

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 KIRK GIUDICI		PHONE (HM)	
PHONE (WK)	CELL (541) 912-4585		FAX
ADDRESS 30366 FOX HOLLOW RD.			
CITY EUGENE	STATE OR	ZIP 97405	E-MAIL * KIRKGIUDICI@GMAIL.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.**

Applicant Signature

Print Name and Title if applicable

Date

Applicant Signature

Print Name and Title if applicable

Date

SECTION 2: SOURCE OF WATER AND LOCATION OF RESERVOIR

Reservoir name:	Cassidy #1				
Source*:	Run-off, seepage	Tributary:	Jackson Creek		
County:	Lane County				
Quantity:	15 Acre-Feet [length x width x depth / 43,560]				
Reservoir Location:	Township (N or S)	Range (E or W)	Section	Quarter-Quarter	Tax Lot #
	19S	4W	31	SWNE/SENE	400/401
Maximum Height of Dam:	9.5 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: 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:

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? 20+ years.

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

If YES, how much? miles.

Existing: Have you been working with other agencies? ☐ YES ☒ NO

Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in this project.

SECTION 6: WITHIN A DISTRICT

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

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

SECTION 7: DESCRIPTION

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

The pond captures natural run-off. An 18" culvert is installed as a means 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).

The dam is less than 10' tall and on the West side of the reservoir made of earth material. This application serves to reapply for a cancelled permit. The pond was constructed under permit R-14508 and is existing. No plans or drawings for the dam have been located.

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 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.

Land Use Information Form



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

NAME KIRK GIUDICI			PHONE (HM)		
PHONE (WK)		CELL (541) 912-4585		FAX	
ADDRESS 30366 FOX HOLLOW RD.					
CITY EUGENE		STATE OR	ZIP 97405	E-MAIL* KIRKGIUDICI@GMAIL.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:
19S	4W	31	SENW	400		☐ Diverted	☐ Conveyed	☒ Used	reservoir
			SWNE	401		☐ Diverted	☐ Conveyed	☒ Used	reservoir
						☐ Diverted	☐ Conveyed	☐ Used	
						☐ Diverted	☐ Conveyed	☐ Used	

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

Lane 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 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) Run-off/seepage

Estimated quantity of water needed: 15.0 ☐ 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:

The permit for a 20+ year old reservoir was cancelled due to an incomplete step. It is proposed to reapprove this reservoir location and continue storing water for multipurpose use.

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): LC 16.21(2)(1.4) & LC 16.21(3)(6.1)
- ☐ 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:	
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ 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.

This Zoning Determination only applies to the storage of water in the reservoirs. Future out-of-reservoir uses of the stored water will require additional zoning determinations to establish land use compatibility.

Name: Gareth Warr Title: LMD Technician

Signature: Gareth P. Warr Phone: 541-682-4655 Date: 8/6/21

Government Entity: Lane County Public Works

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.

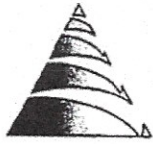


Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____



Evergreen
Land Title Company

After recording return to: (Name, Address, Zip)
Evergreen Land Title Company
260 Country Club Road, Ste. 120, Eugene, OR 97401

Until requested otherwise, send all tax statements to:
KIRK GIUDICI
30366 Fox Hollow Rd., Eugene, OR 97405

GRANTOR:

EDWARD ST. GEORGE, TRUSTEE OF THE EDWARD
ST. GEORGE REVOCABLE TRUST U/A DATED MAY 16,
2002
831 Cliff Dr. Ste. 100, Santa Barbara, CA 93109

GRANTEE:

KIRK GIUDICI
30366 Fox Hollow Rd., Eugene, OR 97405

ORDER NO. 20-21447
TAX ACCOUNT NO. 1386893 & 4199913
MAP NO. 19-04-31-00-00400

Lane County Clerk
Lane County Deeds & Records

2021-002855

01/15/2021 09:15:01 AM

RPR-DEED Cnt=1 Stn=40 CASHIER 01 3pages
\$15.00 \$11.00 \$10.00 \$61.00

\$97.00

Space Above Reserved for Recorder's Use

STATUTORY WARRANTY DEED

EDWARD ST. GEORGE, TRUSTEE OF THE EDWARD ST. GEORGE REVOCABLE TRUST U/A DATED MAY 16, 2002, Grantor, conveys and warrants to KIRK GIUDICI, Grantee, the following described real property free of encumbrances, except as specifically set forth herein, situated in Lane County, State of Oregon, to wit:

See Legal Description attached hereto as Exhibit "A"

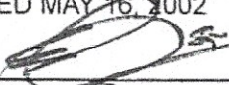
Subject to and excepting: Covenants, Conditions, Restrictions and Easements of record.

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.

The true and actual consideration for this conveyance is \$1,200,000.00 This Deed is being given by Grantor directly to Grantee as an integrated part of a 1031 exchange transaction.. (Here, comply with the requirements of ORS 93.030.)

Dated this January 13, 2021

EDWARD ST. GEORGE, TRUSTEE OF THE
EDWARD ST. GEORGE REVOCABLE TRUST U/A
DATED MAY 16, 2002



EDWARD ST. GEORGE
TRUSTEE

State of ~~Oregon~~
County of ~~Lane~~

CALIFORNIA *(slw)*
SANTA BARBARA *(slw)*

13th *(slw)*

The foregoing instrument was acknowledged before me this *14th* day of January, 2021, by EDWARD ST. GEORGE, TRUSTEE OF THE EDWARD ST. GEORGE REVOCABLE TRUST U/A DATED MAY 16, 2002

Susan L. Cervantes

Notary Public in and for the State of Oregon

My commission expires: *11-20-2021*

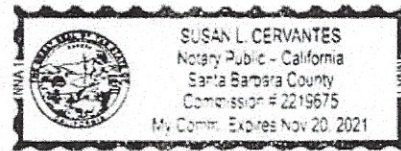


EXHIBIT "A"
LEGAL DESCRIPTION

PARCELS 1 & 2:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE NORTHEAST QUARTER, THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER SECTION 31, TOWNSHIP 19 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON.

ALSO: A TRACT OF LAND 30 FEET WIDE, 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE, TO-WIT: COMMENCING AT A POINT 15 FEET EAST OF THE INTERSECTION OF THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 19 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN WITH COUNTY ROAD NO. 1066, RUN THENCE DUE SOUTH ALONG THE FORTY LINE TO A POINT 15 FEET EAST OF THE INTERSECTION OF SAID FORTY LINE WITH JACKSON CREEK, THENCE IN A STRAIGHT LINE SOUTHEASTERLY FOLLOWING GENERALLY THE LINE OF JACKSON CREEK TO A POINT 720 FEET EAST OF THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 31.

PARCEL 3:

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, SAID TOWNSHIP AND RANGE IN LANE COUNTY, OREGON; EXCEPT THEREFROM THE EAST 990 FEET THEREOF.

ALSO: THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, SAID TOWNSHIP AND RANGE IN LANE COUNTY, OREGON; EXCEPT THEREFROM THE EAST 1155.0 FEET THEREOF.

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? ☐ YES ☒ NO Explain:		
2. Can conditions be applied to mitigate the potential injury to existing water rights? ☐ YES ☐ NO Explain:		
3. Is water available for the proposed reservoir? ☒ YES ☐ NO		
4. If yes, during what period? Beginning: 1/1 End: 12/31 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? ☐ YES ☒ NO		
Who:	Agency:	Date:
Who:	Agency:	Date:

Watermaster Name: JEANA EASTMAN

Watermaster Signature: Jeana Eastman Date: 8/9/21

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: Kirk GiudiciAddress: 30366 Fox Hollow Rd, Eugene, OR 97405Phone/Email: 541-912-4585; kirkgiudici@gmail.comReservoir Name: Cassidy ReservoirVolume (AF): 15.0 AFSource: Run-offBasin Name: Coyote Creek<Long Tom River☐ in-channelTwp Rng Sec QQ: 19S 4W 31☒ 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 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 July 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

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 (spring Chinook Salmon) and sensitive species (Coastal Cutthroat Trout, Pacific Lamprey, and Western Brook Lamprey) may be present in Coyote Creek and/or the Long Tom 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 Long Tom River above the mouth to protect public uses:

JAN	30 cfs	APR	30 cfs	JUL	30 cfs	OCT	30 cfs
FEB	30 cfs	MAY	30 cfs	AUG	30 cfs	NOV	30 cfs
MAR	30 cfs	JUN	30 cfs	SEP	30 cfs	DEC	30 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 July 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. The Upper Willamette Basin has approved TMDLs for stream temperature, mercury, and bacteria. The Upper Willamette Subbasin stream temperature TMDL specifically identifies the Long Tom watershed (which includes perennial and/ or fish bearing streams above and below Fern Ridge). The TMDL includes all surface waters that affect the temperatures of 303(d) listed water bodies because stream temperature is affected by heat loads from upstream as well as local sources. The proposed water use will diminish flows in the Long Tom watershed. Diminished flows will affect water quality impairments in Coyote Creek for temperature and dissolved oxygen and impairments in the Long Tom River for BioCriteria and temperature. During the summer, peak stream temperature and low stream flows create critical stream temperatures and heat loading conditions. In the Upper Willamette Subbasin, peak temperatures typically occur in mid-July through mid-August and often exceed the salmon and trout rearing and migration criterion. There is concern about nutrient, sediment, and temperature loading from reservoir releases during low flow and critical temperature months. Therefore, it is requested that 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.

Because of these reasons, the proposed use will diminish water quality, physical habitat, and/or alter the flow regime to which fish are naturally adapted, negatively affecting their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed use would result in a significant detrimental impact to an existing fishery resource 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)

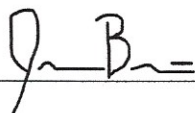
☒ See applicable conditions selected from "Menu of Conditions" on next page

Water is only available to support the quality and quantity of biologically necessary flows at the POD and/or downstream during November 1-June 30. 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 mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use will result in a significant detrimental impact 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.

Applicant Name: Kirk Giudici

ODFW Review

ODFW Signature: _____



Print Name: Jason Brandt

ODFW Title: SW Hydro Coordinator

Date: 9/10/21

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 June 30.
- ☐ **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 1-October 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.