

WATERMASTER COMMENTS FOR
HB 2153 CERTIFICATES
HB 2376 NOTICES

DEATH Watermaster Name Norman E. DART
Date 7-21-97

Please attach copy of HB 2153 Certificate.

HB 2376 Notice of Exempt Reservoir Application # P 83054

** Attach additional sheets if necessary.

Please specify which reservoir(s)/ponds(s) the comments pertain to:

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

* ALL

** POND #1

Does the reservoir/pond cause injury to an existing water right? Specify which water right and the evidence which supports that finding. Please describe for each reservoir listed above. If the water right and the supporting evidence are the same please indicate.

INJURY TO

ISWR

C-73040

EVIDENCED BY:

C-73032

Measurements

C-73031

C-59773

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

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

(1)

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.

(2)

The following provision for a measuring device shall be effective:

- (a) the pump system shall include an access port for measuring the water level;
- (b) the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;
- (c) the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said Watermaster.

(3)

A totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

(4)

A staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed.

*Please specify whether the installation of the weir(s) will provide no public benefit.

(5)

Live stream flow must be by-passed between ** when Regulated and Appt and next.

(6)

The period of use has been limited to _____ through _____.

Other (Please specify below)

* LIMIT USE TO STORAGE CAPACITY
~~FE~~

Application P-83054

Original mailed to:

Applicant: Is there a new address? Y

Copies Mailed
By: CAK
(SUPPORT STAFF)
on: 1/30/98
(DATE)

Other Commenters:

4. ODFW District Biologist: Y Jerry Vogt.
5. WaterWatch of Oregon: Y
6. Other Commenters Y

Other Interested Persons (*CWRE, Agent, etc.*)

7. _____

8. _____

9. _____

10. _____

CASEWORKER: Amm

Information Below This For Mitigation Team Use Only

SMBS	SMSS	BPC	KR1	KR2	J	BSD	BSD2	1A	MD
MD1	MD2	MD3	B57	B58	BYPASS	B51A			Basin



Oregon

John A. Kitzhaber, M.D., Governor

January 16, 1998

Water Resources Department

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

FRED V. BAUMANN
36789 REDWOOD HWY.
OBRIEN, OR 97534

Reference: File P-83054

Dear Applicant:

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

As indicated in our letters to you last November, we had previously received written comments indicating that your reservoir could be detrimental to fish or might cause injury to other water rights. You took advantage of an opportunity that was provided to address those comments. The additional information that you submitted was sent to the commenter indicating that they must reply if there are still concerns regarding detriment to fish or injury to other water rights.

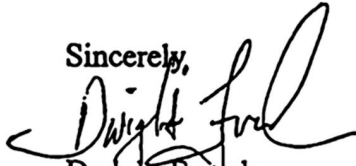
Since then, we have reviewed all the information available to us, including any reply from the commenter, and have determined that certain conditions are necessary to mitigate the potential harm to fish or other water rights. The enclosed Mitigation Order spells out the additional conditions we are proposing.

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Dwight French".

Dwight French
Water Rights Section Manager

Enclosures

cc: Watermaster

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

Oregon Water Resources Department
Water Rights Division

Notice of Existing Reservoir
Number P-83054

Reservoir Mitigation Order

Application History

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

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

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

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

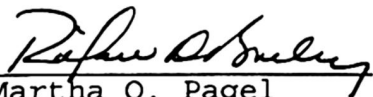
Order

Any secondary use of stored water is limited each year to the capacity of the reservoir.

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.

Therefore, pursuant to ORS 537.405, the use evidenced by notice of existing reservoir number P-83054, shall be allowed to continue if the injury/negative impact of the reservoir is mitigated as described above.

DATED January 16, 1998


Martha O. Pagel
Director

Notice of Right to Contested Case Hearing

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

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

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

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

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

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

Send your request for a contested case hearing to:

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

RECEIVED

JAN - 8 1998

WATER RESOURCES DEPT.
SALEM, OREGON



DEPARTMENT OF
FISH AND
WILDLIFE

December 31, 1997

Mr. Dwight French
Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97310-0210

ROGUE DISTRICT
OFFICE

Dear Dwight:

I have reviewed the comments submitted by applicants regarding their exempt reservoir applications. Based on new information supplied by the applicant, I concur with the comments for the following exempt reservoir applications and have no objection to the removal of ODFW's previous mitigation requirements:

<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>
P-82432	P-82179	P-83099	P-83114 ✓
P-83146 ✓	P-83077 ✓	P-83119 ✓	P-83054
P-83124 ✓	P-83107 ✓	P-83109 ✓	P-83112 ✓
P-83165 ✓	P-82682 ✓	P-82751 ✓	P-82694 ✓
P-82813-1 ✓	P-83127 ✓	P-81818 ✓	P-83087 ✓
P-81152	P-83032 ✓	P-83046	P-83083 ✓
P-83093 ✓	P-83081	P-83098 ✓	P-83097 ✓
P-83096 ✓	P-83094 ✓	P-83092 ✓	P-83085 ✓
P-83082 ✓	P-83073 ✓	P-83108 ✓	P-83133 ✓
P-83134 ✓	P-83153 ✓	P-83147 ✓	P-83136
P-82935	P-74446	P-81156	P-82997 ✓
P-83001 ✓	P-83016 ✓	P-83019 ✓	P-83027 ✓



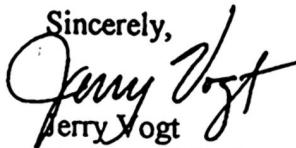
1495 E Gregory Road
Central Point, OR 97502
(503) 826-8774
FAX (503) 826-8776

<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>
P-83023 ✓	P-83020 ✓	P-83018 ✓	P-82999 ✓
P-83035 ✓	P-83038 ✓	P-83026 ✓	P-83033 ✓
P-82450 ✓	P-82872	P-82980	P-82933
P-82819 ✓	P-82836 ✓	P-82854 ✓	P-82783 ✓
P-82007 ✓	P-82021 ✓	P-82070 ✓	P-82214 ✓
P-82199 ✓	P-82426 ✓	P-82436 ✓	P-81848 ✓
P-81262 ✓	P-81301 ✓	P-81325 ✓	P-81259 ✓
P-81507 ✓	P-82211 ✓	P-82851 ✓	P-82920 ✓
P-82934 ✓	P-81684 ✓	P-81742 ✓	P-81819 ✓
P-81831 ✓	P-81830 ✓	P-80763 ✓	P-80764 ✓
P-80730 ✓	P-80821 ✓	P-80839 ✓	P-80860 ✓
P-80873 ✓	P-80907 ✓	P-80685 ✓	P-81562 ✓
P-81569	P-82991 ✓	P-81839	P-81812
P-81828	P-80864	P-83314	P-83313
P-83110	P-83050	P-83068	P-82591
P-82998	P-83028	P-82966	P-82930
P-82898	P-82700	P-82667	P-82466 ✓
P-82531 ✓	P-82537 ✓	P-83037 ✓	P-83116
P-82938	P-82965		

Mr. Dwight French
December 31, 1997
Page - 3

Thank you for the opportunity to respond to these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Vogt".

Jerry Vogt
Assistant District Fish Biologist

cc: Bruce Sund, WRD, Grants Pass
Larry Menteer, WRD, Medford
File

P83006	Peltier	No mitigation required.
P83021	Vahrenwald	No change.
P83022	Nicholson	Headgate requirement not needed.
P83044	Ormsby	Headgate requirement can be removed.
P83054	Baumann	No change.
P83099	Evensen	No mitigation required.
P83101	Garnett	Totalizing meter condition can be removed. It might be better to change condition on groundwater use to say "no groundwater use allowed in excess of existing rights and statutory groundwater exemption".
P83156	Vawter	Headgate condition can be removed. Has water right.
P83157	Tunberg	No mitigation required.
P83158	Rodine	Steam Beer Mining Ltd. Headgate condition can be removed.
P83160	Dunn	Headgate condition can be removed.
P83315	Baas	No mitigation required. Has water right for pond #2, Per 4060.

TO: Water Rights Section, OWRD

FROM: Norm Daft, Dist. 14

DATE: January 12, 1998

SUBJECT: Mitigation for Ponds

I have reviewed rebuttal submitted by pond registrants. I am suggesting that mitigation conditions remain the same unless I have specifically referenced them.

P74446	Schiffiler	Applicant admits there was no prior use of stored water so no mitigation is required.
P80689	Gonzales	Headgate requirements can be removed.
P80826	Caldwell	Change meter requirements to if required by Watermaster.
P81156	Roberts	Change meter requirements to if required by Watermaster.
P81681	Rendata	Remove period of use requirement. Change meter requirement to if required by Watermaster.
P81780	Young	The applicant rebuttal states that no water is diverted from Louse Creek, therefore no mitigation is required.
P82015	Canevari	Change meter requirement to if required by Watermaster.
P82076	Burns	No mitigation required.
P82179	Blakely	Remove meter requirement.
P82432	Walther	No mitigation required.
P82818	Stephens	Since the registrant clarified the use of water, no mitigation is required.
P83004	Applegate	No change
P83005	Robinson	It might be better to say "any secondary use, other than those uses covered by existing water rights, are limited to storage capacity of the reservoir." Headgate requirement can be deleted as it can be required for an existing water right.

Rebuttal (Y) / N

Exempt by WM comments Y / (N)

COMMENTOR:

WM and/or WM Dist: Norm Daft ✓

ODFW Dist: Jerry Vogt ✓

Water Watch: Y / (N)

Mailing List for Commenter Letter

File #: P-83054

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

☒ 1. Watermaster: NORM DARR

☒ 2. ODFW District Bio: Jerry Vayt

☐ 3. Waterwatch

☐ 4. Other: _____

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

Copy of Letter to:

☐ 1. WRD File # P-83054

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



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

Bruce Sund
Norman Daft
Watermaster District 14

Dear Bruce and Norman:

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.

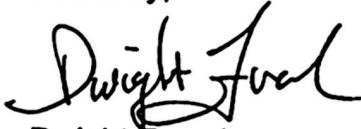
The Department received the attached rebuttals to your comments. If you do not agree with a rebuttal and believe that your comments are still valid, please send a written response to the Department identifying why you disagree with the rebuttal and affirming your position. However, if you agree with the rebuttal you need not respond, unless you determine that it is necessary. In order for use 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 and attention the request 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 exempt status of 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, appearing to read "Dwight French". The signature is fluid and cursive, with the first name "Dwight" and last name "French" clearly distinguishable.

Dwight French
Water Rights Manager

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



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

Jerry Vogt
Oregon Department of Fish & Wildlife
1495 East Gregory Rd.
Central Point, Oregon 97502

Dear Mr. Vogt:

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.

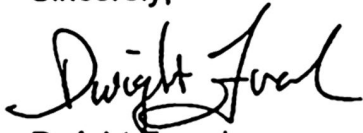
The Department received the attached rebuttals to your comments. If you do not agree with a rebuttal and believe that your comments are still valid, please send a written response to the Department identifying why you disagree with the rebuttal and affirming your position. However, if you agree with 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, appearing to read "Dwight French". The signature is fluid and cursive, with the first name "Dwight" being more prominent than the last name "French".

Dwight French
Water Rights Manager

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

RECEIVED

DEC - 8 1997

MITIGATION CONDITIONS

WATER RESOURCES DEPT.
SALEM, OREGON

File # P-83054
Date 11-12-97
LKS

Oregon Department of Fish and Wildlife Conditions

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

Water Right Related Conditions

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

PLEASE
NOTE

THE CREEK DRIES UP FROM MID JUNE TO MID OCTOBER
THERE IS A SPILLWAY, WHATEVER COMES CAN GO OUT
I DON'T USE IT.
ITS FOR WILD DUCKS, FROGS AND BLUE HERON.
THERE NEVER HAS BEEN ANY FISH IN THE CREEK.



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

FRED V BAUMANN
36789 REDWOOD HWY
OBRIEN, OR 97534

REFERENCE: FILE#: P 83054

Dear Mr. Baumann,

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.

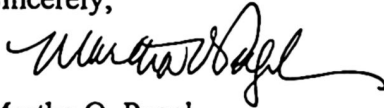
This is why you received a letter from us last week. For more than 16,000 ponds on which notices were filed under HB 2376, about 960 comments were received. From those comments, we determined that about half would appear to require mitigation measures. A total of 450 letters were sent out last week to 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 black ink, appearing to read 'Martha O. Pagel', with a long, sweeping horizontal line extending to the right.

Martha O. Pagel
Director

m:955



Oregon

John A. Kitzhaber, M.D., Governor

November 10, 1997

Water Resources Department

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

FILE#: P 83054

FRED V BAUMANN
36789 REDWOOD HWY
OBRIEN, OR 97534

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

MITIGATION CONDITIONS

File # P- 93054
Date 11-7-97
LKS

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)
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Water Right Related Conditions

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RECEIVED

AUG 29 1997

WATERMASTER COMMENTS FOR
HB 2153 CERTIFICATES
HB 2376 NOTICES

WATER RESOURCES DEPT.
SALEM, OREGON

DEPT Watermaster Name Norman E. DART
Date 7-21-97

Please attach copy of HB 2153 Certificate.

HB 2376 Notice of Exempt Reservoir Application # P 83054

** Attach additional sheets if necessary.

Please specify which reservoir(s)/ponds(s) the comments pertain to:

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

* ALL

** POND #1

Does the reservoir/pond cause injury to an existing water right? Specify which water right and the evidence which supports that finding. *Please describe for each reservoir listed above. If the water right and the supporting evidence are the same please indicate.*

INJURY TO	{	ISWR	C-73040	EVIDENCED BY:
			C-73032	Measurements
			C-73031	
			C-59773	

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

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

(1)

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.

(2)

The following provision for a measuring device shall be effective:

- (a) the pump system shall include an access port for measuring the water level;
- (b) the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;
- (c) the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said Watermaster.

(3)

A totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

(4)

A staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed.

*Please specify whether the installation of the weir(s) will provide no public benefit.

(5)

Live stream flow must be by-passed between *** when Regulated April and June.

(6)

The period of use has been limited to _____ through _____.

Other (Please specify below)

*** LIMIT USE TO STORAGE CAPACITY



Oregon

John A. Kitzhaber, M.D., Governor

November 12, 1997

Water Resources Department

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

FILE#: P 83054

FRED V BAUMANN
36789 REDWOOD HWY
OBRIEN, OR 97534

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

MITIGATION CONDITIONS

File # P-83054
Date 11-12-97
LKS

Oregon Department of Fish and Wildlife Conditions

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

Water Right Related Conditions

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

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

Application # P-83054 Date: July 31, 1997
Biologist's Name: Jerry Vogt
Certificate # (If applicable) Address: 1495 East Gregory Rd., Central Point
Phone: (541) 826-8774

**** Attach additional sheets if necessary**

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

Comments apply to all reservoirs in the application.

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

This reservoir negatively impacts populations of chinook and coho salmon, steelhead and resident trout in Elk Creek. While ODFW has not documented the presence of fish at the POD, this reservoir is above ODFW's instream water right reach on Elk Creek (Certificate 73040). Elk Creek appears on DEQ's 303 (d) list of water quality limited streams due to high summer water temperatures; these high water temperatures reduce salmonid habitat in this stream. Withdrawals of water for this reservoir contribute to existing temperature problems in Elk Creek and injure ODFW's instream water right on this stream.

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

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

The reservoir owner shall: (without ODFW approval)

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

The reservoir owner shall: (with ODFW approval)

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

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

Other: (Please specify below)

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

WATERMASTER COMMENTS FOR
HB 2153 CERTIFICATES
HB 2376 NOTICES

DEPUTY Watermaster Name NORMAN E. DAFT
Date 7-21-97

Please attach copy of HB 2153 Certificate.

HB 2376 Notice of Exempt Reservoir Application # P 83054

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INJURY TO

ISWR

C-73040

EVIDENCED BY:

C-73032

Measurements

C-73031

C-59773

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

RECEIVED

NOV 19 1997

WATER RESOURCES DEPT.
SALEM, OREGON

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(5)

Live stream flow must be by-passed between ** when Regulated Appt and flow.

(6)

The period of use has been limited to _____ through _____.

Other (Please specify below)

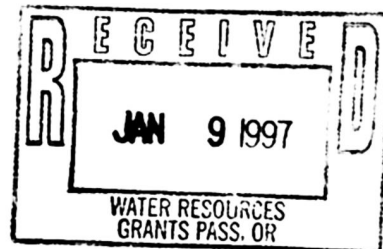
* LIMIT USE TO STORAGE CAPACITY
FE



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.

Landowner: Baumann, Fred ✓
Last name First name MI

Authorized Agent: _____
Last name First name MI

Address: 36789 Redwood Hwy
577

O'Brien OR 97534
City State Zip

Phone: 596-2518
Home Work

FAX: _____ E-Mail Address: _____

A. County of use: Josephine B. River basin (see reverse): 15 - Rogue

C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
41 S	9 W	1	SW/4, NW/4 SW	300

D. Name, if any, of reservoir: ① - NONE E. Reservoir in existence since: ① 6-1940
② - NONE ② 6-1992
③ - NONE MM DD YY

F. Source of water: ① Gilligan Creek which flows into ① Elk Creek
② and ③ Runoff ② and ③ Gilligan Creek
Name of river or creek Name of river or creek

G. Maximum height of dam: ① 7' ② 5' ③ 5' feet.

H. Quantity of water stored in reservoir at maximum capacity (see reverse): ① .05 ② .05 ③ .05 acre-feet.

I. Water stored in reservoir is used for (see reverse): ① Emergency domestic, Fish and
② Wildlife, Fire protection
③

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?

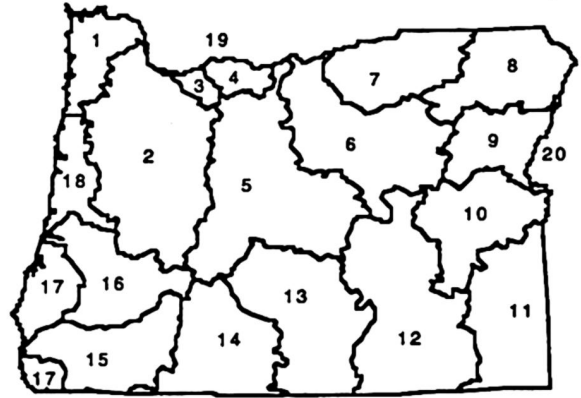
By my signature below, I swear that all statements made and information provided in this application are true to the best of my knowledge.

Fred V Baumann FRED V BAUMANN 9 Jan 97
(Signature of Landowner/Agent) (Printed name and title) (Date)

For Department Use P-83054 File # _____ Date received _____ 10-95

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	# acres	Cranberry	cfs/gpm	# 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	# 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	_____	Supplemental Domestic	cfs/gpm	.005 cfs
Domestic	cfs/gpm	_____	Other:	cfs/gpm	_____
Expanded	cfs/gpm	_____			

①② and ③

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	_____

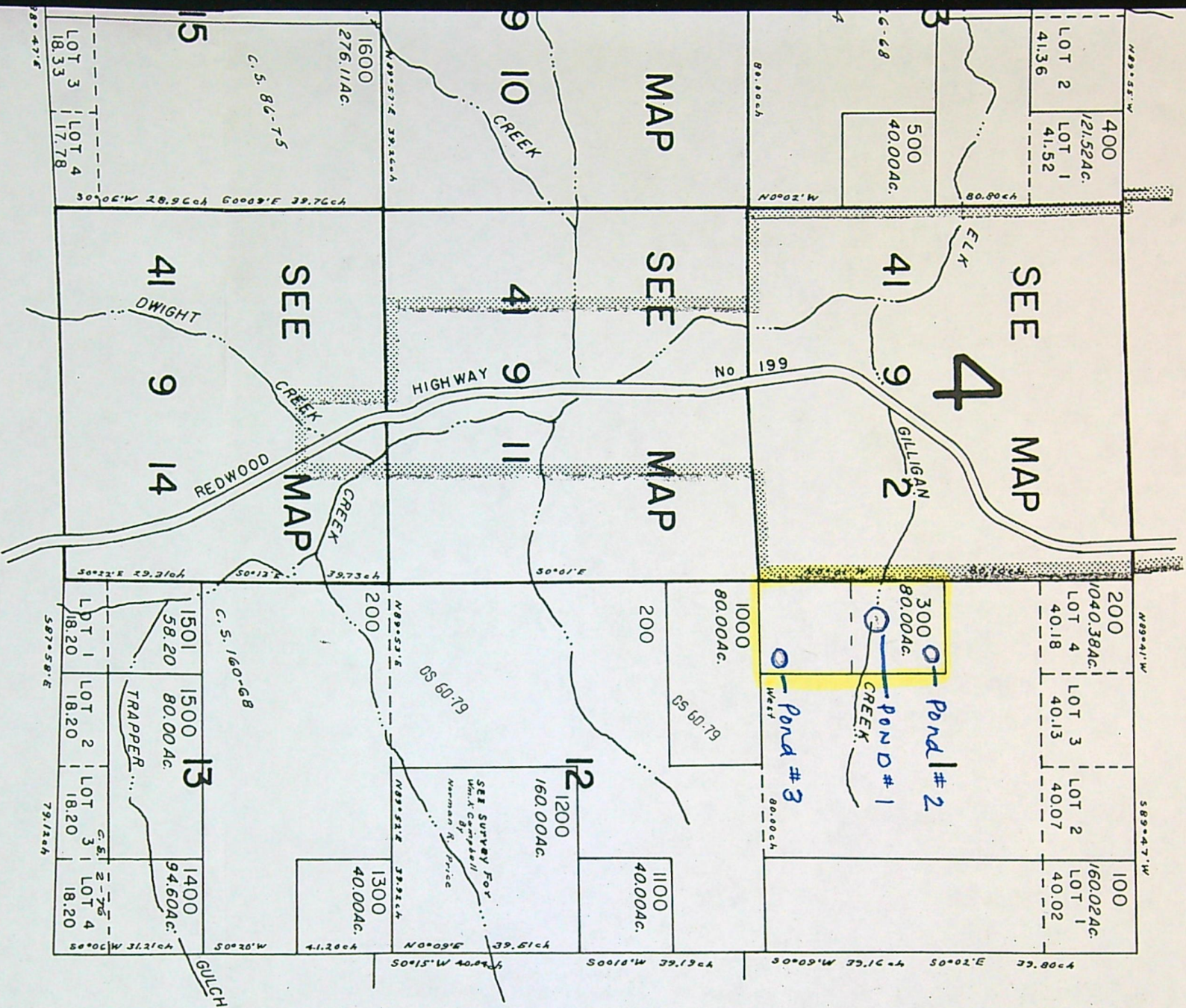
Environmental Benefits

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

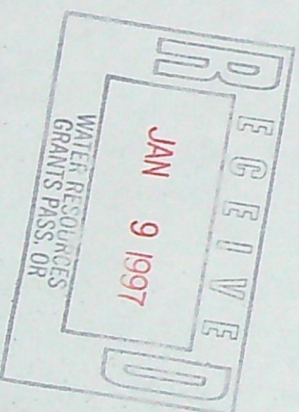
Scale
1" = 2000'

N 4

Application No. 8-83054
Permit No.



SEE MAP 41 8



HB 2376 EXEMPT NOTICE
COMPLETENESS CHECKLIST

- ☒ Landowner name and address*
- ☒ **A.** County of use
- ☒ **B.** River basin
- ☒ **C.** Legal description of reservoir location*
(Includes quarter-quarter section and tax lot)
- ☒ **D.** Reservoir name
- ☒ **E.** Date of construction
- ☒ **F.** Source of water and tributary*
- ☒ **G.** Dam height
- ☒ **H.** Quantity of water stored*
- ☒ **I.** Use of water
- ☒ **J.** Rate and area of use (if any)
- ☒ Signature of Landowner/agent
- ☒ Map showing Township, Range, Section, Quarter-quarter section and Tax Lot* and general location of pond.

Date Received

1/9/97

Received By

Denise

* MINIMUM REQUIREMENT TO FILE

C:\wp51\pondchk