

# 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.wrd.state.or.us](http://www.wrd.state.or.us)

## 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 ([www.oregon.gov/owrd/law.our](http://www.oregon.gov/owrd/law.our)). 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 \$200. 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 \$350.00 for the applicant and \$700.00 for non-applicants. Protests are filed on approximately 10% 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.

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# Surface Water



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

## SECTION 1: APPLICANT INFORMATION AND SIGNATURE

### Applicant Information

NAME Kennerly Ranches LLC		PHONE (HM) 541-679-8897	
PHONE (WK) 541-672-3348	CELL	FAX 541-673-3994	
ADDRESS PO Box 730			
CITY Roseburg	STATE OR	ZIP 97470	E-MAIL * gkennerly@umpquainsurance.com

### Organization Information

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

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

AGENT / BUSINESS NAME Nathan Reed		PHONE 541-784-7191	FAX NA
ADDRESS 1113 SE Cass Av			CELL 541-784-7191
CITY Roseburg	STATE OR	ZIP 97470	E-MAIL * nreed68@hotmail.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 final order documents will also be mailed.)

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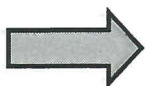
By my signature below I confirm that I understand:

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

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



Applicant Signature

Print Name and title if applicable

Date

Applicant Signature

Print Name and title if applicable

Date

Revise

App. No. 12-00179

For Department Use  
 Permit No. \_\_\_\_\_

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.

Yes

There are no encumbrances.

This land is encumbered by easements, rights of way, roads or other encumbrances.

No

I have a recorded easement or written authorization permitting access.

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

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

Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

DOUGLAS COUNTY, PUBLIC WORKS, 1036 SE DOUGLAS AVE, ROOM 304, ROSEBURG, OR 97470

***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:

Source 1: Galesville Reservoir (R-9964)

Tributary to: Cow Creek

Source 2: \_\_\_\_\_

Tributary to: \_\_\_\_\_

Source 3: \_\_\_\_\_

Tributary to: \_\_\_\_\_

Source 4: \_\_\_\_\_

Tributary to: \_\_\_\_\_

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 item 3A above?

Yes.

No. (Please enclose a copy of your written notification to the operator of the reservoir of your intent to file this application, which you should have already mailed or delivered to the operator.)

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

- By checking this box, you are requesting that the Department process your application under the standard process outlined in ORS 537.150 and 537.153, rather than the expedited process provided by ORS 537.147. To file an application under the standard process, you must enclose the following:
- A copy of a signed non-expired contract or other agreement with the owner of the reservoir (if not you) to impound the volume of water you propose to use in this application.
  - A copy of your written agreement with the party (if any) delivering the water from the reservoir to you.

**SECTION 4: WATER USE**

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

SOURCE	USE	PERIOD OF USE	AMOUNT
Galesville Reservoir (R-9964)	Irrigation	March 1 - October 31	360 <input type="checkbox"/> cfs <input type="checkbox"/> gpm <input checked="" type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

**For irrigation use only:**

Please indicate the number of primary and supplemental acres to be irrigated.

Primary: 134.5 Acres                      Supplemental: 0 Acres

List the Permit or Certificate number of the underlying primary water right(s): \_\_\_\_\_

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: 300

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

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**SECTION 5: WATER MANAGEMENT**

**A. Diversion and Conveyance**

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

Pump (give horsepower and type): 50 Hp electric motored centrifugal

Other means (describe): \_\_\_\_\_

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

Stored water released from Galesville Reservoir (R-9964) is to be re-diverted from the South Umpqua to irrigate 134.5 acres

**B. Application Method**

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

From a 6" mainline of 1.32 miles, laterals of 4" to 2" to 3/4" drip lines

**C. Conservation**

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

This amount of water is requested to irrigate a vineyard. The use of drip irrigation is most efficient and direct method of applying water. Diversion will be monitored with a flow meter.

**SECTION 6: RESOURCE PROTECTION**

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

Diversion will be screened to prevent uptake of fish and other aquatic life.

Describe planned actions: Use of a ODFW certified fish friendly screened intake

Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.

Describe planned actions: None planned

Operating equipment in a water body will be managed and timed to prevent damage to aquatic life.

Describe: None planned

Water quality will be protected by preventing erosion and run-off of waste or chemical products.

Describe: Will employ best irrigation management practices to prevent erosion and run-off of waste or chemical products.

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**SECTION 7: PROJECT SCHEDULE**

Date construction will begin: Spring 2016

Date construction will be completed: Summer 2016

Date beneficial water use will begin: 2017 irrigation season

**SECTION 8: WITHIN A DISTRICT**

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

Irrigation District Name	Address	
City	State	Zip

**SECTION 9: REMARKS**

Use this space to clarify any information you have provided in the application.

\_\_\_\_\_

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# Land Use Information Form



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

## NOTE TO APPLICANTS

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

**This form is NOT required if:**

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

## NOTE TO LOCAL GOVERNMENTS

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

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# Land Use Information Form



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

Applicant: KENNERLY RANCHES LLC (Guy KENNERLY)  
First Last

Mailing Address: PO Box 730

ROSEBURG OR 97470 Daytime Phone: 541-672-3348  
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:
28S	6W	29	NESW	1000	FG AGG	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
28S	6W	29	SWSW	1000	FG AGG	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	
28S	6W	30	NWSE NESE	1200	FG AGG	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	
28S	6W	30	SESE SWSE SESE	1200	FG AGG	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	

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

DOUGLAS COUNTY

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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 Ground Water Registration Modification  
 Limited Water Use License   
  Allocation of Conserved Water   
  Exchange of Water

Source of water:  Reservoir/Pond   
 Ground Water   
 Surface Water (name) \_\_\_\_\_

Estimated quantity of water needed: 300   
 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:

PROPOSING TO USE THE SAME POINT OF DIVERSION OF CERTIFICATE #45647 AND PERMIT #5412 TO IRRIGATE 134.5 ACRES WITH STORED WATER FROM GALESVILLE RESERVOIR (R-9964).

**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.

See bottom of Page 3. →

Surface Water/10

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Revised 2/1/2012

P-08/10

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# For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project is 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): 3.3.050

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

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

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

<p>WS 16-0045 R43329 R44017 R44005</p>	<p><b>DOUGLAS COUNTY PLANNING DEPARTMENT ROOM 106, JUSTICE BUILDING DOUGLAS COUNTY COURTHOUSE ROSEBURG, OR 97470</b></p>
--	--

Name: JAMIE CHARTIER Title: DP  
 Signature: [Signature] Phone: 541-440-4289 Date: 1-26-16  
 Government Entity: DOUGLAS COUNTY PLANNING

**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: \_\_\_\_\_

After recording return to:

Guy Kennerly  
PO Box 730  
Roseburg, Oregon 97470

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Transaction: BARGAIN AND SALE DEED

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Parties: Grantor - Rebecca M. Kennerly  
Grantee - Guy N. Kennerly

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Consideration: \$-0- Other good and valuable consideration

UNTIL A CHANGE IS REQUESTED  
SENT ALL TAX STATEMENTS TO:

Douglas County Official Records  
Patricia K. Hitt, County Clerk

2014-004051



\$56.00

Guy N. Kennerly  
PO Box 730  
Roseburg, Oregon 97470

DEED-BS Cnt=1 Stn=36 BRANDY  
\$15.00 \$11.00 \$20.00 \$10.00

03/11/2014 03:34:37 PM

**BARGAIN AND SALE DEED**

Rebecca M. Kennerly, Grantor, conveys to Guy Kennerly, Grantee, the following-described real property:

*See attached Exhibit "A"*

The true and actual consideration for this conveyance is the division of assets in a divorce proceeding known as "In the Circuit Court of the State of Oregon, For the County of Douglas, In the Matter of the Marriage of GUY N. KENNERLY, Petitioner, and REBECCA M. KENNERLY, Respondent, Case No. 10D00604DS."

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY HEREIN DESCRIBED IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305-195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR

5-88178

ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

DATED this 13 day of January, 2012.

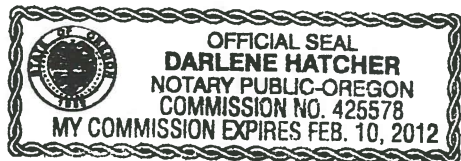
Rebecca M. Kennerly  
Rebecca M. Kennerly

STATE OF OREGON        )  
                                  )        ss.  
County of Douglas     )  
~~Marion~~

Personally appeared the above-named Rebecca M. Kennerly and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 13th day of January, 2012.

Darlene Hatcher  
NOTARY PUBLIC FOR OREGON



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EXHIBIT "A"

Lots 3 and 4 and the South half of the Southwest quarter of Section 29, Township 28 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

EXCEPTING THEREFROM the following: Beginning at a point in the center of the County Road, 4.20 chains West of the quarter section corner between Sections 29 and 32, Township 28 South, Range 6 West, Willamette Meridian, Douglas County, Oregon; thence North 58° West 3.25 chains along County Road; thence South 2 3/4° West 1.87 chains; thence East 3 chains to the place of beginning.

ALSO EXCEPTING THEREFROM the following: Beginning at a 3/4 inch iron pipe on the section line between Sections 29 and 32; Township 28 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, which is South 87° 23' West 578.7 feet from the quarter section corner between said Sections 29 and 32; thence running South 87° 23' West 612.0 feet along said section line to a 3/4 inch iron pipe; thence North 2° 33' East 160.6 feet to a 3/4 inch iron pipe; thence North 69° 16' East 491.3 feet to a 3/4 inch iron pipe, to a point on the west line of the Dillard-Brockway County Road; thence running along said road line, South 24° 59' East 102.4 feet and South 27° 00' East 69.5 feet to a 3/4 inch iron pipe; thence continuing along said road line, South 52° 41' East 88.8 feet to a 3/4 inch iron pipe, on an old fence line; thence running South 0° 51' East 97.0 feet on a line which is described in deed recorded in Volume 107, Page 270, Deed Records of Douglas County, Oregon, as South of the County Road and East of Kent Creek in Section 29, Township 28 South, Range 6 West, Willamette Meridian, to the point of beginning.

ALSO EXCEPTING THEREFROM that portion of Lot 3, Section 29, Township 28 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, which is described as follows: Beginning at an iron pipe at the center of said Section 29, as previously established by a County Surveyor, which is at the northeast corner of said Lot 3 and at the northwest corner of property described in Volume 74, Page 618, Deed Records of Douglas County, Oregon; thence running South along the west line of said recorded property, a distance of 791.0 feet to a pipe from which a 40 inch bull pine tree bears South 61° East 59.3 feet; thence continuing South 193.0 feet to the mean water line on the right or east bank of the South Umpqua River; thence North 65° 05' West 224.5 feet along said line of river to a point; thence North 260.0 feet to a pipe; thence continuing North 629.2 feet along the east line of property recorded in Volume 107, Page 41, Recorder's No. 39316, Deed Records of Douglas County, Oregon, to a pipe; thence Easterly along the south line of property recorded in Volume 90, Page 152, Deed Records of Douglas County, Oregon, to the place of beginning.

ALSO EXCEPTING THEREFROM those portions deeded to Douglas County for road purposes, in Recorder's Nos. 311898 and 74-281, Records of Douglas County, Oregon.

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S-98179





EXHIBIT "A"

BOOK 4325 PAGE 488

Lots Numbered Three (3) and Four (4) in Section Twenty-nine; Lots Numbered Four (4) and Five (5) in Section Thirty; Also the South half of the Southwest quarter (S1SW1/4) of Section Twenty-nine (29); the South half of the Southeast quarter (S1SE1/4) of Section Thirty (30); the North half of the Northwest quarter (N1/2 NW1/4) of Section Thirty-one (31). All of said lands in Township Twenty-eight (28) South, Range Six (6) West, Willamette Meridian, and situated in Douglas County, Oregon.

Excepting therefrom, however, the following parcels, to-wit:

a. Beginning at a point in the center of the County Road, 4.20 chains West of the quarter section corner between Sections 29 and 32, Township 28 South, Range 6 West; thence N 58° W 3.25 chains along County Road; thence S 2-3/4° W 1.07 chains; thence E 3. chains to place of beginning; and

b. Beginning at a 3/4 inch iron pipe, on the section line between Sections 29 and 32, Township 28 South, Range 6 West, W.M., which is S. 87° 23' W. 578.7 feet from the quarter section corner between said Sections 29 and 32; thence running S. 87° 23' W. 612.0 feet along said section line to a 3/4 inch iron pipe; thence N. 69° 14' 2" E. 160.6 feet to a 3/4 inch iron pipe; thence N. 69° 14' E. 491.3 feet to a 3/4 inch iron pipe, to a point on the west line of the Millard-Brookway County Road; thence running along said road line, S 24° 59' E 102.4 ft. and S. 27° 00' E. 69.5 feet to a 3/4 inch iron pipe; thence continuing along said road line S. 52° 41' E. 88.8 feet to a 3/4 inch iron pipe, on an old fence line; thence running S. 0° 51' E. 97.0 feet on a line which is described in Douglas County deed records Vol. 107, Page 270, as north of the County road and east of Kent Creek in Section 29, Township 28 South, Range 6 West, to the point of beginning; and

c. That portion of Lot 3, Section 29, Township 28 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, which is described as follows: Beginning at an iron pipe at the center of said Section 29, as previously established by a county surveyor, which is at the N.E. corner of said Lot 3 and at the N.W. corner of property described in County Clerk's Deed Records in Vol. 74, page 619; thence running South along the west line of said recorded property a distance of 791.0 feet to a pipe from which a 10 inch hull pine tree bears S. 61° E. 59.3 feet; thence continuing South 193.0 feet to the mean water line on the right or east bank of the South Umpqua River; thence N. 65° 05' W. 224.5 feet along said line of river to a point; thence North 260.0 feet to a pipe; thence continuing North 629.2 feet along the east line of property recorded in said Deed Records in Volume 107, page 41, Inst. 39316, to a pipe; thence easterly along the south line of property recorded in said Deed Records in Vol. 90, page 152, to the place of beginning.

Subject to the following:

Right of way reserved through and across said property for the use and benefit of Parcel b immediately above described. Said right of way entitles the owners of said Parcel b to maintain a water line, through and across the property first above described as such water line now crosses the same commencing from a public water line and thence through said property first above described to said Parcel b. Said right of way also entitles the owners of said Parcel b to enter upon said property first above described for the purpose of maintaining, repairing and inspecting said water line. The water line shall be kept at a depth at least equal to the depth that it is now situated.

and Right of Way granted to The California Oregon Power Company.

94-23823

HANDED *cook*

STATE OF OREGON  
COUNTY OF DOUGLAS  
I, GAY FIELDS, COUNTY CLERK AND RECORDER OF  
DOUGLAS COUNTY, DO HEREBY CERTIFY THAT THIS  
INSTRUMENT WAS RECORDED

94 NOV -9 PM 1:02

GAY FIELDS  
DOUGLAS COUNTY CLERK

IN THE ORIGINAL RECORDS OF DOUGLAS COUNTY

*Wm R. Harman*  
DEPUTY

FEE 130  
35

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FEB 16 2016

SALEM, OR

I-2016-2

**CONTRACT FOR PURCHASE OF AGRICULTURAL WATER FROM GALESVILLE PROJECT**

This contract is made on \_\_\_\_\_, 20\_\_ between Douglas County, a political subdivision of the State of Oregon, ("County"), and Kennerly Ranches, LLC, ("Customer").

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**COUNTY AND CUSTOMER AGREE:**

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**1 TERM AND RENEWAL:**

1.1. The initial term of this contract shall begin on March 1, \_\_\_\_\_, **SALEM, OR** 2016 and end on December 31, 2026, unless it is sooner terminated as provided herein.

1.2. As used in this contract, unless the context clearly indicates otherwise, "term" or "term of this contract" shall mean both the initial term and any extension.

1.3. Customer shall have the right to extend the term of this contract for two successive periods of ten years each upon the following conditions:

1.3.1. Approximately ninety days prior to expiration of the contract term, County shall notify Customer in writing that Customer has the right to extend the term at the price set pursuant to section 11.

1.3.2. Customer may elect to extend the contract term by written notice to County within thirty days after County gives notice of the right to extend. Concurrently with written notice of extension Customer may request the Board of Commissioners to review and reduce the price of water in accordance with subsection 11.5.

1.3.3. No other act or agreement shall be required of the parties to effect the extension after Customer gives proper notice of election to extend the contract term.

1.3.4. Each extension shall commence on the day following the termination date of the initial term or the preceding extension.

1.4. The provisions of this contract shall apply to any extension except for changes in the purchase price pursuant to section 11; modifications required to comply with federal or state statutes, regulations, or administrative rules; or modifications required to comply with any contract between County and the United States concerning the Galesville Project.

1.5. Customer shall not be entitled to extend the term of this contract if Customer is in default under this contract at the time extension is requested by Customer.

**2 AUTHORITY OF PUBLIC WORKS DIRECTOR:**

2.1. The Director of the Douglas County Public Works Department (the Director) has authority to administer this contract on behalf of County.



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2.2. The Director may delegate authority to administer this contract to the **SALEM, OR** Manager of the County Public Works Department, Natural Resources Division (the Division Manager), except for authority to establish the price of water under section 11 of this contract. The Director shall retain the right to supersede any decision of the Division Manager in the administration and interpretation of this contract.

2.3. References to the Director in this contract shall be deemed to include the Division Manager, to the extent the Director has delegated authority to the Division Manager.

**3 WATER ALLOCATION:** Each year during the term of this contract, County shall allocate sufficient acre feet of storage capacity in the Galesville Reservoir for Customer to irrigate 134.50 acres. This allocation shall not exceed 300.00 acre feet per irrigation season as specified on the attached Exhibit A.

**4 PERMITS AND CERTIFICATES OF WATER RIGHTS:**

4.1. County shall file and maintain any reservoir water right permit and/or certificate to store water in the Galesville reservoir allocated for the Customer's use, as required by the State of Oregon Water Resources Department or its successor ("OWRD").

4.2. Customer, at Customer's expense, shall be responsible for obtaining any permit and/or certificate of water rights for use of the stored water allocated under this contract as required by the OWRD.

4.3. Within 6 months after the effective date of this contract, Customer shall provide County with a copy of the application map provided to the State.

**5 RELEASE OF WATER:**

5.1. Subject to the provisions of this contract, County will release into the natural channel of Cow Creek water comprising the allocation described in section 3. Water released for Customer's allocation shall be measured and delivered to Customer's point of diversion of record by County with equipment installed and maintained by County.

5.2. County shall report to the OWRD all allocated water stored and distributed to Customer's point of diversion of record, including reasonable losses. Customer shall report all water use as described on Customer's water right of record, or as otherwise may be required by the OWRD.

5.3. The obligations of County to allocate capacity may be restricted by any lawful order, regulation, or ruling of any governmental agency or provisions of a contract between County and the United States. Such legal restrictions may impair the County's ability to perform its obligations under this contract. In that event, County shall be relieved of its obligations to the extent necessary to comply with the legal restrictions. Customer's payments under this contract shall be reduced proportionally to any reduction in Customer's allocation resulting from such legal restrictions.

5.4. Notwithstanding any other provision of this contract, County may suspend release and delivery of water to Customer upon written notice to Customer if Customer fails to make any payment for such water when due.

S-88179

**6 DIVERSION AND USE OF WATER:**

6.1. Customer shall be wholly responsible for taking, diverting, conveying, and utilizing its water and shall bear all losses from Customer's point of diversion.

6.2. Customer shall divert the water it is entitled to receive under this contract in accordance with schedules developed by the Customer and County.

6.3. The water diverted by Customer may be measured by County at the point of diversion. The point of diversion shall be accessible for inspection and measurement of water at all reasonable times by County. Any easement necessary for County to gain access to the point of diversion shall be provided by Customer when requested by County.

6.4. The water shall be utilized for agricultural use. Customer shall utilize the water only for the uses and only on the real property described in Customer's permit and certificate.

6.5. Customer shall be responsible for purchase and installation of a meter or other suitable measuring device if required by the OWRD. Once installed, it shall be the Customer's responsibility to maintain such device in good working order. If requested by the OWRD, Customer shall maintain a record of the amount of water used and report water use on such periodic schedule as may be established by the OWRD.

6.6. If required, Customer shall purchase, install, maintain, and operate fish screening equipment and by-pass devices to prevent fish from entering the diversion. Any required screens and/or by-pass devices shall be in place, functional, and approved prior to diversion of any water under this contract.

**7 QUALITY OF WATER:**

7.1. County shall operate and maintain the Galesville dam, reservoir, and related facilities in a reasonable and prudent manner, and shall endeavor in good faith to take adequate measures to maintain the quality of raw stored water at the facilities. County is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of water. **COUNTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE QUALITY OF WATER RELEASED AND DELIVERED FROM GALESVILLE DAM, RESERVOIR, AND RELATED FACILITIES.**

**8 WATER SHORTAGES:** In any year in which a water shortage in the Galesville reservoir occurs, County shall apportion the available water supply among Customer and other users who are entitled to receive water from the reservoir. The quantity of water to be furnished for irrigation shall first be reduced as necessary, but not greater than 15%. Any further reduction in the reservoir water supply shall be shared by Customer and all other users entitled to water from the reservoir in the same proportion that the entitlement of each user, including Customer's entitlement under this contract, bears to the total entitlements of all users.

**9 WATER CONSERVATION:** Customer acknowledges the critical need for water conservation in the Umpqua River basin. Customer shall implement reasonable and prudent water conservation measures for agricultural activities.

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**10 COMPLIANCE WITH LAW:** This contract shall be governed by and construed in accordance with the laws of the State of Oregon. Each party shall perform its obligations in accordance with all applicable state, federal, and local laws, rules and regulations now or hereafter in effect.

**11 PRICE OF WATER:**

11.1. During the initial term, the price for the allocation stated in section 3 shall be \$4105.25 per year.

11.2. For each discrete ten year extension of the contract term, Customer shall pay the then current rate as established by County in accordance with this section. Notice of the right to extend under subsection 1.3.1 shall state the price of water during the extension.

11.3. The Director shall periodically review and adjust the price for water taking into account the following factors:

11.3.1. The current cost of operating and maintaining the Galesville dam, reservoir, and related facilities;

11.3.2. The projected costs for operating, maintaining, and replacing Galesville water storage and delivery facilities; and

11.3.3. The price of water sold by similar facilities for similar uses.

11.4. The allocation price for each renewal term shall not be increased by more than 10% over the previous term.

11.5. Customer may request the Board of Commissioners to review and reduce the price of water established by the Director. Such request shall be in writing and shall be given with the notice of Customer's election to extend the contract term. After considering the factors listed in subsection 11.3, the Board of Commissioners may reduce or affirm the price established by the Director. If the Board of Commissioners fails to take any action on Customer's request to review and reduce the price of water within 30 days after Customer makes the request, the request shall be deemed denied. If Customer is not satisfied with the action of the Board of Commissioners, Customer may rescind their election to extend the contract term and cancel the contract by written notice to County within sixty days after Customer requests the Board of Commissioners to review and reduce the price.

**12 PAYMENT:**

12.1. Customer shall pay County the annual price established by section 11 for the allocation stated in section 3 regardless of whether Customer uses any or all of the water allocated. Except as provided in subsection 12.2, payment shall be made no later than March 31 of each year.

12.2. If this contract is dated after March 2 in the year for which water is first to be released, then the amount due for the first year only shall be payable within 30 days after the date the contract is signed by County.

12.3. Interest shall accrue on late payments at the rate of eighteen percent per annum commencing the day after the date payment is due. Customer shall pay all interest upon the request of County.

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**13 LIMITATIONS ON LIABILITY:**

13.1. County shall not be liable for damages or other expenses sustained by Customer resulting from shortages in the quantity of water available for release, or interruptions in water deliveries to Customer, if such shortages or interruptions in deliveries are caused partially or entirely by hostile diversion, accidental damage to County facilities, operational failure of County facilities, or any cause beyond County's control.

13.2. Notwithstanding any other provision of this contract, County shall not be liable to Customer for damages caused by failure to comply with any obligation of County under this contract, if such failure results from lack of appropriation of funds necessary to perform such obligation pursuant to ORS 294.305 et seq. (Local Budget Law).

13.3. In no event shall County be liable to Customer for any indirect, special, or consequential damages even if Customer previously advised County of the possibility of such damages.

**14 DEFAULT:**

14.1. There shall be a default under this contract if either party materially fails to comply with any provision of this contract within thirty days after the other party gives written notice specifying the breach. If the breach specified in the notice cannot be completely cured within the thirty day period, no default shall occur if the party receiving the notice begins curative action within the thirty day period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable.

14.2. If a default occurs, the party injured by the default may elect to terminate this contract and pursue any equitable or legal rights and remedies available under Oregon law, except that Customer's remedies shall be subject to the limitations on damages stated in section 13.

14.3. Any litigation arising out of this contract shall be conducted in the Circuit Court of the State of Oregon for Douglas County.

**15 SEVERABILITY:** If any provision of this contract is held to be invalid, that provision shall not affect the validity of any other provision of this contract. This contract shall be construed as if such invalid provision had never been included.

**16 WAIVER:** No provision of this contract shall be waived unless the waiver is written and signed by the party waiving its rights. Any waiver of a breach, whether express or implied, shall not constitute waiver of any other breach.

**17 SUCCESSORS:** The successors, assigns, and legal representatives of Customer and County shall be subject to all provisions of this contract. Customer shall not assign Customer's rights or obligations under this contract without prior written consent of County.

**18 NOTICES:**

18.1. Notices required by this Contract must be given in writing by personal delivery or mail, unless some other means or method of notice is required by law.


18.2. Notices to County shall be directed to Thomas R. Manton, Division Manager, Douglas County Public Works Department, Natural Resources Division, Room 306, Douglas County Courthouse, 1036 SE Douglas Street, Roseburg, OR 97470.

18.3. Notices to Customer shall be directed to: 541 672 3348/Gary  
Kennerly Ranches, LLC  
PO Box 730, Roseburg, OR 97470

**19 ENTIRE AGREEMENT:** This contract is in the final and complete agreement of the parties and supersedes all prior and existing written or oral understandings. No modification of this contract shall be valid unless it is in writing and signed by the parties.

**20 TERMINATION FOR CONVENIENCE:** County may terminate this Contract if the Director determines in good faith that termination is in the best interest of the public. The Director will endeavor to give Customer notice thirty days prior to the date of termination under this section, but failure to give notice will not invalidate the decision to terminate. Termination under this section will not affect the rights of County and/or Customer existing at the time of termination

**CUSTOMER**

By   
Print Name Guy N Kennedy  
Date 2-2-16

**DOUGLAS COUNTY**

By \_\_\_\_\_  
Robert G. Paul, P.E., Director of Public Works Department, Authority to sign contract granted by order of Board of County Commissioners, dated August 14, 2002.  
Date \_\_\_\_\_

**REVIEWED AS TO CONTENT**

By \_\_\_\_\_  
Division Manager  
Date \_\_\_\_\_  
Coding 215-0000-2810-00-012010

**REVIEWED AS TO FORM**

By \_\_\_\_\_  
County Legal Counsel  
Date \_\_\_\_\_

**RECEIVED BY OWRD**

**FEB 16 2016**

**SALEM, OR**

S-88179

EXHIBIT A

COMPUTATION OF RATE:

PRIMARY IRRIGATION

- 1. 134.50 acres of **primary irrigation**. This allocation shall not exceed **2.23** acre feet per acre each irrigation season.

Acre Feet: 300.00 Annual Cost: \$ 4105.25

SUPPLEMENTAL IRRIGATION

- 2. Rights whose priority is between March 26, 1974, and November 3, 1983:

                     acres of **supplemental irrigation**. This allocation shall not exceed **1.5** acre feet per acre each irrigation season on the South Umpqua River and/or Cow Creek or **1.0** acre foot per acre each irrigation season on the main stem, Umpqua River.

Acre Feet:                      Annual Cost: \$                     

- 3. Rights whose priority is between October 24, 1958, and March 26, 1974:

                     acres of **supplemental irrigation**. This allocation shall not exceed **1.0** acre feet per acre each irrigation season on the South Umpqua River and/or Cow Creek or **0.6** acre foot per acre each irrigation season on the main stem, Umpqua River.

Acre Feet:                      Annual Cost: \$                     

- 4. Rights whose priority is prior to October 24, 1958:

                     acres of **supplemental irrigation**. This allocation shall not exceed **0.5** acre feet per acre each irrigation season on the South Umpqua River and/or Cow Creek or **0.3** acre foot per acre each irrigation season on the main stem, Umpqua River.

Acre Feet:                      Annual Cost: \$                     

Note: Instream delivery losses are not included in the above allocations.

Summary:

Total Acres:	<u>134.50</u>	acres
Total Allocation:	<u>300.00</u>	acre feet
Total Cost:	<u>\$ 4105.25</u>	

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