

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12837, Josephine County)	PROPOSING DENIAL OF A CHANGE
)	IN POINT OF DIVERSION, A CHANGE
)	IN PLACE OF USE, AND A CHANGE
)	IN CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ANDREAS AND CAROLE BLECH
1867 WILLIAMS HIGHWAY #260
GRANTS PASS, OR 97527

Findings of Fact

2. On February 5, 2018, ANDREAS AND CAROLE BLECH filed an application to change the point of diversion, place of use, and the character of use under Certificate 3943. The Department assigned the application number T-12837.
3. Notice of the application for transfer was published on February 13, 2018, pursuant to OAR 690-380-4000. The following are the 24 comments that were timely filed in response to the notice:
 - a) On March 13, 2018, Rick J. Foster submitted the following comment:

“Hi, with the current water shortage this does not seem like a wise use of water especially when there is a very good change that it could impact many wells that have been in long time use. It seems to me that there should be more research, also, is this truly the best use of this land. This is a very special place that the native Indians found very special. This is concerning the mining operation for Sunny Valley”

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
--

b) On March 13, 2018, Brandon M. Petty submitted the following comment:

“In response to Sunny Valley Sand & Gravel’s proposed diversion of water and storage of sand and gravel, I would like to respectfully decline this company be allowed to do so. The ecological impacts of such an operation are enormous and would devastate an already struggling riparian ecosystem in the beautiful, historic Grave Creek area. The creek is crippled shell of its former self in regard to an important fish highway, and any more water being diverted or stored, even in the raining months, would significantly reduce the flow rate of the creek. 1. One operation removing a proposed 215 acre-feet of water a year or 70, 000, 000 gallons from an already struggling stream would effectively eliminate anyone else downstream from having access to the beautiful creek. Summer swim holes, downstream water tables, the declining salmon population would all suffer. Irrigation rites for people downstream trying to water their crops to feed their families might as well be revoked because they will nearly be rendered useless. Not acceptable for one entity to reduce the entire creek to nothing. 2. With an already dry winter under our belts, we stare in the face of another hellish fire season. At one point last year, Sunny Valley had some of the worst air quality in the WORLD, and the fires weren’t even that close. Imagine if the fires were close, but we had no water to help put them out because they were all tied up with some mining. We need that water in this area to help with potential fires, not only as an immediate response to wildfires, but also as preventative measures to prevent fires before they start by keeping the ground saturated and cool. 2016 winter was one of the wettest winters in over 100 years in the Rogue Valley, and it was also one of the worst fire seasons in a long time. Please don’t let our beautiful area be endangered over a mine with lots of money. 3. It is just wasteful to use such vast amounts of water for selfish situations such as this. This person doesn’t care about the area like those of us who live here do, the SVS&G Company is here for business and I live here because I love it. I commute long distances each day (almost 2 hrs round trip daily) to work because I love Sunny Valley. I walk down to the creek daily where I have seen beaver come back over the past couple years, and beaver are an indication of a healthy ecosystem. I work with the Friends of Country Living to uphold the beauty of the area: I pick up trash by the creek, paint over graffiti, and I work with an already established group of local people who love the area. One of it, if not the last, covered bridge in Josephine County goes over the Grave Creek, a 100 year old bridge isn’t very special if there’s mining runoff chocking the life out of the waterway, or it’s certainly not very beautiful with a dry creek bed under it because all the water is a mile upstream, stored in giant pits, spawning mosquitoes. 4. All too often throughout history, and certainly more and more now days, money comes out on top of common sense and respect. I ask that you please side with us in denying the proposed movements because this little creek is too important to be killed by money. People have their hearts here, their lives are rooted in this very soil around the creek and to see something so beautiful and pure as what this creek represents, a whole community centered around it, be let down and eventually destroyed is deplorable. I believe there is hope in this world for people to stand up against big money and realize that what’s important is our natural world. Please help us preserve this for a legacy, a David vs. Golliath story, that will ripple with happiness every time a child or adult or fish or fowl splashes in the wild waters of the Grave Creek. Thank You.”

- c) On March 13, 2018, Steve Rouse, of Rogue Advocates, submitted the following comment:

“Dear Water Resources Department, Rogue Advocates, a 501(c)(3) non-profit is dedicated to the sustainable use of resource zoned lands in Jackson and Josephine Counties. On behalf of our members and Board we appreciate the opportunity to submit the following comments. The applicant’s land use mining request is not final, and it would be premature for WRD to transfer the existing irrigation water right to a mining use that is not yet authorized. 1). Land Use approval Not Final Rogue Advocates is actively participating in the LUBA appeal of Josephine County’s preliminary land use approval of the SVSG mine development application. We are currently entering the initial briefing phase for LUBA #2016-127, prior to oral arguments, review and decision. The ongoing LUBA appeal is based on the County’s decision and findings at the remand hearing; this was the second hearing held by the County Commissioners necessitated by Rogue Advocates successful LUBA appeal #2014-095/096 of the initial county hearing. During these local hearings two WRD employees attended by the Commissioners did not provide the opportunity for them to present oral testimony; Kathy Smith, Josephine County Watermaster (retired) and Ivan Gall, Field Services Administrator. The Commissioners deferred review of water resource issues to the expertise of WRD through this permitting and review process. Within this current WRD application we find the Land Use Information Form apparently received from Josephine County dated 1/24/18 has misrepresented the land use status. On that form the box “land-use approval obtained” was checked instead of the accurate “land use approval being pursued” box. The instructions in bold on that form clearly state, “if approvals have been obtained but all appeal periods have not ended, check “Being Pursued”. The applicant has not demonstrated that the land use associated with this water use is in compliance with statewide land use goals and the acknowledged land use plan. There is no final land use approval pending the LUBA appeal process that is ongoing. I have contacted the planner, Jeff Page, and the Planning Director, Julie Schmelzer, regarding this error but have not received a reply regarding their solution to this error. The approval of this water right transfer would violate OAR 690-005-025(1) making OWRD’s Division 5 Rule “Compliance with Statewide Planning Goals, Compatibility With Comprehensive Plans, and Coordination On Land Use Matters” applicable to the transfer of use for a water right. Thank you for your consideration, Steve Rouse, Rogue Advocates Board President.”

- d) On March 14, 2018, Friends of Country Living submitted the following comment:

“Friends of Country Living, a 501(c)(3) non-profit public charity group, is dedicated to the improvement, protection, and support of all aspects of rural country living along with the preservation of the unique characteristics of these communities. For the reasons brought forth, we are requesting that the standard review process ORS 537.153 be applied to application #S88508 and #T-12837. In commenting on this issue, Friends of Country Living is representing the general public to address reasons why the proposed use will impair or be detrimental to the public interest. Thank you for this opportunity.

The Josephine County Commissioners were very concerned about the threat to domestic wells that this project would impose. They were assured by staff testimony that they need not be concerned as ODWR would be responsible for protecting residential domestic water wells. Attached you will find a map detailing the numerous domestic wells in the vicinity of the proposed aggregate mine. Several of these wells along Grave Creek are hand dug shallow unregistered wells (dug by settlers), and were not taken into consideration by the applicant's hydrologists. We urge you to carefully consider this responsibility.

ORS 537.170(8c)

The prevention of wasteful, uneconomic, impracticable or unreasonable use of the water involved.

Having enough domestic and agricultural water from natural aquifers or over allocated Grave Creek water rights is a constant concern to many of the residents in Sunny Valley. Many live on very low producing wells (one gpm or less), and others possess senior irrigation rights that are frequently restricted. Neighbors in this valley share their water when wells run dry, rely on heavy compost to raise crops, haul buckets of water to save riparian vegetation when creek flows are insufficient for pumping, rescue protected salmon fry trapped in pools formed by low creek water conditions, and most are respectful of the limited amount of water available for other uses.

This application and transfer application permitting a mining company to store and use over 215 acre feet (S88508 150 ac/ft, and T-12837 65 ac/ft) of surface water is wasteful (excessive evaporation), uneconomic (removing high percentages of clay & asbestos dust mitigation), impracticable (feasibility of effective reservoir linings) and unreasonable (diminishes senior agricultural rights and threatens domestic wells).

What is the significance of OWRD's prevention of capturing groundwater in shallow reservoirs (permitted under R-15228 & R15230 and currently under reconsideration), but approving mining use leading to or empowering the applicant with a means to dig 80 feet deep into creek side groundwater?

For these reasons you must deny these applications. In addition, we respectfully request you a Standard Review ORS 537.153 to consider additional testimony.

Sincerely,
Board of directors
Friends of Country Living"

e) On March 14, 2018, Lisa W. Collishaw submitted the following comment:

"As we own and live on property that Grave Creek flows through, and are near the SVSG mining site, we are deeply concerned by the recent and proposed activities there. If SVSG is approved for the water use rights they are applying for, an extreme negative impact on the creek, as well as the area water table is inevitable.

Our concerns most certainly regard the creek ecosystem, but our major personal concern is how this will affect OUR WELL WATER. We currently have very limited well water supply during the summer and fall months due to the naturally occurring changes in the water table here. To lessen this further will very probably leave us with inadequate water for our fruit and vegetable garden, pasture irrigation, or for meager defensible green space and fire suppression near our home. This would diminish our quality of life and ability to sustain ourselves in countless ways. Please, please give this more due diligence and further review. Thank you.”

- f) On March 14, 2018, D.L. Klapp submitted the following comment:

“To whom it may concern,

We purchased thirty six acres in Sunny Valley fourteen years ago. We built our home and we are senior citizens. Never in a million years would we think that one man could ruin our homes and property value by putting in a gravel pit and gold mining.

If his permits are given we will lose our water!! We had one well go dry due to this man blasting rocks that changed our fishes.

I’m very concerned for the fate of Graves Creek. For the last few years the creek has almost gone dry and yes, Salmon are in the creek as well.

We love our peace and quiet. I can’t understand for the life of me how one person can change our whole valley; noise, dust, water in a rural residential area. Thank you in advance.”

- g) On March 14, 2018, Steve Klapp submitted the following comment:

“My wife and I bought our property in 2004. It was raw land and we had to dry a well. The first try came up dry. The second try gave us one gallon a minute. We put in a storage tank so we could build a house. At the very end of 2016 that well went dry, so I hauled water myself for months so we could sustain our household. We finally saved enough money to drill another well. The first try was a dry well. The second try gave us two gallons a minute. This was very expensive and a real hardship.

The Reason I’m telling you this is that our property is about 1,000 feet east of Mr. Blech’s proposed gravel pit. We are one of dozens of households surrounding the proposed gravel pit, some of which are just on the other side of Mr. Blech’s fence.

We are very fearful of our wells going dry if Mr. Blech starts tampering with and manipulating Grave Creek (sucking out water), and digging down into our water table and aquifer.

I know our well is already on the razors edge and could go dry at any moment if there is any manipulation of the aquifer by Mr. Blech.

Many of my neighbors had wells drilled last year at the same time we did. Some of their attempts came up dry too. There are also many hand dug wells along the creek. Some of these folks are of limited means and could not afford the great expense of drilling a well.

Since Mr. Blech's proposed gravel pit is such an alien proposal to our small valley, there were county commissioner meetings. Every time the concerned citizens of Sunny Valley brought up the issues of wells going dry, which could make all our properties worthless, the commissioners ignored our concerns and would move on to the next item.

Currently Mr. Blech is constructing his holding pond that he will use to wash dirt to get his gravel. He told the Josephine County Watermaster that he only scrapped a few feet down so as not to affect the water table.

What has all of us puzzled is if he is not supposed to scrape down into the earth for his wash ponds, how it can be acceptable to dig down from 80 to 100 feet if given a mining permit. This will without question affect the endangered Grave Creek, the water table and the aquifer to dozens of dozens of households. Please remember, households need water to survive.

Another huge concern is the migration and spawning fish in Grave Creek which is endangered creek to begin with. When Mr. Blech's dirty water was released, it will make its way back into endangered Grave Creek. His proposed digging will only be yards from the creek. This will have catastrophic affect on the creek. Temperature of the water will rise and sediment will blanket the bottom of Grave Creek.

The whole idea of putting this proposed gravel pit smack in the middle of dozens and dozens of households is crazy to begin with.

My wife and I are asking you to please consider all the ramifications that this will have on dozens of households that are surrounding Mr. Blech's property. We will all be negatively affected if he starts manipulating Grave Creek, the water table and the aquifer. Thank you."

h) On March 14, 2018, David Miller submitted the following comment:

"I live on Grave Creek right across from Mr. Blech's proposed mining operation. We depend on Grave Creek to supply our hand dug well and to irrigate our landscaping. The past several years the creek flow has been so low that our well has been on the verge of failure and we run out of water for irrigation. Any use of the creek water will cause our well to fail and our landscaping to die. This summer will be even worse due to the drought.

There are also Salmon and Steelhead that spawn in the creek. Any more water usage will cause the eggs and smolts to die. There has been work on the riparian area at this creek to try to protect the creek and cool the water. Mr. Blech has cut down brush and trees in the riparian area. This will jeopardize the fish habitat. I'm sure he doesn't have permission to do this.

The washing of rock in the mining operation will pollute our water table and the creek. I don't feel that Mr. Blech has the right to put his interests over the rest of the community and the wildlife. He already has a large pipe in the creek. If he turns it on he will cause severe damage to the creek flow and water quality. The community needs this water source for our wells and irrigation. There just isn't enough water available for a mining operation! ”

i) On March 14, 2018, Dave M. Graves II submitted the following comment:

“Water is our most essential life sustaining resource. Realizing this I moved my family from a drought stricken region of the southwest United States nearly sixteen years ago in search of “greener pastures”. We retired in this peaceful fertile valley farm removed from the parched environment where this drought was evidenced by the dramatic reduction of volume in the nation's largest reservoirs.

Now, we are experiencing natural and man induced events that result in a similar reduction to this most valuable finite resource. Local area precipitation accumulation records obtained during the past three decades should reflect what any local resident cant testify; that Grave Creek season flow rates/volumes and rainfall amounts have substantially decreased. Ground water levels, replenished by annual precipitation or past glacial melt retention, have measurably decreased due in a large part from inadequate rainfall capture in combination with the excessive burden from additional local agriculture and increased population. In addition, many residents water service originates directly from creek wells. These variables are of “grave” concern to this valleys inhabitant's well-being. People's lives are at risk to satisfy the propfits of an apathetic corporation...

In addition to the negative influence on residents' livelihood the BLM watershed analysis reveals that Grave Creek supports anadromous fish with ground water support during non-peak flows. However, the intended capture of water into ponds only serves to overheat the water resulting in excessive bacterial/algae growth from decreased dissolved oxygen below life sustaining levels. An identical example is the 2002 Klamath River mass killing of migrating Salmon. Furthermore, lower water flow increases sedimentation which decreases aquatic food sources yielding a poor environment for anadromous fisheries.

The Sunny Valley residents will realize absolutely no positives associated with the introduction of this intrusive activity. A sizable percentage of residents are senior and/or disabled who are unable to relocate to escape the inconveniences that this situation imposes. The good of the many should out weight the interest of the few”

j) On March 15, 2018, Barbara L. Dickinson submitted the following comment:

“Regarding Sunny Valley Sand & Gravel Irrigation Water Right Transfer app T-12837: I request the application be delayed or denied until such time as the intended use of this water, and full impact on the surrounding and downstream environs is understood. Will it be clean? Will it introduce fines into the flow of the creek? What is the oversight concerned citizens can count on to assure us that the resources SVS&G are borrowing (the water) are returned in a civil and environmentally responsible way. The salmon are already having a hard time spawning up from the Rogue in that area because of overly warm waters, partly resulting from illegal and un-remediated shade removal (trees and shrubs) within the riparian zones along Brimstone Gulch, and Grave Creek. To further deplete or degrade the water in this area would compound the harmful impact, further endangering the habitat of our precious resources. Deep pit mining should be explicitly prohibited, as ground water and the nearby wells are at risk. Or, an official study from an outside agency should be undertaken to understand how proposed uses of this water as a mining resource will be used. Thank you for taking the time to hear my concerns. We are entering an age in which water is becoming an ever more precious resource, I look forward to learning more about how we as a community can work together to ensure best practices are being used to sustain our waterways, so that we can all continue to thrive and enjoy the many resources available to us. Best, Barb.”

k) On March 15, 2018, Carolyn McNamara submitted the following comment:

“Comment to oppose the requested permits for water rights. New Reservoir water use app S-88508, Water right transfer app T-12837. Water is the most important resource we have. We can't live without it. Everything relies on it to exist. Most people in the area feel very protective of it because it is such an important resource. It is a source of recreation, in warmer months, when water levels allow, family members enjoy swimming and tubing on Graves Creek. It provides a sense of security in fire season. The request for 70,000,000 Gallons in addition to the already permitted agricultural allowances is absurd. To allow the year round request to access this water for mining would be irresponsible and inconsiderate to the residents in Sunny Valley. What protections have put in place if the Cascadia Fault shifts? Or a catastrophic flood. How would Graves Creek, its residents, roads and structures be affected if there was a breach in the reservoirs? Has a surety bond been considered for environmental and structural damage? Marihuana grows have invested much money in their properties but have been denied access to water rights and have to truck in this resource, Why is this different? The outcome does not give back to the community. Most in the valley do not support this project. I strongly feel these requested permits should be denied. Thank you, Carolyn.”

- l) On March 15, 2018, Steve McNamara submitted the following comment:

“Comments to oppose the requested permits for water rights. New reservoir water use app: S-88508, Water Resources department consider allowing a mining permit for Sunny Valley Sand and Gravel Company, to drain 70 million gallons of fresh water from Graves Creek, for aggregate mining and mitigation of dust?”

The water levels this year are already in a precarious situation? A water emergency has already been declared in Klamath County and it's only March. And this is not uncommon. Sunny Valley residents rely and cherish their water rights, when used for farming and gardening, it gives back to the community. The request for this amount of water does not seem to be in the community's best interest. As it is only for the company's profit. The use of this amount of water could have unforeseen consequences come fire season. Last year's fire season as historical in this region. Every year fire danger is on everyone's mind. Many of the tributaries of Grave Creek have had increased water temperatures from recent Timber Harvesting contributing to the elevated temperature of Graves Creek, effecting local fish populations, which are already struggling to survive. Reducing the water flow will result in additional challenges. I strongly urge the requested permit be Denied. Thank you, Steve McNamara”

- m) On March 15, 2018, William and Elizabeth Corcoran submitted the following comment:

“We oppose this Application for T-12837 for the following reasons:

We have Senior Water Rights on Grave Creek that are dated from 1874, Volume 13, Page 16536 (see attached). Our property is located adjacent and west, directly downstream from the property submitting this water right application, for water use change.

We rely heavily on the water of this valley. This water threat will cause us to lose our well and render our property useless. Our 80-acre farm and residence includes livestock, crop, orchards, and seed collection and distribution, for the purpose of Southern Oregon plant preservation. In addition over the years, our property is a venue for our family reunions and weddings along with a vacation destination for our children and grandchildren. SVS&G is located at the east end of at the very top, of Sunny Valley, which puts them in a unique position to effect, not only me personally, but all water right holders all the way to the Rogue River and beyond. Grave Creek enters the Rogue River where the permitted Wild and Scenic section of the Rogue River begins. This destination protects a world-renowned recreation and fishing area.

We have owner our property since 1979, and have observed Grave and Shanks Creeks over the years. It has just been in the past few years, since Mr. Andreas Blech has purchased the property, that we have noticed a diminished supply of water volume, lack of clarity, and lack of flow not only in Grave Creek but Shanks Creek as well. We believe that Shanks Creek has been dammed (see attached letter dated November 12, 2017).

The water right that this business application references, has not been exercised for more than 50 years (see two attached Affidavits, Butterfield and Douglas Dick). Ms. Butterfield inherited the property from her parents (McNeil) who owned it from the early 1950's, who also did not irrigate.

This application, based on this scope, will change the availability of water for the other residents who have also been relying on the aquifer and Grave Creek for years.

All water storage in Oregon and related decisions should be used for the benefit of the public, not for a Gold Mining company's profits. This neighboring property owner has stated to me personally he intends to mine for gold. Grave Creek, as a water resource, has been struggling for many years due to over allocation and drought conditions. We, along with the people of Sunny Valley, should not put in a hostage situation over the basic public need of water.

We are a party to the remand process involving SVS&G that is currently before LUBA. This applicant lacks the land use approval for the land use associated with the surface water permit application S-88508 (mining). Based on OAR 690-005-0035(4)(c), if OWRD chooses to issue a permit it must be conditioned to "preclude use of water and any associated construction until the applicant obtains all required local land use approvals". Based on this information we expect all rules to be followed.

The point where Grave Creek enters the Rogue River is where the Wild and Scenic Rogue River "permitted section" begins. This is a world-renowned recreation and fishing area. This river section is so special that you need a permit to use it. Our local Class 1 Grave Creek contributes to and is an integral part of. Any threat to Grave Creek is not just contained here in this small valley.

These excessive water permits are contrary to the OWRD's role regarding protection of existing water rights by preventing excessive groundwater decline or contamination, maintaining aquifer stability and preservation while making decisions based on the most beneficial use of water and in the highest public interest.

Based on the reasons above we ask that this application be denied. In addition, we request a Standard Review of this application.

Respectfully,
William M. Corcoran and Elizabeth A. Corcoran"

n) On March 15, 2018, the Joe Boyer Family submitted the following comment:

"We are again joining with all our neighbors along Grave Creek in Sunny Valley and Placer to **strongly protest** two applications for Grave Creek water (Final Order #S-88508 & T-12837) of Sunny Valley Sand and Gravel (SVSG) mining operation and request you deny their outrageous water usage because of the destructive impact on our well, home, family, community and environment.

The geographic location of the pit mines, truck route and homes are extremely important to understand: The northern area of Josephine County (Hugo, Or.) to the southern part of Douglas County (Canyonville) is an extremely mountainous section known as "Canyon Country" because of the deep canyons providing water to the Rogue River to the west.

(The famous canyon to the north feeds the Umpqua River) The canyons feeding the Rogue are in "Grants Pass District State Forest" and their headwater are Wolf Creek and Coyote Creek which flow into Grave Creek and into the Rogue. There are 5 old towns in these canyons and the valleys which are interlinked with water, schools, roads, their economy and people.

The Grave Creek Canyon is very steep and deep and contains a couple of large meadows at the 1400 ft and 1200 ft elevations collectively known as Sunny Valley, but they are really Fort Leland (Grave Creek Ranch/Old Leland) and Placer on upper Grave Creek. These are two of the oldest, still-occupied communities in Southern Oregon. In fact, Grave Creek derives its name from the grave of the first pioneer, on the first wagon train, to enter Oregon on the Applegate Trail, in 18746. The famous "First Pioneer Cemetery" is jeopardized by SVSG's gravel truck route next to the Grave Creek Covered Bridge.

The Indian villages went back >1200 years or >70 generations along "Leaf Creek" as the Takelma (Rogue) Indians called it. The Indians believe the waters of the Rogue to be sacred and Leaf Creek (now Grave Creek) to be part of their sacred spiritual land. Indian burial grounds still exist in the Placer area and I believe this is their "Happy Hunting Ground". The Grave Creek band of Indians were targeted for genocide by "the Exterminators" in the 1850's for their gold bearing creek land. The town of Golden, on Coyote Creek was obliterated by mining operations and the town of Placer was eventually saved from hydraulic ruin in the 1930's. This is all relevant because we are seeing a repeat in history, and especially their water, which sustains their lives.

The pit mining project (originally Havillah Corp) has been underway and in litigation since 2011, to the best of my knowledge. It has always been about mining in Grave Creek water, not agriculture. Sunny Valley Sand and Gravel took it over after Havillah couldn't get water or zoning. In an unpresided [sic] move the Josephine County Commissioners overruled the popular opinion of the residents and County population to amend the Comprehensive Plan and "Spot Zone" this piece of property for one wealthy speculator. The project proceeded in spite of serious concerns while in "LUGA Limbo".

These applications should be denied and considered fraudulent and abusive for the following reasons:

The Reservoirs

The Pit Mining has already begun with the so-called reservoirs being Gravel Pit No. 1 on the East side of their property. (bait and switch)

They never intended to raise cattle or plant anything. The water has been intended for mining all along. (It is in their Plan) Also, SVSG is extending their perimeters by clearing trees and paths for roads and entrances not in their plan and not permitted.

This encroachment on me and other neighbors is separate from water but shows their contempt for any rules or authority. They seek approval after the fact unless caught in time.

Our Well Water and Irrigation System

SVSG's project plan claims their massive operation will affect only one well in their impact area. Not true. They base that upon wells registered after 1970 only. There are numerous homes and wells within the area that were established in 1890's and 1960's. My well and water rights date back to 1898 when Lew Browning built his large cabin on this spot right on Grave Creek. I have approximately 1500 ft of waterfront property and an established underground irrigation/sprinkler system which has been severely restricted due to water shortages and draught for the last 3+ years. Why are they allowed this water and nobody else?

The proposed reservoirs and other pits are in our aquifer, which is only 15 ft below the surface, and extends to, or into, Shanks Creek wetlands. (which should be considered as their "other sources of water").

Water depletion and Rock Crusher vibrations will collapse the aquifers and cause well failures along with foundation and structural damage to the older homes surround the mines. Mine especially and the old Schoolhouse right across the creek. (rock foundations) SVSG is very well aware of these facts and has never attempted to address or mitigate any of it. They, and the County, chose to ignore the completely proceeded as if we don't exist. Their focus is always away from real issues and they will ruin the water for everyone.

Our Location

I live adjacent to, and 1000 ft upstream from, the SVSG mining operation where Daisy Mine Rd. crosses over the creek at the 1400 ft elevation. I have 12.3 acres and only one 15 ft deep well for drinking water which will be above the top of the water level. I've been here for almost 12 years and the house and well have there over 60 years with no problems, until now. I have experienced ground settling and foundation cracks in the last few years that are threatening my home and pump house. Since I am right on the creek and at the top of the same underground aquifer as the mining operation, I believe explosions I've heard and the water drain has impacted the underground water structure.

I invested over 48 years in the Aerospace industry and spent 15 years looking for this beautiful home. Water was the primary criteria in selecting the property and I love it here. I plan on leaving this to my 4 children so they can enjoy it, preserve it, and pass it on in the same manner.

I believe this is the greatest gift I can every give them. They all love it here also. But – if SVSG uses millions of gallons of water per week my property will be out water quickly and we will lose my family’s heritage. That is an absurd amount of water! Our well will be drained long before they would notice drop in the water level.

SVSG has shown little respect for any considerations of legal, historical, cultural, economical or environmental concerns as it impacts our neighborhood. It is as if they were trying to devalue the properties around them on purpose.

Old Leland (Sunny Valley) is 3 1/2 miles down Grave Creek from the valley of Placer, Jimmy Twogood established the Grave Creek Ranch (old Leland) in 1851. There was an Englishman, prospector named Tom East digging in the hill just above the Shanks Creek wetlands (now SVSG property). He was the only white man who could venture into that valley because of the Indians. The area was named for him and was changed to Placer by a Postmaster in the 1880’s to accommodate a town for the Browning family who owned most of the land.

Beautiful weather conditions and ample food supply, while having a defensive position and escape route, were essential to the security and survival of the Takelma Indians, the pioneers, and the current residents. Making Placer a perfect location. The pocket meadow where the pit diggers are trying to dig is in the center of the Takelma’s summer homeland, hunting grounds, burial grounds, and spiritual lands. Water is in very short supply during summers and the Indians would move to higher location for meat, fish, fowl and water. Current residents can’t do that. The valley of Placer is at the 1400 ft elevation, which puts it right above the fog line and below the 1500 ft snow line. There are direct trails to the East, South, West and North from this point which made it a center for communications and travel for the Indians, not us. Because land was their wealth, the most prominent of the Takelma lived on this land. Their spirits reside here and only a small handful of this civilization still exists but current families have been here for at least nine generations and counting. It is my wonderful family home.

Conclusion

The area known as Sunny Valley is actually a long canyon about ½ to 1 mile wide with a few meadows at various elevations along Grave Creek. It has its own Mini-climate which is better than Grants Pass or other larger valleys in the region. (hence the name, Sunny Valley) the ground is made of large rocks all the way down to Hellgate and our creek water source is spring fed, not snow or lakes. The water supply is seasonal and precarious. Collapsing aquifers will be a liability for them and the valley ecostructure. Settling ponds cannot replenish underground water up hill. They would lose more to evaporation than is feasible for replenishment.

The enterprise of converting our beautiful Sunny Valley and Grave Creek settling to massive gravel pits will endanger habitat and destroy our family’s lives.

The amount of water to be drained from our valley floor and the blasting of rocks has already had an impact on the underground aquifers and rock structure along Grave Creek. Land settlement is creating structural and environmental hazards already.

By draining millions of gallons of water a week and creating a noisy, dusty/muddy mess they will contaminate and destroy our watershed and ground water.

Our property value in this valley will attract druggies and low-life. Josephine County is already having major financial problems and the repercussions of this water theft will only add to that with lower property taxes and fire danger.

Josephine County has already "Spot Zoned" this property against the will of all the residents and people of the county who have been denied the right to vote on it. The appeals process has been made a joke against Democracy and an abuse of power by people who are also speculators and have a track record of ethics violations. The process will escalate and intensify with impunity.

The water of Grave Creek and Shanks Creek will be contaminated with silica from serpentine [sic] rocks (approx. 9%) and mercury, arsenic and other pollutants from old tailings being brought in from old mining sites in the area (not mentioned in their 40 year plan) Silica dust and diesel fumes from their estimated average of 150-180 gravel truck trips a day will choke the air and water of Grave Creek which runs along side of their route on Placer Road. The elk population is already being shot and destroyed by local miners/hunters in order to mitigate that problem. The drainage of aquifers will undermine the 50 year old, high-pressure, 8 inch, deep pits. Explosions similar to the ones in California and Washington will be the biggest disaster in Oregon when it happens. This Gas line is a National Security issue as it severs transportation on I-5 in Southern Oregon. There is not enough water in any creek to put out that fire, and we will be trapped if we survive.

I have painted a bleak and sobering picture of our very realistic situation, but it is also very true. I implore you to deny these applications, revoke SSG's permits and end this insanity that we have been living with for too many years. Let us live in peace with clean water, clean air and safety for our families.

Respectfully yours,
The Joe Boyer Family"

o) On March 15, 2018, Wolfgang E. Nebmaier submitted the following comment:

"RE: SVSG Applications S-88508 and T-12837. Please allow me to comment for the record on the above applications.

Pictures are Evidence of Pictures

A picture of a pump is evidence of the fact that a picture of a pump was taken. It says nothing about when or where the picture was taken.

And it says nothing about if the equipment was used and when and for what purpose. Tellingly, there is no evidence of the beneficial use, such as crops. There are no bags of the much-touted barley, no evidence of cattle roaming among the mining equipment. In other words, the alleged use for that past five years is nothing but well staged fiction. And you would be hard pressed to pretend you don't know.

Omitted Change of Duration Threatens Year-Long Depletion

In earlier evidence, Applicant states that most irrigation took place in the early spring. Not only is such an application of water unable to sustain any of the claimed crops, but it has been well established as not meeting the beneficial use requirement. ("beneficial use includes a component of continuity of use and requires more than a token application of water". *Hale v. Hoskins*, 184 Or App 36, 42 (2002) (beneficial use includes an element of continuity of use.)

This is not the only reason Applicant's transfer application is a Trojan Horse as it seeks disproportionately more than a mere transfer, but an undue expansion of all parameters and an abuse of the priority before most anyone else's needs. He has a seamless track record of utter disregard for anything and anyone but his own advantage and the cronies that promise to support him in his pursuit.

Inherited Unmet Conditions

The shadows of the Administrative Hold and "Agency Discretion" don't "bleach" away unmet conditions. The previous pond applications had been "parked" by way of administrative hold for the express purpose of waiting for the land use application to be approved. This has not happened. The land use is still pending a decision by the Oregon Land Use Board of Appeals. Afterwards, the application returns to Josephine County for a decision. And that decision, once more, may be subject to appeals or other legal challenges. This means that the permits granted are subject to conditions which have not been met and may never be met. Any disposition on these previous or any new reservoir applications therefore is plain and simple premature and arguably counter to established agency policy.

In fact, any action by the OWRD that allows the Applicant to commence work- which he refuses to subject to monitoring – may cause actionable irreparable harm to the people, the unique serpentine, the aquifer as a whole and the downstream water users affected by that prematurely permitted action. This includes actions by the Department that will lead to predictable – but unmonitored – violations of water law. "He said he wouldn't do that"...really? Consequently, the application check list is inaccurate, marking the land use form as properly supplied. As indicated above, it cannot be.

Shell Game of Multiple Ponds and Multiple Sources

No you see it – now you don't. An additional problem lies in the proposed commingling of different water sources in a manner that does not allow for distinction. If water from Grave Creek is introduced into the proposed mining operation it will undoubtedly end up together with water from the proposed reservoirs. This will absolutely invalidate the treatment and groundwater replenishing means included as a critical ingredient in the mining proposal. In other words, Applicant proposes not only to rob Peter to pay Paul, but to rob Paul so Peter wouldn't notice that he was being robbed because you could keep pointing at poor Paul while robbing Peter and getting away with both heists.

More Omissions – in Plain Sight

A brief investigation of a few apparently innocuous lines from the "Attachment 1" page preceding the "Evidence of Use" page reveals some significant problems of the application. Let me *emphasize the critical passages*:

The purpose of this proposed transfer is to **change** the point of diversion, place of use and **character of use** for Certificate 3943. The changes related to the development of a new aggregate mining operation on lands that have been irrigated under the water right.

Certificate 3943 authorizes diversion of water from Grave Creek for irrigation of 65 acres. Under transfer application, the point of diversion, place of use and **character of use will be modified**. The applicant will divert water from Graves Creek at a new point of diversion and will use water for mining purposes (on the entire property) and for irrigation of one acre (in a new location).

What is proposed here as a benign "**character of use will be modified**" has fundamental consequences. The "modification" consists of a radical year-round depletion as compared to a seasonal use as commensurate with the alleged agricultural use – even if that never happened. As a matter of fact, such a transfer will, in effect, bypass any and all conditions placed upon any reservoir applications. Mr. Blech can always claim the water which he wouldn't blink an eye to draw away from the aquifer supplying the rest of Sunny Valley had in reality come from his former "irrigation" right. It would become an utter impossibility to protect anyone else's water supply. Reservoirs supplied by two water sources that cannot be distinguished. Even a permit on this application will enable "the spectre of Sunny Valley" to go ahead and drain the life out of the rest of the valley. No more worrying above victims of his dust and his trucks because no one will have enough water to live there anymore. A shell game.

Moving right along to the next paragraph:

Reservoir storage will provide additional water for mining uses. Reservoir permits were recently issued for two reservoirs on the site, to be filled during the storage season (Application R-87930/Permit R-15228 and Application R-87932/Permit R-15230).

This is a lie by omission. While the R-979..applications were “permitted” the permits continued to be conditioned (see also administrative hold reasoning) upon land use approval that doesn’t exist. (see above) and whose attainment is not at all a sure bet. To base any further action on permits that aren’t really in force since the underlying conditions aren’t met is...the same old same old that started with Mr. Blech’s predecessor and later partner, the late Jack Smith.

Do you see what I’m saying? The agency cannot claim to have any number of hands none of which know what the other hands are doing.

Two Wrongs Do Not Make A Right

Concerning the new pond application, without going into too much detail, Applicant SVS&G is continuing its traditional game of trying to sell multiple almost permits for at least two completed ones and a few blind eyes turned toward its ill fated operation. This must not succeed. Mr. Blech does not deserve a consolation prize.

And finally, ORSs and OARs and case law and politics aside, anyone who has observed recent stream flow in Grave Creek, even today, March 14/15, right after some heavy rains, knows that the reality of the ongoing water shortage cannot be...let me put it differently: You cannot claim making an ethical decision by pawning your responsibility off onto some other agency, for them – with insufficient staffing – to monitor or enforce the doings of the ultra-millionaire Blech. The bottom line is that this is not an issue of dotted I-s and crossed T-s but of lives.

Thank you for you open mind and heart.
Wolfgang Nebmaier”

p) On March 15, 2018, Debra Lawwill submitted the following comment:

“Dear Oregon Water Resources Department:

The proposed use will impair and detrimentally affect a number of specific public interests under ORS 537.170(8). I will be specifically addressing:

“That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses.”

Permitting the use of Grave Creek waters for mining will open Pandora’s Box. Although the aggregate supply may appear to be a valuable resource for our state, its processing will bring more woes than benefits.

The geological report from the applicant's geologist Kuper Consulting, LLC indicates that ultramafic serpentine deposits were found in both the trench and boring samples taken in the area of proposed excavation. Serpentine in this area has been tested and found to contain moderately high levels of chrysotile asbestos. (report attached). Engineering Geologist James D. Rodine, PHD submitted the following statement during the Josephine County Land Use hearing:

"The SVS&G site has exposed serpentine on the east side of the property. The serpentine slopes westward and is covered over at various depths principally by material washed down from the east, debris flow material from a large landslide located upstream, and local soil erosion. Testing of a serpentine sample adjacent and east of SVS&G's mining area show 4.5 % asbestos, greatly exceeding the 1% threshold defined in Oregon OSHA 1910.1001 Asbestos, 437-002-0368 Deterioration, (2)(b).

Since the serpentine extends under, and to the west, of the surficial exposures, and is downhill, some serpentine has been transported across the site. This transport of serpentine can be located on aerial photographs, by color, where sparse vegetation is noted (serpentine is harmful to many plants). On the northern side of the site vegetation is more abundant, indicating less serpentine. LIDAR images indicates that more vegetated area is also within at least 2 flood plains. Therefore, it is likely the flood plains are the result of flooding and debris flow activity are relatively of recent origin, and therefore should not be used nor mined."

The sediment load produced to surface water most likely will contaminate the water supply of the valley even with the installation of silt fences or sediment basins. Asbestos fibers do not dissolve, are smaller than other contaminants, and remain suspended in water. This basin waste will need to be removed periodically and subsequently stockpiled. These now concentrated asbestos fibers will not attach or dissolve subsequently becoming the first to be eroded into ground and surface waters. The cyclic use of these reservoir waters will concentrate this contaminate exponentially. Not only are humans at risk, but wildlife and the already Federally Endangered Coho Salmon. (report attached).

Left alone and undisturbed in its natural state, serpentine deposits pose only minimal and unavoidable risk. But once disturbed, especially to this degree, the Box is opened.

For this and many other reasons brought to your attention, these applications for use of surface waters for mining, should be denied. If further input and review is required for your determination, please apply your standard review process pursuant to ORS 537.153.

Sincerely,
Debra Lawwill"

q) On March 15, 2018, Steven A. Lawwill submitted the following comment:

“ORS 537.170(8c) compels OWRD to prevent wasteful and unreasonable use of water. Sunny Valley Sand & Gravel (SVS&G) has submitted water applications (S88508 & T12837) for surface water use that challenges justification under ORS 537.170(8c). Historic water use evaporation data, from this area, using empirical scientific standards establishes the evaporation waste this water use presents.

The table below is from the Regional Climate Center (RCC) and shows rates of evaporation under standardized test conditions. The RCC delivers climate services at national, regional and state levels working with NOAA partners in the National Climatic Data Center, National Weather Service, the American Association of State Climatologists, and NOAA Research Institutes.

MONTHLY AVERAGE PAN EVAPORATION (INCHES)														
	PERIOD OF RECORD	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YEAR
ASTOR EXPERIMENT STN	1948-1973	0.56	0.96	1.47	2.21	3.75	3.95	4.65	4.10	2.95	1.65	0.87	0.70	27.82
BEND 7 NE	1991-2005	0.00	0.00	0.00	4.25	6.14	6.69	8.66	7.91	5.42	0.00	0.00	0.00	39.07
CORVALLIS STATE UNIV	1889-2005	0.00	0.00	1.79	2.96	4.59	5.86	7.70	7.07	5.06	2.33	0.96	0.00	38.32
COTTAGE GROVE DAM	1943-2005	0.00	1.27	2.16	3.07	4.56	5.60	7.75	6.70	4.47	2.06	0.82	0.00	38.46
DETROIT DAM	1954-2005	0.19	1.16	1.69	2.51	4.38	5.90	7.68	6.64	4.24	2.05	0.88	0.46	37.78
DORENA DAM	1948-2005	0.00	1.01	1.94	2.95	4.98	6.11	8.19	7.15	4.66	2.01	0.00	0.00	39.00
FERN RIDGE DAM	1943-2005	0.39	0.79	1.92	3.17	5.03	6.21	8.12	7.09	4.76	2.21	0.67	0.34	40.70
HERMISTON 2 S	1928-1997	0.00	0.00	3.44	5.43	7.91	9.67	11.32	9.66	6.32	3.97	0.00	0.00	57.72
HOOD RIVER EXP STN	1928-2005	0.00	0.00	0.00	0.00	6.45	6.80	8.81	7.04	3.32	3.09	0.00	0.00	35.51
KLAMATH FALLS AGR STN	1949-2004	0.70	1.31	2.81	4.73	7.21	8.79	10.24	9.41	6.30	4.37	0.00	0.67	56.54
LOOKOUT POINT DAM	1955-2005	0.00	1.76	2.29	3.10	4.67	5.77	7.69	6.89	4.45	1.96	1.01	0.00	39.59
MADRAS 1 NNW	1952-2005	0.00	0.00	0.00	4.72	7.12	8.66	10.23	9.17	6.21	3.16	1.70	0.00	50.97
MALHEUR BRANCH EXP STN	1943-2005	0.00	0.00	0.00	5.68	7.71	8.94	11.06	9.57	6.17	3.14	0.72	0.00	52.99
VOLTAGE 2 NW	1959-2005	0.00	0.00	0.00	4.37	6.22	7.67	9.58	8.52	5.86	3.19	0.00	0.00	45.41
MEDFORD EXP STN	1937-2003	0.53	1.02	2.26	3.56	5.29	6.54	8.24	6.78	4.05	1.81	0.76	0.44	41.28

These water use applications, by extension, will lead to SVS&G capturing unpermitted groundwater in eight deep pit excavations. This result is unavoidable and poses a serious threat to groundwater flowing in Sunny Valley aquifers and the subterranean water associated with Grave Creek. According to SVS&G plans, sump pumps will remove the captured groundwater by pumping it into infiltration swales along Grave Creek, exposing it to added contamination and evaporation. Their plans acknowledge that digging along the creek, SVS&G will encounter groundwater in sufficient quantities to require removal. Digging in groundwater is unavoidable and actually part of their plan.

Sunny Valley Sand & Gravel’s site plan has eight excavation pits totaling 108.9 acres (19.7, 14.6, 16.4, 15.9, 8.7, 6.6, 13.6, and 13.4 acres). **Each excavation pit will be reclaimed as a water filled pond.**

SVS&G (area of eight excavation pits)	108.9 acres x 43,560 sq. ft. = 4,743,684 sq. ft.
Evaporation (using Medford, OR data)	Convert inches to feet, 41.28 / 12 = 3.44 ft.
Evaporation (using .7 factor per RCC)	4,743,684 sq. ft. x 3.44 ft. x .7 = 11,422,790 cu. ft.
Yearly Water Evaporation (from pits)	11,422,790 cu. ft. x 7.48052 = 85.448 million gallons

Please require a complete “standard review” when considering these water use applications.”

r) On March 15, 2018, Glenn D. Standridge submitted the following comment:

“My wife, Marilyn Standridge, and myself, Glenn D. Standridge, wish to express our concerns about the water use application #S-88508 and the water transfer application #T-12837.

We live along Grave Creek and have two water wells that will be affected by this large amount of water if it allowed to be removed from Grave Creek.

One of our wells at 1800 Placer is at a production of only 2 gallons per minute and a 1,000 below ground storage is marginal at best. Any lowering of the ground water will be detrimental.

Statements were made by the applicant that no Grave Creek water would be used in the mining process. These statements were made at a hearing held by the Josephine County Commissioners regarding the county permit for mining and a zoning change needed to mine in a R-5 zone.

The mining plan presented to the county indicated that sufficient rainwater would be collected to wash the rock mined on this site.

Grave Creek flows are extremely low in July, August and September thus removing large amounts of water will affect all downstream users. Grave Creek is used by many people for both domestic use and irrigation. Game and livestock also depend on sufficient flow in the summer for the water.

Again, I state that at county meetings the water use applicant and his experts stated that no water from Grave Creek would be used in operation of the mining.

I have also grave concerns about the concentration of silica, mercury and chrysotile as it will become more concentrated as it is washed from the rock and placed back into holding ponds. This material in the holding ponds will migrate into the gravel and eventually back into the ground water and/or Grave Creek.

The long term contamination will be felt on the Rogue River and perhaps all the way to the Pacific Ocean!

For these reasons we ask that the water applications be denied.

Thank you for your consideration.

Sincerely,
Glenn D. Standridge”

- s) On March 15, 2018, Steve Wiley, President of Middle Rogue Steelheaders submitted the following comment:

The Middle Rogue Steelheaders support the Friends of Country Living, Waterwatch of Oregon, Rogue Advocates and others who are in opposition to the approval of a land use permit for the transition of water now intended for agriculture, to water for mining sand and gravel along Grave Creek in Sunny Valley. We urge that OWRD deny the request.

We are opposed to the project because of the potential for adverse environmental impact on Grave Creek. Grave Creek provides spawning, rearing, and migration habitat for federally threatened Coho salmon, and for the state listed sensitive summer steelhead. Grave Creek also ranks as a stream in the highest need of flow restoration.

The proposed water use will result in multiple, deep pits being excavated along Grave Creek which we believe will capture groundwater, particularly in low flow periods, which could potentially reduce or completely eliminate surface flow, and/or reduce the flow which will in turn result in warming the water, causing significant adverse impacts to the reproductive requirements of the salmon and steelhead. The lack of sufficient flow not only poses a risk to the fishery in the area of the mining project, but it could also prevent passage of fish to many miles of good habitat upstream. The proposed use of Grave Creek water for mining fails to conserve the values of the waters for protection of salmon and steelhead.

The Middle Rogue Steelheaders represent approximately 175 resident fishermen of Josephine and Jackson County. Our mission is to conserve, and restore cold water fisheries and their watersheds in Southwest Oregon. We operate as a non-profit, non-political, and non-sectarian organization for charitable, educational, and scientific purposes while supporting sports fishing. Over the past many years, the Middle Rogue Steelheaders have contributed hundreds of thousands of dollars and thousands of hours of volunteer labor to restore the fisheries habitat in the Middle Rogue Basin.”

- t) On March 15, 2018, Vajra Ma submitted the following comment:

“I strongly believe that any further depletion of the Sunny Valley water flows will cause devastating and irreparable harm to the people of Sunny Valley and downstream, their lives and their lifestyle, as well as the ecology dependent on Grave Creek, its waters and the quality of its waters such as temperatures, sediment, and mineral content.

First, the problems inherent in the entirety of the related previous water rights applications have never been resolved. This means that the issues of

- Serpentine sediment polluting Grave Creek
- Aquifer separation between groundwater and Grave Creek not having been established
- Stream flows already very low and wells drying up
- Snow pack levels are hovering around 50%

Are as much of an elephant in the room as they always were.

I am not up to date on the ODFW stream flow measurements, but I have heard nothing about the quantities for healthy salmon spawning have been sufficiently restored. Grave Creek is already classified as a Class I stream in need of protection. It is a salmon spawning stream and cannot sustain anymore compromise. The mining requirements for water asked for in SVSG's transfer application are far greater and year-round as opposed to the current irrigation WR which is seasonal and less damaging.

On top of that Blech demands to maintain the 1919 irrigation WR priority and apply it to his mining demands. A transfer from irrigation to mining use will cause irreparable damage to already endangered Grave Creek.

As some people said in the course of this more than ten year push (starting with Jack Smith and Douglas Dick) to mining the land now owned by Blech/SVSG: You can't eat rocks. This is significant because the intended water use will destroy much of the growing downstream agriculture. This may at first look like a county issue, but the OWRD's jurisdiction over water rights puts the agency in charge of a large factor of the picture. The economic damage caused to the county by short-sighted political influence peddling will by far outstrip the promises made by Mr. Blech and his friends or attorneys.

An example for predictable damage to the entirety of Sunny Valley was presented at the JOCO BCC hearings for SVSG Application. Certified Geo-Engineer James Rodine stated and explained how mining and its water use requirements on this land will most likely drain the aquifer. If this happens, hundreds of residents will lose their wells and water supply. There is no undoing this damage.

To address the apparent look-away policy: Since no one – other than by airplane - has a visual of Mr. Blech's operations and he has in the past refused access for monitoring, we rely on the sound of heavy equipment to detect when and how long and approximately where SVSG is operating, but we cannot determine legality, extent, or impact of the operations. During the past winter, we witnessed weeks upon weeks of heavy dozer work. What was he doing? We don't know. The fact that there has been no oversight allows SVSG to create facts. Was he already digging the ponds he claims to have permits for but doesn't? (Because they are pending approval of land use, which is still tied up in the current LUBA appeal) And even if LUBA approves, such an approval is likely subject to further legal challenges and stay orders. In short, Mr. Blech has violated rules and regulation before, he can be expected to do so again.

Most of the above is by way of background information. I don't have to repeat the stats, such as the 70 million gallons taken from Grave Creek per year. Others will address the legalities and technicalities.

What I wish to convey is that the agency should not maintain an irresponsibly isolated view of these new applications. This is the case especially since the Applicant has a history of going door-to-door, so to speak, telling one agency that the other agency would

approve if, and attempt to generate the sense of a larger momentum for approval of this entire operation than exists. It's a little like a child playing parents against one another.

May I ask you to, please, consider the irreparable consequences of your decisions to use a forestry metaphor: You can't unfell a tree. Mr. Blech can hire all the lawyers and consultants money can buy. We cannot.

We depend on the future of Sunny Valley on the discretion you have – and you do have it - to make a decisions you know are right.

Thank you very much,
Rev. Vajra Ma"

u) On March 15, 2018, Gregg and Diane Getchell submitted the following comment:

"We are residents that reside in the defined "impact area" of a proposed bold mine in Sunny Valley, Oregon. We are writing to request this application be denied.

OWRD has guidelines and concerns when addressing any and all water use in the state. One of these is to consider the highest use of water for any and all purposes. In addition the department is charged with the prevention of the wasteful, uneconomical impracticable or unreasonable use of the water in the state of Oregon. Another important provision is water must be for a beneficial purpose without waste. We expect that in this situation these guidelines will be respected.

The proposed use of water to operate large, deep mining pits adjacent to Grave Creek, in an area with numerous domestic wells, will not protect adequate and safe water supplies for human consumption. The possibility of domestic and agricultural well contamination or complete loss of existing wells due to the negative influence on the aquifers that currently exist, outweighs the allowance of an immense amount of water to be given to one person for personal economic gain. This permit clearly does not allow for a balance between existing residents, protected spawning Salmon, and area wildlife and this project. The state thought this creek was so important to spawning Coho Salmon that a fish ladder was installed just down from the SVS&G property.

OWRD has acknowledged Grave Creek is over allocated and currently does not meet in stream water rights. When available supplies of water are insufficient there should be extra effort in applying any permit approval consideration. For this reason we are requesting this application go through the Standard Review process to ensure that these effects are all adequately considered Irrigation Water Right Transfer T-12837.

Illegal and legal marijuana grow sites have become another threat to water supply in Sunny Valley. Their numbers have drastically increased since the mining application was originally filed. Each year more growers have set up operation. Just based observation one has to conclude this is another significant impact on the water situation here. Not to mention some legal growers are not abiding by the water usage regulations related to their properties.

Some registered domestic water wells are being used for agricultural. Many residents are aware of water stolen by random pipes and pumps found along Grave Creek. In addition the amount of water wasted by evaporation in the proposed reservoirs alone adds to the amount of water loss.

We ask this permit be denied.

Respectfully,
Gregg Getchell
Diane Getchell”

v) On March 15, 2018, Cindy Henry submitted the following comment:

In response to the above applications there is great concern for the water that these applications would consume. I am a resident of Sunny Valley and have witnessed the creeks reaching drastically low levels and irrigation restrictions have been set in place for the last several years.

Residents of Sunny Valley need water for their wells and to sustain their quality of life.

The fish in Grave Creek and tributaries that feed the famous Wild Rogue river need water.

To allow these applications it is my opinion, would prove to be detrimental to the public, residents and wildlife.

These applications will hopefully be denied with your careful considerations of all who would be impacted.

Thank you for your attention to this matter.
Cindy Henry”

w) On March 15, 2018, Angela Henry submitted the following comment:

As a resident of Sunny Valley, Oregon, I am very concerned about the negative effects the above mentioned applications will have on our community. Having grown up in Sunny Valley I have seen the creeks become smaller and smaller every summer and even through the last few winters.

There is no extra water available for anyone to take out, especially for any projects of this scale.

The use of groundwater will not suffice as many residents have had their wells run dry over the last few summers for just using residential purposes.

I feel that this will only bring negative consequences to our creeks, wells, environment, wildlife of Sunny Valley and beyond.

I hope that you will strongly consider the effects this would have on the residents of Sunny Valley as well as the environment and deny these applications.

Grave Creek is important to the health of Rogue River.

Thank you for your time and consideration.

Angela Henry
Sunny Valley Resident”

x) On March 15, 2018, Jane Martin submitted the following comment:

“My name is Jane Martin, I have been a resident of Sunny Valley for over 30 years living on Grave Creek. I do not want to see the Salmon being eliminated from extra water being withdrawn from their habitat.

These applications must not be allowed for fear of lack of water to resident’s wells and irrigation rights from Grave Creek.

There simply is not enough water to withdraw without severely impacting the life styles of residents in Sunny Valley and causing further lack of water.”

3. The above referenced attachments submitted with the public comments are on file with the Department.
4. Not all the issues raised by the commenters address the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. Under Oregon Law, water right transfers are not subject to a public interest review. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the department finding or determining:
 - a) The water right proposed for transfer is a water use subject to transfer;
 - b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
 - c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - d) The proposed transfer would not result in injury to other water rights.

5. On April 19, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12837 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 21, 2018, for the applicants to respond. On April 25, 2018, the agent for the applicant requested that the Department proceed with the application and seek a recommendation from the Oregon Department of Fish and Wildlife as to whether the Department should consent to the injury of instream water right, Certificate 72697, pursuant to OAR 690-380-4030, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. The applicant also requested that the completion date be extended to October 1, 2023.

6. The right to be transferred is as follows:

Certificate: 3943 in the name of CHARLES W. & WELTHA L. KIRK
(perfected under Permit S-4128)
Use: IRRIGATION of 65.0 ACRES
Priority Date: JUNE 23, 1919
Rate: 0.81 CUBIC FOOT PER SECOND
Source: GRAVE CREEK, a tributary of ROGUE RIVER
Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	5 W	WM	7	SE SE	15.0
34 S	5 W	WM	8	NE SW	10.0
34 S	5 W	WM	8	NW SW	5.0
34 S	5 W	WM	8	SW SW	10.0
34 S	5 W	WM	8	SE SW	25.0
TOTAL					65.0

7. Certificate 3943 does not describe the location of the point of diversion, however information is available from applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	5 W	WM	8	NE SW	2475 FEET NORTH AND 2574 FEET EAST FROM THE SW CORNER OF SECTION 8

8. Certificate 3943 does not specify the irrigation season. However, the Rogue River Decree establishes an irrigation season for the area from April 1 through November 1.

9. Transfer Application T-12837 proposes to move the authorized point of diversion approximately 560 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	5 W	WM	8	NW SE	2630 FEET NORTH AND 2230 FEET WEST FROM THE SE CORNER OF SECTION 8

10. Transfer Application T-12837 proposes to change the place of use of 1.0 acre of irrigation to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	5 W	WM	8	SW SW	1.0

11. Transfer Application T-12837 proposes to change the character of use of the remaining 64.0 acres of irrigation to mining uses. The use will be limited to the irrigation season.
12. Transfer Application T-12837 also proposes to change the place of use of the right to:

MINING USES				
Twp	Rng	Mer	Sec	Q-Q
34 S	5 W	WM	7	NE SE
34 S	5 W	WM	7	SE SE
34 S	5 W	WM	8	NE SW
34 S	5 W	WM	8	NW SW
34 S	5 W	WM	8	SW SW
34 S	5 W	WM	8	SE SW
34 S	5 W	WM	8	NW SE

13. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

14. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12837.
16. The proposed changes, as conditioned, would not result in enlargement of the rights.
17. An instream water right, Certificate 72697, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and the streamflow within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed change in point of diversion.
18. All other application requirements are met.

Determination and Proposed Action

The changes in point of diversion, place of use, and character of use proposed in Transfer Application T-12837 appears NOT to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application will be denied unless the Oregon Department of Fish and Wildlife recommends that the Department consent to injury of an instream water right (Certificate 72697) pursuant to OAR 690-380-5050 or protests are filed pursuant to OAR 690-380-4030.

If the transfer is approved on the recommendation of the Oregon Department of Fish and Wildlife to consent to the injury, the change and subsequent use of water shall be subject to any conditions identified by the Oregon Department of Fish and Wildlife as necessary to ensure that the transfer results in net benefits to the resource and to the following conditions:

1. *The changes in point of diversion, place of use, and character of use proposed in Transfer Application T-12837 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 3943 and any related decree.*
3. *Water right Certificate 3943 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*

7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon, JUN 14 2018.



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

This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@oregon.gov.

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

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>