

FILE#: P 81857  
 WAYNE FOSTER  
 QUAIL MEADOW FARMS INC.  
 PO BOX 25  
 LANGLOIS, OR 97450

Application No. P-81857 HB2376

1996 E

Permit No. \_\_\_\_\_

Certificate No. \_\_\_\_\_

FEES PAID		
Date	Amount	Receipt No.
FEES REFUNDED		
Date	Amount	Check No.

Stream Index, Page No. \_\_\_\_\_  
 See P-82247, R-81899, R-81900,  
 G-137314 32, R-73460,  
 S-73459

Date filed \_\_\_\_\_  
 Priority \_\_\_\_\_  
 Action suspended until \_\_\_\_\_  
 Return to applicant \_\_\_\_\_  
 Date of approval \_\_\_\_\_

ASSIGNMENTS				
Date	To Whom	Address	Volume	Page

**CONSTRUCTION**

Date for beginning \_\_\_\_\_  
 Date for completion \_\_\_\_\_  
 Extended to \_\_\_\_\_  
 Date for application of water \_\_\_\_\_  
 Extended to \_\_\_\_\_

REMARKS				

**PROSECUTION OF WORK**

Form "A" filed \_\_\_\_\_  
 Form "B" filed \_\_\_\_\_  
 Form "C" filed \_\_\_\_\_

**FINAL PROOF**

Blank mailed \_\_\_\_\_  
 Proof received \_\_\_\_\_  
 Date Certificate issued \_\_\_\_\_



# EXPRESS MAIL

UNITED STATES POSTAL SERVICE®



## POST OFFICE TO ADDRESSEE

UNITED STATES POSTAL SERVICE™

ORIGIN (POSTAL USE ONLY)			DELIVERY (POSTAL USE ONLY)		
PO ZIP Code 97717	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Date In Mo. Day Year 12 10 95	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$ 10.00	Mo. Day 12 10	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt	Date of Delivery 12 10 95	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Weight lbs ozs 1.3	Int'l Alpha Country Code	C.O.D.	Signature of Addressee or Agent K. Blamar	Name - Please Print X	
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials DL	Total Postage & Fees \$ 10.00	X		

### CUSTOMER USE ONLY

**TO FILE A CLAIM FOR DAMAGE OR LOSS OF CONTENTS, YOU MUST PRESENT THE ARTICLE, CONTAINER AND PACKAGING.**

**WAIVER OF SIGNATURE** (Domestic Only): I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

**NO DELIVERY**  Weekend  Holiday \_\_\_\_\_ Customer Signature

**FROM: (PLEASE PRINT)**

PHONE \_\_\_\_\_

WALTER FOSTER  
ATTACH LABEL  
PAYMENT REQUIRED  
ADVISE OFFICE OF DAMAGE  
ADVISE OFFICE OF LOSS  
IF DELIVERED TO  
LOCAL OFFICE  
IF NOT DELIVERED  
ADVISE OFFICE OF LOSS

**TO: (PLEASE PRINT)**

PHONE \_\_\_\_\_

WALTER FOSTER  
ATTACH LABEL  
PAYMENT REQUIRED  
ADVISE OFFICE OF DAMAGE  
ADVISE OFFICE OF LOSS  
IF DELIVERED TO  
LOCAL OFFICE  
IF NOT DELIVERED  
ADVISE OFFICE OF LOSS

**FOR PICKUP OR TRACKING CALL 1-800-222-1811**



Label 11-B October 1995

Addressee Copy



Rebuttal  Y / N

Exempt by WM comments Y /  N

**COMMENTOR:**

WM and/or WM Dist: \_\_\_\_\_

ODFW Dist: \_\_\_\_\_

Water Watch:  Y / N

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QUAIL MEADOW FARMS. —

P-81857

R-81899

R-81800

R-73460

S-73459

2-9-99 SAKE REVIEWED



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WAYNE FOSTER  
QUAIL MEADOW FARMS INC.  
PO BOX 25  
LANGLOIS, OR 97450

Called Lloyd  
on 11/13/01 AM.  
and discussed.

# Route Slip



Date \_\_\_\_\_

TO:	Name	Division/Section	Initial	Date
1.				
2.				
3.				
4.				
5.				

as requested		investigate		per conversation
approval		justify		prepare reply
comment		necessary action		return with more detail
confer		initial and return		review and circulate
for your information		note and file		signature

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<b>FROM:</b>	Phone No.
--------------	-----------

**IMPORTANT MESSAGE**

FOR \_\_\_\_\_ DATE 9-27 TIME 12:24 <sup>A.M.</sup>/<sub>P.M.</sub>

M. June Oct #19

OF \_\_\_\_\_

PHONE  FAX  MOBILE

AREA CODE      NUMBER      EXTENSION

MESSAGE \_\_\_\_\_

Felix P-81857

Everything P-82247

Certificated?

- PHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

SIGNED \_\_\_\_\_





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

290 N Central Street  
Coquille, OR 97423  
(541) 396-3121 Ext. 254  
FAX (541) 396-6233

October 31, 2001

Dwight French  
Water Resource Dept.  
158 12<sup>th</sup> Street NE  
Salem, OR 97310-4172

RE: P-81857

Dear Dwight:

Enclosed are letters sent to John Foss and Wayne Foster, dated October 25, 2001 in connection with a complaint made by Croft Lake Association. Per our site inspection, questions have been raised about water use on an area highlighted on the enclosed assessor map, aerial and site photographs.

Mr. Foster was told he is allowed to use the water because of the above pond application. I would like to know the Departments policy on this issue.

After you've had time to look through the file, please call me at your earliest convenience.

Sincerely,

Lloyd C. VanGordon  
District #19 Watermaster

Cc: Bruce Sund, Assistant Regional Manager

RECEIVED

NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

290 N Central Street  
Coquille, OR 97423  
(541) 396-3121 Ext. 254  
FAX (541) 396-6233

October 25, 2001

Wayne Foster  
Quail Meadow Farms  
PO Box 25  
Langlois, OR 97450

RE: T30S, R15W, Sec. 14, Tax Lot 200 and  
T30S, R15W, Sec. 11, Tax Lot 1201, 1202, 1400, and 1500

Dear Mr. Foster:

Thank you for allowing us to inspect your use of water on the above-described lands. We conclude that the only use of water in question is use on lands located in T30S, R15W, Sec. 11, Tax Lots 1400 and 1500. Further research by the Department will determine if water use on this land is allowed under your ponds application number P81857. Please remember all use of water from reservoirs described in that application must be limited to 7-acre feet of stored water and to uses that occurred prior to January 1, 1995. No additional use of water, after that date, will be allowed unless additional permits are issued.

Please release the unpermitted storage of water in the lower reservoir on Abe's Creek as soon as possible.

Pending water right application no. R-73460, R-81899, R-81900, G-13731, G-13732 and S-73459 are on Administrative Hold. No use of water described in these applications may occur until permits are issued.

Again, thank you for your cooperation in this matter and we will contact you as soon as the Department has reached a decision.

Sincerely,

Lloyd C. VanGordon,  
District #19 Watermaster

Cc: Bruce Sund, Assistant Regional Manager  
Dwight French, OWRD

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NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON



# Oregon

John A. Kitzhaber, M.D., Governor

**Water Resources Department**  
290 N Central Street  
Coquille, OR 97423  
(541) 396-3121 Ext. 254  
FAX (541) 396-6233

October 25, 2001

John Foss  
Foss, Whitty, Littlefield, McDaniel & Bodkin, LLP, Attorneys at Law  
PO Box 1120  
Coos Bay, OR 97420-0299

RE: Croft Lake Association Protest of Quail Meadow Farms/Wayne Foster  
Water Rights Application

Dear Sir:

Bruce Sund, Assistant Regional Manager, and I inspected the Wayne Foster/Quail Meadow Farms property October 23, 2001. Through water right research and a physical inspection of water use on Quail Meadow Farms property, we conclude that water is generally being used as permitted by the Oregon Water Resources Department.

Further water right research will be conducted by the Department to determine if water use is authorized on lands located in T30S, R15W Sec. 11, tax lots 1400 & 1500. We will immediately request temporary, non-permitted, storage be discontinued and Mr. Foster will be notified that no additional water use is allowed unless permits are issued for his pending applications.

Please contact our office should you have further questions.

Sincerely,

Lloyd C. VanGordon,  
District #19 Watermaster

Cc: Karl G. Anuta, Croft Lake Association Representative  
Bruce Sund, Assistant Regional Manager  
Dwight French, OWRD

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WATER RESOURCES DEPT.  
SALEM, OREGON





# Oregon Water Resources Department Notice of Exempt Reservoir

1-0100  
**RECEIVED**

DEC 23 1996

WATER RESOURCES DEP  
SALEM, OREGON

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.

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

Landowner: Quail Meadow Farms Inc

Authorized Agent: Foster, WAYNE MI

Address: POB 25 MI

LANGLOIS OR 97450  
City State Zip

Phone: 541 348 2351 Home Work

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

**RECEIVED**

NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON

A. County of use: COOS B. River basin (see reverse): SCORST

### C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
<u>30S</u>	<u>15W</u>	<u>11</u>	<u>SW 1/4 S 1/4</u>	<u>1500</u>

D. Name, if any, of reservoir: Hole 1 E. Reservoir in existence since: NOV 11 1983  
MM DD YY

F. Source of water: RAIN ONLY which flows into NONE  
Name of river or creek Name of river or creek

G. Maximum height of dam: NONE feet.

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

I. Water stored in reservoir is used for (see reverse): Gen Agriculture, CRANberry  
CRANberry Processing, Related uses

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.

Wayne Foster  
(Signature of Landowner/Agent)

Quail Meadow Farms Inc  
(Printed name and title)

Dec 16 1996  
(Date)

For Department Use

P-81837

12/23/96

10-95

File #

Date received

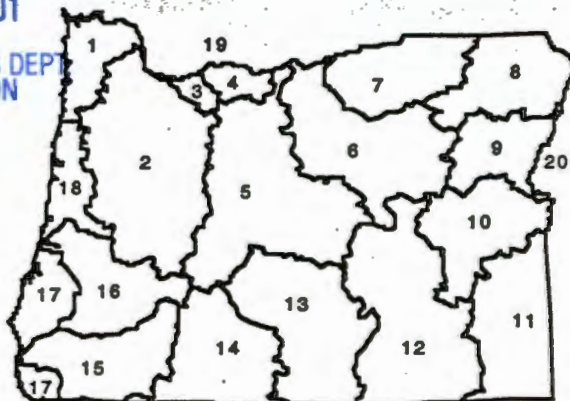


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Oregon's major river basins: NOV 0 2 2001

WATER RESOURCES DEPT  
SALEM, OREGON

- |               |                 |              |
|---------------|-----------------|--------------|
| 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

### Rate and Area of Use

cfs-cubic feet per second                      gpm-gallons per minute

#### Agriculture, Land Management

Gen. Agriculture	cfs/gpm / <u>  </u> # acres <u>  </u>	Cranberry	cfs/gpm / <u>  </u> # acres <u>  </u>
Irrigation	cfs/gpm <u>  </u> # acres <u>  </u>	Nursery Operatn.	cfs/gpm <u>  </u> # acres <u>  </u>
Stockwater	cfs/gpm <u>  </u> # acres <u>  </u>	Temp. Control	cfs/gpm <u>  </u> # acres <u>  </u>
Aquatic Life	cfs/gpm <u>  </u> # acres <u>  </u>	Forest/Range Mgt	cfs/gpm <u>  </u> # acres <u>  </u>
Other:	cfs/gpm <u>  </u> # acres <u>  </u>	Other:	cfs/gpm <u>  </u> # acres <u>  </u>

#### Industrial/Commercial Uses

Industrial	cfs/gpm <u>  </u>	Commercial	cfs/gpm <u>  </u>
Fire Protection	cfs/gpm <u>  </u>	Mining	cfs/gpm <u>  </u>
Power Dev.	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>

#### Drinking Water Supply

Human Consumption	cfs/gpm <u>  </u>	Domestic	cfs/gpm <u>  </u>
Domestic		Other:	cfs/gpm <u>  </u>
Expanded	cfs/gpm <u>  </u>		

#### Community Water Supply

Municipal	cfs/gpm <u>  </u>	Quasi-Municipal	cfs/gpm <u>  </u>
Group Domestic	cfs/gpm <u>  </u>	Storm Water Mgt	cfs/gpm <u>  </u>
Other:	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>

#### Environmental Benefits

Pollution Abatement	cfs/gpm <u>  </u>	Recreation	cfs/gpm <u>  </u>
Wetland Enhancement	cfs/gpm <u>  </u>	Wildlife	cfs/gpm <u>  </u>
Other:	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>

Meadow Farms Inc

POB 114

Langlois On 97450

Scale 1" = 330'

T30S R15W Sec 11 SE 1/4

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DEC - 4 1996

WATER RESOURCES DEPT.  
SALEM, OREGON



DEC 23 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Application No. P-81858  
Permit No.



SW 1/4 SE 1/4 Sec 11 TL 1500

Hole 1

Filled by RAIN water only



POD 700' North  
300' EAST  
of S 1/4 corner Sec 11

TL 1400

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NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON





# 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.

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

**RECEIVED**  
DEC 23 1996  
WATER RESOURCES DEPT.  
SALEM, OREGON

Landowner: Quail Meadow Farms Inc \_\_\_\_\_ MI

Authorized Agent: Foster, WAYNE \_\_\_\_\_ MI

Address: POB 25 \_\_\_\_\_

LANP/015 OR 97450  
City State Zip

Phone: 541 348 2351 \_\_\_\_\_  
Home Work

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

**RECEIVED**  
NOV 02 2001  
WATER RESOURCES DEPT.  
SALEM, OREGON

A. County of use: COOS . B. River basin (see reverse): S COAST

### C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
30S	15W	11	SW 1/4 SE 1/4	1400

D. Name, if any, of reservoir: Water 1 . E. Reservoir in existence since: NOV 11 1983  
MM DD YY

F. Source of water: NO NAME Cr which which flows into NEW RIVER  
IS RUNOFF FROM BOGS & DIRECT RAIN  
Name of river or creek Name of river or creek

G. Maximum height of dam: 6 feet.

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

I. Water stored in reservoir is used for (see reverse): CRANBERRY, CRANBERRY PROCESSING, AGRICULTURE, Related uses

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.

Wayne Foster (Signature of Landowner/Agent) Quail Meadow Farms Inc (Printed name and title) Dec 16 1996 (Date)

For Department Use P-81857 12/23/96 10-95  
File # Date received

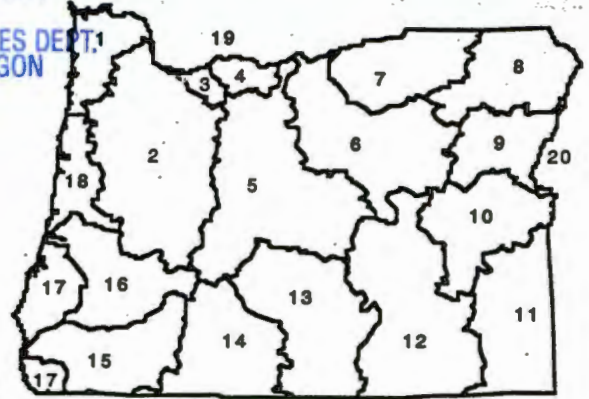


RECEIVED

Oregon's major river basins: NOV 0 2 2001

WATER RESOURCES DEPT.  
SALEM, OREGON

- |               |                 |              |
|---------------|-----------------|--------------|
| 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      |              |



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<b>Rate and Area of Use</b>			
cfs-cubic feet per second		gpm-gallons per minute	
<b>Agriculture, Land Management</b>			
Gen. Agriculture	cfs/gpm / <u>  </u> # acres <u>  </u>	Cranberry	cfs/gpm / <u>  </u> # acres <u>  </u>
Irrigation	cfs/gpm <u>  </u> # acres <u>  </u>	Nursery Operatn.	cfs/gpm <u>  </u> # acres <u>  </u>
Stockwater	cfs/gpm <u>  </u> # acres <u>  </u>	Temp. Control	cfs/gpm <u>  </u> # acres <u>  </u>
Aquatic Life	cfs/gpm <u>  </u> # acres <u>  </u>	Forest/Range Mgt	cfs/gpm <u>  </u> # acres <u>  </u>
Other:	cfs/gpm <u>  </u> # acres <u>  </u>	Other:	cfs/gpm / <u>  </u> # acres <u>  </u>
<b>Industrial/Commercial Uses</b>			
Industrial	cfs/gpm <u>  </u>	Commercial	cfs/gpm <u>  </u>
Fire Protection	cfs/gpm <u>  </u>	Mining	cfs/gpm <u>  </u>
Power Dev.	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>
<b>Drinking Water Supply</b>			
Human Consumption	cfs/gpm <u>  </u>	Domestic	cfs/gpm <u>  </u>
Domestic Expanded	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>
<b>Community Water Supply</b>			
Municipal	cfs/gpm <u>  </u>	Quasi-Municipal	cfs/gpm <u>  </u>
Group Domestic	cfs/gpm <u>  </u>	Storm Water Mgt	cfs/gpm <u>  </u>
Other:	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>
<b>Environmental Benefits</b>			
Pollution Abatement	cfs/gpm <u>  </u>	Recreation	cfs/gpm <u>  </u>
Wetland Enhancement	cfs/gpm <u>  </u>	Wildlife	cfs/gpm <u>  </u>
Other:	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>



LOW FARMS INC

LANGLOIS On 97450

Scale 1" = 330'

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DEC - 4 1996

WATER RESOURCES DEPT.  
SALEM, OREGON



T30S R15W Sec 11 SE 1/4

RECEIVED

DEC 23 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Application No. P 81857  
Permit No.

SW 1/4 SE 1/4 Sec 11 TL 1500

Underground DRAINAGE  
AND SURFACE DRAINAGE OFF  
BOGS FIELDS Res. WATER I

TL 1400

DAM

POD  
300' N AND 800' E  
OF S 1/4 corner Sec 11

No NAME

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NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON

5-17-97

BLM

12

0-97-880

4-7-139



Approximately 12 acres of bogs? Water may be being used on all or part of this acreage on 5-17-97. We have no aerial photos between 7-7-92 and 5-17-97.

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 NOV 22 2001  
 WYOMING  
 FOREST RESOURCES DEPT.  
 SALEM, OREGON





Reservoirs constructed as shown in P-81857, but no apparent use, 07/07/92.



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NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON



10-23-01 KCW

Hole 1



RECEIVED

NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON



10-23-01 KCW

Water 1



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NOV 02 2001

WATER RESOURCES DEPT.  
SALEM, OREGON



10-23-01 LCW

View of place of use (partial)

# Mailing List for Commenter Letter

File #: P-81857

Letter & copies of rebuttal, comments, certificate or notice, and map sent to:

1. Watermaster: \_\_\_\_\_

2. ODFW District Bio: \_\_\_\_\_

3. Waterwatch

4. Other: \_\_\_\_\_

Copies Mailed
By: _____
(SUPPORT STAFF)
on: <u>12-19-97</u>
(DATE)

(Note: Materials mailed only to those individuals/parties that are checked off above.)

Copy of Letter to:

1. WRD File # P-81857





# 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 81857

WAYNE FOSTER  
QUAIL MEADOW FARMS INC.  
PO BOX 25  
LANGLOIS, OR 97450

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



# 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

December 19, 1997

Waterwatch  
213 SW Ash #208  
Portland, Oregon 97204

Dear Waterwatch:

You submitted comments on ponds filed under ORS 537.407 (HB 2153) or under ORS 537.405 (HB 2376). These laws provided an opportunity for the Oregon Department of Fish and Wildlife to comment on how a specific reservoir(s) will cause significant detrimental impacts to an existing fishery resource and allowed members of the public to comment on how the reservoir(s) will cause an injury to an existing water right(s). Based upon review of your comments, the Department prepared notices of proposed mitigation conditions. A notice was mailed to each of the registrants along with a copy of your comments. The registrants were provided an opportunity to submit additional information to the Department explaining how your comments were in error.

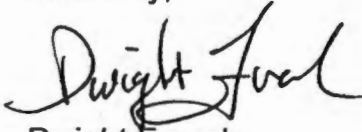
The Department received the attached rebuttals to your comments. If you do not agree with a rebuttal and believe that your comments are still valid, please send a written response to the Department identifying why you disagree with the rebuttal and affirming your position. However, if you agree with the rebuttal you need not respond, unless you determine that it is necessary. In order for us to issue a mitigation order within 180 days of receiving your comments, we need to have your response(s) received by the Department no later than January 7, 1998. If you need an additional day or two to look further at a couple of ponds, please send a request, attention to the appropriate file number.

If you choose to respond, the Department will determine whether a Mitigation Order is required based upon your response and the rebuttal submitted by the registrant. The Mitigation Order, if required, will identify any conditions that must be met in order to protect the fishery resource and/or existing water rights and for the reservoir to be authorized.

If no response to a rebuttal is received, the Department will conclude that you agree with the rebuttal and that a Mitigation Order is not necessary.

If you have any questions, please me at (503) 378-8455, extension 268, or toll free within Oregon at 1 (800) 624-3199.

Sincerely,

A handwritten signature in black ink that reads "Dwight French". The signature is written in a cursive style with a large, stylized "D" and "F".

Dwight French  
Water Rights Manager

Enclosures: Your Comments  
Proposed Mitigation Conditions  
Rebuttal from Registrant  
Copy of Notice of Exempt Pond or Certificate and Map



## MITIGATION CONDITIONS

File # P- 81857  
Date 11.7.97  
DWP

### 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 \_\_\_\_\_ through \_\_\_\_\_ (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.



# 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 20, 1997

WAYNE FOSTER  
QUAIL MEADOW FARMS INC.  
PO BOX 25  
LANGLOIS, OR 97450

REFERENCE: FILE#: P 81857

Dear Mr. Foster,

I want to apologize for any confusion which may have resulted from the letter we sent to you about a week ago. I hope this follow-up letter will better explain our "ponds" program, and give you a clearer picture of what is happening with your pond.

In 1995, the legislature adopted a new law intended to help address a legal problem with many existing ponds throughout the state. These ponds had been developed over the years by land owners who were not aware that water rights may have been required. In order to make sure that all the ponds were "legal" the legislature approved HB 2376 in 1995, which set out a process for filing a notice of the pond with our department. Under the law, such notices could be filed until January 31, 1997. Our job was then to determine whether any of the ponds resulted in injury to other existing water rights, or created a detrimental impact on fish.

This simplified review process was intended to make it easier for the owners of existing ponds to receive final water right certificates. The 1995 law also required that we provide a comment period, which ended on August 1, 1997. During this time, we were required to accept comments as to whether a pond may in fact be resulting in injury to other water rights or creating a detrimental impact to fish. After the close of that comment period, our department was given 180 days in which to evaluate the comments, give notice to the pond owners, and identify whether mitigation measures would be required to alleviate the injury to other water rights or impacts to fish.

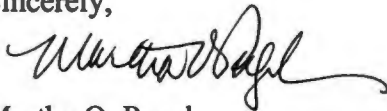
This is why you received a letter from us last week. For more than 16,000 ponds on which notices were filed under HB 2376, about 960 comments were received. From those comments, we determined that about half would appear to require mitigation measures. A total of 450 letters were sent out last week to pond owners like you.

The purpose of these letters was to advise you that the comments had been received, and to provide you with an opportunity to get back to us with any information you might have to show that the mitigation should not be required — either because you disagree with the comment that we received, or because you have a better idea of how to remedy the situation.

The letter you received included a copy of the comments we received about your pond, along with our proposed mitigation plan. We need to hear from you by December 10, 1997, as to whether you disagree with the underlying comment or with our proposed mitigation. We do encourage you to get back to us by the deadline, and we will make every effort to accommodate your suggestions.

Again, I offer my sincere apology for any confusion or irritation caused by our earlier letter. I hope this letter provides additional background information that will help you respond to the questions about your pond. If you have questions about this process, please let us know. I urge you to call our Water Rights Information staff at 1-800-624-3199 extension 499. In some circumstances they may also involve your local Watermaster for additional help. We will try our best to work through this with you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martha O. Pagel".

Martha O. Pagel  
Director

m:955





# 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.

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

**RECEIVED**  
DEC 23 1996  
WATER RESOURCES DEPT.  
SALEM, OREGON

Landowner: Quail Meadow Farms Inc

Authorized Agent: Foster, WAYNE MI

Address: POB 25 MI

HANFORD OR 97450  
City State Zip

Phone: 541 348 2351 Home Work

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

A. County of use: COOS B. River basin (see reverse): S COAST

### C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
30S	15W	11	SW 1/4 SE 1/4	1400

D. Name, if any, of reservoir: Water 1 E. Reservoir in existence since: NOV 11 1983  
MM DD YY

F. Source of water: No NAME Cr which which flows into NEW RIVER  
Name of river or creek Name of river or creek  
IS RUNOFF FROM BOGS & DIRECT RAIN

G. Maximum height of dam: 6 feet.

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

I. Water stored in reservoir is used for (see reverse): CRANBERRY, CRANBERRY PROCESSING  
GENAGRICULTURE, Related uses

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.

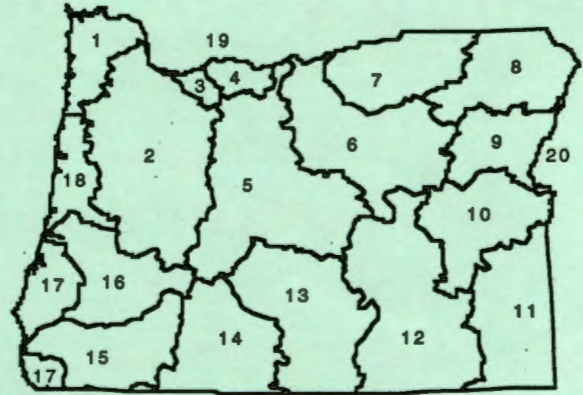
Wayne Foster Quail Meadow Farms Inc Dec 16 1996  
(Signature of Landowner/Agent) (Printed name and title) (Date)

For Department Use	<u>P-81857</u>	<u>12/23/96</u>	10-95
	File #	Date received	



# 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.

## Rate and Area of Use

cfs—cubic feet per second

gpm—gallons per minute

### Agriculture, Land Management

Gen. Agriculture	cfs/gpm / <u>  </u> # acres <u>  </u>	Cranberry	cfs/gpm / <u>  </u> # acres <u>  </u>
Irrigation	cfs/gpm <u>  </u> # acres <u>  </u>	Nursery Operatn.	cfs/gpm <u>  </u> # acres <u>  </u>
Stockwater	cfs/gpm <u>  </u> # acres <u>  </u>	Temp. Control	cfs/gpm <u>  </u> # acres <u>  </u>
Aquatic Life	cfs/gpm <u>  </u> # acres <u>  </u>	Forest/Range Mgt	cfs/gpm <u>  </u> # acres <u>  </u>
Other:	cfs/gpm <u>  </u> # acres <u>  </u>	Other:	cfs/gpm / <u>  </u> # acres <u>  </u>

### Industrial/Commercial Uses

Industrial	cfs/gpm <u>  </u>	Commercial	cfs/gpm <u>  </u>
Fire Protection	cfs/gpm <u>  </u>	Mining	cfs/gpm <u>  </u>
Power Dev.	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>

### Drinking Water Supply

Human Consumption	cfs/gpm <u>  </u>	Domestic	cfs/gpm <u>  </u>
Domestic			
Expanded	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>

### Community Water Supply

Municipal	cfs/gpm <u>  </u>	Quasi-Municipal	cfs/gpm <u>  </u>
Group Domestic	cfs/gpm <u>  </u>	Storm Water Mgt	cfs/gpm <u>  </u>
Other:	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>

### Environmental Benefits

Pollution Abatement	cfs/gpm <u>  </u>	Recreation	cfs/gpm <u>  </u>
Wetland Enhancement	cfs/gpm <u>  </u>	Wildlife	cfs/gpm <u>  </u>
Other:	cfs/gpm <u>  </u>	Other:	cfs/gpm <u>  </u>





# 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.

# RECEIVED

DEC 23 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

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

Landowner: Quail Meadow Farms Inc \_\_\_\_\_ MI

Authorized Agent: Foster, WAYNE \_\_\_\_\_ MI  
Last name First name

Address: POB 25 \_\_\_\_\_

LANGLOIS OR 97450  
City State Zip

Phone: 541 348 2351 \_\_\_\_\_  
Home Work

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

A. County of use: COOS . B. River basin (see reverse): S Coast .

### C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
<u>30S</u>	<u>15W</u>	<u>11</u>	<u>SW 1/4 S 1/4</u>	<u>1500</u>

D. Name, if any, of reservoir: Hole 1 . E. Reservoir in existence since: NOV 11 1983  
MM DD YY

F. Source of water: RAIN ONLY which flows into NONE .  
Name of river or creek Name of river or creek

G. Maximum height of dam: NONE feet.

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

I. Water stored in reservoir is used for (see reverse): Gen Agriculture, CRANberry  
CRANberry Processing, Related uses

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.

Wayne Foster  
(Signature of Landowner/Agent)

Quail Meadow Farms Inc  
(Printed name and title)

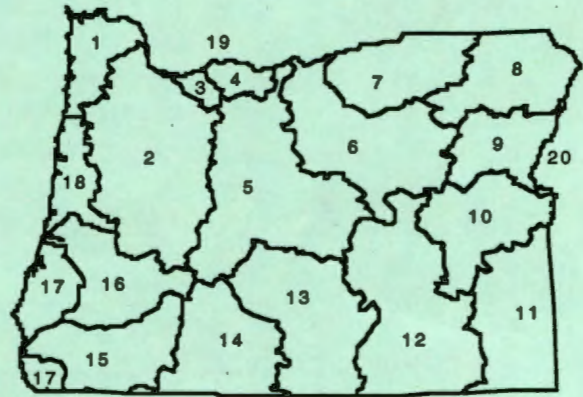
Dec 16 1996  
(Date)

For Department Use	<u>P-81837</u>	<u>12/23/96</u>	10-95
	File #	Date received	



## 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      |              |



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### Rate and Area of Use

cfs—cubic feet per second

gpm—gallons per minute

#### Agriculture, Land Management

Gen. Agriculture	cfs/gpm	/0 # acres	_____	Cranberry	cfs/gpm	/0 # acres	_____
Irrigation	cfs/gpm	# acres	_____	Nursery Operatn.	cfs/gpm	# acres	_____
Stockwater	cfs/gpm	# acres	_____	Temp. Control	cfs/gpm	# acres	_____
Aquatic Life	cfs/gpm	# acres	_____	Forest/Range Mgt	cfs/gpm	# acres	_____
Other:	cfs/gpm	# acres	_____	Other:	cfs/gpm	60 # acres	_____

#### Industrial/Commercial Uses

Industrial	cfs/gpm	_____	Commercial	cfs/gpm	_____
Fire Protection	cfs/gpm	_____	Mining	cfs/gpm	_____
Power Dev.	cfs/gpm	_____	Other:	cfs/gpm	_____

#### Drinking Water Supply

Human Consumption	cfs/gpm	_____	Domestic	cfs/gpm	_____
Domestic			Other:	cfs/gpm	_____
Expanded	cfs/gpm	_____			

#### Community Water Supply

Municipal	cfs/gpm	_____	Quasi-Municipal	cfs/gpm	_____
Group Domestic	cfs/gpm	_____	Storm Water Mgt	cfs/gpm	_____
Other:	cfs/gpm	_____	Other:	cfs/gpm	_____

#### Environmental Benefits

Pollution Abatement	cfs/gpm	_____	Recreation	cfs/gpm	_____
Wetland Enhancement	cfs/gpm	_____	Wildlife	cfs/gpm	_____
Other:	cfs/gpm	_____	Other:	cfs/gpm	_____



RECEIVED

DEC 10 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

Page 1

Dec 9 1997

Water Resources Dept  
Salem Or

Ref: P81857  
Ref: ~~P82247~~ P82247

Sirs;

It would appear, on the face of it, that the objection from Water Watch was not filed by Aug 1, 1997 so should not be considered in your decision on the above applications.

It would also appear that ODFW also failed for the same reason.

If you chose not to consider the above I will make the following:

1 - On water availability the wrong formula was used. an 80% availability was used instead of 50%.

2 On these applications it was indicated that the Reservoirs would be filled from runoff from bogs that will be irrigated and Rain, as the runoff from the bogs will be much per acre than is needed for use, no water will be taken from any creeks.

2 - While runoff from the bogs is being used to fill the reservoirs, ~~there~~ there will be more than a adequate flow in Davis Cr & ~~Conner~~ Conner Cr. During a period of 1 day with 1" of runoff I would collect about 1 1/2 acre ft of water, at the same time the balance of the Davis Creek drainage (Croft Lake) would be

(To Page 2)



about 217 ac ft or 109 Cu Ft Sec or 49000 GPM.

This excess runoff occurs about 10-12 days a year min. and a max of about 30 days.

3 As to depleting the ground water.

all they say is rubbish. These Reservoirs will actually increase the ground water in late summer. While the reservoirs are kept full they will allow water to move laterally into the ground. This water will either return to the reservoir or to the nearest Creek at a slow rate so late summer flow will actually increase.

4 The reason there are an "abundance" of wild life here is plainly because of what the landowners have done here with there over the 150 years. Most of this land was heavy timber 150 years ago and was producing virtually no food for any wild life.

So with this in mind I believe both applications should approved,

Quail Meadows Farms Inc  
Wayne Froese President

**RECEIVED**

DEC 10 1997

WATER RESOURCES DEPT.  
SALEM, OREGON



# Water Watch

RIVERS. NEED WATER

Via FAX and Regular Mail

July 9, 1997

Water Rights Section  
Water Resources Department  
158 12th Street NE  
Salem, OR 97310

**RE: Comments, Exempt Reservoir Applications in New River Basin:**

81691, 81801, 81857, 81920, 82042, 82135, 82148, 82242, 82243, 82247, 82468,  
82556, 82558, 82831, 83010, 83328 (Fourmile Creek, Morton Creek, Floras Creek,  
Davis Creek, Conner Creek, Croft Lake, Bethal Creek, and Twomile Creek)

Dear Water Rights Section:

WaterWatch requests that the Department deny the above listed reservoir requests on the basis that they are causing injury to both instream and out-of-stream water rights, pose a significant detrimental impact to existing fishery resources and because water is not available.<sup>1</sup>

## I. Summary of Facts:

**a. The Proposed Uses:** These applicants have applied for reservoirs to capture over 67 acre feet of water in the New River basin. Most these applicants are requesting the water for year round cranberry operations (irrigation, harvesting, temperature control, etc.).

**b. Water Availability:** There is no water left in this basin for further appropriation. Attached water availability tables show that almost all of the affected streams are overappropriated every single month of the year. See *Water Availability Tables for Fourmile, Morton, Floras, Bethal, Davis and Twomile Creeks generated from WRD's WRIS.*<sup>2</sup> It is important to note that the water availability tables for these creeks do not account for the water appropriated by these "existing" reservoirs.

**c. Fishery Resources:** The aforementioned creeks support a wide variety of fish life, including coho and winter steelhead. Both species are in serious decline. Coho are a state sensitive species. Coho have been petitioned for listing under the Federal Endangered Species Act. In April of 1997, the National Marine Fisheries Service decided not to list coho as threatened (for

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<sup>1</sup> Per SB 133 (which has been signed by the Governor), any person may submit comments requesting the Department to deny a reservoir application for a permit on the basis that the reservoir would result in injury to an existing water right or would pose a significant detrimental impact to existing fishery resources.

<sup>2</sup> It was not possible to get water availability tables for Croft Lake and Conner Creek as the data apparently is not on the Department's WRIS system.



now) based largely upon representations and commitments made in the Oregon Coastal Salmon Restoration Initiative (OCSRI) that the state, including the WRD, would work towards the recovery and restoration of coastal salmon. Though coho were not listed in April, NMFS can still list coho as threatened or endangered at any time. Winter steelhead have also been petitioned for listing under the federal ESA.

d. The New River Basin Resource: All these creeks are found in the New River Basin on the South Coast.<sup>3</sup> The New River is a unique estuarine and freshwater ecosystem that supports a wide mix of wildlife, fisheries, botanical, and cultural resources found in association with few other coastal rivers in the Pacific Northwest. Approximately 200 species of wildlife use the New River area for some parts of their life cycle. See *Final New River ACEC Management Plan*, Bureau of Land Management, May 1995 (hereinafter *BLM 1995*).<sup>4</sup>

The importance of the New River watershed has been recognized by the Bureau of Land Management (BLM) through designation of a portion of the watershed as an Area of Critical Environmental Concern (ACEC). The ACEC includes 994 acres of land bordering the New River, a little over a mile upstream from the mouth of the New River. *BLM* at 2-5. There are also several acres of land at the confluence of Fourmile Creek and the New River that are currently administered by the BLM and are proposed for inclusion in the ACEC. See *BLM 1995* at 2-6. Essentially the ACEC is at the "bottom" of the New River watershed and thus is greatly affected by activities and water diversion that occur upstream.

Nine species of wildlife that use the area are designated as either threatened or endangered on federal lists.<sup>5</sup> *Id.* at 2-29. One plant species has been listed as endangered on the federal list and a number of others are listed on the state list. *Id.* at 2-26. A number of prehistoric cultural sites have been found along the banks of this drainage as well.

Importantly, the New River basin contains a diverse array of aquatic habitats and fish species including four species of anadromous fish and several freshwater lake, freshwater stream, estuarine, and marine fish species. *Id.* at 2-31. The ACEC Management Plan states concern for these species:

While there is a diversity of fish and fish habitats in the New River Area, some fish populations are the subject of concern. Coho salmon populations in the New River system are severely depressed from historic levels, and have been petitioned for federal

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<sup>3</sup> Twomile Creek, while not recognized by the Department as part of New River, is only a few hundred feet from the system and will very soon be connected to the New River.

<sup>4</sup> This plan is on file with the Department.

<sup>5</sup> These species are the Western Snowy Plover, Aleutian Canada Goose, American Bald Eagle, Brown Pelican, Harbor Seal, Peregrine Falcon, Loggerhead Turtle, Green Sea Turtle, Pacific Ridley Turtle and Leatherback Turtle.

listing under the Endangered Species Act (July 1993). All Pacific Coast stocks of steelhead trout have also been petitioned for listing (February 1994). Coastal stocks of fall chinook and soho salmon from New River south to California are listed as state sensitive (critical) according to ODFW (1992). *Id.*

Spawning and rearing habitat for coho salmon has declined throughout the New River basin....Contributing factors include elimination of wetlands and channel straightening, removal of riparian vegetation and large woody material, increased sediment yields from timber harvesting activities along tributary streams, introduction of warm water fish species to freshwater lakes, and low summer flows/high water temperatures brought on by drought and agricultural water diversions. (emphasis added) *Id.*

Surface and groundwater withdrawals are reducing stream levels in the New River watershed. This is particularly evident in the summer/fall period when rainfall is lowest and water diversion is highest. *Id.* at 2-15

The BLM has recognized that actions by state agencies, such as the Water Resource Department have significant effects on management within this ACEC. *New River, Area of Critical Environmental Concern*, June 1989, Bureau of Land Management at 7 (hereinafter BLM) at 7. Commission actions on protecting minimum flows and other water use policies greatly affect the viability of this ecosystem. One of the management objectives identified by the BLM is to maintain minimum flows because:

New River provides important rearing habitat for juvenile salmonids during summer. Channel drying during summer may coincide with downstream migration of juveniles. This may result in high mortality if juveniles become trapped in isolated pools, where they are subject to predation, temperature stress, and suffocation. Losses of juveniles during migration may preclude full use of more stable rearing habitat present downstream in estuarine portions of the ACEC.

Lack of water in the middle section of New River during summer also precludes full use of marshlands by waterfowl. During most years, water is absent from early July to early September in the areas immediately south of the ACEC. This eliminates potential habitat for rearing broods, in turn reducing the prey available to peregrine falcons and bald eagles.

*Id.* at 35.

Several historical land uses have altered the diversity of fish and wildlife habitat in the general New River Area. *BLM 1995* at 2-30. Existing use of water for irrigation has had significant effects on the current habitat of the New River and its tributaries. *BLM* at 17. "Increased local development and water use on nearby lands will affect water flow quantity and

quality, and the health and diversity of New River's aquatic ecosystem." *BLM 1995* at 3-15.

Resident and anadromous fish species which rely on streamflows from the New River and other coastal streams are recognized in the Water Resources Commission's South Coast Basin Program as "significant" to the State of Oregon. Finding 43, 44. The basin program also recognizes that "(a)adequate streamflow throughout the year is necessary for the maintenance of aquatic life in the coastal streams." Finding 45 (*emphasts added*). Lakes and streams in the area are also important to recreational use in the basin, a use which is a major contributor to the economy of the South Coast Basin. Program Finding 39, 40.

#### e. Alternative Dispute Resolution Process

As the Department is aware, because of concerns about the capacity of the New River Basin to support the tremendous growth of the cranberry industry in this area, WaterWatch objected to a large number of water right applications in the New River Basin, including the Daoust application. In these objections we requested denial of the applications. Subsequently, the Department instituted an alternative dispute resolution process to address the concerns of the many interested parties including the applicants, the Oregon Department of Fish and Wildlife, the Bureau of Land Management, the Croft Lake Association, the Kalmiopsis Audubon Society and WaterWatch. As a result of months of negotiations some water rights have been issued with certain conditions attached. As part of our compromise in these negotiations, WaterWatch, the Audubon Society, and the Croft Lake Association did not protest the applications that went through the ADR process. These reservoir requests were not part of this process. And, since, from a resource standpoint, this system is overappropriated and cannot support another use on, we are forced to oppose each and every one of these applications.

II. Objections to applications 81691, 81801, 81857, 81920, 82042, 82135, 82148, 82242, 82243, 82247, 82468, 82556, 82558, 82831, 83010, 83328 (Fourmile Creek, Morton Creek, Floras Creek, Davis Creek, Conner Creek, Croft Lake, Bethal Creek, and Twomile Creek)

#### a. Water is not available for the proposed reservoirs

As is evidenced from the attached water availability tables, all the affected tributaries of the New River are overappropriated most, if not all, months of the year. *See attachment 1*. As noted below, even these numbers over estimate the capacity of the resource as the correct instream water right numbers have not been entered into the WRIS system. Moreover, the existing water availability information does not even take the reservoirs in question into account; if it did, the streams would be even more overappropriated. To put it simply, the New River system cannot support any more uses than those that already have existing water rights.

It is important to note that the compromises arrived at in the New River ADR process were largely circumscribed by the Department's water availability calculations. The permits that resulted from the process essentially take the last of the "available" streamflows. For the Department to now propose issuing permits for reservoirs that were not part of the process and were not taken into consideration is inequitable both to all the parties of the negotiation and to the resource itself.



b. The proposed reservoirs will result in injury to both instream and out-of-stream water rights.

As noted, the affected tributaries are overappropriated most, if not all, months of the year. This means that any further use will injure existing instream and out-of-stream water rights.

Senior existing and pending instream water rights include those on Fourmile Creek and Twomile Creek (73200, 70915, 72803, 72804). These instream water rights protect water for coho, steelhead, fall chinook and cutthroat. As the Department is well aware, both coho and steelhead were proposed for issuance under the federal Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) decided not to list the coho salmon (for now), not because of the state of the fish but because of promises of "restoration" by the state of Oregon in both the Oregon Coastal Salmon Restoration Initiative (OCSRI) and in a MOU between the state and the NMFS. The adoption and fulfillment of instream water rights was a major "tool" identified by the state to help restore salmon populations.

As noted, all the affected streams are sorely overappropriated. In fact, they are even more appropriated than is shown on the Department's WRIS program. The already negative flows are in fact an overestimation of existing flows. This is because the Department has not entered the correct flows for instream water rights 73200, 70915 and 72803. So, flows are even lower than the already negative numbers. Given these low flows, any further permitting will result in the instream water rights not getting the water they are legally entitled to and thus will "injure" them.

This injury is compounded by the fact that given the lack of Department field staff and enforcement mechanisms to regulate consumptive users in times of low flows, it is often the instream water rights that suffer regardless of priority.<sup>6</sup> Injury of this type is not only prohibited by statute, but to jeopardize the instream water rights by issuing the reservoir permits goes against both the content and the spirit of the agreement between the state and the NMFS.

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<sup>6</sup> Moreover, the Department limited these instream water rights to the estimated average natural flow (ENAF) even when more was requested. It seems that, as a rule, the Department will not issue instream water rights above ENAF despite the fact that the flow amounts are those determined by the state fisheries expert (ODFW) to be necessary for fish survival. The Department has argued that they cannot give away water that isn't there. However, at the same time they deny the instream water rights to their full degree, the WRD proposes the issuance of these reservoir permits when water availability tables show there is no water. To say the least, this practice is equitable to the aquatic resources that depend upon adequate streamflows for survival.

Senior consumptive water rights exist on all the affected streams (Fourmile Creek, Morton Creek, Floras Creek, Davis Creek, Conner Creek, Croft Lake, Bethal Creek, and Twomile Creek).<sup>7</sup> Already, some of these are not being met. To give out additional permits will only exasperate the problem. Moreover, to permit more uses will deprive existing users of the water they are legally entitled to which constitutes "injury" to an existing water right. This is prohibited by statute.

c. The reservoirs will pose a significant detrimental impact to existing fishery resources

The aforementioned reservoirs would decrease flows needed for imperiled coho and steelhead populations, as well as chinook and cutthroat. Coho salmon utilize the streams of the New River year-round. After hatching from eggs and emerging from the gravel, coho salmon commonly rear in freshwater from one to two winters (as fingerlings) before making their seaward migration (as smolts). *BLM 1995* at E-1. Steelhead also spawn in these tributaries. They rear in freshwater for at least two years before migrating to sea. *Id.* at E-3.

Adcquate flows are necessary year round for all stages of the salmon and steelhead's lifecycles.

Historically, throughout the year, lake and stream features in the New River area provided coho salmon with rearing habitat including deep pools and off channel areas in their nursery streams, as well as lakes, ponds and open wetlands. These habitats were especially important in providing slow moving water and abundant cover for young fish to survive winter floods.

*Id.* at 2-32. In the summer months, flows already get dangerously low throughout the New River basin, including the affected creeks.

During drought conditions, New River often dries in several locations during the summer months, partially as a result of drought or upstream water diversion for irrigation. During these periods, lower water levels reduce productivity of the aquatic resources and have a direct impact on beaver, river otter, osprey, and the American bald eagle, as well as the fishery resources. (emphasis added)

Even when flow is continuous throughout the summer, water temperatures in New River can reach 76 [degrees] F, which is outside the acceptable water temperature range of 45 [degrees] F to 65 [degrees] F. A continuous, uninterrupted surface flow in New River would allow fish to migrate through even shallow riffles (less than one foot deep), and reduce the chance of temperature stress, mortality and predation.

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<sup>7</sup> These include, but are not limited to: 73022, 73733, 73023, 70725, 70726, 75394, 80662, 71841, 73289, 75393, g13056, g13208, g13737 and g13128.



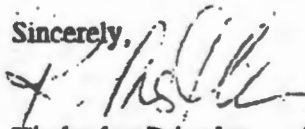
*Id.* at 2-33.

Surface and ground water withdrawals are reducing stream levels in the New River watershed. This is particularly evident in the summer/fall period when rainfall is lowest and water diversion is highest. *Id.* at 2-15. These reservoirs would capture essential streamflows needed for fish survival and would therefore pose a "significant detrimental impact to fishery resources". For this reason, these applications should be denied.

### III. Conclusion

Given that there is no water available for further appropriation, that permitting the reservoirs will cause injury to both instream and consumptive water rights and that the uses will have a significant detrimental impact to existing fishery resources all of these applications should be denied.

Sincerely,

  
Kimberley Priestley  
Legal/Policy Analyst

cc: Nancy Crouch, ODFW

## LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5003000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:06

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Date	Water Available?	Net Water Available
1	5003000000000000	MORTON CR @ mouth		NO	-9.8
2	5003000000000000	MORTON CR @ mouth		NO	-9.6
3	5003000000000000	MORTON CR @ mouth		NO	-8.6
4	5003000000000000	MORTON CR @ mouth		NO	-3.7
5	5003000000000000	MORTON CR @ mouth		NO	-0.7
6	5003000000000000	MORTON CR @ mouth		NO	-1.6
7	5003000000000000	MORTON CR @ mouth		NO	-0.9
8	5003000000000000	MORTON CR @ mouth		NO	-0.5
9	5003000000000000	MORTON CR @ mouth		NO	-0.2
10	5003000000000000	MORTON CR @ mouth		NO	-0.4
11	5003000000000000	MORTON CR @ mouth		NO	-5.6
12	5003000000000000	MORTON CR @ mouth		NO	-10.2
Star	5003000000000000	MORTON CR @ mouth		NO	0.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



**LIMITING WATER AVAILABILITY SUBBASINS**

Water Availability Subbasin: 2001000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:05

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	2000000000000000	FOURMILE CR @ mouth	NO	-15.8
2	2001000000000000	FOURMILE CR ab S FK FOURMILE C	NO	-4.3
3	2001000000000000	FOURMILE CR ab S FK FOURMILE C	NO	-7.3
4	2000000000000000	FOURMILE CR @ mouth	NO	-20.1
5	2000000000000000	FOURMILE CR @ mouth	NO	-30.9
6	2000000000000000	FOURMILE CR @ mouth	NO	-22.0
7	2000000000000000	FOURMILE CR @ mouth	NO	-6.9
8	2000000000000000	FOURMILE CR @ mouth	NO	-5.0
9	2000000000000000	FOURMILE CR @ mouth	NO	-4.2
10	2000000000000000	FOURMILE CR @ mouth	NO	-9.0
11	2000000000000000	FOURMILE CR @ mouth	NO	-46.6
12	2000000000000000	FOURMILE CR @ mouth	NO	-27.9
Star	2001000000000000	FOURMILE CR ab S FK FOURMILE C	YES	3690.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5008000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:08

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	5008000000000000	DAVIS CR @ mouth	NO	-4.0
2	5008000000000000	DAVIS CR @ mouth	NO	-1.6
3	5008000000000000	DAVIS CR @ mouth	NO	-1.9
4	5008000000000000	DAVIS CR @ mouth	NO	-1.7
5	5008000000000000	DAVIS CR @ mouth	NO	-4.2
6	5008000000000000	DAVIS CR @ mouth	NO	-5.3
7	5008000000000000	DAVIS CR @ mouth	NO	-5.8
8	5008000000000000	DAVIS CR @ mouth	NO	-5.7
9	5008000000000000	DAVIS CR @ mouth	NO	-5.4
10	5008000000000000	DAVIS CR @ mouth	NO	-5.2
11	5008000000000000	DAVIS CR @ mouth	NO	-4.0
12	5008000000000000	DAVIS CR @ mouth	NO	-4.4
Stor	5008000000000000	DAVIS CR @ mouth	YES	1550.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



## LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5001000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:13

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	5001000000000000	BETHEL CR @ mouth	NO	-16.4
2	5001000000000000	BETHEL CR @ mouth	NO	-12.2
3	5001000000000000	BETHEL CR @ mouth	NO	-13.9
4	5001000000000000	BETHEL CR @ mouth	NO	-6.1
5	5001000000000000	BETHEL CR @ mouth	NO	-1.3
6	5001000000000000	BETHEL CR @ mouth	NO	-3.0
7	5001000000000000	BETHEL CR @ mouth	NO	-2.0
8	5001000000000000	BETHEL CR @ mouth	NO	-1.2
9	5001000000000000	BETHEL CR @ mouth	NO	-0.5
10	5001000000000000	BETHEL CR @ mouth	NO	-0.8
11	5001000000000000	BETHEL CR @ mouth	NO	-8.7
12	5001000000000000	BETHEL CR @ mouth	NO	-17.1
Stor	5001000000000000	BETHEL CR @ mouth	YES	211.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 1400000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:16

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	1400000000000000	TWOMILE CR @ mouth	NO	-7.5
2	1400000000000000	TWOMILE CR @ mouth	NO	-5.1
3	1400000000000000	TWOMILE CR @ mouth	NO	-5.7
4	1400000000000000	TWOMILE CR @ mouth	NO	-3.8
5	1400000000000000	TWOMILE CR @ mouth	NO	-1.5
6	1400000000000000	TWOMILE CR @ mouth	NO	-1.2
7	1400000000000000	TWOMILE CR @ mouth	NO	-0.8
8	1400000000000000	TWOMILE CR @ mouth	NO	-0.5
9	1400000000000000	TWOMILE CR @ mouth	NO	-0.2
10	1400000000000000	TWOMILE CR @ mouth	NO	-0.2
11	1400000000000000	TWOMILE CR @ mouth	NO	-2.0
12	1400000000000000	TWOMILE CR @ mouth	NO	-8.2
Stor	1400000000000000	TWOMILE CR @ mouth	YES	165.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



**LIMITING WATER AVAILABILITY SUBBASINS**

Water Availability Subbasin: 1900000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:16

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
	1	1900000000000000 TWOMILE CR @ mouth	NO	-2.8
	2	1900000000000000 TWOMILE CR @ mouth	YES	8.0
	3	1900000000000000 TWOMILE CR @ mouth	YES	4.4
	4	1900000000000000 TWOMILE CR @ mouth	NO	-6.1
	5	1900000000000000 TWOMILE CR @ mouth	NO	-15.6
	6	1900000000000000 TWOMILE CR @ mouth	NO	-13.0
	7	1900000000000000 TWOMILE CR @ mouth	NO	-10.4
	8	1900000000000000 TWOMILE CR @ mouth	NO	-10.3
	9	1900000000000000 TWOMILE CR @ mouth	NO	-9.9
	10	1900000000000000 TWOMILE CR @ mouth	NO	-9.6
	11	1900000000000000 TWOMILE CR @ mouth	NO	-16.7
	12	1900000000000000 TWOMILE CR @ mouth	NO	-5.1
Stor		1900000000000000 TWOMILE CR @ mouth	YES	8990.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

## LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5007000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:07

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	5007000000000000	FLORAS CR @ mouth	YES	48.7
2	5007000000000000	FLORAS CR @ mouth	YES	154.0
3	5007000000000000	FLORAS CR @ mouth	YES	132.0
4	5007000000000000	FLORAS CR @ mouth	YES	53.7
5	5007000000000000	FLORAS CR @ mouth	NO	-35.3
6	5007000000000000	FLORAS CR @ mouth	NO	45.0
7	5007000000000000	FLORAS CR @ mouth	NO	-10.6
8	5007000000000000	FLORAS CR @ mouth	NO	-15.1
9	5007000000000000	FLORAS CR @ mouth	NO	-14.0
10	5007000000000000	FLORAS CR @ mouth	NO	-110.0
11	5007000000000000	FLORAS CR @ mouth	NO	-70.1
12	5007000000000000	FLORAS CR @ mouth	YES	53.7
Stor	5007000000000000	FLORAS CR @ mouth	YES	103000.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



January 10, 1997

Oregon

WAYNE FOSTER  
QUAIL MEADOW FARMS INC.  
PO BOX 25  
LANGLOIS, OR 97450

WATER  
RESOURCES  
DEPARTMENT

REFERENCE: File # P-81857;

Notice of Exempt Reservoir (Pond)

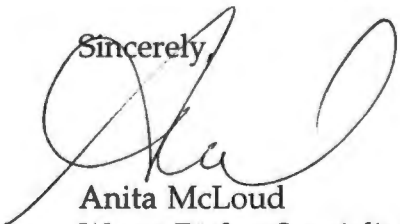
This is to let you know that we have received your Notice of Exempt Reservoir and assigned it the number listed above. Please refer to this number if you need to contact us about the notice. As required by law, your Notice of Exempt Reservoir filing will appear in our weekly public notice within 90 days from the time it was filed.

We have determined that your reservoir appears to meet the general criteria for exemption from the requirement to obtain a permit. However, we feel it is important to tell you that the Department must accept comments until August 1, 1997 on whether the reservoir poses a threat to fishery resources or existing water right holders. After the August 1, 1997 deadline, the Department has 180 days to assess comments. Any such comments will be reviewed and you will be notified only if any action on your part is necessary.

If no comments are received or the Department's assessment shows your pond does not cause injury, your pond will be considered exempt. You are advised that this exemption is limited to the amount of water that had been stored prior to January 1, 1995. Any increase in the storage or use of the stored water after that date must be authorized under a permit issued by this Department.

If you have any questions, please write to use at the address below, or call the Water Rights Information Group at (503)378-8455 ext. 499 or toll free in Oregon, 1-800-624-3199 ext. 499.

Sincerely,



Anita McLoud  
Water Rights Specialist  
Water Rights Division

cc: Watermaster District #19



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

# Water Watch



RIVERS NEED WATER

Via FAX and Regular Mail

July 9, 1997

Water Rights Section  
Water Resources Department  
158 12th Street NE  
Salem, OR 97310

**RE: Comments, Expedited Reservoir Applications in New River Basin:**  
81691, 81801, 81857, 81920, 82042, 82135, 82148, 82242, 82243, 82247, 82468,  
82556, 82558, 82831, 83010, 83328 (Fourmile Creek, Morton Creek, Floras Creek,  
Davis Creek, Conner Creek, Croft Lake, Bethal Creek, and Twomile Creek)

Dear Water Rights Section:

WaterWatch requests that the Department deny the above listed reservoir requests on the basis that, if issued, they would result in injury to both instream and out-of-stream water rights, would pose a significant detrimental impact to existing fishery resources and because water is not available.<sup>1</sup>

## I. Summary of Facts:

**a. The Proposed Uses:** These applicants have applied for reservoirs to capture over 67 acre feet of water in the New River basin. Most these applicants are requesting the water for year round cranberry operations (irrigation, harvesting, temperature control, etc.).

**b. Water Availability:** There is no water left in this basin for further appropriation. Attached water availability tables show that almost all of the affected streams are overappropriated every single month of the year. See *Water Availability Tables for Fourmile, Morton, Floras, Bethal, Davis and Twomile Creeks generated from WRD's WRIS*.<sup>2</sup> It is important to note that the water availability tables for these creeks do not account for the water appropriated by these "existing" reservoirs.

**c. Fishery Resources:** The aforementioned creeks support a wide variety of fish life, including coho and winter steelhead. Both species are in serious decline. Coho are a state sensitive species. Coho have been petitioned for listing under the Federal Endangered Species Act. In April of 1997, the National Marine Fisheries Service decided not to list coho as threatened (for

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<sup>1</sup> Per SB 133 (which has been signed by the Governor), any person may submit comments requesting the Department to deny a reservoir application for a permit on the basis that the reservoir would result in injury to an existing water right or would pose a significant detrimental impact to existing fishery resources.

<sup>2</sup> It was not possible to get water availability tables for Croft Lake and Conner Creek as the data apparently is not on the Department's WRIS system.



now) based largely upon representations and commitments made in the Oregon Coastal Salmon Restoration Initiative (OCSRI) that the state, including the WRD, would work towards the recovery and restoration of coastal salmon. Though coho were not listed in April, NMFS can still list coho as threatened or endangered at any time. Winter steelhead have also been petitioned for listing under the federal ESA.

d. The New River Basin Resource: All these creeks are found in the New River Basin on the South Coast.<sup>3</sup> The New River is a unique estuarine and freshwater ecosystem that supports a wide mix of wildlife, fisheries, botanical, and cultural resources found in association with few other coastal rivers in the Pacific Northwest. Approximately 200 species of wildlife use the New River area for some parts of their life cycle. See *Final New River ACEC Management Plan*, Bureau of Land Management, May 1995 (hereinafter *BLM 1995*).<sup>4</sup>

The importance of the New River watershed has been recognized by the Bureau of Land Management (BLM) through designation of a portion of the watershed as an Area of Critical Environmental Concern (ACEC). The ACEC includes 994 acres of land bordering the New River, a little over a mile upstream from the mouth of the New River. *BLM* at 2-5. There are also several acres of land at the confluence of Fourmile Creek and the New River that are currently administered by the BLM and are proposed for inclusion in the ACEC. See *BLM 1995* at 2-6. Essentially the ACEC is at the "bottom" of the New River watershed and thus is greatly affected by activities and water diversion that occur upstream.

Nine species of wildlife that use the area are designated as either threatened or endangered on federal lists.<sup>5</sup> *Id.* at 2-29. One plant species has been listed as endangered on the federal list and a number of others are listed on the state list. *Id.* at 2-26. A number of prehistoric cultural sites have been found along the banks of this drainage as well.

Importantly, the New River basin contains a diverse array of aquatic habitats and fish species including four species of anadromous fish and several freshwater lake, freshwater stream, estuarine, and marine fish species. *Id.* at 2-31. The ACEC Management Plan states concern for these species:

While there is a diversity of fish and fish habitats in the New River Area, some fish populations are the subject of concern. Coho salmon populations in the New River system are severely depressed from historic levels, and have been petitioned for federal

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<sup>3</sup> Twomile Creek, while not recognized by the Department as part of New River, is only a few hundred feet from the system and will very soon be connected to the New River.

<sup>4</sup> This plan is on file with the Department.

<sup>5</sup> These species are the Western Snowy Plover, Aleutian Canada Goose, American Bald Eagle, Brown Pelican, Harbor Seal, Peregrine Falcon, Loggerhead Turtle, Green Sea Turtle, Pacific Ridley Turtle and Leatherback Turtle.

listing under the Endangered Species Act (July 1993). All Pacific Coast stocks of steelhead trout have also been petitioned for listing (February 1994). Coastal stocks of fall chinook and soho salmon from New River south to California are listed as state sensitive (critical) according to ODFW (1992). *Id.*

Spawning and rearing habitat for coho salmon has declined throughout the New River basin....Contributing factors include elimination of wetlands and channel straightening, removal of riparian vegetation and large woody material, increased sediment yields from timber harvesting activities along tributary streams, introduction of warm water fish species to freshwater lakes, and low summer flows/high water temperatures brought on by drought and agricultural water diversions. (emphasis added) *Id.*

Surface and groundwater withdrawals are reducing stream levels in the New River watershed. This is particularly evident in the summer/fall period when rainfall is lowest and water diversion is highest. *Id.* at 2-15

The BLM has recognized that actions by state agencies, such as the Water Resource Department have significant effects on management within this ACEC. *New River, Area of Critical Environmental Concern, June 1989, Bureau of Land Management at 7 (hereinafter BLM) at 7.* Commission actions on protecting minimum flows and other water use policies greatly affect the viability of this ecosystem. One of the management objectives identified by the BLM is to maintain minimum flows because:

New River provides important rearing habitat for juvenile salmonids during summer. Channel drying during summer may coincide with downstream migration of juveniles. This may result in high mortality if juveniles become trapped in isolated pools, where they are subject to predation, temperature stress, and suffocation. Losses of juveniles during migration may preclude full use of more stable rearing habitat present downstream in estuarine portions of the ACEC.

Lack of water in the middle section of New River during summer also precludes full use of marshlands by waterfowl. During most years, water is absent from early July to early September in the areas immediately south of the ACEC. This eliminates potential habitat for rearing broods, in turn reducing the prey available to peregrine falcons and bald eagles.

*Id.* at 35.

Several historical land uses have altered the diversity of fish and wildlife habitat in the general New River Area. *BLM 1995 at 2-30.* Existing use of water for irrigation has had significant effects on the current habitat of the New River and its tributaries. *BLM at 17.* "Increased local development and water use on nearby lands will affect water flow quantity and



quality, and the health and diversity of New River's aquatic ecosystem." *BLM 1995* at 3-15.

Resident and anadromous fish species which rely on streamflows from the New River and other coastal streams are recognized in the Water Resources Commission's South Coast Basin Program as "significant" to the State of Oregon. Finding 43, 44. The basin program also recognizes that "(a)dequate streamflow throughout the year is necessary for the maintenance of aquatic life in the coastal streams." Finding 45 (*emphasis added*). Lakes and streams in the area are also important to recreational use in the basin, a use which is a major contributor to the economy of the South Coast Basin. Program Finding 39, 40.

### c. Alternative Dispute Resolution Process

As the Department is aware, because of concerns about the capacity of the New River Basin to support the tremendous growth of the cranberry industry in this area, WaterWatch objected to a large number of water right applications in the New River Basin, including the Daoust application. In these objections we requested denial of the applications. Subsequently, the Department instituted an alternative dispute resolution process to address the concerns of the many interested parties including the applicants, the Oregon Department of Fish and Wildlife, the Bureau of Land Management, the Croft Lake Association, the Kalmiopsis Audubon Society and WaterWatch. As a result of months of negotiations some water rights have been issued with certain conditions attached. As part of our compromise in these negotiations, WaterWatch, the Audubon Society, and the Croft Lake Association did not protest the applications that went through the ADR process. These reservoir requests were not part of this process. And, since, from a resource standpoint, this system is overappropriated and cannot support another use on, we are forced to oppose each and every one of these applications.

**II. Objections to applications 81691, 81801, 81857, 81920, 82042, 82135, 82148, 82242, 82243, 82247, 82468, 82556, 82558, 82831, 83010, 83328 (Fourmile Creek, Morton Creek, Floras Creek, Davis Creek, Conner Creek, Croft Lake, Bethal Creek, and Twomile Creek)**

### a. Water is not available for the proposed reservoirs

As is evidenced from the attached water availability tables, all the affected tributaries of the New River are overappropriated most, if not all, months of the year. *See attachment 1*: As noted below, even these numbers over estimate the capacity of the resource as the correct instream water right numbers have not been entered into the WRIS system. Moreover, the existing water availability information does not even take the reservoirs in question into account; if it did, the streams would be even more overappropriated. To put it simply, the New River system cannot support any more uses than those that already have existing water rights.

It is important to note that the compromises arrived at in the New River ADR process were largely circumscribed by the Department's water availability calculations. The permits that resulted from the process essentially take the last of the "available" streamflows. For the Department to now propose issuing permits for reservoirs that were not part of the process and were not taken into consideration is inequitable both to all the parties of the negotiation and to the resource itself.

b. The proposed reservoirs will result in injury to both instream and out-of-stream water rights.

As noted, the affected tributaries are overappropriated most, if not all, months of the year. This means that any further use will injure existing instream and out-of-stream water rights.

Senior existing and pending instream water rights include those on Fourmile Creek and Twomile Creek (73200, 70915, 72803, 72804). These instream water rights protect water for coho, steelhead, fall chinook and cutthroat. As the Department is well aware, both coho and steelhead were proposed for issuance under the federal Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) decided not to list the coho salmon (for now), not because of the state of the fish but because of promises of "restoration" by the state of Oregon in both the Oregon Coastal Salmon Restoration Initiative (OCSRI) and in a MOU between the state and the NMFS. The adoption and fulfillment of instream water rights was a major "tool" identified by the state to help restore salmon populations.

As noted, all the affected streams are sorely overappropriated. In fact, they are even more appropriated than is shown on the Department's WRIS program. The already negative flows are in fact an overestimation of existing flows. This is because the Department has not entered the correct flows for instream water rights 73200, 70915 and 72803. So, flows are even lower than the already negative numbers. Given these low flows, any further permitting will result in the instream water rights not getting the water they are legally entitled to and thus will "injure" them.

This injury is compounded by the fact that given the lack of Department field staff and enforcement mechanisms to regulate consumptive users in times of low flows, it is often the instream water rights that suffer regardless of priority.<sup>6</sup> Injury of this type is not only prohibited by statute, but to jeopardize the instream water rights by issuing the reservoir permits goes against both the content and the spirit of the agreement between the state and the NMFS.

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<sup>6</sup> Moreover, the Department limited these instream water rights to the estimated average natural flow (ENAF) even when more was requested. It seems that, as a rule, the Department will not issue instream water rights above ENAF despite the fact that the flow amounts are those determined by the state fisheries expert (ODFW) to be necessary for fish survival. The Department has argued that they cannot give away water that isn't there. However, at the same time they deny the instream water rights to their full degree, the WRD proposes the issuance of these reservoir permits when water availability tables show there is no water. To say the least, this practice is equitable to the aquatic resources that depend upon adequate streamflows for survival.



Senior consumptive water rights exist on all the affected streams (Fourmile Creek, Morton Creek, Floras Creek, Davis Creek, Conner Creek, Croft Lake, Bethal Creek, and Twomile Creek).<sup>7</sup> Already, some of these are not being met. To give out additional permits will only exasperate the problem. Moreover, to permit more users will deprive existing users of the water they are legally entitled to which constitutes "injury" to an existing water right. This is prohibited by statute.

c. The reservoirs will pose a significant detrimental impact to existing fishery resources

The aforementioned reservoirs would decrease flows needed for imperiled coho and steelhead populations, as well as chinook and cutthroat. Coho salmon utilize the streams of the New River yearround. After hatching from eggs and emerging from the gravel, coho salmon commonly rear in freshwater from one to two winters (as fingerlings) before making their seaward migration (as smolts). *BLM 1995* at E-1. Steelhead also spawn in these tributaries. They rear in freshwater for at least two years before migrating to sea. *Id.* at E-3.

Adequate flows are necessary year round for all stages of the salmon and steelhead's lifecycles.

Historically, throughout the year, lake and stream features in the New River area provided coho salmon with rearing habitat including deep pools and off channel areas in their nursery streams, as well as lakes, ponds and open wetlands. These habitats were especially important in providing slow moving water and abundant cover for young fish to survive winter floods.

*Id.* at 2-32. In the summer months, flows already get dangerously low throughout the New River basin, including the affected creeks.

During drought conditions, New River often dries in several locations during the summer months, partially as a result of drought or upstream water diversion for irrigation. During these periods, lower water levels reduce productivity of the aquatic resources and have a direct impact on beaver, river otter, osprey, and the American bald eagle, as well as the fishery resources. (emphasis added)

Even when flow is continuous throughout the summer, water temperatures in New River can reach 76 [degrees] F, which is outside the acceptable water temperature range of 45 [degrees] F to 65 [degrees] F. A continuous, uninterrupted surface flow in New River would allow fish to migrate through even shallow riffles (less than one foot deep), and reduce the chance of temperature stress, mortality and predation.

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<sup>7</sup> These include, but are not limited to: 73022, 73733, 73023, 70725, 70726, 75394, 80662, 71841, 73289, 75393, g13056, g13208, g13737 and g13128.

*Id.* at 2-33.

Surface and ground water withdrawals are reducing stream levels in the New River watershed. This is particularly evident in the summer/fall period when rainfall is lowest and water diversion is highest. *Id.* at 2-15. These reservoirs would capture essential streamflows needed for fish survival and would therefore pose a "significant detrimental impact to fishery resources". For this reason, these applications should be denied.

### III. Conclusion

Given that there is no water available for further appropriation, that permitting the reservoirs will cause injury to both instream and consumptive water rights and that the uses will have a significant detrimental impact to existing fishery resources all of these applications should be denied.

Sincerely,

  
Kimberley Priestley  
Legal/Policy Analyst

cc: Nancy Couch, ODFW



## LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5003000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:06

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Water Available	Net Water
1	5003000000000000	MORTON CR @ mouth	NO		-9.8
2	5003000000000000	MORTON CR @ mouth	NO		-9.6
3	5003000000000000	MORTON CR @ mouth	NO		-8.6
4	5003000000000000	MORTON CR @ mouth	NO		-3.7
5	5003000000000000	MORTON CR @ mouth	NO		-0.7
6	5003000000000000	MORTON CR @ mouth	NO		-1.6
7	5003000000000000	MORTON CR @ mouth	NO		-0.9
8	5003000000000000	MORTON CR @ mouth	NO		-0.5
9	5003000000000000	MORTON CR @ mouth	NO		-0.2
10	5003000000000000	MORTON CR @ mouth	NO		-0.4
11	5003000000000000	MORTON CR @ mouth	NO		-5.6
12	5003000000000000	MORTON CR @ mouth	NO		-10.2
Stor	5003000000000000	MORTON CR @ mouth	NO		0.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

**LIMITING WATER AVAILABILITY SUBBASINS**

Water Availability Subbasin: 2001000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:05

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	2000000000000000	FOURMILE CR @ mouth	NO	-15.8
2	2001000000000000	FOURMILE CR ab S FK FOURMILE C	NO	-4.3
3	2001000000000000	FOURMILE CR ab S FK FOURMILE C	NO	-7.3
4	2000000000000000	FOURMILE CR @ mouth	NO	-20.1
5	2000000000000000	FOURMILE CR @ mouth	NO	-30.9
6	2000000000000000	FOURMILE CR @ mouth	NO	-22.0
7	2000000000000000	FOURMILE CR @ mouth	NO	-6.9
8	2000000000000000	FOURMILE CR @ mouth	NO	-5.0
9	2000000000000000	FOURMILE CR @ mouth	NO	-4.2
10	2000000000000000	FOURMILE CR @ mouth	NO	-9.0
11	2000000000000000	FOURMILE CR @ mouth	NO	-46.6
12	2000000000000000	FOURMILE CR @ mouth	NO	-27.9
Stor	2001000000000000	FOURMILE CR ab S FK FOURMILE C	YES	3690.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



**LIMITING WATER AVAILABILITY SUBBASINS**

Water Availability Subbasin: 5008000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:08

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	5008000000000000	DAVIS CR @ mouth	NO	-4.0
2	5008000000000000	DAVIS CR @ mouth	NO	-1.6
3	5008000000000000	DAVIS CR @ mouth	NO	-1.9
4	5008000000000000	DAVIS CR @ mouth	NO	-1.7
5	5008000000000000	DAVIS CR @ mouth	NO	-4.2
6	5008000000000000	DAVIS CR @ mouth	NO	-5.3
7	5008000000000000	DAVIS CR @ mouth	NO	-5.8
8	5008000000000000	DAVIS CR @ mouth	NO	-5.7
9	5008000000000000	DAVIS CR @ mouth	NO	-5.4
10	5008000000000000	DAVIS CR @ mouth	NO	-5.2
11	5008000000000000	DAVIS CR @ mouth	NO	-4.0
12	5008000000000000	DAVIS CR @ mouth	NO	-4.4
Stor	5008000000000000	DAVIS CR @ mouth	YES	1550.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

## LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5001000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:13

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Water Available	Net Water
1	5001000000000000	BETHEL CR @ mouth	NO		-16.4
2	5001000000000000	BETHEL CR @ mouth	NO		-12.2
3	5001000000000000	BETHEL CR @ mouth	NO		-13.9
4	5001000000000000	BETHEL CR @ mouth	NO		-6.1
5	5001000000000000	BETHEL CR @ mouth	NO		-1.3
6	5001000000000000	BETHEL CR @ mouth	NO		-3.0
7	5001000000000000	BETHEL CR @ mouth	NO		-2.0
8	5001000000000000	BETHEL CR @ mouth	NO		-1.2
9	5001000000000000	BETHEL CR @ mouth	NO		-0.5
10	5001000000000000	BETHEL CR @ mouth	NO		0.8
11	5001000000000000	BETHEL CR @ mouth	NO		-8.7
12	5001000000000000	BETHEL CR @ mouth	NO		-17.1
Stor	5001000000000000	BETHEL CR @ mouth	YES		211.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



**LIMITING WATER AVAILABILITY SUBBASINS**

Water Availability Subbasin: 1400000000000000

Basin: SOUTH COAST

Precedence Level: 80

Time: 14:16

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Water Available	Net Water
1	1400000000000000	TWOMILE CK @ mouth	NO		-7.5
2	1400000000000000	TWOMILE CR @ mouth	NO		-5.1
3	1400000000000000	TWOMILE CR @ mouth	NO		-5.7
4	1400000000000000	TWOMILE CR @ mouth	NO		-3.8
5	1400000000000000	TWOMILE CR @ mouth	NO		-1.5
6	1400000000000000	TWOMILE CR @ mouth	NO		-1.2
7	1400000000000000	TWOMILE CR @ mouth	NO		-0.8
8	1400000000000000	TWOMILE CK @ mouth	NO		-0.5
9	1400000000000000	TWOMILE CR @ mouth	NO		-0.2
10	1400000000000000	TWOMILE CR @ mouth	NO		-0.2
11	1400000000000000	TWOMILE CR @ mouth	NO		-2.0
12	1400000000000000	TWOMILE CR @ mouth	NO		-8.2
Stor	1400000000000000	TWOMILE CK @ mouth	YES		165.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

**LIMITING WATER AVAILABILITY SUBBASINS**

Water Availability Subbasin: 1900000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:16

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	1900000000000000	TWOMILE CR @ mouth	NO	-2.8
2	1900000000000000	TWOMILE CR @ mouth	YES	8.0
3	1900000000000000	TWOMILE CR @ mouth	YES	4.4
4	1900000000000000	TWOMILE CR @ mouth	NO	-6.1
5	1900000000000000	TWOMILE CR @ mouth	NO	-15.6
6	1900000000000000	TWOMILE CR @ month	NO	-13.0
7	1900000000000000	TWOMILE CR @ mouth	NO	10.4
8	1900000000000000	TWOMILE CR @ mouth	NO	-10.3
9	1900000000000000	TWOMILE CR @ mouth	NO	-9.9
10	1900000000000000	TWOMILE CR @ mouth	NO	-9.6
11	1900000000000000	TWOMILE CR @ mouth	NO	-16.7
12	1900000000000000	TWOMILE CR @ mouth	NO	-5.1
Star	1900000000000000	TWOMILE CR @ mouth	YES	8990.0

Enter (1) to CONTINUE; (2) to WRITE the Table:



## LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5007000000000000

Basin: SOUTH COAST

Exceedance Level: 80

Time: 14:07

Date: 07/03/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
	1	5007000000000000 FLORAS CR @ mouth	YES	48.7
	2	5007000000000000 FLORAS CR @ mouth	YES	154.0
	3	5007000000000000 FLORAS CR @ mouth	YES	132.0
	4	5007000000000000 FLORAS CR @ mouth	YES	53.7
	5	5007000000000000 FLORAS CR @ mouth	NO	-35.3
	6	5007000000000000 FLORAS CR @ mouth	NO	-45.0
	7	5007000000000000 FLORAS CR @ mouth	NO	-10.6
	8	5007000000000000 FLORAS CR @ mouth	NO	-15.1
	9	5007000000000000 FLORAS CR @ mouth	NO	-14.0
	10	5007000000000000 FLORAS CR @ mouth	NO	-110.0
	11	5007000000000000 FLORAS CR @ mouth	NO	-70.1
	12	5007000000000000 FLORAS CR @ mouth	YES	53.7
Stor		5007000000000000 FLORAS CR @ mouth	YES	103000.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

QUAIL MEADOW FARMS INC

POB 114

Langlois Or 97453

Scale 1" = 330'

RECEIVED

DEC - 4 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

RECEIVED

DEC 23 1996

WATER RESOURCES DEPT.  
SALEM, OREGON



T30S R15W Sec 11 SE 1/4

Application No. 4-81858  
Permit No.

SW 1/4 SE 1/4 Sec 11 TL 1500

Hole 1  
Filled by RAIN water only  
POD 700' North  
300' EAST  
of S 1/4 Corner Sec 11

TL 1400

S 1/4 section Corner



2018 10 10 10:00 AM

2018 10 10 10:00 AM

2018 10 10 10:00 AM

MILLERS FALLS  
ERASE  
COTTON CONTENT

2018 10 10 10:00 AM



CON

2018 10 10 10:00 AM



Quail Meadow FARMS INC

POB 114

LANGOLIS OR 97430

Scale 1" = 330'

RECEIVED

DEC - 4 1996

WATER RESOURCES DEPT.  
SALEM, OREGON



T30S R15W Sec 11 SE 1/4

RECEIVED

DEC 23 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Application No. P 81957  
Permit No.

SW 1/4 SE 1/4 Sec 11 TL 1500

Underground DRAINAGE  
AND SURFACE DRAINAGE OFF  
BOYS FIELDS RES. Water I

TL 1400

DAM

POD  
300' N AND 800' E  
OF S 1/4 corner Sec 11

No name

S 1/4 Corner

MILBENS VALLE

ERASE

COTTON CONTENT



Handwritten text, possibly a date or identifier, located in the upper left quadrant.

Handwritten text, possibly a name or location, located in the center of the page.

Handwritten text, possibly a date or identifier, located in the lower right quadrant.

Handwritten text, possibly a date or identifier, located in the lower left quadrant.

Handwritten text, possibly a name or location, located in the lower left quadrant.

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Handwritten text, possibly a date or identifier, located in the lower left quadrant.

MILBENS VALLE



SECTION 11 T.30S. R.15W. W.M.  
COOS COUNTY

1"=400'



RECEIVED  
NOV 0 2 2001  
WATER RESOURCES DEPT.  
SALEM, OREGON

46-00

SEE MAP 30 15 14

SEE MAP 30 15 12