

**CLAIM OF
BENEFICIAL USE
for Reservoir Permits by
CWRE's (not self-certified)**



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

RECEIVED
SEP 02 2022
OWRD

A fee of \$230 must accompany this form for permits with priority dates of July 9, 1987, or later.

Claims received without the correct fee of \$200 will be returned.

This COBU is for a permit with a priority date of November 20, 2000; the referenced \$230 fee is applicable and is included.

A separate form shall be completed for each permit.

In cases where a permit has been amended through the permit amendment process, a separate claim for the permit amendment is not required. Incorporate the permit amendment into the claim for the permit.

This form is subject to revision. **Begin each new claim** by checking for a new version of this form at:

<https://www.oregon.gov/OWRD/Forms/Pages/default.aspx>

The completion of this form is required by OAR 690-014-0100(1) and 690-014-0110(4).

Please type or print in dark ink. If this form is found to contain errors or omissions, it may be returned to you. **Every item must have a response.** If any requested information does not apply to the claim, insert "NA." **Do not delete or alter any section of this form unless directed by the form.** The Department may require the submittal of additional information from any water user or authorized agent.

"Section 8" of this form is intended to aid in the completion of this form and should not be submitted.

If you have questions regarding the completion of this form, please call 503-979-9103.

The Department has a program that allows it to enter into a voluntary agreement with an applicant for expedited services. Under such an agreement, the applicant pays the cost to hire additional staff that would not otherwise be available. This program means a certificate may be issued in about a month. For more information on this program see:

<https://www.oregon.gov/OWRD/programs/WaterRights/RA/Pages/default.aspx>

SECTION 1

GENERAL INFORMATION

1. File Information

APPLICATION # R-84588	PERMIT # (IF APPLICABLE) R-13073	PERMIT AMENDMENT # (IF APPLICABLE)
---------------------------------	--	------------------------------------

2. Property Owner (current owner information)

APPLICANT/BUSINESS NAME David and Bette McKibben Trust; David and Bette McKibben trustees		PHONE NO. 503-931-9724	ADDITIONAL CONTACT NO.
ADDRESS 3415 Ballard Road			
CITY Dallas	STATE OR	ZIP 97338	E-MAIL b2mck@aol.com

If the current property owner is not the permit holder of record, it is recommended that an assignment be filed with the Department. ***Each permit holder of record must sign this form.***

3. Permit holder of record (this may, or may not, be the current property owner)

PERMIT HOLDER OF RECORD David McKibben			
ADDRESS 3415 Ballard Road			RECEIVED SEP 02 2022
CITY Dallas	STATE OR	ZIP 97338	

OWRD

ADDITIONAL PERMIT HOLDER OF RECORD Brad Ford			
ADDRESS 3415 Ballard Road			
CITY Dallas	STATE OR	ZIP 97338	

4. Date of Site Inspection:

July 21, 2022

5. Person(s) interviewed and description of their association with the project:

NAME	DATE	ASSOCIATION WITH THE PROJECT
David and Bette McKibben	7/19/2022	Owners
Dustin McKibben	7/21/2022	Son of Owner; Former Field Hand

6. County

Polk

7. If any property described in the place of use of the permit final order is excluded from this report, identify the owner of record for that property (ORS 537.230(5)):

RECEIVED

OWNER OF RECORD N/A		
ADDRESS		
CITY	STATE	ZIP

Add additional tables for owners of record as needed

SECTION 2
SIGNATURES

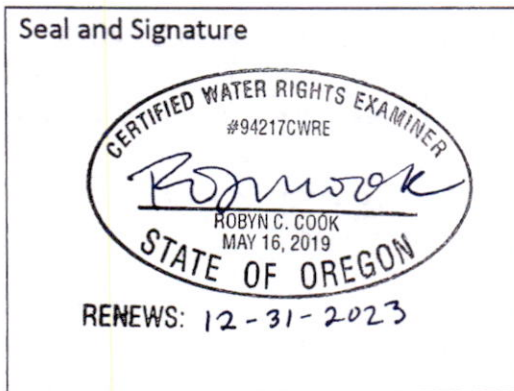
RECEIVED

SEP 02 2022

OWRD

CWRE Statement, Seal and Signature

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge.



CWRE NAME Robyn Cook		PHONE NO. 971-200-8505	ADDITIONAL CONTACT NO.
ADDRESS GSI Water Solutions, Inc., 55 SW Yamhill Street, Suite 300			
CITY Portland	STATE OR	ZIP 97201	E-MAIL rcook@gsiws.com

Permit Holder's of Record Signature or Acknowledgement

Each permit or transfer holder of record must sign this form in the space provided below.

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate.

SIGNATURE	PRINT OR TYPE NAME	TITLE	DATE
	David McKibben	owner	8-26-22
	Brad Ford	owner	8/26/22

**SECTION 3
CLAIM DESCRIPTION**

RECEIVED

SEP 02 2022

OWRD

1. Reservoir source and, if from surface water, the tributary:

RESERVOIR NAME OR NUMBER	SOURCE	TRIBUTARY
Mount Pisgah Reservoir	Middle Fork, Ash Creek	Ash Creek

2. Developed use(s), period of use, and acre foot (af) for each use:

RESERVOIR NAME OR NUMBER	USES	SEASON OR MONTHS WHEN WATER WAS APPROPRIATED FOR STORAGE	VOLUME STORED (AF)
Mount Pisgah Reservoir	Storage	November 1 to June 30	45
Total Quantity of Water Stored			45

3. Provide a general narrative description of the distribution works. This description must trace the water system from each point of diversion to the reservoir:

Water from the middle fork of Ash Creek flows into the reservoir where the water is stored for subsequent use by the permit holder.

Reminder: The map associated with this claim must identify the location of the point(s) of diversion, Donation Land Claims (DLC), Government Lots (GLot), and Quarter-Quarters (QQ).

4. Variations:

Was the use developed differently from what was authorized by the permit, permit amendment final order, or extension final order? If yes, describe below. **YES**

(e.g. "The permit allowed the development of three reservoirs. The permit holder only developed one of the reservoirs." or "The permit allowed for the storage of 9 acre feet of water. The reservoir was developed to hold 5.2 acre feet.")

Point of Diversion. The location of the center of the dam has been re-described slightly from the location stated on the permit to more accurately locate this feature. The discrepancy in the location description appears to be the result of placement of the PLSS grid on the application map; the relative location of the center of the dam with respect to the reservoir is unchanged from that shown on the application map.

5. Claim Summary:

RESERVOIR NAME OR #	MAXIMUM STORAGE AUTHORIZED BY PERMIT (AF)	MAXIMUM STORAGE DEVELOPED (AF)
Mount Pisgah Reservoir	45	45

SYSTEM DESCRIPTION

OWRD

NO

Are there multiple reservoirs?

If "YES" you will need to copy and complete Sections A through E for each reservoir.

Reservoir Name or Number this section describes (only needed if there is more than one):

[Empty text box for Reservoir Name or Number]

A. Reservoir Location

1. Is the reservoir on-channel?

YES

2. Provide dam outlet location and/or point of diversion(s).

TWP	RNG	MER	SEC	QQ	GLOT	DLC	MEASURED DISTANCES
8S	5W	WM	10	NW SE		69	Center of Dam: 640 feet South and 2010 feet West of the SE Corner DLC 44

Reminder: The map associated with this claim must identify Donation Land Claims (DLC), Government Lots (GLOT), and Quarter-Quarters (QQ).

B. Diversion and Delivery System Information

Provide the following information concerning the diversion and delivery system. Information provided must describe the equipment used to transport the water from the point(s) of diversion to the reservoir.

1. Is a pump used?

NO

If "NO" items 2 through item 5 may be deleted. Items 2 through 5 were deleted.

6. Additional notes or comments related to the system:

[Empty text box for Additional notes or comments related to the system]

C. Gravity Flow Pipe

(THE DEPARTMENT TYPICALLY USES THE HAZEN-WILLIAM'S FORMULA FOR A GRAVITY FLOW PIPE SYSTEM)

1. Does the system involve a gravity flow pipe?

NO

If "NO", items 2 through 4 relating to this section may be deleted. Items 2 through 4 were deleted.

D. Gravity Flow Canal or Ditch

(THE DEPARTMENT TYPICALLY USES MANNING'S FORMULA FOR CANALS AND DITCHES)

1. Is a gravity flow canal or ditch used to convey the water as part of the distribution system?

NO

If "NO", items 2 through 4 relating to this section may be deleted. Items 2 through 4 were deleted.

E. Reservoir

1. Does the reservoir require the submittal of as-built plans and specifications?

YES

RECEIVED

If "YES", answer item 2; items 3 through 8 relating to this section may be deleted. Items 3 through 8 were deleted

If "NO", skip items 2; answer items 3 through 8.

2. Complete the table:

HAVE THE DOCUMENTS BEEN SUBMITTED? YES OR NO	WHEN WERE THE DOCUMENTS SUBMITTED?	HAVE THEY BEEN APPROVED BY THE DEPARTMENT?	NUMBER OF ACRE FEET STORED
Yes	February 5, 2010	Yes	45

RECEIVED
SEP 02 2022
OWRD

**SECTION 5
CONDITIONS**

OWRD

All conditions contained in the permit, permit amendment, or any extension final order shall be addressed. Reports that do not address all performance related conditions will be returned.

1. Time Limits:

Permits and any extension final orders contain any or all of the following dates; the date when the actual construction work was to begin, the date when the construction was to be completed, and the date when the complete application of water to the proposed was to be completed. These dates may be referred to as ABC dates. Describe how the water user has complied with each of the development timelines established in the permit or extension final order:

	DATE FROM PERMIT	DATE ACCOMPLISHED*	DESCRIPTION OF ACTIONS TAKEN BY WATER USER TO COMPLY WITH THE TIME LIMITS
ISSUANCE DATE	8/23/2001		
BEGIN CONSTRUCTION (A)	Not specified	N/A	N/A
COMPLETE CONSTRUCTION (B)	Not specified	N/A	N/A
COMPLETE APPLICATION OF WATER (C)	10/1/2012	10/1/2012	The reservoir was filled, permit conditions were met, and water was put to beneficial use by the permit holder.

* must be within period between permit or any extension final order issuance and the date to completely apply water

2. Is there an extension final order(s)? YES

3. Measurement Conditions:

a. Does the permit, permit amendment, or any extension final order require the installation of a meter or approved measuring device? YES

If "NO", items b through f relating to this section may be deleted.

Reminder: If a meter or approved measuring device was required, the COBU map must indicate the location of the device in relation to the point of diversion or appropriation.

b. Has a meter been installed? NO

c. Meter Information N/A

POD/POA NAME OR #	MANUFACTURER	SERIAL #	CONDITION (WORKING OR NOT)	CURRENT METER READING	DATE INSTALLED

If a meter has been installed, items d through f relating to this section may be deleted.

d. If a meter has not been installed, has a suitable measuring device been installed and approved by the Department? YES

e. If "YES", provide a copy of the letter approving the device, if available. If the letter is not available provide the name and title of the Water Resources Department employee approving the measuring device, and the approximate date of the approval:

NAME	TITLE	APPROXIMATE DATE
Joel Plahn	NW Region Watermaster	Prior to December 6, 2012 (referenced in Extension of Time PFO, bullet #15)

f. Measurement Device Description

DEVICE DESCRIPTION	CONDITION (WORKING OR NOT)	DATE INSTALLED
Staff gauge	Working	October 1, 2012

4. Recording and reporting conditions

a. Is the water user required to report the water use to the Department? NO

If "NO", item b relating to this section may be deleted. Item b was deleted.

RECEIVED

5. Outlet Pipe

a. Is the water user required to install a minimum 8" outlet pipe/conduit? YES

If "NO", items b through c relating to this section may be deleted.

SEP 02 2022

OWRD

b. Has the outlet pipe been installed? YES

If "YES", items c relating to this section may be deleted. Item c was deleted.

6. Fish Screening

a. Are any points of diversion required to be screened to prevent fish from entering the point of diversion? NO

If "NO", items b through e relating to this section may be deleted. Items b through e were deleted.

Reminder: If fish screening devices were required, the COBU map must indicate their location in relation to the point of diversion.

7. By-pass Devices

a. Are any points of diversion required to have a by-pass device to prevent fish from entering the point of diversion? NO

If "NO", items b and c relating to this section may be deleted. Items b and c were deleted.

Reminder: If by-pass devices were required, the COBU map must indicate their location in relation to the point of diversion.

8. Other conditions required by permit, permit amendment final order, or extension final order

a. Was the water user required to restore the riparian area if it was disturbed? YES

b. Was a fishway required? NO

c. Was submittal of a letter from an engineer required prior to storage of water? YES

d. Was submittal of a water management and conservation plan required? NO

e. Other conditions? YES

If "YES" to any of the above, identify the condition and describe the water user's actions to comply with the condition(s):

8a. The water right holder is in compliance with this condition. This permit is for storage of water in a reservoir constructed on an intermittent stream that flows only during the rainy season of the year. A riparian area remains present around the perimeter of the reservoir during the time when the reservoir holds water, which includes the rainy season of the year when the original intermittent stream had flow.

8c. The water right holder is in compliance with this condition. The Department received a letter February 5, 2010 from the engineer of record. As-built plans are dated 5/12/2001.

8e. The use may be restricted if the quality of the source stream or downstream water decrease to the point that those water no longer meet existing state or federal water quality standards due to reduced flows. The water right holder is in compliance with this condition.

8e. The outlet gate shall be cycled at least once each year and shall be fully operational at all time. The water right holder is in compliance with this condition.

8e. Routine maintenance of the dam, its spillway and all appurtenant structures shall be performed as necessary to remove trees, brush, and debris, and to repair slumps, areas of erosion, or defective equipment. The water right holder is in compliance with this condition.

8e. The embankment, the resultant reservoir, and the emergency spillway, shall be constructed and maintained according to the approved plans and specification on file with the Oregon Water Resources Dam Safety program. Any significant change in the approved design prior to or during construction shall be documented by the project engineer in a letter to Dam Safety. All construction shall be performed under the supervision of a registered professional engineer licensed in Oregon. The permit holder is in compliance with this condition.

8e. No fill shall be placed until preparation of the foundation and the excavation of the core trench has been completed and examined in entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both. It is assumed that because the dam was constructed under the supervision of the design engineer that the core trench was approved by the engineer of record.

8e. No water shall be stored until the Water Resources Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications. If construction deviates from the approved design a set [of] reproducible asbuilt drawings, including a revised reservoir capacity graph or table, must accompany the engineer's written certification of completion. The permit holder is in compliance with this condition.

8e. The completed structure shall not be enlarged, modified, altered or reconfigured without the prior written approval of the Director of the Water Resources Department or the Director's authorized representative. Except for routine repair and maintenance, approved plans and specifications prepared by an Oregon licensed engineer are required for any enlargement, signification [sic] modification, alteration, or rehabilitation of the dam, spillway or its appurtenant structures. The permit holder is in compliance with this condition.

8e. Flashboards shall be removed from the emergency spillway no later than October 31st of each year not to be reinserted before the beginning of the irrigation season, which begins March 1st. The permit holder is in compliance with this condition.

**SECTION 6
ATTACHMENTS**

Provide a list of any additional documents you are attaching to this report:

ATTACHMENT NAME	DESCRIPTION
Attachment 1	Map
Attachment 2	Water Right Information
Attachment 3	Documentation

RECEIVED

SEP 02 2022

OWRD

RECEIVED

SEP 02 2022

OWRD

SECTION 7

CLAIM OF BENEFICIAL USE MAP

The Claim of Beneficial Use Map must be submitted with this claim. Claims submitted without the Claim of Beneficial Use map will be returned. The map shall be submitted on poly film at a scale of 1" = 1320 feet, 1" = 400 feet, or the original full-size scale of the county assessor map for the location.

Provide a general description of the survey method used to prepare the map. Examples of possible methods include, but are not limited to, a traverse survey, GPS, or the use of aerial photos. If the basis of the survey is an aerial photo, provide the source, date, series and the aerial photo identification number.

The reservoir was visited during the site inspection. The location of the dam (point of diversion) and the extent of the reservoir pool were located using an aerial photograph (April 15, 2021), a handheld GPS, and a field survey completed during the site inspection. The map was created using Geographic Information System (GIS) software and spatial datasets obtained from Polk County, ESRI, Oregon Geographic Information Council (OGIC), and United States Geological Survey. Additional data and information specific to the use water of under the water right described in this Claim of Beneficial Use report were obtained from the water right holder.

Map Checklist

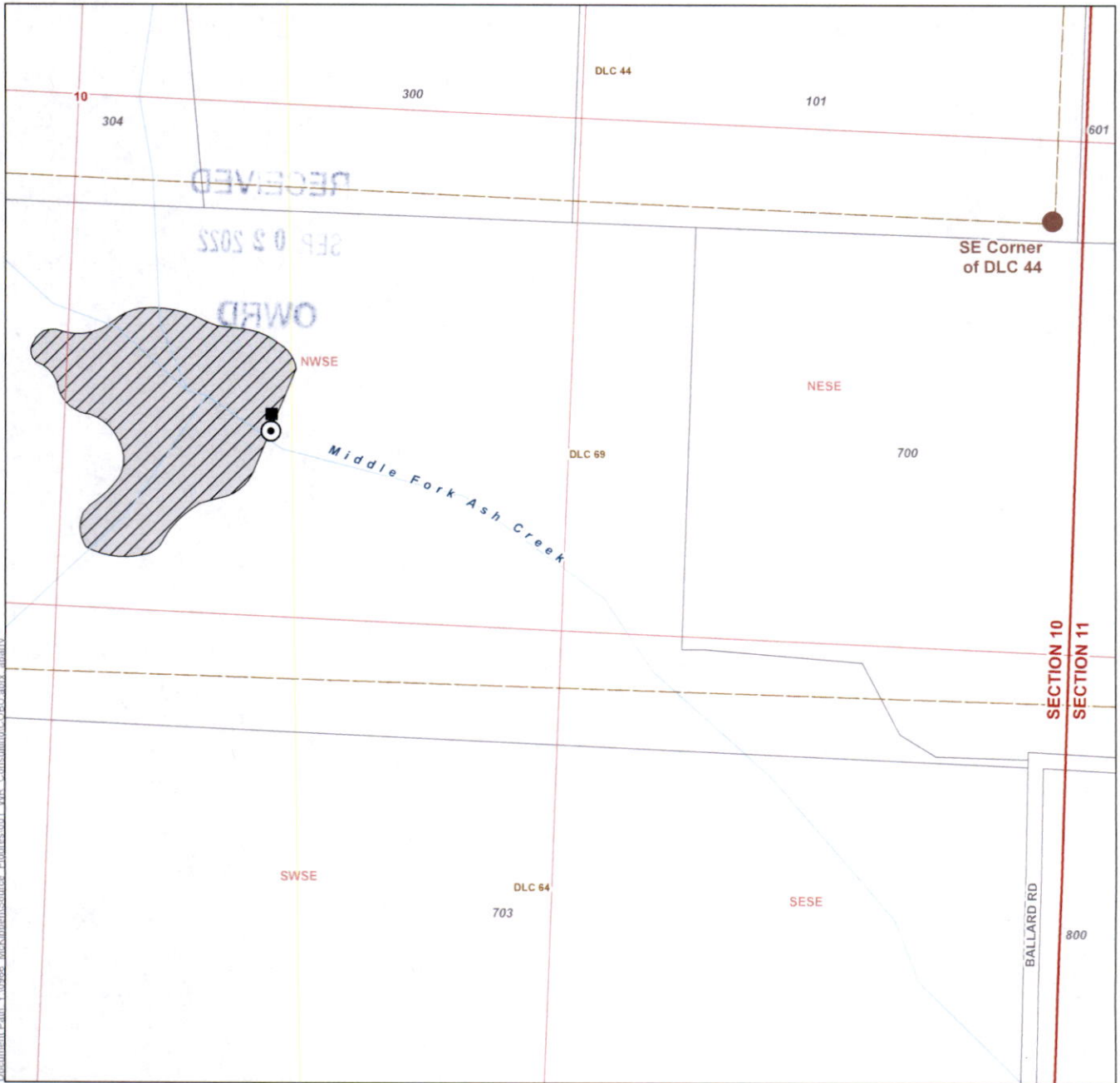
RECEIVED

SEP 02 2022

OWRD







Please be sure that the map you submit includes ALL the items listed below.
(Reminder: Incomplete maps and/or claims may be returned.)

- Map on polyester film.
- Appropriate scale (1" = 400 feet, 1" = 1320 feet, or the original full-size scale of the county assessor map)
- Township, Range, Section, Donation Land Claims, and Government Lots
- N/A If irrigation, number of acres irrigated within each projected Donation Land Claims, Government Lots, Quarter-Quarters
- N/A Locations of fish screens and/or fish by-pass devices in relationship to point of diversion
- Locations of meters and/or measuring devices in relationship to point of diversion
- Conveyance structures illustrated (pumps, reservoirs, pipelines, ditches, etc.)
- Point(s) of diversion or appropriation (illustrated and coordinates)
- Tax lot boundaries and numbers
- Source illustrated if surface water
- Disclaimer ("This map is not intended to provide legal dimensions or locations of property ownership lines")
- Application and permit number or transfer number
- North arrow
- Legend
- CWRE stamp and signature



Document Path: Y:\0986_McKibben\Source - Figures\001_WR_Configure\COBLA\axr_ahh\axr

LEGEND

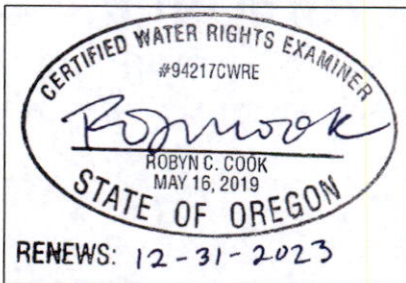
-  Center of Dam
-  Staff Gauge
-  Place of Use (POU)
-  Donation Land Claim (DLC)
-  Tax Lot
-  Watercourse

**Claim of Beneficial Use
in the Name of David McKibben and Lowell Ford
Place of Use/Point of Diversion Map**

Permit R-13073, Application R-84588

Township 8 South, Range 5 West (W.M.)

CERTIFIED WATER RIGHTS EXAMINER STAMP



RECEIVED

SEP 02 2022

OWRD

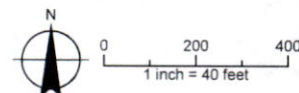
LOCATION DESCRIPTION

Center of Dam
Located 640 feet South and 2010 feet West from the SE corner of DLC 44, Township 8 South, Range 5 West (W.M.)

DISCLAIMER

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

Date: July 28, 2022
Data Sources: BLM, ESRI, OWRD, USGS, Polk County



RECEIVED

SEP 02 2022

5505 S 0 932

STATE OF OREGON

OWRD

COUNTY OF POLK

OWRD

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVID MCKIBBEN & LOWELL FORD
3415 BALLARD ROAD
DALLAS, OREGON 97338

(503) 931-3724

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-84588

SOURCE OF WATER: MIDDLE FORK ASH CREEK, A TRIBUTARY OF ASH CREEK

STORAGE FACILITY: MOUNT PISGAH RESERVOIR

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-84589, PERMIT 53746, FOR IRRIGATION OF 181.8 ACRES. TO BE MAINTAINED UNDER PERMIT 53746 FOR FISH AND WILDLIFE USE

MAXIMUM VOLUME: 45.0 ACRE-FEET PER YEAR

WATER MAY BE APPROPRIATED FOR STORAGE: NOVEMBER 1 THROUGH JUNE 30

DATE OF PRIORITY: NOVEMBER 20, 2000

The area submerged by the reservoir, when full, will be 5.2 acres and the maximum depth of water will be 18.0 feet. The maximum height of the dam shall not exceed 22.0 feet.

DAM LOCATION: NW 1/4 SE 1/4, SECTION 10, T8S, R5W, W.M.; 595 FEET SOUTH & 2095 FEET WEST FROM SE CORNER DLC 44

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

NW 1/4 SE 1/4
SECTION 10
TOWNSHIP 8 SOUTH, RANGE 5 WEST, W.M.

RECEIVED

SEP 02 2022

RECEIVED

SEP 02 2022 PAGE 2

Measurement, recording and reporting conditions:

OWRD

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

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.

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 outlet gate shall be cycled at least once each year and shall be fully operational at all times.

Routine maintenance of the dam, its spillway and all appurtenant structures shall be performed as necessary to remove trees, brush and debris, and to repair slumps, areas of erosion, or defective equipment.

The embankment, the resultant reservoir, and the emergency spillway, shall be constructed and maintained according to the approved plans and specifications on file with the Oregon Water Resources Dam Safety program. Any significant change in the approved design prior to or during construction shall be documented by the project engineer in a letter to Dam Safety. All construction shall be performed under the supervision of a registered professional engineer licensed in Oregon.

No fill shall be placed until preparation of the foundation and the excavation of the core trench has been completed and examined in

OWRD

PAGE 3

entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both.

No water shall be stored until the Water Resources Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications. If construction deviates from the approved design a set reproducible asbuilt drawings, including a revised reservoir capacity graph or table, must accompany the engineer's written certification of completion.

The completed structure shall not be enlarged, modified, altered or reconfigured without the prior written approval of the Director of the Water Resources Department or the Director's authorized representative. Except for routine repair and maintenance, approved plans and specifications prepared by an Oregon licensed engineer are required for any enlargement, signification modification, alteration, or rehabilitation of the dam, spillway or its appurtenant structures.

Flashboards shall be removed from the emergency spillway no later than October 31st of each year not to be reinserted before the beginning of the irrigation season, which begins March 1st.

STANDARD CONDITIONS

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

RECEIVED

SEP 02 2022

OWRD

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2005. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued August 23, 2001

Dwight F. Cleary
Paul R. Cleary, Director
Water Resources Department

RECEIVED

SEP 02 2022

OWRD

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

RECEIVED
SEP 02 2022
OWRD

RECEIVED
SEP 02 2022
OWRD

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
Application – Application for Extension of Time
Agent – Boatwright Engineering, Inc.
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
AF – acre-feet

AUTHORITY

Generally, see **ORS 537.230** and **OAR Chapter 690 Division 315**.

ORS 537.230(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under **ORS 539.010(5)** and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

FINDINGS OF FACT

Background

1. On August 23, 2001 Permit R-13073 was issued by the Department. The permit authorizes the storage of up to 45.0 AF of water in Mount Pisgah Reservoir from the Middle Fork Ash Creek, a tributary of Ash Creek, to be appropriated under Application S-84589, Permit 53746, for irrigation of 181.8 acres, and to be maintained under Permit 53746 for fish and wildlife use. The permit specified the reservoir shall be filled and complete application of the stored water to the use was to be made on or before October 1, 2005.

2. On February 5, 2010, the Department received a letter from the engineer of record, stating construction of the dam and storage reservoir was completed.
3. On April 27, 2015, the Department received authorization from permit holder, Lowell Ford, authorizing Boatwright Engineering, Inc. (Agent) to act as an agent for Permit R-13073.
4. On October 26, 2016, the Agent for David McKibben and Lowell Ford submitted an "Application for Extension of Time" to the Department, requesting the time to apply water to full beneficial use under the terms of Permit R-13073 be extended from October 1, 2005, to October 1, 2012. This is the first permit extension requested for Permit R-13073.
5. On November 1, 2016, notification of the Application for Extension of Time for Permit R-13073 was published in the Department's Public Notice. No public comments were received regarding the extension application.
6. On November 29, 2016, the permit holder submitted additional information to supplement their Application for an Extension of Time. The additional information addressed compliance with a permit condition.

Review Criteria [OAR 690-315-0040]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230², 537.248³ and/or 539.010(5)⁴.

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

7. On October 26, 2016, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

8. Construction of the water system began prior to permit issuance. The permit holder states, construction of Mount Pisgah Reservoir began September 15, 2001.
9. On February 5, 2010, photographic evidence was submitted to the Department, and is kept on file in the Department's Dam Safety section, file number M-7. The photographic evidence illustrates that construction of Mount Pisgah Reservoir began in 2001. The Department has determined the permit holder has satisfied the condition requiring beginning of construction of Mount Pisgah Reservoir.

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

RECEIVED
SEP 02 2012
OWRD

RECEIVED
SEP 02 2012
OWRD

RECEIVED
SEP 02 2012
OWRD

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

10. As of October 26, 2016, the permit holder states the remaining work to be completed consists of complying with all permit conditions, and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2012, to comply with permit conditions and to accomplish the application of water to beneficial use under the terms and conditions of Permit R-13073 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

Amount of Construction [OAR 690-315-0040(3)(a)]

11. The application states work was accomplished within the time allowed in the permit as follows:
12. Work was accomplished during the original development time frame under Permit R-13073. The work consisted of constructing the Mount Pisgah Reservoir dam, 8" outlet gate, trickle tube, and splashboard spillway.
13. Since October 1, 2005, the permit holder has installed a staff gage as required under R-13073.

The Department has determined that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence from the appropriator towards the complete application of water to a beneficial use.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

14. The Department has considered the permit holder's compliance with conditions; staff gage installed after the specified completion date.
15. On October 1, 2012, a staff gage was installed in Mount Pisgah Reservoir.

RECEIVED

SEP 02 2022

OWRD

RECEIVED

SEP 02 2022

OWRD

The Department has determined that this extension will allow the staff gage installed after October 1, 2005 to satisfy compliance of the condition of "Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director," in an effort to make proof of beneficial use of the water as required by Permit R-13073.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

16. The application states a maximum volume of 45.0 AF of water has been stored in Mount Pisgah Reservoir, from the Middle Fork Ash Creek, a tributary of Ash Creek, to be appropriated under Application S-84589, Permit 53746, for irrigation of 181.8 acres.

Beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2005.

Financial Investments to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]

17. The applications states the permit holder has invested about \$59,756, which is the total projected cost for complete development of this project.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

18. The Department has found good faith of the appropriator under Permit R-13073.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].

19. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit R-13073; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an application for a new water right is submitted.
20. Current Water Availability Analysis for the Willamette River, (Tributary to Columbia River) at the mouth (watershed ID 783), shows that water is available at the 50% exceedance level.

21. The point of diversion is located on Middle Fork Ash Creek, a tributary of Ash Creek, and is located within a Withdrawn Area.
22. Ash Creek is not located within or above a state or federal scenic waterway.
23. Ash Creek is located within an area ranked low" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.
24. The point of diversion is not in a location listed by the Department of Environmental Quality as a water quality limited stream.

Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].

25. No other economic interests dependent on completion of the project have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].

26. No other factors relevant to the determination of the market and present demand for water and power have been identified.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

27. Use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

28. Delay in the development of this project was not caused by any other governmental requirements.

Unforeseen Events [OAR 690-315-0040(2)(h)]

29. The application did not identify unforeseen events.

Denial of an Extension Would Result in Undue Hardship [OAR 690-315-0040(2)(i)]

30. The application did not state if a denial of the extension would result in undue hardship.

CONCLUSIONS OF LAW

1. The Applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. The Applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
3. The Applicant complied with timeline requirements to begin construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

RECEIVED
SEP 02 2022
OWRD

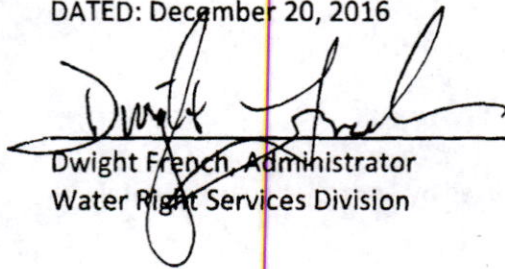
4. Based on Finding of Facts 8 through 18, full application of water to beneficial use can be accomplished by October 1, 2012⁵, as required by OAR 690-315-0040(1)(c).
5. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to apply water to beneficial use under Permit R-13073 from October 1, 2005 to October 1, 2012.

DATED: December 20, 2016



Dwight French, Administrator
Water Right Services Division

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

RECEIVED

SEP 02 2022

OWRD

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **February 3, 2017**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

⁵Pursuant to ORS 537.230(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

RECEIVED

SEP 02 2022

RECEIVED

SEP 02 2022

OWRD

2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.

3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

-
- If you have any questions about statements contained in this document, please contact Corey Courchane at (503) 986-0825.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
- Fax: 503-986-0901
-

RECEIVED

SEP 02 2022

OWRD

RECEIVED

SEP 02 2022

OWRD

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit R-13073, Water Right Application R-84588) FINAL ORDER
in the name of David McKibben and Lowell Ford)

Permit Information

Application: R-84588
Permit: R-13073
Basin: Middle Willamette / Watermaster District 16
Date of Priority: November 20, 2000
Source of Water: Middle Fork Ash Creek, a tributary of Ash Creek
Storage Facility: Mount Pisgah Reservoir
Purpose or Use: To be appropriated under Application S-84589, Permit 53746, for irrigation of 181.8 acres. To be maintained under Permit 53746 for fish and wildlife use
Maximum Volume: 45.0 Acre-Feet (AF) per year

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

Appeal Rights

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

Permit R-13073 was issued by the Department on August 23, 2001. The permit specified the reservoir shall be filled and complete application of the stored water to the use by October 1, 2005. On October 26, 2016, David McKibben and Lowell Ford submitted an Application for Extension of Time for Permit R-13073. In accordance with OAR 690-315-0050(2), on December 20, 2016, the Department issued a Proposed Final Order proposing to extend the time to apply

water to full beneficial use from October 1, 2005 to October 1, 2012. The protest period closed February 3, 2017, in accordance with OAR 690-315-0060(1). No protest was filed.

FINDINGS OF FACT

The Department adopts and incorporates by reference the findings in the Proposed Final Order dated December 20, 2016.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to no additional conditions.

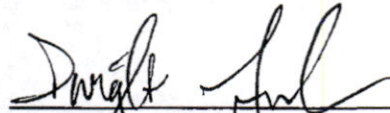
CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

ORDER

The extension of time for Application R-84588, Permit R-13073, therefore, is approved. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2005 to October 1, 2012.

DATED: February 10, 2017



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

RECEIVED

SEP 02 2022

OWRD

-
- If you have any questions about statements contained in this document, please contact Permit Extension Specialist at (503) 986-0825.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
-

OMHD



July 2000

RECEIVED

SEP 02 2022

OWRD



February 2003

RECEIVED

SEP 02 2022

OWRD



August 2004

RECEIVED

SEP 02 2022

OWRD



Oregon

John A. Kitzhaber, M.D., Governor

June 7, 2001

PC02
DAVID MCKIBBEN
3415 BALLARD ROAD
DALLAS OR 97304

PC02
LOWELL FORD
2450 WALLACE ROAD NW
SALEM OR 97304

Re: State Permit Number 23825-NSP
Proposed dam on Middle Fork of Ash Creek

Dear Mr. McKibben and Mr. Ford:

We have received the revised drawings for the above referenced project. Based on our review and clarification provided by Martin Boatwright, the proposed project will result in less than 50 cubic yards of removal in wetlands. Per Oregon Administrative Rules 141-085-0020 (Exemptions) (2), Filling for the purpose of constructing dams for which permits or certificates have been or shall be issued under ORS 543.010 to 543.620 are exempt from permit requirements of the Removal-Fill Law.

Therefore, no state permit is required for the proposed project as revised. You may still need a permit from the US Army Corps of Engineers. Your contact at the Corps is Dan Gresham (503) 808-4393).

Please contact me at (503) 378-3805, extension 226 if you have any questions regarding this letter.

Thank you,

Patti E. Caswell
Natural Resource Coordinator

PEC/tn

FO\AttachmentAwestLAS\NSP No State Permit Required LAS\23825-NSP.doc

Enclosure

- c. Gary Galovich, Oregon Dept. of Fish and Wildlife
Dan Gresham, Corps of Engineers
Tom Melville, Dept. of Environmental Quality
John Marshall, US Fish and Wildlife Service

Division of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 378-3805
FAX (503) 378-4844
<http://statelands.dsl.state.or.us>

State Land Board

John A. Kitzhaber
Governor

Bill Bradbury
Secretary of State

Randall Edwards
State Treasurer

RECEIVED

SEP 02 2002

OWRD

June 4, 2001

RECEIVED

SEP 02 2002

OWRD

Patty Caswell
Division of State Lands
775 Summer Street NE
Salem, OR 97301-1279

**RE: REVISED JOINT REMOVAL/FILL PERMIT APPLICATION FOR DAVID
McKIBBEN PROPERTY LOCATED AT T8S, R5W, SECTION 10, TAX LOT 700,
POLK COUNTY, OREGON**

Dear Ms. Caswell:

Enclosed is a copy of the revised Joint Removal/Fill Permit Application for Mr. David McKibben as per your letter dated April 24, 2001

After we receiving your letter and taking the time to carefully review its contents in the interest of time, we (Boatwright Engineering Inc., David McKibben, Lowell Ford and myself elected to review the entire project, from the design specifications for the proposed dam to our mitigation options as were described within your letter.

During our review of the entire including the engineering specifications we realized that through the use of the design as per the drawings within the water resources permit application, therefore we will only be removing a total of 41.13 cubic yards of material from Waters of the State/Freshwater Wetlands. In accordance with ORS 537, 539 or 543-010 to 543.620, if the project is designed by an engineer to meet Oregon Water Resources Department (OWRD) specifications and they approved the design the project would therefore be exempt from the requirements of the removal/fill law ORS 196.800-196.990

We would like to thank you for all of your efforts in assisting us with the regulatory issues surrounding this project. We would appreciate a letter stating that there will be no state permit needed as soon as you have received confirmation from the OWRD regarding the formal approval of the design and application currently pending for the above referenced project

OWRD

COPY FOR
DAVID

Existing Physical and Biological Character of the Wetland By Area and Type of Resource

The wetlands that will be impacted by the proposed development project are located in the north/central portion of the site within the stream channel and slope wetlands adjacent to the stream channel. A more detailed description of the locations of the stream channel and adjacent wetlands can be found in the enclosed wetland delineation map, Figure 3 *Wetland Delineation Site Plan*.

Resource Replacement and Mitigation

There is an excellent opportunity for the replacement of impacted wetlands below the proposed dam. The topography within this area would allow for the creation/restoration of areas of like emergent wetlands. Given the plant diversity within the area we are certain that the area below the dam will make an excellent functioning slope emergent wetland in a short time.

However, after receiving and reviewing the letter from DSL (Patty Caswell) dated April 24, 2001 (we) the engineer, the property owner and myself elected to review the entire project and discuss our options. It has been determined that this project is in accordance with the ORS 537, 539 or 543.010 to 543.620 is designed and is believed, will be approved by Oregon Water Resources Department (OWRD) (see enclosed OWRD information) and the fact that there will be less than 50 cubic yards (41.13 cubic yards) of material removed from waters of the state, therefore, will be exempt from the requirements of the Removal Fill Law ORS 196.800- 196.990.

OAR 141-85-020 (2), Exemptions to the removal/fill law, and ORS 537, 539 or 543.010 to 543.620

RECEIVED

SEP 02 2022

OWRD

Additional Information for Revised Joint Removal/Fill Application for the David McKibbens Application, Polk County, Oregon.

Block 1-3: Information supplied on application form

Block 4: Proposed project Purpose and Description

Project Purpose and Need:

Project Description:

Figures for this application are included in the attached site description (see the following list of figures). The proposed dam construction project will be to create water storage for irrigation during the summer months.

Fernwood Environmental Services, Inc., (FES) has completed and submitted a wetland delineation report for this site to the Division of State Lands (DSL) and the U.S. Army Corps of Engineers (COE.). Concurrence for this report has been received from DSL wetland staff in the form of a letter dated May 24, 2001. FES has enclosed a copy of this letter with this revised application packet. Any work to be completed within the proposed study area will be completed using all of the standard permit erosion control recommendations for a project such as this.

- | | |
|------------|---|
| Figure 1 | Vicinity Map |
| Figure 2 | NWI Map |
| Figure 3-A | Wetland Delineation Map |
| Figure 3-B | Project Cross Section |
| Figure 4 | Soils Map |
| Figure 4-B | Revised Project Drawings of
Wetland Impact Area Map (May 17, 2001) |

RECEIVED
SEP 02 2022
OWRD

RECEIVED

We will also continue our permit application efforts with Dan Gresham of the U S Army Corps of Engineers. In the event that you have any additional recommendations regarding this project please add them to the NSP letter so that we can address them during construction of the project. We will also be following all of the standard guidelines for erosion control measures during the construction phase of the project including the seeding of the disturbed area with native wetland grasses and plants which are native to this specific location.

Please feel free to contact me concerning any questions or any additional information regarding this proposed project at (503) 871-5793, Fax (503) 581-6887, E-mail (rosskotty@aol.com)

Sincerely,
FERNWOOD ENVIRONMENTAL SERVICES, INC.



Michael Rotsolk

RECEIVED

SEP 02 2022

OWRD

enc: Revised removal/fill application
Revised project drawings
Copy of ORS, Oregon Water Laws, Water Related Statutes

cc: Dan Gresham, Corps of Engineers
David McKibben, Property Owner
Lowell Ford

RECEIVED

SEP 02 2022

OWRD

Block 5: PROJECT IMPACTS AND ALTERNATIVES

Describe alternative sites and project designs that were considered to avoid impacts to the waterway or wetland.

Due to the changes in the agriculture/farming and ranching industry along with the continued need for water during the summer months the applicant has found it necessary to construct the proposed dam within the proposed location as the local zoning restrictions will allow. The application is for a location within a portion of T8S, R5W, Section 10, Tax Lot 700. The total area within the proposed project site including the area proposed to be flooded encompasses an area approximately 5 acres in size.

The site is located at 3415 Ballard Road, near the Dallas, Polk County, Oregon.

The wetlands/waters of the state (jurisdictional areas) that we are proposing to impact is located within the area adjacent to the Middle Fork of Ash Creek within tax lot 700, Polk County. This portion of Ash Creek intermittent stream flows in a southeasterly direction.

During the delineation study of the site, it was determined that most of the potentially jurisdictional areas within the proposed impact area are confined within the stream channel (bed & banks) and the slope/drainages surrounding the channel. The area therefore, receives its annual hydrology from stream flow and drainages/seeps from adjacent hillsides. The entire project area is confined within a small valley area with the topography climbing in elevation to the north, south and west. The stream itself is confined to a narrow cut channel with the exception of confluence the drainages that meet within the site.

The delineation report for this portion of the site has been concurred with (DSL) and Patty Caswell and Larry Devroy of DSL staff have been on site. Other agency representatives that have either been on site or have reviewed the plan or site include Steve Moser, Kathy Verble, Jennifer Goodridge all of DSL, Ken Hale and Les Batchelor of the Natural Resources Conservation Service, Andy Galager, soil scientist, Dan Gresham, regulatory branch of the U S Army Corps of Engineers, Gary Galovich of the Oregon Department of Fish and Wildlife, Martin Boatwright of Boatwright Engineering, Mark Fisher of US Fish and Wildlife, Oregon Water Resources Department, Polk County Planning Department, Jackie Hastings of the Rickreall Watershed Council, The president of the Oregon Chapter of the National Turkey Federation and Ducks Unlimited. The delineation report for this site was submitted along with the original application to both the Division of State Lands and the U S Army Corps of Engineers (COE).

Some of the areas within the site that were determined to be jurisdictional are proposed to be impacted/flooded following the construction of the proposed dam. This area includes a total of 1.56 acres of fresh water wetlands/waters of the state and 0.31 acres of wetlands associated with the dam construction.

OWRD

The fact that the proposed impact area involves a small stream channel and associated wetlands located within the valley which is bordered on both the north and south sides by hills would make avoiding the area with the flooding from the dam impossible. This location was also selected as being the most practical location within the property, in part due to such reasons as that it was determined that this location would limit the wetland impacts compared to alternative locations. So after extensive research and consulting numerous agencies location was found to be the only practical dam construction site within the confines of the property. Any attempt to construct the proposed dam at any other location within the property would have been very difficult if not impossible along with being cost prohibitive.

These facts combined with the location of the jurisdictional areas (wetlands & stream channel/bed & banks), should confirm that there were no practical options to the proposed dam location.

To the issues of resource impacts verse improvements to the resources, such a structure will create additional emergent areas adjacent to shrub areas surrounding the fringe of the area proposed to be inundated by the dam. The water contained by the proposed dam will also create an area of deep water habitat within the area. This should offer additional habitat for migratory bird populations and other forms of wildlife adapted to deep water habitat. This combination of habitats will offer a substantial benefit to the existing diversity of wildlife habitat within the area. Therefore the applicant is confident that the benefits outweigh the negatives surrounding the justification for this wetland fill project.

Describe what measures you will use (before and after construction) to minimize impacts to the waterways or wetlands.

During and after construction, silt fences and hay bales will be used, where needed to prohibit erosion and sediment from entering the wetlands and waterway. The work will be accomplished during the Oregon Department of Fish and Wildlife recommended in-water work period if one exists for this reach of Ash Creek. Also depending on weather or not there is any flow within the stream during the time of construction, the stream may also have to be diverted around the construction area to prevent additional turbidity from entering the stream. Following construction, all excavated and disturbed areas within the site will be seeded with the appropriate native grass seed mix to provide additional soil stabilization. Erosion should not be a problem due to the size of the actual area within the project site that is to be disturbed (specific dam construction area), and the level of stream flow during the summer months scheduled for the construction.

Block 6: ADDITIONAL INFORMATION

Adjoining Property Owners and their Addresses

See attached sheet

BLOCK 10: SUPPLEMENTAL WETLAND IMPACT INFORMATION



August 26, 2022

Oregon Water Resources Department
ATTN: Mr. Gerry Clark
725 Summer Street NE, Suite A
Salem, OR 97301

RECEIVED

SEP 02 2022

OWRD

Subject: Claim of Beneficial Use for Permit R-13073
David McKibben and Lowell Ford

Dear Gerry:

This Claim of Beneficial Use (COBU) is submitted on behalf of David McKibben and Brad Ford for permit R-13073.

If you have any questions regarding the enclosed COBU, please call me at (503) 239-8799 ext. 130. Thank you for your assistance and I look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink that reads "Robyn Cook".

Robyn Cook, RG, CWRE
GSI Water Solutions, Inc.

Enclosures: Claim of Beneficial Use for R-13073
Check in the amount of \$230

CC: David McKibben and Brad Ford