



Oregon Water Resources Department  
 725 Summer Street NE, Suite A  
 Salem Oregon 97301-1266  
 (503) 986-0900  
 www.wrd.state.or.us

# Certificate of Water Right Ownership Update

## NOTICE TO SELLERS & BUYERS:

By law, all water belongs to the public (ORS 537.110). In almost every instance, a permit or water right certificate from the Water Resources Department is needed before using, diverting or storing water (ORS 537.130). However, most domestic wells do not require water rights. A certificate of water right stays with the land. In order to keep track of water right ownership, the Department requests that this form be submitted to the Department. *If for multiple rights, a separate form for each right will be required.*

Water that has been used for a long time in one place or that involves a water structure (like a dam) that already exists is no guarantee that there is a water right which would allow the water use to continue.

If you have any questions about this form or water right requirements, please contact your local watermaster or call the Water Resources Department at 503-986-0900.

Note: Please type or print legibly when filling in the following information. Use additional paper if necessary.

### PROPERTY SELLER INFORMATION

Applicant(s): David L Stearns Robynn E Sheahan  
First Last  
 Mailing Address: PO Box 225, 44349 + 44345 Hwy 62 - PO Box 245  
Prospect OR 97536  
City State Zip  
 Phone: (541) 944-0827  
Home Work Other

### PROPERTY BUYER INFORMATION

RECEIVED BY OWRD

Applicant(s): Daryl Risner FEB 27 2017  
First Last  
 Mailing Address: 44349 + 44345 Hwy 62 SALEM, OR  
Prospect OR 97536  
City State Zip  
 Phone: (541) 560-3336 (805) 340-1598  
Home Work Other

### PROPERTY DESCRIPTION (attach additional pages if necessary):

County: Jackson Township: T32S Range: 2 East Section: 36  
 Tax Lot Number(s): 9500

Street address of water right property: 44349 + 44345 Hwy 62

Water Right Information (attach copy of water right permit or certificate & final proof map):

Application #: \_\_\_\_\_ Permit #: P-83015 Certificate or Page #: \_\_\_\_\_

Will all the lands associated with this water right be owned by the buyer?  Yes  No

Name of individual completing this form: Daryl Risner Phone: (805) 340-1598

Signature: \_\_\_\_\_ Date: 2-10-2017

Please be sure to attach a copy of your property deed or legal description of the property.





After recording return to:  
Daryl Risner  
44345 & 44349 Highway 62  
Prospect, OR 97536

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Daryl Risner  
44345 & 44349 Highway 62  
Prospect, OR 97536

File No.: 7161-2731139 (SGB)  
Date: November 27, 2016

THIS SPACE RE

Jackson County Official Records **2017-002309**  
R-WD  
Str=0 MORGANSS 01/23/2017 02:20:03 PM  
\$25.00 \$8.00 \$10.00 \$20.00 \$11.00 **\$74.00**

I, Christine Walker, County Clerk for Jackson County, Oregon, certify  
that the instrument identified herein was recorded in the Clerk  
records.

Christine Walker - County Clerk

25

### STATUTORY WARRANTY DEED

**David L. Stearns and Robynn E. Sheahan who acquired title as Robynn E. Stearns as to  
Parcels I and II and David L. Stearns and Robynn E. Sheahan who acquired title as Robynn E.  
Sheahan-Stearns, as to Parcel III**, Grantor, conveys and warrants to **Daryl Risner**, Grantee, the  
following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$650,000.00**. (Here comply with requirements of ORS 93.030)

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SALEM, OR



After recording return to:  
Daryl Risner  
44345 & 44349 Highway 62  
Prospect, OR 97536

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Daryl Risner  
44345 & 44349 Highway 62  
Prospect, OR 97536

File No.: 7161-2731139 (SGB)  
Date: November 27, 2016

THIS SPACE RESERVED FOR RECORDER'S USE

Recorded electronically  
ID \_\_\_\_\_  
County \_\_\_\_\_  
Date \_\_\_\_\_ Time \_\_\_\_\_  
Simplifile.com 306-300-5137

25

### STATUTORY WARRANTY DEED

**David L. Stearns and Robynn E. Sheahan who acquired title as Robynn E. Stearns as to Parcels I and II and David L. Stearns and Robynn E. Sheahan who acquired title as Robynn E. Sheahan-Stearns, as to Parcel III**, Grantor, conveys and warrants to **Daryl Risner**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$650,000.00**. (Here comply with requirements of ORS 93.030)

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SALEM, OR







APN: 1-050838-6

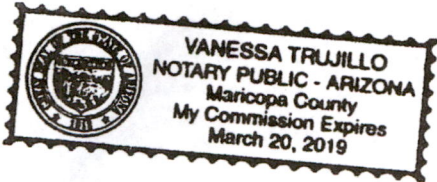
Statutory Warranty Deed  
- continued

File No.: 7161-2731139 (SGB)

STATE OF <sup>VT</sup> Oregon )  
                  Arizona )ss.  
County of <sup>VT</sup> Jackson )  
                  Maricopa

This instrument was acknowledged before me on this 18<sup>th</sup> day of January, 2017  
by **Robynn E. Sheahan**.

*[Handwritten Signature]*



Notary Public for <sup>VT</sup> Oregon Arizona  
My commission expires: March 20, 2019

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**EXHIBIT A**

**LEGAL DESCRIPTION:** Real property in the County of Jackson, State of Oregon, described as follows:

**PARCEL I:**

Commencing at a  $\frac{3}{4}$  inch iron plug in the physical center of Crater Lake Highway which bears South 1697.09 feet and West 402.68 feet from the Northeast corner of Section 1 in Township 33 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon; thence North  $53^{\circ} 55' 30''$  West 75.43 feet to the point of intersection with the Northwesterly line of said Highway and the Southerly line of private road described in Document No. 79-14752, Official Records, Jackson County, Oregon, for the true point of beginning; thence along said Southerly line on the arc of a 115.00 foot radius non-tangent curve concave to the Southwest 73.48 feet (the long chord of which bears North  $21^{\circ} 48' 37\frac{1}{2}''$  West 72.235 feet); thence continue along said Southerly line as follows: North  $3^{\circ} 30' 20''$  West 27.665 feet along the arc of a 305.00 foot radius curve to the left 116.155 feet (the long chord of which bears North  $14^{\circ} 24' 57\frac{1}{2}''$  West 115.455 feet), North  $25^{\circ} 19' 35''$  West 93.285 feet, along the arc of a 310.00 foot radius curve to the left 136.35 feet (the long chord of which bears North  $37^{\circ} 55' 37\frac{1}{2}''$  West 135.255 feet) North  $50^{\circ} 31' 40''$  West 573.50 feet; thence along the arc of a 135.00 foot radius curve to the left 81.025 feet (the long chord of which bears North  $67^{\circ} 43' 20''$  West 79.815 feet) North  $84^{\circ} 55' 00''$  West 73.955 feet, along the arc of a 160.00 foot radius curve to the left 94.975 feet (the long chord of which bears South  $78^{\circ} 04' 40''$  West 93.59 feet), South  $61^{\circ} 04' 20''$  West 106.915 feet, along the arc of a 370.00 foot radius curve to the left 92.335 feet (the long chord of which bears South  $53^{\circ} 55' 22\frac{1}{2}''$  West 92.095 feet) South  $46^{\circ} 46' 25''$  West 35.58 feet and along the arc of a 4025.00 foot radius curve to the right 175.195 feet (the long chord of which bears South  $48^{\circ} 01' 14''$  West 175.18 feet); thence leaving said road line, North  $37^{\circ} 26' 30''$  West 11.245 feet to a  $\frac{5}{8}$  inch iron pin; thence continue North  $37^{\circ} 26' 30''$  West 18.805 feet to a point of intersection with the Northerly line of said private road; thence continue North  $37^{\circ} 26' 30''$  West 81.715 feet to a  $\frac{5}{8}$  inch iron pin; thence North  $54^{\circ} 20' 03''$  East 119.33 feet to a  $\frac{5}{8}$  inch iron pin; thence South  $82^{\circ} 00' 45''$  West 64.58 feet to a  $\frac{5}{8}$  inch iron pin; thence South  $54^{\circ} 20' 03''$  West 49.31 feet to a  $\frac{5}{8}$  inch iron pin; thence North  $12^{\circ} 31' 04''$  West 43.85 feet to a  $\frac{5}{8}$  inch iron pin; thence South  $81^{\circ} 34' 36''$  West 244.07 feet to the Southeast corner of the land described in Volume 373, Page 177, Deed Records, Jackson County, Oregon; thence North  $00^{\circ} 30'$  East along the Easterly line thereof, 781.00 feet to an iron pipe; thence North  $60^{\circ} 00'$  East 56.00 feet to an iron pipe; thence North  $00^{\circ} 30'$  East 200.00 feet to the Northeast corner thereof; thence East along the North line of the Northeast Quarter of said Section 1 to the Northeast corner thereof; thence South along the East line of said Northeast Quarter to a point on the Northwesterly line of the relocated Crater Lake Highway, as conveyed to the State of Oregon by deeds recorded in Volume 551, Pages 115 and 120, Deed Records, Jackson County, Oregon; thence Southwesterly along said Northwesterly line to the true point of beginning.

**PARCEL II:**

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APN: 1-050838-6

Statutory Warranty Deed  
- continued

File No.: 7161-2731139 (SGB)

Beginning at the quarter corner between Section 31 in Township 32 South, Range 3 East, and Section 36 in Township 32 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon; thence East 800.00 feet; thence South 1866.7 feet; thence North  $89^{\circ} 10'$  West 800.00 feet to a point on the West line of said Section 31; thence North along said Section line, 1855.1 feet to the point of beginning.

**PARCEL III:**

The East half of the Southeast quarter of Section 36 in Township 32 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon.

**NOTE:** This legal description was created prior to January 1, 2008.

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# JACKSON COUNTY

Oregon

Watermaster's Office

Travis Kelly  
Watermaster

10 S. Oakdale, Room 309  
Medford, OR 97501  
Phone: (541) 774-6880  
kellytn@jacksoncounty.org

October 5, 2016

Daryl Risner  
44349 & 44345 Hwy 62  
Prospect, Or 97536

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RE: Map Identification: Township 32S, Range 2East, Section 36, Tax Lot 9500  
Township 33S, Range 2East, Section 1, Tax Lot 102

FEB 27 2017

To Whom it May Concern:

SALEM, OR

A water right research was conducted for the above stated parcel(s) per your request. Findings indicate the following water rights of record are pertinent to the tax lot(s) as described in the table below:

Tax Lot	Certificate or Permit	Priority Date	Use	Source
9500 & 102	C-57822	March 2, 1973	Irrigation	North Fork Rogue River
9500	C-57793	August 3, 1981	Supplemental Irrigation	Lost Creek Reservoir Contract with BOR
9500	P-83015	January 1, 1995	Storage for Wildlife & Aesthetics	Runoff

Irrigation season is from April 1<sup>st</sup> through October 31<sup>st</sup> and the reservoir is required to bypass flows during this time.

Certificate 57793 is under contract with the Bureau of Reclamation and is subject to the terms and conditions of the contract. Please contact Bill Parks with the Bureau of Reclamation at (208)378-5344 to verify the contract and/or to transfer this contract into the new owner's name.

Please refer to the attached documents and maps for the place of use of these water rights. This will allow you to compare how the water rights of record overlay the parcel. In order to determine the **exact** location of the water right, you may want to hire a Certified Water Rights Examiner (CWRE) to survey the water right. Keep in mind, while this office may tell you water rights are attached to a tract of land, we cannot tell you about continued use or non-use of the right. After five successive years of non-use all or part of the right may be subject to forfeiture.

Once a Permit or Certificate of water rights has been issued, it stays with the land. In order to keep track of ownership, the department requests that when a Permit has been issued that a Request for Assignment Form be submitted and when a Certificate of Water Rights has been issued that an Ownership Update Form be submitted to the department. If there are multiple water rights, a separate form for each right will be required.

Feel free to contact us if you have questions or to set up an appointment to discuss these water rights.

Sincerely,

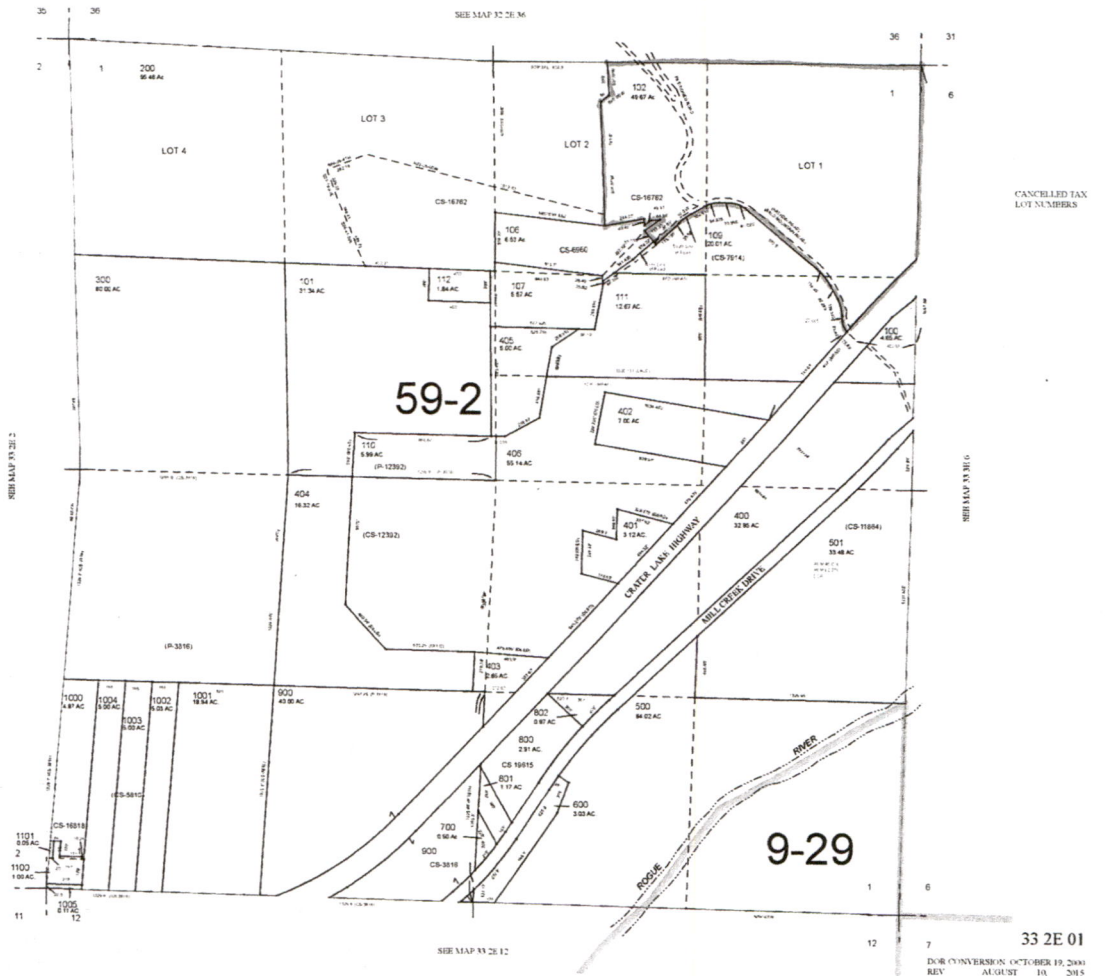
Christi Haines  
Office Assistant III

Data provided by this office is based on the best and most current information available within our files and data base. The "Official Records" however, reside in the Department's Salem office. For additional information, please contact the Oregon Water Resources Department at 1-503-986-0900 or at [www.wrd.state.or.us](http://www.wrd.state.or.us).

FOR ASSESSMENT AND  
TAXATION ONLY

SECTION 1, T.33S., R.2E., W.M.  
JACKSON COUNTY  
1" = 400'

33 2E 01



GIS DATA  
08/17/2015 1:50:27 PM JAHWA/WH

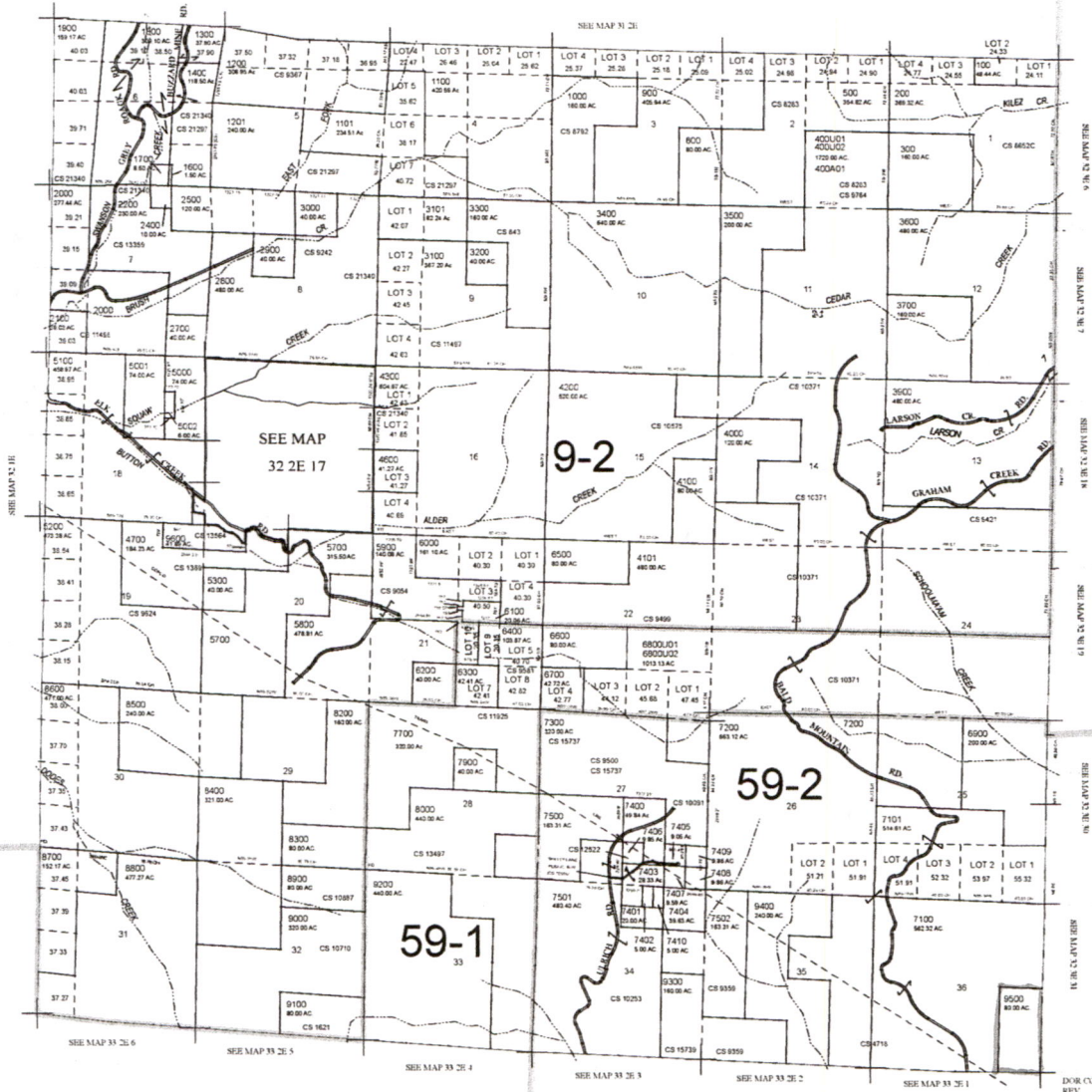
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SALEM, OR

FOR ASSESSMENT AND TAXATION ONLY

T.32S., R.2E., W.M.  
JACKSON COUNTY  
1" = 2000'



CANCELLED TAX  
LOT NUMBERS  
12C ADDED TO 1101  
140C ADDED TO 1101  
171C  
171C

05/21/2015 11:08:48 AM jshmaWH

DNR CONVERSION, OCTOBER 01, 1999  
82V AT 01:57 PM 2014

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SALEM, OR



STATE OF OREGON  
COUNTY OF JACKSON  
CERTIFICATE OF WATER RIGHT

THIS IS TO CERTIFY, that RALPH B. AND ANNABELLE LEIBY, of 44345 HWY 62, PROSPECT, OREGON 97536, has a right to the use of the waters of LOST CREEK RESERVOIR, CONSTRUCTED UNDER PERMIT R-8142, A TRIBUTARY OF ROGUE RIVER, for the purpose of SUPPLEMENTAL IRRIGATION OF 164.3 ACRES.

The right has been perfected under Permit 46021. The date of priority is AUGUST 3, 1981. The right is limited to not more than 50.0 ACRE-FEET STORED WATER ONLY or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

NW1/4 SW1/4, SECTION 29, T32S, R3E, WM; 590 FEET SOUTH & 100 FEET EAST FROM W1/4 CORNER SECTION 29. LOST CREEK DAM IS LOCATED IN NW1/4 SW1/4, SECTION 24, T33S, R1E, W.M.

This right is limited to a diversion of 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein, and is subject to the terms and conditions of Contract No. 1-07-10-W0293, or a satisfactory replacement, between the Bureau of Reclamation and the applicant, a copy of which is on file in the records of the Water Resources Department.

The right shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

40.0 ACRES NE1/4 SE1/4  
39.8 ACRES SE1/4 SE1/4  
SECTION 36  
TOWNSHIP 32 SOUTH, RANGE 2 EAST, W.M.

22.0 ACRES LOT 3 (NW1/4 SW1/4)  
8.0 ACRES LOT 4 (SW1/4 SW1/4)  
SECTION 31  
TOWNSHIP 32 SOUTH, RANGE 3 EAST, W.M.

39.4 ACRES LOT 1 (NE1/4 NE1/4)  
9.7 ACRES LOT 2 (NW1/4 NE1/4)  
1.7 ACRES SW1/4 NE1/4  
3.7 ACRES SE1/4 NE1/4  
SECTION 1  
TOWNSHIP 33 SOUTH, RANGE 2 EAST, W.M.

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The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The right is subject to minimum flows established by the Water Resources Commission with an effective date prior to this right.

WITNESS the signature of the Water Resources Director, affixed this date OCTOBER 10, 1988.

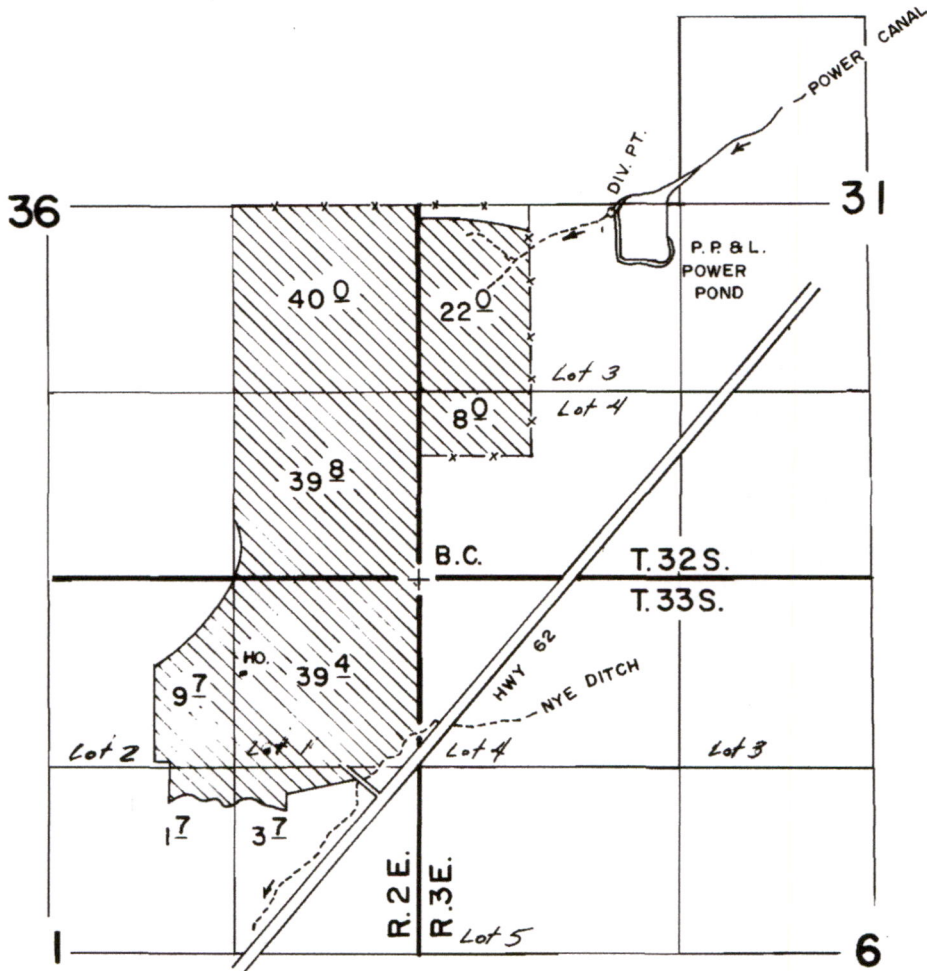
/s/ WILLIAM H. YOUNG

Water Resources Director

Recorded in State Record of Water Right Certificates numbered 57793

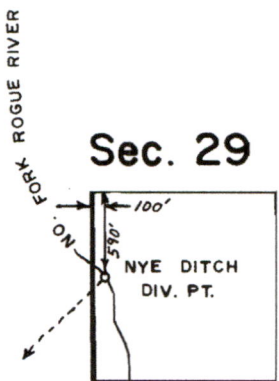
62062

# T.32 & 33S., R.2 & 3E., W.M.



SCALE 4" = 1 MILE

## Sec. 29



NW 1/4 SW 1/4  
T. 32 S., R. 3 E., W.M.

## FINAL PROOF SURVEY UNDER

62062                      46021  
Application No. 50108... Permit No. 37415.....  
IN NAME OF

RALPH & or ANNABELLE LEIBY

Surveyed May 23, 1983, by B.S. JAMES.....

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# Oregon Water Resources Department Notice of Exempt Reservoir

For reservoirs built before January 1, 1995, that:

- Store less than 9.2 acre-feet of water, or
- Have a dam less than 10 feet high.

JAN 17 1997

WATER RESOURCES  
GRANTS PASS, OR

The deadline for submitting a Notice of Exempt Reservoir is January 31, 1997.

STEARNS DAVID / ROBYNNE E

Landowner: \_\_\_\_\_

Authorized Agent: BLACK Last name, ALTA First name, M. MI

Address: 44345 Hwy 62 - P.O. Box 225 Last name, Prospect City, OR State, 97536 Zip, M. MI

Phone: 541-560-3922 Home, \_\_\_\_\_ Work

FAX: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

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A. County of use: JACKSON B. River basin (see reverse): ROGUE

C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
<u>32</u>	<u>2E</u>	<u>36</u>	<u>SE - SE</u>	<u>9500</u>

D. Name, if any, of reservoir: \_\_\_\_\_ E. Reservoir in existence since: 1 191 MM DD YY

F. Source of water: RUN OFF which flows into ROGUE RIVER  
Name of river or creek Name of river or creek

G. Maximum height of dam: 9 feet.

H. Quantity of water stored in reservoir at maximum capacity (see reverse): .03 acre-feet.

I. Water stored in reservoir is used for (see reverse): LIFE WILD / AESTHETICS

J. Rate and area of use—Refer to chart on the back of this form. For each type of water use listed in Item I., show the quantity of water used and, if applicable, the number of acres on which water is used.

BEFORE YOU SIGN AND SUBMIT THIS APPLICATION ... HAVE YOU:

- Answered each question on this form as completely as possible?
- Attached a legible map showing township, section, range, quarter-quarter & tax lot number?

By my signature below, I swear that all statements made and information provided in this application are true to the best of my knowledge.

Alta M. Black  
(Signature of Landowner/Agent)

ALTA M. BLACK  
(Printed name and title)

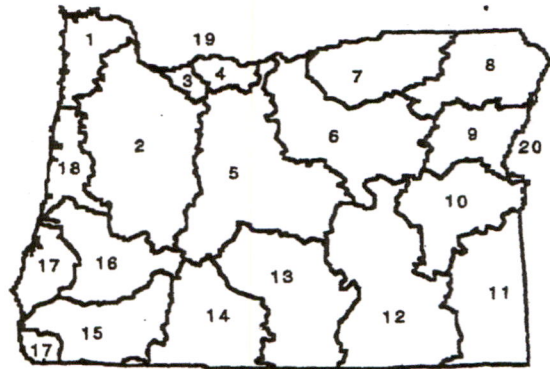
1-17-97  
(Date)

For Department Use	<u>973015</u>	Date received	10-95
	File #		



**Oregon's major river basins:**

- |               |                 |              |
|---------------|-----------------|--------------|
| 1-North Coast | 8-Grande Ronde  | 15-Rogue     |
| 2-Willamette  | 9-Powder        | 16. Umpqua   |
| 3-Sandy       | 10-Malheur      | 17-S. Coast  |
| 4-Hood        | 11-Owyhee       | 18-Mid Coast |
| 5-Deschutes   | 12-Malheur L.   | 19-Columbia  |
| 6-John Day    | 13-Goose/Summer | 20-Snake     |
| 7-Umatilla    | 14-Klamath      |              |



One acre-foot is the volume of water that would cover one acre with one foot of water. To find out how much water your pond stores, multiply the surface area by the average depth. This will give you a rough estimate of cubic feet. One acre-foot equals 43,560 cubic feet. You can submit a Notice of Exempt Reservoir if your pond stores less than 400,752 cubic feet-43,560 X 9.2

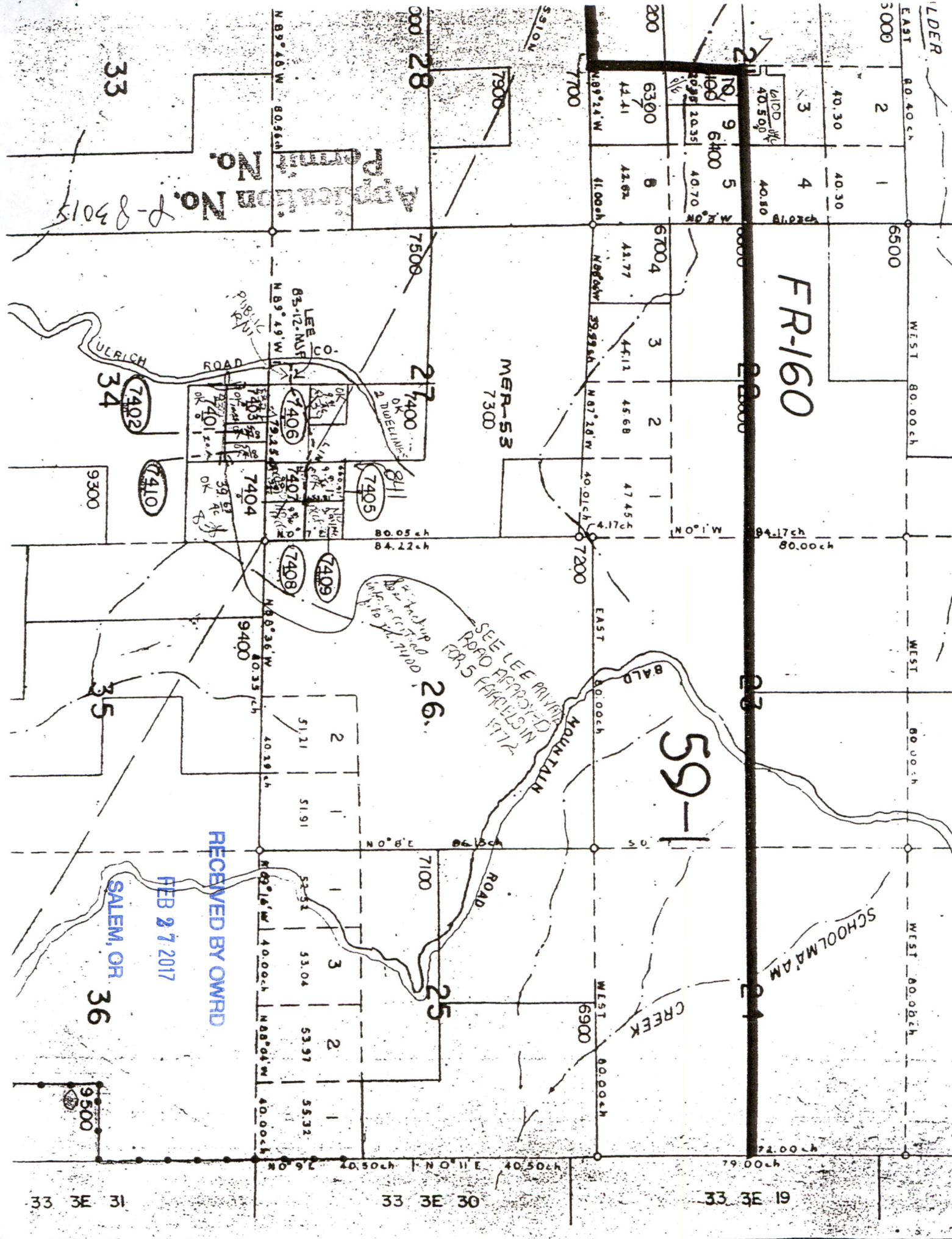
<div style="font-size: 2em; font-weight: bold; margin-right: 10px;">NA</div> <h2 style="margin: 0;">Rate and Area of Use</h2>	
cfs-cubic feet per second	gpm-gallons per minute
<b>Agriculture, Land Management</b>	
Gen. Agriculture	cfs/gpm ___ # acres ___
Irrigation	cfs/gpm ___ # acres ___
Stockwater	cfs/gpm ___ # acres ___
Aquatic Life	cfs/gpm ___ # acres ___
Other:	cfs/gpm ___ # acres ___
Cranberry	cfs/gpm ___ # acres ___
Nursery Operatn.	cfs/gpm ___ # acres ___
Temp. Control	cfs/gpm ___ # acres ___
Forest/Range Mgt	cfs/gpm ___ # acres ___
Other:	cfs/gpm ___ # acres ___
<b>Industrial/Commercial Uses</b>	
Industrial	cfs/gpm _____
Fire Protection	cfs/gpm _____
Power Dev.	cfs/gpm _____
Commercial	cfs/gpm _____
Mining	cfs/gpm _____
Other:	cfs/gpm _____
<b>Drinking Water Supply</b>	
Human Consumption	cfs/gpm _____
Domestic	cfs/gpm _____
Expanded	cfs/gpm _____
Domestic	cfs/gpm _____
Other:	cfs/gpm _____
<b>Community Water Supply</b>	
Municipal	cfs/gpm _____
Group Domestic	cfs/gpm _____
Other:	cfs/gpm _____
Quasi-Municipal	cfs/gpm _____
Storm Water Mgt	cfs/gpm _____
Other:	cfs/gpm _____
<b>Environmental Benefits</b>	
Pollution Abatement	cfs/gpm _____
Wetland Enhancement	cfs/gpm _____
Other:	cfs/gpm _____
Recreation	cfs/gpm _____
Wildlife	cfs/gpm _____
Other:	cfs/gpm _____

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33

LEADER  
EAST 80.40 ch  
WEST 80.00 ch  
WEST 80.00 ch  
WEST 80.00 ch  
WEST 80.00 ch  
WEST 80.00 ch  
WEST 80.00 ch

FR-160

MER-53  
7300

59-1

SEE LEE PRIVATE ROAD PROPOSED FOR 5 PARCELS IN 1972

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FEB 27 2017  
SALEM, OR

36

33 3E 31

33 3E 30

33 3E 19

NO. 2-83015

34

9300

26

25

9500

INSTRUCTIONS:

Hi-lite answer to each question. Initial on line that follows

HB2376 PROCESSING GUIDELINES

Ap. No. P83015

(1) PULL AND ATTACH ASSOCIATE 2153 FILE IF ANY no

(2) 2153 ELIGIBLE?

NO → (3) CHECK QUAD & AERIAL, STILL 2153 ELIGIBLE? YES *lh*  
*RUNOFF → WI, AESTHETICS*

(3) CHECK QUAD & AERIAL, STILL 2153 ELIGIBLE?

NO → (4) ERRONEOUS FILING? (HAS A WATER RIGHT) YES

(4) ERRONEOUS FILING? (HAS A WATER RIGHT)

NO → (5) SORT BY BASIN AND SUB-BASIN YES

(5) SORT BY BASIN AND SUB-BASIN

(6) DISTRIBUTION PAST 5 YEARS?

YES → (7) FUTILE EFFORT? (NO BENEFIT FROM DENIAL) NO

(7) FUTILE EFFORT? (NO BENEFIT FROM DENIAL)

NO → (8) WATERMASTER FINAL CHECK YES

(8) WATERMASTER FINAL CHECK

CONCERN?

NO CONCERN?

WATERMASTER TO OWRD, SALEM  
LETTER OF CONCERN  
8-01-97

WATERMASTER TO OWRD, SALEM  
NO CONCERN"  
8-01-97

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FEB 27 2017

SALEM, OR

*P83015*

*Joe*





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

November 12, 1997

FILE#: P 83015

DAVID L STEARNS  
STEARNS, ROBYNNE E; BLACK, ALTA M  
PO BOX 225; 44345 HWY 62  
PROSPECT, OR 97536

Dear Reservoir Owner,

You submitted a Notice of Exempt Reservoir under *ORS 537.405 (HB 2376)*. HB 2376 provided an opportunity for the Oregon Department of Fish and Wildlife to comment on how a specific reservoir(s) caused injury to an existing fishery resource. In addition the same law allowed members of the public to comment on how the storage or use of the water caused an injury to an existing water right. This comment period ended on August 1, 1997.

The Department received the attached injury allegation(s) related to your reservoir(s), as provided for in *ORS 537.405*. If you do not agree with the allegation of injury, please submit detailed information to the Department explaining why or how the allegation is in error. Your response must be postmarked no later than *December 10, 1997*.

The Department will review any submission you may make and determine if a Mitigation Order is required. If the Department finds that the allegation is factual and verifiable, the Department will issue a Mitigation Order requiring that the attached conditions, or other conditions that prove to be necessary after reviewing any information that is submitted, be met in order for the reservoir to maintain an exempt status.

If you receive a Mitigation Order, you may request a Contested Case Hearing to contest the findings of the Department and the allegation of injury. Information on how to request a Contested Case Hearing will be provided with the mitigation order, if issued.

If you have any questions, please call the Water Rights Information Group at (503) 378-3739 extension. 499.

Water Right Section

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**ODFW BIOLOGIST COMMENTS FOR  
HB 2153 CERTIFICATES  
HB 2376 NOTICES**

Application # P-83015    Date: July 30, 1997  
Biologist's Name: Jerry Vogt  
Address: 1495 East Gregory Rd., Central Point  
Certificate #                      (If applicable)                      Phone: (541) 826-8774

\*\*Attach additional sheets if necessary

Please specify which reservoir(s)/ponds(s) the comments pertain to:  
*Describe by name, number or Township Range Section and 1/4 1/4 if necessary. If  
comments refer to all reservoir listed please specify. **Please provide enough information  
to accurately describe which reservoir the comment(s) pertain to.***

These comments apply to all reservoirs in the application.

Does the reservoir/pond cause a detrimental impact to existing fishery resource. Specify  
which fishery resource and the evidence which supports that finding. *Please describe for  
each reservoir listed above. If the water right and the supporting evidence are the same  
please indicate.*

---

This reservoir negatively impacts coho and chinook salmon, steelhead and trout  
populations in the Rogue River. While ODFW has not documented the presence of fish  
at the POD, this stream is a tributary of the Rogue River, a stream for which ODFW  
holds an instream water right (Certificate 59979, 59980). This section of the Rogue  
River also appears on DEQ's 303 (d) list of water quality limited streams due to high  
summer water temperatures; these high water temperatures reduce salmonid habitat in the  
Rogue River. Withdrawals of water for this reservoir contribute to temperature problems  
on the Rogue River and injure ODFW's instream water right.

\*\*\*\*\*BACK OF PAGE FOR LIST OF CONDITIONS TO MITIGATE INJURY\*\*\*\*\*

Which of the following conditions are required to mitigate the described injury?

The reservoir owner shall: (without ODFW approval)

- (a) install, maintain, and operate fish screening devices as required by the Oregon  
Department of Fish and Wildlife to prevent fish from entering the proposed  
diversion. \*The required screen is to be in place and functional prior to any further  
diversion of water.
- (b) in accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate  
by-pass devices as required by the Oregon Department of Fish and Wildlife that will  
provide adequate upstream and downstream passage for fish.
- (a & b) install, maintain, and operate fish screening and by-pass devices as required by the  
Oregon Department of Fish and Wildlife to prevent fish from entering the proposed  
diversion. \*The required screen is to be in place and functional prior to any further  
diversion of water.

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## MITIGATION CONDITIONS

File # P- 83015  
Date 11-12-97  
MC

### Oregon Department of Fish and Wildlife Conditions

- \_\_\_\_\_ In accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate bypass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream passage for fish. (SMBS)
- \_\_\_\_\_ Install, maintain, and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the diversion. (SMSS)
- ✓ \_\_\_\_\_ The reservoir owner is required to by-pass flows from April 1 through October 31. (BPC)

### Water Right Related Conditions

- \_\_\_\_\_ The pond may be filled one time only per year. No diversion of water to storage can occur during times all water rights are not met on the John Day river System. (KR1)
- \_\_\_\_\_ If required by the Watermaster, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Watermaster (Department). (KR2)
- \_\_\_\_\_ Live stream flow must be passed when required to satisfy existing water rights. In order to substantiate live flow is being passed, measuring devices may be required. (J)
- \_\_\_\_\_ Live flow must be by-passed all year. (BSD)
- \_\_\_\_\_ Any secondary use of stored water is limited each year to the capacity of the reservoir. (BSD2)
- \_\_\_\_\_ The water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

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The reservoir owner shall: (with ODFW approval)

- (a) install, maintain, and operate fish screening device as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. \*The required screen is to be in place, functional and approved by an ODFW representative prior to any further diversion of water.
- (b) in accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate by-pass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream and downstream passage for fish. \*The required by-pass device is to be in place, functional and approved by an ODFW representative prior to any further diversion of water.
- (a & b) install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. \*The required screens and by-pass devices are to be in place, functional and approved by an ODFW representative prior to any further diversion of water.

The reservoir owner shall by-pass flows during months when Instream Water Rights are not being met.

Other: (Please specify below)

Because the presence of fish at the POD is unknown, ODFW will not require the applicant to provide fish screens or fish passage. However, to prevent further degradation of stream temperature problems on the Rogue River, and to avoid injury to ODFW's instream water right for that stream, the reservoir owner should be required to by-pass flows from April 1 through October 31.

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# Oregon

John A. Kitzhaber, M.D., Governor

*al Cook*

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

January 16, 1998

DAVID L. AND ROBYNNE E. STEARNS  
ALTA M. BLACK  
P.O. BOX 225  
44345 HWY 62  
PROSPECT, OR 97536

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Reference: File P-83015

SALEM, OR

Dear Applicant:

Thank you for your continuing efforts in our program for authorizing exemptions for existing ponds and reservoirs. We know it has been a long and complicated process, and we appreciate your cooperation.

As indicated in our letters to you last November, we had previously received written comments indicating that your reservoir could be detrimental to fish or might cause injury to other water rights. You were provided an opportunity to submit additional information addressing those comments.

Since then, we have reviewed all the information available to us, and have determined that certain conditions are necessary to mitigate the potential harm to fish or other water rights. The enclosed Mitigation Order spells out the additional conditions we are proposing.

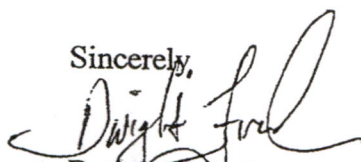
If you agree with these conditions, and comply with the Mitigation Order, the process will be complete.

If you disagree with this order, you may request a contested case hearing, and submit in writing your reasons why the order should be changed or rescinded. You may wish to submit maps or sketches to help us to better understand the particulars of your situation. Once we receive your request for a contested case hearing, we will contact you to discuss the situation and how we might be able to settle disagreements without holding a hearing. If we are unable to agree on a solution, we will schedule a contested case hearing at a time that is agreeable to both you and the Department. The appeal rights are described in more detail in the order enclosed.

P 83015

Once again, thank you for your participation in this program. If you have any questions please call one of the water rights staff listed below. My extension number is 268.

Sincerely,



Dwight French  
Water Rights Section Manager

Enclosures

cc: Watermaster

Russ Klassen	1-800-624-3199	Ext 266
Laura Snedaker		Ext 331
Dallas Miller		Ext 272

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SALEM, OR



Oregon Water Resources Department  
Water Rights Division

Notice of Existing Reservoir  
Number P-83015

## **Reservoir Mitigation Order**

### *Application History*

A reservoir was constructed prior to January 1, 1995. As evidence of the right to store water, pursuant to ORS 537.405(2)(a), notice of existing reservoir was submitted.

Pursuant to ORS 537.405(4)(a) the Department has received information from Oregon Department of Fish and Wildlife demonstrating that the reservoir poses a significant detrimental impact to existing fishery resources.

Pursuant to ORS 537.405(4)(b) the Department has received information demonstrating that the reservoir results in injury to an existing water right.

ORS 537.405(7) specifies that "...the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resource."

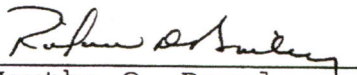
Therefore, the Department has determined that with the following additional mitigation condition(s), the injury to existing water rights and/or detrimental impact to existing fishery resources, described above, will be mitigated.

### **Order**

The reservoir owner is required to by-pass flows from APRIL 1 through OCTOBER 31.

Therefore, pursuant to ORS 537.405, the use evidenced by notice of existing reservoir number P-83015, shall be allowed to continue if the injury/negative impact of the reservoir is mitigated as described above.

DATED January 16, 1998

  
Martha O. Pagel  
Director

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## Notice of Right to Contested Case Hearing

The owner of the reservoir that is the subject of this mitigation order may request a contested case hearing if the owner disagrees with the order. Most disagreements are settled through a series of informal discussions before the hearing date arrives.

If the department does not receive a request for hearing within the time stated in this notice you have waived your right to a hearing under ORS Chapter 183, unless your failure to request a hearing was beyond your reasonable control, as provided in OAR 137-03-075.

The record of this proceeding to date, including information in Department files on the subject of this proceeding, is automatically part of the contested case record upon default for the purpose of proving a prima facie case.

In order to process your request for a contested case hearing please include the following in writing:

- The reference number (located near the top right corner of the order.);
- Your name, address, and telephone number;
- A detailed description of why the condition(s) proposed in this order is not necessary to protect existing water rights or fishery resources;
- Any citation of legal authority to support your protest, if known.

Your request for a contested case hearing must be received by the Department no later than 60 days after the date of this order.

Send your request for a contested case hearing to:

Ponds Program Appeals  
Water Rights Section  
Oregon Water Resource Department  
158 12<sup>th</sup> ST NE  
Salem OR 97310

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