

Mailing List for MO Copies

Application P-81567

MO Date January 6, 1998

Original mailed to:

Applicant: ☒ Is there a new address? Y _____

1. WRD - File # P-81567
2. WRD - Watermaster # 5
3. WRD - Regional Manager (not Bob Main): NCR

Copies Mailed
By: <u>JB</u>
(SUPPORT STAFF)
on: <u>1/26/98</u>
(DATE)

Other Commenters:

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

Other Interested Persons (CWRE, Agent, etc.)

7. _____
8. _____
9. _____
10. _____

CASEWORKER :

Information	Below	This	For	Mitigation	Team	Use	Only		
SMBS	SMSS	BPC	KR1	<u>KR2</u>	J	BSD	BSD2	1A	MD
MD1	MD2	MD3	B57	B58	BYPASS	<u>B51A</u>		Basin	<u>7</u>

1/1 - 5/31 FOR THE APPROVAL OF H₂O FOR SUP

Rebuttal Y / ☒ N

Exempt by WM comments Y ☒ N

COMMENTOR:

WM and/or WM Dist: Tony Sustos

ODFW Dist: _____

WaterWatch: Y / N

January 16, 1998

WATER
RESOURCES
DEPARTMENT

NEVADA FIRST CORP.
HANK HOWARD
PO BOX 506
HEPPNER, OR 97836

Reference: File P-81567

Dear Applicant:

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

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

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

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

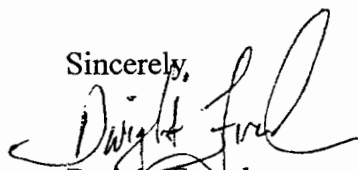
If you disagree with this order, you may request a contested case hearing, and submit in writing your reasons why the order should be changed or rescinded. You may wish to submit maps or sketches to help us to better understand the particulars of your situation. Once we receive your request for a contested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



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

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-81567

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.

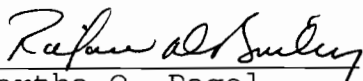
Order

Water may be appropriated for storage during the period January 1 through May 31 only.

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).

Therefore, pursuant to ORS 537.405, the use evidenced by notice of existing reservoir number P-81567, 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



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

HOWARD HANK
NEVADA FIRST CORP.
PO BOX 506
HEPPNER, OR 97836

REFERENCE: FILE#: P 81567

Dear Mr. Hank,

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.



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 81567

NEVADA FIRST CORP., HANK, HOWARD
PO BOX 506
HEPPNER, OR 97836

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

_____ The following provision for a measuring device shall be effective:

_____ the pump system shall include an access port for measuring the water level;

_____ the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;

_____ 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.

_____ 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.

_____ 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.

_____ Live stream flow must be by-passed between _____ and _____.

✓ The period of use has been limited to 1/1 through 5/31 x

FOR THE APPROPRIATION OF WATER FOR STORAGE

RECEIVED

JUL 21 1997

WATER RESOURCES DEPT.
SALEM, OREGON

**WATERMASTER COMMENTS FOR
HB 2153 CERTIFICATES
HB 2376 NOTICES**

Watermaster Name Tony Justus
Date 7-17-97

Please attach copy of HB 2153 Certificate.

HB 2376 Notice of Exempt Reservoir Application # P 81567

RECEIVED

AUG 26 1997

WATER RESOURCES DEPT.
SALEM, OREGON

**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.

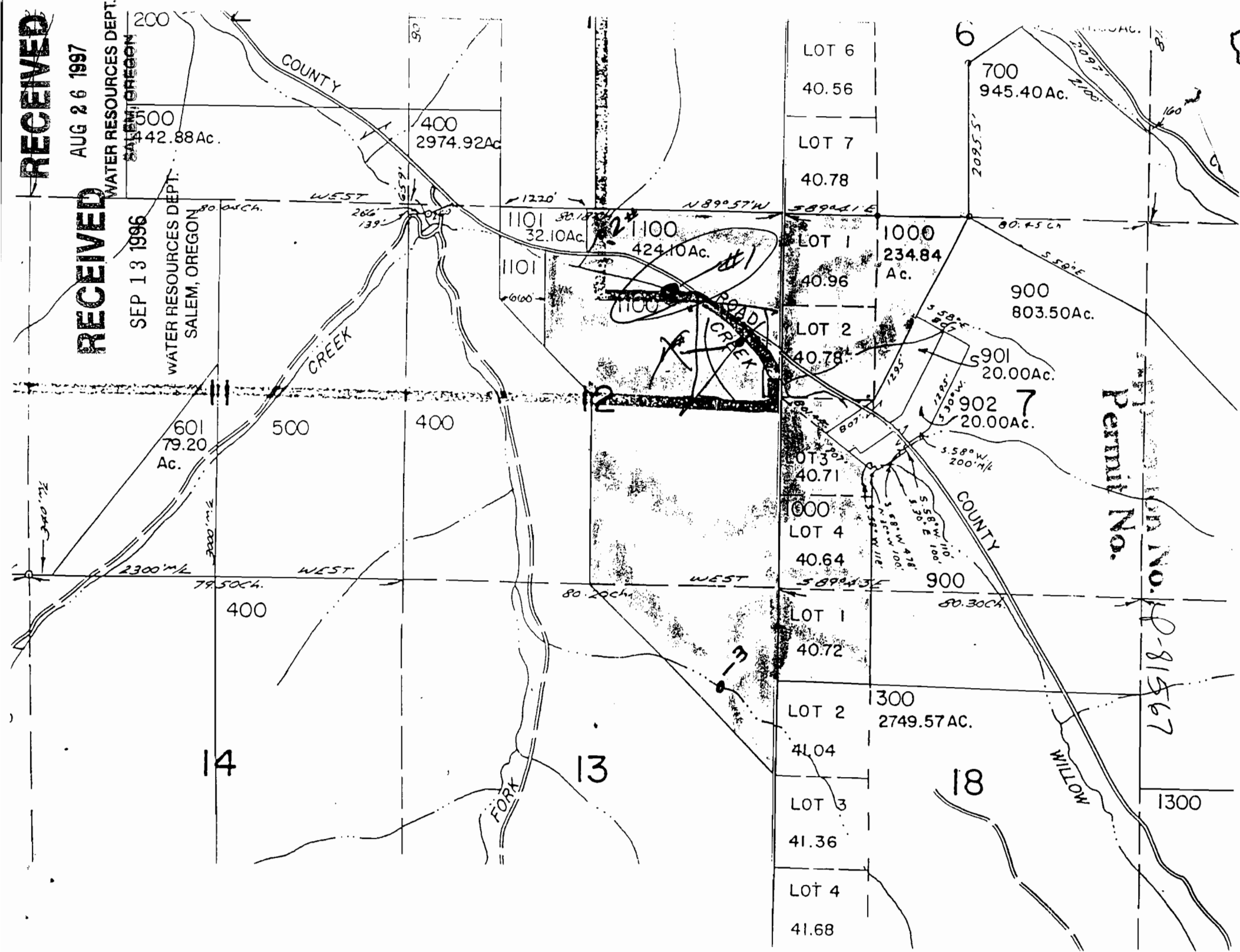
Reservoir #1 is mislocated on the map furnished by applicant. The pond is shown on USGS quad maps & is located in the NW 1/4 NE 1/4 of Sec 12 NOT NESE as shown on Notice. I discussed this with Mr Hank Howard at my visit to the property.

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.

Water is diverted under certificate #169 Willow Creek Decree for irrigation. Pond catches waste & excess water under water right & may use this water w/o additional W/R on lands which have the water right. Willow Creek is regulated annually because flows are insufficient for all rights. Direct Diversions to fill or maintain the pond during this time frame after 5/31 should not be allowed. All W/Rs on Willow Creek & tributaries are ~~not~~ injured by direct diversion to this pond during times of shortage. W/R's affected (in part) are C# 199, 572610, 125, 57240, 144, 158, 150, 46346, 164, 145.

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

7-81561



RECEIVED

AUG 26 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Oregon

July 25, 1996

REFERENCE: Water use on Willow Creek, Rhea Creek, and Hinton Creek.

WATER
RESOURCES
DEPARTMENT

Watermaster

Dear Water Users,

Due to low flows which have resulted in a shortage of water on Willow Creek, we have received a request for water from a senior water right holder. Therefore we will start regulating the available flows in Willow Creek, Rhea Creek, and Hinton Creek immediately.

This Letter is our official request for those having water rights newer than **1906**, to terminate your use immediately. If you are sprinkling, shut off the pump. If you are flooding, close the headgate securely and pull all boards on the dam. For those having water rights **1906** or older, you may use the quantity of water listed with your water right.

This regulation will be in effect until **this office notifies you otherwise**. Please call our office if you should have **any** questions about this letter at 278-5456.

Sincerely,



Sandra Cairns
Assistant Watermaster, Dist. 5

cc: Tony Justus, Watermaster, Dist. 5



3920 Westgate
Pendleton, OR 97801
Phone 503-278-5456
FAX 503-278-2087



Oregon Water Resources Department

Notice of Exempt I

For reservoirs built before Janu

- Store less than 9.2 acre-ft
- Have a dam less than 10

The deadline for submitting a Notice of Exempt

NEVADA FIRST CORPORATION

P.O. BOX 490

WINNEMUCCA, NV 89446-0490

Landowner: NEVADA FIRST CORP

Authorized Agent: Howard Last name First name MI

Address: P.O. Box 506 Last name First name MI
Heppner OR 97836

Phone: 1-702-623-2586 City State Zip
1-541-676-5891 WORK Home WORK Home

FAX: 1-702-623-1678 E-Mail Address:

WATER RESOURCES DEPT.
SALEM, OREGON

SEP 13 1996

RECEIVED

A. County of use: MORROW B. River basin (see reverse): John Day

C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
1. <u>35</u>	<u>27E</u>	<u>12</u>	<u>NE, SE</u>	<u>1100</u>

D. Name, if any, of reservoir: 1, 2, 3 E. Reservoir in existence since: PRE 1951 MM DD YY

F. Source of water: Rain, Springs which flows into Willow Creek
Name of river or creek Name of river or creek

G. Maximum height of dam: 2 Feet feet.

H. Quantity of water stored in reservoir at maximum capacity (see reverse): 1.2 1/2 ACRE acre-feet.
24, 3#

I. Water stored in reservoir is used for (see reverse): Stock Water on 1# IRRIGATION

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.

1.2 ACRES - 2 1/2
2.1 ACRES - 1 1/2
3.1 ACRES - 1 1/2

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.

Hank L Howard

(Signature of Landowner/Agent)

HANK L HOWARD Lands mgr

(Printed name and title)

9/12/96

(Date)

For Department Use

P 81567

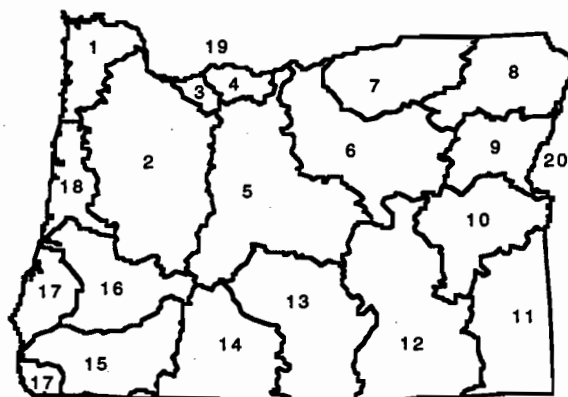
File #

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

SEP 13 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Application No. 28-81567
Permit No. _____

September 27, 1996

Oregon

NEVADA FIRST CORP.; HANK, HOWARD
PO BOX 506
HEPPNER, OR 97836

WATER
RESOURCES
DEPARTMENT

REFERENCE: File # P-81567;

Notice of Exempt Reservoir (Pond)

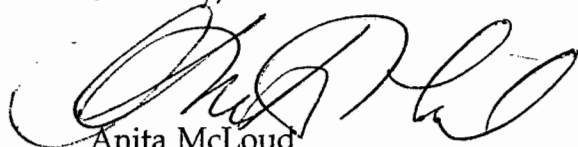
This is to let you know that we have received your Notice of Exempt Reservoir and assigned it the number listed above. Please refer to this number if you need to contact us about the notice. As required by law, your Notice of Exempt Reservoir filing will appear in our weekly public notice within 90 days 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 #05



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

PRE-TR APPLICATION PROCESSING OUTLINE

Application File #

81567

MINIMUM REQUIREMENTS TO FILE

OAD 690-11-020

DATE STAMP

DATE

INITIAL

Name and mailing address of applicant

Source of water

Quantity of water

Map showing location of POD & POU

Use of water

Names and addresses of legal owners

Signature of applicant

Oath

Application date stamped per money receipt date

Land use approved _____ pending _____

If reservoir < 5 AF \$_____, if > 5 AF \$_____

HB 2153/HB 2107 APPLICATION -- SEE REVERSE

Route to Data Center (Unless 2153/2107)

DATA CENTER

Stream Code _____

Entered into WRIS

SUPPORT SERVICES

Stamp contents with application number

Mail ack letter (provided by Data Center) with receipt to applicant, cc to CWRE and file

Place label on file and calender card

APPLICATION SECTION

Stream Indexed Basin # _____

Plat Carded and copy made YES NO

If dam is over 10 feet or storage exceeds 9.2

AC-FT, route file to Dam Safety Section

TR CASEWORKER

TR Checklist complete YES NO

Within Irrigation District _____

District Notified _____

District excerpt received _____

TR Mailed DATE _____

Public Interest Checklist complete _____

Management Codes _____

REMARKS:

MINIMUM APPLICATION REQUIREMENTS TO FILE:

HB 2153 - existing, small, EXEMPT ponds

(date & initials) NOTICE OF EXEMPT RESERVOIR form (or letter
if prior to April 8, 1994).

Appropriate map (see item 1 on form).

Evidence that reservoir existed before
January 1, 1993 (one or more of the following: dated aerial
photo, NOTARIZED affidavit, dated map from agency, construction
receipts or other documentation).

Items 2, 3, 4, 5, and 6 are completed.

Signature (and title, if applicable)

HB 2153 - non-exempt existing ponds (large, on-channel)

Complete Minimum Requirements to File on reverse, except before
routing to Data Center, change priority date to 1/1/1993. Also,
confirm the following:

Receipt of evidence that reservoir existed
before January 1, 1993 (one or more of the following: dated
aerial photo, NOTARIZED affidavit, dated map from agency,
construction receipts or other documentation)

**HB 2107 - wetland, stream restoration and storm water
management**

Complete Minimum Requirements to File on reverse EXCEPT DO NOT
ROUTE TO DATA CENTER, BUT DO ROUTE TO CAROL. Also confirm the
following:

within 1/4 mile Name/address of adjacent property owner

Map with scale not less than 2 in.=1 mi.

CWRE map if > 10 feet dam or > 9.2 AF

Description of proposed use

Condition addressed

Resulting benefits

Public notices (circle) #1 #2