

Application for a Permit to Use Groundwater



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

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant

NAME HEIBERTO GARAY, RAQUEL GARAY		PHONE (HM)	
PHONE (WK)	CELL 541-295-7252		FAX
ADDRESS 4084 AVENUE A			
CITY WHITE CITY	STATE OR	ZIP 97503	E-MAIL*

Organization

NAME		PHONE	FAX	RECEIVED AUG 27 2020
ADDRESS		CELL		
CITY	STATE	ZIP	E-MAIL*	OWRD

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

AGENT / BUSINESS NAME HEIBERTO "EDDIE" GARAY		PHONE	FAX
ADDRESS 4084 AVENUE A		CELL 541-295-7252	
CITY WHITE CITY	STATE OR	ZIP 97503	E-MAIL*

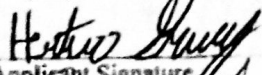
Note: Attach multiple copies as needed

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

By my signature below I confirm that I understand:

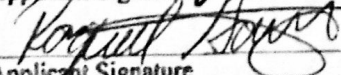
- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- 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.

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


Applicant Signature

Heiberto Garay
Print Name and Title if applicable

8-25-2020
Date


Applicant Signature

Raquel Garay
Print Name and Title if applicable

09-10-2020
Date

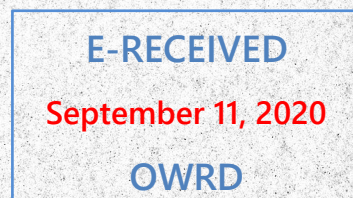
Applicant Signature

PRINT NAME

DATE

Groundwater — Page 1
Rev 08-18

For Department Use: App. Number: _____



SECTION 2: PROPERTY OWNERSHIP

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

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

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

N/A

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

SECTION 3: WELL DEVELOPMENT

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
JACK 6269	WHETSTONE CREEK	2860 FT.	+ 20 FT.

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials *(attach additional sheets if necessary).*

WELL DEPTH WAS MEASURED BY HAROLD L. CENTER CWRE NO. 152 ON NOVEMBER 23, 2018 AT 110 FEET FROM TOP OF CASING, FOUND WATER LEVEL AT 12 FEET BELOW THE TOP OF CASING. WELL WAS NOT PUMPING AT TIME OF MEASUREMENT.

SECTION 3: WELL DEVELOPMENT, continued

Total maximum rate requested: 5.61 (1/80TH CFS) (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

The table below must be completed for each source to be evaluated or the application will be returned. If this is an existing well, the information may be found on the applicable well log. (If a well log is available, please submit it in addition to completing the table.) If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner to obtain the necessary information.

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	PROPOSED USE			
										SOURCE AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)
JACK 6269	<input type="checkbox"/>	<input checked="" type="checkbox"/>	L 132437	<input type="checkbox"/>	6"	TOTAL 39'			SEE NOTE SECTION 3	UNKNOWN	108'	5.61	4.5 AF
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									

* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.

** A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.

*** Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.

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

This information must be provided for your application to be accepted as complete. The Water Resources Department will determine whether the proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened or endangered fish species if your proposed groundwater use is determined to have the potential for substantial interference with nearby surface waters.

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

For more detailed information, click on the following link and enter the TRSQQ or the Lat/Long of a POA and click on "Submit" to retrieve a report that will show which section, if any, of the rules apply:

https://apps.wrd.state.or.us/apps/misc/lkp_trsq_features/

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

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

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Is the well or proposed well located in an area where the Upper Columbia Rules apply?

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Yes No

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

If yes, and if the Department determines that proposed groundwater use has the potential for substantial interference with nearby surface waters:

- I understand that the permit, if issued, will not allow use during the time period April 15 to September 30, except as provided in OAR 690-033-0140.
- I understand that the Department of Environmental Quality will review my application to determine if the proposed use complies with existing state and federal water quality standards.
- I understand that I will install and maintain water use measurement and recording devices as required by the Water Resources Department, and comply with recording and reporting permit condition requirements.

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

Is the well or proposed well located in an area where the Lower Columbia rules apply?

Yes No

If yes, and the proposed groundwater use is determined to have the potential for substantial interference with nearby surface waters you are notified that the Water Resources Department will determine, by reviewing recovery plans, the Columbia River Basin Fish and Wildlife Program, and regional restoration programs applicable to threatened or endangered fish species, in coordination with state and federal agencies, as

appropriate, whether the proposed use is detrimental to the protection or recovery of a threatened or endangered fish species and whether the use can be conditioned or mitigated to avoid the detriment.

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

If yes, you will be required to provide the following information, if applicable.

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

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

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Statewide - OAR 690-033-0330 thru -0340

Is the well or proposed well located in an area where the Statewide rules apply?

Yes No

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

SECTION 5: WATER USE

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Irrigation and plant propagation	Year round	11.0 AF

For irrigation use only:

Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).

Primary: 4.20 Acres Supplemental: Acres

If you listed supplemental 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: 11.0

- If the use is **municipal or quasi-municipal**, attach **Form M**

- If the use is **domestic**, indicate the number of households: ____ (Exempt Uses: Please note that 15,000 gallons per day for single or group **domestic** purposes and 5,000 gallons per day for a single **industrial or commercial** purpose are exempt from permitting requirements.)
- If the use is **mining**, describe what is being mined and the method(s) of extraction (*attach additional sheets if necessary*): _____

SECTION 6: WATER MANAGEMENT

A. Diversion and Conveyance

What equipment will you use to pump water from your well(s)?

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- Pump (give horsepower and type): Submersible, size TBD
 Other means (describe): _____

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Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water. Pump from well to place of use via buried pipelines

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B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler) (*attach additional sheets if necessary*)

Mostly drip, low pressure sprinklers as needed

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 aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters (*attach additional sheets if necessary*).

Programmed watering at low evaporation time of day, timer controlled drip irrigation to prevent contamination.

SECTION 7: PROJECT SCHEDULE

- Date construction will begin: May 1, 2019
- Date construction will be completed: October 2020
- Date beneficial water use will begin: October 2019

SECTION 8: RESOURCE PROTECTION

In granting permission to use water the state encourages, and in some instances requires, careful control of activities that may affect adjacent 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.

- Water quality will be protected by preventing erosion and run-off of waste or chemical products.
Describe: Drip irrigation and low pressure sprinkler application of water
- Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.
Note: If disturbed area is greater than one acre, applicant should contact the Oregon Department of Environmental Quality to determine if a 1200C permit is required.
Describe planned actions and additional permits required for project implementation: N/A
- Other state and federal permits or contracts required and to be obtained, if a water right permit is granted:

List: _____

SECTION 9: WITHIN A DISTRICT

Check here if the point of appropriation (POA) or place of use (POU) are located within or served by an irrigation or other water district.

Irrigation District Name	Address	
City	State	Zip

SECTION 10: REMARKS

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

Existing well, see Jack 6269, well has been utilized for domestic purposes and there have been no issues with production. CWRE No. 152 Harold Center measured the depth of the well and water level and measurements match the 1961 well log Jack 6269/

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Minimum Requirements Checklist

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

Include this checklist with the application

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

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

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

Include the following additional items:

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

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Note: In addition to a groundwater application, a standard reservoir application is required to store groundwater in a reservoir. If an applicant proposes to divert water from a reservoir, a surface water application is also required.

Water-Use Permit Application Processing

1. Completeness Determination

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

2. Initial Review

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

3. Public Notice

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

4. Proposed Final Order Issued

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

5. Public Notice

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

6. Final Order Issued

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

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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.oregon.gov/OWRD

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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 groundwater 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.

Land Use Information Form



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

Applicant

NAME <i>HERIBERTO GARAY, INDEUSA GARAY, RAQUEL GARAY</i>			PHONE (HM)		
PHONE (WK)		CELL <i>541-295-7252</i>		FAX	
ADDRESS <i>4084 AVENUE A</i>					
CITY <i>WHITE CITY</i>		STATE <i>OR</i>	ZIP <i>97503</i>	E-MAIL*	

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:
<i>36</i>	<i>1W</i>	<i>22</i>	<i>NWSW</i>	<i>800</i>	<i>RR-5</i>	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<i>CANUBOS Vegetable garden</i>
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

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

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B. Description of Proposed Use

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

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

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

Estimated quantity of water needed: *5.0 GPM* 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 *Protection*

Briefly describe:
CANUBOS Grow - Vegetable garden

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.

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land use plan. Do not include approval for activities such as building or grading permits.

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Please check the appropriate box below and provide the requested information

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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): _____

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:	
Type 2 Non-conforming use	LDO 3.13.3, 6.2-1 11.2	<input checked="" 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.

See attached staff reports 439-16-02065-20N & 439-17-01453-20N

NAME: <i>Mathew Langley</i>	TITLE: <i>Planner 1</i>
SIGNATURE: <i>Mathew Langley</i>	PHONE: <i>541-774 6945</i>
GOVERNMENT ENTITY: <i>Jackson County</i>	DATE: <i>11/27/18</i>

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: _____



**JACKSON COUNTY
DEVELOPMENT SERVICES**

**TYPE 2 LAND USE DECISION
VERIFICATION OF NONCONFORMING
STATUS
STAFF REPORT**

**DEVELOPMENT
SERVICES**

**Tracie Nickel
Planner III**

10 South Oakdale Ave.
Medford, OR 97501
Phone: (541) 774-8903
Fax: (541) 774-8791
nickelt@jacksoncounty.org

OWNER: Heriberto and Indelisa Garay
4084 Avenue A
White City, Oregon 97503

FILE 439-16-02065-ZON

MAP DESCRIPTION:

TWP: 36S **RANGE:** 1W **SECTION:** 22C **TAX LOT:** 800

LOCATION: 4084 Avenue A, White City, Oregon.

NATURE OF APPLICATION: Verification of pre-existing, lawful nonconforming marijuana production on property zoned Rural Residential – 5 (RR-5).

STAFF DECISION: Denied

I. BACKGROUND INFORMATION

- A. **Lot Size:** 5.0 acres.
- B. **Zoning:** Rural Residential – 5 (RR-5).
- C. **Fire Protection:** Fire District # 3
- D. **Access:** Avenue A
- E. **Overlays:** AQMA, Sport Park
- F. **Current Land Use:** Residential, receiving residential assessment

KEY ISSUES

- A. Section 11.8 Verification of Nonconforming Status.

II. APPLICABLE CRITERIA

To approve this application, the County must determine that the application is in conformance with Section 11.8 of the Jackson County Land Development Ordinance.

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III. FINDINGS OF CONFORMANCE WITH THE LAND DEVELOPMENT ORDINANCE

- 1) **Section 11.8.1** establishes the following approval criteria:

11.8.1 Process

Owners of nonconforming uses, structures, or signs may request a "verification of lawful nonconforming status" by filing an application with the Director in accordance with Type 2 decision-making procedures. In cases of nonconforming lots or parcels, determinations regarding lawful lot creation may be made in accordance with the provisions of Section 10.2.1. *(Amended by Ordinance 2004-12, effective 2-6-2005)*

FINDING: Pursuant to Section 11.8.1 of the Jackson County Land Development Ordinance (JCLDO), the Applicant requests a verification of lawful non-conforming status for marijuana production in a rural residential zoning district. The application was filed on September 30, 2016 along with the required application fee in accordance with Jackson County's Type 2 decision-making procedure.

The application concerns the production of marijuana as a land use on a parcel in the RR-5 Zoning District. In particular, the Applicant requests verification that marijuana production beyond what would now be allowed under current zoning regulations was lawfully established as a use on the subject property on March 16, 2016 and may be continued in accordance with the regulations of JCLDO Chapter 11, "Nonconformities".

- A) *The application must be accompanied by documentation that establishes the approximate date that the use, structure, or sign was established; proof that the use, structure, or sign was lawfully established at the time it became nonconforming; and proof that the use has not been discontinued or abandoned, except as provided in Section 11.8.2 below. The Director may require or provide additional information if deemed necessary to permit an accurate determination.*

FINDING: The Applicant relies on Medical Marijuana Program (OMMP) identifying the subject property by address, 4084 Avenue A, White City Oregon, as the documentation satisfying this criterion.

The OMMP was enacted in 1998. Prior to 1998 growing marijuana was not legal in the State of Oregon. With the passage of legislation came regulations associated with growing marijuana related to land use. State laws associated with marijuana production make this use unlike the cultivation of any other farm crop.

JCLDO Table 6.2-1 sets forth the uses permitted within all base zoning districts, except for resource districts. The table applies to all new uses, expansions of existing uses and change of use when the expanded or change in use would require a Type 1, 2, 3, or 4 review, unless specified in Table 6.2-1. The Jackson County Land Development Ordinance was amended by Emergency Ordinance No. 2016-4 (effective March 16, 2016)

and by Permanent Ordinance No. 2016-3 (effective June 19, 2016). The ordinances adopted text changes to JCLDO Chapters 3, 4, 6 and 13 to allow and regulate marijuana related uses in certain zoning districts, and otherwise restrict and delimit marijuana uses in other districts. Table 6.2-1 was updated to add the land use category "Farm Use" which previously was accommodated only in resource zoning districts as provided by Table 4.2-1 "Use Table for Exclusive Farm Use (EFU) District", 4.3-1 "Use Table for Forest Districts" and 4.4-1 "Use Table for Aggregate Removal District".

Before the 2016 changes to the Jackson County LDO became effective, the major land use category "Farm Use" and the specific use category "Marijuana Production" were not listed in the use Table for Base Zoning Districts (Table 6.2-1). The current structure of the Jackson County Land Development Ordinance results from major text revisions adopted in 2004 (Ordinance 2004-12, effected 2-6-2005). Chapter 6, as then adopted, consolidated use lists from separate zoning district chapters under the former code into a single use table for all base zoning districts. A procedure was also established at JCLDO Section 6.2.3 for classifying any unlisted uses. Under that procedure, the Planning Director determines whether a proposed use is deemed to be within one (1) or more use classifications, or not within any use classification (JCLDO 13.2(C), Use Classifications – Procedure).

The Applicant in this case has provided evidence that the subject property was first used for marijuana production prior to the effective date of the 2016 changes to the Jackson County Land Development Ordinance but subsequent to the 2004 changes to the JCLDO. The applicant claims that he was growing for ten (10) patients. Under the JCLDO prior to the 2016 changes marijuana production would have required a land use permit pursuant to Section 6.2.3. The procedure required at the time was a Type 2 land use permit to authorize the unlisted use within the RR-5 zoning district. This required procedure was not followed in this case, as would be needed to lawfully establish the use under the code then in effect. Specifically, JCLDO Section 1.8.1, as in effect when the use was established, provided that:

"It is a violation of County Law for any person or other entity to violate this Ordinance. Specifically, it is a violation to:

- A) Intentionally make false statements of material fact on any application.
- B) *Use land, construct, occupy, or place improvements, sell or transfer land by an instrument of conveyance, or conduct any activity on land, in any manner not in accordance with the standards set forth in this Ordinance, or with any special permit or order of the Development Services Department, Hearings Officer, Planning Commission, or Board of Commissioners issued hereunder.*
- C) *Conduct, without a permit, any activity for which a permit is required by this Ordinance.*

CONCLUSION: No land use permit was requested to establish the use on the subject property. Consequently, no permit was ever issued for the same, as then required. Accordingly, it is concluded that the use was not lawfully established under regulations in effect at the time the use was initiated.

B) Notwithstanding subsection (A) above, the Applicant will not be required to prove the existence, continuity, nature, and extent of the use for more than a consecutive 10-year period immediately preceding the date of application. Documentation showing the use existed and was continued during this time period creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. [ORS 215.130]

FINDING: This standard is not applicable as the use was not lawfully established.

C) Once issued, a County provided verification will be recorded in the County deed records by the applicant. Such verifications will run with the land, and their status will not be affected by changes of tenancy, ownership, or management.

FINDING: This standard is not applicable as the use was not lawfully established.

III. CONCLUSION:

The proposal has not been found consistent with the Jackson County Comprehensive Plan and the Jackson County Land Development Ordinance because the criteria of Section 11.8 of the Jackson County Land Development Ordinance (LDO) are not met by this application.

IV. DECISION:

File 439-16-02065-ZON, an application for a Type 2 land use decision verifying a non-conforming use, being medical marijuana production on property described as Township 36 South, Range 1W, Section 22C, Tax Lot 800, is denied.

This decision is limited to the County's review of applicable zoning rules and land use law, as outlined in the Jackson County Comprehensive Plan, the Jackson County Land Development Ordinance, and the Oregon Administrative Rules and Oregon Revised Statutes relating to land use. Other County, State and Federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating development.

Notice of this decision is being sent to property owners in the vicinity of this property. They or the property owner have the right to appeal the decision within 12 days of the date this decision is mailed. This decision will be final on the 13th day, provided an appeal hearing has not been requested.

JACKSON COUNTY PLANNING DIVISION



By: Tracie Nickel Planner III

Date: _____

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**JACKSON COUNTY
DEVELOPMENT SERVICES**

**TYPE 2 LAND USE DECISION
ALTERATION
OF A NON-CONFORMING USE
STAFF REPORT**

**DEVELOPMENT
SERVICES**

**Tracie Nickel
Planner III**

10 South Oakdale Ave.
Medford, OR 97501
Phone: (541) 774-8951
Fax: (541) 774-8791
nickelt@jacksoncounty.org

OWNER: Heriberto and Indelisa Garay
4084 Avenue A
White City, Oregon 97503

439-17-01934-ZON

MAP DESCRIPTION:

TWP: 36S RANGE: 1W SECTION: 22C TAX LOT: 800

LOCATION: 4084 Avenue A, White City, Oregon.

NATURE OF APPLICATION: A request for an alteration of a pre-existing, non-conforming use from medical marijuana production to recreational marijuana production.

STAFF DECISION: Approved

I. BACKGROUND INFORMATION

A. Lot Size: 5.0 acres.

B. Zoning: Rural Residential – 5 (RR-5).

C. **Fire Protection:** Fire District # 3

D. **Access:** Avenue A

E. **Overlays:** AQMA, Sport Park

F. **Current Land Use:** Residential, receiving residential assessment

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KEY ISSUES

A. Section 11.2 alteration of a nonconforming use.

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II. APPLICABLE CRITERIA

To approve this application, the County must determine that the application is in conformance with Section 11.2 of the Jackson County Land Development Ordinance.

11.2 NONCONFORMING USES

All nonconforming uses will be subject to the following standards:

11.2.1 Alterations

An alteration of a nonconforming use may include a change in the use that may or may not require a change in any structure or physical improvements associated with it. An application for an alteration of a nonconforming use must show either that the use has nonconforming status, as provided in Section 11.8, or that the County previously issued a determination of nonconforming status for the use and the use was not subsequently discontinued as provided in Section 11.2.2. A nonconforming use, once modified to a conforming or less intensive nonconforming use, may not thereafter be changed back to any less conforming use.

FINDING/CONCLUSION: The applicant is proposing a change in use from medical marijuana production to recreational marijuana production. The Hearings Officer found through file number 439-16-02065-ZON that the use being medical marijuana production in the RR-5 zoning district is established as a pre-existing non-conforming use. The nature of the nonconforming use is seasonal outdoor medical marijuana production and the extent is a maximum of 54 medical marijuana plant propagated within the "grow area". The Hearings Officer also found that the property may be used to produce up to ten (10) additional marijuana plants on the property being six (6) medical marijuana plants and four (4) "homegrown recreational" plants.

A) *Change in Use*

Applications to change a nonconforming use to a conforming use are processed in accordance with the applicable provisions of the zoning district. (See Chapter 6.) Applications to change a nonconforming use to another, no more intensive nonconforming use are processed as a Type 2 review. The application must show that the proposed new use will have no greater adverse impact on the surrounding neighborhood.

FINDING/CONCLUSION: The applicant is proposing a change in use from medical marijuana production to recreational marijuana production. Tracking of the production,

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processing and transfer of all marijuana is mandatory for both OMMP and recreational marijuana. Staff finds that tracking of the marijuana will have no greater adverse impacts on the surrounding neighborhood. The same grow area is proposed to be used. There is no expansion of the existing "grow" footprint proposed. The hours of operation will not be expanded. The number of plants is proposed to increase. Water delivery traffic is not anticipated to change. The differences are that security cameras are required by OLCC. The applicant states that the security cameras are non-intrusive and barely visible. A condition of any approval shall require the applicant to demonstrate the camera range and angle are set in such a way to not record adjacent properties. A security camera conex and dry conex is proposed as part of the change in use as well as the addition of hoop houses. The applicant states and the plot plan shows no expansion in the "grow" footprint.

Staff finds that based on the proposal and the proposed changes the alteration of the non-conforming use from medical marijuana production to recreational marijuana production is not such a substantial change that the surrounding neighborhood will be adversely impacted.

B) Expansion or Enlargement

- 1) *A nonconforming use, other than a single-family dwelling (see Section 11.4), aggregate, mining, or rural industrial use operation (see subsection (C) below), may not be expanded or enlarged except as provided under (2) below. For purposes of this Section, to "expand" or "enlarge" means:*
 - a) *To replace a structure, in which a nonconforming use is located, with a larger structure;*
 - b) *To alter the use in a way that results in more traffic, employees, or physical enlargement of an existing structure housing a nonconforming use; or*
 - c) *An increase in the amount of property being used by the nonconforming use.*
- 2) *Limited expansion of a nonconforming use may be approved, through a Type 3 review, provided such expansion includes improvements to the existing use to a degree that the existing use, including the proposed expansion, complies with or is more in conformance with the development standards of Chapter 9, and will have no greater adverse impacts on the surrounding neighborhood.*

FINDING/CONCLUSION: The proposal is an alteration, from one non-conforming use to another, no more intensive non-conforming use. The proposal is not an expansion or enlargement as defined by Section 11.2 (B). A footprint expansion is not proposed. No additional structures are proposed. No additional traffic is anticipated. There is no increase in the amount of property being used for the nonconforming use.

III. CONCLUSION:

The proposal has been found to be consistent with the Jackson County Comprehensive Plan and LDO because the criteria of Section 11.2 of the Jackson County Land

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Development Ordinance (LDO) are met. Medical marijuana production is a pre-existing non-conforming use on the subject lot. With conditions imposed the County finds the proposed use will not have any greater adverse impacts on the surrounding neighborhood.

WRD

IV. DECISION:

File 439-17-01934-ZON, an application for a Type 2 land use decision for an alteration of a non-conforming use on property described as Township 36 South, Range 1W, Section 22C, Tax Lot 800, is conditionally approved. The following must occur to secure the lawful nonconforming status.

- 1) **Site Plan**: A revised, to-scale site plan shall be submitted showing all existing development and all proposed development. The plot plan shall demonstrate no additional footprint expansion of the "grow" area.
- 2) **Security Camera Plan**: The applicant shall provide a security camera plan showing height, range and direction of the cameras. The cameras shall be placed as to not record adjacent properties.
- 3) **Recordation**: The applicant shall properly record the alteration report and approved site plan in the County deed records.
- 4) **Discontinuance of Use**: If the nonconforming use is discontinued for a period of more than two (2) years, the subsequent use of the lot or parcel will conform to the regulations and provisions of the Jackson County Land Development Ordinance applicable to the parcel. An application for a determination that a nonconforming use that has been temporarily discontinued may continue to operate is subject to a Type 2 review, and a finding that the use has not been discontinued for more than two (2) years.
- 5) **Compliance with Conditions is Mandatory**: The County may suspend or revoke an approved application for noncompliance with conditions of approval. The County may establish a fee to cover the reasonable costs of inspections and other actions to determine whether conditions have been complied with.
- 6) **Expiration**: This decision will become void four (4) years from the date of the final decision if development is not initiated, as provided in Section 13.3. An extension of up to 12 months may be granted pursuant to the provisions of Section 2.6.8, provided that the extension request is filed prior to the expiration of the applicable approval period.

This decision is limited to the County's review of applicable zoning rules and land use law, as outlined in the Jackson County Comprehensive Plan, the Jackson County Land Development Ordinance, and the Oregon Administrative Rules and Oregon Revised Statutes relating to land use. Other County, State and Federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating development.

Notice of this decision is being sent to property owners in the vicinity of this property. They or the

97-35200

JACKSON COUNTY TITLE
DIVISION OF OREGON TITLE INSURANCE COMPANY
502 W. Main Street (P. O. Box 218) Medford, OR 97501 (541) 779-2811

75524tm-36

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WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that ,

JAMES W. REEVES and LOIS A. REEVES

hereinafter called the Grantor, for the consideration hereinafter stated, to Grantor paid by

HERIBERTO GARAY and INDELISA GARAY, husband and wife and Raquel Garay, not as tenants in common, but with the right of survivorship, that is the fee shall vest in the survivor thereof

hereinafter called the Grantee, does hereby grant, bargain, sell and convey unto the said Grantee and Grantee's heirs, successors and assigns, that certain real property with the tenements, hereditaments and appurtenances therunto belonging or appertaining, situated in the County of JACKSON, State of Oregon, described as follows to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD the same unto the said Grantee and Grantee's heirs, successors and assigns forever.

And Grantor hereby covenants to and with Grantees and the heirs of the survivor and their assigns, that Grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances, EXCEPT

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

and that Grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whatsoever, except those claiming under the above described encumbrances.

THE TRUE AND ACTUAL CONSIDERATION paid for this transfer, stated in terms of dollars is \$ 111,500.00

WHERE THE CONTEXT SO REQUIRES, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to individuals and to corporations.

IN WITNESS WHEREOF, the grantor has executed this instrument this 17 day of September, 1997.

"THIS INSTRUMENT WILL 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 APPROVED USES, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

James W. Reeves
JAMES W. REEVES

Lois A. Reeves
LOIS A. REEVES

STATE OF OREGON
COUNTY OF Jackson

The foregoing instrument was acknowledged before me this 17 day of September, 1997, by
JAMES W. REEVES and LOIS A. REEVES

Tammy L. Morgan
Notary Public for Oregon
My commission expires _____

Mail Tax Statements to:
Grantee
4084 AVENUE "A"
WHITE CITY, OR 97503



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EXHIBIT A

Commencing at the southwest corner of Block 16 of the AGATE SUBDIVISION EXTENSION NO. 3 in Jackson County, Oregon, according to the official plat thereof, now of record, thence South 0°12' West 80.0 feet to a 1/2" iron pin, thence South 89°48' East 772.26 feet to a 1/2" iron pin for the true point of beginning, thence South 0°12' West 843.18 feet to a 1/2" iron pin, thence North 89°46'30" East 258.59 feet to a 1/2" iron pin, thence North 0°12' East 841.26 feet to a 1/2" iron pin, thence North 89°48' West 258.58 feet to the true point of beginning, being a portion of the Southwest Quarter of Section 22 in Township 36 South, Range 1 West of the Willamette Meridian in Jackson County, Oregon.

(Code 9-03, Account #1-26866-7, Map #361W22C, Tax Lot #800)

SUBJECT TO THE FOLLOWING:

1. Taxes for the fiscal year 1997-98 are a lien in an amount yet to be determined, but not yet payable.
2. The effect of said property, or any part thereof, lying within the Rogue River Valley Irrigation District, and subject to all water and irrigation rights, easements for ditches and canals, and all regulations of said District, including any and all assessments, liens and charges assessed, and to be assessed.
3. The premises herein described are within the Avenue "A" Extension Project No. 76-13 Area of the Bear Creek Valley Sanitary Authority, and are subject to the statutory powers, including the power of assessment, of said Bear Creek Valley Sanitary Authority.
4. Easement over that portion lying within Lake of the Woods.
5. Easements, rights of way, reservations, and restrictive covenants and conditions therewith, reserved by the United States in deed recorded October 24, 1949, in Volume 325 page 83 of the Deed Records of Jackson County, Oregon.
6. Restrictions and reservations as set out in deed recorded April 14, 1960 in Volume 488 page 151 of the Deed Records of Jackson County, Oregon.
7. Joint Maintenance Agreement recorded December 8, 1978 as No. 78-27856 of the Official Records of Jackson County, Oregon.

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Jackson County, Oregon
Recorded
OFFICIAL RECORDS

SEP 19 1997

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[Signature]
COUNTY CLERK

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Today's Date: Monday, December 10, 2018

Base Application Fee.		\$1,340.00
Number of proposed cubic feet per second (cfs) to be appropriated. (1 cfs = 448.83 gallons per minute)	.020	\$350.00
Number of proposed Use's for the appropriated water. (i.e. Irrigation, Supplemental Irrigation, Pond Maintenance, Industrial, Commercial, etc) *	1	
Number of proposed Ground Water points of appropriation. (i.e. number of wells) (include all injection wells, if applicable) **	1	
Permit Recording Fee. ***		\$520.00
* the 1st Water Use is included in the base cost. ** the 1st Ground Water point of appropriation is included in the base cost. *** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.	Recalculate	
Estimated cost of Permit Application		\$2,210.00

OWRD Fee Schedule

Fee Calculator Version B20170117

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