

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 DUANE D DANIELS & LAURA K BREEZE		PHONE (HM)	
PHONE (WK) 541-519-5119	CELL 541-519-5119	FAX	
ADDRESS 49173 HWY 26		JUL 08 2021	
CITY MT VERNON	OR	97865	E-MAIL *

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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		PHONE		FAX	
ADDRESS			CELL		
CITY	STATE	ZIP	E-MAIL *		



Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the 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.

	Print Name and Title if applicable	7/6/2021
Applicant Signature		Date
	Print Name and Title if applicable	7/6/2021
Applicant Signature		Date

SECTION 2: SOURCE OF WATER AND LOCATION OF RESERVOIR

Reservoir name:	Big "D" Pond				
Source*:	Wiley Creek	Tributary:	John Day River		
County:	Grant				
Quantity:	1. Acre-Feet [length x width x depth / 43,560]				
Reservoir Location:	Township (N or S)	Range (E or W)	Section	Quarter-Quarter	Tax Lot #
	13	28	8	SESW	1002
Maximum Height of Dam:	3.5 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: 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

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. **Stephan Charette/John Day Fish Biologist, Oregon Department of Fish & Wildlife (541)575-1167 Ext 226**

SECTION 6: WITHIN A DISTRICT

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

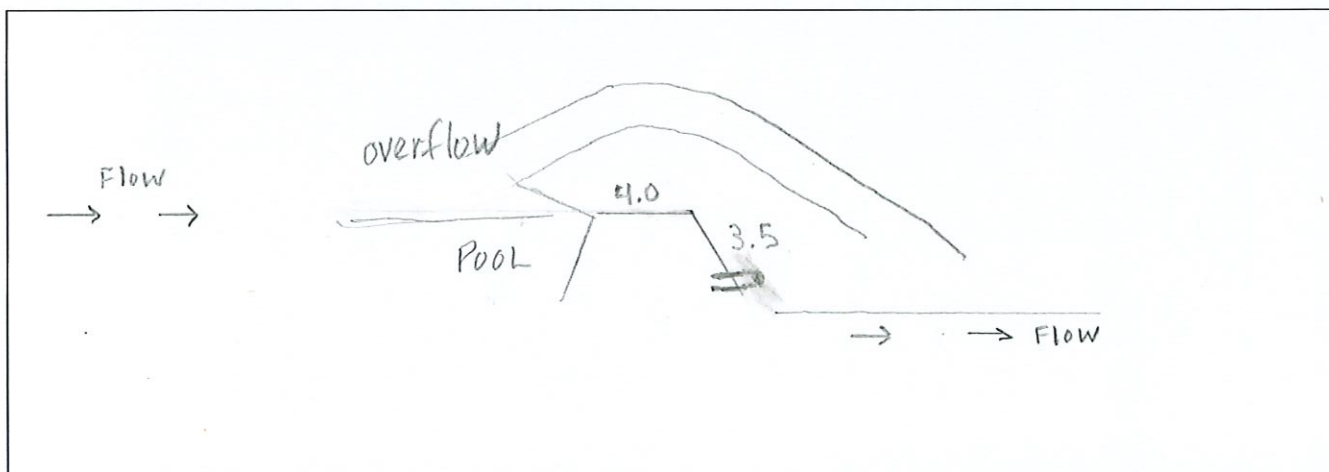
Irrigation District Name:		Address:	
City:	State:	Zip:	

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.

This is an existing earthen structure that has been in place 30+/- years. It is approximately 20+/- feet in depth and approximately 30+/- feet in width. The dam height in channel is 3.5 feet of earthen material and any live flow passes around the dam structure through an earthen overflow and or passes over the dam. Wiley Creek is an intermittent stream and flow is naturally reduced significantly in later season months.

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).



Land Use Information Form



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NOTE TO APPLICANTS

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

This form is NOT required if:

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

NOTE TO LOCAL GOVERNMENTS

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

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Land Use Information Form

Form with fields for NAME (DUANE D DANIELS & LAURA K BREEZE), phone (541-519-5119), address (49173 HWY 26), location (MT VERNON, OR), ZIP (97865), and E-MAIL (N/A).

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.

Table with 8 columns: Township, Range, Section, 1/4, Tax Lot #, Plan Designation, Water to be: (Diverted, Conveyed, Used), Proposed Land Use. Row 1 contains data: 13, 28, 8, SESW, 1002, EFU, [checked] Diverted, [checked] Conveyed, [checked] Used.

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

Text box containing the word 'Grant'.

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) Wiley Creek

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

Intended use of water: Irrigation, Commercial, Industrial, Domestic for household(s), Municipal, Quasi-Municipal, Instream, Other

Briefly describe:

Text box containing: 'This is an existing in channel earthen structure, its intended use is for "mulit purpose" including irrigation.'

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.

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For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project 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): Art 4e4 Grant Co Land Dev Code
- 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.

Irrigation is allowed in EFL zone

Name: Shannon Springer Title: Planning Director
 Signature: [Signature] Phone: 541-575-1519 Date: 4/6/2021
 Government Entity: Grant County Planning Department

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: _____

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 type="checkbox"/> YES <input checked="" type="checkbox"/> NO Explain: This is a self-regulating system with minimal water rights. Additionally there has been no request for regulation in my 15 years as an assistant watermaster. If the need for regulation were to occur we would regulate accordingly to serve any pre existing rights of record.		
2. Can conditions be applied to mitigate the potential injury to existing water rights? <input type="checkbox"/> YES <input type="checkbox"/> NO Explain: N/A		
3. Is water available for the proposed reservoir? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 4. If yes, during what period? Beginning: December End: June 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 checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
Who: Stephan Charette	Agency: ODFW	Date: march 1, 2021
Who:	Agency:	Date:

Watermaster Name: Hailey Hughes

Watermaster Signature: *Hailey Hughes* Date: 7/6/2021

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NOTE: This completed form must be returned to the applicant

ODFW Alternate Reservoir Application Review Sheet

This portion to be completed by the applicant.	
Applicant Name: <u>DUANE D DANIELS & LAURA K BREEZE</u>	RECEIVED
Address: <u>49173 HWY 26, MT VERNON</u>	JUL 08 2021
Phone/Email: <u>541-519-5119</u>	OWRD
Reservoir Name: <u>Big "D" Pond</u>	Volume (AF): <u>0.5</u>
Source: <u>Wiley Creek</u>	<input checked="" type="checkbox"/> in-channel
Basin Name: <u>John Day</u>	<input type="checkbox"/> off-channel
Twp Rng Sec QQ: <u>13S28E8 SESW</u>	
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 AO¹ 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 NMF² 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 February and April 15 through December 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

¹ 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)

² 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 (Summer Steelhead) and sensitive species (Redband Trout) are present in Wiley Creek and John Day 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 or downstream. In addition to existing instream water rights, ODFW recommends the following biologically necessary flows be available in the John Day River to protect public uses:

	Below Beech Creek (CFS)	Below South Fork John Day River (CFS)	Below North Fork John Day River (CFS)
JAN	155.0	160.0	500.0
FEB	250.0	270.0	500.0
MAR	250.0	270.0	500.0
APR	250.0	270.0	500.0
MAY	250.0	270.0	500.0
JUN	155.0	160.0	500.0
JUL	100.0	105.0	500.0
AUG	81.8	105.0	397.5
SEP	85.7	105.0	314.6
OCT	100.0	105.0	500.0
NOV	110.0	157.4	500.0
DEC	155.0	160.0	500.0

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Based on parameters assessed by ODFW, instream flows are currently below those essential to support the biological needs of an existing fishery resource during February and April 15 – December 31. 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) YES (select from Menu of Conditions on next page)

- See applicable conditions selected from “Menu of Conditions” on next page

Water is only available to support biologically necessary flows at the POD and/or downstream during **January and March 1 - April 14**. ODFW recommends the season of use be restricted to coincide with this period or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. Without appropriate conditions and/or mitigation, a further reduction in flow or alteration of habitat from the proposed water use outside of this period 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

Applicant Name: DUANE D DANIELS & LAURA K BREEZE

ODFW Review

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: Aaron Maxwell Digitally signed by Aaron Maxwell
Date: 2021.05.24 12:22:50 -07'00'

Print Name: Aaron Maxwell

ODFW Title: East Region Hydropower and Water Right Coordinator

Date: 5/24/2021

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

Revised 10/4/12; reformatted 5/12/20

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MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND ODA

Revised May 12, 2020, March 25, 2021

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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 January and March 1 - April 14.
- 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 July 15 – August 31 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.

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Signature: _____ Phone: _____ Date: _____

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STATUTORY WARRANTY DEED

ORAL A. CHANEY, Grantor, conveys and warrants to DUANE D. DANIELS and LAURA K. BREEZE, Grantee, the following described real property, free of encumbrances except as specifically set forth herein:

That particular real property described on Exhibit A attached hereto and incorporated herein by reference.

Subject to exceptions shown on Exhibit A attached hereto and incorporated herein by reference.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

The true and actual consideration for this conveyance is: \$57,500.

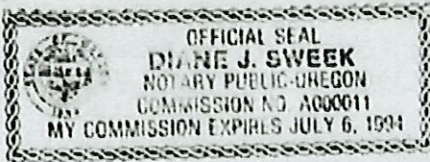
Until a change is requested, all tax statements are to be sent to the following address: Duane D. Daniels and Laura K. Breeze GENERAL DELIVERY, DAYVILLE, OR 97825.

Dated this 10th day of MARCH, 1993.

Oral A. Chaney

STATE OF OREGON, County of Grant)ss.

The foregoing instrument was acknowledged before me this 10th day of MARCH, 1993, by Oral A. Chaney.



[Signature]
Notary Public for Oregon
My Commission Expires: 7/6/94

After recording return to:

Land Title Co.
John Day OR 97845

10979 13-28(67)

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10979, 13-28(67)

EXHIBIT A

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LEGAL DESCRIPTION

Township 13 South, Range 31 East, Willamette Meridian, Grant County, Oregon:
Section 8: A tract of land situated in the SW1/4 described as follows:
Beginning at a point which is 1362.30 feet South and 1939.81 feet East of the
West 1/4 corner of said Sec. 8;
thence S. 1°46'45" W., 727.36 feet;
thence N. 88°30'10" W., 159.62 feet;
thence S. 0°27'00" W., 130.16 feet;
thence N. 88°30'10" W., 517.84 feet;
thence N. 0°27'00" E., 857.64 feet;
thence S. 88°30'10" E., 694.83 feet to the point of beginning.

ALSO, an access road easement in common for the purpose of ingress and egress to the above described tract of land, said easement being 30.0 feet in width, 15.0 feet on each side of the following described centerline:

Beginning at a point on the Northerly right of way line of U.S. Highway 26, said point being 2913.34 feet South and 1793.56 feet East of the West 1/4 corner of said Sec. 8; said point also being 60.00 feet Northerly of, when measured at right angles to, Engineer's centerline station 661+55.73;
thence N. 2°42' E., 94.0 feet;
thence N. 8°00' W., 59.0 feet;
thence N. 17°43' W., 80.0 feet;
thence N. 27°50' W., 137.0 feet;
thence N. 37°22' E., 136.0 feet;
thence N. 19°39' E., 69.0 feet;
thence N. 4°18' E., 70.0 feet;
thence N. 6°05' W., 236.20 feet to a point on the Southerly boundary of the tract of land first herein described and the terminus of this easement.
All according to Map of Survey No. 549 as filed in the Office of the Grant County Surveyor.
(Tax Acct. 16-2 13-28 1002; 06197)

SUBJECT TO AND EXCEPTING:

1. Any improvement located upon the insured property which is described or defined as a mobile home under the provisions of Chapters 803 and 820, ORS, and is subject to registration as provided therein.
2. Rights of the public in streets, roads and highways.
3. Exception, including the terms and provisions thereof, contained in Patent from the United States of America, recorded Dec. 15, 1903 in Deed Book V, Page 332.
4. Reservation, including the terms and provisions thereof, in deed from The Federal Land Bank of Spokane, recorded February 8, 1946 in Deed Book 48, Page 278.
5. An easement, including the terms and provisions thereof, to California-Pacific Utilities Company, recorded Dec. 17, 1946, in Deed Book 49, Page 242, Records of Grant County, Oregon.
6. An easement, including the terms and provisions thereof, to California-Pacific Utilities Company, recorded May 26, 1971 in Deed Book 106, Page 21.

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7. Covenants, burdens and restrictions, with certain limited access granted, including the terms and provisions thereof, as shown in Deeds and Indentures to the State of Oregon, by and through its State Highway Commission, as follows:
 - (a) Warranty Deed dated Aug. 3, 1953, recorded Aug. 11, 1953 on Deed Book 68, Page 288.
 - (b) Quitclaim Deed dated Nov. 22, 1954, recorded Nov. 29, 1954 in Deed Book 71, Page 228.
 - (c) Indenture dated Oct. 2, 1963, recorded Dec. 10, 1963 in Deed Book 89, Page 622.
 - (d) Indenture of Access dated April 20, 1965, recorded April 30, 1965 in Deed Book 92, Page 520.
8. Easement appurtenant, including the terms and provisions thereof, in deed to Wallace Hudspeth, et ux, recorded Jan. 18, 1966 in Deed Book 94, Page 131.
9. An easement, including the terms and provisions thereof, to California-Pacific Utilities Company, a corp., recorded December 6, 1978 in Deed Book 120, Page 95.
10. Easement, including the terms and provisions thereof, to Donald H. Metz and Rose M. Metz, husband and wife, recorded Nov. 9, 1984, in Deed Book 130, Page 973.
11. Reservation, including the terms and provisions thereof, in deed from James D. MacKenzie and Carole I. MacKenzie, husband and wife, recorded Nov. 28, 1984 in Deed Book 131, Page 68.
12. Boundary line discrepancy on the North line of the subject property as disclosed by Map of Survey No. 549 filed in the office of the Grant County Surveyor.

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INSTRUMENT NO. _____ REF. NO. 75810-75820
 FILED FOR RECORD 10 DAY OF March 1985
 RECORD OF Deeds TIME 1:33 AM-PM 3 PGS.
 WATHY MCKINNON BY Lannie Lawrence
 GRANT COUNTY CLERK _____ DEPUTY

Oregon Water Resources Department
Water Availability Analysis

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Water Availability Analysis

JOHN DAY R > COLUMBIA R - AB S FK JOHN DAY R
JOHN DAY BASIN

Water Availability as of 4/6/2021

Watershed ID #: 212 ([Map](#))

Date: 4/6/2021

Exceedance Level:

Time: 10:47 AM

[Water Availability](#)

[Limiting Watersheds](#)

[Complete Water Availability Analysis](#)

Water Availability

Select any Watershed for Details

Nesting Watershed Order	Stream Name ID #	Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Sto												
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
Select 1	209 JOHN DAY R> COLUMBIA R- AT MOUTH	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes
Select 2	210 JOHN DAY R> COLUMBIA R- AB HEIDTMANN CAN	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes
Select 3	211 JOHN DAY R> COLUMBIA R- AB N FK JOHN DAY R	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes
Select 4	212 JOHN DAY R> COLUMBIA R- AB S FK JOHN DAY R	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes

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Water Availability Analysis Detailed Reports

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JOHN DAY BASIN

Water Availability as of 4/6/2021

Watershed ID #: 212 ([Map](#))
Date: 4/6/2021

Exceedance Level:
Time: 10:47 AM

Water Availability Calculation	Consumptive Uses and Storages	Instream Flow Requirements	Reservations
Water Rights		Watershed Characteristics	

Water Availability Calculation

Monthly Streamflow in Cubic Feet per Second
Annual Volume at 50% Exceedance in Acre-Feet

Month	Natural Stream Flow	Consumptive Uses and Storages	Expected Stream Flow	Reserved Stream Flow	Instream Flow Requirement	Net Water Available
JAN	229.00	5.79	223.00	0.00	80.00	143.00
FEB	346.00	6.22	340.00	0.00	118.00	222.00
MAR	493.00	6.64	486.00	0.00	118.00	368.00
APR	705.00	32.70	672.00	0.00	118.00	554.00
MAY	727.00	64.90	662.00	0.00	118.00	544.00
JUN	512.00	85.90	426.00	0.00	80.00	346.00
JUL	195.00	122.00	72.90	0.00	50.00	22.90
AUG	98.80	95.90	2.90	0.00	30.00	-27.10
SEP	77.70	65.30	12.40	0.00	30.00	-17.60
OCT	144.00	27.30	117.00	0.00	50.00	66.70
NOV	163.00	5.43	158.00	0.00	80.00	77.60
DEC	207.00	5.58	201.00	0.00	80.00	121.00
ANN	235,000.00	31,800.00	203,000.00	0.00	57,300.00	149,000.00

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HUGHES Hailey D * WRD

From: CHARETTE Stephan R * ODFW
Sent: Wednesday, May 26, 2021 9:27 AM
To: MAXWELL Aaron N * ODFW; HUGHES Hailey D * WRD
Cc: FAUCERA Danette L * ODFW
Subject: RE: Daniels/Breeze Wiley Creek

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As Aaron mentioned, the first person to approach for a waiver is Greg Apke, as that falls under the passage waiver/exemption process through his department.

Stephan Charette

Oregon Department of Fish and Wildlife

John Day District Fish Biologist

PO Box 9, John Day, OR 97845

Office: 541-575-1167 ext. 226

My email address has recently changed to: Stephan.r.charette@odfw.oregon.gov

From: MAXWELL Aaron N * ODFW <Aaron.N.MAXWELL@odfw.oregon.gov>
Sent: Monday, May 24, 2021 12:35 PM
To: HUGHES Hailey D * WRD <hailey.d.hughes@oregon.gov>
Cc: FAUCERA Danette L * ODFW <Danette.L.FAUCERA@odfw.oregon.gov>; CHARETTE Stephan R * ODFW <Stephan.R.CHARETTE@odfw.oregon.gov>
Subject: RE: Daniels/Breeze Wiley Creek

Good question. Steph would be best direct you in that process, but Greg Apke at our Salem office is the Fish Passage Program Lead and can answer any questions you might have.

Greg Apke

ODFW, Statewide Fish Passage Program Leader

503-947-6228 (wk)

503-931-4361 (cell)

greg.d.apke@odfw.oregon.gov

From: HUGHES Hailey D * WRD <hailey.d.hughes@oregon.gov>
Sent: Monday, May 24, 2021 12:28 PM
To: MAXWELL Aaron N * ODFW <Aaron.N.MAXWELL@odfw.oregon.gov>
Cc: FAUCERA Danette L * ODFW <Danette.L.FAUCERA@odfw.oregon.gov>; CHARETTE Stephan R * ODFW <Stephan.R.CHARETTE@odfw.oregon.gov>
Subject: RE: Daniels/Breeze Wiley Creek

Thank you. IF, a waiver is needed who should I send or refer them to?

[Hailey Hughes](#)

Assistant Watermaster, District 4

201 S Humbolt St, Ste 180 Canyon City, OR 97820

Phone 541-575-0119 | Cell Phone 541-620-1972



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From: MAXWELL Aaron N * ODFW
Sent: Monday, May 24, 2021 12:27 PM
To: HUGHES Hailey D * WRD
Cc: FAUCERA Danette L * ODFW; CHARETTE Stephan R * ODFW
Subject: RE: Daniels/Breeze Wiley Creek

Hi Hailey-

Please see attached ODFW review of the Wiley Creek alternate reservoir application. Fish passage will need to be addressed, though it may be possible to get a fish passage waiver or exemption. Please let me know if you have any questions.

Thanks,

Aaron Maxwell
East Region Hydropower and Water Rights Coordinator
Oregon Department of Fish and Wildlife
65495 Alder Slope Road Enterprise, OR 97828
NEW EMAIL! Aaron.N.MAXWELL@odfw.oregon.gov
Office: 541-426-3279
Cell: 541-263-0647 (preferred)

From: FAUCERA Danette L * ODFW <Danette.L.FAUCERA@odfw.oregon.gov>
Sent: Monday, May 17, 2021 12:01 PM
To: HUGHES Hailey D * WRD <hailey.d.hughes@oregon.gov>; FAUCERA Danette L (Danette.L.Faucera@state.or.us) <Danette.L.Faucera@state.or.us>
Cc: JULSRUD Eric W * WRD <Eric.W.Julsrud@oregon.gov>; MAXWELL Aaron N * ODFW <Aaron.N.MAXWELL@odfw.oregon.gov>
Subject: RE: Daniels/Breeze Wiley Creek

Aaron Maxwell (cc'ed here) is now handling water right reviews, including Alternate Reservoirs, for ODFW's East Region. Applications can go straight to him, preferably electronically. I'm working on setting up a generic email account for our East and West Regions for Alt Res submittals, but that is not yet completed.

Steph did forward this one on to me, and Aaron and I have been working on it together. I believe the review is close to being finalized, and Aaron was going to reach out to see if you wanted it back or if we should send it directly to the applicant.

Also, it is helpful for the applicant to know that ODFW's review goes beyond screening and passage requirements. The ODFW assessment includes 1) biological flow needs for fish (both quantity and quality) that may (is likely to) result in a different outcome than WRD's assessment of water availability for allocation purposes; 2) a consultation with DEQ on water quality impacts relevant to fishery resources; and 3) a look at other ecological impacts. We have also stated in the newest Alt Res guidance (I think it made it in there during the last update) that we may take up to 45 days to complete our review given the complexity of the review and other workload issues. I'd love this message to be coming from WRD

in the early conversations to alleviate any surprises, and have been working on some talking points for both agencies to use.

Thanks!

Danette

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****note new email address: danette.l.faucera@odfw.oregon.gov****

**Danette Faucera
Water Policy Coordinator
Oregon Department of Fish and Wildlife
(503) 947-6092
4034 Fairview Industrial Drive SE
Salem, OR 97302**

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: HUGHES Hailey D * WRD <hailey.d.hughes@oregon.gov>
Sent: Monday, May 17, 2021 11:39 AM
To: FAUCERA Danette L (Danette.L.Faucera@state.or.us) <Danette.L.Faucera@state.or.us>
Cc: JULSRUD Eric W * WRD <Eric.W.Julsrud@oregon.gov>
Subject: FW: Daniels/Breeze Wiley Creek

Good Morning,

Below is an previous email for an alternate reservoir application we assisted a landowner with back in April following a site visit with Steph Charrette and our office on Wiley Creek , it is waiting for the ODFW review component as it is required as part of the application up front. The attachment is of the application minus ODFW review. Can you let me know what the preferred method is for these types of applications when a review is needed and how you would like to receive the requests? The landowner has been contacting our office for status update on their application and we are unable to advise them to submit the application without the review.

Thank you so much for your assistance on this and please feel free to contact us if you have any questions.

Hailey Hughes

Assistant Watermaster, District 4
201 S Humbolt St, Ste 180 Canyon City, OR 97820
Phone 541-575-0119 | Cell Phone 541-620-1972



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From: HUGHES Hailey D * WRD
Sent: Tuesday, April 6, 2021 1:03 PM
To: CHARETTE Stephan R
Subject: Daniels/Breeze Wiley Creek

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Steph,

Please find attached the application for Duane Daniels and Laura Breeze. This is the small in channel structure on Wiley Creek. I have attached their application which should be fillable so the ODFW portion can be completed.

Let me know if you have any questions. Thank you.

[Hailey Hughes](#)

Assistant Watermaster, District 4
201 S Humbolt St, Ste 180 Canyon City, OR 97820
Phone 541-575-0119 | Cell Phone 541-620-1972



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Application Completeness Checklist

Applicants are encouraged to use this checklist before submitting a complete application to the Department.

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1. Landowner name, mailing address and telephone number provided
2. Application signed – All parties noted as applicants must sign the application
3. Source and tributary listed.
4. Reservoir Location. TRSQQ and tax lot provided.
5. Dam height indicated, if applicable
6. Property ownership completed
7. If applicant does not own all the land, is the affected landowner's name and mailing address listed?
8. Environmental impact section completed?
9. **Completed Watermaster review sheet**, signed and dated. Note: Must be completed within last 6 months.
 - Will the reservoir injure an existing water right? YES NO
 - If YES, can conditions be applied to mitigate injury? YES NO
If NO, return the application.
10. **Completed ODFW review sheet**, signed and dated. Note: Must be completed within last 6 months.
 - Will the reservoir pose a significant detrimental impact to an existing fishery resource? YES NO
 - If YES, can conditions be applied to mitigate the impact? YES NO N/A
If NO, return the application.
11. **Completed Land-Use Form** or receipt signed by the appropriate planning department official enclosed?
Note: Does the use on land-use form match the proposed use on the application? Must be completed within the last 12 months.
12. **Include a copy of a Legal Description** of all the property involved with this application. A copy of a deed, land sales contract, or title insurance to meet this requirement.
13. **Acceptable Map**. Note: Requirements set forth by the Commission; causes fatal flaw if not provided by the applicant.
 - Reservoir Location - noting Township, Range, Section, 1/4 1/4 and Tax Lot number(s)
 - Scale of the Map, even scale such as 1" = 400', 1" = 1000', or 1" = 1320'
 - Reference corner on map
 - North directional symbol
 - 1/4's clearly identified
 - Reservoir clearly identified **
 - Dam location identified, with measured distances from survey corner. If no dam, use coordinates to the center of reservoir.
 - If diverting water from a river or stream to a reservoir located off-channel, include measured distances from survey corner
14. **Fees:** Are the appropriate fees included? Use this fee calculator to determine the application fees:

https://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator/Permit_for_AltRes.aspx

Oregon Water Resources Department
Alternate Reservoir Application

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

Today's Date: Tuesday, July 6, 2021

Base Application Fee.		\$410.00
Proposed Dam Height in feet.	3.5	
Proposed Reservoir volume in Acre Feet.	1	\$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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