

Herb Mosgar

From: Norm Daft [normthewaterguy@charter.net]
Sent: Tuesday, August 25, 2009 11:26 AM
To: Herbert L MOSGAR
Subject: Sea Wind Farms - COBU's

Herb,

The owners of Sea Wind Farms would like me to review the COBU's completed for permits for which no certificates have been issued.

The permits are:

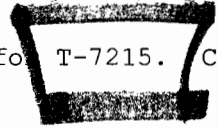
S-52989 (app S-70170) ✓

G-13598 (app G-14722) ✓

R-12095 (app R-73733) ✓

S-52993 (app S-73734) ✓

In addition, the WEB information shows that a claim has not been done for T-7215. Could you check your files to see if a claim has been done?



What I need is a copy of the claim report and map(s).

If these can be sent as an e-mail attachment, that would be good. Otherwise, my address is: Norm Daft, 245 Glenoak Lane, Grants Pass, OR 97526.

Please let me know if there is a fee.

Thanks.

Norm

541 761-1057

NOTICE OF BEGINNING OF CONSTRUCTION

I, SEA WIND FARMS INC, the holder of Permit No. R-12095

to appropriate the public waters of the state of Oregon, began the actual construction of the works described
thereon on the 10th day of AUGUST, 1997.

Remarks: COMPLETED TWO OF THE FIVE RESERVOIRS
The appropriator must state the manner of beginning of construction, the amount of work completed and the type of equipment

required for the water system up to the date of this statement, and any additional information which shows a substantial beginning of construction as
authorized by your permit.

IN WITNESS WHEREOF, I have hereunto set my hand this 23RD day of February, 1999.

Kurt W Anderson FARM MANAGER
(Signature of Applicant)

P.O. Box 242 SIXES, OR 97476
(Address)

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when construction work is begun.

RECEIVED

FEB 26 1999

WATER RESOURCES DEPT
SALEM, OREGON

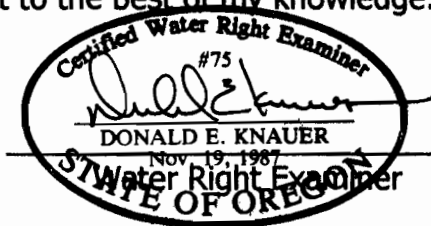
OK
PCM

PERIOD OF USE: Water is stored November 1 through May 31.

PERMIT CONDITIONS:

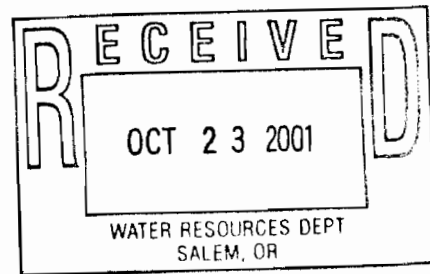
Evacuate water: Reservoirs #2 and #3 can be emptied by use of a portable pump. Reservoir #1 has a 12" corrugated Poly Pipe with a 40" half round riser with flash boards. The riser is 10 feet high with the top, 3 feet below the top of the dam. The conduit is about 60 feet long and discharges well below the toe of the dam.

The final proof survey and inspection of the water use as found to be completed under the terms and conditions of Permit R-12095 which was completed by me on 9/05/01, and the facts contained in this report and accompanying map are correct to the best of my knowledge.



I, Knute Anderson, Manager, agree to the findings of the Water Right Examiner and submit this report and map as my Claim of Beneficial Use of the water as provided under the terms and conditions of my permit # R-12095.


Signature

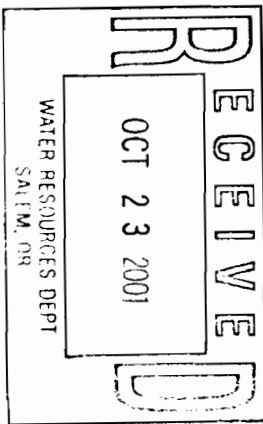
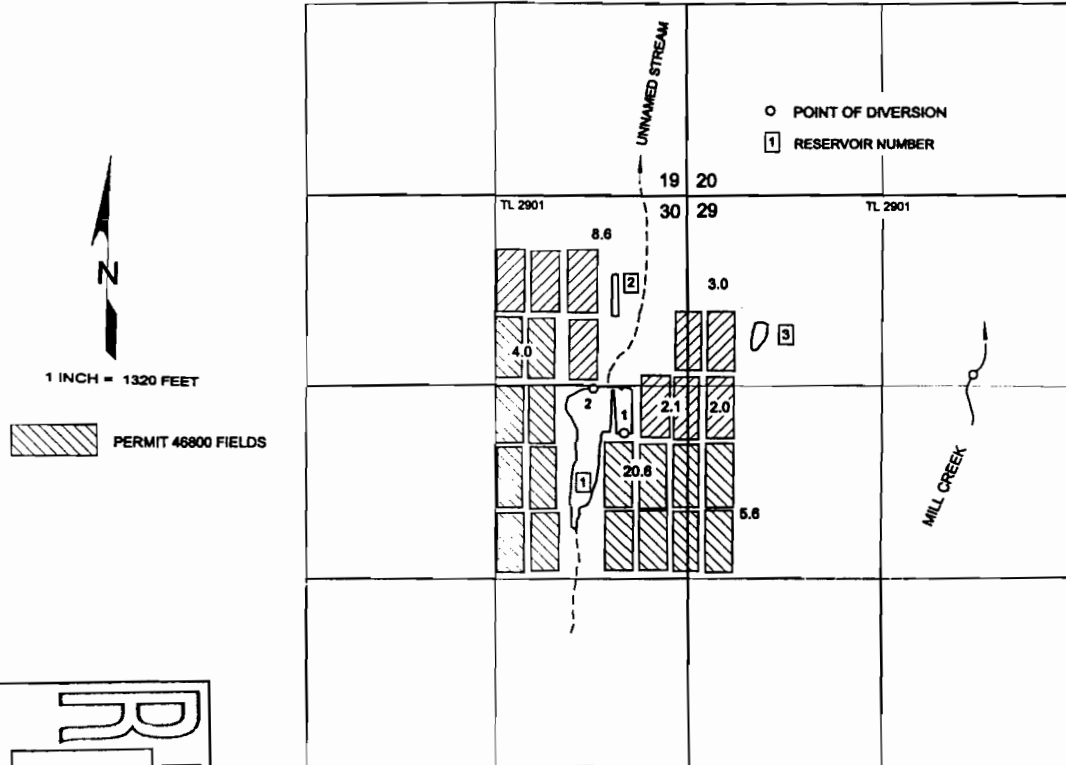


FINAL PROOF SURVEY MAP IN THE NAME OF SEA WIND FARMS, INC.

APPLICATION R-73733
S-73734

PERMIT R-12095
52993

SECTIONS 29 & 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.

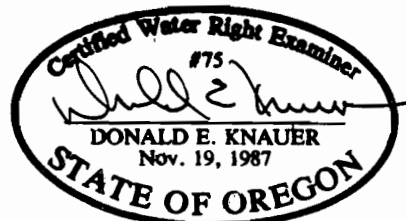


THE MILL CREEK POINT OF DIVERSION IS LOCATED 1230 FEET SOUTH AND 1940 FEET EAST FROM THE NORTHEAST CORNER OF SECTION 30 BEING WITHIN THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 29, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.; AND

THE UNNAMED STREAM POINTS OF DIVERSION ARE LOCATED AS FOLLOWS: NUMBER ONE IS 1650 FEET SOUTH AND 420 FEET WEST AND NUMBER TWO IS 1340 FEET SOUTH AND 640 FEET WEST; BOTH BEING WITHIN THE SE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.; AND

THE DAM FOR RESERVOIR ONE IS LOCATED 1320 FEET SOUTH AND 540 FEET WEST, WITHIN THE SE $\frac{1}{4}$ NE $\frac{1}{4}$; AND THE CENTER OF RESERVOIR TWO IS LOCATED 490 FEET SOUTH AND 670 FEET WEST WITHIN THE NE $\frac{1}{4}$ NE $\frac{1}{4}$; BOTH FROM THE NORTHEAST CORNER OF SECTION 30 AND WITHIN SECTION 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.; AND

THE CENTER OF RESERVOIR THREE IS LOCATED 960 FEET SOUTH AND 490 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 30; BEING WITHIN THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 29, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.; ALL WITHIN CURRY COUNTY.



THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

CLAIM OF BENEFICIAL USE

Section 29 & 30, Twp 31 S Range 15 W, W.M.

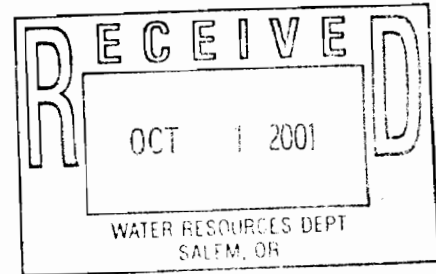
Curry County

FOR: Sea Wind Farms Inc.

Application # R-73733

Permit # R-12095

Date surveyed: 9/05/01



OWNER INFORMATION:

permittee:

name: Sea Wind Farms Inc.
address: PO BOX 242
city & state: Sixes OR 97476
phone: 541-348-9937

property owner: same

person interviewed: Knute Anderson, Manager

SOURCE: Field run-off in reservoirs 2 and 3 and an Unnamed Stream in reservoir 1; tributary to Floras Lake.

TYPE OF USE: Stored water to be appropriated under permit 52993 for primary and supplemental cranberry operations.

DAM AND RESERVOIR DESCRIPTION:**Reservoir No. 1:**

Dam: Road across the drainage on the north side of the reservoir.

Height: 5 foot
Width: 20-25 feet
Length: 200'
D/S slope: 2:1 - 4:1
U/S slope: 1½:1 (most of reservoir excavated for storage)
Conduit: 12" corrugated Poly Pipe with 40" half round riser with flash boards. Half round is 10 feet high and 3 feet below top of road. Conduit is +/- 60 feet in length discharging well below the dam.

Spillway: None- boards are removed to control water level.

Surface area: 4.8 acres

Volume: 18.4 acre feet

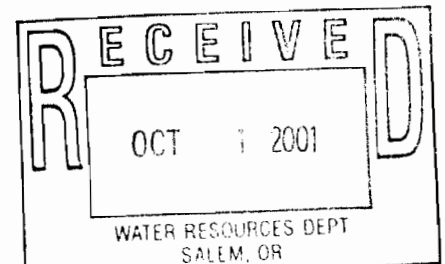
1 acre with average depth of 10 feet

2.78 acres ranging from 10 feet – 5 feet in depth

1 acre ranging from 5 feet – 0 feet in depth

$$(10)(.7) + (20.85)(.5) = (2.5)(.4) = 18.4$$

Two pump stations at this site.

**Reservoir No. 2**

Dam: None. Excavated between cranberry fields and unnamed stream (drainage). Excavated to a depth of 5 feet with fairly vertical sides.

Surface area: 0.3 acre

Volume: 1.0 acre foot

No conduit or outlet; overflow by depression towards the West. Filled by rainfall and diversion from cranberry field. Water used via a portable pumping unit.

Reservoir No.3

Dam: None. Excavated below cranberry fields. Very similar to Reservoir No. 2, except sides not as steep.

Surface area: 0.4 acre

Maximum depth: 10 feet

Capacity: 2.4 acre feet

Water used via a portable pumping unit.

SYSTEM CAPACITY:

Reservoir #1 = 18.4 acre-feet

Reservoir #2 = 1.0 acre-feet

Reservoir #3 = 2.4 acre-feet

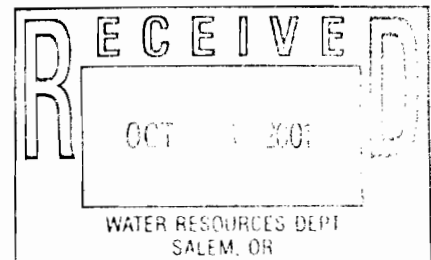
TOTAL = 21.8 ACRE-FEET

DAM/RESERVOIR LOCATION: Reservoir No. 1 is within the SE1/4 NE1/4 section 30, Reservoir No. 2 is within the NE1/4 NE1/4 section 30, and Reservoir No. 3 is within the NW1/4 NW1/4 section 29, all are T315 R15 W, W.M.

RATE:

rate allowed by permit: 45.0 ac-ft.

rate calculated based on system: 21.8 ac-ft.



TIME LIMITS: All the time limits were met.



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

April 17, 2009

SEA WIND FARMS INC.
KNUTE ANDERSSON
PO BOX 242
SIXES, OR 97476

Reference: Water use reporting for Permits R-12095, R-12960, S-53713, R-13159

Dear Mr. Andersson,

On April 1, 2009, the Oregon Water Resources Department (Department) sent a reminder card to certain Permit Holders that water use reports are due for the 2008 water year. This reminder was mistakenly sent to you. Please know that the Department is not requesting any water use data at this time and we apologize for any inconvenience that this may have caused.

If you have any questions, please call me at 503-986-0837.

Sincerely,

Alyssa Mucken
Water Measurement Specialist

cc:

Dwight French
Lloyd Van Gordon
File R-73733
File R-74441
File S-74439
File R-74440



Alyssa Mucken

From: Dwight French
Sent: Thursday, April 09, 2009 3:55 PM
To: Alyssa Mucken
Subject: RE: Bandon area rights and water use reporting condition

Hi Alyssa,
 I remember a lot about the history and background for what I call the "New River Permits" or "New River ADR."

These permit holders, with this language, aren't automatically required to provide data unless we determine that we need the data. Then, we can ask for it and they'll have to provide it until we tell them that we don't need it anymore.

The "its" is in reference to WRD. So, if we request the data they have to provide it. If you need more information or want to talk about it we can.

*we shouldn't have requested it - (WRD)
 - this is a more formal request by WRD - per Dwight
 ∴ removed rights from WRD db.*

Dwight

From: Alyssa Mucken
Sent: Thursday, April 09, 2009 1:38 PM
To: Dwight French
Cc: Lloyd VanGordon
Subject: Bandon area rights and water use reporting condition

Hi Dwight,

I have two users (Coventry Farms and Seawind Farms) down near the Bandon area that have permits with a slightly different language used for the Water use reporting condition.

The following permits use the term "at it's request" in the measurement, recording, and reporting condition:

Permit S-53588
 Permit R-12695
 Permit R-12095
 Permit R-12960
 Permit S-53713
 Permit R-13159

"At it's request" isn't used in the typical water use reporting condition we use today - and I've only seen it used in this particular area. Some of these permits, although not all, reference the New River ADR agreement. Someone in this position made the interpretation that both of these Users were required to submit their data, however, after reading the condition, I'm not so sure.

I just sent both Farms a reminder postcard that water use reports were due. I'm wondering if we shouldn't have. It's not clear from reading the Technical Review or the Proposed Final Orders why the language was modified in such a way. Can you tell me whether we should be requesting their data at this time? I was hoping you might be familiar with the New River ADR and whether that agreement was related to the language that was used for the measurement, recording and reporting condition.

4/17/2009



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130
www.wrd.state.or.us

April 12, 2002

SEA WIND FARMS INC
PO BOX 242
SIXES OR 97476

Application(s): R-73733, R-74441, S-70170, S-73734, R-74440, S-74439

Permit Number(s): R-12095, R-12960, S-52989, S-52993, R-13159, S-53713

Re: Best Management Practices

As you know, your water right permit(s) as referenced above require(s) use of best management practices to protect water quality. The "best management practices" condition was developed as part of a negotiated settlement of challenges to yours and other water right applications in the New River area. The best management practices were to be developed by a consensus process in which participation was available to a broad range of interests, and were to include mechanisms to ensure their effectiveness.

The Oregon Agricultural Water Quality Management Act, ORS 568.900 to 568.933 (SB 1010), provides a framework for the Oregon Department of Agriculture to develop watershed-based plans to address agricultural water quality issues. The Agricultural Water Quality Management Area Plan and the associated rules for the Coos and Coquille Watersheds (SB 1010 plan; OAR Chapter 603, Division 95 sec 1500 to 1560) were adopted by the State Board of Agriculture last month and the rules filed with the Secretary of State on March 7, 2002. The plan and rules were developed by a Local Advisory Committee consisting of stakeholders residing in the Coos and Coquille watershed. A copy of the plan and rules can be found at the following website:

["http://www.oda.state.or.us/Natural_Resources/agwqmpr.htm"](http://www.oda.state.or.us/Natural_Resources/agwqmpr.htm)

The plan identifies best management practices, - measures and strategies to prevent and control water pollution resulting from agricultural activities. The rules identify mechanisms to ensure the effectiveness of the best management practices - to address prohibited conditions with respect to management of sediment, nutrients, pesticides, riparian areas, irrigation and waste (OAR 690-095-1540). The Water Resources Department (WRD) proposes to rely on the SB 1010 plan and rules for the Coos and Coquille

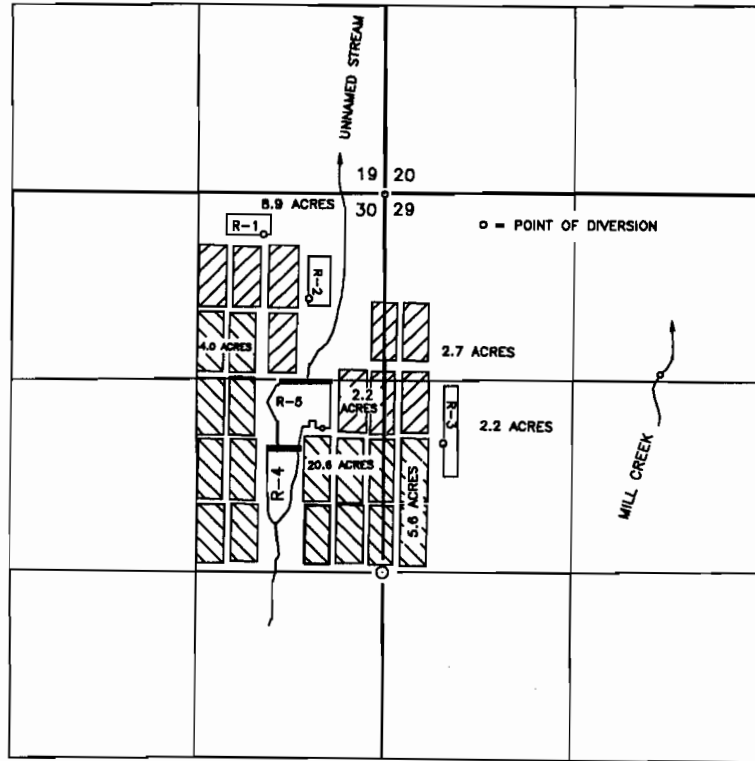


APPLICATION MAP

IN THE NAME OF SEAWIND FARMS, INC.

SECTIONS 29 & 30, T 31 S, R 15 W, W.M.

FILED
JUN 23 1994



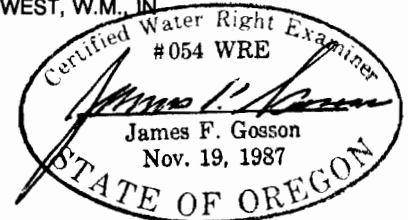
Application No. R 73733
Permit No. R12095

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

DIVERSION	NORTH/SOUTH	EAST/WEST	¼ ¼	SECTION
UNNAMED STREAM	1650 FEET SOUTH	420 FEET WEST	SE¼ NE¼	30
MILL CREEK	1230 FEET SOUTH	1940 FEET EAST	NE¼ NW¼	29
RESERVOIR No. 1	290 FEET SOUTH	840 FEET WEST	NE¼ NE¼	30
RESERVOIR No. 2	730 FEET SOUTH	520 FEET WEST	NE¼ NE¼	30
RESERVOIR No. 3	1720 FEET SOUTH	410 FEET WEST	SW¼ NW¼	29
RESERVOIR No. 4	1770 FEET SOUTH	680 FEET WEST	SE¼ NE¼	30
RESERVOIR No. 5	1320 FEET SOUTH	530 FEET WEST	SE¼ NE¼	30

ALL FROM THE NORTHEAST CORNER OF SECTION 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M. IN CURRY COUNTY.

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.



WaterWatch

RIVERS NEED WATER

RECEIVED
DEC 2 1996
WATER RESOURCES DEPT.
SALEM, OREGON

By FAX and Regular Mail

files

12/3/96

November 29, 1996

12/17/96

#39

Dwight French
Water Resources Department
158 12th Street NE
Salem, OR 97310

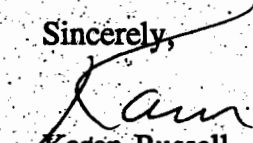
Re: Bypass Flow Condition for 74439, R 74440, 73734 and R 73733, Sea Wind Farms

Dear Dwight,

The letter is in response to your fax regarding modified bypass conditions for the above referenced applications. These conditions are consistent with the intent of the negotiations. We can support them as drafted. Please send a letter to us confirming that this will be the bypass flow condition that will be placed in the Final Orders on these applications when you get an o.k. from all the relevant parties.

Have you had a chance to run this language by Todd Confer at ODFW? Please call if you have any questions.

Sincerely,



Karen Russell
Assistant Director

c. Sea Wind Farms
Todd Confer, ODFW
Al Cook, WRD

encl.

DEC - 2 1996

WATER RESOURCES DEPT.
SALEM, OREGON

To: Karen Russell
From: Dwight French

Let me know what you think. I received this wording from John Drolet.

R74440

To the extent that water is naturally available, it is the permittee's responsibility to pass 0.05 CFS through Reservoir #1 on Big Creek. In the event that less than 0.05 CFS is naturally available, ALL natural flow will be passed through the reservoir. Measurement is required through weirs upstream and downstream from the reservoir.

S74439

To the extent that water is naturally available, it is the permittee's responsibility to pass 0.05 CFS past the authorized point of diversion for this permit on Big Creek. In the event that less than 0.05 CFS is naturally available, ALL natural flow will be passed through the diversion point. Measurement is required through weirs upstream and downstream from the diversion point.

R73733

To the extent that water is naturally available, it is the permittee's responsibility to pass 0.05 CFS through Reservoir #4 and #5 the unnamed stream, a tributary of Floras Lake. In the event that less than 0.05 CFS is naturally available, ALL natural flow will be passed through the reservoirs. Measurement is required through weirs upstream and downstream from the reservoir.

S73734

To the extent that water is naturally available, it is the permittee's responsibility to pass 0.05 CFS past the authorized point of diversion for this permit on the unnamed stream, a tributary to Floras Lake. In the event that less than 0.05 CFS is naturally available, ALL natural flow will be passed through the diversion point. Measurement is required through weirs upstream and downstream from the diversion point.

files

RECEIVED

DEC - 4 1996

December 3, 1996 WATER RESOURCES DEPT.
SALEM, OREGON

Dwight French
Water Resources Department
158 12th St. NE
Salem, OR 97310

43
12/12/96
12/26/96
Dwight

Re: 74439, R 74440, 73734 and [REDACTED], Sea Wind Farms

Dear Dwight,

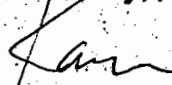
I was reviewing again the by-pass condition language you sent me last Friday and discovered a few errors in the language that I unfortunately did not catch on Friday. In comparing the language with my letter of August 13 outlining the agreed upon conditions and my notes from the November meeting I found the following errors:

- with regard to R 74440 and 74439, the bypass flow should be 0.5 not .05.
- with regard to R 73733 and S 73734 it was my understanding that the bypass flow was to be maintained on Mill Creek, not the unnamed stream.

I have a phone call into Todd Confer at ODFW to see if his notes regarding the agreement reached on these applications are the same as mine. I'm writing this letter to give you a heads up and I'll let you know as soon as I hear from him. For the time being, WaterWatch agrees in concept with the language of your Friday fax, but these two errors need to be corrected.

Please call if you have any questions.

Sincerely,


Karen Russell
Assistant Director

c. Todd Confer

RECEIVED

NOV 22 1996

WATER RESOURCES DEPT.
SALEM, OREGON
November 20, 1996

Dwight French
Water Resources Department
158 12th St. NE
Salem, OR 97310

Re: PFO for Application No. R-73733, Unnamed Stream/Floras
Lake, Sea Wind Farms, Inc.

Dear Mr. French,

We reviewed this Proposed Final Order (PFO) to ensure that was consistent with the agreements reached by all the parties, including the Water Resources Department, in the New River Alternate Dispute Resolution process (ADR). Our comments below outline where the PFO does not reflect the agreements reached in the ADR. We are not protesting or filing a standing statement on this application because we have been assured that this and other PFO's for applications in the New River Basin will be processed consistent with the New River ADR and that the applicant has agreed to these conditions.

We can support this applicants use as proposed in the PFO with the following specific changes which are consistent with the ADR:


- The bypass flow condition in the PFO must be modified to be consistent with the language agreed to in earlier ADR meetings and as specified in the November 6th meeting. The condition needs to be made clearer and the bypass flow is .05, not .1 cfs. The condition should be as follows:

Use of water under the terms of this permit is
subject at all times to a .05 cfs bypass flow.

- As agreed in the ADR, the applicant, Seawind Farms Inc., has signed the New River Alternative Dispute Resolution Team Agreement (which was faxed to our offices today), prior to the issuance of any final order issuing a permit.

Thanks in advance for your attention to this letter. Please call if you have any questions.

Sincerely,



Karen Russell
Assistant Director

- c. Seawind Farms Inc.
Al Cook, WRD
Todd Confer, ODFW

Application R-73733

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # R-73733

WATERMASTER # 19: John Drolet

REGIONAL MANAGER: Al Cook

ODF&W - Curry County: YES

AGENT: Jonathon Goodling; Attorney at Law; 111 SW Fifth Avenue; Portland, OR 97204-3699

DEQ: YES

OTHER STATE AGENCY IF NECESSARY: N/A

DIVISION 33 LIST: N/A COLUMBIA RIVER INTERTRIBAL FISH COMMISSION; U.S. FISH & WILDLIFE;
(CHECK ONLY IF APPLICABLE) NORTHWEST POWER PLANNING COUNCIL & NATIONAL MARINE FISHERIES

POWER BUILDER UPDATER; FRONT COUNTER; 

OTHER ADDRESSES OF PEOPLE WHO PAID THE \$10 FEE:

PEOPLE WITH OBJECTIONS, COMMENTS OR REQUESTED COPY W/O \$10 (SEND THE \$10 LETTER):

Audubon Society
P.O. Box 1265
Port Orford, OR 97465

Ron Yockim
P.O. Box 218
Roseburg, OR 97470

WW - FO

CASEWORKER : BW

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-73733

Final Order

Application History

On October 13, 1993, SEA WIND FARMS INC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on October 15, 1996. The protest period closed November 29, 1996, and no protest was filed.

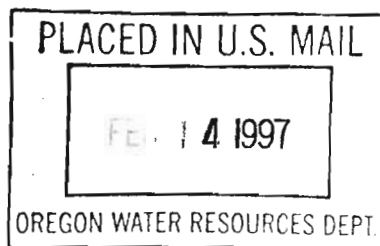
The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe measurement and reporting conditions and the bypass flow requirement and the maximum dam height.

Order

Application R-73733 therefore is approved with the above modifications to the Proposed Final Order, and Permit Number R-12095 is issued as limited by the conditions set forth therein.

DATED January 31, 1997


Martha O. Pagel
Director



Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

Under the provisions of ORS 183.484, the applicant or any person having standing may appeal this order by filing a petition for review in the Circuit Court for Marion County or the circuit court for the county in which the applicant resides or has a principal business office. The petition for review must be filed within 60 days after the date this order is served.

STATE OF OREGON

COUNTY OF CURRY

PERMIT TO STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

SEA WIND FARMS, INC.
P.O. BOX 242
SIXES, OREGON 97476

(541) 348-9937

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-73733

SOURCE OF WATER: FIELD RUN-OFF IN RESERVOIRS 1, 2, AND 3 AND AN UNNAMED STREAM IN RESERVOIRS 4 AND 5, TRIBUTARIES OF FLORAS LAKE

STORAGE FACILITY: FIVE UNNAMED RESERVOIRS

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-73734, PERMIT 52993, FOR SUPPLEMENTAL CRANBERRY OPERATIONS

MAXIMUM VOLUME ALLOWED: 45.0 ACRE-FEET (AF) PER YEAR, BEING 9.0 AF EACH IN RESERVOIRS 1, 2, 3, 4 AND 5

PERIOD OF ALLOWED STORAGE: WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD NOVEMBER 1 THROUGH MAY 31

DATE OF PRIORITY: OCTOBER 13, 1993

The area submerged by the Reservoir 1, when full, will be 1.0 acre and the maximum depth of water will be 12.0 feet. The maximum height of the dam shall not exceed 3.0 feet.

The area submerged by the Reservoir 2, when full, will be 1.0 acre and the maximum depth of water will be 12.0 feet. The maximum height of the dam shall not exceed 3.0 feet.

The area submerged by the Reservoir 3, when full, will be 1.0 acres and the maximum depth of water will be 10.0 feet. The maximum height of the dam shall not exceed 4.0 feet.

The area submerged by the Reservoir 4, when full, will be 1.8 acres and the maximum depth of water will be 12.0 feet. The maximum height of the dam shall not exceed 9.8 feet.

The area submerged by the Reservoir 5, when full, will be 3.0 acres and the maximum depth of water will be 10.0 feet. The maximum height of the dam shall not exceed 9.8 feet.

DAM LOCATION: SW 1/4 NW 1/4, SECTION 29, NE 1/4 NE 1/4, SE 1/4 NE 1/4, SECTION 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.; RESERVOIR 3 - 1720 FEET SOUTH & 410 FEET WEST; RESERVOIR 1 - 290 FEET SOUTH & 840 FEET WEST; RESERVOIR 2 - 730 FEET SOUTH & 520 FEET WEST; RESERVOIR 4 - 1770 FEET SOUTH & 680 FEET WEST; RESERVOIR 5 - 1320 FEET SOUTH & 530 FEET WEST; ALL FROM THE NORTHEAST CORNER, SECTION 30

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 NW 1/4
SECTION 29
NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 30

TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a totalizing flow meter or other suitable measuring device(s) as approved by the watermaster must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645. The permittee shall keep a complete record of the amount of water used each month. The permittee shall submit a report which includes the recorded water use measurements to the Department at its request. The permittee may be required to report annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

To the extent that water is naturally available, it is the permittee's responsibility to allow 0.05 cfs to pass the Mill Creek diversion point. In the event that less than 0.05 cfs is naturally available, ALL natural flow will be allowed to pass the diversion point on Mill Creek. Measurement is required through weirs or other suitable measuring devices upstream and downstream from the diversion point.

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

No diversion screening or fish passage facilities are required.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water from Reservoirs 1, 2 and 3 when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches on Reservoirs 4 and 5.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

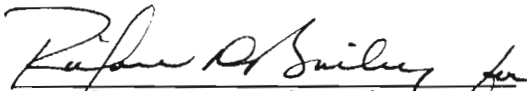
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1999. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2000.

Issued January 31, 1997


Martha O. Pagel, Director
Water Resources Department

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-73733

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On October 13, 1993, SEA WINDS FARM, INC. submitted an application to the Department for the following water use permit:

- Amount of Water: 45.0 ACRE-FEET (AF), BEING 9.0 AF EACH IN RESERVOIRS 1, 2, 3, 4 AND 5
- Use of Water: SUPPLEMENTAL CRANBERRY OPERATIONS
- Source of Water: FIELD RUN-OFF IN RESERVOIRS 1, 2, AND 3 AND AN UNNAMED STREAM IN RESERVOIRS 4 AND 5, TRIBUTARIES OF FLORAS LAKE
- Area of Proposed Use: Curry County within SECTIONS 29 AND 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.

The Department mailed the applicant notice of its Technical Review June 28, 1994, determining that THE STORAGE OF 45.0 AF OF WATER, BEING 9.0 AF IN EACH OF FIVE RESERVOIRS, FROM FIELD RUN-OFF AND AN UNNAMED STREAM, TRIBUTARIES OF FLORAS LAKE, IS ALLOWED NOVEMBER 1 THROUGH JUNE 30 FOR SUPPLEMENTAL CRANBERRY USE. The 60-day objection period closed September 9, 1994.

Within the 60-day period, objections were received from John Drolet, District 19 Watermaster (7/5/94), the Oregon Department of Fish and Wildlife (9/1/94), Kalmiopsis Audubon Society (9/8/94) and WaterWatch (9/8/94).

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law

- any comments received

Findings of Fact

Based on continued evaluation, the Department finds the determinations of the Technical Review require modification to further limit the period of allowed storage and to incorporate additional conditions as set by the New River Alternate Dispute Resolution team.

The South Coast Basin Program allows the following uses: CRANBERRY OPERATIONS

Senior water rights exist on FIELD RUN-OFF AND AN UNNAMED STREAM, TRIBUTARIES OF FLORAS LAKE or on downstream waters.

FIELD RUN-OFF AND AN UNNAMED STREAM, TRIBUTARIES OF FLORAS LAKE are not within or above a State Scenic Waterway.

Water is available for further appropriation (at a 50 percent exceedance probability) for the period NOVEMBER 1 THROUGH JUNE 30.

The Department finds that no more than 45.0 AF, BEING 9.0 AF EACH IN RESERVOIRS 1, 2, 3, 4 AND 5, would be necessary for the proposed use. The amount of water requested, 45.0 AF, BEING 9.0 AF EACH IN RESERVOIRS 1, 2, 3, 4 AND 4, is allowable.

The Oregon Department of Fish and Wildlife has advised that one or more species of game fish are present at the described point of diversion.

The New River Alternate Dispute Resolution team reviewed this proposed use for potential adverse impacts on declining fish populations. This team consisted of representatives from the Oregon Department of Water Resources, Oregon Department of Fish and Wildlife, U.S. Bureau of Land Management, Oregon Cranberry Association, WaterWatch of Oregon, Croft Lake Association, the Audubon Society, and the Bandon Water Control District. In addition, individual applicants participated in the ADR process when issues relevant to their applications were addressed. The ADR team recommended that the following limitations or conditions of use be imposed on this application:

Water may be appropriated for storage from NOVEMBER 1 THROUGH MAY 31 OF EACH YEAR.

Before use of water can be allowed under the terms of this permit, the permittee must release 0.1 cfs of water from Mill Creek.

Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed in the reservoir. The staff gage shall be permanently located in the pool to allow readings of total range of pool elevations or surveyed to a permanent monument and be United States Geological Survey style porcelain enamel iron staff gage style A, C, E, I or M.

No diversion screening or fish passage facilities are required.

Before water use may begin under this permit, a weir must be installed upstream and downstream of Reservoirs 4 and 5.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water from Reservoirs 1, 2 and 3 when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches on Reservoirs 4 and 5.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the South Coast Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

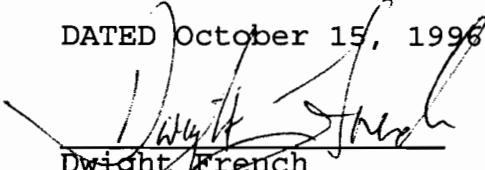
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount of water necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED October 15, 1996


Dwight French
Water Rights Section Manager

Protest Rights

Under the provisions of ORS 537.153(6) or 537.621(7), you have the right to submit a protest against this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050.
- If you are the applicant, a statement of whether or not you are requesting that a contested case hearing be held. If you do not request a hearing, the Department will presume that you do not wish for a hearing to be held.

Your protest must be received in the Water Resources Department no later than **November 29, 1996**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

BW

DRAFT

This is not a permit!!!
STATE OF OREGON

DRAFT

COUNTY OF CURRY

DRAFT PERMIT TO STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SEA WIND FARMS, INC.
P.O. BOX 242
SIXES, OREGON 97476

(541)348-9937

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: R-73733

SOURCE OF WATER: FIELD RUN-OFF IN RESERVOIRS 1, 2, AND 3 AND AN UNNAMED STREAM IN RESERVOIRS 4 AND 5

TRIBUTARIES OF: FLORAS LAKE

STORAGE FACILITY: FIVE UNNAMED RESERVOIRS

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-73734 FOR SUPPLEMENTAL CRANBERRY OPERATIONS

MAXIMUM VOLUME ALLOWED: 45.0 ACRE-FEET (AF), BEING 9.0 AF EACH IN RESERVOIRS 1, 2, 3, 4 AND 5

PERIOD OF ALLOWED STORAGE: WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD NOVEMBER 1 THROUGH MAY 31

DATE OF PRIORITY: OCTOBER 13, 1993

The area submerged by the Reservoir 1, when full, will be 1.0 acre and the maximum depth of water will be 12.0 feet. The maximum height of the dam shall not exceed 2-3 feet.

The area submerged by the Reservoir 2, when full, will be 1.0 acre and the maximum depth of water will be 12.0 feet. The maximum height of the dam shall not exceed 2-3 feet.

The area submerged by the Reservoir 3, when full, will be 1.0 acres and the maximum depth of water will be 10.0 feet. The maximum height of the dam shall not exceed 3-4 feet.

The area submerged by the Reservoir 4, when full, will be 1.8 acres and the maximum depth of water will be 12.0 feet. The maximum height of the dam shall not exceed 9.8 feet.

Application R-73733 Water Resources Department

PERMIT DRAFT

The area submerged by the Reservoir 5, when full, will be 3.0 acres and the maximum depth of water will be 10.0 feet. The maximum height of the dam shall not exceed 9.8 feet.

DAM LOCATION: SW 1/4 NW 1/4, SECTION 29, NE 1/4 NE 1/4, SE 1/4 NE 1/4, SECTION 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.; RESERVOIR 3 - 1720 FEET SOUTH & 410 FEET WEST; RESERVOIR 1 - 290 FEET SOUTH & 840 FEET WEST; RESERVOIR 2 - 730 FEET SOUTH & 520 FEET WEST; RESERVOIR 4 - 1770 FEET SOUTH & 680 FEET WEST; RESERVOIR 5 - 1320 FEET SOUTH & 530 FEET WEST; ALL FROM THE NORTHEAST CORNER, SECTION 30

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

SW 1/4 NW 1/4
SECTION 29
NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 30
TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed in the reservoir. The staff gage shall be permanently located in the pool to allow readings of total range of pool elevations or surveyed to a permanent monument and be United States Geological Survey style porcelain enamel iron staff gage style A, C, E, I or M. The permittee shall take a reading from the gage once a month and keep a record of these measurements and shall be responsible for maintaining the gage. The permittee shall submit a report which includes the recorded water use measurements to the Department at its request. The permittee may be required to measure water use more frequently or report annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

Before use of water can be allowed under the terms of this permit, the permittee must by-pass 0.1 cfs of water from Mill Creek.

Before water use may begin under this permit, a weir must be installed upstream and downstream of Reservoirs 4 and 5.

No diversion screening or fish passage facilities are required.

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water from Reservoirs 1, 2 and 3 when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches on Reservoirs 4 and 5.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1998. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 1999.

Issued _____, 199_

DRAFT - THIS IS NOT A PERMIT

Water Resources Department
Director

Application R-73733 Water Resources Department
Basin 17 Volume
BW MGMT. CODE

PERMIT DRAFT
District 19

FILE # R73733
WEEK # 64

FO CHECKLIST

REVIEW DATE: 11, 27, 96
INITIALS: DB

PFO TO FO CONVERSION

In preparing the FO, you should check the following:

1. / N Were comments or protests received? If so, from whom and when?
WATERWATCH 11/22/96
2. On the PFO CC list, verify names and addresses of **ALL** commentors (regardless of comment date), **affected landowners**, and those who paid the \$10 fee.
3. / N Have affected landowners been notified?
4. Y / Is the file lacking a signed oath of accuracy for the application?
5. Y / Has ODFW asked for self certification of screening condition? If so, write "ODFW CERT" in the permit blank on the front of the file.
6. Y / Is water use prohibited for one or more months of the normal use period?
7. / N If # 6 = "Y", is short season letter on file? Note: If short season letter is lacking, see Item #10 below. Give applicant 60 days to submit required information.
8. Verify payment of recording fees (*circle the appropriate option*)
 (1) Issue FO w/permit if fees are paid -- Prepare refund request for excess fees, including standing fees if no protest is filed and no modifications are being made to the PFO
 (2) Issue FO w/o permit if fees are lacking
9. / N Is further processing possible? If not state reason: _____
10. NA Notify applicant of additional information or fees required prior to permit issuance. (SEND CERTIFIED LETTER & use standard wording from M:\T\FO\TOOLS if possible)
11. Assign permit numbers to files with oath, fees, and no protests or other issues

Route to: (circle one)
DENIAL FO w/o PERMIT

FO & PERMIT

Respond to Requested changes
COMMENTS

Incorporated into fo/permit wording

Initials DB

Modify FO as needed to:

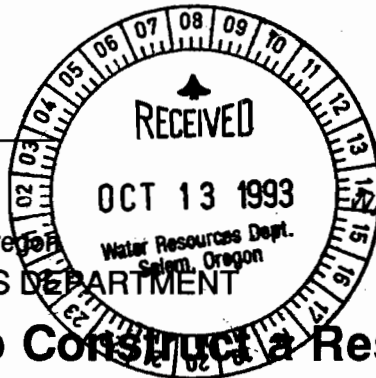
12. Respond to significant comments, issues, or disputes related to the proposed use of water (see notes, if any, listed above)
13. Include or exclude permit conditions and management codes
14. Correct PFO errors (such as POD or POU location (verify from map), Permit format)

Once FO document is completed:

15. Save WordPerfect document in M:\T\FO\WEEK 64 & delete duplicates
16. Print final draft of document and submit to team leader for review
17. Y / N Team leader review completed

Application No. _____

R-73733



RECEIVED

OCT 13 1993

WATER RESOURCES DEPT.
SALEM, OREGON

State of Oregon

WATER RESOURCES DEPARTMENT

Application for a Permit to Construct a Reservoir

Applicant(s) Sea Wind Farms, Inc.

(Please print or type - use dark ink)

Mailing Address: P.O. Box 242

Sixes, Oregon 97476 (503) 348-9937
City State Zip Daytime Phone No.

I (We) make application for a permit to construct Five Reservoirs reservoir and store the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: Unnamed stream and field runoff, a tributary of Floras Creek.

If not in channel of a stream, state how it is to be filled: See Supplemental Sheet

2. **THE DAM:** The maximum height of the structure will be _____ feet above stream bed or ground surface at the centerline.

The dam will be (check one) earthfill, _____ concrete, _____ flashboard, _____ other.

If "other" give description: _____

See Supplemental Sheet

Give the location, description, and dimensions of the outlet conduit: _____

See Supplemental Sheet

NOTE: All dams across natural stream channels must be provided with an outlet conduit, minimum diameter of 8", or be of such capacity and location as to pass the normal flow of the stream at any time.

3. **THE USE(s)** of the impounded water will be: Supplemental Cranberry Use

4. **THE AMOUNT OF WATER** to be stored is: 45 acre feet acre-feet.
The area submerged by the reservoir, when filled, will be See supplemental sheet acres,
and the maximum depth of water will be See supplemental sheet feet.

5. **SPILLWAY DESCRIPTION** (location and dimensions). State whether over or around the dam. _____

See supplemental sheet

6. **PROJECT SCHEDULE:** (List month and year)

Proposed date construction work will begin October, 1994

Proposed date construction work will be completed October, 1997

Proposed date water use will be completed October, 1999

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

7. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

 Applicant XX CWRE Other (Identify in REMARKS section)

b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):


 Applicant XX CWRE Other (Identify in REMARKS section)

8. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? Yes. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

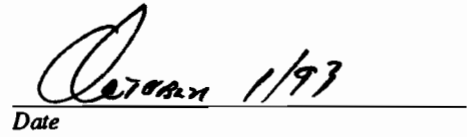
REMARKS: _____

I/We certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge.

NOTE: The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.



Signature of Applicant



Date

Signature of Co-Applicant, if any

Date

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

WITNESS my hand this _____ day of _____, 19____.

Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at SALEM, Oregon, on the 13th day of OCTOBER, 1993, at 8:00 o'clock, A M.

APPLICATION NO: R-73733

Application No. P-73733 Permit No.

SEAWIND FARMS SUPPLEMENTAL SHEET

TABLE ONE

RESERVOIR	SOURCE	TRIBUTARY TO	HOW FILLED	AMOUNT TO BE STORED
Number 1	Field runoff	Unnamed Stream	Field runoff channeled to reservoir	9.0 Acre Feet
Number 2	Field runoff	Unnamed Stream	Field runoff channeled to reservoir	9.0 Acre Feet
Number 3	Field runoff	Mill Creek	Field runoff channeled to reservoir	9.0 Acre Feet
Number 4	Unnamed Stream	Floras Lake	Unnamed Stream	9.0 Acre Feet
Number 5	Unnamed Stream	Floras Lake	Unnamed Stream	9.0 Acre Feet

TABLE TWO

RESERVOIR	DAM HEIGHT	MAXIMUM DEPTH	SURFACE AREA	CONDUIT	SPILLWAY
Number 1	2 - 3 Feet (excavated pond)	12 Feet	1.0 Acre	None (excavated/off channel)	8" pipe to handle periods of excess rainfall - water will discharge into unnamed stream.
Number 2	2 - 3 Feet (excavated pond)	12 Feet	1.0 Acre	None (excavated/off channel)	8" pipe to handle periods of excess rainfall - water will discharge into unnamed stream.
Number 3	3 - 4 Feet (excavated pond)	10 Feet	1.3 Acre	None (excavated/off channel)	8" pipe to handle periods of excess rainfall - water will discharge into Mill Creek.
Number 4	9.8 Feet	12 Feet	1.8 Acres	8" Steel Pipe	36" Aluminum Pipe w/flashboard riser
Number 5	9.8 Feet	10 Feet	3.0 Acres	8" Steel Pipe	36" Aluminum Pipe w/flashboard riser

RECEIVED
 OCT 13 1993
 WATER RESOURCES DEPT.
 SALEM, OREGON

JUNE 28, 1994

WATER
RESOURCES
DEPARTMENT

SEA WIND FARMS, INC.
PO BOX 242
SIXES, OREGON 97476

Reference: File R 73733

Hello:

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



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

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

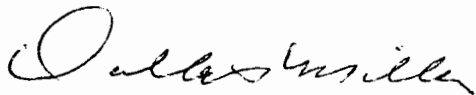
All evidence and objections must be received by our Salem office no later than 5:00 p.m. on or before **SEPTEMBER 9, 1994** or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



DALLAS MILLER
Water Rights Division

Enclosures

Report Date: JUNE 28, 1994

OREGON WATER RESOURCES DEPARTMENT
SATISFACTORY REPORT OF TECHNICAL REVIEW
FOR WATER USE PERMIT(S)

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD N.E., SALEM, OREGON 97310, BY 5 P.M. ON OR BEFORE: SEPTEMBER 9, 1994

1. APPLICATION FILE NUMBER - 73733
2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:
SEA WIND FARMS, INC.
P.O. BOX 242
SIXES, OR 97476
CURRY COUNTY 503-348-9937

Date application received for filing and/or tentative date
of priority: 10/13/1993

SOURCE: UNNAMED STREAM AND UNNAMED DRAINAGE TRIBUTARY TO: FLORAS
LAKE

Purpose and/or use: STORAGE FOR SUPPLEMENTAL CRANBERRY USE

Volume: 45.0 ACRE-FEET, BEING 9.0 ACRE-FEET EACH FOR RESERVOIRS
1,2,3,4, AND 5

RESERVOIR LOCATION

SW NW
SEC 29

SE NE
NE NE
SEC 30
T 31 S, R 15 W, WM.

SURFACE WATER AVAILABILITY

Water is likely available in excess of needs for all existing rights 50% of the time during each monthly period proposed by the technical review.

Water availability tables are available in the application file and may be reviewed in the office of the Water Resources Department in Salem.

CONFLICTS WITH OTHER WATER RIGHTS:

There are existing rights from this point of diversion. See proposed permit conditions.

There are no existing water rights appurtenant to the lands described in the application.

REPORT CONCLUSIONS:

Based on the Department's review of water availability and Oregon Administrative Rules, water in the amount of 45.0 acre-feet is likely available for 8 months. Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.

This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.

PROPOSED PERMIT CONDITIONS

Application: R 73733

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

1. Use of water under this permit is subject to all prior rights.
2. Rate of use: 45.0 ACRE-FEET, BEING 9.0 ACRE-FEET EACH IN RESERVOIRS 1,2,3,4 AND 5.
3. Water may be appropriated for storage during the period: NOVEMBER 1 THROUGH JUNE 30 FOR SUPPLEMENTAL CRANBERRY USE
4. Water use development requirements:
 - A. Begin construction by (one year from issuance of permit).
 - B. Complete construction by October 1, 1996.
 - C. Completely apply the water to beneficial use by October 1, 1997.
5. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
6. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation of the permit.

7. The permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
8. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
9. The total area proposed to be submerged by the reservoir, when full is 8.1 acres; the proposed maximum depth of water in feet is 12; the maximum height of the dam is 9.8 feet.
10. The storage of water allowed herein is subject to the installation and maintenance of an fully functional conduit/gate assembly having a minimum diameter of 8 inches.
11. Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.
12. In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

WATER AVAILABILITY TABLE

Basin: SOUTH COAST Exceedance Level: 50
 Water Availability Subbasin: 5006000000000000 (and Nested Subbasins)
 Time: 09:32 Date: 07/29/1996

Item #	W.A. Subbasin	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	5000000000000000	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
2	5006000000000000	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES

STREAM NAMES

Basin: SOUTH COAST
 Water Availability Subbasin: 5006000000000000 (and Nested Subbasins)
 Time: 09:32 Date: 07/29/1996

WAB #	Stream Name	Tributary to
5000000000000000	NEW R	PACIFIC OCEAN
5006000000000000	UNN STR 17-1560-0130-0010	FLORAS L

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 5006000000000000
 Basin: SOUTH COAST
 Exceedance Level: 50
 Time: 09:32 Date: 07/29/1996

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	5006000000000000	UNN STR 17-1560-0130-0010	YES	1.4
2	5006000000000000	UNN STR 17-1560-0130-0010	YES	1.4
3	5006000000000000	UNN STR 17-1560-0130-0010	YES	1.2
4	5006000000000000	UNN STR 17-1560-0130-0010	YES	0.2
5	5006000000000000	UNN STR 17-1560-0130-0010	NO	-0.6
6	5006000000000000	UNN STR 17-1560-0130-0010	NO	-0.8
7	5006000000000000	UNN STR 17-1560-0130-0010	NO	-0.2
8	5006000000000000	UNN STR 17-1560-0130-0010	NO	-0.2
9	5006000000000000	UNN STR 17-1560-0130-0010	NO	-1.1
10	5006000000000000	UNN STR 17-1560-0130-0010	NO	-0.9
11	5006000000000000	UNN STR 17-1560-0130-0010	YES	0.2
12	5006000000000000	UNN STR 17-1560-0130-0010	YES	1.5
Stor	5006000000000000	UNN STR 17-1560-0130-0010	YES	355.0

DETAILED REPORT ON WATER AVAILABILITY

Basin: SOUTH COAST

Stream: NEW R

> PACIFIC OCEAN

Water Availability Subbasin: 5000000000000000

Exceedance Level: 50

Time: 09:32

Date: 07/29/1996

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	623.00	1.00	622.00	10.20	612.00	0.00	612.00
2	725.00	2.00	723.00	12.00	711.00	0.00	711.00
3	642.00	0.00	642.00	10.30	632.00	0.00	632.00
4	356.00	1.00	355.00	5.50	349.00	0.00	349.00
5	118.00	3.00	115.00	4.39	111.00	0.00	111.00
6	99.00	8.90	90.10	4.95	85.10	0.00	85.10
7	56.90	13.70	43.20	5.36	37.80	0.00	37.80
8	34.90	11.20	23.70	4.22	19.50	0.00	19.50
9	21.30	4.80	16.50	4.42	12.10	0.00	12.10
10	32.20	0.70	31.50	3.16	28.30	0.00	28.30
11	308.00	1.00	307.00	4.14	303.00	0.00	303.00
12	660.00	1.00	659.00	9.96	649.00	0.00	649.00
Stor	220000	2890	217000	4710	213000	0	213000

DETAILED REPORT OF ISWRs

Basin: SOUTH COAST

Stream: NEW R

> PACIFIC OCEAN

Water Availability Subbasin: 5000000000000000

Time: 09:32

Date: 07/29/1996

APP # :	0	0	0	0	0	0	RESULTANT
STATUS:							
1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
10	0.0	0.0	0.0	0.0	0.0	0.0	0.0
11	0.0	0.0	0.0	0.0	0.0	0.0	0.0
12	0.0	0.0	0.0	0.0	0.0	0.0	0.0

DETAILED REPORT ON WATER AVAILABILITY

Basin: SOUTH COAST
 Stream: UNN STR 17-1560-0130-0010 > FLORAS L
 Water Availability Subbasin: 5006000000000000
 Exceedance Level: 50
 Time: 09:32 Date: 07/29/1996

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4.14	0.06	4.08	2.64	1.44	0.00	1.44
2	4.97	0.08	4.89	3.46	1.43	0.00	1.43
3	4.22	0.00	4.22	2.98	1.24	0.00	1.24
4	1.93	0.01	1.92	1.72	0.20	0.00	0.20
5	0.51	0.09	0.42	1.00	-0.58	0.00	-0.58
6	0.49	0.26	0.23	1.00	-0.77	0.00	-0.77
7	0.26	0.41	-0.15	0.00	-0.15	0.00	-0.15
8	0.13	0.33	-0.20	0.00	-0.20	0.00	-0.20
9	0.07	0.14	-0.07	1.00	-1.07	0.00	-1.07
10	0.09	0.01	0.08	1.00	-0.92	0.00	-0.92
11	1.17	0.02	1.15	1.00	0.15	0.00	0.15
12	4.02	0.06	3.96	2.50	1.46	0.00	1.46
Stor	1320	88	1250	1100	355	0	355

DETAILED REPORT OF ISWRs

Basin: SOUTH COAST
 Stream: UNN STR 17-1560-0130-0010 > FLORAS L
 Water Availability Subbasin: 5006000000000000
 Time: 09:32 Date: 07/29/1996

APP # :	ISWRs					RESULTANT
STATUS:	0	0	0	0	0	
1	0.0	0.0	0.0	0.0	0.0	0.0
2	0.0	0.0	0.0	0.0	0.0	0.0
3	0.0	0.0	0.0	0.0	0.0	0.0
4	0.0	0.0	0.0	0.0	0.0	0.0
5	0.0	0.0	0.0	0.0	0.0	0.0
6	0.0	0.0	0.0	0.0	0.0	0.0
7	0.0	0.0	0.0	0.0	0.0	0.0
8	0.0	0.0	0.0	0.0	0.0	0.0
9	0.0	0.0	0.0	0.0	0.0	0.0
10	0.0	0.0	0.0	0.0	0.0	0.0
11	0.0	0.0	0.0	0.0	0.0	0.0
12	0.0	0.0	0.0	0.0	0.0	0.0

WMA# 19

JUL - 7 1994

WATER RESOURCES DEPT.
SALEM, OREGON

TO: Jake Szamek
FM: John Drolet / JLD

07-05-94

Oregon

JUNE 28, 1994

SEA WIND FARMS, INC.
PO BOX 242
SIXES, OREGON 97476

Recommend that applicant have
an operable measuring device/weir
below outlet as a condition of
permit. Recommend that permit
not be certificated unless weir
is in place at time of final proof survey

WATER
RESOURCES
DEPARTMENT

Reference: File R 73733

Hello:

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



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

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

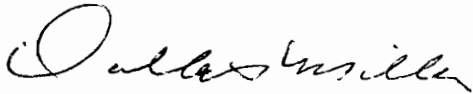
All evidence and objections must be received by our Salem office **no later than 5:00 p.m. on or before SEPTEMBER 9, 1994** or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



DALLAS MILLER
Water Rights Division

Enclosures

RECEIVED

SEP - 2 1994

WATER RESOURCES DEPT.
SALEM, OREGON



DEPARTMENT OF
FISH AND
WILDLIFE

September 1, 1994

Water Rights Section
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97310

GOLD BEACH
DISTRICT OFFICE

RE: Water Right Application #S 73734 and R 73733;
Report of Technical Review

Because one or more species of game fish are present at the described POD, ODFW will require the applicant to provide fish screening pursuant to ORS 498.248. Therefore, ODFW supports the intent of Proposed Permit Condition #12. In addition, ODFW requests WRD add the following language to Condition #12:

The required screens are to be in place, functional, inspected and approved by an ODFW representative prior to diversion of any water.

Because the proposed reservoirs are located at off-channel sites, the language in Condition #12 referring to fish passage facilities is not necessary.

ODFW also requests the following condition relating to in-channel obstructions be included as a permit condition:

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Todd Confer".

Todd Confer
Assistant District Biologist
South Coast District

c: Habitat Conservation Division
WaterWatch



746 Airport Way
PO Box 642
Gold Beach, OR 97444
(503) 247-7605
FAX (503) 247-2321

SEP 1 1994

Kalmiopsis Audubon Society
of Curry County
P.O. Box 1265
Port Orford, Oregon 97465

September 8, 1994
Oregon Water Resources Department
Water Right Section
158 12th St. NE
Salem, Oregon 97310

Re: Objection to Technical Reports for:
R73733, S73734, Sea Wind Farms, Cranberry Operation

There are three unnamed Creeks within the Sections where Sea Wind Farms are asking for reservoirs and water rights to support a cranberry operation. All three creeks are anadromous streams. The fish come up New River to Floras Creek and into the outlet of Floras Lake, cross the lake and spawn in the unnamed creeks at the south end of Floras Lake. These creeks are small and very important to the ecosystem and watershed of New River. There is tremendous pressure on all these streams in the Floras Creek/New River area for water for housing development and agricultural use. There is a proliferation of cranberry bogs in this area. These streams and the fish that they support cannot withstand this intensity of development. Historically we do not have rain for the months of June, July, August and we are currently in a drought and have been for the past 8 years. There is tremendous effort being expended throughout Coos and Curry County on watershed protection. People who normally don't talk to each other are working together on watershed councils on almost all of the streams in Curry County trying to save these streams for the anadromous fish.

Water storage that is being allowed from November 1 through June 30 is not appropriate, not if there is to be sufficient water for fish and sufficient cool water for fish!

A much safer period for this use would be from December 1 though April 1.

Surface water withdrawal that is being allowed from September 1 through June 30 is totally inappropriate for the same reasons as above. As an example, it is September 8 as I write this, my town Port Orford is on water rationing, Coos Bay is on water rationing. It is sounding the death knell to fish to be allowing any water withdrawal from those creeks during the dry season. Water should only be allowed to be withdrawn from December 1 though April 1. It is up to the agricultural operation to store that water appropriately so as to have the water to irrigate and flood during harvest. They should not be allowed to withdraw water during the low flow times of the year.

Water Resources Dept.
R73733,73734
page 2

In conclusion, the public interest is not being served by this use because surface waters will be depleted which provide habitat for public instream and riparian area uses.

We ask that, at a minimum, the time frame of withdrawal be shortened to December 1 through April 1, and that you look at the cumulative effects of the water allocation that has gone on in this watershed. It would be a great embarrassment to all citizens if the agency that is working so hard to restore watersheds for anadromous fish on the one hand, was destroying those watersheds by giving away the very water that people are trying so hard to save.

Please consider our argument.

Sincerely,



Ellen Warring, Conservation Chair for
Land Use and Ocean Issues

WaterWatch

RECEIVED

SEP 8 1994

WATER RESOURCES DEPT.
SALEM, OREGON

Hand Delivered

September 8, 1994

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

Re: **Objection to Technical Reports for:**
R73733, S73734, Sea Wind Farms, Cranberry Use, Floras Lake

These applications are just a few of the many pending applications requesting water for cranberry operations in the New River Basin. These proposed uses request water from streams that are tributaries to the New River. The cumulative impacts of these proposed uses are of great concern to WaterWatch. We have been in contact with area residents who have concerns about the ability of the resource to accommodate all of these proposed uses.

Floras Lake and its surrounding tributaries and wetlands support a variety wildlife and fish life. Residents in the area have reported searun cutthroat trout in the lake and its tributaries. It is suspected that the trout spawn in the lakes tributaries. Croft lake is also a source of recreation in the area and area residents are concerned about maintaining the lakes existing water quality. The surrounding wetlands provide wildlife and other habitat and we understand that the Nature Conservancy has been involved in wetland protection efforts in the area.

Floras Lake drains into the New River. The New River has been designated by the Bureau of Land Management (BLM) as an Area of Critical Environmental Concern. The BLM has ongoing studies and is developing a management plan for the area. The New River supports a variety of anadromous fish species and provides wetland habitat for native bird populations.

The analysis contained in the technical reports reveals that little information is known about the hydrology of the water system in this area. Because of our concerns about protection of the resource from the cumulative effects of these proposed developments and our growing concerns about the capacity of the resource to accommodate further expansion of the cranberry industry, we request that these applications joined in a contested case process with other pending applications for the area.

In addition, we submit the following objections pursuant to OAR 690-11-170:

The Technical Reports are Defective

The technical reports fail to contain many of the elements and evaluations required in OAR 690-11-160(1).

The Uses As Proposed are Not in the Public Interest

The proposed uses fail to pass the public interest considerations in ORS 537.170(5) and the policies of Oregon's water laws including ORS 468B.155 and 468B.015. *See also*, OAR 690-11-195(3)(d), (4)(a), (4)(c)(A), (4)(d)(A), (4)(d)(B), (4)(e), and (4)(f). The proposed uses will not be supported by existing surface water supplies and will deplete flows needed to for the New River system.

- 1. The proposed uses are not in the public interest because they will deplete surface waters which provide habitat for public instream and riparian area uses.**

The South Coast Basin plan states:

Income from water-related recreation is a major contributor to the economy of the South Coast Basin. Finding 39.

The natural lakes, storage reservoirs and free-flowing streams support part of the water-based recreation use. Finding 40.

The water resources, wetlands and associated habitat are critical to the subsistence and propagation of wildlife in the Basin. Finding 42.

Reduction in surface water contribution to wetlands will decrease contributions to existing wetlands, decrease inflows into the lake and hinder or destroy the filtering capacity and other functions of the wetlands. Surface water in this area is vital to the maintenance of lake levels, surface water flows, wetlands and the protection of public uses of water including wildlife, recreation and fish.

The proposed uses propose to divert water from tributaries of Floras Lake, a tributary to the New River. The New River is a unique estuarine and freshwater ecosystem utilized by a wide diversity of fish and wildlife. *New River, Area of Critical Environmental Concern*, June 1989, Bureau of Land Management. (hereinafter BLM). According to the BLM's study of the New River this River:

supports a unique mix of wildlife, fisheries, botanical, and cultural resources found in association with few other coastal rivers in the Pacific Northwest. Four species of wildlife that use the area are designated as either threatened or endangered on state or federal lists. One plant species has been identified as a candidate for federal listing, and is designated as threatened on the state list. A number of prehistoric cultural sites have been found along the banks of this drainage, and the river itself is thought to provide critical rearing habitat for juvenile salmonids.

... New River has received special attention from a variety of private, state, and federal conservation interests. The Nature Conservancy has examined New River as a candidate area for their conservation programs. . . the Oregon Natural Resources Council considers New River to be the single most important estuary in Oregon that currently is not under any comprehensive form of management. . . New River also has been identified by the U.S. Fish and Wildlife Service as a candidate site for establishing a National Wildlife Refuge. . . The Oregon Department of Fish and Wildlife has identified the area as critical habitat for the western snowy plover. . . (S)ince 1983, BLM has designated its ownership as an Area of Critical Environmental Concern (ACEC), giving the area special recognition and status for improved management of the unique resources that are present. . .

BLM at 1. Since publication of the BLM's report, the western snowy plover has listed as "threatened" under the Federal Endangered Species Act and nine additional wildlife species that utilize the New River system are either listed under the federal act, or are candidates for listing.¹

The New River supports chinook salmon, coho and other fish populations. Since this BLM report was written, coastal coho populations, which utilize coastal streams such as the New River, have been petitioned for listing under the federal Endangered Species Act. Coastal stocks of fall chinook and coastal cutthroat trout are identified by the state as species of concern. The New River provides important habitat for these

¹ These include the Brown Pelican, Peregrine Falcon, Leatherback Sea Turtle, Aleutian Canada Goose, American Bald Eagle, Loggerhead Sea Turtle, Pacific Ridley Sea Turtle, Letherback Sea Turtle, and the red legged frog.

species. For example, some of the best pools for fish rearing are found in the New River, below the rivers confluence with Croft Lake. *BLM* at 30. However, downstream fish migration coincides with periods of low flows which can result in high fish mortality. *BLM* at 30. For instance, juveniles trapped in isolated pools in the river:

may be subject to predation, suffocation, and heat stress. Local ranchers have observed great blue herons and kingfishers feeding on these juveniles in the shallower, isolated pools over a period of days in which the channel remained dry.

BLM at 30.

In addition to the resources identified in BLM's plan, the New River and its tributaries, which include Floras Lake, provide habitat for a multitude of other fish and wildlife resources, including sensitive populations of searun cutthroat. Streamflows in this basin also provides recreational benefits to residents living and vacationing in the area. Streamflows into and out of the Lake maintain the water quality that is essential for these public uses of the lake.

The BLM has recognized that actions by state agencies, such as the Water Resource Commission have significant effects on management within the ACEC area in the New River Basin. *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.

BLM at 35.

Resident and anadromous fish species which rely on coastal streams are recognized in the 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. 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. Surface waters also contributes to wetlands which are critical to the ecological integrity of the area.

Floras Lake provides habitat to the petitioned fish populations in the New River system. The tributaries also provide flows for the marshlands that support the wildlife in the area and the values for which the Area of Critical Environmental Concern is managed.

These and other pending applications, both individually, and cumulatively, will deplete flows that currently provide habitat for the fish and wildlife mentioned above. The proposed uses and storage projects will also adversely affect water quality in the system. The construction and operation of storage facilities can lead to increased turbidity in the water. The use of water for bogs and irrigation can result in pesticides and fertilizers being leached into the ground water and into the stream system. Allowing these uses to go forward, without analysis of the cumulative impacts of these uses and conditioning and/or denying these uses in order to protect these fish and wildlife values in contrary to Oregon policies which promote use within the capacity of the resource, require protection of instream flow needs and values, requires protection of fish, water quality, wetlands, and other public uses of water and call for integrated and coordinated water management. ORS 496.435, ORS 537.170(5), ORS 537.525, ORS 196.669, ORS 196.672, ORS 496.182, ORS 496.268, 16 USC 1538, OAR 690-11-195(4)(c)(A), (d), (e), (f), (h).

2. Measurement and reporting.

If these uses were to be permitted, the measurement and reporting conditions are not adequate to protect the public's interest in the resource. Measurement and reporting should be a mandatory condition of all new uses. The condition should also require measurement and reporting of both rate and duty. Applicants for reservoirs should be required to report both inflow and outflow from their reservoirs to ensure

that storage is not occurring during times when it is prohibited. Finally, there should be some requirement of measurement of streamflows effected by these uses - either by each individual user or as part of a cooperative effort. This should be a mandatory condition of any new water use.

The technical report for 73734 proposes to limit the the months of use to which water can be used by this applicant. The Department's enforcement staff is already stretched to the limit. The proposed use adds yet another enforcement responsibility on top of an already unmanageable load. Under these circumstances, it is difficult if not impossible for the state to ensure that this applicant will, **at all times**, use water in compliance with the permit conditions. Given the critical state of the water resource in the New River basin and the Department's inability to control this and other uses, even with measurement and reporting, these uses are not in the public interest.

3. The proposed uses are likely to impair the public interest because there is not water available.

The availability of water for further appropriation from system, for these applications is inadequate for the following and other reasons:

- There is no analysis of water availability in the files for Mill Creek and the unnamed streams that are the proposed sources of water for these application.

- The analysis used for these applications is based upon estimates - not actual - flows in the New River. In many cases the flows predicted are significantly greater than the flows that are actually observed in these streams.

- None of the analyses for these applications take into account the full amount of water rights of record. The failure to adequately determine water availability does not comply with the statewide allocation policy and Oregon law. OAR 690-400-010, ORS 537.170(5).

- The technical reports failed to contain any analysis of water availability, contrary to OAR 690-11.

- The water availability analysis for the reservoir applications used a 50% exceedence flow rather than an 80% exceedence flow. The Water Allocation Policy requires that water be available at least 80% of the time before a permit can be issued. OAR 690-400-010(2)(a). Subsection (c) does give the agency the discretion to allow new storage facilities even if water is not available under this standard. It **does not**, however, automatically exempt storage facilities from this standard.

The initial water availability analysis must use the same standard for storage and other proposed uses of water. If, after the initial calculations are made, it is determined that a different standard will be used, the Department must justify the use of a different standard. This justification should be stated in the technical report. It is not good public policy to use two different water availability standards in the initial analysis.

● Finally, there has been no review of the cumulative effects of these and other pending applications on the resources and flows in the New River Basin. Failure to ensure that these and other proposed uses for this area do not impair the public's interest in the wetlands, fish and wildlife which rely on surface and ground water is contrary to the statewide Allocation Policy. This policy prohibits the overallocation of ground and surface water. OAR 690-410-070. The policy requires that new out-of-stream applications be conditioned to protect public uses. OAR 690-410-070(2)(h). See also Instream Flow Protection policy OAR 690-410-030 and the Groundwater Management policy OAR 690-410-010.

4. **The uses of surface water will impair the public interest because fish screening and passage facilities are not clearly mandatory conditions of use.**

The technical reports do not require mandatory fish screening and passage facilities prior to diversion and use of water. Given the critical status of fish populations in the this basin, the adverse impact diversions and dams have on fish habitat, screening and passage should clearly be required to be in place **before** any diversion or storage of water. In addition, failure to maintain screening and passage facilities must be grounds for shutting off water use. There should be a condition which clearly states these requirements.

5. **The proposed uses are contrary to Oregon policy.**

ORS 537.170(5)(a) and (c) require the Department to ensure that waters in the basin will be used and controlled for all purposes, not just consumptive purposes. The Statewide Instream Flow Protection Policy states that "(w)here streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented." OAR 690-410-030(1). When considering applications for new water rights the agency is required to consider the needs of instream and out-of-stream uses and the need to develop streamflow restoration programs. OAR 690-410-030(2)(a). No such consideration has been done.

Critical to the protection of instream flows is knowing and controlling water use in the basin. These and other potential water users in the basin should be required to contribute to activities that enable the state to better manage and control the resource - such contributing funds for installation and maintenance of gauging stations in key locations.

The recent petitions for listing of coastal coho and steelhead populations makes the protection of instream flows even more important for achieving a balance. The protection of instream flow will help to achieve a balanced allocation of water between public instream and other uses in Basin and throughout the state.

Protection of instream water flow also furthers statewide policies, priorities and goals for streamflow restoration including those in OAR 690-11-030(1), 690-410-070, and 690-77-015. Providing streamflow protection for fish is also necessary in order to carry out the state policy of restoring native fish stocks. ORS 496.435. Thus, protection of the public interest requires denial of these applications.

6. Conservation Conditions are inadequate

Oregon statutes and rules call for the state to "aggressively promote" water conservation and places a high priority on eliminating waste and improving the efficiency of water use. ORS 537.460(2)(a) and OAR 690-410-060(1). The proposed conditions do little to further these policies. These proposed uses should be held to a specific efficiency standard prior to any permit approval and the applicant should have an approved conservation plan in place and approved by the Department prior to any permit issuance.

Sincerely,



Karen Russell
Assistant Director

TECHNICAL REVIEW CHECKLIST

FORM-71393

(1) Application: R 73733

(2) Review Date: 12/30/93

Miller

S Indicates information was completed or adequately addressed.
 U Indicates information is needed, or incomplete, or inadequately addressed
 N/A Indicates Not Applicable

SUMMARY	
<u>S</u>	Completeness
<u>S</u>	Land Use
<u>N/A</u>	GW Interference (if potential interference with surface water, see results of water availability analysis)
<u>S</u>	Conflicts
<u>S</u>	Water Availability

(3) S The applicant has certified that the information provided in the application is an accurate representation of the proposed use and is true and correct to the best of their knowledge.

(4) N/A No oath is required because application was filed before June 5, 1992.

(5) S Application fees:

Examination fee:	\$ 200
Recording fee:	\$ 100
TOTAL REQUIRED	\$ 300
TOTAL SUBMITTED	\$ 300
AMOUNT DUE prior to issuance of permit	\$ 0
AMOUNT OVERPAID refund due applicant	\$ 0

(6) S Proposed dates of beginning and completion of construction, and complete application of water.

(7) S MAP: U Prepared by a CWRE
 ___ Exempt under OAR 690-11-150(3)
 ___ A map or drawing included (non-CWRE)
 ___ No map or drawing in file

- (8) N/A A CWRE map is not required for applications filed before November 9, 1987.
- (9) S A written copy of the legal description of the property on which the water is to be used.
- (10) N/A A copy of written authorization, contract or easement permitting access to the land or reservoir not owned by the applicant.
- (11) S The proposed use is not restricted or prohibited by statute.
- (12) S The source of water is not withdrawn from appropriation by order of the State Engineer or Water Resources Commission, or legislatively withdrawn under ORS Chapter 538.
- (13) S STORAGE use(s) is/are classified uses(s) under the S. Coast Basin Program, OAR 690 - 512-004
- (14) S The application, map and supporting data are complete and free of defects.

Land Use Compatibility:

- (15) As expressed by the Planning Department of Curry Co
- (16) S The land uses to be served by proposed water uses (including proposed construction) are allowed or are not regulated by the local comprehensive plan (ordinance section 3.061 + 3.051).
- (17) N/A The land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals which have been obtained.
- (18) N/A The local government was notified, and sent no comment pursuant to the rules at the time; land use was presumed in compliance per such statement printed on the application.

For ground water applications:

- (20) N/A A copy of the constructor's log, if available, for any well already constructed, or required information regarding actual or anticipated construction.
- (21) N/A The report from groundwater section has been received.

For reservoir applications:

- (22) N/A Plans, specifications and supporting information for the dam and impoundment area.

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WATER RESOURCES DEPT.
SALEM, OREGON

Land Use Information Form: Permits, Licenses, Water Uses in Addition to Classified Uses

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the request for water use. DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.

Applicant's Name: Sea Wind Farms, Inc.
Address: P.O. Box 242
City: Sixes, State: Or. Zip: 97476
Phone: (503) 348-9937 WRD Application No.: _____

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Used
318/15W				
S. 29		X	X	X
S. 30		X	X	X
TL 2901	AGRICULTURAL FARM DISTRICT (AFD) FORESTRY GRAZING (FG)			

The following section must be completed by all local planning departments responsible for the property(ies) listed above. Please ask the Department for extra forms, as needed.

For Local Government Use Only

Local government planning officials are to complete the remainder of this form and return it to the applicant or the Water Resources Department (3850 Portland Rd. NE, Salem, OR, 97310) within 60 days of the date of receipt as shown below. If the form is not completed within 60 days, the Department may take action to approve the water use.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3.061 - 3.065. Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. **Note:** Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily

(over)

WRD Applicant Name: _____

Receipt for Request for Land Use Information

This section should be completed by a local government official and returned to the applicant upon request by the applicant for land use information.

City or County: See Over

Staff Contact: _____ Phone: _____

Signature: _____ Date of Information Request: _____

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: DIANNE L. SNOW

Date: 10/1/93

Title: PLANNER

Phone: 247-2011

Signature: Dianne L. Snow

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Continuations or Additional Comments:

FARMING IS AN OUTRIGHT USE ON THE
SUBJECT PROPERTY.

Application No. R 73733

Permit No. _____

Description of Water Use

Planning Official Initials: _____

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: Sea Wind Farms
 Address: P.O. Box 242
Sixes, Oregon 97476
 Phone: (503) 348-9937

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 SALEM, OREGON

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- Irrigation (crop type, golf course, nursery or greenhouse): _____
- Livestock (type of livestock, feedlot, slaughterhouse): _____
- Residential (# units, single or multi-family, # lots if partition or subdivision): _____
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- Institutional (i.e., school, library, etc.): _____
- Mining (aggregate, metal, open pit, placer, etc.): _____
- Recreation (park, campsite, pond, etc.): _____
- Fish and Wildlife (pond, hatchery, etc.): _____
- Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- Other (Name and list key characteristics): Cranberry Use

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name sources: <u>Unnamed Stream</u> <u>Mill Creek</u>	<u>2.00</u> Cubic feet per second. <u>889</u> Gallons per minute. <u>45</u> Acre-Feet
<input checked="" type="checkbox"/> Reservoir or pond (5 Reservoirs)	
<input type="checkbox"/> Ground Water	

W003

AFTER RECORDING, RETURN TO:

Jonathon L. Goodling
Miller, Wash. Wiener, Hager
& Carlsen
3500 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204-3699

UNTIL A CHANGE IS REQUESTED,
SEND ALL TAX STATEMENTS TO:

SeaWinds Farms, Inc.
Suite 211
1260 Shoppers Row
Campbell River, B.C.
Canada V9W 2C8
Attention: Pat Martin

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SALEM, OREGON

STATUTORY SPECIAL WARRANTY DEED

PACIFICORP CREDIT, INC., an Oregon corporation, Grantor, conveys and specially warrants to SEAWINDS FARMS, INC., an Oregon corporation, that certain real property located in Curry County, Oregon and more particularly described on Exhibit A attached hereto, free of encumbrances created or suffered by Grantor, except those set forth on Exhibit B attached hereto.

The true consideration for this conveyance is \$2,757,800.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

DATED this 9th day of May, 1991.

GRANTOR:

PACIFICORP CREDIT, INC., an Oregon corporation

By: W.E. Peressini
William E. Peressini,
Senior Vice President

Application No. R-73733
Permit No.

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**WATER RESOURCES DEPT.
SALEM, OREGON**

EXHIBIT "A"

PARCEL I:

The North half (N $\frac{1}{4}$) and the North half (N $\frac{1}{4}$) of the South half (S $\frac{1}{2}$) of Section Twenty (20); The North half (N $\frac{1}{4}$) and the North half (N $\frac{1}{4}$) of the South half (S $\frac{1}{2}$) of Section Twenty-one (21), and the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Nineteen (19), all in Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon.

Map No. 31-15, Tax Lot 2900 (47768)

Map No. 31-15, Tax Lot 2900 (164717)

PARCEL II:

The South half (S $\frac{1}{2}$) of the South half (S $\frac{1}{2}$) of Section Twenty (20); The South half (S $\frac{1}{2}$) of the South half (S $\frac{1}{2}$) of Section Twenty-one (21); The North half (N $\frac{1}{4}$) of Section Twenty-eight (28); The North half (N $\frac{1}{4}$) of Section Twenty-nine (29), and the East half (E $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty (30), all in Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon.

Map No. 31-15, Tax Lot 2901 (48497)

Map No. 31-15, Tax Lot 2901 (164701)

PARCEL III:

The North 200 feet of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) lying West of the West boundary of U. S. Highway 101 in Section Twenty-two (22), Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon,

SAVE AND EXCEPT therefrom the most Southerly 150 feet thereof.

Map No. 31-15-22, Tax Lot 902 (56529)

(continued)

EXHIBIT "A" (Page 1 of 2)

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PARCEL IV:

Commencing at Section Corner common to Sections Twenty-one (21), Twenty-two (22), Twenty-seven (27) and Twenty-eight (28), Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, said Section Corner being the Southwest Corner of Section Twenty-two (22) above described, from this point of beginning run 500 feet North on Section line between Sections Twenty-one (21) and Twenty-two (22) to the point of beginning of the tract of land herein conveyed. From this point of beginning run North on said Section line 556 feet to a point;

thence due East to West boundary line of U. S. Highway 101;

thence Southeasterly following Westerly boundary of said highway to a point due East of the point of beginning;

thence due West to point of beginning all in Curry County, Oregon.

Map No. 31-15-22, Tax Lot 1100 (57980)

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EXHIBIT "B"

ENCUMBRANCES

1. The rights of the public in and to that portion of the herein described property lying within the limits of public roads or highways.

2. Excepting and reserving all oil, gas and mineral rights as set forth in that certain instrument recorded October 7, 1942 in Deed Volume 27, Page 164 from Port Orford Cedar Company to J. F. Kronenberg.
(Affects Parcels I and II).

3. An easement created by instrument, including the terms and provisions thereof,
Dated : November 8, 1972
Recorded : September 18, 1980 BR: 80 Page 222
In Favor of : Coos-Curry Electric Cooperative, Inc.
For : Right of Way

4. An easement created by instrument, including the terms and provisions thereof,
Dated : July 17, 1945
Recorded : July 17, 1945 DV: 29 Page 488-9
In Favor of : Henry Slotic and Joseph Slotic
For : Right of way lying West of highway

5. An easement created by instrument, including the terms and provisions thereof,
Dated : April 22, 1982
Recorded : October 27, 1983 BR: 100 Page 602
In Favor of : Coos-Curry Electric Cooperative
For : Right of way easement

6. That certain distribution line extension contract, including the terms and provisions thereof by and between Thomas Shipler and Coos-Curry Electric Cooperative, recorded October 25, 1984 in Book of Records 107, Page 1021-24.

(continued)

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EXHIBIT "B"

ENCUMBRANCES

7. An easement created by instrument, including the terms and provisions thereof,

Dated : June 5, 1984
Recorded : August 3, 1984 BR: 106 Page 40
In Favor of : General Telephone
For : Right of way easement

8. As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land.

9. As disclosed by the assessment and tax roll, the premises therein have been specially assessed as forest land. If the land becomes disqualified for this special assessment under the statute, an additional tax plus interest may be levied for the last five or lesser number of years in which the land was subject to this special land use assessment.

STATE OF OREGON }
COUNTY OF CURRY }

SEAL: '81 MAY 10 PM 3 25
ELKIE JOY
CURRY COUNTY CLERK

I hereby certify that the within instrument was received and duly recorded in the OFFICIAL RECORDS OF CURRY COUNTY.

By: *[Signature]*

Fee: 50.00 Pgs: 5

1991 Instrument 91 02465

**MILLER, NASH, WIENER,
HAGER & CARLSEN**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AND COUNSELORS AT LAW
3500 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3699
TELEPHONE (503) 224-5858
TELEX 364462 KINGMAR PTL
FACSIMILE (503) 224-0155

SEATTLE OFFICE:
4400 TWO UNION SQUARE
601 UNION STREET
SEATTLE, WASHINGTON 98101-2352
TELEPHONE (206) 622-8484
FACSIMILE (206) 622-7485

JONATHON L. GOODLING, P.C.
DIRECT-DIAL: (503) 423-2522

March 31, 1995

Director
Oregon Water Resources Department
158 - 12th Street N.E.
Salem, Oregon 97310-0210

Subject: Water Permit Application Nos. 70170, R73733,
73734, 74439, R74440, and R74441

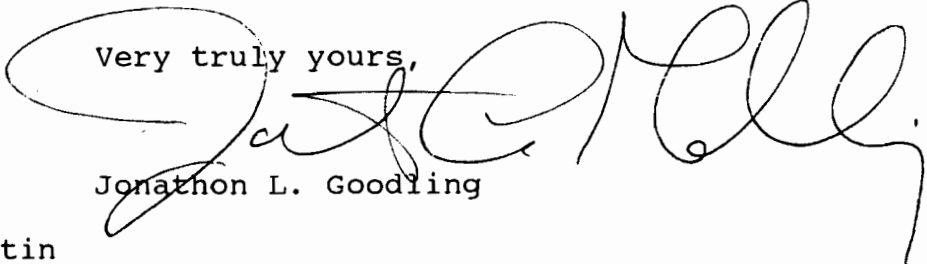
Dear Sir:

We represent Sea Wind Farms, Inc., the applicant under the above-referenced water permit applications. Our client has requested that we assume primary responsibility for representing its interest in connection with these applications.

Henceforth please send to the undersigned at the above-stated Portland address all notices of pending hearings, determinations, etc., as well as copies of all orders, technical reports, objections, and other comments.

Please also continue to send all notices and other matters directly to Sea Wind Farms, Inc., at the address stated on the applications.

Very truly yours,


Jonathon L. Goodling

cc: Mr. Llewellyn J. Martin

580 South State Street
Sutherlin, Oregon 97479

JAMES F. GOSSON Consulting Engineer

CIVIL ENGINEER
LAND SURVEYOR
WATER RIGHTS EXAMINER

(503) 459-2243

June 27, 1994

Oregon Water Resources Department
158 12th Street, NE
Salem, Oregon 97310

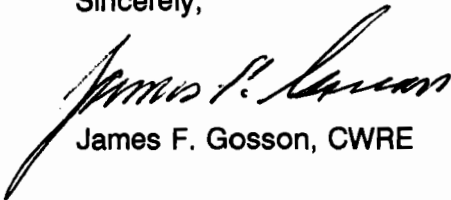
Attention: Dallas Miller, Water Right Specialist

Dear Mr. Miller:

As requested, enclosed is an application map showing all the points of diversions for the reservoirs to be developed.

Please contact me if you have any additional questions.

Sincerely,



James F. Gosson, CWRE

TOWNSHIP 315 RANGE 15w W. M. SECTION 29

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
						5 ⁰										61901	46800	67223
23 ⁰		18 ⁰														63324	46806	7
											RES					R-64419	R8604	64874
											19 ⁷⁴					64420	47420	64875
											19 ⁷⁴					6-10867	6-10027	64873
											TC					6-10867	6-10027	64873
											CF					R-73733		
						RES										73734		
						5 ⁰										73734		
						27	22											

NCR

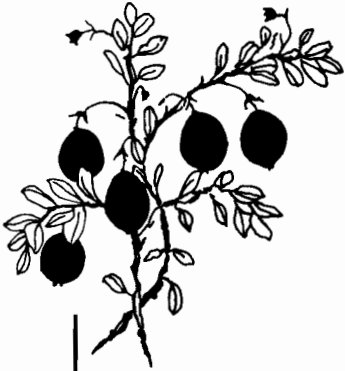
TOWNSHIP 315 RANGE 15w W. M. SECTION 30

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
4 ⁰			20 ⁰													61901	46800	67223
RES			RES													R-73733		
4 ⁰			20 ⁰													73734		
8 ⁹			22													73734		

NCR

SP*35621-690

No Conflicting Rights



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**WATER RESOURCES DEPT.
SALEM, OREGON**

SEA WIND FARMS (Canada) INC.

211 - 1260 Shoppers Row
Campbell River, B.C.
V9W 2C8 Canada
Tel: (604) 287-2215
Fax: (604) 287-2259

SEA WIND FARMS INC.

P.O. Box 242
Sixes, Oregon
97476 U.S.A.
Tel: (503) 348-9937
Fax: (503) 348-2546

October 6th, 1993

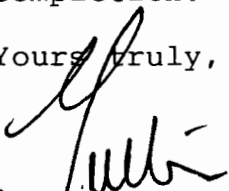
Oregon Water Resources Department
3850 Portland Road NE
Salem, Oregon
USA 97310

Enclosed herewith:

1. Signed reservoir and surface water applications
2. Application map
3. Signed Land Use Form
4. Copy of legal descriptions
5. Cheque of \$ 650.00 for FEES

Please advise if you require further information for completion.

Yours truly,


G.L. Hamilton
DIRECTOR

Application No. R-73733
Permit No.

OCTOBER 26, 1993

Sea Wind Farms, Inc.
P.O. Box 242
Sixes, OR 97476

WATER
RESOURCES
DEPARTMENT

RE: Proposed Reservoirs
Unnamed tributary of Floras Creek
Application R-73733

Gentlemen:

The Water Rights section recently forwarded the referenced Application for a Permit to Construct a Reservoir to Dam Safety for our review of the design for the proposed structures. Oregon Law stipulates that any hydraulic structure greater than 9.9 feet height and/or impounding more than 9.2 acre-feet of water must be designed by a licensed engineer, and said design must be reviewed by Dam Safety and approved by the Director of the Water Resources Department prior to any permits being issued.

Based on my cursory review of the information in your file, it would appear that the proposed dams and reservoirs will be constructed somewhat less than the statutory size limits. As such, I have determined that a set of plans and specifications need not be prepared by a professional engineer, nor submitted for our approval. This decision is based largely on the relatively small amount of water to be impounded in the reservoirs and the maximum expected height of less than 10 feet.

I have returned your file to the Water Rights section for completion of the technical review process. You will be notified by written letter of their decision. Please note however, should the Final Proof Survey reveal that the post-construction height of the dam is greater than the 9.8 ft. height you listed on the application, or if the amount of water impounded exceeds 9.2 acre-feet, a set of engineered asbuilt drawings will be required and approval granted by Water Resources Dam Safety program before any permits or certificate of water right can be issued. In order to expedite the permitting process, it is advantageous to limit the final dam dimensions to those stated on the application.

Very Truly Yours,



John A. Falk, P.E.
Dam Safety Coordinator

cc: Steve Brown-Water Rights



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

WaterWatch

O F O R E G O N

RECEIVED

OCT 29 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

October 28, 1993

RE: Application for Permit #R73733, 73734, Sea Wind Farms
Mill Cr., Curry Co., Cranberry Use

WaterWatch has reviewed the limited amount of information contained in the public notice of this water right application. Based upon that information, WaterWatch raises the following issues, questions, and concerns:

Is there unappropriated water available for this proposed use? Does the Department have adequate data to accurately determine the 50% and 80% exceedence levels?

What effect will this proposed use have on instream flows necessary to protect the public's interest in fish, wildlife, recreation, and a healthy aquatic system?

This water source may suffer from water quality problems. Has the Department consulted with the Department of Environmental Quality to determine the effect this proposed withdrawal will have on water quality?

If this water source provides habitat to native fish during any phase of their life cycle, WaterWatch requests that the Department include conditions requiring the installation and maintenance of fish screening and bypass devices prior to any diversion of water.

Will this proposed diversion require a dredge & fill permit from the U. S. Army Corps. of Engineers, a fill and removal permit from the Division of State Lands, or a 401 certificate from the Department of Environmental Quality?

Given the importance of surface water sources, and the Department's limited enforcement staff, it only makes sense to require this applicant to measure and report water use. Measurement not only helps the Department carry out its statutory mandate to promote the control of water resources for all beneficial uses, it helps the Department protect the public's interest in assuring the use is within the bounds of the permit. ORS 536.220(1)(a), 537.170(5).

Will this proposed use be compatible with Goal 5 elements of the local comprehensive plan?

It is a high priority of the state to eliminate waste and improve the efficiency of water use. Statewide policy also calls upon water users to use and maintain their water systems in a manner consistent with the state's priority. What conditions are proposed for this permit that will carry out and encourage compliance with state policy?

Is this an existing illegal use of water? If so, will the continued use without a permit cause harm to existing water rights and the public interest?

Please send WaterWatch a copy of the Department's technical review of this application.

Sincerely,

WaterWatch of Oregon, Inc. 921 S.W. Morrison. Suite 438
bc: Portland, Oregon 97205 (503) 295-4039
Jim Myron

RECEIVED

OCT 25 1993

COMMENT FORM

WATER RESOURCES DEPT.
SALEM, OREGON

Please list below the Application Number of the water use application(s) that are of interest to you. When the technical evaluation is completed a report of the technical review of these applications will be delivered to you.

Application #s R 73733, 73734

Send to: *Ron Yochin*
P.O. Box 218
Roseburg, OR 97470

Please include specific comments or concerns. Use additional sheets if necessary.

Return to:
Oregon Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

This Comment corresponds to the OCT/20/1993 Public Notice.

PFO CHECKLIST

Application #: _____

Basin: _____ WAB: _____

Township _____ Range _____ Section _____ 1/4 1/4 _____

- A1. Public Interest Screen Criteria
- 1. Is the file complete by the Completeness Checklist?
- 2. Fees or other shortcomings (items needed before a permit and/or FO can be issued)
- 3. Check file for indicators that the process **should not** continue until a later date (ie - protest, letter to file indicating hold, or other)
- A4. A groundwater review has been evaluated for substantial interference with surface water (convert old gw conditions to the 7 series and add to the PFO, if necessary)
 - a. Is second groundwater review necessary? (objection)
 - b. Is HB 1033 review complete?
- 5. Is the source withdrawn or limited? - State Engineer, Legislative (ORS 538), etc.
- 6. Is the Proposed Use located in or above a Scenic Waterway?
- 7. Is the proposed use located in a TMDL Basin? (Tualatin, Yamhill, Pudding)
- 8. Is the use allowed or limited by the Basin Program?
- A9. If source is groundwater, is the well located in a groundwater limited area? (If applicable, include map with POD)
- A10. ^{FOR PFO} Water Availability Data has been verified (50% before July 17, 1992; 80% live flow & 50% storage after July 17, 1992)
- 11. Rate See Permit for specs Duty for specs Irrigation Season _____
- 12. Period of Allowed Use Stored water may be approp. 11/1 ~ 5/31
- 13. Is use from a B.O.R. project and if so, is a signed contract in the file?
- A14. Division 33 has been addressed - if applicable (Above Bonn after July 17, 1992 & Below Bonn after April 8, 1994 or June 3, 1994)
- 15. Have conflicts been identified, verified and/or addressed?
- 16. Is the use Small (<0.1cfs, <9.2AF), Medium (>0.1 or <1.5cfs, >9.2 or <100AF) or Large (>1.5 cfs, >100 AF)? _____
- 17. Check TR/IR for permit conditions not included in the Draft Permit attached to the PFO
- 18. Fill out Accuracy Checklist
- 19. Spell Check
- 20. Documents used in determination are attached and highlighted
- 21. Fill out PFO CC List (a.k.a. the Check-Off Sheet) - don't forget to check for other property owners.
 - a. Does Ken Stahr need to be on the CC list (Rate, Duty and Period of Allowed Use changes)
- 22. Final PFO report hard copy check (format, margins, etc.)
- 23. Final PFO has been saved to m:\t\pfo\done\week#\application #

Name: Bernadette Date: 10/3/96 BW

RECEIVED

SEP - 2 1994

WATER RESOURCES DEPT.
SALEM, OREGON



DEPARTMENT OF
FISH AND
WILDLIFE

September 1, 1994

GOLD BEACH
DISTRICT OFFICE

Water Rights Section
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97310

RE: Water Right Application #S 73734 and R 73733;
Report of Technical Review

Because one or more species of game fish are present at the described POD, ODFW will require the applicant to provide fish screening pursuant to ORS 498.248. Therefore, ODFW supports the intent of Proposed Permit Condition #12. In addition, ODFW requests WRD add the following language to Condition #12:

The required screens are to be in place, functional, inspected and approved by an ODFW representative prior to diversion of any water.

Because the proposed reservoirs are located at off-channel sites, the language in Condition #12 referring to fish passage facilities is not necessary.

ODFW also requests the following condition relating to in-channel obstructions be included as a permit condition:

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Confer".

Todd Confer
Assistant District Biologist
South Coast District

c: Habitat Conservation Division
WaterWatch



746 Airport Way
PO Box 642
Gold Beach, OR 97444
(503) 247-7605
FAX (503) 247-2321

JUNE 28, 1994

WATER
RESOURCES
DEPARTMENT

SEA WIND FARMS, INC.
PO BOX 242
SIXES, OREGON 97476

Reference: [REDACTED]

Hello:

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



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

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

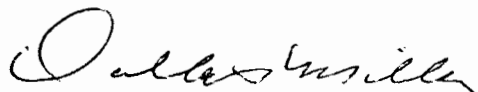
All evidence and objections must be received by our Salem office no later than 5:00 p.m. on or before **SEPTEMBER 9, 1994** or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



DALLAS MILLER
Water Rights Division

Enclosures

Report Date: JUNE 28, 1994

OREGON WATER RESOURCES DEPARTMENT

SATISFACTORY REPORT OF TECHNICAL REVIEW

FOR WATER USE PERMIT(S)

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD N.E., SALEM, OREGON 97310, BY 5 P.M. ON OR BEFORE: SEPTEMBER 9, 1994

1. APPLICATION FILE NUMBER - 73733

2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:
SEA WIND FARMS, INC.
P.O. BOX 242
SIXES, OR 97476
CURRY COUNTY 503-348-9937

Date application received for filing and/or tentative date
of priority: 10/13/1993

SOURCE: UNNAMED STREAM AND UNNAMED DRAINAGE TRIBUTARY TO: FLORAS
LAKE

Purpose and/or use: STORAGE FOR SUPPLEMENTAL CRANBERRY USE

Volume: 45.0 ACRE-FEET, BEING 9.0 ACRE-FEET EACH FOR RESERVOIRS
1,2,3,4, AND 5

RESERVOIR LOCATION

SW NW
SEC 29

SE NE
NE NE
SEC 30
T 31 S, R 15 W, WM.

SURFACE WATER AVAILABILITY

Water is likely available in excess of needs for all existing rights 50% of the time during each monthly period proposed by the technical review.

Water availability tables are available in the application file and may be reviewed in the office of the Water Resources Department in Salem.

CONFLICTS WITH OTHER WATER RIGHTS:

There are existing rights from this point of diversion. See proposed permit conditions.

There are no existing water rights appurtenant to the lands described in the application.

REPORT CONCLUSIONS:

Based on the Department's review of water availability and Oregon Administrative Rules, water in the amount of 45.0 acre-feet is likely available for 8 months. Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.

This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.

PROPOSED PERMIT CONDITIONS

Application: R 73733

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

- 1. Use of water under this permit is subject to all prior rights.
- 2. Rate of use: 45.0 ACRE-FEET, BEING 9.0 ACRE-FEET EACH IN RESERVOIRS 1,2,3,4 AND 5.
- 3. Water may be appropriated for storage during the period: NOVEMBER 1 THROUGH JUNE 30 FOR SUPPLEMENTAL CRANBERRY USE

NOV 1 - MAY 31

- 4. Water use development requirements:
 - A. Begin construction by (one year from issuance of permit).
 - B. Complete construction by October 1, 1996.
 - C. Completely apply the water to beneficial use by October 1, 1997.

well by pass on Mill Creek 0.1 ap

- 5. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

Staff gauge in Res.

*Units above shown
8" on 4th Res 4-5
Nov 1-2-3*

- 6. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation of the permit.

no fish screens on any of 5

7. The permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
8. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
9. The total area proposed to be submerged by the reservoir, when full is 8.1 acres; the proposed maximum depth of water in feet is 12; the maximum height of the dam is 9.8 feet.
10. The storage of water allowed herein is subject to the installation and maintenance of an fully functional conduit/gate assembly having a minimum diameter of 8 inches.
11. Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.
12. In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

COMPLETENESS DETERMINATION CHECKLIST

COMPLETED
 DC 10-4-95
 200 EXAM
 100 USACFT

Application #	Review Date	Reviewer
R-73733	10/4/95	GERRY

A checkmark (✓) indicates that the item is incomplete or defective.

300 Total
 300 Received
 & Fees OK

- _____ 1. Examination fees (and recording fees, if for PFO/FO).
- _____ 2. Name and address of the applicant, and title if applicable.
- _____ 3. Source of water.
- _____ 4. Use of water.
- _____ 5. Amount of water.
- _____ 6. Description of delivery system.
- _____ 7. A statement of whether the applicant has written authorization or easements permitting access to lands owned by others.
- _____ 8. Name(s) and address(es) of the owners of any lands involved, but not owned by the applicant.
- _____ 9. Proposed dates of beginning and completion of construction, and complete application of water.
- _____ 10. If for **municipal use**, the present population to be served and expected future water requirements.
- _____ 11. If for **mining use**, the type of mines and methods of supplying & utilizing the water.
- _____ 12. If for a **reservoir**:
 - _____ a. The height of the dam.
 - _____ b. The storage capacity.
 - _____ c. The area submerged.
 - _____ d. The maximum depth.
 - _____ e. The construction method (earthfill, concrete, flashboard, etc.).
 - _____ f. A description of the outlet conduit.
 - _____ g. A description of the spillway.
- _____ 13. If for **groundwater**, the horizontal distance from the well to the nearest surface water source (if within one mile), and the difference in land surface elevation between them.
- _____ 14. If the application was made under **HB 2107**:
 - _____ a. Name and address of each adjacent property owner and verification that each owner has been mailed a copy of the completed notice.
 - _____ b. A description of the proposed water used and related project, the condition it will address, and the benefits that are expected to result from the project.
 - _____ c. The number of reservoirs per application is appropriate as per OAR 690-11-049 (3)(b)
- _____ 15. An oath that the application information is true and correct.
- _____ 16. The signature of the applicant(s).
- _____ 17. A satisfactory map of the proposed POD & POU.
- _____ 18. A Land Use Information Form or receipt.
- _____ 19. A legal description of the property where water will be used.

Application No. *R-73733*

Permit No.

SEAWIND FARMS

SUPPLEMENTAL SHEET

TABLE ONE

RESERVOIR	SOURCE	TRIBUTARY TO	HOW FILLED	AMOUNT TO BE STORED
Number 1	Field runoff	Unnamed Stream	Field runoff channeled to reservoir	9.0 Acre Feet
Number 2	Field runoff	Unnamed Stream	Field runoff channeled to reservoir	9.0 Acre Feet
Number 3	Field runoff	Mill Creek	Field runoff channeled to reservoir	9.0 Acre Feet
Number 4	Unnamed Stream	Floras Lake	Unnamed Stream	9.0 Acre Feet
Number 5	Unnamed Stream	Floras Lake	Unnamed Stream	9.0 Acre Feet

TABLE TWO

RESERVOIR	DAM HEIGHT	MAXIMUM DEPTH	SURFACE AREA	CONDUIT	SPILLWAY
Number 1	2 - 3 Feet (excavated pond)	12 Feet	1.0 Acre	None (excavated/off channel)	8" pipe to handle periods of excess rainfall - water will discharge into unnamed stream.
Number 2	2 - 3 Feet (excavated pond)	12 Feet	1.0 Acre	None (excavated/off channel)	8" pipe to handle periods of excess rainfall - water will discharge into unnamed stream.
Number 3	3 - 4 Feet (excavated pond)	10 Feet	1.3 Acre	None (excavated/off channel)	8" pipe to handle periods of excess rainfall - water will discharge into Mill Creek.
Number 4	9.8 Feet	12 Feet	1.8 Acres	8" Steel Pipe	36" Aluminum Pipe w/flashboard riser
Number 5	9.8 Feet	10 Feet	3.0 Acres	8" Steel Pipe	36" Aluminum Pipe w/flashboard riser

RECEIVED
 OCT 13 1993
 WATER RESOURCES DEPT.
 SALEM, OREGON

Application No. R-73733



RECEIVED
OCT 13 1993
WATER RESOURCES DEPT.
SALEM, OREGON

State of Oregon
WATER RESOURCES DEPARTMENT

Application for a Permit to Construct a Reservoir

Applicant(s) Sea Wind Farms, Inc.
(Please print or type - use dark ink)

Mailing Address: P.O. Box 242
Sixes, Oregon 97476 (503) 348-9937
City State Zip Daytime Phone No.

I (We) make application for a permit to construct Five Reservoirs reservoir and store the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: Unnamed stream and field runoff, a tributary of Floras Creek

If not in channel of a stream, state how it is to be filled: See Supplemental Sheet

2. **THE DAM:** The maximum height of the structure will be _____ feet above stream bed or ground surface at the centerline.

The dam will be (check one) earthfill, _____ concrete, _____ flashboard, _____ other.

If "other" give description: _____
See Supplemental Sheet

Give the location, description, and dimensions of the outlet conduit: _____

See Supplemental Sheet

NOTE: All dams across natural stream channels must be provided with an outlet conduit, minimum diameter of 8", or be of such capacity and location as to pass the normal flow of the stream at any time.

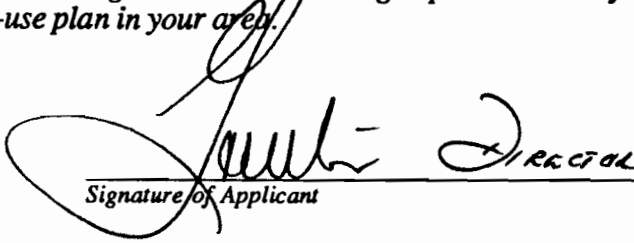
3. **THE USE(s)** of the impounded water will be: Supplemental Cranberry Use

8. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? Yes. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

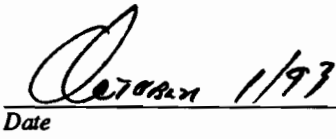
REMARKS: _____

I/We certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge.

NOTE: The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.



Signature of Applicant



Date

Signature of Co-Applicant, if any

Date

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

WITNESS my hand this _____ day of _____, 19____.

Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at SALEM, Oregon, on the 13th day of OCTOBER, 1993, at 8:00 o'clock, A M.

APPLICATION NO: R-73733

Application No. 13121

Description of Water Use

Permit No.

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: Sea Wind Farms
 Address: P.O. Box 242
Sixes, Oregon 97476
 Phone: (503) 348-9937

RECEIVED
 OCT 13 1993
 WATER RESOURCES DEPT.
 SALEM, OREGON

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- Irrigation (crop type, golf course, nursery or greenhouse): _____
- Livestock (type of livestock, feedlot, slaughterhouse): _____
- Residential (# units, single or multi-family, # lots if partition or subdivision): _____
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- Institutional (i.e., school, library, etc.): _____
- Mining (aggregate, metal, open pit, placer, etc.): _____
- Recreation (park, campsite, pond, etc.) _____
- Fish and Wildlife (pond, hatchery, etc.) _____
- Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- Other (Name and list key characteristics): Cranberry Use

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name sources: <u>Unnamed Stream</u> <u>Mill Creek</u>	<u>2.00</u> Cubic feet per second. <u>889</u> Gallons per minute. <u>45</u> Acre-Feet
<input checked="" type="checkbox"/> Reservoir or pond (5 Reservoirs)	
<input type="checkbox"/> Ground Water	

Land Use Information Form: Permits, Licenses, Water Uses In Addition to Classified Uses

RECEIVED

OCT 13 1993

WATER RESOURCES DEP
SALEM, OREGON

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the request for water use. DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.

Applicant's Name: Sea Wind Farms, Inc.
 Address: P.O. Box 242
 City: Sixes State: Or. Zip: 97476
 Phone: (503) 348-9937 WRD Application No.: _____

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Used
318/15W				
S. 29		X	X	X
S. 30		X	X	X
TL 2901	AGRICULTURAL FARM DISTRICT (AFD) FORESTRY GRAZING (FG)			

The following section must be completed by all local planning departments responsible for the property(ies) listed above. Please ask the Department for extra forms, as needed.

For Local Government Use Only

Local government planning officials are to complete the remainder of this form and return it to the applicant or the Water Resources Department (3850 Portland Rd. NE, Salem, OR, 97310) within 60 days of the date of receipt as shown below. If the form is not completed within 60 days, the Department may take action to approve the water use.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3.061 + 3.061. Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily

(over)

WRD Applicant Name: _____

Receipt for Request for Land Use Information

This section should be completed by a local government official and returned to the applicant upon request by the applicant for land use information.

City or County: See Over

Staff Contact: _____ Phone: _____

Signature: _____ Date of Information Request: _____

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: DIANNE L. SNOW

Date: 10/1/93

Title: PLANNER

Phone: 247-2011

Signature: Dianne L. Snow

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Continuations or Additional Comments:

FARMING IS AN OUTHRIGHT USE ON THE
SUBJECT PROPERTY.

1991 Curry Co. 91 02465
Instrument

INDEX

AFTER RECORDING, RETURN TO:

Jonathon L. Goodling
Miller, Wash. Wiener, Nager
& Carlsen
3500 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204-3699

UNTIL A CHANGE IS REQUESTED,
SEND ALL TAX STATEMENTS TO:

SeaWinds Farms, Inc.
Suite 211
1260 Shoppers Row
Campbell River, B.C.
Canada V9W 2C8
Attention: Pat Martin

RECEIVED

OCT 13 1993

WATER RESOURCES DEPT.
SALEM, OREGON

STATUTORY SPECIAL WARRANTY DEED

PACIFICORP CREDIT, INC., an Oregon corporation, Grantor, conveys and specially warrants to SEAWINDS FARMS, INC., an Oregon corporation, that certain real property located in Curry County, Oregon and more particularly described on Exhibit A attached hereto, free of encumbrances created or suffered by Grantor, except those set forth on Exhibit B attached hereto.

The true consideration for this conveyance is \$2,757,800.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

DATED this 9th day of May, 1991.

GRANTOR:

PACIFICORP CREDIT, INC., an
Oregon corporation

By: W.E. Peressini
William E. Peressini,
Senior Vice President

Application No. R-73733
Permit No.

RECEIVED

OCT 13 1993

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT "A"

PARCEL I:

The North half (N $\frac{1}{4}$) and the North half (N $\frac{1}{4}$) of the South half (S $\frac{1}{4}$) of Section Twenty (20); The North half (N $\frac{1}{4}$) and the North half (N $\frac{1}{4}$) of the South half (S $\frac{1}{4}$) of Section Twenty-one (21), and the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Nineteen (19), all in Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon.

Map No. 31-15, Tax Lot 2900 (47768)

Map No. 31-15, Tax Lot 2900 (164717)

PARCEL II:

The South half (S $\frac{1}{4}$) of the South half (S $\frac{1}{4}$) of Section Twenty (20); The South half (S $\frac{1}{4}$) of the South half (S $\frac{1}{4}$) of Section Twenty-one (21); The North half (N $\frac{1}{4}$) of Section Twenty-eight (28); The North half (N $\frac{1}{4}$) of Section Twenty-nine (29), and the East half (E $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty (30), all in Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon.

Map No. 31-15, Tax Lot 2901 (48497)

Map No. 31-15, Tax Lot 2901 (164701)

PARCEL III:

The North 200 feet of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) lying West of the West boundary of U. S. Highway 101 in Section Twenty-two (22), Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, Curry County, Oregon,

SAVE AND EXCEPT therefrom the most Southerly 150 feet thereof.

Map No. 31-15-22, Tax Lot 902 (56529)

(continued)

RECEIVED

OCT 13 1993

WATER RESOURCES DEPT.
SALEM, OREGON

PARCEL IV:

Commencing at Section Corner common to Sections Twenty-one (21); Twenty-two (22), Twenty-seven (27) and Twenty-eight (28), Township Thirty-one (31) South, Range Fifteen (15) West, Willamette Meridian, said Section Corner being the Southwest Corner of Section Twenty-two (22) above described, from this point of beginning run 500 feet North on Section line between Sections Twenty-one (21) and Twenty-two (22) to the point of beginning of the tract of land herein conveyed. From this point of beginning run North on said Section line 556 feet to a point;

thence due East to West boundary line of U. S. Highway 101;

thence Southeasterly following Westerly boundary of said highway to a point due East of the point of beginning;

thence due West to point of beginning all in Curry County, Oregon.

Map No. 31-15-22, Tax Lot 1100 (57980)

RECEIVED

OCT 13 1993

EXHIBIT "B"

ENCUMBRANCES

**WATER RESOURCES DEPT.
SALEM, OREGON**

1. The rights of the public in and to that portion of the herein described property lying within the limits of public roads or highways.

2. Excepting and reserving all oil, gas and mineral rights as set forth in that certain instrument recorded October 7, 1942 in Deed Volume 27, Page 164 from Port Orford Cedar Company to J. F. Kronenberg.
(Affects Parcels I and II).

3. An easement created by instrument, including the terms and provisions thereof,
Dated : November 8, 1972
Recorded : September 18, 1980 BR: 80 Page 222
In Favor of : Coos-Curry Electric Cooperative, Inc.
For : Right of Way

4. An easement created by instrument, including the terms and provisions thereof,
Dated : July 17, 1945
Recorded : July 17, 1945 DV: 29 Page 488-9
In Favor of : Henry Slotic and Joseph Slotic
For : Right of way lying West of highway

5. An easement created by instrument, including the terms and provisions thereof,
Dated : April 22, 1982
Recorded : October 27, 1983 BR: 100 Page 602
In Favor of : Coos-Curry Electric Cooperative
For : Right of way easement

6. That certain distribution line extension contract, including the terms and provisions thereof by and between Thomas Shipler and Coos-Curry Electric Cooperative, recorded October 25, 1984 in Book of Records 107, Page 1021-24.

(continued)

RECEIVED

OCT 13 1993

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT "B"
ENCUMBRANCES

7. An easement created by instrument, including the terms and provisions thereof,
Dated : June 3, 1984
Recorded : August 3, 1984 BR: 106 Page 40
In Favor of : General Telephone
For : Right of way easement

8. As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land.

9. As disclosed by the assessment and tax roll, the premises therein have been specially assessed as forest land. If the land becomes disqualified for this special assessment under the statute, an additional tax plus interest may be levied for the last five or lesser number of years in which the land was subject to this special land use assessment.

STATE OF OREGON }
COUNTY OF CURRY }
91 MAR 10 PM 3 25
ELIANE JOY
CURRY COUNTY CLERK

I hereby certify that the within instrument was received and duly recorded in the OFFICIAL RECORDS OF CURRY COUNTY.

By: *[Signature]*
Fee: 50.00 Pgs: 5

1991 Instrument 91 02465

**MILLER, NASH, WIENER,
HAGER & CARLSEN**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AND COUNSELORS AT LAW
3500 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3699
TELEPHONE (503) 224-5858
TELEX 364462 KINGMAR PTL
FACSIMILE (503) 224-0155

SEATTLE OFFICE:
4400 TWO UNION SQUARE
601 UNION STREET
SEATTLE, WASHINGTON 98101-2352
TELEPHONE (206) 622-8484
FACSIMILE (206) 622-7485

JONATHON L. GOODLING, P.C.
DIRECT-DIAL: (503) 423-2522

March 31, 1995

Director
Oregon Water Resources Department
158 - 12th Street N.E.
Salem, Oregon 97310-0210

Subject: Water Permit Application Nos. 70170, R73733,
73734, 74439, R74440, and R74441

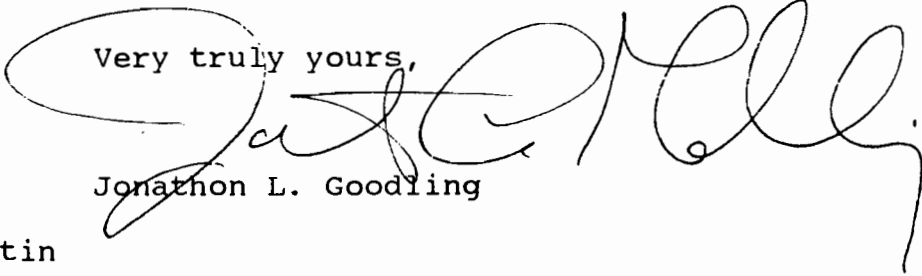
Dear Sir:

We represent Sea Wind Farms, Inc., the applicant under the above-referenced water permit applications. Our client has requested that we assume primary responsibility for representing its interest in connection with these applications.

Henceforth please send to the undersigned at the above-stated Portland address all notices of pending hearings, determinations, etc., as well as copies of all orders, technical reports, objections, and other comments.

Please also continue to send all notices and other matters directly to Sea Wind Farms, Inc., at the address stated on the applications.

Very truly yours,


Jonathon L. Goodling

cc: Mr. Llewellyn J. Martin

WaterWatch

RECEIVED

SEP 8 1994

**WATER RESOURCES DEPT.
SALEM, OREGON**

Hand Delivered

September 8, 1994

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

Re: **Objection to Technical Reports for:**
R73733, S73734, Sea Wind Farms, Cranberry Use, Floras Lake

These applications are just a few of the many pending applications requesting water for cranberry operations in the New River Basin. These proposed uses request water from streams that are tributaries to the New River. The cumulative impacts of these proposed uses are of great concern to WaterWatch. We have been in contact with area residents who have concerns about the ability of the resource to accommodate all of these proposed uses.

Floras Lake and its surrounding tributaries and wetlands support a variety wildlife and fish life. Residents in the area have reported searun cutthroat trout in the lake and its tributaries. It is suspected that the trout spawn in the lakes tributaries. Croft lake is also a source of recreation in the area and area residents are concerned about maintaining the lakes existing water quality. The surrounding wetlands provide wildlife and other habitat and we understand that the Nature Conservancy has been involved in wetland protection efforts in the area.

Floras Lake drains into the New River. The New River has been designated by the Bureau of Land Management (BLM) as an Area of Critical Environmental Concern. The BLM has ongoing studies and is developing a management plan for the area. The New River supports a variety of anadromous fish species and provides wetland habitat for native bird populations.

The analysis contained in the technical reports reveals that little information is known about the hydrology of the water system in this area. Because of our concerns about protection of the resource from the cumulative effects of these proposed developments and our growing concerns about the capacity of the resource to accommodate further expansion of the cranberry industry, we request that these applications joined in a contested case process with other pending applications for the area.

In addition, we submit the following objections pursuant to OAR 690-11-170:

The Technical Reports are Defective

The technical reports fail to contain many of the elements and evaluations required in OAR 690-11-160(1).

The Uses As Proposed are Not in the Public Interest

The proposed uses fail to pass the public interest considerations in ORS 537.170(5) and the policies of Oregon's water laws including ORS 468B.155 and 468B.015. *See also*, OAR 690-11-195(3)(d), (4)(a), (4)(c)(A), (4)(d)(A), (4)(d)(B), (4)(e), and (4)(f). The proposed uses will not be supported by existing surface water supplies and will deplete flows needed to for the New River system.

1. **The proposed uses are not in the public interest because they will deplete surface waters which provide habitat for public instream and riparian area uses.**

The South Coast Basin plan states:

Income from water-related recreation is a major contributor to the economy of the South Coast Basin. Finding 39.

The natural lakes, storage reservoirs and free-flowing streams support part of the water-based recreation use. Finding 40.

The water resources, wetlands and associated habitat are critical to the subsistence and propagation of wildlife in the Basin. Finding 42.

Reduction in surface water contribution to wetlands will decrease contributions to existing wetlands, decrease inflows into the lake and hinder or destroy the filtering capacity and other functions of the wetlands. Surface water in this area is vital to the maintenance of lake levels, surface water flows, wetlands and the protection of public uses of water including wildlife, recreation and fish.

The proposed uses propose to divert water from tributaries of Floras Lake, a tributary to the New River. The New River is a unique estuarine and freshwater ecosystem utilized by a wide diversity of fish and wildlife. *New River, Area of Critical Environmental Concern*, June 1989, Bureau of Land Management. (hereinafter BLM). According to the BLM's study of the New River this River:

supports a unique mix of wildlife, fisheries, botanical, and cultural resources found in association with few other coastal rivers in the Pacific Northwest. Four species of wildlife that use the area are designated as either threatened or endangered on state or federal lists. One plant species has been identified as a candidate for federal listing, and is designated as threatened on the state list. A number of prehistoric cultural sites have been found along the banks of this drainage, and the river itself is thought to provide critical rearing habitat for juvenile salmonids.

... New River has received special attention from a variety of private, state, and federal conservation interests. The Nature Conservancy has examined New River as a candidate area for their conservation programs. . . the Oregon Natural Resources Council considers New River to be the single most important estuary in Oregon that currently is not under any comprehensive form of management. . . New River also has been identified by the U.S. Fish and Wildlife Service as a candidate site for establishing a National Wildlife Refuge. . . The Oregon Department of Fish and Wildlife has identified the area as critical habitat for the western snowy plover. . . (S)ince 1983, BLM has designated its ownership as an Area of Critical Environmental Concern (ACEC), giving the area special recognition and status for improved management of the unique resources that are present. . .

BLM at 1. Since publication of the BLM's report, the western snowy plover has listed as "threatened" under the Federal Endangered Species Act and nine additional wildlife species that utilize the New River system are either listed under the federal act, or are candidates for listing.¹

The New River supports chinook salmon, coho and other fish populations. Since this BLM report was written, coastal coho populations, which utilize coastal streams such as the New River, have been petitioned for listing under the federal Endangered Species Act. Coastal stocks of fall chinook and coastal cutthroat trout are identified by the state as species of concern. The New River provides important habitat for these

¹ These include the Brown Pelican, Peregrine Falcon, Leatherback Sea Turtle, Aleutian Canada Goose, American Bald Eagle, Loggerhead Sea Turtle, Pacific Ridley Sea Turtle, Letherback Sea Turtle, and the red legged frog.

species. For example, some of the best pools for fish rearing are found in the New River, below the rivers confluence with Croft Lake. *BLM* at 30. However, downstream fish migration coincides with periods of low flows which can result in high fish mortality. *BLM* at 30. For instance, juveniles trapped in isolated pools in the river:

may be subject to predation, suffocation, and heat stress. Local ranchers have observed great blue herons and kingfishers feeding on these juveniles in the shallower, isolated pools over a period of days in which the channel remained dry.

BLM at 30.

In addition to the resources identified in BLM's plan, the New River and its tributaries, which include Floras Lake, provide habitat for a multitude of other fish and wildlife resources, including sensitive populations of searun cutthroat. Streamflows in this basin also provides recreational benefits to residents living and vacationing in the area. Streamflows into and out of the Lake maintain the water quality that is essential for these public uses of the lake.

The BLM has recognized that actions by state agencies, such as the Water Resource Commission have significant effects on management within the ACEC area in the New River Basin. *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.

BLM at 35.

Resident and anadromous fish species which rely on coastal streams are recognized in the 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. 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. Surface waters also contributes to wetlands which are critical to the ecological integrity of the area.

Floras Lake provides habitat to the petitioned fish populations in the New River system. The tributaries also provide flows for the marshlands that support the wildlife in the area and the values for which the Area of Critical Environmental Concern is managed.

These and other pending applications, both individually, and cumulatively, will deplete flows that currently provide habitat for the fish and wildlife mentioned above. The proposed uses and storage projects will also adversely affect water quality in the system. The construction and operation of storage facilities can lead to increased turbidity in the water. The use of water for bogs and irrigation can result in pesticides and fertilizers being leached into the ground water and into the stream system. Allowing these uses to go forward, without analysis of the cumulative impacts of these uses and conditioning and/or denying these uses in order to protect these fish and wildlife values in contrary to Oregon policies which promote use within the capacity of the resource, require protection of instream flow needs and values, requires protection of fish, water quality, wetlands, and other public uses of water and call for integrated and coordinated water management. ORS 496.435, ORS 537.170(5), ORS 537.525, ORS 196.669, ORS 196.672, ORS 496.182, ORS 496.268, 16 USC 1538, OAR 690-11-195(4)(c)(A), (d), (e), (f), (h).

2. Measurement and reporting.

If these uses were to be permitted, the measurement and reporting conditions are not adequate to protect the public's interest in the resource. Measurement and reporting should be a mandatory condition of all new uses. The condition should also require measurement and reporting of both rate and duty. Applicants for reservoirs should be required to report both inflow and outflow from their reservoirs to ensure

that storage is not occurring during times when it is prohibited. Finally, there should be some requirement of measurement of streamflows effected by these uses - either by each individual user or as part of a cooperative effort. This should be a mandatory condition of any new water use.

The technical report for 73734 proposes to limit the the months of use to which water can be used by this applicant. The Department's enforcement staff is already stretched to the limit. The proposed use adds yet another enforcement responsibility on top of an already unmanageable load. Under these circumstances, it is difficult if not impossible for the state to ensure that this applicant will, **at all times**, use water in compliance with the permit conditions. Given the critical state of the water resource in the New River basin and the Department's inability to control this and other uses, even with measurement and reporting, these uses are not in the public interest.

3. The proposed uses are likely to impair the public interest because there is not water available.

The availability of water for further appropriation from system, for these applications is inadequate for the following and other reasons:

- There is no analysis of water availability in the files for Mill Creek and the unnamed streams that are the proposed sources of water for these application.

- The analysis used for these applications is based upon estimates - not actual - flows in the New River. In many cases the flows predicted are significantly greater than the flows that are actually observed in these streams.

- None of the analyses for these applications take into account the full amount of water rights of record. The failure to adequately determine water availability does not comply with the statewide allocation policy and Oregon law. OAR 690-400-010, ORS 537.170(5).

- The technical reports failed to contain any analysis of water availability, contrary to OAR 690-11.

- The water availability analysis for the reservoir applications used a 50% exceedence flow rather than an 80% exceedence flow. The Water Allocation Policy requires that water be available at least 80% of the time before a permit can be issued. OAR 690-400-010(2)(a). Subsection (c) does give the agency the discretion to allow new storage facilities even if water is not available under this standard. It **does not**, however, automatically exempt storage facilities from this standard.

The initial water availability analysis must use the same standard for storage and other proposed uses of water. If, after the initial calculations are made, it is determined that a different standard will be used, the Department must justify the use of a different standard. This justification should be stated in the technical report. It is not good public policy to use two different water availability standards in the initial analysis.

● Finally, there has been no review of the cumulative effects of these and other pending applications on the resources and flows in the New River Basin. Failure to ensure that these and other proposed uses for this area do not impair the public's interest in the wetlands, fish and wildlife which rely on surface and ground water is contrary to the statewide Allocation Policy. This policy prohibits the overallocation of ground and surface water. OAR 690-410-070. The policy requires that new out-of-stream applications be conditioned to protect public uses. OAR 690-410-070(2)(h). See also Instream Flow Protection policy OAR 690-410-030 and the Groundwater Management policy OAR 690-410-010.

4. **The uses of surface water will impair the public interest because fish screening and passage facilities are not clearly mandatory conditions of use.**

The technical reports do not require mandatory fish screening and passage facilities prior to diversion and use of water. Given the critical status of fish populations in the this basin, the adverse impact diversions and dams have on fish habitat, screening and passage should clearly be required to be in place before any diversion or storage of water. In addition, failure to maintain screening and passage facilities must be grounds for shutting off water use. There should be a condition which clearly states these requirements.

5. **The proposed uses are contrary to Oregon policy.**

ORS 537.170(5)(a) and (c) require the Department to ensure that waters in the basin will be used and controlled for all purposes, not just consumptive purposes. The Statewide Instream Flow Protection Policy states that "(w)here streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented." OAR 690-410-030(1). When considering applications for new water rights the agency is required to consider the needs of instream and out-of-stream uses and the need to develop streamflow restoration programs. OAR 690-410-030(2)(a). No such consideration has been done.

Critical to the protection of instream flows is knowing and controlling water use in the basin. These and other potential water users in the basin should be required to contribute to activities that enable the state to better manage and control the resource - such contributing funds for installation and maintenance of gauging stations in key locations.

The recent petitions for listing of coastal coho and steelhead populations makes the protection of instream flows even more important for achieving a balance. The protection of instream flow will help to achieve a balanced allocation of water between public instream and other uses in Basin and throughout the state.

Protection of instream water flow also furthers statewide policies, priorities and goals for streamflow restoration including those in OAR 690-11-030(1), 690-410-070, and 690-77-015. Providing streamflow protection for fish is also necessary in order to carry out the state policy of restoring native fish stocks. ORS 496.435. Thus, protection of the public interest requires denial of these applications.

6. Conservation Conditions are inadequate

Oregon statutes and rules call for the state to "aggressively promote" water conservation and places a high priority on eliminating waste and improving the efficiency of water use. ORS 537.460(2)(a) and OAR 690-410-060(1). The proposed conditions do little to further these policies. These proposed uses should be held to a specific efficiency standard prior to any permit approval and the applicant should have an approved conservation plan in place and approved by the Department prior to any permit issuance.

Sincerely,



Karen Russell
Assistant Director

SEP 17 1994

WATER RESOURCES DEPARTMENT
SALEM, OREGON

Kalmiopsis Audubon Society
of Curry County
P.O. Box 1265
Port Orford, Oregon 97465

September 8, 1994
Oregon Water Resources Department
Water Right Section
158 12th St. NE
Salem, Oregon 97310

Re: Objection to Technical Reports for:
R73733, S73734, Sea Wind Farms, Cranberry Operation

There are three unnamed Creeks within the Sections where Sea Wind Farms are asking for reservoirs and water rights to support a cranberry operation. All three creeks are anadromous streams. The fish come up New River to Floras Creek and into the outlet of Floras Lake, cross the lake and spawn in the unnamed creeks at the south end of Floras Lake. These creeks are small and very important to the ecosystem and watershed of New River. There is tremendous pressure on all these streams in the Floras Creek/New River area for water for housing development and agricultural use. There is a proliferation of cranberry bogs in this area. These streams and the fish that they support cannot withstand this intensity of development. Historically we do not have rain for the months of June, July, August and we are currently in a drought and have been for the past 8 years. There is tremendous effort being expended throughout Coos and Curry County on watershed protection. People who normally don't talk to each other are working together on watershed councils on almost all of the streams in Curry County trying to save these streams for the anadromous fish.

Water storage that is being allowed from November 1 through June 30 is not appropriate, not if there is to be sufficient water for fish and sufficient cool water for fish!

A much safer period for this use would be from December 1 through April 1.

Surface water withdrawal that is being allowed from September 1 through June 30 is totally inappropriate for the same reasons as above. As an example, it is September 8 as I write this, my town Port Orford is on water rationing, Coos Bay is on water rationing. It is sounding the death knell to fish to be allowing any water withdrawal from those creeks during the dry season. Water should only be allowed to be withdrawn from December 1 through April 1. It is up to the agricultural operation to store that water appropriately so as to have the water to irrigate and flood during harvest. They should not be allowed to withdraw water during the low flow times of the year.

In conclusion, the public interest is not being served by this use because surface waters will be depleted which provide habitat for public instream and riparian area uses.

We ask that, at a minimum, the time frame of withdrawal be shortened to December 1 through April 1, and that you look at the cumulative effects of the water allocation that has gone on in this watershed. It would be a great embarrassment to all citizens if the agency that is working so hard to restore watersheds for anadromous fish on the one hand, was destroying those watersheds by giving away the very water that people are trying so hard to save.

Please consider our argument.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Warring".

Ellen Warring, Conservation Chair for
Land Use and Ocean Issues

WMA# 19

Oregon

JUL - 7 1994
WATER RESOURCES DEPT.
SALEM, OREGON

TO: Jake Szramek 07-05-94
FM: John Drolet / JFD

WATER
RESOURCES
DEPARTMENT

JUNE 28, 1994

SEA WIND FARMS, INC.
PO BOX 242
SIXES, OREGON 97476

Recommend that applicant have
an operable measuring device/weir
below outlet as a condition of
permit. Recommend that permit
not be certificated unless weir
is in place at time of final proof survey

Reference: File R 73733

Hello:

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



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

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

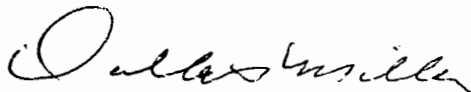
All evidence and objections must be received by our Salem office no later than 5:00 p.m. on or before **SEPTEMBER 9, 1994** or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



DALLAS MILLER
Water Rights Division

Enclosures

COPY CHECK-OFF SHEET FOR TECHNICAL REVIEWS

CC: FILE # R 73733

WATERWATCH

ODF&W

WATERMASTER #

19

REGIONAL MANAGER -

SW

CWRE -

James Gosson

DEO

OREGON ASSOCIATION OF NURSERYMEN INC.

KEN STAHR

OTHER ADDRESSES: Kalamispis Audubon Society

Ron Yochim

PO Box 1265

PO Box 218

Port Orford, OR 97465

Roseburg, OR 97470

CASEWORKER

D Miller

ORIGINAL TO APPLICANT 2/03/94

T: 7894

OCTOBER 26, 1993

Sea Wind Farms, Inc.
P.O. Box 242
Sixes, OR 97476

WATER
RESOURCES
DEPARTMENT

RE: Proposed Reservoirs
Unnamed tributary of Floras Creek
Application R-73733

Gentlemen:

The Water Rights section recently forwarded the referenced Application for a Permit to Construct a Reservoir to Dam Safety for our review of the design for the proposed structures. Oregon Law stipulates that any hydraulic structure greater than 9.9 feet height and/or impounding more than 9.2 acre-feet of water must be designed by a licensed engineer, and said design must be reviewed by Dam Safety and approved by the Director of the Water Resources Department prior to any permits being issued.

Based on my cursory review of the information in your file, it would appear that the proposed dams and reservoirs will be constructed somewhat less than the statutory size limits. As such, I have determined that a set of plans and specifications need not be prepared by a professional engineer, nor submitted for our approval. This decision is based largely on the relatively small amount of water to be impounded in the reservoirs and the maximum expected height of less than 10 feet.

I have returned your file to the Water Rights section for completion of the technical review process. You will be notified by written letter of their decision. Please note however, should the Final Proof Survey reveal that the post-construction height of the dam is greater than the 9.8 ft. height you listed on the application, or if the amount of water impounded exceeds 9.2 acre-feet, a set of engineered asbuilt drawings will be required and approval granted by Water Resources Dam Safety program before any permits or certificate of water right can be issued. In order to expedite the permitting process, it is advantageous to limit the final dam dimensions to those stated on the application.

Very Truly Yours,



John A. Falk, P.E.
Dam Safety Coordinator

cc: Steve Brown-Water Rights



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

WaterWatch

O F O R E G O N

RECEIVED

OCT 29 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

October 28, 1993

RE: Application for Permit #R73733, 73734, Sea Wind Farms
Mill Cr., Curry Co., Cranberry Use

WaterWatch has reviewed the limited amount of information contained in the public notice of this water right application. Based upon that information, WaterWatch raises the following issues, questions, and concerns:

Is there unappropriated water available for this proposed use? Does the Department have adequate data to accurately determine the 50% and 80% exceedence levels?

What effect will this proposed use have on instream flows necessary to protect the public's interest in fish, wildlife, recreation, and a healthy aquatic system?

This water source may suffer from water quality problems. Has the Department consulted with the Department of Environmental Quality to determine the effect this proposed withdrawal will have on water quality?

If this water source provides habitat to native fish during any phase of their life cycle, WaterWatch requests that the Department include conditions requiring the installation and maintenance of fish screening and bypass devices prior to any diversion of water.

Will this proposed diversion require a dredge & fill permit from the U. S. Army Corps. of Engineers, a fill and removal permit from the Division of State Lands, or a 401 certificate from the Department of Environmental Quality?


Given the importance of surface water sources, and the Department's limited enforcement staff, it only makes sense to require this applicant to measure and report water use. Measurement not only helps the Department carry out its statutory mandate to promote the control of water resources for all beneficial uses, it helps the Department protect the public's interest in assuring the use is within the bounds of the permit. ORS 536.220(1)(a), 537.170(5).

Will this proposed use be compatible with Goal 5 elements of the local comprehensive plan?

It is a high priority of the state to eliminate waste and improve the efficiency of water use. Statewide policy also calls upon water users to use and maintain their water systems in a manner consistent with the state's priority. What conditions are proposed for this permit that will carry out and encourage compliance with state policy?

Is this an existing illegal use of water? If so, will the continued use without a permit cause harm to existing water rights and the public interest?

Please send WaterWatch a copy of the Department's technical review of this application.

WaterWatch of Oregon, Inc. 921 S.W. Morrison, Suite 438 Portland, Oregon 97205 (503) 295-4039
bc:  Sincerely,
Jim Myron

TECHNICAL REVIEW CHECKLIST

FORM-71393

(1) Application: R 73733

(2) Review Date: 12/30/93

Miller

- S Indicates information was completed or adequately addressed.
- U Indicates information is needed, or incomplete, or inadequately addressed
- N/A Indicates Not Applicable

SUMMARY	
<u>S</u>	Completeness
<u>S</u>	Land Use
<u>N/A</u>	GW Interference (if potential interference with surface water, see results of water availability analysis)
<u>S</u>	Conflicts
<u>S</u>	Water Availability

(3) S The applicant has certified that the information provided in the application is an accurate representation of the proposed use and is true and correct to the best of their knowledge.

(4) N/A No oath is required because application was filed before June 5, 1992.

(5) S Application fees:

Examination fee:	\$ <u>200</u>
Recording fee:	\$ <u>100</u>
TOTAL REQUIRED	\$ <u>300</u>
TOTAL SUBMITTED	\$ <u>300</u>
AMOUNT DUE prior to issuance of permit	\$ <u>0</u>
AMOUNT OVERPAID	\$ <u>0</u>
refund due applicant	\$ <u>0</u>

(6) S Proposed dates of beginning and completion of construction, and complete application of water.

(7) S MAP: Prepared by a CWRE
 Exempt under OAR 690-11-150(3)
 A map or drawing included (non-CWRE)
 No map or drawing in file

- (8) N/A A CWRE map is not required for applications filed before November 9, 1987.
- (9) S A written copy of the legal description of the property on which the water is to be used.
- (10) N/A A copy of written authorization, contract or easment permitting access to the land or reservoir not owned by the applicant.
- (11) S The proposed use is not restricted or prohibited by statute.
- (12) S The source of water is not withdrawn from appropriation by order of the State Engineer or Water Resources Commission, or legislatively withdrawn under ORS Chapter 538.
- (13) S STORAGE use(s) is/are classified uses(s) under the S. Coast Basin Program, OAR 690 - 512-004
- (14) S The application, map and supporting data are complete and free of defects.

Land Use Compatibility:

- (15) As expressed by the Planning Department of Curry Co
- (16) S The land uses to be served by proposed water uses (including proposed construction) are allowed or are not regulated by the local comprehensive plan (ordinance section 3.061 + 3.051).
- (17) N/A The land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals which have been obtained.
- (18) N/A The local government was notified, and sent no comment pursuant to the rules at the time; land use was presumed in compliance per such statement printed on the application.

For ground water applications:

- (20) N/A A copy of the constructor's log, if available, for any well already constructed, or required information regarding actual or anticipated construction.
- (21) N/A The report from groundwater section has been received.

For reservoir applications:

- (22) N/A Plans, specifications and supporting information for the dam and impoundment area.