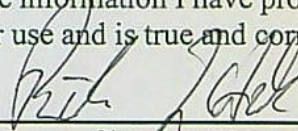
See attached application map.

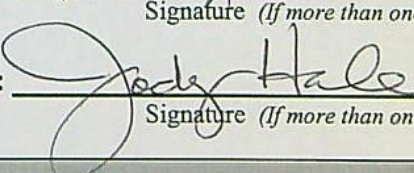
12. SIGNATURE

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 packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

I certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge:

Applicant:  4/10/18
Signature (If more than one applicant, all must sign.) Date

Applicant:  4/10/18
Signature (If more than one applicant, all must sign.) Date

Before you submit your application be sure to:

- Answer each question completely.
- Attach a legible map that includes township, range, section, quarter/quarter and tax lot.
- Include a Land Use Information Form or receipt stub signed by a local official.
- Include the legal description of all the property involved with this application. You may include a copy of your deed land sales contract or title insurance policy to meet this requirement.
- Include a check payable to the Oregon Water Resources Department for the appropriate amount. The Department's fee schedule can be found at www.wrd.state.or.us or call (503) 986-0900.

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R-00574

Land Use Information Form



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

NOTE TO APPLICANTS

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

This form is NOT required if:

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

NOTE TO LOCAL GOVERNMENTS

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

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APR 12 2018

OWRD

Land Use Information Form



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

NOTE TO APPLICANTS

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

NOTE TO LOCAL GOVERNMENTS

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

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Original in Ground water App.

Land Use Information Form



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

Applicant(s): Rick and Jody Hale

Mailing Address: 73426 Hwy 207

City: Echo

State: OR

Zip Code: 97826

Daytime Phone: 1 541 571 3669

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:
T6S	R24E	09	NESE	400	EFU	☒ Diverted	☒ Conveyed	☐ Used	EFU
T6S	R24E	09	NWSE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SWSE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SESE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	09	SENW	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	15	NWNW	400	EFU	☒ Diverted	☒ Conveyed	☐ Used	EFU
T6S	R24E	16	NENE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NWNE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	SWNE	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NENW	400	EFU	☒ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	NWNW	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU
T6S	R24E	16	SENW	400	EFU	☐ Diverted	☒ Conveyed	☒ Used	EFU

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

Wheeler

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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): WCZO 3.1(3) a, o
- ☐ Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

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

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

Name: N Lynn Marley Title: Wheeler County Judge
 Signature: N Lynn Marley Phone: 541-763-3460 Date: 4-2-18
 Government Entity: Wheeler County

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

Receipt for Request for Land Use Information

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

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Until a change is requested all tax statements
should be sent to the following address:
RICK HALE & JOHANNA HALE
73426 HWY 207
ECHO, OR 97826

After Recording Please Return to:
MID-COLUMBIA TITLE COMPANY
P.O. BOX 290
BOARDMAN, OR 97818

WHEELER COUNTY, OREGON 2011-0006
D-WD
Cnt=1 Pgs=2 TERESAG 01/04/2011 02:31:23 PM
\$10.00 \$11.00 \$15.00 \$10.00 Total:\$46.00



00000984201100000060020021

I, Barbara S. Sifton, County Clerk for Wheeler County,
Oregon certify that the instrument identified herein was
recorded in the Clerk's records

Barbara S. Sifton - County Clerk

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT, STEVEN E. SHERRELL, Grantor herein, does hereby grant, bargain, sell and convey unto RICK HALE AND JOHANNA HALE, husband and wife, as tenants by the entirety, Grantees, the following described tract of land in the County of Wheeler, and State of Oregon, more particularly described as follows:

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO.

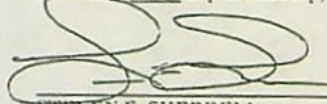
TO HAVE AND TO HOLD the granted premises unto the said Grantees, its heirs and assigns forever.

And the Grantors do covenant that they are lawfully seized in fee simple of the above granted premises free from all encumbrances except all those items of record, if any, as of the date of this deed and those shown below, if any, and that they will, and their successors heirs executors and administrators shall Warrant and forever defend the granted premises, against the lawful claims and demands of all persons, except as stated below: For encumbrances see Exhibit "A" attached hereto--

THE TRUE AND ACTUAL CONSIDERATION IS \$775,000.00.

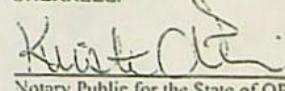
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT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

Dated this 3 day of January, 2011


STEVEN E. SHERRELL

STATE OF OREGON
COUNTY OF UMATILLA

This instrument was acknowledged before me this 3 day of January, 2011 by STEVEN E. SHERRELL.


Notary Public for the State of OREGON
My Commission Expires: June 7, 2014



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R-88574

DGV Consulting, PLLC

2141 South Lyle, Kennewick, WA 99337

April 4, 2018

1084.001

Oregon Water Resources Dept.
725 Summer Street NE, Suite A
Salem Oregon 97301-1271

Re: Rick Hale GW Permit Application and Application to Store Water in a Reservoir

To Whom it may concern:

I am assisting Rick Hale with preparation of documents associated with two permit applications. One is an Application for a Permit to Use Ground Water and the other is an Application for a Permit to Store Water in a Reservoir. Both permit applications are associated with existing reservoirs located on property in Wheeler County Oregon. The reservoirs are in Sections 9 and 16, T6S, R24E, W.M. The applicant is currently storing water in these reservoirs under certificates 70248 and 70285, as well as limited license LL- 1683. The applications are being submitted to satisfy Condition 9 of the limited license.

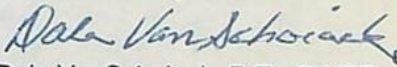
Certificates 70248 and 70285 allow for storage of water that fills a portion of the total storage capacity of the reservoirs. The new permit applications are, in part, for public ground water, and public surface water when it is available to be used to fill and maintain water in the existing reservoirs. The applications are for the total storage capacity of the reservoirs and are requested to be in addition to or stacked on the existing storage rights which will allow for more than one-time fill in the same season. The ground water permit application also involves an irrigation component.

The documents included with this letter are:

Application for a Permit to Use Ground Water
Permit Application Map for Use of Ground Water
Land Use Form
Copy of Deed
Check in the amount of \$5236.80 for the permit application and recording fee.

Minimum Requirements Checklist
Application for a Permit to Store Water in a Reservoir (Standard Review) (Multiple Reservoirs)
Application Map
Land Use Form
Copy of Deed
Check in the amount of \$2597.60 for the permit application and recording fee.

Sincerely,
DGV Consulting, PLLC


Dale VanSchoiack, P.E., CWRE
Consulting Engineer

Cc Rick Hale, Dave Filippi, OWRD LL-1683 file

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Phone 509 627 8717

Email dalevconsulting@gmail.com

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.

- | | |
|---|---|
| ☒ SECTION 1: applicant information | ☒ SECTION 7: the amount of water to be stored |
| ☒ SECTION 2: source of water | ☒ SECTION 8: project schedule |
| ☒ SECTION 3: dam height and composition | ☒ SECTION 9: property ownership |
| ☒ SECTION 4: primary outlet works | ☒ SECTION 10: within a district |
| ☒ SECTION 5: emergency spillway | ☒ SECTION 11: map requirements |
| ☒ SECTION 6: the use of the impounded water | ☒ SECTION 12: signature |

Attachments:

- ☒ Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- ☒ Provide the legal description of: (1) the property on which the water is to be stored, and (2) any property crossed by the proposed ditch, canal or other work
- ☒ Fees - Amount enclosed: \$ 2597.60
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.
- ☒ Preliminary plans and specifications including dam height, width, crest width and surface area for each reservoir

Provide a map and check that each of the following items is included:

- ☒ Map must be prepared by Certified Water Rights Examiner
- ☒ Permanent quality and drawn in ink
- ☒ Even map scale not less than 4" = 1 mile (examples: 1" = 400 ft, 1" = 1320 ft.)
- ☒ North Directional Symbol
- ☒ Township, Range, Section, Quarter/Quarter, Tax Lots
- ☒ Reference public-land survey corner on map
- ☒ Location of each dam if applicable, by reference to a recognized public-land survey corner (distances north/south and east/west)
- ☒ ~~NA~~ Indicate the area of use by Quarter/Quarter and tax lot identified clearly
- ☒ ~~NA~~ Number of acres per Quarter/Quarter and hachuring 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)
- ☒ Other See accompanying application for groundwater

***Please note a secondary application is necessary if there will be out-of-reservoir uses associated with this application.**

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Oregon Water Resources Department
Permit to Appropriate Surface Water for Storage -Standard Reservoir Application

[Main](#) [Help](#)
[Return](#) [Contact Us](#)

Today's Date: Friday, April 13, 2018

Base Application Fee.		\$930.00
Number of acre feet to be diverted for Storage.	42.16	\$727.60
Number of reservoirs.	4	\$420.00
Permit Recording Fee. ***		\$520.00
*** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.		Recalculate
Estimated cost of Permit Application		\$2,597.60

OWRD Fee Schedule

Fee Calculator Version: B20170117

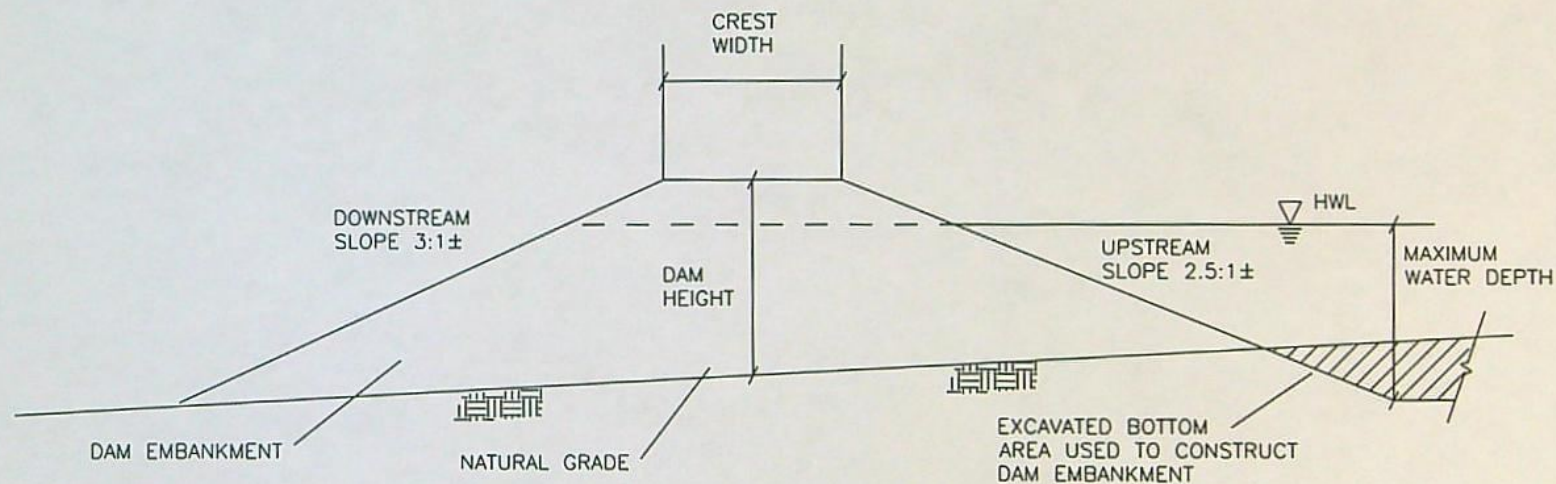
Application for a Permit to Store Water in a Reservoir
Applicant: Rick and Jody Hale

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Exhibit A.
Attachment to:
Section 3. Dam Height and Composition

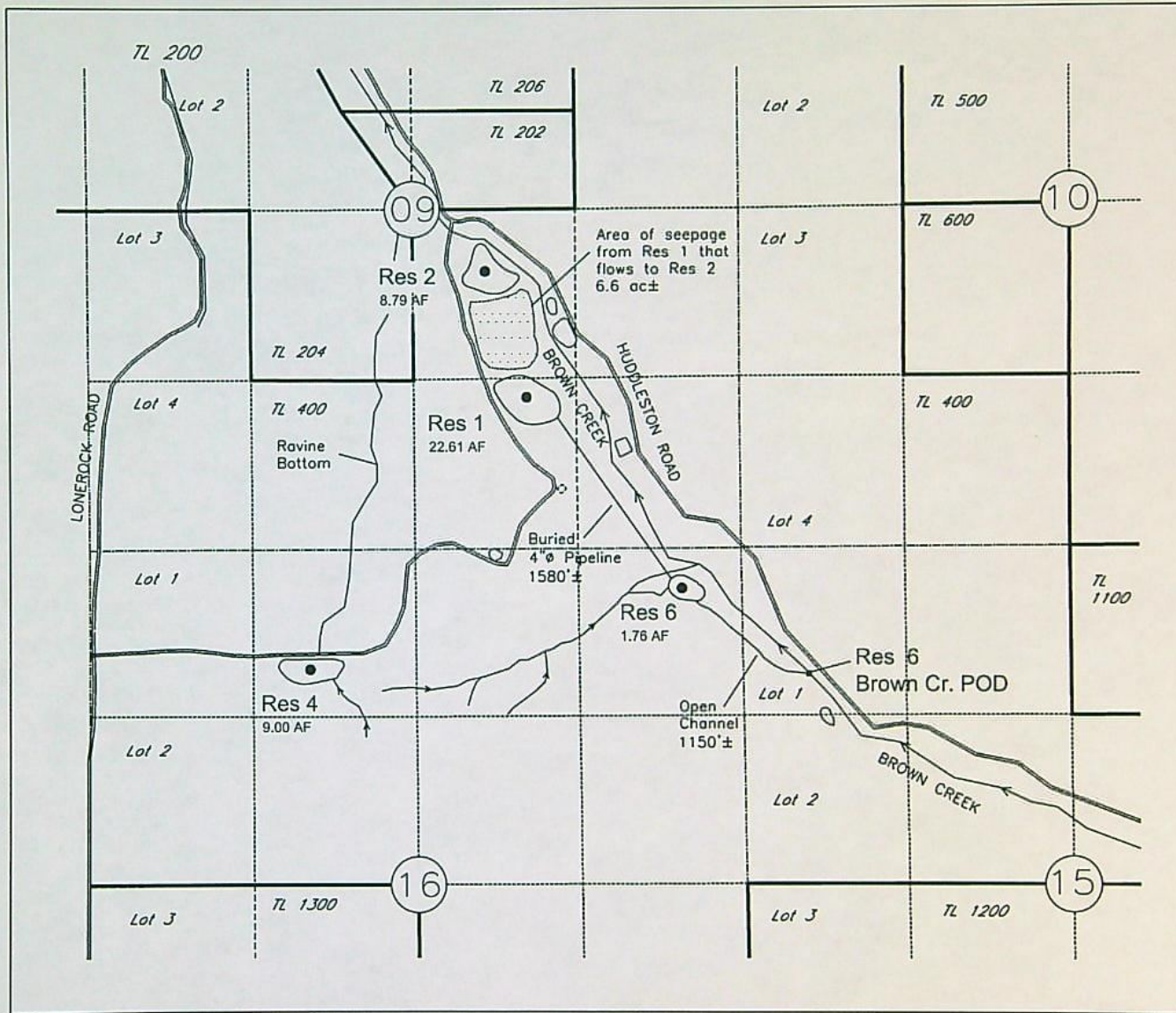


TYPICAL CROSS SECTION THROUGH DAMS

R-88574

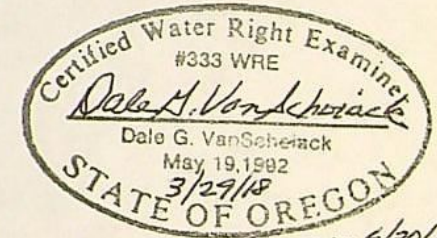
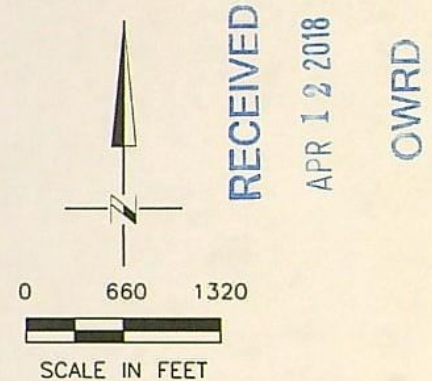
SUPERSEDED 3/29/19

PERMIT APPLICATION MAP FOR RESERVOIR STORAGE
IN THE NAME OF RICK & JODY HALE
T6S, R24E, W.M., WHEELER COUNTY



LOCATION OF RESERVOIRS AND POD

- Res 1, 1190' N & 1700' W FROM THE SE CORNER OF SEC 09
- Res 2, 2170' N & 2000' W FROM THE SE CORNER OF SEC 09
- Res 4, 950' S & 1750' E FROM THE NW CORNER OF SEC 16
- Res 6, 320' S & 470' W FROM THE NE CORNER OF SEC 16
- Res 6 POD FROM BROWN CREEK 1000' S & 460' E FROM THE NW CORNER OF SEC 15



Revised 6/30/18

DGV Consulting, PLLC
dalevconsulting@gmail.com
509 627 8717

February 19, 2018

NOTE:
THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES. PIPELINE SIZES AND LOCATIONS WERE PROVIDED BY FARM PERSONNEL AND HAVE NOT BEEN VERIFIED.

R-288574

7021 1970 0001 3950 4225

WR

KMWF/AF

Oregon

Water Resources Department
Water Right Services Division
725 Summer St NE Ste A
Salem, OR 97301-1266

CERTIFIED MAIL®



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US POSTAGE PATNEY BOWES



ZIP 97301 \$ 008.34⁰
02 4W
0000361800 MAY 16 2023

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☐ Return Receipt (electronic) \$ _____
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☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

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Postage

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Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

5/18/2023
6/9

R-88574
Rick Hale
Jody Hale
73426 Hwy 207
Echo, OR 97826

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JUN 12 2023

OWRD

NIXIE 971 DE 1 0006/11/23

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

UNC
97301>1266

BC: 97301126673 *1579-06159-11-25
|||||