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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

S-88659  
 Gary Wheeler  
 34856 E. Columbia Ave.  
 Scappoose, OR. 97056



9590 9402 4402 8248 9809 62

2. Article Number (Transfer from service label)

7018 0680 0002 0041 5442

PS Form 3811, July 2015 PSN 7530-02-000-9053 TM/KF

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

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*Gary Wheeler*

- Agent  
 Addressee

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*Gary Wheeler*

C. Date of Delivery

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| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                               | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

Domestic Return Receipt

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 # 140735

INVOICE # \_\_\_\_\_

RECEIVED FROM: Gary Wheeler;  
BY: Paula Wheeler

APPLICATION 5-88659  
PERMIT  
TRANSFER

CASH:  CHECK:# OTHER: (IDENTIFY)

3390

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:

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

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR	EXAM FEE \$	0219 LICENSE FEE \$
LANDOWNER'S PERMIT		0220 LICENSE FEE \$

0223 OTHER (IDENTIFY) Protect Fees \$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 \$

RECEIPT: 140735 DATED: 5/18/2023 BY: Lisa D. Miller

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

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 # 140735

INVOICE # \_\_\_\_\_

RECEIVED FROM: Gary Wheeler;  
BY: Paula Wheeler

APPLICATION 5-88659  
PERMIT  
TRANSFER

CASH:  CHECK:# OTHER: (IDENTIFY)

3390

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:

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

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR	EXAM FEE \$	0219 LICENSE FEE \$
LANDOWNER'S PERMIT		0220 LICENSE FEE \$

0223 OTHER (IDENTIFY) Protect Fees \$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 \$

RECEIPT: 140735 DATED: 5/18/2023 BY: Lisa D. Miller

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

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 # **127603**

INVOICE # \_\_\_\_\_

RECEIVED FROM: Soggy Feet Enterprises, LLC

BY: \_\_\_\_\_

APPLICATION	S-88659
PERMIT	
TRANSFER	

CASH:  CHECK:#  2086 OTHER: (IDENTIFY)  \_\_\_\_\_

TOTAL REC'D \$ 2500.00

**1083 TREASURY 4170 WRD MISC CASH ACCT**

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

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

**4270 WRD OPERATING ACCT**

**MISCELLANEOUS**

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

**WATER RIGHTS:**

0201 SURFACE WATER \$ \_\_\_\_\_ 0202 \$ \_\_\_\_\_  
 0203 GROUND WATER \$ \_\_\_\_\_ 0204 \$ \_\_\_\_\_  
 0205 TRANSFER \$ \_\_\_\_\_

**WELL CONSTRUCTION**

0218 WELL DRILL CONSTRUCTOR \$ \_\_\_\_\_ 0219 \$ \_\_\_\_\_  
 LANDOWNER'S PERMIT 0220 \$ \_\_\_\_\_

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 \_\_\_\_\_

**RECEIVED**  
**OVER THE COUNTER**

RECEIPT: **127603**

DATED: 8/10/18 BY: Juanita Tullops

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## Preface

My name is Gary Wheeler of 34856 East Columbia Avenue, phone 503-475-5208. I am writing to formally protest the proposed final order to deny Water Right Application S-88659. I am the 4<sup>th</sup> generation owner of this property. My son (soon to be the fifth-generation owner) and I believe that not irrigating this property will significantly impair continued agricultural use of the land.

It is my understanding that the DEQ is concerned about dissolved oxygen (too low), mercury level (too high) and water temperature (too high) in the Multnomah Channel and/or at the Points of Diversion (PODs) referenced in this application. I recognize that that irrigation practices have the potential to harm water quality depending on the circumstances, but that potential harm does not always translate to actual harm. It is also understood that drawing from PODs can influence the downstream waters, including the Multnomah Channel and Columbia River. This irrigation application does not fall into the traditional category where water quantity is limited; this document provides detail addressing all three water quality concerns.

## Introduction

The PODs in this application all draw from either the Santosh Slough or a secondary ditch which is ultimately pumped into the Santosh. The Santosh Slough is generally not referred to as Jackson Creek (except for some old mapping) because the two sources are completely separate except for rare (approximately 25 year) flood events.

The Santosh Slough (at no more than 7 feet NAVD88) does not natively flow into the Multnomah Channel. A levee resides at an elevation of approximately 30 feet (NAVD88) which prevents virtually all 5700 acres within Scappoose Drainage Improvement Company's (SDIC) boundaries from flowing into the channel absent of pumps/other assistance.

Water in the Santosh Slough is generally warm, shallow, stagnant, murky, turbid water, particularly during the irrigation season referenced in this application (March 1<sup>st</sup> – October 31<sup>st</sup>). These conditions are not conducive to trout or salmonoid life.

The primary water source is groundwater seepage and pumping from secondary ditches which effectively become tributary ditches; tributary ditches are also primarily sourced via ground groundwater seepage as the watermaster confirmed during his onsite visit, concluding his report with, "the fact that the Drainage District has to pump water from the Santosh Slough via the Evans throughout the summer further supports my findings" that water is not limited.

DEQ appears primarily concerned with fresh water flow reduction to the Multnomah Channel. This application will not significantly affect flow into the Multnomah Channel because water at the PODs resides near the water table (approximately 4.5-7 feet NAVD88) which regenerates itself and cannot be reasonably pumped dry. In other words, irrigation from the proposed PODs result in replacement via groundwater. This groundwater contains higher levels of dissolved oxygen, lower mercury content and cooler temperatures (all detailed below). Said another way, irrigation as referenced in this application results in better quality groundwater reaching the Multnomah Channel versus the stagnant "poor-quality" water which would otherwise be pumped from the Santosh into the Multnomah Channel.

Considerations for this location are much different than the more traditional “finite quantity of water scenario” which is present in many other parts of the Pacific Northwest. Irrigation described in this water right would not harm the Multnomah Channel water quality may even improve it as detailed below.

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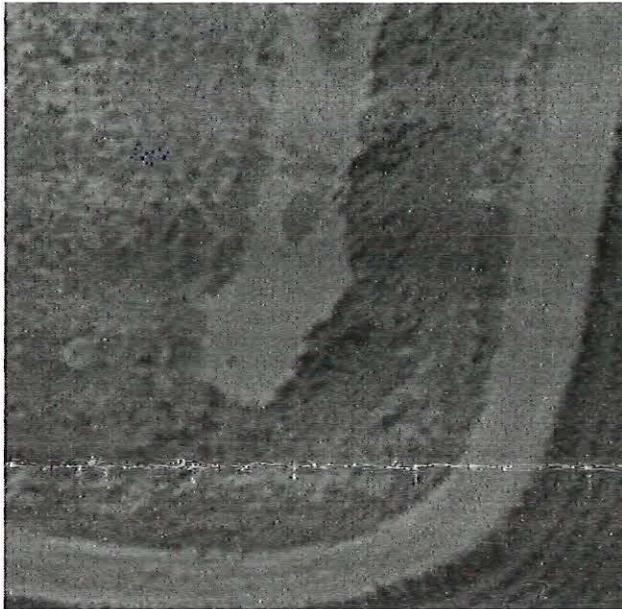
### Dissolved Oxygen

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Dissolved Oxygen (DO) is essential for salmonoid species. Unfortunately, the native waters from Santosh Slough and other feeder ditches are likely to be extremely low in DO. I'm not aware of dissolved oxygen having been previously measured, but the EPA cites 10 factors which are likely to indicate a low DO level. 9 of these factors are present in the Santosh and proposed PODs as described below:

- EPA Factor: High plant abundance
  - Presence: Yes - Present at all POD including significant and nearly continuous algae blooms during the warmer months.
- EPA Factor: Slow-moving water
  - Presence: Yes – water is virtually stagnant except when the SDIC pumps are running.
- EPA Factor: Reduced water volume
  - Presence: Yes – ditches are narrow and shallow. Water volume pales in comparison to larger lakes, rivers and streams.
- EPA Factor: Weather conditions / season
  - Presence: Yes – It's not unusual to see long periods with warm weather and no precipitation during the irrigation season.
- EPA Factor: High elevation
  - Presence: No / Does not apply. Property within SDICs boundaries is generally flat and low elevation (below 20 feet NAVD88).
- EPA Factor: Presence of organic waste
  - Presence: Yes, aside from inherent plant and animal sources, the ditches are routinely cleared of debris and sediment.
  - Additionally, the city of Scappoose's wastewater treatment plant is adjacent to the Santosh Slough. The EPA suggests that runoff events often occur in city treatment plants.
- EPA Factor: Turbid water
  - Presence: Yes – Organic sources and the clay/silt soils which surround the area and are generally suspended within the water. The water generally appears brown or dark colored underneath and green or yellow on top.
  - According to ODFW, carp often “root in the muddy/sandy bottoms looking for food”, thereby “uprooting aquatic vegetation and increasing turbidity. They also release large quantities of sediment-bound nutrient that can lead to algae blooms that further deplete oxygen levels.”
- EPA Factor: Foul smelling water
  - Presence: Yes – water appears, and smells swamp-like to varying degrees year-round.
- EPA Factor: Yellowish-green, brown, gray or black water or dark sediments
  - Presence: Yes – Surface waters are generally green / yellow and water underneath is brown or dark colored.

- See a Google Earth arial view (August 2020) at one proposed POD here:



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- Photo of a connecting ditch (May 15<sup>th</sup>, 2023)



- EPA Factor: Embedded substrate
  - Presence: Yes – The PODs have mud/silt bottoms which require maintenance to prevent “silting in” due to the presence of frequent substrate in the water. The water generally contains suspended organic matter because of its stagnant and swamp like nature.

As evidenced above, 9 of the 10 factors which the EPA cites as likely to indicate low DO levels are present.

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Additionally, while not explicitly called out in the above 10 factors, the EPA cites the following factors as likely to contribute to significant organic growth and warmer waters which inherently result in lower DO levels:

- Presence of farming - Several thousand acres of surrounding lands are farmed including at least one permitted CAFO (confined animal feeding operation). While farmers intend to minimize pollution, the EPA states “agricultural practices may contribute nutrients, pesticides, and organic matter to nearby surface waters and reduce DO concentrations.”
- Municipal waste treatment plants – The City of Scappoose has their waste water treatment plant located adjacent to the slough. According to the EPA, it’s not uncommon for municipal waste treatment plants to be overwhelmed during storms and release untreated waters which may be high in organic and other fertilizer compounds.
- Devegetated riparian areas – All ditches included in the application are adjacent to agricultural fields and the Scappoose Drainage Improvement Company also requires access for equipment, to perform maintenance, and prevent blockages. According to the EPA, the additional sunlight which reaches the ditches / slough contributes to warmer waters, inherently resulting in lower DO levels. Additionally, this sunlight and warm water promotes decaying algae which settles into sediment and decay, ultimately allowing the bacteria and zooplankton to consume the algae and oxygen in the water, thereby further depleting the water of oxygen for salmonoid and other life.

Lastly, the EPA notes that while natural inflows of ground waters may initially have low concentrations of dissolved oxygen, “ground water is often colder than surface waters and may increase dissolved oxygen saturation levels” over time. Furthermore, at these PODs, the groundwater likely contains more DO at the time it seeps into the ditches due to the swamp like nature of the Santosh Slough and surrounding ditches.

All of these factors are much more evident in the Santosh Slough when compared to the Multnomah channel, indicating that the DO levels in the Multnomah Channel and groundwater almost certainly exceed those of the Santosh Slough. As a result, groundwater replenishment improves the quality of the Santosh Slough before being pumped into the Multnomah Channel.

<https://www.epa.gov/caddis-vol2/dissolved-oxygen#:~:text=Natural%20inflows%20of%20groundwater%20usually,may%20increase%20DO%20saturation%20levels>

<https://myodfw.com/fishing/species/common-carp>

## Mercury

The 2019 Willamette Basin Mercury report (prepared by Oregon DEQ) states that “by far, the greatest source of mercury in the basin is from atmospheric deposition, which is mercury in the air falling onto the land or into the water.”

“Mercury can occur in dissolved form in groundwater [but] limited data are available on groundwater mercury concentrations. No studies were found that accurately characterize mercury in groundwater in

the Willamette Basin, or elsewhere in the Pacific Northwest.” The report goes on to state “there were some samples collected from groundwater sources near Superfund cleanup sites of the mining areas in the Coast Fork Willamette River watershed, which were low (near 1 ng/L) or below the detection limit of 0.5 ng/L.”

The World Health Organization (WHO) concurs with this assessment and states that “levels of mercury in rainwater are in the range of 5-100 ng/litre”, but “naturally occurring levels of mercury in groundwater and surface water are less than 0.5 µg/litre”. These statements from both Oregon DEQ and the WHO point to the conclusion that groundwater replenishment will be lower in mercury content than the existing surface water.

Mercury concentration in the Santosh Slough is reduced as groundwater replenishes water which was used for irrigation. This inherently benefits the PODs, Multnomah Channel and Columbia River by reducing concentrations of mercury throughout each water source. As a result, the irrigation would not hurt and may even reduce mercury concentrations at each POD, the Multnomah Channel and Columbia River.

[https://www.who.int/docs/default-source/wash-documents/wash-chemicals/mercury-background-document.pdf?sfvrsn=9b117325\\_4](https://www.who.int/docs/default-source/wash-documents/wash-chemicals/mercury-background-document.pdf?sfvrsn=9b117325_4)

<https://www.oregon.gov/deq/wq/Documents/willHgtmdlwqmpF.pdf>

## Temperature

Water temperature in the ditches during summer months is very warm to the touch (similar to bath water). This likely results from virtually no flow and lack of shade. Note that no additional revegetation will take place as a result of these PODs.

I was not able to locate an official temperature reading for the Santosh Slough, but it will certainly be much higher than the larger, deeper, cool water fed Multnomah Channel. USGS measured water temperatures in the Multnomah Channel during the summers of 2016 and 2017 and noted a high temperatures of 23.0 Celsius / 73.4 Fahrenheit during August 2016.

I was also unable to attain precise groundwater temperature for the location, but Hydroflow-USA measured a variety of locations in Oregon and the nearest location measured was Portland at 52 degrees Fahrenheit.

I believe the Santosh temperature during the irrigation period is often well in excess of the 73.4 (measured in the Multnomah Channel). The groundwater temperature is significantly below even this figure with a greater than 20 degree spread in temperature.

As a result, using water at the specified PODs results in cooler groundwater replenishment and less warm water remains present at the PODs which is ultimately pumped into the Multnomah Channel.

<https://pubs.usgs.gov/of/2018/1184/ofr20181184.pdf>

<https://www.hydroflow-usa.com/oregon-groundwater-temperature#:~:text=Oregon%20Groundwater%20Temperature%20Yearly%20Average&text=Since%20Oregon's%20average%20temperature%20range,F%20and%2055%C2%B0F.>

### **Summary**

Irrigation as proposed in this application would have no net negative effect on the Multnomah Channel or salmonoid life as measured by dissolved oxygen, mercury and temperature levels. Additionally, it may benefit one or more of these categories as described above because better quality water (more DO, less mercury, cooler temperature) refills the Santosh Slough (and is ultimately pumped into the Multnomah Channel) when I am irrigating.

Lastly, this property and each POD is within a drainage district, meaning that taxpayers are annually assessed for the cost of pumping water out of the district, over the dike, and into the Multnomah Channel. Taxpayers and the managing body (Scappoose Drainage Improvement Company) would likely immediately file complaint to prevent outside/upstream waters from being sourced into the district, only to later be pumped back out, at their expense. This type of circular water strategy would be inefficient and costly.

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MAY 18 2023

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# Mailing List for PFO Deny Copies

Application S-88659

PFO Date April 4, 2023

Original mailed via CERTIFIED MAIL to applicant:

GARY WHEELER  
34856 E. COLUMBIA AVE.  
SCAPPOOSE, OR 97056

Copies Mailed
By: <u>KMWF</u> (SUPPORT STAFF)
On: <u>APR 04 2023</u> (DATE)

**Sent via auto email:**

1. Applicant – gps450@gmail.com
2. Agent – Amanda Hoyt: amanda\_hoyt@msn.com
3. WRD – Watermaster District #18, Jacob W. Constans
4. WRD – Mike McCord, NWR
5. WRD – SW Section

**Copies sent to:**

1. WRD – File # S-88659

Application Specialist: Lucinda Vranizan

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

Water Right Application S-88659 in the name of GARY WHEELER	) ) )	PROPOSED FINAL ORDER TO DENY
--	-------------	---------------------------------

**Summary:** The Department proposes to issue an order denying Application S-88659. The use does not comply with rules of the Commission, specifically Oregon Administrative Rule (OAR) Chapter 690, Division 33.

**Authority**

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and OAR Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the Willamette Basin Program (OAR 690-502). 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 not met and the presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8) and OAR 690-310-0120(2).

If the Department determines that the proposed use will impair or be detrimental to the public interest, the Department may issue a proposed final order recommending denial of the application.

## FINDINGS OF FACT

### Application History

1. On August 10, 2018, Gary Wheeler filed a complete application for the following water use:
  - Source:** JACKSON CREEK, SANTOSH SLOUGH, AN UNNAMED DITCH, KESSI DITCH, SANTOSH DITCH AND JOHNSON DITCH, TRIBUTARIES TO MULTNOMAH CHANNEL
  - Use:** IRRIGATION OF 69.19 ACRES
  - Rate:** 0.86 CUBIC FOOT PER SECOND (CFS)
  - Period of Use:** MARCH 1 THROUGH OCTOBER 31
  - County:** COLUMBIA COUNTY
  - Place of Use:** SECTIONS 7, 8, AND 18, TOWNSHIP 3 NORTH, RANGE 1 WEST, W.M.
2. On November 2, 2018, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 0.86 CFS of water from Jackson Creek, Santosh Slough, an unnamed ditch, Kessi Ditch, Santosh Ditch and Johnson Ditch, tributaries to Multnomah Channel for irrigation of 69.19 acres, March 1 through October 31 is allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On November 6, 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. On October 2, 2019, the Department sent the applicant correspondence outlining the requirements from the interagency review team to mitigate the impacts to water quality for the habitat of sensitive, threatened, or endangered fish species. The correspondence gave the applicant until December 2, 2019, to notify the Department if they plan on pursuing mitigation. As of the date of this order, the Department had not received indication that mitigation is being pursued.
5. The application was placed on administrative hold several times, the last of which expired on July 17, 2022.

### Presumption Criterion (a) Consistency with Basin Program

6. Irrigation is allowed under the Willamette Basin Program (OAR 690-502-0150(3)). ORS 537.153(2); OAR 690-310-0110(1)(a)

### Presumption Criterion (b) Water Availability

7. Based on a preliminary review, an analysis of water availability using the Department's Water Availability Reporting System is not possible for the proposed points of diversion. Therefore, a site-specific determination must be made by the Watermaster. An assessment of water availability has been completed by the local Watermaster and has determined that water is available for further appropriation March 1 through October 31 of each year. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). ORS 537.153(2); OAR 690-310-0110(1)(b)

**Presumption Criterion (c) Injury Determination**

8. The proposed use, if authorized, will not injure other water rights. ORS 537.153(3)(d); OAR 690-310-0150(2)(e)

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

9. 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)
10. The proposed use is in an area of the state in which OAR 690-033-0210 thru -0230 and OAR 690-033-0310 thru -0340 apply. These rules establish definitions, additional procedures, and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

**OAR 690-033-0210 Lower Columbia Rules (Below Bonneville Dam)**

- A. The proposed use of water is detrimental to the protection or recovery of a threatened or endangered species. OAR 690-033-0220(1)
- B. The proposed use can be conditioned or mitigated to avoid the detriment. OAR 690-033-0220(1)
- C. The applicant did not propose mitigation compatible with OAR 690-033-0220(2), (3) and (4). OAR 690-033-0220(5)
- D. The application is presumed to impair or be detrimental to the public interest under the OAR 690-033-0220 evaluation criteria.

**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 recommend conditions and mitigation as necessary to achieve the standards listed in OAR 690-033-0330(2)(a) and (b).
11. The proposed use is not located within or above a 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**

Because the criteria are not met (the use does not comply with rules of the Commission) the presumption is not established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

**Further Evaluation of the Proposed Use**

12. No comments were received by the close of the comment period. OAR 690-310-0120(3)(a)
13. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0150(2)

**Other Criteria and Requirements**

14. The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 6 and 7 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.

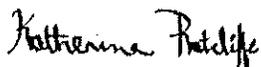
**CONCLUSIONS OF LAW**

1. The proposed use will impair or be detrimental to the public interest as described in ORS 537.153(2).

**PROPOSED ORDER**

The Department recommends issuing an order denying Application S-88659.

DATED April 4, 2023



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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 **May 19, 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, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the 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 **May 19, 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;



## VRANIZAN Lucinda R \* WRD

---

**From:** VRANIZAN Lucinda R \* WRD  
**Sent:** Tuesday, April 11, 2023 2:17 PM  
**To:** FRENCH Kim R \* WRD  
**Subject:** RE: S-88659 Wheeler

Thank you! You too!

*Lucinda Vranizan*

Water Right Caseworker

725 Summer St NE Suite A | Salem OR 97301 | Phone 971-375-2256

---

**From:** FRENCH Kim R \* WRD <Kim.R.FRENCH@water.oregon.gov>  
**Sent:** Tuesday, April 11, 2023 2:17 PM  
**To:** VRANIZAN Lucinda R \* WRD <Lucinda.R.VRANIZAN@water.oregon.gov>  
**Subject:** FW: S-88659 Wheeler

Here you go! The whole email string!

Have a great week!

**Kim French** | Water Rights Transfer Specialist

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-9607 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)

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---

**From:** FRENCH Kim R \* WRD  
**Sent:** Wednesday, August 3, 2022 10:53 AM  
**To:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Subject:** RE: S-88659 Wheeler

Yes, when the PFO is issued, there is a 45-day protest period. The protest instructions will be at the end of the PFO.

**Kim French** | Water Rights Program Analyst

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)

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**From:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Sent:** Wednesday, August 3, 2022 10:24 AM  
**To:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Subject:** Re: S-88659 Wheeler

I will still have the option to contest the ruling correct?

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

---

**From:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Sent:** Wednesday, August 3, 2022 10:20:52 AM  
**To:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Subject:** RE: S-88659 Wheeler

Here is what the DEQ review says:

**Flow Mitigation.** Mitigation obligation: Prior to issuance of a permit, the applicant shall provide mitigation water instream 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 must be transferred instream for the *March 1-October 31* and of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.

You would need to find a surface water right that is not being used and transfer it instream. However, if there is a surface water irrigation right that someone would be willing to give up, it might be easier to just transfer the place of use (provided it meets all the transfer criteria).

There are many hoops to jump through when it comes to transferring a right instream to provide mitigation. If you find a right that may work for mitigation, we can talk more about it, although it's not an easy process. Seems like nothing is easy any more.

Thanks,

**Kim French** | Water Rights Program Analyst

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)

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**From:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Sent:** Wednesday, August 3, 2022 9:48 AM  
**To:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Subject:** Re: S-88659 Wheeler

So if we try to perform the mitigation they are requesting, what does that look like?

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

---

**From:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Sent:** Wednesday, August 3, 2022 9:34:00 AM  
**To:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Subject:** RE: S-88659 Wheeler

After looking through recent information and information from 2020 from DEQ, it appears that they spoke to the drainage district and the watermaster and feel that the findings and requirements are accurate. Therefore, there is nothing to "fix." The findings in the DEQ Division 33 review will remain the same.

Here is the response that I have from 2020:

"A very, very long time ago I was contacted by Amanda Hoyt about DEQ's Division 33 review for Gary Wheeler. Amanda (asked) if DEQ would reconsider the findings in the review (specifically for the mitigation requirement) because of the uniqueness of the area where Gary Wheeler's property is located. Mitigation was recommended in part because there is no water availability information for this area, and, because there are TMDL listings downstream in the receiving waters of Multnomah Channel.

While it took me a very long time to figure out how to approach this request, in the last month or so I received all the pieces of information I needed, and had some very helpful conversations with the SDIC and Watermaster. After much analysis and consideration for the information that I did receive, I wanted to let you know that DEQ's determination will not be changing."

So, I will be preparing the PFO to be issued in the next month or so.

Thank you,

**Kim French** | Water Rights Program Analyst

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)

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**From:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Sent:** Tuesday, August 2, 2022 1:30 PM  
**To:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Subject:** Re: S-88659 Wheeler

I guess I can do that, but it seems like that makes for a lot more work instead of just fixing the issue before we do the final order?

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

---

**From:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Sent:** Tuesday, August 2, 2022 1:28:38 PM  
**To:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Subject:** RE: S-88659 Wheeler

As we have told other applicants in that area, our process is to issue a Proposed Final Order and the applicant can protest. If you don't agree with the findings in either our PFO or the Division 33 reviews, that would be the time to submit additional data or request a site visit.

**Kim French** | Water Rights Program Analyst  
**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)  
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**From:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Sent:** Tuesday, August 2, 2022 1:21 PM  
**To:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Subject:** Re: S-88659 Wheeler

Throughout this whole process I have been passed back-and-forth between DEQ and the water rights department and finally got to the point that I felt like I had to contact DEQ to try to get this issue brought to light so that it would be known that I am not taking water from the water bodies they think. The water control structure that is diverting water from Jackson creek directly into the channel doesn't show up on any maps so until I can get somebody to come out here and see for themselves that I am not using any water from Jackson Creek because maps are still miss labeled, I don't know what to do.

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

---

**From:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Sent:** Tuesday, August 2, 2022 1:12:10 PM  
**To:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Subject:** RE: S-88659 Wheeler

The person that originally sent the information about not changing the review is not available at DEQ any longer. We usually want the applicants (or agents, in this case) to work through us and not contact the other agencies directly. That's probably why you haven't gotten a call back. They have relayed all of the information to us.

Here is the information that I received regarding the review:

"Unless the applicant can provide new data to warrant a revision of the review, DEQ is not willing to change our recommendation.

As to question of the 303d list, the proposed diversions impact the Multnomah Channel which does not meet state water quality standards for the following parameters: dissolved oxygen to support salmon and trout spawning requirements (Jan. 1 – May 15), mercury and temperature (year round salmon and trout rearing and migration).

In addition, the proposed PODs also impact the Multnomah Channel and Sauvie Island waterbodies which are covered by the Lower Willamette Basin Temperature TMDL. As stated in DEQ's original review, the TMDL established both nonpoint and point source allocations for temperature and demonstrated the connection between flow and river temperatures in the basin. The identified critical period is **June – September**. The Lower Willamette Subbasin Temperature TMDL applies to "Perennial and/or fish bearing (as identified by ODFW, USFW or NFMS) streams within the HUC (Hydrologic Unit Code) 17090012 – Lower Willamette." This includes the waterbodies impacted by the proposed PODs."

So, as I said in my previous email, if the applicant wants to pursue mitigation, please let me know. If they don't wish to pursue mitigation, I will proceed with a Proposed Final Order. If they disagree with the findings in the PFO, they will have the opportunity to protest.

**Kim French** | Water Rights Program Analyst

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)  
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**From:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Sent:** Tuesday, August 2, 2022 12:47 PM  
**To:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Subject:** Re: S-88659 Wheeler

That is interesting since I have tried contacting them repeatedly and nobody will call me back. Can you let me know who it was you talk to so I can try calling them.

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

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**From:** FRENCH Kim R \* WRD <[Kim.R.FRENCH@water.oregon.gov](mailto:Kim.R.FRENCH@water.oregon.gov)>  
**Sent:** Tuesday, August 2, 2022 12:44:38 PM  
**To:** KYLE HOYT <[soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com)>  
**Subject:** S-88659 Wheeler

Hello Amanda,

I wanted to let you know that I received confirmation from DEQ that their review will not be changing with regards to the mitigation requirements that we sent out on 10/2/19.

If they intend to provide mitigation, please let me know by **August 19, 2022**. If I don't hear from you by then, we will proceed with issuing a Proposed Final Order.

Please let me know if you have any questions.

Thank you,

**Kim French** | Water Rights Program Analyst

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)

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## FRENCH Kim R \* WRD

---

**From:** SAUTER Sarah \* DEQ  
**Sent:** Tuesday, August 2, 2022 7:15 AM  
**To:** FRENCH Kim R \* WRD  
**Cc:** HENDRICKSON Cole \* DEQ; MATZKE Andrea \* DEQ; HENDRICKSON Cole \* DEQ  
**Subject:** RE: S-88659 Wheeler  
**Attachments:** Update- Division 33 for Gary Wheeler (S-88659)

Hi Kim,

Thanks for reaching out.

I attached an email Roxy sent Alyssa in June 2020 in response to a request to reconsider our mitigation finding. Unless the applicant can provide new data to warrant a revision of the review, DEQ is not willing to change our recommendation.

As to question of the 303d list, the proposed diversions impact the Multnomah Channel which does not meet state water quality standards for the following parameters: dissolved oxygen to support salmon and trout spawning requirements (Jan. 1 – May 15), mercury and temperature (year round salmon and trout rearing and migration).

In addition, the proposed PODs also impact the Multnomah Channel and Sauvie Island waterbodies which are covered by the Lower Willamette Basin Temperature TMDL. As stated in DEQ's original review, the TMDL established both nonpoint and point source allocations for temperature and demonstrated the connection between flow and river temperatures in the basin. The identified critical period is **June – September**. The Lower Willamette Subbasin Temperature TMDL applies to "Perennial and/or fish bearing (as identified by ODFW, USFW or NFMS) streams within the HUC (Hydrologic Unit Code) 17090012 – Lower Willamette." This includes the waterbodies impacted by the proposed PODs.

Please let me know if you have any additional questions,

~Sarah

**From:** FRENCH Kim R \* WRD <Kim.R.FRENCH@water.oregon.gov>  
**Sent:** Friday, July 29, 2022 7:55 AM  
**To:** SAUTER Sarah \* DEQ <Sarah.SAUTER@deq.oregon.gov>; HENDRICKSON Cole \* DEQ <Cole.HENDRICKSON@deq.oregon.gov>  
**Subject:** S-88659 Wheeler

Hi Sarah and Cole,

I was looking at this application and it's in the same area as S-88694 (Ken Bernet – the one that wanted a site visit). The agent said that the diversion is not within a 303d listed stream and, therefore, the mitigation requirements do not apply.

Is that accurate? Does the DEQ Division 33 review need to be revised? ODFW said the rate is inconsequential.

I'm assuming that it will be essentially the same the Ken Bernet one, where I will issue the PFO and they can protest and present any new data they may have.

Let me know! Thanks!

**Kim French** | Water Rights Program Analyst

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Phone: 503 979-3168 Email: [kim.r.french@water.oregon.gov](mailto:kim.r.french@water.oregon.gov)

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## **VRANIZAN Lucinda R \* WRD**

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**From:** NAYAR Roxy \* DEQ  
**Sent:** Monday, June 15, 2020 4:25 PM  
**To:** FRENCH Kim R \* WRD; MUCKEN Alyssa M \* WRD; KOHANEK Ron C \* WRD  
**Cc:** MATZKE Andrea \* DEQ  
**Subject:** Update- Division 33 for Gary Wheeler (S-88659)

Hi Kim, Craig and Alyssa,

A very, very long time ago I was contacted by Amanda Hoyt about DEQ's Division 33 review for Gary Wheeler. Amanda if DEQ would reconsider the findings in the review (specifically for the mitigation requirement) because of the uniqueness of the area where Gary Wheeler's property is located. Mitigation was recommended in part because there is no water availability information for this area, and, because there are TMDL listings downstream in the receiving waters of Multnomah Channel.

While it took me a very long time to figure out how to approach this request, in the last month or so I received all the pieces of information I needed, and had some very helpful conversations with the SDIC and Watermaster. After much analysis and consideration for the information that I did receive, I wanted to let you know that DEQ's determination will not be changing.

This is the first instance where I have had an applicant reach out directly, requesting reconsideration, in an area where there is no supporting data to warrant a revision of the review. Is there is a process or conversation between our agencies that needs to take place next, or a process for notifying the applicant about the decision?

Thank you!!  
Roxy

Integrated Water Resource Specialist  
Oregon Department of Environmental Quality

## FRENCH Kim R \* WRD

---

**From:** KYLE HOYT <soggyfeetfarms@msn.com>  
**Sent:** Monday, May 10, 2021 11:40 AM  
**To:** FRENCH Kim R \* WRD  
**Subject:** Re: Request for Administrative Hold for Water Right App S-88659

Good afternoon!

On May 12th our administrative hold will expire. Due to the still ongoing pandemic restrictions, we have been unable to make any progress on our work with DEQ. I would like to request an additional 180 day administrative hold on our application in hopes that the pandemic restrictions will lift soon, allowing us to continue our work on Application S-88659.

Thank you for your help! Please confirm that you have received this email.

Amanda Hoyt

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

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**From:** FRENCH Kim R \* WRD <Kim.R.French@oregon.gov>  
**Sent:** Thursday, November 12, 2020 10:35:19 AM  
**To:** KYLE HOYT <soggyfeetfarms@msn.com>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

Hi Amanda,

Here is the confirmation letter for the additional admin hold.

Have a great weekend!

**Kim French** | Water Rights Application Specialist  
**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)  
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**From:** KYLE HOYT <soggyfeetfarms@msn.com>  
**Sent:** Thursday, November 12, 2020 10:10 AM  
**To:** FRENCH Kim R \* WRD <Kim.R.French@oregon.gov>  
**Subject:** Re: Request for Administrative Hold for Water Right App S-88659

Hi Kim!

I'm writing to request another extension on our process. With the COVID issues involved, I don't see much progress getting made by deq.

Let me know if you have any questions.

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

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**From:** FRENCH Kim R \* WRD <[Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov)>  
**Sent:** Tuesday, July 21, 2020 3:24:31 PM  
**To:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

I found out it wasn't me that dropped the ball. It was my manager. I'll make sure this gets done this time.

Thank you!

**Kim French** | Water Rights Application Specialist  
**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)  
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**From:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>  
**Sent:** Tuesday, July 21, 2020 3:22 PM  
**To:** FRENCH Kim R \* WRD <[Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov)>  
**Subject:** FW: Request for Administrative Hold for Water Right App S-88659

Below is our email thread from when I requested a second administrative hold.

**From:** FRENCH Kim R \* WRD <[Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov)>  
**Sent:** Thursday, May 7, 2020 7:22 AM  
**To:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

Good Morning Amanda,

The Department has determined that management must approve any administrative hold requests after the first one, so I have forwarded your request to my manager. In light of all that is happening, it's likely that it will be approved, but I'll let you know for sure when I know.

Thank and have a great day!

**Kim French** | Water Rights Application Specialist  
**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)

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

**From:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>  
**Sent:** Wednesday, May 06, 2020 5:24 PM  
**To:** FRENCH Kim R \* WRD <[Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov)>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

Hi Kim!

I need to request another administrative hold. Apparently nobody was working on this for most of the time since November. Ive been in contact with Roxy at DEQ and she is looking into the situation, but told me I will need to ask for more time for her to do her work. Is this sufficient as another request?

Amanda Hoyt

**From:** FRENCH Kim R \* WRD <[Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov)>  
**Sent:** Wednesday, November 27, 2019 7:50 AM  
**To:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>  
**Cc:** Gary (<[gps450@gmail.com](mailto:gps450@gmail.com)>) <[gps450@gmail.com](mailto:gps450@gmail.com)>; CONSTANS Jake W \* WRD <[Jake.W.Constants@oregon.gov](mailto:Jake.W.Constants@oregon.gov)>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

Hi Amanda,

Yes, your email request is sufficient. Here is the acknowledgement letter for the administrative hold. Let me know if you need anything else.

Thank you,

**Kim French** | Water Rights Application Specialist

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)

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

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**From:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>  
**Sent:** Tuesday, November 26, 2019 4:09 PM  
**To:** FRENCH Kim R \* WRD <[Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov)>  
**Subject:** Request for Administrative Hold for Water Right App S-88659  
**Importance:** High

Good afternoon!

I received a letter from your department informing us that the ODEQ reviewed our application and is requesting a mitigation plan due to a potential conflict involving a 303 (d) water source. After reading the letter, and contacting the ODEQ, I am requesting a **180 day Administrative Hold** on the process as the ODEQ is re-evaluating their recommendation and will need an undetermined amount of time to do so. I brought to their attention that our water right/diversion points have no effect on the water source they are concerned about and therefore make a mitigation plan unnecessary.

The letter also stated that I must submit a request for the Administrative Hold, in writing, before December 2, 2019. I am assuming that submitting the request through email is an approved method as the letter did not state otherwise.

Please let me know if you need any further information or the request in a different format.

Thank you!

*Amanda Hoyt*

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P 503-730-2517

## FRENCH Kim R \* WRD

---

**From:** KYLE HOYT <soggyfeetfarms@msn.com>  
**Sent:** Thursday, November 12, 2020 10:10 AM  
**To:** FRENCH Kim R \* WRD  
**Subject:** Re: Request for Administrative Hold for Water Right App S-88659

Hi Kim!

I'm writing to request another extension on our process. With the COVID issues involved, I don't see much progress getting made by deq.

Let me know if you have any questions.

Amanda Hoyt

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P: 503.730.2517

---

**From:** FRENCH Kim R \* WRD <Kim.R.French@oregon.gov>  
**Sent:** Tuesday, July 21, 2020 3:24:31 PM  
**To:** KYLE HOYT <SOGGYFEETFARMS@msn.com>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

I found out it wasn't me that dropped the ball. It was my manager. I'll make sure this gets done this time.

Thank you!

**Kim French** | Water Rights Application Specialist

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)  
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**From:** KYLE HOYT <SOGGYFEETFARMS@msn.com>  
**Sent:** Tuesday, July 21, 2020 3:22 PM  
**To:** FRENCH Kim R \* WRD <Kim.R.French@oregon.gov>  
**Subject:** FW: Request for Administrative Hold for Water Right App S-88659

Below is our email thread from when I requested a second administrative hold.

**From:** FRENCH Kim R \* WRD <Kim.R.French@oregon.gov>  
**Sent:** Thursday, May 7, 2020 7:22 AM  
**To:** KYLE HOYT <SOGGYFEETFARMS@msn.com>  
**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

Good Morning Amanda,

The Department has determined that management must approve any administrative hold requests after the first one, so I have forwarded your request to my manager. In light of all that is happening, it's likely that it will be approved, but I'll let you know for sure when I know.

Thank and have a great day!

**Kim French** | Water Rights Application Specialist

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)

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Amanda Hoyt

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**Sent:** Wednesday, November 27, 2019 7:50 AM

**To:** KYLE HOYT <[SOGGYFEETFARMS@msn.com](mailto:SOGGYFEETFARMS@msn.com)>

**Cc:** Gary ([gps450@gmail.com](mailto:gps450@gmail.com)) <[gps450@gmail.com](mailto:gps450@gmail.com)>; CONSTANS Jake W \* WRD <[Jake.W.Constans@oregon.gov](mailto:Jake.W.Constans@oregon.gov)>

**Subject:** RE: Request for Administrative Hold for Water Right App S-88659

Hi Amanda,

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Thank you,

**Kim French** | Water Rights Application Specialist

**Water Resources Department** | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0816 | Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov)

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**Subject:** Request for Administrative Hold for Water Right App S-88659

**Importance:** High

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Thank you!

*Amanda Hoyt*

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P 503-730-2517



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

November 27, 2019

GARY WHEELER  
34856 E COLUMBIA AVE  
SCAPPOOSE, OR 97056

Reference: File S-88659

Dear Applicant:

On November 27, 2019, the Water Resources Department received a letter from your agent, Amanda Hoyt, requesting a 180-day administrative hold on processing the above-referenced application to allow you time to address mitigation requirements.

The Department will not take any action on this application until **May 27, 2020**, unless you request that we continue processing sooner. If you need to request additional time, you will need to show justification for why additional time is reasonable and necessary, that substantial progress is being made towards being ready to proceed with application processing, and a general time line, which identifies when you anticipate being ready to continue with the application process.

Feel free to contact me at [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov) or 503-986-0816 with questions.

Sincerely,

Kim French  
Water Right Application Specialist

cc: WM# 18  
File  
Agent – Amanda Hoyt – [soggyfeetfarms@msn.com](mailto:soggyfeetfarms@msn.com) – email sent  
Applicant – [gps450@msn.com](mailto:gps450@msn.com) – email sent

## FRENCH Kim R \* WRD

---

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**Sent:** Tuesday, November 26, 2019 4:09 PM  
**To:** FRENCH Kim R \* WRD  
**Subject:** Request for Administrative Hold for Water Right App S-88659

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Thank you!

*Amanda Hoyt*

Soggy Feet Enterprises LLC  
35635 E Columbia Ave  
Scappoose, OR 97056  
P 503-730-2517



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

[www.Oregon.gov/OWRD](http://www.Oregon.gov/OWRD)

October 2, 2019

Gary Wheeler  
34856 E. Columbia Ave.  
Scappoose, OR 97056

Re: Water Right Application S-88659

Dear Mr. Wheeler,

The Oregon Water Resources Department (Department) has been working to complete the next step in processing your application, which is preparing the Proposed Final Order (PFO). Oregon Administrative Rule (OAR) 690-033 requires this application be reviewed by the Oregon Department of Environmental Quality (ODEQ) and the Oregon Department of Fish and Wildlife (ODFW) to determine whether the proposed use will impair or be detrimental to the public interest with regard to Sensitive, Threatened, or Endangered (STE) fish species.

The Department received the review conducted by ODEQ, which indicated that there is a connection between the point of appropriation and a 303(d) listed water quality limited water body. What this means is that the proposed use will result in diminution of the water quality for the habitat of STE fish species. ODEQ's recommendation is that you provide flow mitigation of no less volume than the proposed use. Mitigation water shall be sourced upstream of the point of diversion in Jackson Creek. If surface water is used for mitigation, it shall be instream March 1 through October 31. This will mitigate the impact on STE fish species habitat and allow the Department to make positive findings in the PFO.

Your application indicated that you would use a volume of approximately 173.0 acre-feet of water annually; **therefore we require that you provide mitigation in the amount of 173.0 acre-feet of water** to be able to move forward with a proposed final order recommending approval. Pursuant to Oregon Revised Statute 536.050(1)(b)(B), a mitigation fee of \$670 will be required and must be submitted with any mitigation proposal.

**Please let us know if you plan to pursue mitigation no later than December 2, 2019.** If you do plan to pursue mitigation, you may request an administrative hold for up to 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not hear from you by **December 2, 2019**, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

Please feel free to contact me at [Kim.R.French@oregon.gov](mailto:Kim.R.French@oregon.gov) or 503 986-0816 if you have any questions.

Regards,

Kim French  
Water Rights Application Specialist

cc: WM #18

Agent – Amanda Hoyt – [Amanda.hoyt@msn.com](mailto:Amanda.hoyt@msn.com)

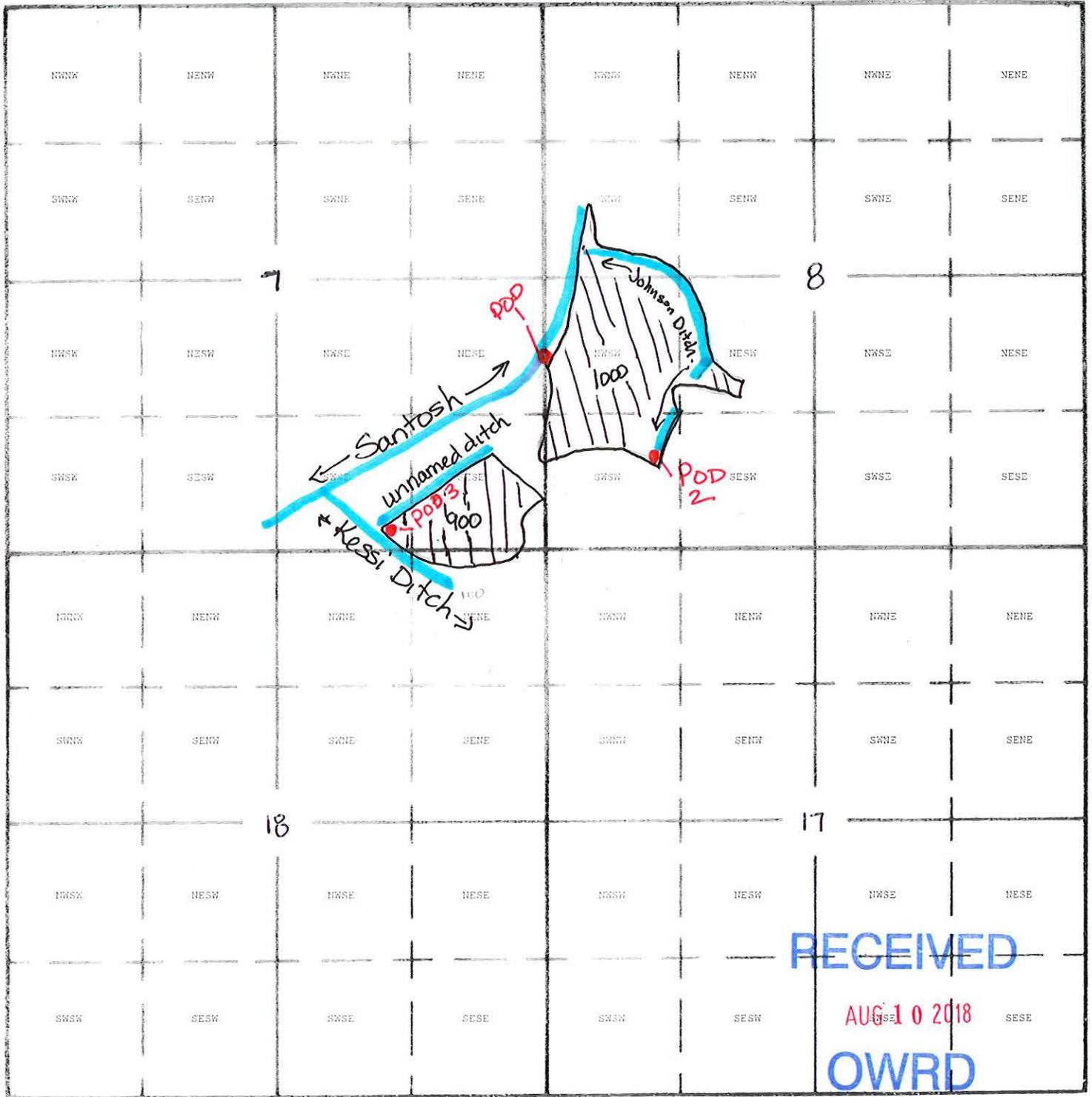
\*Files copy  
copy sent to  
applicant  
10/3/2019



1" = 1320'

Tax Lot: 900, 1000

Township 3N, Range 1W, Section 7, 8, 18, Tax Lot 900 & 1000



POD: See attached water sources page for descriptions  
POD:

= Primary Irrigation

P-88659

Tax lot 900 = 20.96 acres  
Tax lot 1000 = 48.14 acres

**List of acres per quarter quarter**

Lake Bottom Field (Lot 900) (20.96 acres total)

- Section 18 NENE 1.76 acres
- Section 7 SWSE 1.29 acres
- Section 7 SESE 18 acres

Pasture Field (Lot 1000) (48.14 acres total)

- Section 7 SESE 0.10 acres
- Section 8 SWSW 7.92 acres
- Section 8 NWSW 32 acres
- Section 8 SWNW 2.6 acres
- Section 8 NESW 5.52 acres

RECEIVED

AUG 10 2018

OWRD

SECTION 3: SOURCE OF WATER

Source 1: Santosh Ditch, a tributary to the Multnomah Channel. TRSQQ of POD: 3N1W, Section 8, NWSW Quarter Quarter. The diversion point/pump location would be 2100ft N, 280ft E of the SW corner of Section 8, being within 3N1W.

Source 2: Johnson Ditch, a tributary to the Santosh Ditch. TRSQQ of POD: 3N1W, Section 8, SWSW quarter quarter. The diversion point/pump location will be 1100 feet E, 930 ft N of the SW corner of Section 8, within the SWSW Quarter Quarter.

Source 3: Unnamed Ditch/Kessi Ditch, a tributary to the Santosh Ditch. TRSQQ of POD: 3N1W, Section 7, SWSE Quarter Quarter. The diversion point/pump location will be 180ft N, 1600 ft W of the SE corner of Section 7, in the SWSE Quarter Quarter.

RECEIVED

AUG 10 2018

OWRD

# Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SHEET Lower Columbia Basin (Below 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): March 1-Oct 31

Basin: Willamette

Stream: Jackson Creek/Santosh Slough/Kessi Ditch/Santosh Ditch

Tributary to: Multnomah Channel

TRSQQ: type here (optional)

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

- A)  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)
- B)  The following STE fish species are present at the location of the proposed use or will be impacted by the proposed use:

STE Species	Listing Status			Life Stage Present		
	Sensitive	Threatened	Endangered	Egg	Juvenile	Adult
Coastal Cutthroat Trout	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>type here</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>type here</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<u>type here</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>type here</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 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. (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):
- 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:
- D) Are the biologically necessary flows identified above (Questions B and C) **available**<sup>1</sup> 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 obstruction<sup>2</sup> to fish passage for STE native migratory fish currently or historically present *at the point of diversion* per ORS 509.585?
- YES; "Passage"  
 NO
- B) Would STE fish species benefit from fish screening per ORS 498.306?
- YES; "Screen"  
 NO  
 "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

<sup>1</sup> Based on information WRD's Water Availability Reporting System (WARS)

<sup>2</sup> "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.

### 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?

YES;

- 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 Lower Columbia Rules)

#### Overarching Question 1:

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

- 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.**
- NO; 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.
- YES; Based on knowledge of recovery plans, the Fish and Wildlife Program, and regional restoration programs, ODFW found the use to be detrimental to the protection or recovery of a threatened or endangered species 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).

#### Overarching Question 2:

**Can the use be conditioned or mitigated to avoid the detriment to a threatened or endangered fish species?**

- 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"

*Note: 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:
 

<p><u>Flow</u></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> "Maintain Flow"</li> <li><input type="checkbox"/> "Restrictor"</li> <li><input type="checkbox"/> "Biologically Necessary Flows"</li> <li><input type="checkbox"/> "Bypass Flows"                             <ul style="list-style-type: none"> <li><input type="checkbox"/> plus a net benefit</li> </ul> </li> <li><input type="checkbox"/> Site-specific condition(s): <u>type here</u></li> </ul>	<p><u>Passage and Screening</u></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> "Passage"</li> <li><input type="checkbox"/> "Screen"</li> <li><input type="checkbox"/> "Future Protection"</li> </ul> <p><u>Other Ecological Functions [Section 3.3]</u></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> "Riparian"</li> <li><input type="checkbox"/> Site-specific condition(s): <u>type here</u></li> </ul>
--	--

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

 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:

Additional comments: type here

- 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)  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 Program<sup>3</sup> 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.

<sup>3</sup> Water Resources Department's document number 94-2

## Part 1: Flow Mitigation

### 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: (cfs or AF; equals amount requested or equivalent % PSI)

- plus a net benefit (for Habitat Category 2)

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

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

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

**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: 

Date: 2/10/20

Name: Jason Brandt

Phone: 541-464-2182

Email: Jason.r.brandt@state.or.us

## **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: type here

Name: type here

Phone: type here

Email: type here

Application #: S-88659

Applicant: Gary Wheeler

### DEQ Water Right Review

Basin & Subbasin: *Willamette Basin, Multnomah Channel Subbasin*

What are the names of the surface water source and the nearest receiving waterbody? *Kessi Ditch, Johnson Ditch, Santosh Ditch and Multnomah Channel*

Requested water amount: *0.86 CFS for irrigation of 69.19 acres*

Requested time period: *March 1- October 31*

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.

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#### 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":

1. **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 directed to contact the local ODFW Fish Biologist prior to diverting water.
2. **Flow Mitigation**. Mitigation obligation: Prior to issuance of a permit, the applicant shall provide mitigation water in-stream 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 must be transferred **instream for the March 1- October 31** and of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.

3. **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.
4. **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.
5. **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.

**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: *Roxann Nayar*

Date prepared: *February 27, 2019*

ODA review requested:  No  Yes

Date review sent to ODA: *February 27, 2019*

ODA reviewer: *Mike Powers and Margaret Matter* ODA review date: *April 11, 2019*

Comments:

1. *Table 2 is not completed so it is not clear if water is available. However, the DEQ conditions approval on providing mitigation water upstream of the PODs, suggesting that water is unavailable during the irrigation season. ODA concurs with the remaining conditions.*

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**THE SECTION BELOW IS FOR DEQ INTERNAL USE ONLY**

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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 6<sup>th</sup> 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.

*The Multnomah Channel does not meet state water quality standards for the following parameters: dissolved oxygen to support salmon and trout spawning requirements (Jan. 1 – May 15), mercury and temperature (year round salmon and trout rearing and migration). DEQ does not have data to indicate whether or not either of the POD diversion canals/waterbodies meets water quality standards. The Willamette Basin TMDL, which includes the Multnomah Channel and Sauvie Island waterbodies, established both nonpoint and point source allocations for temperature and demonstrated the connection between flow and river temperatures in the basin. The identified critical period is June – September. A TMDL has not yet been developed for dissolved oxygen and the current mercury TMDL will be updated by April 2019.*

*Multnomah Channel is impaired for Dissolved Oxygen, Mercury and Temperature, parameters commonly affected by flow. The requested withdrawal period overlaps with the critical season for temperatures and without specific water availability data, flow mitigation is required to maintain water quality conditions during this season.*

**Table 1: Integrated Report/ 303(d) listings**

Water Body (Stream/Lake)	River Miles	Parameter	Season	Criteria	Beneficial Uses	Status
Multnomah Channel	0 to 21.7	Dissolved Oxygen	January 1 - May 15	Spawning: Not less than 11.0 mg/L or 95% of saturation		Cat 5: Water quality limited, 303(d) list, TMDL needed

Multnomah Channel	0 to 21.7	Mercury	Year Round	Table 40 Human Health Criteria for Toxic Pollutants	Human health	Cat 5: Water quality limited, 303(d) list, TMDL needed
Multnomah Channel	0 to 21.7	Temperature	Year Round (Non-spawning)	Salmon and trout rearing and migration: 18.0 degrees Celsius 7-day-average maximum	Salmon and trout rearing and migration	Cat 4A: Water quality limited, 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. *List TMDL and identify the load allocation and if hydromodification is a limiting factor.*

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.

- *Lower Willamette Basin 2006 TMDL approved for Multnomah Channel: Temperature*

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.

*The application does not provide sufficient information to determine impacts to water quality and OWRD does not have water availability information for this area to provide the necessary information to assess cumulative effects. DEQ recommends the mitigation measures mentioned above in addition to the standard conditions.*

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.

*Note: No water availability information is available for this point of diversion.*

**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
	50	JAN						
	50	FEB						
	50	MAR						
	50	APR						
	50	MAY						
	50	JUN						
	50	JUL						
	50	AUG						
	50	SEP						
	50	OCT						
	50	NOV						
	50	DEC						
	50	ANN						

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 flow<sup>1</sup>. 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.

*See conditions listed on Page 1.*

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.

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:

*The Multnomah Channel does not meet state water quality standards for the following parameters: dissolved oxygen to support salmon and trout spawning requirements (Jan. 1 – May 15), mercury and temperature (year round salmon and trout rearing and migration). DEQ does not have data to indicate whether either of the POD diversion canals/waterbodies meets water quality standards. The Willamette Basin*

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

*TMDL, which includes the Multnomah Channel and Sauvie Island waterbodies, established both nonpoint and point source allocations for temperature and demonstrated the connection between flow and river temperatures in the basin. The identified critical period is June – September. A TMDL has not yet been developed for dissolved oxygen and the current mercury TMDL will be updated by April 2019.*

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.

No. Provide basis for conclusion:

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### CONDITIONS

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

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**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 *include dates when releases are allowed.* 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 (gaging 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:**

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



Application S88659 Workflow Tracking

GARY WHEELER  
34856 E COLUMBIA AVE  
SCAPPOOSE, OR 97056

Workflow Process: Application Tracking

Action	Status	Begin Date	Remind Date	Deadline	Completed Date	Reviewer	Remark(Public Viewable for Transfers Only)	Location	Receipt Nbr	Fee	Fee Reduced	Fee Xfr
Select Caseworker Assigned		8/10/2018				KIM FRENCH		SLM				
Select Initial Review	Propose to Approve	8/10/2018		9/24/2018	11/2/2018	KIM FRENCH		SLM				
Select Application Filed		8/10/2018			8/10/2018			SLM				
Select Data Technician Review		8/16/2018			8/16/2018	MARISSA ANDREWS		SLM				
Select Peer Review		10/26/2018			10/26/2018	ELISABETH GRAHAM		SLM				
Select DEQ Review Request		11/2/2018	1/7/2019	1/1/2019	4/30/2019	DEQ LWR WILLAMETTE BASIN		NWR				
Select Watermaster Review		11/2/2018	11/27/2018	12/16/2018		NORTHWEST REGION WM DIST 18		NWR				
Select ODFW Review		11/2/2018	1/16/2019	1/1/2019		NW REGION NW/D-COAST RANGE		NWR				
Select IR Comment Period	Propose to Approve	11/6/2018			12/6/2018	KIM FRENCH		SLM				
Select Proposed Final Order		12/11/2018		1/15/2019		KIM FRENCH		SLM				

General Information

Fish Friendly

Internal Remark sent email to Jake Constans for w/a on 8/31/18; reminder on 10/8/18; got w/a from Jake 10/25/18; pr to lg 10/26/18; IR 11/2/18; correct water availability determination in PFO (IR says water is avail oct-march, s/b march-oct); waiting on WM and ODFW reviews;

Edit

Close Email Log

Description	Date Sent	To Address	Subject	Notes
APPLICATION FILED	08/14/2018	gps450@gmail.com,amanda_hoyt@msn.com	OWRD: Water Right Application S 88659 has been received	No Dam Safety Reviewer message sent because there was no dam safety reviewer defined for the snapshot
APPLICATION FILED	08/14/2018	gps450@gmail.com,amanda_hoyt@msn.com	OWRD: Water Right Application S 88659 has been received	No Watermaster message sent because there was no watermaster district defined for the snapshot
APPLICATION FILED	08/14/2018	gps450@gmail.com,amanda_hoyt@msn.com	OWRD: Water Right Application S 88659 has been received	No Caseworker message sent because there was no caseworker assigned to that workflow
APPLICATION FILED	08/14/2018	gps450@gmail.com,amanda_hoyt@msn.com	OWRD: Water Right Application S 88659 has been received	mail queued
WATERMASTER REVIEW	11/02/2018	wrd_dl_watermaster_district_18@oregon.gov	OWRD: WR Application S 88659 has been submitted for your District or Region (Surface Water) [WMR]	mail queued
ODFW REVIEW	11/02/2018	wrd.nwwdcoastrange@state.or.us	OWRD: WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued
DEQ REVIEW REQUEST	11/02/2018	lowerwillamette@deq.state.or.us	OWRD: WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [DEQ]	mail queued
INITIAL REVIEW	11/02/2018	gps450@gmail.com,amanda_hoyt@msn.com	OWRD: Initial Review for Application S 88659 has been completed	No DEQ Reviewer message sent because there was no DEQ reviewer defined for the snapshot
INITIAL REVIEW	11/02/2018	gps450@gmail.com,amanda_hoyt@msn.com	OWRD: Initial Review for Application S 88659 has been completed	No Reviewer message sent because there was no reviewer defined for the snapshot
INITIAL REVIEW	11/02/2018	gps450@gmail.com,amanda_hoyt@msn.com,watermaster_district_18@wrd.state.or.us,kim.french@oregon.gov	OWRD: Initial Review for Application S 88659 has been completed	mail queued
DEQ REVIEW REQUEST	11/24/2018	lowerwillamette@deq.state.or.us	[Reminder] OWRD: WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [DEQ]	mail queued
ODFW REVIEW	11/27/2018	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD: WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued
DEQ REVIEW REQUEST	12/16/2018	lowerwillamette@deq.state.or.us	[Reminder] OWRD: WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [DEQ]	mail queued
ODFW REVIEW	12/22/2018	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD: WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued

OK TO ISSUE PFO  
w/o ODFW REVIEW  
PER AM 9/25/19

DEQ REVIEW REQUEST	03/13/2019	lowenw@amette@deq.state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [DEQ]	mail queued NRD
WATERMASTER REVIEW	03/13/2019	wrd_dl_watermaster_district_18@oregon.gov	[Reminder] OWRD, WR Application S 88659 has been submitted for your District or Region (Surface Water) [WMR]	mail queued NRD
ODFW REVIEW	03/13/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD
DEQ REVIEW REQUEST	03/27/2019	lowenw@amette@deq.state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [DEQ]	mail queued NRD
WATERMASTER REVIEW	03/27/2019	wrd_dl_watermaster_district_18@oregon.gov	[Reminder] OWRD, WR Application S 88659 has been submitted for your District or Region (Surface Water) [WMR]	mail queued NRD
ODFW REVIEW	03/27/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD
ODFW REVIEW	05/21/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD
WATERMASTER REVIEW	07/17/2019	wrd_dl_watermaster_district_18@oregon.gov	[Reminder] OWRD, WR Application S 88659 has been submitted for your District or Region (Surface Water) [WMR]	mail queued NRD
ODFW REVIEW	07/17/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD
ODFW REVIEW	08/09/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD
ODFW REVIEW	08/23/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD
WATERMASTER REVIEW	08/23/2019	wrd_dl_watermaster_district_18@oregon.gov	[Reminder] OWRD, WR Application S 88659 has been submitted for your District or Region (Surface Water) [WMR]	mail queued NRD
ODFW REVIEW	09/16/2019	wrd.nwwdcoastrange@state.or.us	[Reminder] OWRD, WR Application S 88659 - (Deadline Date: Jan 1 2019) - has been submitted for your District or Region (Surface Water) [ODFW]	mail queued NRD

# SURFACE WATER AVAILABILITY REPORT

Application S-88659

A WAB does not exist for the POD location proposed by the attached application. If the source is a well, it has been determined to have the potential for substantial interference with surface water, therefore surface water availability must be considered. **Based on the definitions below**, please make a determination of surface water availability by completing this form.

Determination Exceedance Level  50%  80%

Do water rights exist downstream from the proposed point of diversion?  Yes  No

Is there a history of regulation at/near this proposed point of diversion?  Yes  No

*Note: if there is no history of regulation, the Department could find water is available.*

Is there enough water available to satisfy the proposed use plus the consumption portion of all relevant rights of record during the full season requested?  Yes  No  Unsure

What information was used to determine water availability?

Investigation of stream flow or groundwater measurement records

Watermaster distribution records  Flow requirements of existing water rights

Stream flow modeling in ungauged basins  Minimum perennial streamflows

Scenic waterway flow requirements  Other Observations during the summer of 2018

If a permit is issued, what conditions would you recommend from the following list?

b51a The period of use has been limited to March 1 through October 31.

TFM Req'd Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion/appropriation. The permittee shall maintain the device in good working order.

Staff Gage Req'd Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. The permittee shall maintain the device in good working order.

blv Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.

Comments The source for this application is complex. Jackson Creek essentially becomes Santosh Slough prior to the Slough discharging into the Multnomah Channel. For permitting purposes I think the source should state both of these sources, as well as the drainage ditches that pump water into the Santosh but not the Multnomah Channel. The ditches shown on the application map are directly

ted to Santosh Slough. Water levels in the slough are managed by the Scappoose Drainage District. The fact that the Drainage District has to pump water from the Santosh Slough via the Evans slough throughout the summer further supports my finding that water is available.

---

Signature 

Date 10/25/18

Reminder: use a different colored pen for changes and Date and Initial changes.

PFO Checklist for Standard Application

Application # S-88659 Applicant: GARY WHEELER

Basin # 2 WM 18

IR requested additional information?  NA  Yes

Add'l info received?  NA  Yes

IR Date 11/2/18 Noticed on 11/6/18 Comment Deadline 12/6/18

Electronic /Written comments?  No  Yes Comment Eval?  NA  No  Yes

Allowed Use/Rate/Season IR- 69.19AC; D.B CCFs; 3/1- 10/31 Limit: Duty:

GW Rev  NA  will likely be available  will not likely be available  will, if conditioned  
 No PSI  Yes PSI WELL Has PSI with

PSI caused from:  1/4 mile  > 5CFS  Instream Q  > 1% of 80%  Interference > 25%

Groundwater Conditions:

Well construction meets minimum standards?  NA (proposed well)  Yes  No (propose to deny)

Conditions DEQ - RIP, WQ, AB, PROACT, MITIGATION  
 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

SWW  NA  above  within If GW, add 7J

SW availability  NA  80%  50% AVAIL PER WM

Division 33  NA  No  
 UPPER COLUMBIA (not allowed 4/15 - 9/30) OAR 690-033-0120 (DIV331)  
 LOWER COLUMBIA OAR 690-033-0220 (DIV332)  
 STATEWIDE OAR 690-033-0330 (DIV333)  
 UPPER COLUMBIA AND STATEWIDE (DIV334)  
 LOWER COLUMBIA AND STATWIDE (DIV335)

Land Use  allowed outright  decision obtained  being pursued  not being pursued

Municipal Use?  NA  change construction condition to 20 years in Draft Permit

Needed before permit:  NA  Fees  LU  easement  plans/ specs  storage contract

Changes from IR determinations

Notes

Specialist: Kim R. French Date: 9/25/19 Peer Reviewer: Date: Manager: Date:

Copy to: NCR WM 18  
Agent amanda\_hoyt@msn.com  
CWRE \_\_\_\_\_  
A.L.O. \_\_\_\_\_  
Commenter(s) \_\_\_\_\_  
SW Section (If SW, GW w/PSI, or SWW (include copy of yellow sheet))

EXAM FEE REQUIRED	<u>1980</u>	RECORDING FEE REQUIRED	<u>500</u>
EXAM FEE PAID	<u>1980</u>	RECORDING FEE PAID	<u>500</u>
STILL OWED	<u>Ø</u>	STILL OWED	<u>Ø</u>

The purpose of this check list is to be used as a working document by the Department staff to aid in the production of the related Initial Review, Proposed Final Order or Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above. The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production.

IR Checklist for Standard Application

Reminder: use a different colored pen for changes and Date and Initial changes.

Application #: S-88659 Applicant GARY WHEELER

Basin # 2 Priority Date: August 10, 2018 WM #18

Requested Use/Rate/Season IR-69.19AC; 0.86 CFS; 3/1-10/31 Limit 1/80 Duty 2.5

Allowed use/Rate/Season IR-69.19AC; 0.86 CFS; 3/1-10/31 Limit 1/80 Duty 2.5

ORS 538 prohibits use No Yes (stop processing and return app and fees)

GW Rev: NA will likely be available... will not likely be available... will, if properly condition...

No PSI OR well has PSI with

PSI caused from: 1/4 mile > 5 CFS Instream Q > 1% of 80% Interference > 25%

Reduce rate to avoid PSI

GW conditions

Well construction meets minimum standards? NA Yes No (propose to deny)

Conditions

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

- use at least Medium for: Siltcoos Lake, stored water contract, and Sandy Basin ground water.
use Large for: Tenmile Lake, NU or other temp control, and gov. entities, HC exceptions; and if GW in South Salem Hills, or 10+ acres in Stage Gulch CGWA; Large-7g, Large-7i for 7g/7i.

Use is allowed not allowed limited OAR Compact 690-502-0150

\*SW availability NA 80% 50% WATER AVAIL MID: PER WM

Use DWF's 6/21/05 non-standard W/A memo if the source is: trib to Drews Res, Snake R, Columbia R, North Umpqua R below Rock Cr, or within drainages of Lost R, Chehalem Cr, or Champoeg Cr (including Mission Cr and Case Cr)

DIVISION 33: NA Yes (If Yes, UPPER COLUMBIA (not allowed 4/15 - 9/30) OAR 690-033-0120)

SWW: NA above within

POU conflict? No No, different sources No, make up a deficiency in rate No, existing not at max. rate Yes

Use is supplemental, checked for primary rights w/ diff source NA No yes, limits

App w/in a District boundary No Yes, cc: SCAPPOOSE DRAINAGE IMP DIST, 53466 E HONEYMAN RD

Land use: allowed outright not allowed being pursued not being pursued decision obtained receipt only N/A

MU or QM: NA change construction finding to 20 years Chris or Kerri reviewed Form M and added recommendations

Storage contract NA BOR Doug Co Corp of Eng needed obtained #

POD is within North Umpqua or Tenmile Lake for domestic use and the spreadsheet was updated NA Yes

Forms NA HC except (receipts/well logs attached) spring description Form M

Application #: S-88659 Applicant GARY WHEELER

Authorized agent specified  No  Yes AMANOA HOYT - AMANOA.HOYT@msn.com

- Copy to  SWR  WM #18  ALO  
 NCR  Agent  City \_\_\_\_\_  
 District (w/in 5-mile muni wells)  
 SW Section (if SW, GW with PSI, or SWW (include copy of yellow sheet))  
 CWRE \_\_\_\_\_  
 Division 33 – Upper Columbia (Northwest Power and Cons Council, National Marine Fisheries, Indian Tribes (CTUIR, WST), and USFWS)  
 DOA Food Safety Division (bottled water)  
 DOGAMI & DSL (mining/wetlands)  
 Any appropriate local government

✓ Fees <u>0.86</u> CFS	Base	<u>930</u>	
_____ AF	Up to 1 CFS	<u>350</u>	
	Add'l CFS@ \$350/CFS	_____	
<u>3</u> well(s)/POD(s)	Up to 20 AF @ \$35/AF	_____	
	Add'l AF @ \$1.20/AF	_____	
<u>1</u> use(s)	Add'l <u>2</u> POD/POA use +	<u>700</u>	
	Exam Fee Required	<u>1980</u>	Rec Fee Req'd <u>520</u>
	Exam Fee Paid	<u>1980</u>	Rec Fee Paid <u>520</u>
	Still Owed/Refund	<u>0</u>	Owed before Permit <u>0</u>

- App/map meet min. required  Yes  No  ALO info  map  legal \_\_\_\_\_  
 Req'd before PFO:  NA  LU approve/pursue  ALO info  exam fees  
 Req'd before permit:  NA  recording fees  LU  easement  plans/specs  storage contract  
 Letter format:  good  limited  bad  bad w/ rate reduction opportunity  
 Scanned images exist for application form and map

APP LISTED GW AS A SOURCE → NOT CONSIDERED UNDER THIS APPLICATION

Name: Kim R. French Date Completed: 03/18 Initials: \_\_\_\_\_ Peer Reviewer hsp/ly Date: 10.11.18

The purpose of this checklist is to be used as a working document by Department staff to aid in the production of the related Initial Review, Proposed Final Order, or Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above. The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production.



## Point of Diversion Characteristics

Right:	App: S 88659 *
Name:	GARY WHEELER

**TRSQQ: 03.00N-01.00W-07-SWSE**

County: Columbia  
 Basin: Willamette  
 WM District: 18  
 WM Region: NW  
 Withdrawn Area:  
 WAB: → SEE ATTACHED MAP & (EMAIL TO JAKE 8/31/18)  
 Priority WAB:  
 Rule 4D: Rules apply  
 Groundwater Restricted Area:  
 Scenic Water Way:  
 Division 33: LOWER COLUMBIA  
 Water Quality Limited:

**TRSQQ: 03.00N-01.00W-08-NWSW**

County: Columbia  
 Basin: Willamette  
 WM District: 18  
 WM Region: NW  
 Withdrawn Area:  
 WAB:  
 Priority WAB:  
 Rule 4D: Rules apply  
 Groundwater Restricted Area:  
 Scenic Water Way:  
 Division 33: LOWER COLUMBIA  
 Water Quality Limited:

**TRSQQ: 03.00N-01.00W-08-SWSW**

County: Columbia  
 Basin: Willamette  
 WM District: 18  
 WM Region: NW  
 Withdrawn Area:  
 WAB:  
 Priority WAB:  
 Rule 4D: Rules apply  
 Groundwater Restricted Area:  
 Scenic Water Way:  
 Division 33: LOWER COLUMBIA  
 Water Quality Limited:

# WATER RESOURCES DEPARTMENT

## DIVISION 502

### WILLAMETTE BASIN PROGRAM

690-502-0150

#### Columbia Subbasin

The Columbia Subbasin includes the Willamette River main stem below Willamette Falls near river mile 27 and its tributaries, and all other stream systems in the Willamette Basin except for the Tualatin River and Clackamas River Subbasins. It includes the Multnomah Channel and Columbia Slough but does not include the main stem Columbia River. Surface water classification:

(3) Multnomah Channel and drainage waters originating within drainage districts are classified for domestic, livestock, municipal, industrial, **irrigation**, commercial, agricultural, mining, power, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses.



## Place of Use Conflict Report

The following rights have acreage in the same quarter-quarter as App: S 88659 \*

Right	Name	Decree	App	Permit	Cert	Priority	Status	Use	T-R-S-QQ	DLC	Gov't Lot	Acres
<u>CERT:64419 OR *</u>	CASE LOOS		R-63941	R-8505	64419	8/24/1982	NC	<del>IS</del>	03.00N-01.00W-08-NESW			
								<del>ST</del>	03.00N-01.00W-08-NESW			
<u>CERT:70237 OR *</u>	GARY WHEELER		R-76281		70237	1/1/1993	NC	<del>FP</del>	03.00N-01.00W-18-			
								<del>FW</del>	03.00N-01.00W-18-			
<u>PERMIT: R 15035 *</u>	ATTENTION JACK ZALAHA		R-87903	R-15035		6/4/2013	NC	<del>RC</del>	03.00N-01.00W-18-NENE			
								<del>WI</del>	03.00N-01.00W-18-NENE			
<u>CERT:42704 OR *</u>	WALLACE JOHNSON		S-49252	S-36516	42704	5/15/1972	NC	<del>IR</del>	03.00N-01.00W-08-SWSW		5	<del>4.6000</del>
<u>CERT:64420 OR *</u>	CASE LOOS		S-63942	S-47049	64420	8/24/1982	NC	<del>IR</del>	03.00N-01.00W-08-SWSW		5	<del>19.5000</del>
								<del>IR</del>	03.00N-01.00W-08-NWSW		4	<del>0.7000</del>
								<del>IR</del>	03.00N-01.00W-08-NESW			<del>17.1000</del>
								<del>IR</del>	03.00N-01.00W-08-SWNW		3	<del>10.8000</del>
								<del>IR</del>	03.00N-01.00W-07-SESE			<del>0.8000</del>
								<del>IS</del>	03.00N-01.00W-08-SWSW		5	<del>4.6000</del>
								<del>NU</del>	03.00N-01.00W-18-NENE			<del>10.0000</del>
<u>PERMIT: S 53831 *</u>	FRED BERNET		S-84987	S-53831		12/12/2001	NC	<del>NU</del>	03.00N-01.00W-18-NENE			<del>10.0000</del>

NO  
CONFLICT

ORS 690-300-0100(58): "Water Availability Analysis" means the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use.

ORS 690-300-0100(57): "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

(a) The requested source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or

(b) If the requested source is already over-appropriated for any portion of the period of use proposed in a new application:

(A) The applicant can show the proposed use requires water only during the period of time in which the requested source is not already over-appropriated;

(B) The applicant has obtained or has shown the applicant can obtain authorization to use water from an alternate source to provide water needed during any period of use in which the source is over-appropriated; or

(C) If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water from the alternate source.

(c) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-0010 and 690-410-0070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period.

OAR 690-400-0010(11)(a) "Over-Appropriated" means a condition of water allocation in which:

(A) The quantity of surface water available during a specified period is not sufficient to meet the expected demands from all water rights at least 80 percent of the time during that period; or

(B) The appropriation of groundwater resources by all water rights exceeds the average annual recharge to a groundwater source over the period of record or results in the further depletion of already over-appropriated surface waters.

(b) The standards for determining over-appropriation described in paragraph (A) of this subsection shall apply to water availability determination for permit applications submitted after July 17, 1992.

## FRENCH Kim R \* WRD

---

**From:** CONSTANS Jake W \* WRD  
**Sent:** Tuesday, September 04, 2018 8:41 AM  
**To:** FRENCH Kim R \* WRD  
**Subject:** RE: Water Availability for S-88659

Good morning Kim,

The WAB displayed in your link is incorrect and as you also mentioned as a possibility, I don't believe there is a WAB for this location. This area is highly influenced by the water table and is within a drainage district. This application is a result of a compliance matter, so I am giving it extra attention. I would prefer to fill out the water availability and will also be consulting with Mike McCord prior to doing so.

Thank you for running it by me and bringing the application to my attention.

Jake Constans  
Watermaster, District 18  
Oregon Water Resources Department  
1400 SW Walnut Street, Suite 240  
Hillsboro, OR 97123  
(503) 846-7780  
[Jake.W.Constans@oregon.gov](mailto:Jake.W.Constans@oregon.gov)

---

**From:** FRENCH Kim R \* WRD  
**Sent:** Friday, August 31, 2018 10:02 AM  
**To:** CONSTANS Jake W \* WRD  
**Subject:** Water Availability for S-88659

Hi Jake,

I have a new surface water application (referenced above) and WRIS is showing no WAB, but when I plot the PODs in the mapper it's giving me this WAB:

S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR

Can you tell me if this is correct? If not, and there really is no WAB there, can you fill out the Water Availability Form (attached) and send it back to me?

Let me know if you have any questions.

Thanks,

Kim French | Water Right Application Specialist  
Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301  
Ph: 503 986-0816 | Fax: 503 986-0901  
Email: [kim.r.french@oregon.gov](mailto:kim.r.french@oregon.gov) | Web: <http://www.wrd.state.or.us>



Search

Identify Non-Water Right Features

Distance: 1 Feet

General Rules Hydrography

OWRD Stream code: -

Waterbody Name: -

HUC 10: 1709001203

HUC Watershed: Multnomah Channel

WAB Wshed: 3

Order: -

WAB Analysis: S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR

Streamflow: OWRD Opportunities: Good ODFW Needs: Highest Combined Priority: Current resources priority

Gaging Station Data: -

Tax Lots

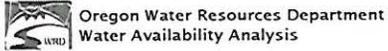
Layers

Tools



ID (select)	Organization	Website	Data Source

NOT CORRECT WAB PER JAKE



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

## Water Availability Analysis

S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR  
WILLAMETTE BASIN  
Water Availability as of 8/31/2018

Watershed ID #: 161 [\(Map\)](#)  
Date: 8/31/2018

Exceedance Level: 80%  
Time: 9:03 AM

[Download Data](#)

### Water Availability

Select any Watershed for Details

Nesting Order	Watershed ID #	Stream Name
1	30201202	SCAPPOOSE CR> SCAPPOOSE BAY- AT MOUTH
2	30201203	S SCAPPOOSE CR> SCAPPOOSE CR- AT MOUTH
3	161	S SCAPPOOSE CR> SCAPPOOSE CR- AB RAYMOND CR

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
Yes	No	No	Yes	Yes	Yes	Yes						
Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes
Yes	Yes	Yes	No	Yes								

### Limiting Watersheds

Monthly Streamflow in Cubic Feet per Second  
Annual Volume at 50% Exceedance in Acre-Feet

Month	Limiting Watershed ID #	Stream Name	Water Available?	Net Water Available
JAN	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	Yes	6.24
FEB	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	Yes	13.40
MAR	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	Yes	10.00
APR	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-2.39
MAY	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-14.00
JUN	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-8.81
JUL	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-6.14
AUG	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-7.25
SEP	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-7.57
OCT	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-6.55
NOV	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-23.70
DEC	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	No	-8.16
ANN	161	S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR	Yes	9,310.00

### Detailed Reports for Watershed ID #30201202

SCAPPOOSE CR > SCAPPOOSE BAY - AT MOUTH  
WILLAMETTE BASIN  
Water Availability as of 8/31/2018

Watershed ID #: 30201202 [\(Map\)](#)  
Date: 8/31/2018

Exceedance Level: 80%  
Time: 9:03 AM

### Water Availability Calculation

Monthly Streamflow in Cubic Feet per Second  
Annual Volume at 50% Exceedance in Acre-Feet

Month	Natural Stream Flow	Consumptive Uses and Storages	Expected Stream Flow	Reserved Stream Flow	Instream Flow Requirement	Net Water Available
JAN	119.00	6.16	113.00	0.00	0.00	113.00
FEB	140.00	6.18	134.00	0.00	0.00	134.00
MAR	129.00	6.09	123.00	0.00	0.00	123.00

APR	90.00	6.28	84.00	0.00	0.00	84.00
MAY	52.80	6.72	46.10	0.00	0.00	46.10
JUN	25.50	9.89	15.60	0.00	0.00	15.60
JUL	11.10	10.20	0.88	0.00	0.00	0.88
AUG	7.24	10.10	-2.81	0.00	0.00	-2.81
SEP	5.85	9.56	-3.71	0.00	0.00	-3.71
OCT	9.10	6.11	2.99	0.00	0.00	2.99
NOV	18.60	6.09	12.50	0.00	0.00	12.50
DEC	70.40	6.14	64.30	0.00	0.00	64.30
ANN	71,800.00	5,410.00	66,400.00	0.00	0.00	66,400.00

### Detailed Report of Consumptive Uses and Storage

Consumptive Uses and Storages in Cubic Feet per Second

Month	Storage	Irrigation	Municipal	Industrial	Commercial	Domestic	Agricultural	Other	Total
JAN	0.08	0.00	5.50	0.43	0.00	0.13	0.01	0.00	6.16
FEB	0.10	0.00	5.50	0.43	0.00	0.13	0.01	0.00	6.18
MAR	0.01	0.01	5.50	0.43	0.00	0.13	0.01	0.00	6.09
APR	0.01	0.20	5.50	0.43	0.00	0.13	0.01	0.00	6.28
MAY	0.00	0.64	5.50	0.43	0.00	0.13	0.01	0.00	6.72
JUN	0.00	0.81	8.50	0.43	0.00	0.13	0.01	0.00	9.89
JUL	0.00	1.15	8.50	0.43	0.00	0.13	0.01	0.00	10.20
AUG	0.00	0.98	8.50	0.43	0.00	0.13	0.01	0.00	10.10
SEP	0.00	0.49	8.50	0.43	0.00	0.13	0.01	0.00	9.56
OCT	0.00	0.03	5.50	0.43	0.00	0.13	0.01	0.00	6.11
NOV	0.01	0.00	5.50	0.43	0.00	0.13	0.01	0.00	6.09
DEC	0.07	0.00	5.50	0.43	0.00	0.13	0.01	0.00	6.14

### Detailed Report of Reservations for Storage and Consumptive Uses

Reserved Streamflow in Cubic Feet per Second

No reservations were found for this watershed.

### Detailed Report of Instream Flow Requirements

Instream Flow Requirements in Cubic Feet per Second

No instream flow requirements were found for this watershed.

### Detailed Reports for Watershed ID #30201203

S SCAPPOOSE CR > SCAPPOOSE CR - AT MOUTH  
WILLAMETTE BASIN  
Water Availability as of 8/31/2018

Watershed ID #: 30201203 [\(Map\)](#)  
Date: 8/31/2018

Exceedance Level: 80%  
Time: 9:03 AM

### Water Availability Calculation

Monthly Streamflow in Cubic Feet per Second  
Annual Volume at 50% Exceedance in Acre-Feet

Month	Natural Stream Flow	Consumptive Uses and Storages	Expected Stream Flow	Reserved Stream Flow	Instream Flow Requirement	Net Water Available
JAN	49.60	5.97	43.60	0.00	0.00	43.60
FEB	59.50	5.97	53.50	0.00	0.00	53.50
MAR	54.40	5.97	48.40	0.00	0.00	48.40
APR	36.80	6.05	30.80	0.00	0.00	30.80
MAY	20.80	6.23	14.60	0.00	0.00	14.60
JUN	9.65	9.30	0.35	0.00	0.00	0.35
JUL	3.95	9.45	-5.50	0.00	0.00	-5.50
AUG	2.49	9.37	-6.88	0.00	0.00	-6.88
SEP	1.98	9.17	-7.19	0.00	0.00	-7.19
OCT	3.12	5.97	-2.85	0.00	0.00	-2.85
NOV	6.71	5.96	0.75	0.00	0.00	0.75
DEC	28.70	5.97	22.70	0.00	0.00	22.70
ANN	30,100.00	5,160.00	25,900.00	0.00	0.00	25,900.00

### Detailed Report of Consumptive Uses and Storage

Consumptive Uses and Storages in Cubic Feet per Second

Month	Storage	Irrigation	Municipal	Industrial	Commercial	Domestic	Agricultural	Other	Total
JAN	0.01	0.00	5.50	0.39	0.00	0.07	0.00	0.00	5.97
FEB	0.01	0.00	5.50	0.39	0.00	0.07	0.00	0.00	5.97
MAR	0.01	0.00	5.50	0.39	0.00	0.07	0.00	0.00	5.97
APR	0.01	0.08	5.50	0.39	0.00	0.07	0.00	0.00	6.05
MAY	0.00	0.27	5.50	0.39	0.00	0.07	0.00	0.00	6.23
JUN	0.00	0.34	8.50	0.39	0.00	0.07	0.00	0.00	9.30
JUL	0.00	0.49	8.50	0.39	0.00	0.07	0.00	0.00	9.45
AUG	0.00	0.41	8.50	0.39	0.00	0.07	0.00	0.00	9.37
SEP	0.00	0.21	8.50	0.39	0.00	0.07	0.00	0.00	9.17
OCT	0.00	0.01	5.50	0.39	0.00	0.07	0.00	0.00	5.97
NOV	0.00	0.00	5.50	0.39	0.00	0.07	0.00	0.00	5.96
DEC	0.01	0.00	5.50	0.39	0.00	0.07	0.00	0.00	5.97

### Detailed Report of Reservations for Storage and Consumptive Uses

Reserved Streamflow in Cubic Feet per Second

No reservations were found for this watershed.

### Detailed Report of Instream Flow Requirements

Instream Flow Requirements in Cubic Feet per Second

No instream flow requirements were found for this watershed.

### Detailed Reports for Watershed ID #161

S SCAPPOOSE CR > SCAPPOOSE CR - AB RAYMOND CR  
WILLAMETTE BASIN

Water Availability as of 8/31/2018

### Water Availability Calculation

Monthly Streamflow in Cubic Feet per Second  
Annual Volume at 50% Exceedance in Acre-Feet

Month	Natural Stream Flow	Consumptive Uses and Storages	Expected Stream Flow	Reserved Stream Flow	Instream Flow Requirement	Net Water Available
JAN	35.00	4.06	31.20	0.00	25.00	6.24
FEB	42.50	4.06	38.40	0.00	25.00	13.40
MAR	39.10	4.06	35.00	0.00	25.00	10.00
APR	26.70	4.09	22.60	0.00	25.00	-2.39
MAY	15.20	4.16	11.00	0.00	25.00	-14.00
JUN	7.38	4.19	3.19	0.00	12.00	-8.81
JUL	3.11	4.25	-1.14	0.00	5.00	-6.14
AUG	1.97	4.22	-2.25	0.00	5.00	-7.25
SEP	1.57	4.14	-2.57	0.00	5.00	-7.57
OCT	2.51	4.05	-1.55	0.00	5.00	-6.55
NOV	5.39	4.06	1.33	0.00	25.00	-23.70
DEC	20.90	4.06	16.80	0.00	25.00	-8.16
ANN	21,800.00	2,960.00	19,000.00	0.00	12,500.00	9,310.00

### Detailed Report of Consumptive Uses and Storage

Consumptive Uses and Storages in Cubic Feet per Second

Month	Storage	Irrigation	Municipal	Industrial	Commercial	Domestic	Agricultural	Other	Total
JAN	0.00	0.00	4.00	0.00	0.00	0.06	0.00	0.00	4.06
FEB	0.00	0.00	4.00	0.00	0.00	0.06	0.00	0.00	4.06
MAR	0.00	0.00	4.00	0.00	0.00	0.06	0.00	0.00	4.06
APR	0.00	0.03	4.00	0.00	0.00	0.06	0.00	0.00	4.09
MAY	0.00	0.10	4.00	0.00	0.00	0.06	0.00	0.00	4.16
JUN	0.00	0.13	4.00	0.00	0.00	0.06	0.00	0.00	4.19
JUL	0.00	0.19	4.00	0.00	0.00	0.06	0.00	0.00	4.25
AUG	0.00	0.16	4.00	0.00	0.00	0.06	0.00	0.00	4.22
SEP	0.00	0.08	4.00	0.00	0.00	0.06	0.00	0.00	4.14
OCT	0.00	0.00	4.00	0.00	0.00	0.06	0.00	0.00	4.06
NOV	0.00	0.00	4.00	0.00	0.00	0.06	0.00	0.00	4.06
DEC	0.00	0.00	4.00	0.00	0.00	0.06	0.00	0.00	4.06

### Detailed Report of Reservations for Storage and Consumptive Uses

Reserved Streamflow in Cubic Feet per Second

No reservations were found for this watershed.

### Detailed Report of Instream Flow Requirements

Instream Flow Requirements in Cubic Feet per Second

Application #	Status	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
MF161A	CERTIFICATE	25.00	25.00	25.00	25.00	25.00	12.00	5.00	5.00	5.00	5.00	25.00	25.00
Maximum		25.00	25.00	25.00	25.00	25.00	12.00	5.00	5.00	5.00	5.00	25.00	25.00

E-2

Standard Application Completeness Checklist

Yes No

For use with Groundwater and Surface Water Applications Only
Minimum Requirements (OAR 690-310-0040) (ORS 537.400)
For use by WRD staff only

Application S-88659 County COLUMBIA Priority Date 8/10/18

Township 3N Range 1W Section 7,8,18

Amount 0.86CFS Use IRRIGATION WM Dist. # 18

Applicant Name GARY WHEELER

Receipt No. 127603 Caseworker Assigned: [X] Kim [ ] Lisa [ ] Scott

- Applicant/Organization Name and Mailing Address
Signature of all applicants (include title or authority of representative if applicant is an organization or corporation). \*Applicant's agent may NOT sign application.
Property Ownership: Does the applicant own all the land for the proposed project? [X] Y [ ] N
For a SW Application: Source of water must be indicated.
For a GW Application: Well Development Tables completed and/or a well log report included (if existing)
Division 33, Public Interest Information (Sensitive, Threatened, Endangered, Fish Species)
Proposed Water Use
Water Management Section (Estimates if the water system has not been designed)
Resource Protection Section
Project schedule (If system is already completed, indicate "existing.")

OK PER APPLICANT

N/A

N/A

N/A

OK

- Supplemental data sheets enclosed (if needed)
  - Form M (Municipal or Quasi-Municipal)
  - Spring Description Sheet (if source is a spring)

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.*

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 applicant may submit a lot book report prepared by a title company. Copies of tax bills are not acceptable.

The proposed source **IS / IS NOT** (circle one) restricted or withdrawn from further appropriation. *NOTE: If it is withdrawn under ORS 538, return application and fees.*

The **map** must meet all the minimum requirements of OAR 690-310-0050.

- Township, Range, Section
- Location of main canals, ditches, pipelines or flumes (if POA/POD is outside of POU)
- Place of use, 1/4-1/4's and tax lot clearly identified
- Even map scale not less than 4" = 1 mile (1" = 1320 ft.); examples: 1" = 100 ft., 1" = 200 ft.
- Location of *each* diversion point or well by reference to a recognized public land survey corner. Multiple wells shall be uniquely labeled, and identified on well logs, if existing.
- Reference corner on map
- North Directional Symbol
- Number of acres per 1/4 1/4 if for irrigation, nursery, or agriculture

**Fees: Print out from Fee Calculator**

Total Fees	\$ <u>2500<sup>00</sup></u>
Fee Paid	\$ <u>2500<sup>00</sup></u>
Amount Due	\$ <u>0</u>

Reviewed by:  Date: 8/10/18



## Water Right Application Initial Review

November 2, 2018

GARY WHEELER  
34856 E COLUMBIA AVE  
SCAPPOOSE OR 97056

Reference: Application S-88659

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 Rule (OAR) 690-310-0080)**

1. The application proposes the diversion of 0.86 cubic foot per second (CFS) of water from Jackson Creek, Santosh Slough, an unnamed ditch, Kessi Ditch, Santosh Ditch and Johnson Ditch, tributaries to Multnomah Channel, for irrigation of 69.19 acres March 1 Through October 31 of each year.
2. The application listed groundwater as a source of water, however groundwater must be applied for under a different application process, therefore groundwater will not be considered as a source under this application.
3. The proposed use is not prohibited by law or rule except where otherwise noted below.
4. Irrigation is an allowable use under the Willamette Basin Program (690-502-0150).
5. Based on a preliminary review, an analysis of water availability using the Department's Water Availability Reporting System is not possible for the proposed points of diversion. Therefore, a site-specific determination must be made by the Watermaster. An assessment of water availability has been completed by the local Watermaster and has determined that water is available for further appropriation October 1 through March 31 of each year. This review is done consistent with OAR 690-410-0070(2)(a). Oregon Revised Statute (ORS) 537.153(3)(b); OAR 690-310-0080(1)(b)
6. The proposed use is not located within or above any state scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

## Summary

**The diversion of 0.86 CFS of water from Jackson Creek, Santosh Slough, an unnamed ditch, Kessi Ditch, Santosh Ditch and Johnson Ditch, tributaries to Multnomah Channel for irrigation of 69.19 acres, March 1 through October 31 is allowable.**

Because of the favorable determinations described herein, Application S-88659 can move to the next phase of the water-rights application review process, which includes a public interest review.

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

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

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

Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring another water right. Following the Initial Review, you will be notified if mitigation is required. If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options.

**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 **November 16, 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 Use 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 permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

### If you have any questions:

Feel free to contact me at [Kim.R.French@oregon.gov](mailto: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  
S-88659  
WAB: no WAB

# APPLICATION FACT SHEET

Application File Number: S-88659

Applicant: GARY WHEELER

County: COLUMBIA

Watermaster: JAKE CONSTANS, 18, NWR

Priority Date: AUGUST 10, 2018

Source: JACKSON CREEK, SANTOSH SLOUGH, AN UNNAMED DITCH, KESSI DITCH, SANTOSH DITCH AND JOHNSON DITCH, TRIBUTARIES TO MULTNOMAH CHANNEL

Purpose or Use: IRRIGATION OF 69.19 ACRES

Rate: 0.86 CUBIC FOOT PER SECOND

Basin Name & Number: WILLAMETTE, # 2

Points of Diversion:

POD	POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	SANTOSH DITCH	3 N	1 W	WM	8	NW SW	2100 FEET NORTH AND 280 FEET EAST FROM SW CORNER, SECTION 8
2	JOHNSON DITCH	3 N	1 W	WM	8	SW SW	930 FEET NORTH AND 1100 FEET EAST FROM SW CORNER, SECTION 8
3	KESSI DITCH	3 N	1 W	WM	7	SW SE	180 FEET NORTH AND 1600 FEET WEST FROM SE CORNER, SECTION 7

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	1 W	WM	7	SW SE	1.29
3 N	1 W	WM	7	SE SE	18.10
3 N	1 W	WM	8	SW NW	2.60
3 N	1 W	WM	8	NE SW	5.52
3 N	1 W	WM	8	NW SW	32.00
3 N	1 W	WM	8	SW SW	7.92
3 N	1 W	WM	18	NE NE	1.76

**PUBLIC NOTICE DATE: November 6, 2018**

**14 DAY STOP PROCESSING DEADLINE DATE: November 16, 2018**

**30 DAY COMMENT DEADLINE DATE: December 6, 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](http://www.wrd.state.or.us)

### *1. Pre-application considerations*

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

### *2. Application filing*

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

### *3. Initial Review (IR)*

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Contact the Caseworker if you have questions about the IR.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.
- An **administrative hold** may be requested in writing by Applicant.

### *4. Proposed Final Order (PFO)*

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

### *5. Final Order (FO)*

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

### *The protest process*

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

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

### *Permit holder responsibilities*

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

**STOP PROCESSING REQUEST FORM**  
**FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR**  
**APPLICATIONS**

---

- Stop processing deadline is within 14 days of Initial Review.
- Applicant notification to withdraw Water Right Application **S-88659**.
- 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 processing fee) be returned.
- This notice must be received at Water Resources Department by:

**November 16, 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 S-88659

---

IR Date: November 2, 2018

**Original and map mailed to applicant:**

GARY WHEELER  
34856 E COLUMBIA AVE  
SCAPPOOSE OR 97056

**SENT VIA AUTO EMAIL:**

1. WRD – Watermaster Jake Constans # 18
2. ODFW
3. DEQ
4. Agent – Amanda Hoyt – [Amanda.hoyt@msn.com](mailto:Amanda.hoyt@msn.com)

**Copies sent to:**

5. WRD – SW Section
6. WRD - File S-88659

Application Specialist: Kim French

<p>Copies Mailed</p> <p>By: <u>TM</u> (SUPPORT STAFF)</p> <p>On: <u>11/2/2018</u> (DATE)</p>
--

# Application for a Permit to Use Surface Water



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

## SECTION 1: APPLICANT INFORMATION AND SIGNATURE

### Applicant

NAME GARY WHEELER		PHONE (HM)	
PHONE (WK)	CELL 503-475-5208	FAX	
ADDRESS 34856 E COLUMBIA AVE			
CITY SCAPPOOSE	STATE OR	ZIP 97056	E-MAIL * GPS450@GMAIL.COM

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### Organization

NAME		PHONE		FAX
ADDRESS				CELL
CITY	STATE	ZIP	E-MAIL *	

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

AGENT / BUSINESS NAME AMANDA HOYT		PHONE 503-730-2517		FAX
ADDRESS 35635 E COLUMBIA AVE				CELL
CITY SCAPPOOSE	STATE OR	ZIP 97056	E-MAIL * AMANDA_HOYT@MSN.COM	

Note: Attach multiple copies as needed

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

### By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot legally use water until the Water Resources Department issues a permit.
- The Department encourages all applicants to wait for a permit to be issued before beginning construction of any proposed diversion. Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- If I receive a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to receive water to which they are entitled.

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

  
Applicant Signature

Gary Wheeler  
Print Name and Title if applicable

8-8-18  
Date

Applicant Signature

Print Name and Title if applicable

Date

**SECTION 2: PROPERTY OWNERSHIP**

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

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

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

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

**SECTION 3: SOURCE OF WATER**

**A. Proposed Source of Water**

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

Source 1: See attached list for sources	Tributary to:
TRSQQ of POD:	
Source 2:	Tributary to:
TRSQQ of POD:	

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

**B. Applications to Use Stored Water**

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

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

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

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

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

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

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

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

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

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

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

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

Yes  No

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

**If yes,**

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

5-88659

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

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

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

Yes  No

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

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

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

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

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

**Statewide - OAR 690-033-0330 thru -0340**

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

Yes  No

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



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SECTION 7: RESOURCE PROTECTION

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

Diversion will be screened per ODFW specifications in ORS 498.301 through 498.346 to prevent uptake of fish and other aquatic life. Describe planned actions: A strainer is attached to the end of the suction hose.

Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas. **Note: If disturbed area is more than one acre, applicant should contact the Department of Environmental Quality to determine if a 1200C permit is required.** Describe planned actions and additional permits required for project implementation: Minimal to no excavation will be needed with the use of a PTO pump. No additional permitting will be needed.

Operating equipment in a water body will be managed and timed to prevent damage to aquatic life. Describe planned actions and additional permits required for project implementation: \_\_\_\_\_

Water quality will be protected by preventing erosion and run-off of waste or chemical products. Describe planned actions: No chemical products will be used near the water. If soil is disturbed near the water source when installing the pump, we will over seed the disturbed area to mitigate any erosion possibilities. Pumping equipment is maintained and any leaks will be fixed immediately to prevent erosion.

List other federal and state permits or contracts to be obtained, if a water right permit is granted. N/A

SECTION 8: PROJECT SCHEDULE

- a) Date construction will begin: ASAP
- b) Date construction will be completed: ASAP
- c) Date beneficial water use will begin: ASAP

SECTION 9: WITHIN A DISTRICT

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

Irrigation District Name	Address	
Scappoose Drainage Improvement Company	53466 E Honeyman Rd	
City	State	Zip
Scappoose	OR	97056

SECTION 10: REMARKS

5-88659

Use this space to clarify any information you have provided in the application. (*Attach additional sheets if necessary*).  
The water sources in the Scappoose Drainage District are not connected to any rivers for fish to be able to enter the drainage district system.

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For Department Use: App. Number: \_\_\_\_\_

S-88659

3107-00-00950  
LUC 19-06

# Land Use Information Form



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

Applicant: Gary ~~Whe~~ Wheeler  
First Last

Mailing Address: 34856 E Columbia Ave

Scappoose OR 97056 Daytime Phone: 503-415-5208  
City State Zip

### A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
3N	1W	7,8,18	See map	900, 1000	PA-80	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Farm Irrigation
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

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

Columbia

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### B. Description of Proposed Use

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

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

Source of water:  Reservoir/Pond  Groundwater  Surface Water (name) Multnomah channel Santosh, Kessi/unnamed, Johnson ditches  
ground water

Estimated quantity of water needed: \_\_\_\_\_  cubic feet per second  gallons per minute  acre-feet

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

Briefly describe:

Applying for water rights to irrigate farm fields

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

5-88659

## 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): Section 300 of Zoning Ordinance
- 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:	
<b>RECEIVED</b>		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
AUG 10 2018		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
<b>OWRD</b>		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

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

Irrigation of agricultural crops are permitted in the PA-D zone

Name: Deborah S. Jacob Title: Planner II  
 Signature: Deborah S. Jacob Phone: 503-397-7260 Date: 8/9/18  
 Government Entity: Columbia 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: \_\_\_\_\_

5-88659

Legal Description

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Tax lots 900 & 1000

Township 3N, Range 1W, Sections 7, 8, 18

Amanda J. ~~HP~~

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That Gladys Wheeler, unmarried, hereinafter called grantor, in consideration of Ten Dollars and other good and valuable considerations to grantor paid, the receipt whereof hereby is acknowledged, does hereby grant, bargain, sell and convey unto her son, Konnie Wheeler, hereinafter called grantee, and unto grantee's heirs, successors and assigns all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Columbia, State of Oregon, described as follows, to-wit:

Beginning at a point that is South 679.5 feet and East 2220.0 feet from the West quarter corner of Section 8, Township 3 N. Range 1 W. W. M. Columbia County, Oregon; thence South 7° 46' W. 547.2 feet; thence South 2° 45' West 743.3 feet to the North right of way line of Honeyman County Road and the true point of beginning for the following described property; thence North 2° 45' East a distance of 743.3 feet to a point which is the Southwest corner of parcel #3 as described in Book 71, page 145 deed records; thence North 7° 46' East a distance of 1545.4 feet to a 1½ inch iron pipe being on the United States meander line of a lake 37.99 chains South and 3.25 chains West of the quarter corner on the North side of Section 8; thence North 56° 14' West a distance of 1933.92 feet to a 2 inch iron pipe; thence continuing North 56° 14' West a distance of 22.6 feet to the center line of Santosh ditch; thence following the center of said Santosh ditch as follows: South 0° 49' East a distance of 47.0 feet; thence South 34° 00' West a distance of 660.0 feet; thence South 8° 45' West a distance of 1110.0 feet; thence South 43° 15' West a distance of 278.63 feet; thence South 30° 20' West a distance of 311.92 feet; thence leaving said Santosh ditch South 29° 15' East a distance of 127.0 feet; thence South 17° 10' East a distance of 35.0 feet; thence South 7° 11' West a distance of 825.45 feet to the Northerly right of way line of the former Portland Southwestern railroad; thence along the said Northerly right of way line as follows: South 49° 41' East a distance of 303.25 feet; thence North 25° 00' East a distance of 32.8 feet; thence South 49° 41' East a distance of 648.7 feet to the Westerly right of way line of said

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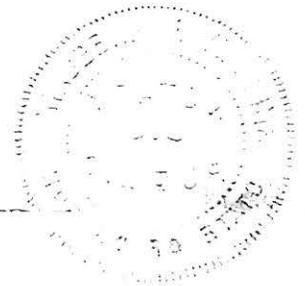


meander line in a general Northeasterly direction to the place of beginning and containing 23.80 acres more or less after excepting and deducting therefrom the included County Road area; all being within the boundaries of the above said U.S. Government lake survey.

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379

Re Record

STATE OF OREGON  
COLUMBIA COUNTY  
RECORDS DEPARTMENT  
1984 JAN 25 PM 12:46  
BOOK 250 PAGE 532  
BETA C. KENNEDY CO. CLERK  
BY: J. Butler, SER

TN

BARGAIN AND SALE DEED—STATUTORY FORM  
INDIVIDUAL GRANTOR

GLADYS JOHNSON WHEELER

Grantor,

conveys to LINDA WHEELER and GARY WHEELER, as tenants in common,

Grantee, the following real property situated in Columbia

County, Oregon, to-wit: but reserving and excepting from the above conveyance, however, unto Grantor the full use, control, income and possession of the property for and during her natural life.

Beginning at a point where the United States Government meander line of a lake survey is intersected by the Southerly right-of-way line of the Portland & Southwestern Railroad, said point being North 485.42 feet and South 49°41' East 27.29 feet from the corner to Sections 7,8,17 and 18, Township 3 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon; thence along said Southerly right-of-way line North 49°41' West 658.54 feet to a one-inch pipe; thence South 59°42½' West 1507.80 feet to the center of County Road; thence along the center of said County Road South 57°07' East 160.00 feet to the Northwesterly extension of the center line of a district drainage ditch; thence leaving road and following center line of said district drainage ditch and its extension 7°18' East 209.0 feet; thence South 21°37' East 290.0 feet; thence South 4°02' West 75 feet; thence South 35°16' East 86.40 feet; thence leaving ditch South 72°43' East 144.91 feet to an intersection with the U.S. Government meander line of the above said lake survey; thence along said U.S. Government (over)

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

The true consideration for this conveyance is \$ -0- (Here comply with the requirements of ORS 93.030)

Dated this 18 day of 3, 1983.

*Gladys Johnson Wheeler*  
Gladys Johnson Wheeler

STATE OF OREGON, County of Columbia, ss.

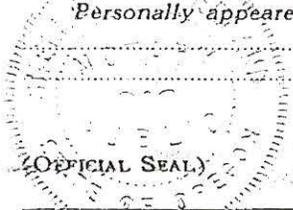
3-18 1983

Personally appeared the above named GLADYS JOHNSON WHEELER

and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me: *Shelley R. Kneeland*

Notary Public for Oregon—My commission expires: 3-30-85



BARGAIN AND SALE DEED

Gladys Johnson Wheeler  
Linda and Gary Wheeler GRANTOR  
19815 N.W. Gillian Loop Rd. GRANTEE  
Portland, Oregon 97231  
GRANTEE'S ADDRESS, ZIP

After recording return to:

Konnie Wheeler  
19815 N.W. Gillian Loop Rd.  
Portland, OR 97231  
NAME, ADDRESS, ZIP

Until a change is requested, all tax statements shall be sent to the following address:

Gladys J. Wheeler  
Rt. 3, Box 298  
Scappoose, Oregon 97056  
NAME, ADDRESS, ZIP

STATE OF OREGON

County of

I certify that the within instrument was received for record on the day of 19 at o'clock M., and recorded in book on page or as file/reel number

Record of Deeds of said County.  
Witness my hand and seal of County affixed.

Recording Officer

By Deputy

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AUG 20 2018  
OWRD



**Oregon Water Resources Department  
Surface Water Application**

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

Today's Date: Friday, August 10, 2018

Base Application Fee.		\$930.00
Number of proposed cubic feet per second (cfs) to be diverted. (1 cfs = 448.83 gallons per minute)	.86	\$350.00
Number of proposed Use's for the appropriated water. (i.e. Irrigation, Supplemental Irrigation, Pond Maintenance, Industrial, Commercial, etc) *	1	
Number of proposed Surface Water points of diversions. **	3	\$700.00
Number of Acre Feet to be diverted from Stored Water. (if the application is appropriating water from a pond/reservoir)	0	
Permit Recording Fee. ***		\$520.00
* the 1st Water Use is included in the base cost. ** the 1st Surface Water point of diversion is included in the base cost. *** 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.	<a href="#">Recalculate</a>	
Estimated cost of Permit Application		\$2,500.00

OWRD Fee Schedule

Fee Calculator Version: B20170117

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OWRD

5-88659

## Minimum Requirements Checklist

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

### Include this checklist with the application

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

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

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



#### Include the following additional items:

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

# Water-Use Permit Application Processing

## 1. Completeness Determination

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

## 2. Initial Review

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

## 3. Public Notice

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

## 4. Proposed Final Order Issued

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

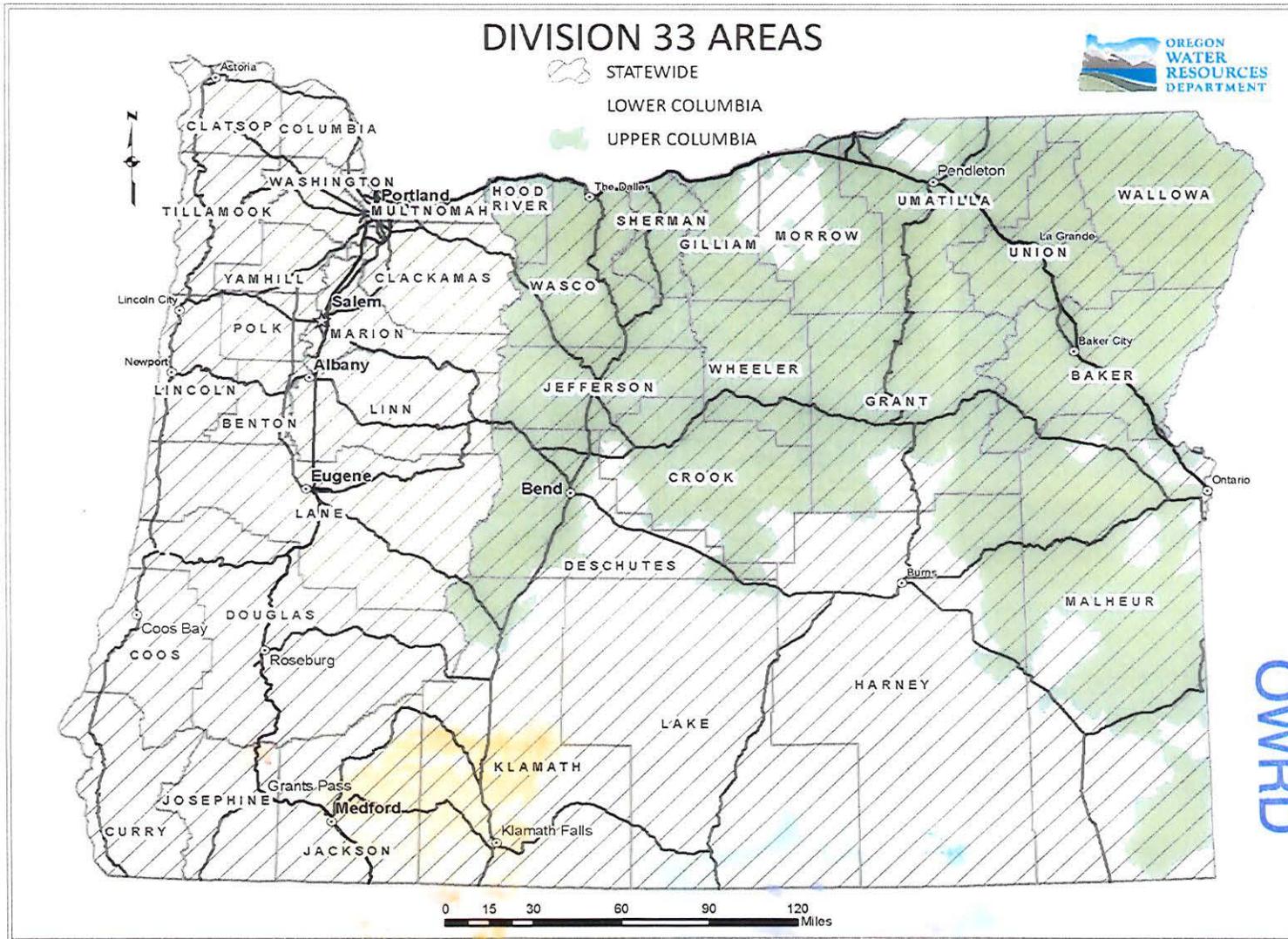
## 5. Public Notice

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

## 6. Final Order Issued

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

Figure 1: Map of Division 33 Areas



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For more detailed information, click on the following link and enter the TRSQQ or the Lat/Long of a POD and click on "Submit" to retrieve a report that will show which section, if any, of the Division 33 rules apply: [https://apps.wrd.state.or.us/apps/misc/lkp\\_trsqq\\_features/](https://apps.wrd.state.or.us/apps/misc/lkp_trsqq_features/)

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