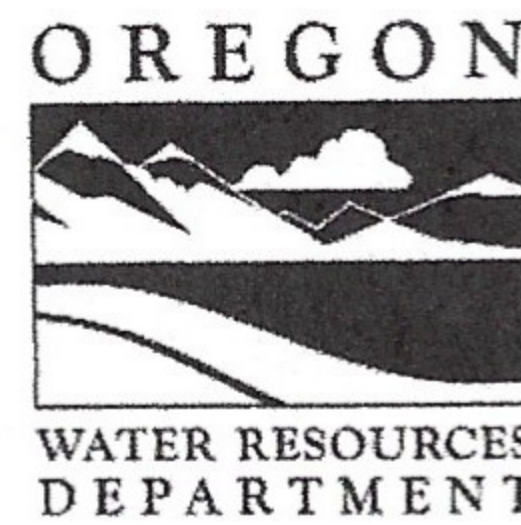


Application for a Permit to  
**Store Water in a Reservoir**  
 Alternate Review (ORS 537.409)



**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**

**SECTION 1: APPLICANT INFORMATION AND SIGNATURE**

**Applicant**

NAME MARK E. & NICOLE J. DIETRICH			PHONE (HM)
PHONE (WK)	CELL (503) 991-3179		FAX
ADDRESS 3370 ALT LN. NE			
CITY SILVERTON	STATE OR	ZIP 97381	E-MAIL * MARKD@MTVIEWSEEDS.COM

**Organization**

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

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


AGENT / BUSINESS NAME WILL MCGILL SURVEYING LLC			PHONE (503) 510-3026	FAX
ADDRESS 15333 PLETZER RD. SE			CELL (503) 931-0210	
CITY TURNER	STATE OR	ZIP 97392	E-MAIL * WILLMCGILL.SURVEYING@GMAIL.COM	


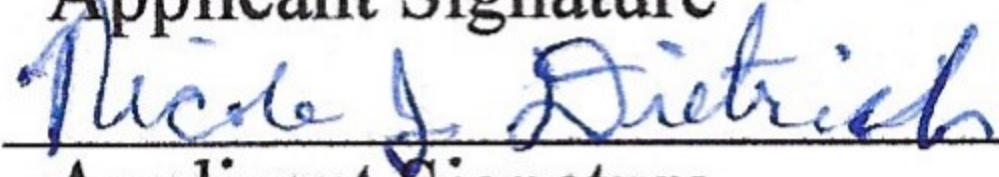
Note: Attach multiple copies as needed

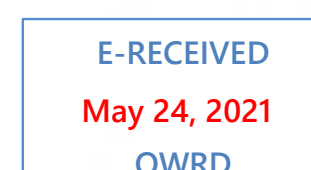
\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

**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.**

	Mark Dietrich	5/21/21
Applicant Signature	Print Name and Title if applicable	Date
	Nicole Dietrich	5/21/21
Applicant Signature	Print Name and Title if applicable	Date



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

<b>Reservoir name:</b>	<b>Mallard Reservoir</b>				
<b>Source*:</b>	<b>Run-off, Seepage, Pudding River</b>	<b>Tributary:</b>	<b>Molalla River</b>		
<b>County:</b>	<b>Marion</b>				
<b>Quantity:</b>	<b>5 Acre-Feet [length x width x depth / 43,560]</b>				
<b>Reservoir Location:</b>	Township (N or S)	Range (E or W)	Section	Quarter-Quarter	Tax Lot #
	7S	1W	7/8	SESE/SWSW	300
<b>Maximum Height of Dam:</b>	8 feet. If excavated write "zero feet."				

\* 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: Multipurpose

**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**

**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? **50 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.

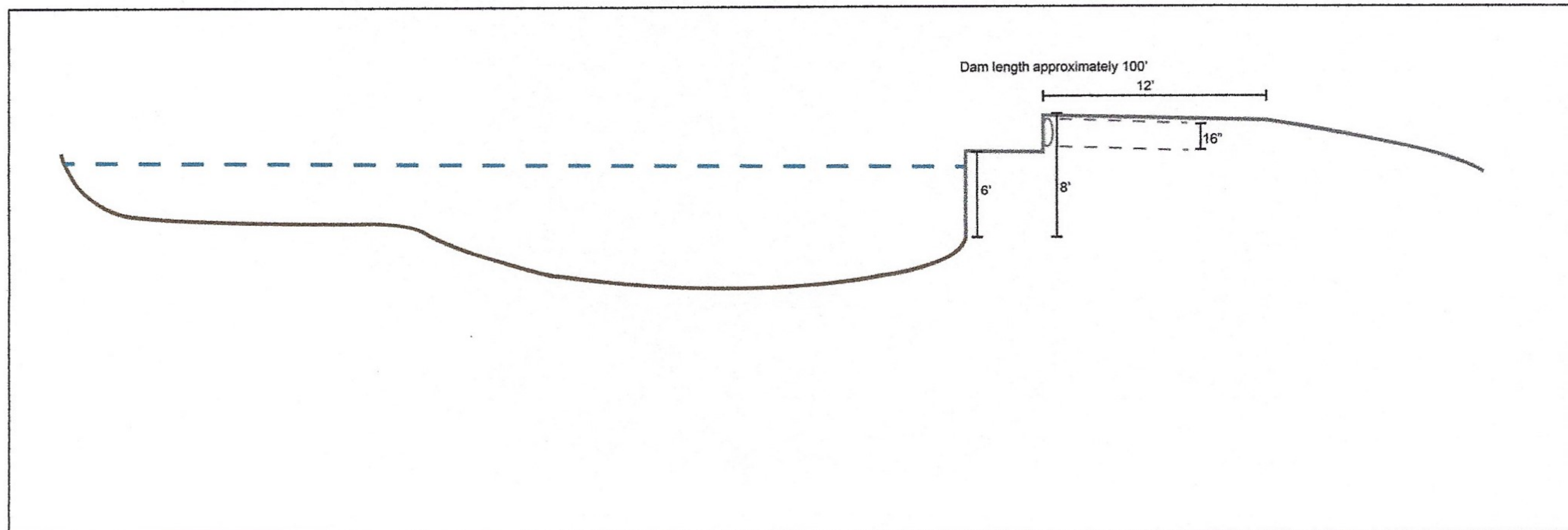
Irrigation District Name:		Address:	
City:	State:	Zip:	

**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.

5 HP Centrifugal PTO pump delivers water to pond via 550' of above ground mainline if more storage is needed outside of run-off/seepage. Otherwise, water is stopped behind an 8' dam with two 16" concrete culverts to pass overflow.

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).



# 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.

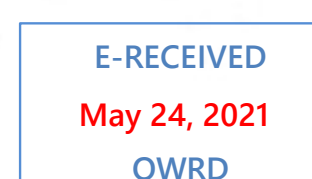
The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

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))

Applicant's Name		
1. Does the proposed reservoir have the potential to injure existing water rights? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Explain:		
2. Can conditions be applied to mitigate the potential injury to existing water rights? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Explain: <i>All live flow must be passed outside of fill period</i>		
3. Is water available for the proposed reservoir? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
4. If yes, during what period? Beginning: <i>Nov</i> End: <i>June</i>  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: Greg Wacker  
 Watermaster Signature: Greg Wacker Date: 3-24-2021

**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 97301-1266  
503-986-0900  
www.oregon.gov/OWRD

## 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 MARK E. & NICOLE J. DIETRICH		PHONE (HM)	
PHONE (WK)	CELL (503) 991-3179	FAX	
ADDRESS 3370 ALT LN. NE			
CITY SILVERTON	STATE OR	ZIP 97381	E-MAIL* MARKD@MTVIEWSEEDS.COM

**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:
7S	1W	8	SWSW	300	EFU	<input checked="" type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Farming
7S	1W	7	SWSE SESE	300	EFU	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Farming
						<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:

*Marion County*

**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) pudding River

Estimated quantity of water needed: 36.25  cubic feet per second   
 gallons per minute   
 acre-feet

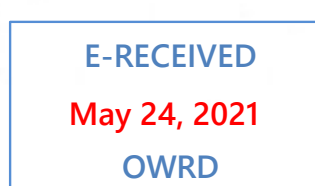
Intended use of water:  Irrigation   
 Commercial   
 Industrial   
 Domestic for \_\_\_\_\_ household(s)  
 Municipal   
 Quasi-Municipal   
 Instream   
 Other Multipurpose-Reservoir

Briefly describe:

*It is proposed to permit the existing reservoir on TL 300 and authorize the storage of water in this reservoir. The water will be rediverted for irrigation of crops on TL 300.*



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

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

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

NAME <b>Lindsey King, CFM</b>	TITLE: <b>Planner</b>
SIGNATURE	PHONE: <b>503 566 4162</b>
GOVERNMENT ENTITY <b>Marion County</b>	DATE: <b>5/21/2021</b>

**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: Mark E. and Nicole J. Dietrich

Address: 3370 Alt Ln. NE, Silverton, OR 97381

Phone/Email: 503-991-3179; markd@mtviewseeds.com

Reservoir Name: Mallard Reservoir

Volume (AF): 5 AF

Source: Pudding River, run-off, seepage

Basin Name: Pudding River<Willamette River

in-channel

Twp Rng Sec QQ: 7S 1W 7/8

off-channel

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

**This 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

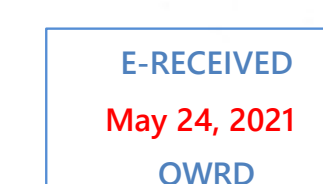
If fish passage is required under ORS 509.580 through .910, then either 3(a) or 3(b) must be “Yes” to move forward with the application. If responses to 3(a) and 3(b) are “No”, then the proposed reservoir does not meet the requirements of Oregon Fish Passage Law and shall not be constructed as proposed.

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 1 through October 31** 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 and spring Chinook Salmon), sensitive species (Coastal Cutthroat Trout and Pacific Lamprey), and other game fish (Coho Salmon) may be present in the Pudding River during the period of impact. ODFW has identified biologically necessary flows not captured in an instream water right (e.g., flows in a Basin Investigation Report, Persistence Flow Determination, Seasonally Varying Flow prescription, or other flow analysis) that would benefit fishery resources at the Point of Diversion and/or downstream.

In addition to existing instream water rights and pending instream water right applications, ODFW recommends the following biologically necessary flows be available in the Pudding River above the Howell Prairie Creek confluence to protect public uses:

Table with 8 columns (Month, Flow) and 3 rows of data: JAN 80 cfs, APR 80 cfs, JUL 40 cfs, OCT 50 cfs; FEB 80 cfs, MAY 80 cfs, AUG 30 cfs, NOV 80 cfs; MAR 80 cfs, JUN 50 cfs, SEP 30 cfs, DEC 80 cfs.

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 1-October 31. 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-September 30 (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. These changes will negatively affect their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water 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) [X] YES (select from Menu of Conditions on next page)

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

ODFW recommends the season of use be restricted to November 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. Any pump used in the Pudding River to fill the proposed reservoir must be equipped with an ODFW approved fish screen. Please contact Hilary Doulos (541-296-8026) in The Dalles ODFW Screen Shop for additional information.

ODFW Signature: [Handwritten Signature] Print Name: Jason Brandt

ODFW Title: SW Hydro Coordinator Date: 5/10/21

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

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

Revised May 12, 2020, March 25, 2021

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

- 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 November 1 through May 31.
- 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.
- 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.
- 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.
- 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.

- 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.
- 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 June 1-September 15 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.
- 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.
- 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.



## Oregon DEQ Alternative Reservoir Review Summary Sheet

### Applicant Information:

<b>Applicant Name:</b>	Mark E. & Nicole J. Dietrich	<b>Requested Water Amount:</b>	5 AF
<b>Basin &amp; Sub-basin:</b>	Willamette Basin & Middle-Willamette Subbasin	<b>Nearest Receiving Waterbody:</b>	Pudding River
<b>Nearest Surface Water:</b>	Pudding River	<b>Requested Period of Use:</b>	Year round (assumed)
<b>Proposed Use:</b>			

<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
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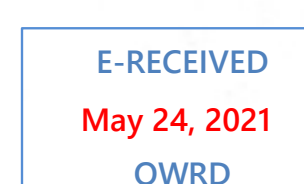
### Comments

#### Regarding Water Quality Impairment(s) Impacts on Fishery Resources

The Pudding River is a stream in the Molalla-Pudding sub-basin. The Molalla-Pudding sub-basin has approved TMDLs for stream temperature, mercury, bacteria, pesticides, nitrate, and metals. The Molalla-Pudding sub-basin temperature TMDL applies to all perennial and/or fish bearing streams in the Molalla-Pudding sub-basin – including the Pudding River. The proposed water use will diminish flows in the Pudding River. Diminished flows in the Pudding River will affect water quality impairments for dissolved oxygen, temperature, and biocriteria. The Pudding River Water Availability Table indicates that at the 50% exceedance level, cumulative withdrawals exceed 20% of natural flow from July through September.

During the summer, peak stream temperature and low stream flows create critical stream temperatures and heat loading conditions. In the Molalla-Pudding sub-basin, peak temperatures typically occur in mid-July through mid-August and often exceed the salmon and trout rearing and migration criterion and core cold water criterion. The TMDL defines the Pudding River critical period for stream temperature as June 1 – September 30. Any additional withdrawals from June through September could negatively affect surface water quantity and quality in the Pudding River. If OWRD approves the water right, DEQ recommends flow mitigation during the critical period for stream temperature.

DEQ is concerned about nutrient, sediment, and temperature loading from reservoir releases during low flow and critical temperature months. Therefore, DEQ requests the applicant 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. 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.
- 2. 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
- 3. 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.
- 4. 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 July - September time period, and be of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.



## 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]: PUDDING R > MOLALLA 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
69998	50	JAN	2380	129	2250	0	80	2170	5%
69998	50	FEB	2270	119	2150	0	80	2070	5%
69998	50	MAR	1790	87.1	1700	0	80	1620	5%
69998	50	APR	1260	60.6	1200	0	80	1120	5%
69998	50	MAY	742	57.7	684	0	80	604	8%
69998	50	JUN	347	81.3	266	0	60	206	23%
69998	50	JUL	151	127	23.9	0	50	-26.1	84%
69998	50	AUG	91	104	-13.2	0	40	-53.2	114%
69998	50	SEP	88.9	59.4	29.5	0	40	-10.5	67%
69998	50	OCT	138	13.8	124	0	60	64.2	10%
69998	50	NOV	936	54	882	0	80	802	6%
69998	50	DEC	2260	123	2140	0	80	2060	5%
69998	50	ANN	748000	61300	688000	0	48900	643000	8%

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

Assessment Unit Name	Assessment Unit Description	Parameter	Status*	Beneficial Uses
HUC12 Name: Headwaters Pudding River	Watershed Unit (1st through 4th order streams)	BioCriteria	Category 5	Fish and Aquatic Life
HUC12 Name: Headwaters Pudding River	Watershed Unit (1st through 4th order streams)	Dissolved Oxygen- Spawning	Category 4A	Fish and Aquatic Life
HUC12 Name: Headwaters Pudding River	Watershed Unit (1st through 4th order streams)	Dissolved Oxygen- Year Round	Category 4A	Fish and Aquatic Life
HUC12 Name: Headwaters Pudding River	Watershed Unit (1st through 4th order streams)	E. coli	Category 4A	Water Contact Recreation
HUC12 Name: Headwaters Pudding River	Watershed Unit (1st through 4th order streams)	Temperature- Year Round	Category 5	Fish and Aquatic Life

\*Integrated Report Category

**Category 4** - Data indicate that at least one designated use is not supported, but a TMDL is not needed to address the pollutant

**Category 4A** - Clean-up plans (also called TMDLs) that will result in the waterbody meeting water quality standards and supporting its beneficial uses have been approved

**Category 4B** - Other pollution control requirements are expected to address pollutant of concern and will result in attainment of water quality standards

**Category 4C** - 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

**Category 5** - 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

DEQ review prepared by: Sarah Sauter      Date complete:



E-RECEIVED  
May 24, 2021  
OWRD

## 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.

RECORDING REQUESTED BY:



206 N 1st St  
Silverton, OR 97381

**AFTER RECORDING RETURN TO:**  
Order No.: 471817065372-TK  
Mark E. Dietrich and Nicole J. Dietrich  
3370 Alt Lane NE  
Silverton, OR 97381

**SEND TAX STATEMENTS TO:**  
Mark E. Dietrich and Nicole J. Dietrich  
3370 Alt Lane NE  
Silverton, OR 97381

APN: R21199  
Map: 071W07D 00300

REEL 4014 PAGE 392  
MARION COUNTY  
BILL BURGESS, COUNTY CLERK  
11-13-2017 01:17 pm.  
Control Number 483611 \$  
51.00  
Instrument 2017 00058959

TICOR TITLE 471817065372

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATUTORY WARRANTY DEED**

**Brian J. Dietrich and Amanda L. Dietrich, Grantor, conveys and warrants to Mark E. Dietrich and Nicole J. Dietrich, as tenants by the entirety, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Marion, State of Oregon:**

A tract of land situated in the Southeast Quarter of Section 7 and the Southwest Quarter of Section 8, Township 7 South, Range 1 West of the Willamette Meridian, in the County of Marion, State of Oregon, more particularly described as follows:

Beginning at a point 34.62 chains East and 14.24 chains South 00°04' West from the Southwest corner of the Donation Land Claim of Thomas C. Shaw and wife in Township 7 South, Range 1 West of the Willamette Meridian in Marion County, Oregon; thence South 00°04' West 5.00 chains; thence 35.53 chains to the East line of the A.G. Jerman and Josephine J. Jerman Estate; thence North 12°41' East 5.12 chains; thence West 36.66 chains to the place of beginning.

ALSO: Beginning at a point 34.62 chains East and 14.24 chains South 00°04' West from the Southwest corner of the Donation Land Claim of Thomas C. Shaw and wife in Township 7 South, Range 1 West of the Willamette Meridian in Marion County, Oregon; thence North 00°04' East 35.26 feet; thence East 2427.46 feet to the East line of the A.G. Jerman and Josephine J. Jerman Estate; thence South 12°41' West 36.14 feet; thence West 36.66 chains to the place of beginning.

TOGETHER WITH a non-exclusive easement for ingress and egress as created by instrument recorded June 28, 1999 in Reel 1611, page 588, Deed Records for Marion County, Oregon.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS FOUR HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$430,000.00). (See ORS 93.030).

**Subject to:**

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

The rights of the public and governmental bodies for fishing, navigation and commerce in and to any portion of the Land herein described, lying below the high water line of the Pudding River.

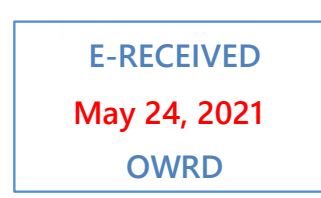
The right, title and interest of the State of Oregon in and to any portion lying below the high water line of Pudding River.

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

Reserved by: William C. McCool  
Purpose: public road  
Recording Date: October 20, 1970  
Recording No: Book 692, page 562  
Affects: West 20 feet

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

Granted to: Clarence A Dietrich and Mildred L. Dietrich  
Purpose: right-of-way and utility purposes  
Recording Date: October 13, 1971  
Recording No: Book 714, page 102



**STATUTORY WARRANTY DEED**

(continued)

Road Easement and Maintenance Agreement, including the terms and provisions thereof,

Recording Date: June 28, 1999  
Recording No.: Reel 1611, page 586

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: 11/9/17

Brian J. Dietrich  
Brian J. Dietrich

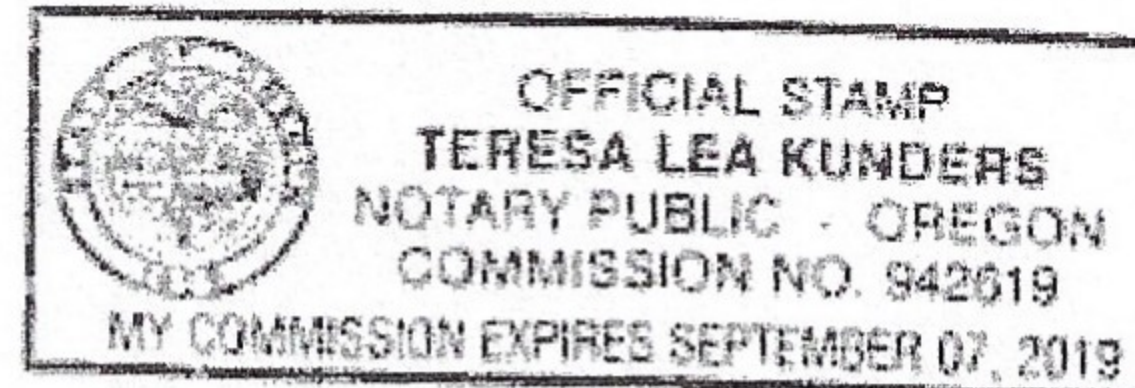
Amanda L. Dietrich  
Amanda L. Dietrich

State of Oregon  
County of Marion

This instrument was acknowledged before me on 11-9-17 by Brian J. Dietrich and Amanda L. Dietrich.

Teresa Lea Kunders  
Notary Public - State of Oregon

My Commission Expires: 9-7-19



**REEL: 4014**

**PAGE: 392**

**November 13, 2017, 01:17 pm.**

**CONTROL #: 483611**

State of Oregon  
County of Marion

I hereby certify that the attached instrument was received and duly recorded by me in Marion County records:

**FEE: \$ 51.00**

**BILL BURGESS  
COUNTY CLERK**

**THIS IS NOT AN INVOICE.**