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Date: 03/27/2009 11:35

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Comment:

Please see attached comments, etc., on R-87376.

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Application: R87376 (Dave Obrist)	ADVERSE COMMENTS, REQUEST FOR PARTY STATUS AND PUBLIC RECORDS REQUEST
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Charles and Deborah Noble ("Noble") hereby submit the following adverse comments, request for party status and public records request regarding the above referenced application.

INTERESTS OF NOBLE

Noble owns and resides on property near Beavercreek, Oregon. A tributary to Beaver Creek runs through Noble's property. Beaver Creek and Parrott Creek merge in an area south of Oregon City before flowing into the Willamette River. With proper fish passage, fish in Parrott Creek and its tributaries can migrate into Beaver Creek and its tributaries (and *vice versa*). Thus, conditions in Parrott Creek and its tributaries affect fish populations in Beaver Creek and its tributaries.

Noble desires healthy native fish populations in Beaver Creek and its tributaries because the presence of native fish in the tributary on Noble's property would enhance Noble's use and enjoyment of the property. Noble has invested considerable amounts of money to improve fish habitat on Noble's property and to improve fish habitat and passage in downstream portions of the tributary that runs through Noble's property. Noble also desires the presence of healthy native fish populations in Beaver Creek, Parrott Creek and the Willamette River because healthy fish populations in the vicinity of Noble's

property enhance Noble's use and enjoyment of their property and because Noble enjoys knowing that such fish populations exist.

COMMENTS

Pursuant to ORS 537.409(5), Noble requests that the Department deny the above application on grounds the proposed reservoir poses a significant detrimental impact to existing fishery resources. Although the application states that the proposed reservoir is not located in the stream channel, the accompanying map, and aerial photographs available on Google Earth, indicate that the proposed reservoir is in fact in the channel of a tributary ("Tributary") to Parrott Creek. Fish distribution maps of the Oregon Department of Fish and Wildlife ("ODFW") show that fish, including native cutthroat trout, are present in Parrott Creek and its tributaries.

The proposed reservoir, alone and cumulatively in combination with other reservoirs in the Parrott Creek and Beaver Creek watersheds, poses a significant detrimental impact to existing fishery resources because it will impair fish passage in the Tributary, reduce flows in the Tributary and in Parrott Creek, and, most significantly, contribute to adverse temperature impacts (warming) in the Tributary, Parrott Creek, Beaver Creek (after joining Parrott Creek) and the Willamette River.

Even if a permit for the reservoir is conditioned to allow storage only during cooler weather, the reservoir will still contribute to adverse warming if the reservoir releases any stored water during warmer months. Moreover, storage of water even during perceived "high flow" periods poses a significant detrimental impact to fishery resources by reducing flows that are beneficial to fish and/or to formation and maintenance of fish habitat.

Permit conditions cannot be applied to prevent the significant detrimental impacts to existing fishery resources. Seasonal limitations on storage and water releases cannot realistically be effective because there is no practical way to measure and monitor compliance with such conditions, particularly in light of the Department's limited enforcement resources and the Department's historic unwillingness to require measuring devices for reservoirs of the size and type proposed.

REQUEST FOR PARTY STATUS

To the extent Noble is not already a "party" that would be "affected" by allowance of the proposed permit, Noble hereby requests to participate before the Department as a "party" in this matter. Noble will be affected by the proceeding because the outcome will impact the fish populations in which Noble has an interest, as described above.

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PUBLIC RECORDS REQUEST

Noble requests copies of all documents related to the above application, including but not limited to copies of all comments submitted by any other person, organization or agency, except to the extent such documents may be obtained via the Department's Internet website. Copies should be delivered to the undersigned counsel. The undersigned counsel will pay all reasonable copying charges upon receiving an estimate of such charges from the Department.

DATED: March 27, 2009.

By *Brian Posewitz*
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