

## 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:

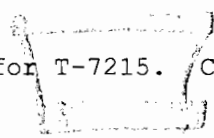
S-52989 (app S-70170)

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

STATE OF OREGON  
COUNTY OF CURRY  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

SEAWIND FARMS INC.  
580 S. STATE STREET  
SUTHERLIN, OR 97479

confirms the right to use the waters of ONE UNNAMED STREAM AND MILL CREEK, tributaries of FLORAS LAKE, for IRRIGATION OF 30.2 ACRES, FLOOD HARVESTING AND TEMPERATURE CONTROL OF CRANBERRIES.

This right was perfected under Permit 46800. The date of priority is JULY 15, 1981. This right is limited to 4.5 CUBIC FEET PER SECOND, BEING 0.76 CFS FOR IRRIGATION, 1.5 CFS FOR FLOOD HARVESTING, AND 4.5 CFS FOR TEMPERATURE CONTROL FROM THE UNNAMED STREAM WITH ANY DEFICIENCY TO BE MADE UP FROM MILL CREEK or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion are located as follows:

SE 1/4 NE 1/4, SECTION 30 AND NE 1/4 NW 1/4, SECTION 29, T 31 S, R 15 W, W.M.; UNNAMED STREAM - 1650 FEET SOUTH AND 420 FEET WEST; MILL CREEK - 1230 FEET SOUTH AND 1940 FEET EAST; BOTH FROM THE NORTHEAST CORNER OF SECTION 30.

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

SW 1/4 NW 1/4      5.6 ACRES  
SECTION 29  
  
NE 1/4 NE 1/4      4.0 ACRES  
SE 1/4 NE 1/4      20.6 ACRES  
SECTION 30  
TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

WITNESS the signature of the Water Resources Director, affixed  
MARCH 20, 1992.

/s/ WILLIAM H. YOUNG

William H. Young

Recorded in State Record of Water Right Certificates numbered 67223.  
61901.LMJ

NOTICE OF BEGINNING OF CONSTRUCTION

RECEIVED

I, SEA WIND FARMS INC., the holder of Permit No. 52993

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

Remarks: HAVE STARTED CONSTRUCTION OF 16 ACRES OF CANNIBERRY FIELDS

The appropriator must state the manner of beginning of construction, the amount of work completed and the type of equipment acquired 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.

Signature of Applicant: [Signature] FARM MANAGER P.O. BOX 242 SILES, OR 97476 (Address)

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

SP\*35567-690

OK PSM

FEB 26 1999 WATER RESOURCES DEPT SALEM, OREGON

# CLAIM OF BENEFICIAL USE

*10/1/01  
FP Map & signature  
per the be-...  
in @ ...  
...  
...  
...*

Section 29 & 30, Twp 31 S Range 15 W

Tax Lot # 2901

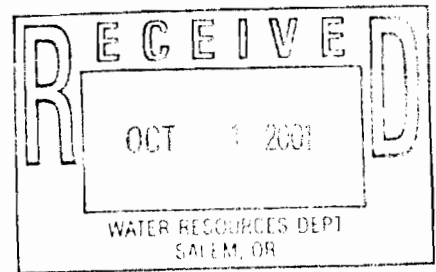
Curry County

FOR: Sea Wind Farms, Inc.

Application # 73734

Permit # 52993

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:** Mill Creek and three Unnamed Reservoirs, constructed under permit R-12095, tributary of Floras Lake.

**TYPE OF USE:** Primary cranberry operations on 15.7 acres and supplemental cranberry operations on 30.2 acres.

**DIVERSION WORKS DESCRIPTION:**

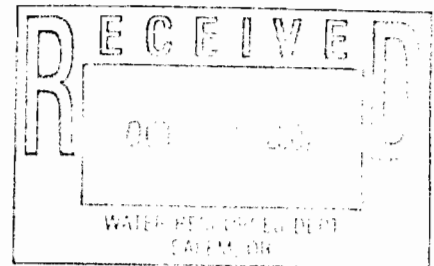
Mill Creek Pump System:

Motor:

brand: Baldor Electric  
serial #: 09810DP  
horsepower: 25  
cat: JPM2531T  
voltage: 460

Pump:

brand: Cornell  
model: 3B-25-4  
type: centrifugal  
serial #: 35G-37  
impeller: 11 1/4"



Meter: Aquamaster 1198 flow meter  
model: 400B  
serial #: 21120

**SYSTEM CAPACITY:**

Meter reading on 9/05/01 = 450 gpm

Reservoir storage = 21.8 acre feet

**DIVERSION POINT/POINTS LOCATION:**

Mill Creek diversion point: 1230 feet south and 1940 feet east from the northeast corner of section 30 being within the NE1/4 NW1/4 of section 29, T 31 S R 15 W, W.M

Reservoir #1: 1320 feet south and 540 feet west, within the SE1/4 NE1/4;

Reservoir #2: 490 feet south and 670 feet west, within the NE1/4 NE1/4;

both from the northeast corner of section 30 and within section 30, township 31 south, range 15 west, W.M.

Reservoir #3: 960 feet south and 490 feet west from the northeast corner of section 30; being within the NW1/4 NW1/4 of section 29, township 31 south, range 15 west, W.M.

**RATE:**

rate allowed by permit or transfer order: Mill Creek = 2.0 cfs

Stored water = 45.0 acre-feet

rate of beneficial use measured: Mill Creek = 450 gpm

Store water = 21.8 acre-feet

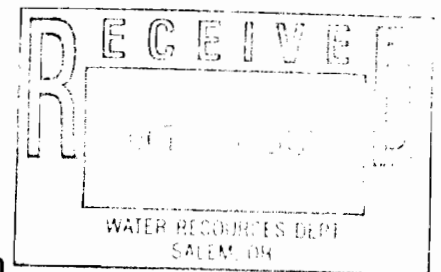
**TIME LIMITS:** Time limits were met.

**CROP TYPE AND PERIOD OF USE:** Cranberries, September 1 through Mar 31 from Mill Creek and year round from the three Unnamed Reservoirs

**PERMIT CONDITIONS:**

Meter: meter installed on Mill Creek diversion

Mill Creek weirs: weirs are in place at the Mill Creek diversion

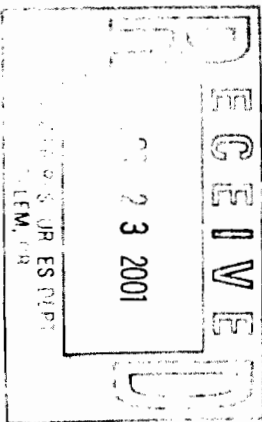
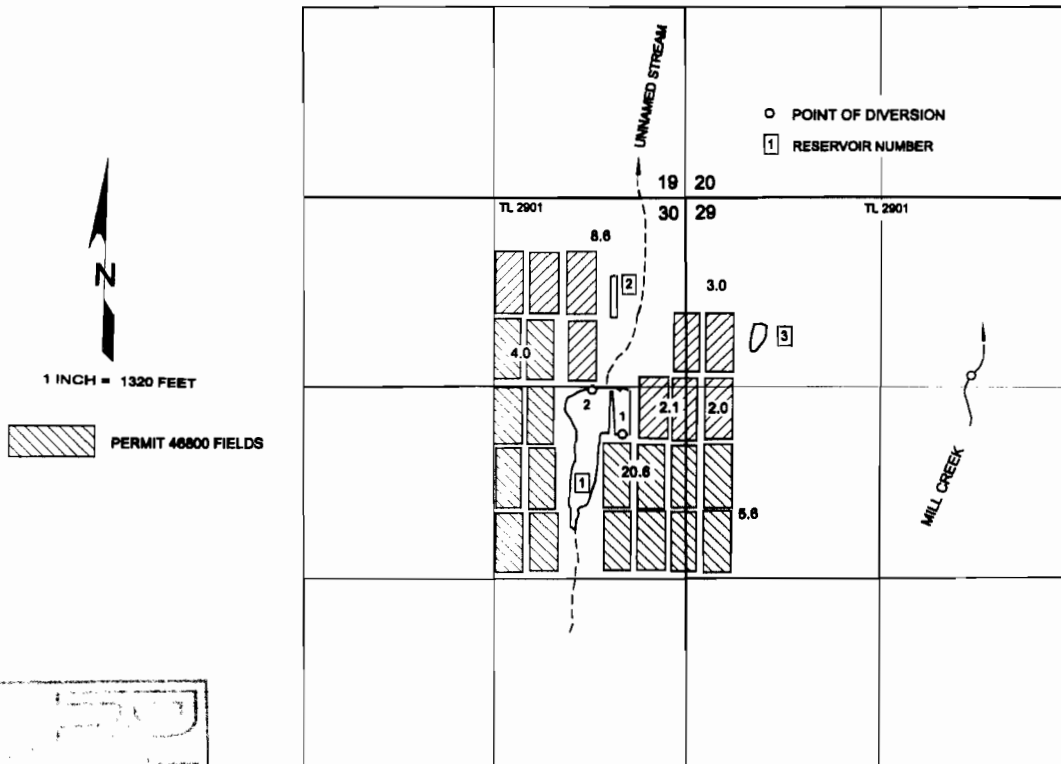


# FINAL PROOF SURVEY MAP IN THE NAME OF SEA WIND FARMS, INC.

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 1680 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

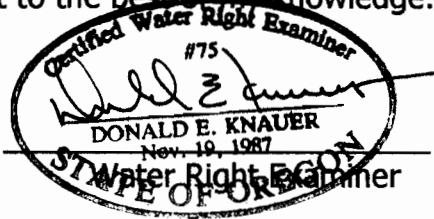
THE DAM FOR RESERVOIR ONE IS LOCATED 1320 FEET SOUTH AND 540 FEET WEST, WITHIN THE SE $\frac{1}{4}$  NE $\frac{1}{4}$ ; AND THE CENTER OF RESERVOIR TWO IS LOCATED 490 FEET SOUTH AND 670 FEET WEST, WITHIN THE NE $\frac{1}{4}$  NE $\frac{1}{4}$ ; BOTH FROM THE NORTHEAST CORNER OF SECTION 30 AND WITHIN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

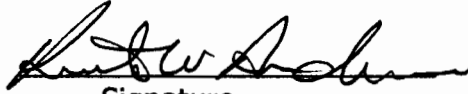


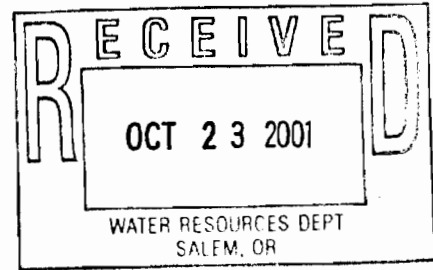
THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

The final proof survey and inspection of the water use as found to be completed under the terms and conditions of permit 52993 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 # 52993.

  
Signature







# 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](http://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

April 12, 2002

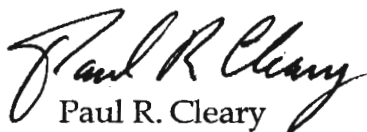
Page 2

Watersheds to satisfy the best management practices permit condition for the New River water right permits, such that compliance with the SB 1010 plan and rules will constitute compliance with the permit condition.

The New River water right permits with the "best management practices" permit condition encompass an area that includes Coos, Coquille and Curry Counties. Within the next year the Department of Agriculture is scheduled to complete a similar plan and rules for the Curry watershed area. WRD proposes to rely on the Coos and Coquille plan for the Curry County permits as well, until the Curry County Agricultural Water Quality Management Plan and associated rule are adopted.

Thank you for your cooperation and assistance. If you have questions or concerns with this proposal, please contact Dwight French, Water Rights Manager, at 503-378-8455, ext. 268.

Sincerely,



Paul R. Cleary  
Director

cc: Brad Howe, Croft Lake Association  
Doug Richert  
Eric Aasen  
Lonnie Hull  
Wayner Scherer, Bandon Cranberry Water Control District  
Carol Russell, Oregon Cranberry Farmers Alliance  
Karen Russell, WaterWatch of Oregon  
Al Cook, WRD  
Lloyd Vangordon, WRD  
Ray Jaindl, Department of Agriculture  
Pam Blake, Department of Environmental Quality  
Todd Confer, ODFW  
Jill Zarnowitz, ODFW  
John Youngquist  
Dan Carpenter, Bureau of Land Management

RECEIVED

DEC - 4 1996

December 3, 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

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

Re: 74439, R 74440, ~~7334~~ and R 73733, Sea Wind Farms

# 43

12/12/96

12/26/96

D. Wight

Dear Dwight,

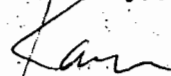
I was reviewing again the by-pass condition language you sent me last Friday and discovered a few errors in the language that I unfortunately did not catch on Friday. In comparing the language with my letter of August 13 outlining the agreed upon conditions and my notes from the November meeting I found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

Change all M&R <sup>(Surface, Est & GW)</sup> to read as shown in  
73184 & As ~~As~~ shown in WW letter of  
11/2. (check 2<sup>nd</sup> to last sentence)

Except Do Not change the following -  
73734, 73290, G 120089, G 13039, G 13208  
These three should be M&R Large

---

Some still need Agreement's signed <sup>(By Applicants)</sup> - They must be signed ~~there~~  
Before a FO is done under ADR Conditions. If no  
Agreement, FO would be modified to reflect standard processing  
limitations - Div. 33, TRIAGE, WA, etc.

Hull, Isenhart, Jensen, Quail Meadow Farms (Foster)

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Change DATE in BMP CONDITION TO ~~"December 1996"~~  
See ~~73734~~

---

~~See~~ Revised Fish Conditions in 75032 & 70170  
See WW letter Dated 11/22/96 modified by Todd Center  
12/12/96

---

See Revised Period close - 72561

Change all M&R <sub>(Surface, Est & GW)</sub> to Read as shown in  
73184 & As ~~As~~ shown in WW letter of  
11/2. (check 2<sup>nd</sup> to last sentence)

Except Do Not change the following -  
~~73734~~, 73290, G 120089, G 13039, G 13208  
These three should be M&R Large

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See 73734

---

~~See~~ Revised Fish Conditions in 75032 & 70170  
See WW letter Dated 11/22/96 modified by Todd Center  
12/12/96

---

See Revised Period close - 72561

# Water Watch

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*  
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.

March 6, 1997

SEA WIND FARMS  
PO BOX 242  
SIXES, OR 97476



REFERENCE: REFUND, APPLICATION FILES 73734 AND 74439

Enclosed is a check, no. 4402036, in the amount of \$474, being \$300 for Application File 74439 and \$174 for Application File 73734. This is a refund of excess recording fees paid for the above referenced application files. Neither your permit number 52993 or your application number 74439 is adversely affected by this refund of excess fees.

If you need further assistance please contact the Water Rights Section at the address listed below or phone (503) 378-3739.

Sincerely,

A handwritten signature in black ink that appears to read "Douglas L. Baer".

Douglas L. Baer  
Senior Water Rights Technician

enclosure

CC: Watermaster # 19



---

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



STATE OF OREGON  
WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: MARIE LICARI, FISCAL  
CC: FILE  
FROM: Douglas Baer

*Small and Fairmount  
Pl. Box 242  
Sycamore 97478*

SUBJECT: REQUEST FOR REFUND CHECK

PLEASE REFUND \$ 174<sup>00</sup> TO Applicant  
FILE # 73734, RECEIPT # 114807. THESE FUNDS ARE  
REFUNDED DUE TO :

- APPLICATION REJECTED
- APPLICATION WITHDRAWN
- EXCESS FEES COLLECTED FOR APPLICATION
- FILE CLOSED
- PROTEST FILING FEE
- OTHER: \_\_\_\_\_

PLEASE INCLUDE THE FOLLOWING MAILING ADDRESS ON THE CHECK:

*0707 OK Sycamore*

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. S-73734, Reservoir and Mill  
Creek/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<sup>1</sup> 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 should be as follows:

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

- The MAXIMUM RATE/VOLUME ALLOWED and PERIOD OF USE provisions 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 should read as follows:

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<sup>1</sup> Please note that the measurement and reporting condition as proposed in the PFO (the Department's "large" condition) is the correct condition and should remain as proposed in the PFO.

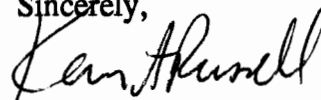
MAXIMUM RATE/VOLUME ALLOWED: 2.0 CUBIC FOOT PER SECOND (CFS) OF LIVE FLOW ~~BEING 0.6 CFS FROM AN UNNAMED STREAM AND 1.4 CFS FROM MILL CREEK~~ AND 45.0 ACRE-FEET (AF) OF STORED WATER, BEGIN 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5.

PERIOD OF USE: SEPTEMBER 1 THROUGH MAY 31 FROM MILL CREEK ~~AND AN UNNAMED STREAM~~ AND YEAR ROUND WHEN AVAILABLE FROM FIVE UNNAMED RESERVOIRS.

- As agreed in the ADR, the applicant, Sea Wind 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. Sea Wind Farms Inc.  
Al Cook, WRD  
Todd Confer, ODFW

Application S-73734

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # S-73734

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 INTERTIBAL 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	Ron Yockim
P.O. Box 1265	P.O. Box 218
Port Orford, OR 97465	Roseburg, OR 97470

WATERWATCH (FO)

CASEWORKER : BW

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-73734

**Final Order**

*Application History*

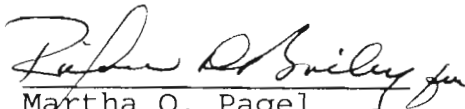
On October 13, 1993, SEA WIND FARMS INC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on October 15, 1996. The protest period closed November 29, 1996, and no protest was filed.

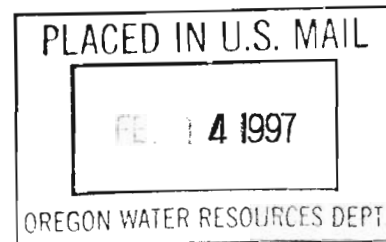
The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the source of water, the period and quantity of allowed use, and the bypass flow requirements.

**Order**

Application S-73734 therefore is approved with the above modifications to the Proposed Final Order, and Permit Number 52993 is issued as limited by the conditions set forth therein.

DATED January 31, 1997

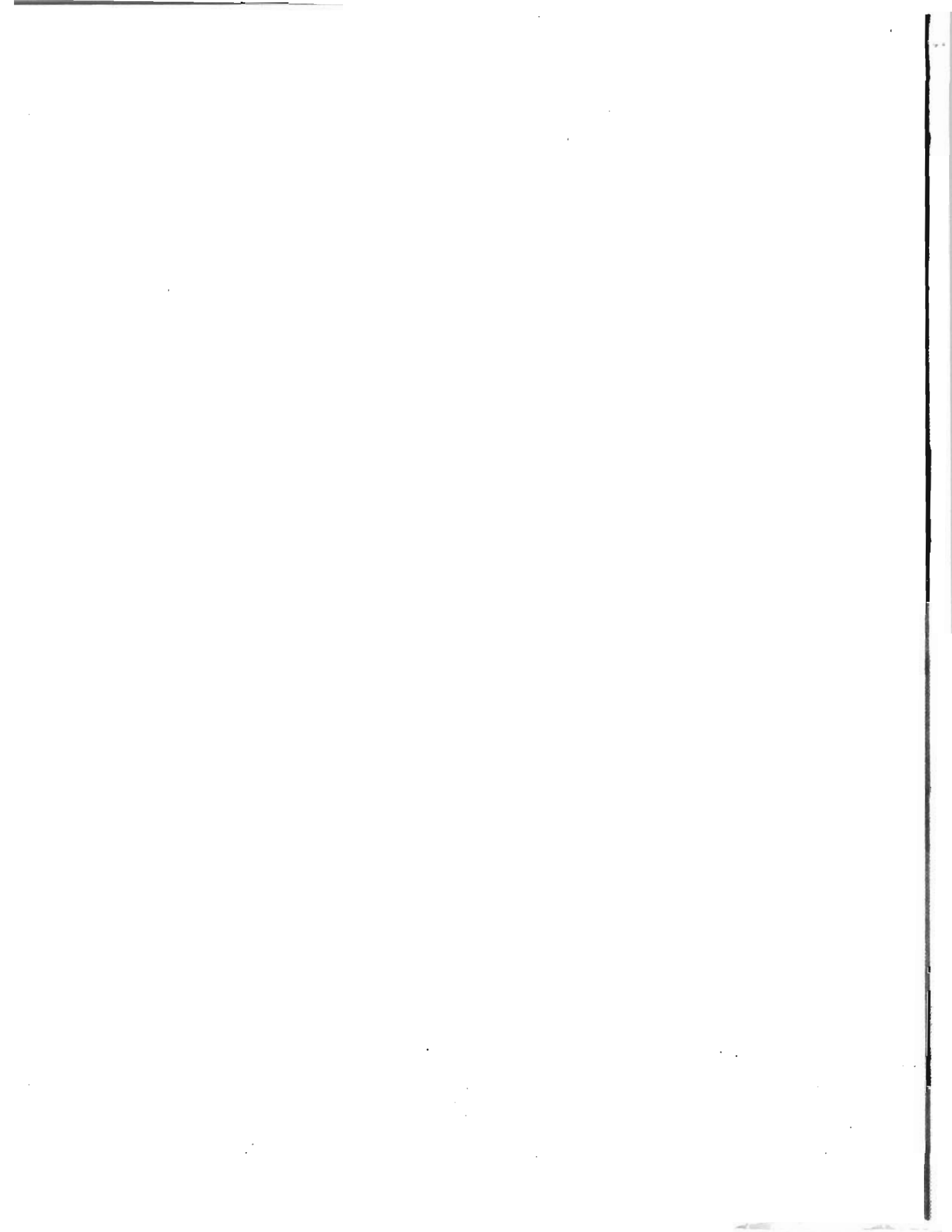
  
Martha O. Pagel  
Director



*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 APPROPRIATE 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: S-73734

SOURCE OF WATER: MILL CREEK AND FIVE UNNAMED RESERVOIRS, CONSTRUCTED UNDER APPLICATION R-73733, PERMIT R-12095, TRIBUTARIES OF FLORAS LAKE

PURPOSE OR USE: PRIMARY CRANBERRY OPERATIONS ON 16.0 ACRES AND SUPPLEMENTAL CRANBERRY OPERATIONS ON 30.2 ACRES

MAXIMUM RATE/VOLUME ALLOWED: 2.0 CUBIC FOOT PER SECOND (CFS) OF LIVE FLOW FROM MILL CREEK, AND 45.0 ACRE-FEET (AF) PER YEAR FROM STORED WATER, BEING 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5

PERIOD OF USE: SEPTEMBER 1 THROUGH MAY 31 FROM MILL CREEK AND YEAR ROUND WHEN AVAILABLE FROM FIVE UNNAMED RESERVOIRS

DATE OF PRIORITY: OCTOBER 13, 1993

POINT OF DIVERSION LOCATION: NE 1/4 NW 1/4, 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.; MILL CREEK - 1230 FEET SOUTH & 1940 FEET EAST; RESERVOIR 3 - 1720 FEET SOUTH & 410 FEET WEST; RESERVOIR 1 - 290 FEET SOUTH & 840 FEET WEST; RESERVOIR 2 - 730 FEET SOUTH & 520 FEET WEST; UNNAMED STREAM - 1650 FEET SOUTH & 420 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 amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

	<u>PRIMARY</u>	<u>SUPPLEMENTAL</u>
NW 1/4 NW 1/4	2.7 ACRES	
SW 1/4 NW 1/4	2.2 ACRES	5.6 ACRES
SECTION 29		
NE 1/4 NE 1/4	8.9 ACRES	4.0 ACRES
SE 1/4 NE 1/4	2.2 ACRES	20.6 ACRES
SECTION 30		
TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.		

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, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department 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.
- 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.

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.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

To the extent that water is naturally available, it is the permittee's responsibility to allow 0.05 cfs to pass the authorized point of diversion for this permit on Mill Creek. 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.

Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement on file with the Department.



**STANDARD CONDITIONS**

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

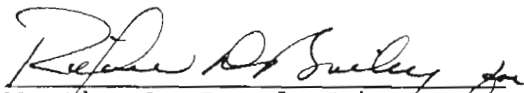
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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. Complete application of the 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 S-73734

**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.

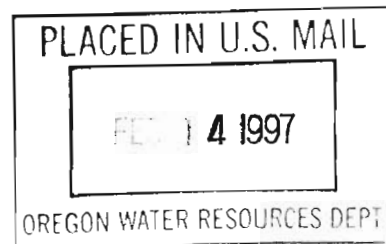
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**Order**

Application S-73734 therefore is approved with the above modifications to the Proposed Final Order, and Permit Number 52993 is issued as limited by the conditions set forth therein.

DATED January 31, 1997

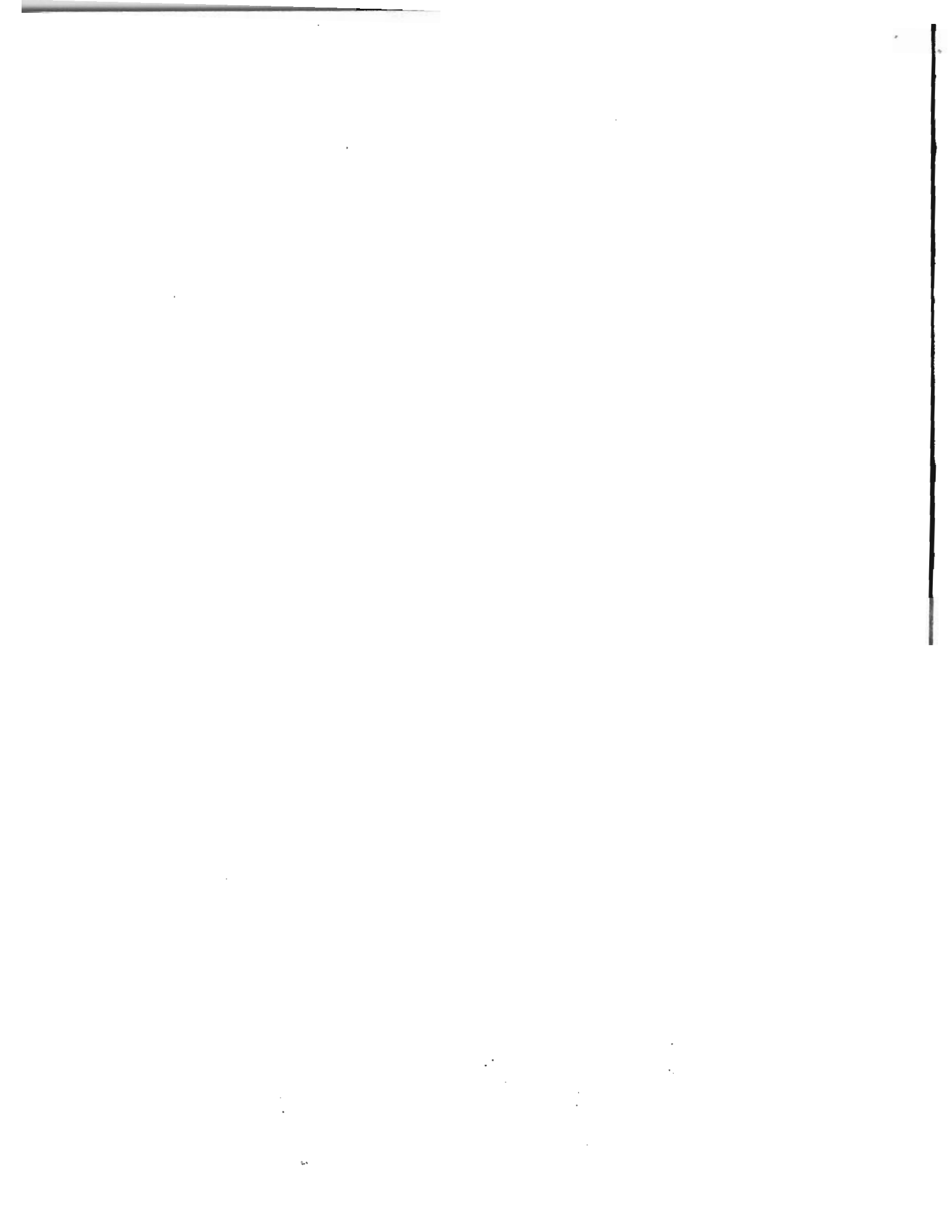
  
Martha O. Pagel  
Director



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STATE OF OREGON

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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, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department 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.
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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.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

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Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement on file with the Department.

## STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

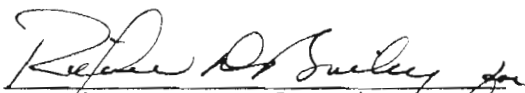
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The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

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. Complete application of the water to the use shall be made on or before October 1, 2000.

Issued January 31, 1997

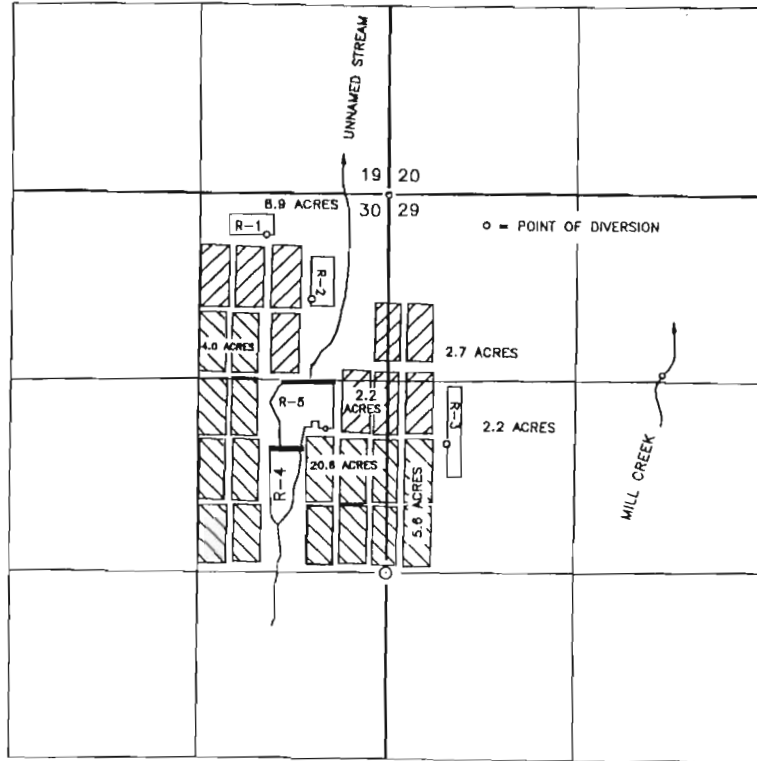


Martha O. Pagel, Director  
Water Resources Department

APPLICATION MAP

IN THE NAME OF SEAWIND FARMS, INC.  
 SECTIONS 29 & 30, T 31 S, R 15 W, W.M.

RECEIVED  
 JUN 23 1994



EXISTING CRANBERRY FIELDS (SUPPLEMENTAL) P 46800  
 NEW CRANBERRY FIELDS

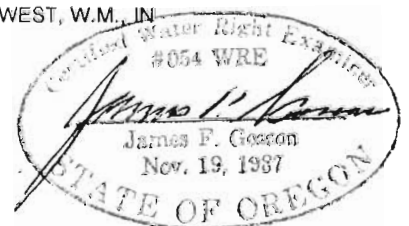
Application No. 73734  
 Permit No. 52993

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.



# FO CHECKLIST

FILE # 73734

REVIEW DATE: 12, 3, 96

WEEK # 64

PFO TO FO CONVERSION

INITIALS: DD

In preparing the FO, you should check the following:

1.  N Were comments or protests received? If so, from whom and when?
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. WATER WATCH 11/22/96
3.  N Have affected landowners been notified?
4. Y /  N Is the file lacking a signed oath of accuracy for the application?
5. Y /  N 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 /  N Is water use prohibited for one or more months of the normal use period?
7. Y /  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. #174 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 APP=CR 2.0 CFS AND storage
  - (2) Issue FO w/o permit if fees are lacking

200 EXAM  
100 RES 1st CFS  
50 + 1 Add'l CFS  
350
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  
COMMENTS

Modify FO as needed to:

Initials DD

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



Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-73734

**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 WIND FARMS, INC. submitted an application to the Department for the following water use permit:

- Amount of Water: 2.0 CUBIC FOOT PER SECOND (CFS) OF LIVE FLOW, BEING 0.6 CFS FROM AN UNNAMED STREAM AND 1.4 CFS FROM MILL CREEK, AND 45.0 ACRE-FEET (AF) OF STORED WATER, BEING 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5
- Use of Water: PRIMARY CRANBERRY OPERATIONS ON 16.0 ACRES AND SUPPLEMENTAL CRANBERRY OPERATIONS ON 30.2 ACRES
- Source of Water: MILL CREEK, AN UNNAMED STREAM AND FIVE UNNAMED RESERVOIRS, CONSTRUCTED UNDER APPLICATION R-73733, TRIBUTARIES OF FLORAS LAKE
- Area of Proposed Use: Curry County within SECTIONS 29 AND 30, TOWNSHIP 31 SOUTH, RANGE 15 WEST, W.M.
- Water Delivery System: Water will be delivered by electric motor/pump through plastic mainline to place of use. Water will be applied by sprinkler.

The Department mailed the applicant notice of its Technical Review June 28, 1994, determining that THE USE OF 2.0 CFS, BEING 1.4 CFS FROM MILL CREEK AND 0.6 CFS FROM AN UNNAMED STREAM IS ALLOWED SEPTEMBER 1 THROUGH JUNE 30 FOR PRIMARY CRANBERRY OPERATIONS AND 45.0 AF, BEING 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5, CONSTRUCTED UNDER APPLICATION R-73733, IS ALLOWED YEAR ROUND IF AVAILABLE FOR SUPPLEMENTAL CRANBERRY OPERATIONS. The 60-day objection period closed September 9, 1994.

Within the 60-day period, objections were received from 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 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 MILL CREEK, AN UNNAMED STREAM AND FIVE UNNAMED RESERVOIRS, TRIBUTARIES OF FLORAS LAKE or on downstream waters.

MILL CREEK, AN UNNAMED STREAM AND FIVE UNNAMED RESERVOIRS, TRIBUTARIES OF FLORAS LAKE are not within or above a State Scenic Waterway.

Water is available for further appropriation (at an 80 percent exceedance probability) from Mill Creek and Unnamed Stream for the period SEPTEMBER 1 THROUGH JUNE 30 and from Five Unnamed Reservoirs for the period YEAR ROUND WHEN AVAILABLE.

The Department finds that no more than 2.0 CFS OF LIVE FLOW, BEING 0.6 CFS FROM AN UNNAMED STREAM AND 1.4 CFS FROM MILL CREEK, AND 45.0 AF OF STORED WATER, BEING 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5, would be necessary for the proposed use. The amount of water requested, 2.0 CFS OF LIVE FLOW, BEING 0.6 CFS FROM AN UNNAMED STREAM AND 1.4 CFS FROM MILL CREEK, AND 45.0 AF OF STORED WATER, BEING 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5, 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:

Before water use may begin under this permit, the permittee shall by-pass 0.05 cfs of water through Mill Creek.

No diversion screening or fish passage facilities are required.

Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement date (blank), 1996 on file with the Department.

**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.

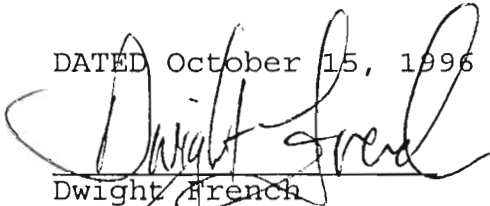
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount 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!!!

DRAFT

STATE OF OREGON

COUNTY OF Curry

DRAFT PERMIT TO APPROPRIATE 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: S-73734

SOURCE OF WATER: MILL CREEK, AN UNNAMED STREAM AND FIVE UNNAMED RESERVOIRS, CONSTRUCTED UNDER APPLICATION R-73733

TRIBUTARIES OF: FLORAS LAKE

PURPOSE OR USE: PRIMARY CRANBERRY OPERATIONS ON 16.0 ACRES AND SUPPLEMENTAL CRANBERRY OPERATIONS ON 30.2 ACRES

MAXIMUM RATE/VOLUME ALLOWED: 2.0 CUBIC FOOT PER SECOND (CFS) OF LIVE FLOW, BEING 0.6 CFS FROM AN UNNAMED STREAM AND 1.4 CFS FROM MILL CREEK, AND 45.0 ACRE-FEET (AF) OF STORED WATER, BEING 9.0 AF EACH FROM RESERVOIRS 1, 2, 3, 4 AND 5

PERIOD OF USE: SEPTEMBER 1 THROUGH MAY 31 FROM MILL CREEK AND AN UNNAMED STREAM AND YEAR ROUND WHEN AVAILABLE FROM FIVE UNNAMED RESERVOIRS

DATE OF PRIORITY: OCTOBER 13, 1993

POINT OF DIVERSION LOCATION: NE 1/4 NW 1/4, 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.; MILL CREEK - 1230 FEET SOUTH & 1940 FEET EAST; RESERVOIR 3 - 1720 FEET SOUTH & 410 FEET WEST; RESERVOIR 1 - 290 FEET SOUTH & 840 FEET WEST; RESERVOIR 2 - 730 FEET SOUTH & 520 FEET WEST; UNNAMED STREAM - 1650 FEET SOUTH & 420 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 amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

	PRIMARY	SUPPLEMENTAL
NW 1/4 NW 1/4	2.7 ACRES	
SW 1/4 NW 1/4	2.2 ACRES	
SW 1/4 NW 1/4		5.6 ACRES
SECTION 29		
NE 1/4 NE 1/4	8.9 ACRES	
NE 1/4 NE 1/4		4.0 ACRES
SE 1/4 NE 1/4	2.2 ACRES	
SE 1/4 NE 1/4		20.6 ACRES
SECTION 30		

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

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, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department 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.
- 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.

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.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

Before water use may begin under this permit, the permittee shall bypass 0.05 cfs of water through Mill Creek.

Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement date (blank), 1996 on file with the Department.

**STANDARD CONDITIONS**

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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. Complete application of the 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 S-73734    Water Resources Department  
Basin 17                    Volume  
BW                            MGMT.CODE

PERMIT DRAFT  
District 19



**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)
  - 4. 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?
  - 9. If source is groundwater, is the well located in a groundwater limited area? (If applicable, include map with POD)
  - 10. <sup>ADP Process</sup> Water Availability Data has been verified (50% before July 17, 1992; 80% live flow & 50% storage after July 17, 1992)
  - 11. Rate See Specs - Crawbumps Duty \_\_\_\_\_ Irrigation Season \_\_\_\_\_
  - 12. Period of Allowed Use 9/1 or 5/31 Live flow  
Year Round Storage
  - 13. Is use from a B.O.R. project and if so, is a signed contract in the file?
  - 14. 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 ( $\leq 0.1$ cfs,  $\leq 9.2$ AF), Medium ( $> 0.1$  or  $< 1.5$ cfs,  $> 9.2$  or  $< 100$ AF) or Large ( $\geq 1.5$  cfs,  $\geq 100$  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

Application No. 73734



State of Oregon  
WATER RESOURCES DEPARTMENT

# Application for a Permit to Appropriate Surface Water

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 appropriate the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: 5 Reservoirs, Mill Creek & Unnamed Stream  
a tributary of Floras Lake

2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: 2.0 cubic feet per second, OR 889 gallons per minute. If water is to be used from more than one source, give the quantity of water from each: Unnamed stream: 0.60 cfs.; Mill Creek 1.40 cfs. and 45 acre feet (9 acre feet from each of 5 reservoirs)

3. **INTENDED USE(s) OF WATER:** Cranberry Use and Supplemental Cranberry Use

If for more than one use, give the quantity of water from each source for each use; Unnamed stream and Mill Creek, Cranberry Use; Reservoirs: Supplemental

If for **DOMESTIC** use, state the number of households to be supplied; \_\_\_\_\_

If for **MUNICIPAL OR QUASI-MUNICIPAL** use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.)  
\_\_\_\_\_  
\_\_\_\_\_

If for **MINING** use, state the nature (gold, silver, etc.) of the mines to be served; \_\_\_\_\_

If for **IRRIGATION**, or other land area use, state the **TOTAL** number of acres to be developed under each use;

Irrigation \_\_\_\_\_

Other (describe) \_\_\_\_\_

Cranberry Use: 14.0 acres

Supplemental Cranberry Use: 30.2 acres

4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** *Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).*

Water will be delivered by electric motor/pump through plastic mainline to place of use. Water applied by sprinkler.

5. **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.*

6. 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)

7. *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.*

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: 73734

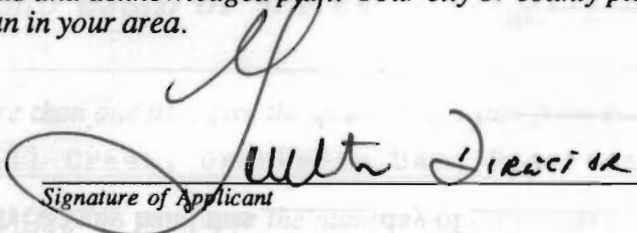
PERMIT NO: \_\_\_\_\_

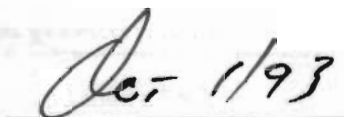
**REMARKS:** \_\_\_\_\_

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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

*If for MINING use, I/we have examined the proposed water use and have determined that it is in compliance with the goals and acknowledged plan of the State of California.*

FOR WATER RESOURCES DEPARTMENT USE ONLY

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.

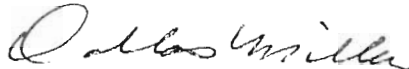
All evidence and objections must be received by our Salem office **no later than 5:00 p.m. on or before SEPTEMBER 9, 1994** or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon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

JUNE 28, 1994

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

WATER  
RESOURCES  
DEPARTMENT

Reference: File S 73734

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

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 - S 73734

**2. MINIMUM APPLICATION INFORMATION**

Applicant name/address/county/phone:

SEA WIND FARMS, INC.  
PO BOX 242  
SIXES, OREGON 97476  
CURRY CO PH 503-348-9937

Date application received for filing and/or tentative date of priority: 10/13/93

SOURCE: 5 RESERVOIRS, MILL CREEK AND UNNAMED STREAM  
TRIBUTARY TO: FLORAS LAKE

Purpose and/or use: CRANBERRY OPERATIONS 16.0 ACRES,  
SUPPLEMENTAL CRANBERRY OPERATIONS 46.2  
ACRES

Flow: 2.0 CUBIC FEET PER SECOND, BEING 1.4 CFS FROM MILL  
CREEK, 0.6 CFS FROM UNNAMED STREAM AND 45.0 ACRE-Feet  
FROM 5 RESERVOIRS

Point of Diversion Location:

SE NE SEC 30, NE NW SEC 29, T 31 S, R 15 W, WM; UNNAMED  
STREAM -1650'S,420'W, MILL CREEK-1230'S,1940'E, BOTH FROM NE  
COR SEC 30.  
RES-1,2 NE NE SEC 30, RES-3 SW NW SEC 29, RES 4 AND 5, -SE NE  
SEC 30, 1-290'S,840'W,2-730'S,520'W,3-1720'S,410'W,4-  
1770'N, 680'W,5-1320'S,530'W, FROM NE COR SEC 30 T 31 S, R  
15 W, WM.



Place of use:		PRIMARY	SUPPLEMENTAL
NW NW	2.7 ACRES		
SW NW	2.2 ACRES		5.6 ACRES
SEC 29			
NE NE	8.9 ACRES		4.0
SE NE	2.2 ACRES		20.6
SEC 30			
T 31 S, R 15 W, WM.			

#### SURFACE WATER AVAILABILITY

Water is likely available in excess of needs for all existing rights 80% 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 existing water rights appurtenant to the lands described in the application. See proposed permit conditions.

#### REPORT CONCLUSIONS:

Based on the Department's review of water availability and Oregon Administrative Rules, water in the amount of 2.0 cfs is likely available for 10 months and stored water of 45 acre-feet available anytime water is available. 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

## PROPOSED PERMIT CONDITIONS

Application: S 73734

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. Period of allowed use: SEPTEMBER 1 THROUGH JUNE 30, PRIMARY CRANBERRY OPERATIONS FROM MILL CREEK AND UNNAMED STREAM, SUPPLEMENTAL CRANBERRY OPERATIONS FROM RESERVOIRS ALL YEAR IF AVAILABLE FROM RESERVOIRS.
3. Rate of use: 2.0 CUBIC FEET PER SECOND, BEING 1.4 CFS FROM MILL CREEK, 0.6 CFS FROM UNNAMED STREAM AND 45.0 ACRE-FEET, BEING 9.0 ACRE-FEET FROM EACH OF 5 RESERVOIRS CONSTRUCTED UNDER APPLICATION R-73733 PERMIT \_\_\_\_\_.
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, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department 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.
  - 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.

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. 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.
10. This right is limited to any deficiency in the available supply of any prior right existing for the same land.
11. The amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
12. Diversion screening or fish passage facilities shall be designed, installed, and operated to Oregon Department of Fish & Wildlife specifications.

Basin:

Water Availability By Month for Exceedance Level 80  
For Water Availability Subbasin 5006000000000000  
And Its Associated Nested Subbasins

15:32

02/07/1994

It. #	W.A. Subbasin	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	500000000000000000	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
2	500600000000000000	YES	YES	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES	YES

Basin:

Detailed Report for Water Availability Subbasin 5006000000000000  
 Water Availability By Month for Exceedance Level 80  
 15:34 02/07/1994

MO	Gross Water Avail	Consumptive Use		Storage Rights		Net Min Flow	Instream Water Rights		Net Water Avail
		Applic	Permit	Applic	Permit		Applic	Permit	
1	3	0	0	0	0	3	0	0	3
2	4	0	0	0	0	4	0	0	4
3	3	0	0	0	0	3	0	0	3
4	2	0	0	0	0	2	0	0	2
5	1	0	0	0	0	1	0	0	1
6	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0
11	1	0	0	0	0	1	0	0	1
12	2	0	0	0	0	2	0	0	2
Stor	2130	0	0	0	0	2130	0	0	2130

Basin:

Detailed Report for the ISWRs  
In Water Availability Subbasin 5006000000000000  
15:34 02/07/1994

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

**PFO CHECKLIST**

Application #: S-73734 Vol \_\_\_\_\_ Subbasin \_\_\_\_\_

Basin: 17-South Coast

WAB: \_\_\_\_\_

Township 31 South Range 15 West Section 29 1/4 1/4 POD - SWNW; POU - NWNW & SWNW  
S. 30 - POD & POU: NENE & SENE

- 1. Completeness checklist verified? Y / N
- 2. Indicators that the process should not continue (ie - protest, items missing, letter to file indicating hold, other) Y / N
- 3. Groundwater review A B C D
  - a. Is second groundwater review necessary? Y / N reason \_\_\_\_\_
  - b. Is the well located in a groundwater limited area? Y / N
- 4. SWW Y /  N Triage Y / N conditions/restrictions Y / N \_\_\_\_\_
- 5. Basin Program limitations? Y /  N OR 1690-517-001 (8)
- 6. Withdrawal? Y /  N season allowed \_\_\_\_\_ Tribs to Floras Lake
- 7. Basin Maps have been checked.  Y / N The River Mile is Tribs to Floras Lake
- 8. Water Availability (50% < July 17, 1992 OR 80% [50% storage] > July 17, 1992) NA
  - a. Notify Ken Stahr Y / N (Q, Duty, or Season) \_\_\_\_\_
- 9. Rate/Duty/Season 1/80 & 2 1/2; IR-Mar. 1 - Oct. 31 & AG-Year Round  
Cranberry Use
- 10. Use Agri. & Irrigation Period of Allowed Use \_\_\_\_\_
- 11. Priority Date(s) October 13, 1993 (TR / IR mail date June 28, 1994)
- 12. B.O.R. project Y /  N contract # \_\_\_\_\_
- 13. TMDL Basin? Y /  N (Tualatin, Yamhill, Pudding) Division 33 Y /  N (Abv Bonn > July 17, 92 //// Blw Bonn > April 18, 94 or June 3, 94)
- 14. Conflicts Y /  N No Conflict
- 15. Objections?  Y /  N WaterWatch, Kalmiopsis PFO different from IR/TR Y / N \_\_\_\_\_
- 16. Conditions (from IR/TR/ or Additional) Y / N (macro series 4 - 7) 3D (Cranberry)
- 17. Land use approval  OK'd needs approval county notified NA
- 18. SIZE Small (<0.1cfs, <9.2AF), Medium (>0.1 or <1.5cfs, >9.2 or <100AF) Large (>1.5 cfs, >100 AF)?
- 19. Watermaster Dist: (1 2 16 18 - NWR) (3 4 5 - NCR) (6 8 9 10 - ER) (11 12 17 - SCR) (14 15  19 -  SWR)
 

<u>Requested</u>	<u>CC: Miller, Nash, Wiener, Hager &amp; Carlson</u>
<u>2.0 cfs</u>	<u>3500 U.S. Bancorp Tower</u>
<u>0.6 cfs - Unnamed stream</u>	<u>111 SW Fifth Ave</u>
<u>1.4 cfs - Mill Creek</u>	<u>Portland, OR 97204-3699</u>
<u>9 AF each (45 AF) - 5 Reservoirs</u>	

Name: [Signature]

Date: 7-11-96

SEP 17 1994

WATER RESOURCES DEPT.  
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.



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

# Oregon

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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 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

# WaterWatch

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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.<sup>1</sup>

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

---

<sup>1</sup> 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.

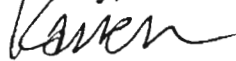
The recent petitions for listing of coastal coho and steelhead populations makes the protection of instream flows even more important for achieving a balance. The protection of instream flow will help to achieve a balanced allocation of water between public instream and other uses in Basin and throughout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

Application No. 73734

Permit No.

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

RECEIVED  
OCT 13 1993

WATER RESOURCES DEPT  
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 & 3.051. 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: \_\_\_\_\_

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: DIANNE L. SNOW  
Title: PLANNER

Date: 10/1/93  
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 OUBRIGHT USE ON THE  
SUBJECT PROPERTY.

### Description of Water Use

**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	

COMPLETED

NC 10-4-95

COMPLETENESS DETERMINATION CHECKLIST

Application #	Review Date	Reviewer
5-73731	10/4/95	GERRY

200 Exam  
170 VSACOR

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

370 Total  
524 Received  
\$154 Refund

- 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.

INDEX

AFTER RECORDING, RETURN TO:

Jonathon J. 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 V9V 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 9<sup>th</sup> day of May, 1991.

GRANTOR:

PACIFICORP CREDIT, INC., an  
Oregon corporation

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

Application No. 73734  
Permit No.

RECEIVED

OCT 13 1993

WATER RESOURCES DEPT.  
SALEM, OREGON

EXHIBIT "A"

PARCEL I:

The North half (N $\frac{1}{2}$ ) and the North half (N $\frac{1}{2}$ ) of the South half (S $\frac{1}{2}$ ) of Section Twenty (20); The North half (N $\frac{1}{2}$ ) and the North half (N $\frac{1}{2}$ ) 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 $\frac{1}{2}$ ) of Section Twenty-eight (28); The North half (N $\frac{1}{2}$ ) 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)

Application No. 73734  
Permit No.



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OCT 18 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)

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EXHIBIT "B"

OCT 13 1993

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 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 }

91 MAR 10 PM 3 25

ELMIE JOY  
CURRY COUNTY CLERK

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

By: *mw*

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

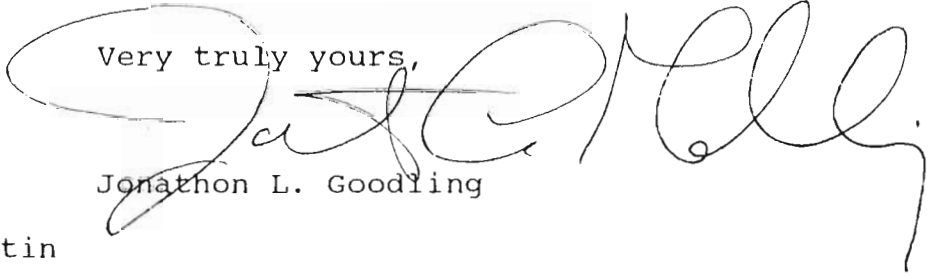
Dear Sir:

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

October 19, 1993

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

REFERENCE: File(s) R-73733, S-73734

We have received your application(s) for a water use permit along with your supporting data, documentation, and fees. A receipt is enclosed here unless you were previously issued one. Your application has been assigned the above referenced file number. Please refer to this number whenever you contact us about your application.

Even though your application has been received, filed and assigned an application reference number, no authorization has been granted to develop your water use. The filing of an application does not create a water right. Water may not be used without a water right permit.

After an application has been accepted for filing, public notification of the application is made, followed by the mandatory 30-day comment period. Thereafter, applications can be considered for processing as time allows.

At present the Water Resources Department has a backlog of several thousand applications for water use permits which has delayed our application processing time. Applications are processed in the order in which they are received.

The processing of an application does not guarantee that a water right permit will be issued. Each application must undergo a specialized analysis called a technical review and a public interest review. There is no way to determine at this time whether your particular proposed water use will be recommended for a permit.



REFERENCE: File(s) - R-73733, S-73734

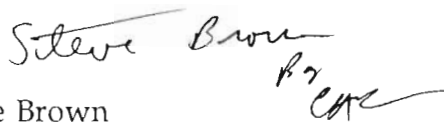
When the report on the technical review is completed and sent to you, a 60-day objection period begins during which you, the applicant, or anyone who has expressed an interest in your proposed water use may communicate to us their disagreement with what we have said in our report on your application. After the 60-day objection period, the Department conducts the public interest review and considers any objections which have been made.

After any objections have been considered, there may follow time to allow parties to resolve conflicts over the proposed water use. In addition, a 30-day protest period may be required. Lastly, it may be necessary to schedule a hearing or send the application to the Water Resources Commission for their review. In most cases no objections are received and the application processing can proceed without further conflict resolution, protest, or hearing.

If your application is recommended for approval and a permit is issued, the use allowed by the permit will be subject to the Basin Program Rules of the Water Resources Commission, instream flow requirements, and the demands of prior right holders, and other conditions to conform the water use to particular standards.

Please contact the Water Rights Section of the Water Resources Department if you have any questions. You may write to us at 3850 Portland Road, Northeast, Salem, Oregon 97310 or you may call 378-3739 in Salem or toll free from within the state 1-800-624-3199.

Sincerely,

A handwritten signature in cursive script that reads "Steve Brown". Below the name, there are two smaller handwritten initials, "R" and "C", which likely stand for "Ry" and "CWC".

Steve Brown  
Manager  
Water Rights Division

cc:CWRE.

# 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 Portland, Oregon 97205 (503) 295-4039  
bc: Jim Mvron

TECHNICAL REVIEW CHECKLIST

FORM-71393

- (1) Application: 73434  
 (2) Review Date: 2-7-94 *D.M. Her*

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>NA</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) NA No oath is required because application was filed before June 5, 1992.

(5) V Application fees:

Examination fee:	\$ <u>200</u>
Recording fee:	\$ <u>324</u>
TOTAL REQUIRED	\$ <u>524</u>
TOTAL SUBMITTED	\$ <u>350</u>
AMOUNT DUE prior to issuance of permit	\$ <u>174</u>
AMOUNT OVERPAID	\$ _____
refund due applicant	\$ _____

*10 = 100  
 20276 = 54  
 122 = 174  
 150 = 150  
 324 = 324*

(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 690-14-150(3)  
 A map or drawing included (non-CWRE)  
 No map or drawing in file



- (8)   /   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)   NA   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     Crawford IRP   use(s)   B   (is/are) classified uses(s) under the   South Coast   Basin Program, OAR 690 -517-001.   (8)
- (14)   /   The application, map and supporting data are complete and free of defects.

Land Use Compatibility:

- (15) As expressed by the Planning Department of   CUIR
- (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   3,041  3,051  ).
- (17)   /   The land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals which have been obtained.
- (18)   /   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)   /   A copy of the constructor's log, if available, for any well already constructed, or required information regarding actual or anticipated construction.
- (21)   /   The report from groundwater section has been received.

For reservoir applications:

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

JUNE 28, 1994

WATER  
RESOURCES  
DEPARTMENT

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

Reference: File S 73734

Hello:

Under separate cover I have enclosed our report of technical review. Your application file was recently reviewed. Before we can process your application further, you need to provide us with additional information, documentation, or fees.

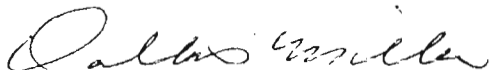
Please send the following:

The technical review reveals that your proposed uses of water are irrigation and agricultural use on 46.2 acres. Prior to issuance of the permit, we will need to receive total fees in the amount of \$ 524.00; being an examination fee of \$200.00, permit recording fee for the irrigation of 46.2 acres of \$ 174.00 and permit recording fee for agricultural use of \$ 150.00. Since you have previously submitted \$ 350.00, an additional amount of \$ 174.00 is required.

After the file is complete and the deadline for objections to the technical review expires, staff will again review the file for objections and further process your application as soon as possible.

Please feel free to contact me if you have any questions and I will be happy to address any concerns you may have.

Sincerely,



DALLAS MILLER  
Water Rights Division

cc: JAMES F. GOSSON , CWRE



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

*Ann  
ORIGINAL ANSWER  
TO MR FOR PERMITS  
PLEASE  
COPY WITH TO WRA  
ENCL TO  
COPY OF LETTER  
TO*

# Oregon

JUNE 28, 1994

WATER  
RESOURCES  
DEPARTMENT

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

**RECEIVED**

**JUL 27 1994**

WATER RESOURCES DEPT.  
SALEM, OREGON

Reference: File S 73734

Hello:

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Sincerely,

DALLAS MILLER  
Water Rights Division

cc: JAMES F. GOSSON , CWRE

<b>APPROVED FOR PAYMENT</b>	
APPROVED BY:	<u>RWA</u>
DATE APPROVED:	<u>7-07-94</u>
INVOICE NO:	_____
DATE PAID:	<u>7-10-94</u>
CHECK NO:	<u>1485</u>
ACCOUNT CODE:	<u>8600</u>



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

COPY CHECK-OFF SHEET FOR TECHNICAL REVIEWS

CC: FILE # 73734

WATERWATCH

ODF&W

WATERMASTER # 77 19

REGIONAL MANAGER - SW

CWRE - James Gossard

DEQ

KEN STAHR

OTHER ADDRESSES: Ort. Assoc. of Nursery Men

Ron Yackin PO Box 218 Roseburg 97470

Kalmiopsis Audubon Society, PO Box 1265, Port Orford 97465

CASEWORKER P Miller

ORIGINAL TO APPLICANT 12/03/93

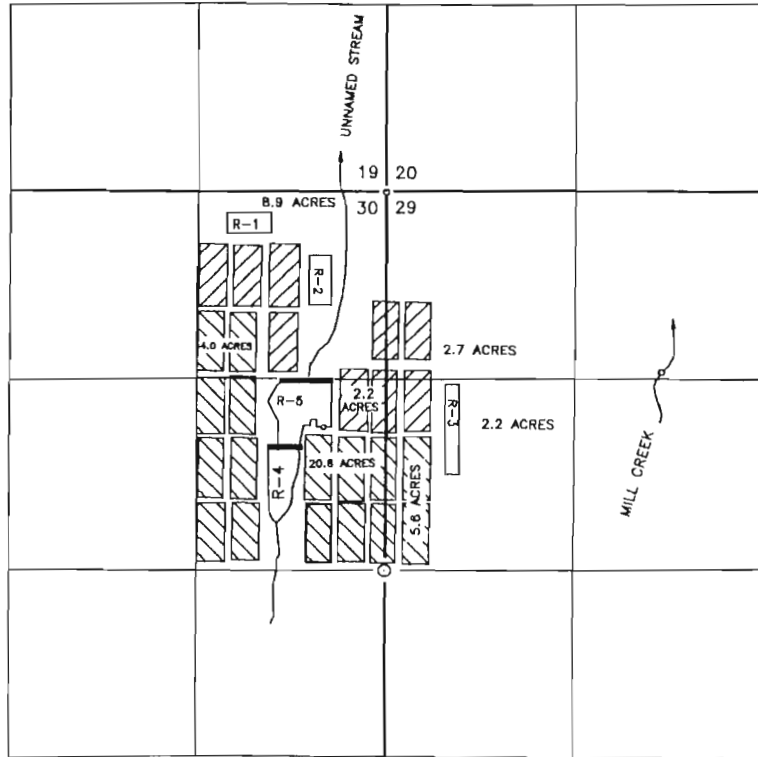
7:TR94

APPLICATION MAP

IN THE NAME OF SEAWIND FARMS, INC.

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

RECEIVED  
OCT 18 1993  
WATER RESOURCES DEPT.  
SALEM, OREGON



*Superseded*

Application No. 73738  
Permit No.

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			NE¼ NE¼	30
RESERVOIR No. 2			NE¼ NE¼	30
RESERVOIR No. 3			SW¼ NW¼	29
RESERVOIR No. 4	1770 FEET SOUTH	680 FEET WEST	SE¼ NE¼	30
RESERVOIR No. 5			SE¼ NE¼	30

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

Certified Water Right Examiner  
#054 WRE  
*James F. Gosson*  
James F. Gosson  
Nov. 19, 1987  
STATE OF OREGON