



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

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

Alternate Review Process (ORS 537.409): You may use this form for any reservoir storing less than 9.2 acre-feet or with a dam less than 10 feet high.

**Use a separate form for each reservoir**

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply, insert "n/a". A summary of review criteria and procedures that are generally applicable to these applications is available at [www.wrd.state.or.us/OWRD/PUBS/forms.shtml](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).

**1. APPLICANT INFORMATION**

Applicant: Todd Pershing **RECEIVED BY OWRD**  
First Last

Mailing Address: PO Box 308 **SEP 08 2016**

Jacksonville OR 97530  
City State Zip

Phone: 916-316-0331 same none **SALEM, OR**  
Home Work Other

Fax: none E-Mail Address\*: toddpershing@icloud.com

\* 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.)

**2. AGENT INFORMATION**

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

Agent: Evan Malepsy  
First Last

Mailing Address: 52 Pineridge Lane

Eagle Point OR 97524  
City State Zip

Phone: 541-621-2868 same none  
Home Work Other

Fax: none E-Mail Address\*: emalepsy@roguecivil.com

\* 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.)

**3. LOCATION AND SOURCE**

A. Reservoir Name: Pershing Reservoir

B. Source: Provide the name of the water body or other source from which water will be diverted, and the name of the stream or lake it flows into. Indicate if source is run-off, seepage, or an unnamed stream or spring.  
 Source: Little Applegate River Tributary to: Applegate River

C. County in which diversion occurs: Jackson

App. No. <u>1288282</u>	For Department Use Permit No. _____	Date _____
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**D. Reservoir Location**

Township (N or S)	Range (E or W)	Section	quarter/quarter	tax lot number
39S	3W	10	NE/SE	600

**E. Dam:** Maximum height of dam: Zero Feet feet. If excavated, write "zero feet".

**F. Quantity:** Amount of water to be stored in the reservoir at maximum capacity. List volume in acre-feet: 1.5

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

**4. WATER USE**

Indicate the proposed use(s) of the stored water. **NOTE: You may wish to consider filing for "Multipurpose use" for your reservoir. Multipurpose use does not limit the types of future uses for the stored water. Multipurpose covers all uses including: stockwater, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.** If any use will be out of reservoir use, regardless of the type of storage listed, a secondary application must be filed to appropriate the stored water.

Multipurpose Use

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**5. PROPERTY OWNERSHIP**

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Please provide a copy of the recorded deed(s).

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

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**Yes** (please check appropriate box below then skip to section 5)

There are no encumbrances

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

**No** (Please check the appropriate box below)

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 irrigated and/or domestic use only (ORS 274.040). (Do not check this box if you described your use as "Multipurpose" in #3 above.)

List the names and mailing addresses of all affected landowners:

None

**6. ENVIRONMENTAL IMPACT**

- A. Channel:** Is the reservoir:  in-stream or  off channel?
- B. Wetland:** Is the project in a wetland?  Yes  No  Don't know
- C. Existing:** Is this an existing reservoir?  Yes  No  
If yes, how long has it been in place? 20+ years.
- D. Fish Habitat:** Is there fish habitat upstream of the proposed structure?  Yes  No  Don't know  
If yes, how much? \_\_\_\_\_ miles.
- E. Partnerships:** Have you been working with other agencies?  Yes  No  
Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in this project.

ODFW - Peter Samarin  
Watermaster - Travis Kelly

**7. 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 N/A	Address	
City	State	Zip

**8. DESCRIPTION**

Provide a description of the design and operation of the proposed diversion, including a description of how live flow will be passed outside the authorized storage season. Use this space for narrative. You may also provide narrative and sketches on separate pages.

The reservoir is an existing facility that has been in place for an unknown amount of time, greater than 20 years based on review of aerial photos. The reservoir is in-stream and will require a system of ditches/pipes to pass live flow outside the authorized storage season. A gate system will be installed at the point of diversion to channel live flow into a bypass channel/pipe. The reservoir is an excavated depression with no dam.

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If the diversion involves a dam, use this space for sketches of the diversion (e.g. cross-section of the dam with its dimensions, dimension and placement of outlet pipe, means of passing live flow outside of the authorized storage season, and means for providing fish passage).

N/A - no dam.

### 9. SIGNATURE

I swear that all statements made and information provided in this application are true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Landowner Signature

8-31-16  
\_\_\_\_\_  
Date

**Before you submit your application be sure you have:**

- Answered each question completely.
- Included a legible map that includes Township, Range, Section, quarter-quarter and tax lot number.
- The map must meet map requirements to be accepted.
- Included a land use form or receipt stub signed by a local planning official.
- Included a check payable to Oregon Water Resources Department for the appropriate amount.

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SALEM, OR

R-00202

# WATERMASTER ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

**The review of alternate reservoirs is limited to these criteria only.**

Application #: R-                      Applicant's Name: Todd Pershing

1) Does the proposed reservoir have the potential to injure existing water rights?

NO     YES

Explain: Source is winter run-off tributary of Little Applegate River. Storage is available during the month of February.

2) Can conditions be applied to mitigate the potential injury to existing water rights?

NO     YES    N/A

If YES, which conditions are recommended: Storage is available during the month of February.

3) Did you meet with staff from another agency to discuss this application?

NO     YES

Who:

Agency:

Date:

Who:

Agency:

Date:

Watermaster signature:



Date: 8-18-2016

WRD Contact:

Caseworker:

Water Rights Division, 503-986-0900 / Fax 503-986-0901

**NOTE: This completed form must be returned to the applicant**

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R-08292

# ODFW Alternate Reservoir Application Review Sheet

This section to be completed by the applicant.

Applicant Name/Address/Phone/Email: Todd Pershing / PO Box 308, Jacksonville, OR 97530  
916-316-0331 / toddpershing@icloud.com

Reservoir Name: Pershing Reservoir Source: unnamed draw, trib. to Little Applegate River Volume (AF): 1.5

Twp Rng Sec QQ: 39S 3W 10 NE/SE Basin Name: Rogue Basin  in-channel  
 off-channel

Note: It is unlikely that ODFW will be able to complete this form while you wait, nevertheless we recommend making an appointment to submit the form so as to provide any necessary clarifications. See pg. 6 of Instructions for contact information.

This section to be completed by Oregon Department of Fish and Wildlife (ODFW) District Office

- 1) Is the proposed project and AO<sup>1</sup> off channel? .....  YES  NO  
 (if yes then proceed to #4; if no then proceed to #2)
- 2) Is the proposed project or AO located where NMF<sup>2</sup> are or were historically present?.....  YES  NO  
 (if yes then proceed to #3; if no then proceed to #4)
- 3) If NMF are or were historically present:
- a. Is there an ODFW-approved fish-passage plan?..... YES  NO
  - b. Is there an ODFW-approved fish-passage waiver or exemption?.....  YES  NO

If fish passage is required under ORS 509.580 through .910, then either 3(a) or 3(b) must be "Yes" to move forward with the application. If responses to 3(a) and 3(b) are "No", then the proposed reservoir **does not meet** the requirements of Oregon Fish Passage Law and **shall not** be constructed as proposed.

- 4) Would the proposed project pose any other significant detrimental impact to an existing fishery resource locally or downstream?..... YES  NO  
 Explain below (for example, list STE species or other existing fishery resources that would be impacted negatively.)

Any diversion or appropriation of water for storage during the period March through January poses a significant detrimental impact to existing fishery resources. (For example, if diversion of water for storage during a certain time period would cause a significant detrimental impact to an existing fishery resource, then ODFW should recommend conditions or limitations.) If NMF fish are present at the project site or point of water diversion then the applicant should be advised that a fish screen consistent with screening criteria will be required.

This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam. ODFW has determined that additional diversions of water in this area pose a significant detrimental impact to existing fishery resources during the period April 15 through September 30.

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<sup>1</sup> AO = Artificial Obstruction means any dam, diversion, culvert or other human-made device placed in waters of this state that precludes or prevents the migration of native migratory fish. ORS 509.580 (1)

<sup>2</sup> NMF = Native Migratory Fish Species in Oregon as defined by OAR 635 - 412 - 0005 (32)

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This impoundment is located on a small (un named), non fish bearing tributary to the Little Applegate River.

ODFW believes that if the application is conditioned as recommended, impacts to native migratory fish in the Little Applegate, and Applegate Rivers can be lessened. Additionally, this pond should not store water if the instream right (70982) on the Little Applegate River is not met.

If YES, can conditions be applied to mitigate the significant detrimental impact to an existing fishery resource?


NO (explain)

YES (select from Menu of Conditions on next page)

fishmay

b51a: The period of use has been limited to February.

ODFW Signature: \_\_\_\_\_



Print Name: Peter Samarin

ODFW Title: Assistant District Fish Biologist

Date: 8/25/2016

**NOTE: This completed form must be returned to the applicant.**

Revised 10/4/12

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Use this menu to identify appropriate conditions to be included in the permit, and indicate the abbreviations on the review form:

**fishpass:** As required by ORS 509.585, a person owning or operating an artificial obstruction (AO) may not construct or maintain any AO across any waters of this state that are inhabited, or historically inhabited, by native migratory fish (NMF) without providing passage for NMF. A person owning or operating an AO shall, prior to construction, fundamental change in permit status or abandonment of the AO in any waters of this state, obtain a determination from ODFW as to whether NMF are or historically have been present in the waters. If ODFW determines that NMF are or historically have been present in the waters, the person owning or operating the AO 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 from the department prior to construction, permit modification or abandonment of the AO. Approved fish-passage plans, waivers, and exemptions shall maintain adequate passage of NMF at all times (ORS 509.601) as per the approved plan, waiver or exemption.

**fishself:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

**fishapprove:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

**fishdiv33:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

**fishmay:** Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.

**b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.

**b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.

**b51a** The period of use has been limited to \_\_\_\_\_ through \_\_\_\_\_.

**b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point.

**b58** 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 must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.

**futile call:** The use of water allowed herein may be made only at times when waters from the (NAME OF SURFACE WATER) would not otherwise flow into a tributary of the \_\_\_\_\_ River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

**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 ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

**wq:** The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

**fence:** The stream and its adjacent riparian area shall be fenced to exclude livestock.

**blv:** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with a shut-off 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.

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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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**Receipt for Request for Land Use Information**

Applicant name: Todd Pershing **RECEIVED**

City or County: Jackson County Staff contact: Kate McGwire **SEP 02 2016**

Signature:  Phone: 941-334-6907 **JACKSON COUNTY PLANNING**



# Transaction Receipt

Record Number: 439-16-01888-ZON

Receipt Number: 238749

<http://www.co.jackson.or.us/>

JCBuilding@jacksoncounty.org

Address: 3063 APPLGATE RD, JACKSONVILLE, OR

Receipt Date: 9/2/16

Parcel Number: 39-3W-10-600

### Fee Items Paid

DESCRIPTION	ACCOUNT CODE	AMOUNT PAID
Type I Counter Permit	3701040000.45105.1300	\$113.00
		<b>\$113.00</b>

### Payment Summary

PAYMENT METHOD	PAYER	COMMENTS	AMOUNT PAID
Check	Lanier Land Consulting LLC	OWRD_kjm	\$113.00
			<b>\$113.00</b>

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After recording return to:  
Todd C. Pershing  
P.O. Box 6140  
Auburn, CA 95604

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Todd C. Pershing  
P.O. Box 6140  
Auburn, CA 95604

File No.: 7161-2367716 (lb)  
Date: December 31, 2014

Jackson County Official Records **2015-001151**  
R-WD  
Stn=12 BARROWCK 01/14/2015 03:19:42 PM  
\$15.00 \$11.00 \$10.00 \$8.00 \$20.00 **\$64.00**

I, Christine Walker, County Clerk for Jackson County, Oregon, certify  
that the instrument identified herein was recorded in the Clerk  
records.  
Christine Walker - County Clerk

THIS SPACE RESERVED

### STATUTORY WARRANTY DEED

**Applegate Tree Farm, LLC limited liability company**, Grantor, conveys and warrants to **Todd C. Pershing**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

The land referred to in this report is described in Exhibit A attached hereto.

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$420,000.00**. (Here comply with requirements of ORS 93.030)

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12-88282

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 13 day of January, 2015.

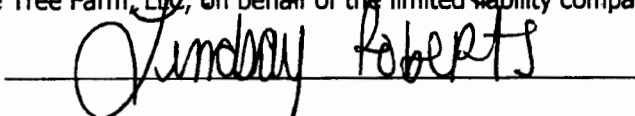
Applegate Tree Farm, LLC, a limited liability company



By: William Gerwick, Member

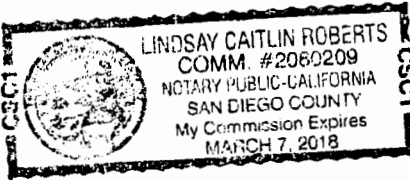
STATE OF California )  
County of San Diego )ss.

This instrument was acknowledged before me on this 13<sup>th</sup> day of JANUARY, 2015 by William Gerwick as Member of Applegate Tree Farm, LLC, on behalf of the limited liability company.



Notary Public for California  
My commission expires:

03/07/2018



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**Exhibit "A"**

Real property in the County of Jackson, State of Oregon, described as follows:

**PARCEL 1:**

The East Half of the Northwest Quarter of the Southeast Quarter, the Northwest Quarter of the Northwest Quarter of the Southeast Quarter, the Southeast Quarter of the Southeast Quarter and Government Lot 5, all in Section 10, Township 39 South, Range 3 West of the Willamette Meridian, Jackson County, Oregon.

**PARCEL 2:**

Commencing at a brass cap monumenting the East Quarter corner of Section 10, Township 39 South, Range 3 West, Willamette Meridian, Jackson County, Oregon; thence North 89° 56' 44" West along the East-West centerline of said Section 10, a distance of 811.84 feet to a 5/8 inch iron pin for the true point of beginning; thence North 31° 11' 11" East, 1049.36 feet to intersect the Southerly right of way line of the Little Applegate Road (County Road) at a 5/8 inch iron pin; thence South 58° 48' 49" East (Record South 58° 49' 00" East) along said right of way line, 368.72 feet to a 5/8 inch iron pin monumenting Engineer's Centerline Station 35+10.41 P.C.; thence along the arc of a 3789.72 foot radius curve to the right (the long chord to which bears South 55° 52' 01" East 389.65 feet) an arc length of 389.82 feet to a 5/8 inch iron pin; thence leaving said right of way line, South 37° 04' 48" West 612.84 feet to the brass cap monumenting said East Quarter corner of Section 10; thence South 00° 06' 04" East along the East line of said Section 10, a distance of 915.30 feet to intersect the South boundary of Donation Land Claim No. 37, said Township and Range; thence North 89° 55' 14" West (Record West) along said South boundary, 812.54 feet (Record 811.80 feet) to a brass cap monumenting the South Southwest corner of said Donation Land Claim No. 37; thence North 00° 03' 26" West (Record North) along the West boundary of said Donation Land Claim No. 37, a distance of 914.95 feet to the true point of beginning.

NOTE: This legal description was created prior to January 1, 2008

Tax Parcel Number: 1-047944-7 and 1-071282-1 and 1-047944-7 and 1-071282-1

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# ALTERNATE RESERVOIR PROCESS

## BACKGROUND:

### *Why do I need a water right?*

Under Oregon Law, all water belongs to the public. With few exceptions, any person wishing to take and store surface water or ground water must first obtain a permit from the Water Resources Department (Department). The water right, once developed, is a type of property right and is attached to the land where it was established. Land with an attached water right may be several miles from the actual source of water. In Oregon, landowners with water flowing past, through, or below their property do not automatically have a right to use that water.

Oregon's water laws are based on the principle of "prior appropriation." That is, the first person to obtain a water right to a water source is the last to be shut off in times of low flow. In water-short times, water users with the oldest water right can demand the amount specified in their right regardless of the needs of junior users. If there is a surplus beyond the specified amount of the senior right holder, the person with the next oldest priority date can take their specified amount as necessary to satisfy their appropriation under their right and so on down the line until there is no surplus. The date of application for a permit determines the priority date of the right. Often, streamflow will not be available for storage during an irrigation season, so reservoirs may be filled from excess winter streamflow. Obtaining a water right secures your place within the prior appropriation system.

Oregon's water code contains four basic provisions:

- With few exceptions, surface or ground water may be diverted legally only if it is used under the terms of a valid water right for a beneficial purpose.
- The more senior the water right, the longer water is available in a time of shortage.
- A water-right certificate is attached to the land where it was established. If the land is sold, the water right goes with the land to the new owner. (This appurtenancy does not apply to water rights still in permit status.)
- A water right is valid as long as it is used at least once every five years, for its intended purpose. If the right is unused for five consecutive years, it is legally forfeited and subject to cancellation, with few exceptions.

By law, the land use associated with water use must comply with the statewide land-use goals and local land-use plans. If state goals or local comprehensive plans prohibit the land use, the water-use permit may not be exercised until land-use approval is obtained. City or county planning agencies can provide information about local land-use plans and requirements.

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## **THE WATER RIGHT: *Applying for a Permit to Use Water***

A water-right permit is the authorization necessary from the Water Resources Department to be allowed to store water. Additional permits and approvals from other agencies may be necessary prior to construction of a storage facility. With few exceptions, the storage of water requires a water-right permit; regardless of size, or whether or not the pond or reservoir already exists.

In 1995, the legislature created a new program, the Alternate Reservoir Process, for small ponds. A permit issued under the Alternate Reservoir Process allows only for the storage of water. To use or appropriate the stored water requires a “secondary” permit for all out-of-reservoir uses, with few exceptions. The *Surface Water Right Application Guidebook* explains how to complete a secondary application. The Alternate Reservoir Process does not allow the storage of groundwater (or water from a well); to do so it is necessary to apply under the *Groundwater Permit* process.

In addition, the Alternate Reservoir Process is applicable to any pond or reservoir of any capacity with a dam height of less than 10 feet. If the dam height is 10 feet or greater, the maximum amount of water that may be stored under the Alternate Reservoir Process is less than 9.2 acre-feet. Any pond or reservoir that stores 9.2 acre-feet or greater and with a dam height of 10 feet or greater requires engineered plans and specifications; and must apply for permit under the *Standard Reservoir Process*.

A “bulge in the system” is a pond that will be used as an in-system storage facility during the irrigation season to manage and handle water allotted by an irrigation district or water that is allowed under an existing water right for irrigation or agricultural uses. If the waters held in the pond are used on a rotational basis during the irrigation season under an existing right, a water storage permit is not required. This would *not* include storing or holding water outside the irrigation season.

However, where storage for future use is needed, a permit is required.

## **THE PERMIT PROCESS: *How an Application is Processed***

Before an application for an Alternate Reservoir water right is submitted, the applicant must contact the local Fish and Wildlife office to assess what fish passage and screening requirements will need to be addressed.<sup>1</sup> ODFW will provide the Alternate Reservoir Application Review Sheet form to be included with the application, as described in the instructions below.

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<sup>1</sup> The default assumption under ORS 509.585 is that fish passage will be provided if migratory fish are present or were historically present, which requires the approval of a fish passage plan by ODFW. An alternative to providing fish passage is to seek a fish-passage waiver or exemption from the Fish and Wildlife Commission. This will require development of a plan and mitigation to be approved by the Fish and Wildlife Commission (ORS 509.585). Once a fish-passage plan, waiver or exemption is approved, the applicant can then submit the completed Alternate Reservoir application to WRD for processing. Fish-passage waiver and exemption-request applications can be found at the ODFW Fish Passage Program website [Fish Passage Requirements - ODFW](#).



After a completed application has been received by the Department, the Department must make public notice of the application within 60 days. The Department does not notify individual, neighboring landowners of an application, unless they are identified in the application as affected landowners. The public notice is to ensure that any person may submit detailed information requesting the Department deny an application based on injury to existing water rights or based on a significant detrimental impact to an existing fishery resource. All comments must be submitted within 60 days of the public notice.

The Department issues a Final Order within 180 days of the priority date (i.e., date of submission of the application). The Department recommends applicants not schedule excavation work or otherwise expend financial resources until an ODFW fish passage plan and the alternate reservoir application have been approved.

## **INSTRUCTIONS: What is needed to complete the application?**

***STEP 1: Print out the “Application for a Permit to Store Water in a Reservoir (Alternate Review)” form, which includes the following three supplemental forms:***

1. Watermaster Alternate Reservoir Application Review Sheet – to be completed by the local Watermaster, who is an employee with the Water Resources Department.
2. ODFW Alternate Reservoir Application Review Sheet – to be completed by a representative of the Oregon Department of Fish and Wildlife (ODFW).
3. Land Use Information Form – to be completed by the local Planning Department.

***STEP 2: Complete the application form and prepare a map***

**Note:** *All information should be typewritten or neatly printed with dark ink. All items must be completed even if parts or all of the required information appears on supplemental maps or drawings. Applications must be submitted on original forms that are provided by the Department or watermaster. Sign the forms in INK.*

### **1. Applicant Information**

If you are an individual applying for a permit to store water in a reservoir, include your name, *mailing* address and phone number. If there is a co-applicant, please indicate that information also. You may include a fax number or e-mail address, if you have one. These numbers are not required, but helpful if the Department must contact you.

For corporations, associations, firms, partnerships, cooperatives, and/or public and municipal corporations, complete the Authorized Agent section, including the title of the authorized agent.

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## 2. Location and Source

In order to examine your application properly, the Department must have an accurate map that shows the location of the proposed reservoir and source or dam. The Department utilizes the following criteria for your map to ensure the timeliest processing possible.

- The map shall be of permanent quality and drawn clearly in ink on good quality paper.
- Maps should be submitted on 8.5 x 11 inch paper. If a map is larger than 11 x 17 inches, submit four copies or draw on tracing vellum or Mylar.
- The map must be drawn to a standard, even scale of not less than 4 inches = 1 mile. Standard scales include 1"= 400'; 1"= 200'; 1"= 100'. Use only whole numbers. U.S.G.S quad maps, title company maps or aerial photo maps will not be accepted.

Each copy of the map must clearly show the elements of the proposed appropriation:

- The location of the dam and reservoir. The location must be referenced to a government land survey corner (*not the property corner unless it is also a government land survey corner.*) The reservoir location may be shown by coordinates (i.e., the number of feet north or south and the number of feet east or west from survey corner). If there is no dam, reference the center of the reservoir. If the reservoir is off-channel, include both the dam/reservoir location and the location of the diversion point from the stream, if applicable.
- The Township, Range, Section and quarter-quarter section as well as tax lot lines and tax lot numbers must be indicated clearly on the map.
- Include the scale of the map as well as the North directional symbol.

*A platted and recorded subdivision map, deed description survey map or a county assessor tax lot map may be submitted as the application map if all the required information is clearly shown on each print.*

**A. Reservoir Name:** If there is no name, insert N/A. If applying for more than one reservoir, a separate application is *required* for each pond. If all reservoirs are shown on one map, label each accordingly. List as Pond #one, Pond #two, etc., unless named.

**B. Source:** List the commonly used name of the body of water from which the water will be diverted, and the stream it flows to (tributary). If the source is diffuse run off, please state that.

NOTE: If the source of water is from a well, you may not file under the Alternate Reservoir Process; use the *Groundwater Permit Process*.

**C. Reservoir Location:** Clearly indicate the location by Township, Range, Section, quarter-quarter and tax lot number. This information can be found on the base map or by contacting your local tax assessor's office.

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**D. County of Use:** Indicate the county where the pond or reservoir is located.

**E. Dam:** List the dam height. If there is no dam, enter "0 feet." NOTE: If the dam is 10 feet or greater, and the storage capacity of the reservoir is more than 9.2 acre-feet, you must apply under the *Standard Reservoir Process*.

**F: Quantity:** List the total quantity of water to be stored at maximum capacity. List the total in acre-feet. One acre-foot is equal to one acre in size, one foot deep. One acre-foot is also equivalent to 325,851 gallons or 43,560 cubic feet.

### 3. Water Use

In order to receive a water right, you must show that you will be using the water beneficially and without waste. Indicate the type of use of the stored water. **NOTE: You may wish to consider filing for "multipurpose use" for your reservoir. Multipurpose use does not limit the types of future uses for the stored water. Multipurpose covers all beneficial uses including: stock water, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection, and pollution abatement.** Regardless of the type of storage listed, if *any* use will be out-of-reservoir, a secondary application will be required to appropriate the stored water.

#### Examples of Beneficial Uses of Water Under Oregon Water Law

- Agriculture Use
- Cranberry Use
- Stock water
- Forest and Range Management
- Commercial
- Mining
- Aesthetics
- Municipal or Quasi-municipal
- Aquatic Life
- Recreation
- Wildlife
- Irrigation
- Nursery Operations
- Temperature Control
- Industrial
- Fire Protection/Suppression
- Power Development
- Domestic use
- Storm Water Management
- Pollution Abatement
- Wetland Enhancement

### 4. Property Ownership

If the water you plan to use will be transported by ditch, canal or other work, or if your pond or reservoir will back up water onto another property, you must own all the property or have legal access to the property. This includes crossing any public roads or rights-of-way. Under ORS 274.040, if your application proposes only irrigation and/or domestic use, written authorization or an easement is not necessary to occupy state-owned submersible lands for the construction, maintenance and operation of any structure or facility necessary for the use of water.

- If you own all the land that includes the source, diversion and place of use of water, mark YES and skip to the next section.

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- If not, attach a list of the names and addresses of the affected property owners. If there are more than 25 landowners, you will be required to file a public notice in a newspaper that circulates in the area of the water use.

### **5. Environmental Impact**

- A. Channel:** Indicate if the pond or reservoir is in a stream channel.
- B. Wetland:** Indicate if the project is in a wetland.
- C. Existing:** Indicate if the project is an existing reservoir and if so, how long.
- D. Fish Habitat:** If there is fish habitat upstream of the proposed reservoir, please describe.
- E. Partnerships:** List any agencies such as the Natural Resources Conservation Service (NRCS) or ODFW that you may be working with on a project.

### **6. Within a District**

Indicate if the point of diversion or reservoir are located within or served by an irrigation or other water district.

### **7. Signature**

All applicants must sign the application in ink.

- **Properly completed application form(s).** Only one reservoir per application. If there is more than one applicant, each applicant must sign the application.

### ***STEP 3: Obtain a completed review from the local watermaster.***

**The Watermaster Alternate Reservoir Application Review Sheet must be completed by the local watermaster.**

We suggest that you call to make an appointment with the local watermaster. *For assistance in locating the local watermaster office, please call 503-986-0900 or for a list of watermaster offices see: [http://www.wrd.state.or.us/OWRD/offices.shtml#Watermaster\\_Offices](http://www.wrd.state.or.us/OWRD/offices.shtml#Watermaster_Offices)*

The watermaster will review your completed application form and map showing the reservoir location and source and determine if the reservoir will cause injury to an existing water right. In addition, the watermaster will determine when and if water is available for the proposed use. If the watermaster determines that the reservoir will injure any existing water right and cannot identify any condition(s) that would mitigate such injury or if water is not available, the application cannot be accepted by the Department.

### ***STEP 4: Obtain a completed review from the local ODFW fish biologist.***

**The ODFW Alternate Reservoir Application Review Sheet must be completed by the local ODFW representative.**

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We suggest that you call to make an appointment with the local fish biologist or other representative at the appropriate ODFW office. *For assistance in locating the local ODFW office, please call 503-947-6200 or to see a map of ODFW's regions, please see:*

*[http://www.dfw.state.or.us/agency/directory/region\\_map.asp](http://www.dfw.state.or.us/agency/directory/region_map.asp) . For a list of ODFW offices see: [http://www.dfw.state.or.us/agency/directory/local\\_offices.asp](http://www.dfw.state.or.us/agency/directory/local_offices.asp) .*

The ODFW representative will review your completed application form, the map indicating the reservoir location, and the information you obtained from the watermaster. ODFW will then determine if the reservoir will pose a significant detrimental impact to existing fishery resources. If ODFW identifies such an impact and cannot identify condition(s) that would mitigate the impact, the application cannot be accepted by the Department, and the applicant will need to either abandon the reservoir project or utilize the standard reservoir application process.

Additionally, for reservoirs proposed to be in-channel, ODFW will also consider: 1) fish populations and their distributions, and 2) whether fish passage requirements will be necessary. If fish passage is required, either approval of a fish-passage plan will be required or the approval of a fish passage waiver or exemption by the Fish and Wildlife commission will be needed before ODFW provides the Alternate Reservoir Application Review Sheet.

***STEP 5: Obtain a completed Land-Use Information Form or receipt stub from the local planning agency.***

**The Land Use Information Form or receipt stub must be completed by a representative of the local planning agency.**

Determine if the reservoir location is within the boundaries of a city or county or other planning jurisdiction. The representative from the planning agency will review your completed application, which will describe the proposed use of water, and your map indicating the reservoir location and determine if the proposed use of water is consistent with local land use rules. The Receipt for Request for Land Use Information allows the Department to accept the application; however, the demonstration of land-use compatibility is required before the Department will issue a permit for the proposed use.

***STEP 6: Submit the application, supplemental forms, map, and fees to the Department.***

Before submitting the application, be sure you include all the necessary items. Your application and supplemental materials **will be returned** if not complete.

**Watermaster Alternate Reservoir Application Review Sheet:** Include a Watermaster Review Sheet completed by the local watermaster. *NOTE: If the watermaster determined that your reservoir will injure an existing water right, and did not identify any conditions to mitigate such injury or if water is not available, STOP here – the Department cannot accept the application.*

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**ODFW Alternate Reservoir Application Review Sheet:** Include an ODFW Review Sheet completed by an ODFW representative. *NOTE: If ODFW determined that your reservoir will pose a significant detrimental impact to existing fishery resources and did not identify any conditions to mitigate such impact, STOP here – the Department cannot accept the application.*

**Land Use Information Form:** Include a Land Use Information Form or the Land Use Information Form receipt stub signed (*must be original*) by a representative of the local planning agency having jurisdiction (i.e., county or city planning).

**Legible and accurate map:** A map of the proposed development must accompany each application for a permit. See pages 3 and 4 and the Minimum Requirements on page 8 for map requirements.

**Payment:** A check or money order made out to WRD for the examination fee. The base fee is \$350. In addition, there is a fee of \$30 per acre-foot or fraction thereof. Example: 0.3 AF = \$380; 1.5 AF = \$410; 20.0 AF = \$950; 30.0 AF = \$1250.

NOTE: There is a \$450 permit recording fee for Alternate Reservoir applications. You may pay the permit recording fee at time of submittal or you may pay that fee at a later date prior to permit issuance. For fastest processing, the Department recommends that the permit recording fee be paid in advance. If the Department does not issue a permit, the permit recording fee will be refunded.

**Secondary Application:** Submit a secondary application if there will be out-of-reservoir uses associated with this reservoir **AFTER** the reservoir has been permitted.

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## Appendix A

Developing your water right often entails grading trenching or other types of construction within waterways, riparian areas, and wetlands. Permits from local, state or federal agencies may be required. A good first step is to check with your local city or county planning office. The following information was provided by the Oregon Division of State Lands.

### **Activities in Wetlands and Waterways are Regulated by:**

- The Division of State Lands (DSL) under the State Removal-Fill Law
- The U.S. Army Corps of Engineers (Corps) under the Federal Clean Water Act and Rivers and Harbors Act
- The State Department of Forestry under the Forest Practices Act
- The U.S. Natural Resource Conservation Service (NRCS) under the Food, Agriculture, Conservation and Trade Act
- Some City and County land use ordinances

### **What Areas are Regulated?**

- Rivers streams and most creeks
- Estuaries and tidal marshes
- Lakes and some ponds
- Permanent and seasonal wetlands
- Regulations apply to all lands, public or private
- A wetland does not have to be mapped by the state or otherwise 'designated' to fall under the regulations
- If you are uncertain if there are regulated wetlands on your property, contact DSL for assistance.

### **What Activities are Regulated?**

- Placement of fill material
- Alteration of stream bank or stream course
- Ditching and draining
- Plowing/disking non-farmed wetlands
- Excavation or dredging of material
- In-water construction (may also require a lease from DSL)
- For some activities, joint application forms can be obtained from DSL or the Corps

### **What Activities are Exempt**

- Some routine maintenance activities
- Established, ongoing agricultural activities and grazing
- Some minor projects involving small amounts of fill or removal

### **How are Laws Enforced?**

The best enforcement is to prevent illegal wetland alterations through information and education. However, when violations do occur, a variety of enforcement tools may be used, including restoration orders, fines of up to \$10,000 per day (DSL), civil and/or criminal charges.

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