

Application for a Permit to  
**Store Water in a Reservoir**  
 Alternate Review (ORS 537.409)



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

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

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**SECTION 1: APPLICANT INFORMATION AND SIGNATURE**

**Applicant**

|                                |             |                            |  |
|--------------------------------|-------------|----------------------------|--|
| NAME<br>Frank Foti             |             | PHONE (HM)<br>503-819-3000 |  |
| PHONE (WK)                     | CELL        |                            | FAX                                    |
| ADDRESS<br>15560 NW Redshot Ln |             |                            |  |
| CITY<br>Carlton                | STATE<br>OR | ZIP<br>97111               | E-MAIL *<br>Frank.Foti@ evolution.love |

**Organization**

|                                |             |                       |  |     |
|--------------------------------|-------------|-----------------------|--|-----|
| NAME<br>HOB LLC                |             | PHONE<br>866-213-3136 |  | FAX |
| ADDRESS<br>15990 NW Redshot Ln |             |                       | CELL                                   |     |
| CITY<br>Carlton                | STATE<br>OR | ZIP<br>97111          | E-MAIL *<br>Frank.Foti@ evolution.love |     |

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

|   |             |                       |  |     |
|---|-------------|-----------------------|--|-----|
| AGENT / BUSINESS NAME<br>Kellan Lancaster |             | PHONE<br>971-201-0256 |  | FAX |
| ADDRESS<br>15990 NW Redshot Ln            |             |                       | CELL   |     |
| CITY<br>Carlton                           | STATE<br>OR | ZIP<br>97111          | E-MAIL *<br>kellan.lancaster@ evolution.love |     |

Note: Attach multiple copies as needed

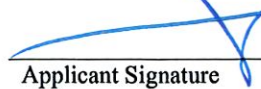
\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

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

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot legally store water until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction. 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.**

|   |                                    |         |
|---|------------------------------------|---------|
|  | Frank Foti, Manager                | 3/31/21 |
| Applicant Signature   | Print Name and Title if applicable | Date    |
| Applicant Signature   | Print Name and Title if applicable | Date    |

**SECTION 2: SOURCE OF WATER AND LOCATION OF RESERVOIR**

|                               |  |                       |                               |                        |                  |
|-------------------------------|--|-----------------------|-------------------------------|------------------------|------------------|
| <b>Reservoir name:</b>        | Xander Reservoir                                   |                       |                               |                        |                  |
| <b>Source*:</b> run-off       | <b>Tributary:</b>                                  |                       | Beaver Creek -> Panther Creek |                        |                  |
| <b>County:</b>                | Yamhill  |                       |                               |                        |                  |
| <b>Quantity:</b> 0.3          | <b>Acre-Feet</b> [length x width x depth / 43,560] |                       |                               |                        |                  |
| <b>Reservoir Location:</b>    | <b>Township (N or S)</b>                           | <b>Range (E or W)</b> | <b>Section</b>                | <b>Quarter-Quarter</b> | <b>Tax Lot #</b> |
|                               | 3S   | 5W                    | 23                            | SW-SW                  | 2100             |
| <b>Maximum Height of Dam:</b> | feet. If excavated write "zero feet." 8'           |                       |                               |                        |                  |

\* 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, an unnamed stream, or spring.

**SECTION 3: WATER USE**

Indicate the proposed use(s) of the stored water: Multi-purpose

**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: stock water, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.

**SECTION 4: PROPERTY OWNERSHIP**

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

- 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:

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**SECTION 5: ENVIRONMENTAL IMPACT**

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**Channel:** Is the Reservoir:  in-stream or  off channel?

**Wetland:** Is the project in a wetland?  YES  NO  unknown

**Existing:** Is this an existing reservoir?  YES  NO

If YES, how long has it been in place? \_\_\_\_\_ years.

**Fish Habitat:** Is there a fish habitat upstream of the proposed structure?  YES  NO  unknown

If YES, how much? \_\_\_\_\_ miles.

**Existing:** 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.

**SECTION 6: WITHIN A DISTRICT**

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

|                           |        |          |  |
|---------------------------|--------|----------|--|
| Irrigation District Name: |        | Address: |  |
| City:                     | State: | Zip:     |  |

**SECTION 7: DESCRIPTION**

Provide a short 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 applicant is not proposing to divert water from a defined channel or stream and therefore no diversion structure is proposed. The pond is designed to retain seasonal runoff to rehydrate the hillside for agricultural use and environmental habitat. The pond is designed to store excess water from winter rains and improve water quality while reducing erosion.

If the diversion involves a dam, use this space below 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).

While this reservoir involves a dam, the dam will not be constructed in a defined channel or stream and therefore passage of live flow does not apply to this application.

# Watermaster Alternate Reservoir Application Review Sheet

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 Water Resources 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))

|   |         |       |
|---|---------|-------|
| <b>Applicant's Name</b> Xander and Allie Reservoir 3S 5W Sec 23   |         |       |
| 1. Does the proposed reservoir have the potential to injure existing water rights? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br>Explain:  |         |       |
| 2. Can conditions be applied to mitigate the potential injury to existing water rights? <input type="checkbox"/> YES <input type="checkbox"/> NO<br>Explain: NA no conditions needed  |         |       |
| 3. Is water available for the proposed reservoir? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |         |       |
| 4. If yes, during what period? Beginning: October End: July 31<br><br>Attach a WARS printout at 50% exceedance. If WARS does not cover the proposed location, make a recommendation for a storage season based upon regulation history and your knowledge of the location. (Water Availability for Reservoir Policy found under OAR 690-410-0070(2)(c)) |         |       |
| 5. Did you meet with staff from another agency to discuss this application? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |         |       |
| Who:  | Agency: | Date: |
| Who:  | Agency: | Date: |

Watermaster Name: Joel Plahn

Watermaster Signature: Joel Plahn Date: 4/7/2021

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NOTE: This completed form must be returned to the applicant

# Land Use Information Form



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266503-986-0900  
www.oregon.gov/OWRD

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|                                    |                 |                                |  |
|------------------------------------|-----------------|--------------------------------|--|
| NAME <b>Frank Foti</b>             |                 | PHONE (HM) <b>503-819-3000</b> |  |
| PHONE (WK)                         | CELL            | FAX                            |  |
| ADDRESS <b>15560 NW Redshot Ln</b> |                 |                                |  |
| CITY <b>Carlton</b>                | STATE <b>OR</b> | ZIP <b>97111</b>               | E-MAIL* <b>Frank.Foti@evolution.love</b> |

**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: |
|-----------|-----------|-----------|--------------|-------------|---|-----------------------------------|-----------------------------------|--|--------------------|
| <u>3S</u> | <u>5W</u> | <u>23</u> | <u>NE-SW</u> | <u>2100</u> | <u>EF-80 (AFLH)</u>                             | <input type="checkbox"/> Diverted | <input type="checkbox"/> Conveyed | <input checked="" type="checkbox"/> Used | <u>Farm</u>        |
| _____     | _____     | _____     | _____        | _____       | _____   | <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:

Yamhill County, Carlton

**B. Description of Proposed Use**

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

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

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

Estimated quantity of water needed: 0.3  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 wildlife

Briefly describe:

Store excess water from winter rains and improve water quality and availability while reducing erosion.

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.

**Please check the appropriate box below and provide the requested information**

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 402.02(A) VCZO
- 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<br>(e.g., plan amendments, rezones, conditional-use permits, etc.) | Cite Most Significant, Applicable Plan Policies & Ordinance Section References | Land-Use Approval:   |  |
|---|--|--|--|
|   |  | <input type="checkbox"/> Obtained<br><input type="checkbox"/> Denied | <input type="checkbox"/> Being Pursued<br><input type="checkbox"/> Not Being Pursued |
|   |  | <input type="checkbox"/> Obtained<br><input type="checkbox"/> Denied | <input type="checkbox"/> Being Pursued<br><input type="checkbox"/> Not Being Pursued |
|   |  | <input type="checkbox"/> Obtained<br><input type="checkbox"/> Denied | <input type="checkbox"/> Being Pursued<br><input type="checkbox"/> Not Being Pursued |
|   |  | <input type="checkbox"/> Obtained<br><input type="checkbox"/> Denied | <input type="checkbox"/> Being Pursued<br><input type="checkbox"/> Not Being Pursued |
|   |  | <input type="checkbox"/> Obtained<br><input type="checkbox"/> Denied | <input type="checkbox"/> Being Pursued<br><input type="checkbox"/> Not Being Pursued |
|   |  | <input type="checkbox"/> Obtained<br><input type="checkbox"/> Denied | <input type="checkbox"/> Being Pursued<br><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.

Name: Stephanie Armstrong Title: Senior Planner  
 Signature: [Signature] Phone: 503.434.7576 Date: 4/12/21  
 Government Entity: Yamhill County

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



#### Receipt for Request for Land Use Information

Applicant name: \_\_\_\_\_  
 City or County: \_\_\_\_\_ Staff contact: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Phone: \_\_\_\_\_ Date: \_\_\_\_\_

# ODFW Alternate Reservoir Application Review Sheet

**This portion to be completed by the applicant.**

Applicant Name: Frank Foti

Address: 15560 NW Redshot Ln, Carlton, OR 97111

Phone/Email: 503-819-3000/frank.foti@evolution.love

Reservoir Name: Xander Reservoir      Volume (AF): 0.3

Source: Run-off       in-channel

Basin Name: Panther Creek       off-channel

Twp Rng Sec QQ: 3S 5W 23 NESW

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.

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**This portion to be completed by Oregon Department of Fish and Wildlife (ODFW) staff.**

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)

*\*Based on available information, the proposed use does not appear to involve instream structures that would create or maintain an artificial obstruction. However, if the applicant creates or maintains an artificial obstruction to fish passage for the proposed use, the applicant will need to address Oregon's fish passage laws.*

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 June-November 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

<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)

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.

ESA-listed fish (winter steelhead), sensitive species (Coastal Cutthroat Trout and Pacific Lamprey), and other game fish (Coho Salmon) may be present in Panther Creek and/or North Yamhill River during the period of impact. Instream flows to fulfill C72585 and C72586 for aquatic life are not being met partially or wholly during the period of impact. Based on parameters assessed by ODFW, instream flows are currently below those essential to support the biological needs of an existing fishery resource during June-November. In addition, ODFW (through consultation with ODEQ) determined that the proposed use would impair water quality that supports existing fish resources (e.g. habitat) at or downstream of the Point of Diversion during June 1-October 31 and it is recommended that the applicant not release polluted water from this off-channel reservoir into waters of the state from May 1 – October 31 except when the release is directed by the State Engineer to prevent dam failure (see attached DEQ review for additional details). The proposed use will diminish physical habitat and alter the flow regime to which fish are naturally adapted, negatively affecting their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed use would impair or be detrimental to an existing fishery resource and/or their habitat without appropriate conditions and/or mitigation.

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)

See applicable conditions selected from "Menu of Conditions" on next page

ODFW recommends the season of use be restricted to December 1-May 31 or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to an existing fishery resource. Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water through purchasing or transferring an existing water right. If the applicant chooses to pursue mitigation after application submittal to WRD, ODFW will provide appropriate conditions and a Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) to compensate for any potential impact from the proposed use. Upon request, the WRD caseworker can schedule a consultation with ODFW for more information.

ODFW Signature: 

Print Name: Jason Brandt

ODFW Title: SW Hydro Coordinator

Date: 5/14/21

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## MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND ODA

Revised May 12, 2020

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Use this menu to identify appropriate conditions to be included in the permit:

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**Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.

**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 December-May.

**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.

**Bypass Flows:** Per 690-410-0070 (2)(c), the following flows shall be bypassed or passed through the reservoir during the filling season:

- 1) When the biologically necessary flows identified below are not available immediately upstream of the impacted area, the permittee shall pass all live flow downstream at a rate equal to the inflow, minus the amount of mitigation water provided upstream, if applicable, and
- 2) When the biologically necessary flows identified below are available immediately upstream of the impacted area, the permittee shall pass flow downstream at a rate equal to or greater than the biologically necessary flows.

Once the reservoir has reached the permitted volume, all live flow shall be passed downstream at a rate equal to the inflow.

The permittee shall quantify and document inflow and outflow and maintain the bypass flows for the life of the permit and subsequent certificate per the approved Bypass Plan. The bypass flow data shall be available upon request by the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, or Oregon Department of Agriculture.

**Construction Activities:** For construction activities (clearing, grading, excavation, staging, and stockpiling) that will disturb one or more acres and may discharge to state waters, the permittee is required to obtain from DEQ a 1200-C NPDES Stormwater Construction Permit prior to project construction.

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

**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.

**Fish Stocking:** Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon need to have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. As part of the permitting process, the permittee must also screen the inlet and outlet of their pond to insure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.

**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 type here River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

**In-Water or Riparian Construction:** For in-water or riparian construction, permittee may be required to obtain additional permits from the Oregon Department of State Lands, the U.S. Army Corps of Engineers, and the DEQ Section 401 certification program prior to construction. The applicant must contact these agencies to confirm requirements.

**In-Water Work:** Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of type here unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.

**Live Flow:** Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.

**Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.

**On-Channel Reservoir:** The permittee shall design and operate the water storage facility such that all waters within and below the reservoir meet water quality criteria. The permittee shall develop a reservoir operations plan that details how water quality criteria and standards will be met. A Certified Water Rights Examiner shall verify that the reservoir operations are consistent with the plan before a certificate is issued. The reservoir operator shall maintain a copy of the plan and make it available for review upon request.

**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.

**Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.

**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.

**wetland:** The permittee must submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation prior to disturbance or development of the point of diversion and/or diversion of water.

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

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Oregon DEQ Alternative Reservoir Review  
Summary Sheet

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Applicant Information:

|                               |  |                                     |   |
|-------------------------------|--|-------------------------------------|---|
| <b>Applicant Name:</b>        | Frank Foti   | <b>Reservoir Name:</b>              | Allie Reservoir<br>Xander Reservoir                   |
| <b>Basin &amp; Sub-basin:</b> | Willamette Basin and Middle Willamette Sub-basin     | <b>Requested Water Amount:</b>      | Allie Reservoir - 0.2 AF<br>Xander Reservoir - 0.3 AF |
| <b>Nearest Surface Water:</b> | Beaver Creek, Panther Creek, and North Yamhill River | <b>Nearest Receiving Waterbody:</b> | Beaver Creek, Panther Creek, and North Yamhill River  |
| <b>Proposed Use:</b>          | multipurpose   | <b>Requested Period of Use:</b>     | Year round  |

|   |  |
|---|--|
| <b>Alternative Reservoir:</b> Per ORS 537.409 will the proposed use potentially impair water quality that supports existing fish resources (e.g. habitat) | <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Insufficient data |
|---|--|

Comments

Regarding Water Quality Impairment(s) Impacts on Fishery Resources

The proposed off-channel reservoirs will divert surface water from Beaver Creek, a tributary to Panther Creek in the North Yamhill watershed. Diminished flows from Panther Creek can impact the following water quality impairments: BioCriteria, Dissolved Oxygen, and Temperature.

The Yamhill River has TMDLs for mercury and phosphorus. DEQ's primary concerns are temperature loading from diversions, mercury from erosion, and nutrient and temperature loading from reservoir releases during low-flow summer months defined in the TMDL (May – October). DEQ requests the applicant not release polluted water from this off-channel reservoir into waters from of the state from May – October except when the release is directed by the State Engineer to prevent dam failure. Reservoir releases could contain phosphorus which would increase phosphorus loading.

Diminished flows can impact temperature impairments in Panther Creek. Therefore, DEQ requests the applicant limit use to the period during the months when cumulative flows exceed 20%: November 1 – May 31.

Construction of the reservoir and point of diversion may require additional DEQ permits, such as a 1200-C stormwater construction permit. DEQ suggests the applicant call the relevant agencies/departments to determine if additional permits are required.

Recommended Permit Conditions

- 1. Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes



are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. Permittee is responsible for obtaining any necessary state and federal permits.

- Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
- Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state from May 1 – October 31, except when the release is directed by the State Engineer to prevent dam failure.
- Limit Period of Use:** Water use shall be limited to the period: November 1 – May 31.

Cumulative Withdrawals Effects

Is it likely that the proposed activity, together with existing withdrawals in the OWRD’s Water Availability Basin (WAB), will lower water quality and impair fishery resources, and aquatic life?  No  Yes

Water Availability and Cumulative Impacts Summary Table

Percent of natural flow = (consumptive use/natural stream flow)\*100. See Appendix for additional

[Water Availability Basin]: N YAMHILL R > YAMHILL R - AT MOUTH

| Watershed ID | Exceedance Level | Month | Natural Stream Flow | Consumptive Use | Expected Stream Flow | Reserved Stream Flows | Instream Requirement | Net Water Available | Percent of Flow |
|--------------|------------------|-------|---------------------|-----------------|----------------------|-----------------------|----------------------|---------------------|-----------------|
| 70746        | 50               | JAN   | 824                 | 30.7            | 793                  | 0                     | 70                   | 723                 | 4%              |
| 70746        | 50               | FEB   | 867                 | 31.4            | 836                  | 0                     | 70                   | 766                 | 4%              |
| 70746        | 50               | MAR   | 663                 | 22.9            | 640                  | 0                     | 70                   | 570                 | 3%              |
| 70746        | 50               | APR   | 374                 | 23.7            | 350                  | 0                     | 70                   | 280                 | 6%              |
| 70746        | 50               | MAY   | 175                 | 22.9            | 152                  | 0                     | 70                   | 82.1                | 13%             |
| 70746        | 50               | JUN   | 92.8                | 26.1            | 66.7                 | 0                     | 40                   | 26.7                | 28%             |
| 70746        | 50               | JUL   | 48.9                | 30.7            | 18.2                 | 0                     | 15                   | 3.23                | 63%             |
| 70746        | 50               | AUG   | 31.9                | 28.2            | 3.66                 | 0                     | 10                   | -6.34               | 88%             |
| 70746        | 50               | SEP   | 26.3                | 21.4            | 4.85                 | 0                     | 10                   | -5.15               | 81%             |
| 70746        | 50               | OCT   | 32.1                | 13.4            | 18.7                 | 0                     | 10                   | 8.68                | 42%             |
| 70746        | 50               | NOV   | 221                 | 20.1            | 201                  | 0                     | 70                   | 131                 | 9%              |
| 70746        | 50               | DEC   | 796                 | 30.2            | 766                  | 0                     | 70                   | 696                 | 4%              |
| 70746        | 50               | ANN   | 249000              | 18200           | 231000               | 0                     | 34600                | 197000              | 7%              |

Integrated Report Water Quality Impairment- 303(d) List Summary Table

| Assessment Unit Name | Assessment Unit Description       | Parameter                    | Status*     | Beneficial Uses          |
|----------------------|-----------------------------------|------------------------------|-------------|--------------------------|
| Panther Creek        | Headwaters WA Unit to Baker Creek | BioCriteria                  | Category 5  | Fish and Aquatic Life    |
|                      |                                   | Dissolved Oxygen- Year Round | Category 5  | Fish and Aquatic Life    |
|                      |                                   | E. coli                      | Category 4A | Water Contact Recreation |
|                      |                                   | Temperature- Year Round      | Category 5  | Fish and Aquatic Life    |



|   |  |           |            |  |
|---|--|-----------|------------|--|
| HUC12 Name:<br>Panther Creek  | Watershed Unit (1st through 4th order streams) | Turbidity | Category 5 | Fish and Aquatic Life; Private Domestic Water Supply; Public Domestic Water Supply |
| <p>*Integrated Report Category</p> <p><b>Category 4</b> - Data indicate that at least one designated use is not supported, but a TMDL is not needed to address the pollutant</p> <p><b>Category 4A</b> - Clean-up plans (also called TMDLs) that will result in the waterbody meeting water quality standards and supporting its beneficial uses have been approved</p> <p><b>Category 4B</b> - Other pollution control requirements are expected to address pollutant of concern and will result in attainment of water quality standards</p> <p><b>Category 4C</b> - The impairment is caused by pollution, not a pollutant. For example, flow, or lack of flow, are not considered pollutants, but may be affecting the waterbody's beneficial uses</p> <p><b>Category 5</b> - Data indicate a designated use is not supported or a water quality standard is not attained and a TMDL is needed. This category constitutes the Section 303(d) list that EPA will approve or disapprove under the Clean Water Act</p> |  |           |            |  |

|                         |              |                         |
|-------------------------|--------------|-------------------------|
| DEQ review prepared by: | Sarah Sauter | Date complete: 5/4/2021 |
|-------------------------|--------------|-------------------------|

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### Standard Water Quality Considerations Related to Aquatic Life Beneficial Uses

- 1. Antidegradation:** Rule 340-041-0004 applies: withdrawals cannot cumulatively increase a waterbody's temperature by more than 0.5 degrees Fahrenheit or cause a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach so long as it has no adverse effects on threatened and endangered species. See OAR [340-041-0004\(3\)-\(5\)](#) for a description in rule of activities that do not result in lowering of water quality.
- 2. Flow Modification:** Temperature and dissolved oxygen are flow-related parameters. When streamflow is reduced, assimilative capacity is reduced. As a waterbody heats up, dissolved oxygen concentrations decline. Reduced stream flows (including groundwater inputs to streamflow), exacerbate temperature and/or dissolved oxygen impairments.
- 3. Temperature:** Increases in temperature or reduction in dissolved oxygen adversely affect ST&E fish. Additional heat or reduction in dissolved oxygen concentrations will further impact the habitat of these species.

### Menu of Conditions Related to Impairments Affecting Aquatic Life Beneficial Uses:

- **Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. Permittee is responsible for obtaining any necessary state and federal permits.
- **Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
- **Water Storage Construction:** The applicant shall locate the reservoir outside of the stream's natural channel. *identify waterbody and set back to prevent stream capture and justification for distance selected.*
- (Note to reviewer: The 1200C permit requires a 50-foot setback, which is cited from the National General Construction Permit OAR-660-023-0090(5). Requiring the storage reservoir to be outside of the mapped 100 year floodway may also be a protective buffer. )
- **Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.



- **Limit Period of Use:** Water use shall be limited to the period: *start date through end date*. (Note to reviewer: Do not split the irrigation season. Require mitigation if water is not available during the requested time period.)
- **On-Channel Reservoir:** The permittee shall design and operate the water storage facility such that all waters within and below the reservoir meet water quality criteria. The permittee shall develop a reservoir operations plan that details how water quality criteria and standards will be met. A Certified Water Rights Examiner shall verify that the reservoir operations are consistent with the plan before a certificate is issued. The reservoir operator shall maintain a copy of the plan and make it available for review upon request.
- **Restrict Reservoir Release:** To prevent pollution downstream, the permittee shall not release water from the reservoir when the flow at Gaging Station ID *(gage name)* is below the Mean Daily Discharge of *CFS* (discharge which was equaled or exceeded for 90% percent of the time) except when the release is directed by the State Engineer to prevent dam failure.
- **Live Flow:** Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.
- **Mitigation Obligation:** Prior to the issuance of a Proposed Final Order, the applicant shall submit a mitigation proposal that is of no less volume and rate than the permitted use. The proposal shall include water that is sourced upstream of the point of diversion or appropriation, or the uppermost point on the stream at which the potential for surface water interference occurs. If a surface water right is used for mitigation, it shall be transferred instream for the [month-month] time period, and be of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.

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TICOR TITLE COMPANY 471819086322

RECORDING REQUESTED BY:



1215 NE Baker Street  
McMinnville, OR 97128

GRANTOR'S NAME:  
Phillip F. Doran and Amy L. Doran

GRANTEE'S NAME:  
HOB, LLC

AFTER RECORDING RETURN TO:  
Order No.: 471819086322-LC  
HOB, LLC, a Washington limited liability company  
1400 SE 75th Ct.  
Vancouver, WA 98664

SEND TAX STATEMENTS TO:  
HOB, LLC  
1400 SE 75th Ct.  
Vancouver, WA 98664

APN: 104264  
642388  
Map: R3523 02100

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|                                     |                        |
|-------------------------------------|------------------------|
| Yamhill County Official Records     | <b>201915920</b>       |
| DMR-DDMR                            |                        |
| Sl#3 SUTTONS                        | 10/31/2019 02:46:00 PM |
| 2Pgs \$10.00 \$11.00 \$5.00 \$60.00 | <b>\$86.00</b>         |

I, Brian Van Bergen, County Clerk for Yamhill County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.  
Brian Van Bergen - County Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATUTORY WARRANTY DEED**

Phillip F. Doran and Amy L. Doran, Grantor, conveys and warrants to HOB, LLC, a Washington limited liability company, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Yamhill, State of Oregon:

A tract of land in Section 23, Township 3 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon, being a portion of that certain tract of land described in Volume 103, Page 415, Yamhill County Deed Records and being more particularly described as follows:

Beginning at a point on the South line of the Robert Reed Donation Land Claim that is South 86°36'02" East 543.852 feet from the Southwest corner of said Donation Land Claim; thence continuing along said South line, South 86°36'02" East, 945.43 feet to the center of County Road No. 231; thence South 38°30'53" West, along the center of said road, 877.07 feet; thence North 65°25'28" West, along the center of Road Easement No. 1 as hereinafter described, 125.34 feet; thence continuing along said center line, North 77°16'13" West, 410 feet; thence North 11°00' East 614.69 feet to the Point of Beginning.

TOGETHER WITH an easement for road and utility purposes being 30 feet on each side of the following described centerline:

Beginning at a point in the center of County Road No. 231 that is North 89°34' West, 1936.61 feet and North 52°07'47" East 248.07 feet and North 38°30'53" East, 300.00 feet from the Northeast corner of the O. H. Adams Donation Land Claim in Section 23, Township 3 South, Range 5 West of the Willamette Meridian, Yamhill County, Oregon; thence North 65°25'28" West, 125.34 feet; thence North 77°16'13" West 968.97 feet; thence North 61°07'13" West 197.34 feet; thence Northwesterly 71.14 feet along the arc of a 100 foot radius curve right, through a central angle of 40°45'45" (chord bears North 40°44'21" West, 69.65 feet); thence North 20°21'28" West 64.12 feet; thence Northerly 71.44 feet along the arc of a 100 foot radius curve right, through a central angle of 40°56' (chord bears North 00°06'32" East 69.93 feet); thence North 20°35'32" East 153.08 feet; thence Northerly 85.06 feet along the arc of a 200 foot radius curve left, through a central angle of 24°22' (chord bears North 08°24'32" East 84.41 feet); thence North 03°46'28" West 164.77 feet; thence North 00°11'17" East 267.32 feet; thence North 02°32'43" West, 180.04 feet; thence North 25°02'43" West, 203.44 feet; thence North 52°25'13" West, 134.05 feet and the terminus of said easement.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS ONE MILLION TWO HUNDRED NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,295,000.00). (See ORS 93.030).

**Subject to:**

The Land has been classified as forest land, as disclosed by the tax roll. If the Land becomes disqualified, said Land may be subject to additional taxes and/or penalties.

Regulations, levies, liens, assessments, rights of way and easements of Red Shot Water Association, a non-profit Oregon corporation.

Rights of the public to any portion of the Land lying within the area commonly known as streets, roads and highways.



STATUTORY WARRANTY DEED  
(continued)

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Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of McMinnville  
Purpose: Water pipeline  
Recording Date: August 10, 1917  
Recording No: Book 72, Page 546, Deed Records

The exact location and extent of said easement is not disclosed of record.

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Adjoining property owners  
Purpose: Road and utilities  
Recording Date: September 29, 1977  
Recording No: Film Volume 123, Page 1142  
Affects: Southerly 30 feet

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Adjoining property owners  
Purpose: Water pipeline  
Recording Date: September 29, 1977  
Recording No: Film Volume 123, Page 1142  
Affects: Southerly portion of property

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.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 10/31/2019

[Signature]  
Phillip F. Doran

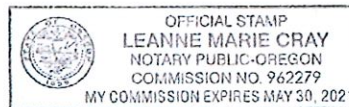
[Signature]  
Amy L. Doran

State of Oregon  
County of Yamhill

This instrument was acknowledged before me on 31 October 2019 by Phillip F. Doran and Amy L. Doran.

[Signature]  
Notary Public - State of Oregon

My Commission Expires: 30 May 21

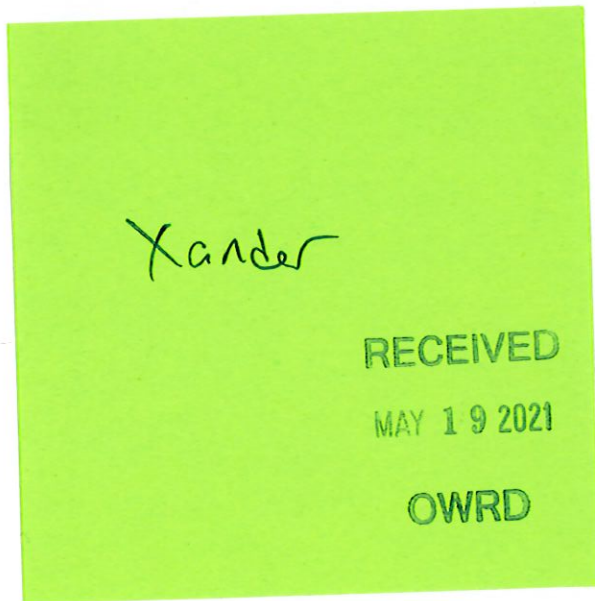




For impoundments less than 10 feet in height or storing less than 9.2 acre feet of water.

Today's Date: Monday, May 17, 2021

|  |             |          |
|--|-------------|----------|
| Base Application Fee.  |             | \$410.00 |
| Proposed Dam Height in feet.   | 8           |          |
| Proposed Reservoir volume in Acre Feet.  | .3          | \$35.00  |
| Subtotal:  |             | \$445.00 |
| Permit Recording Fee. ***  |             | \$520.00 |
| *** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed. | Recalculate |          |
| Estimated cost of Permit Application   |             | \$965.00 |



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