



WATERWATCH

PROTECTING NATURAL FLOWS IN OREGON RIVERS

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January 10, 2008

Water Rights Section
Water Resources Department
725 Summer Street NE, Suite "A"
Salem, OR 97301

JAN 14 2008

**WATER RESOURCES DEPT
SALEM, OREGON**

Re: Comments, Alternate Reservoir Applications R-87020 & 87021, Coventry Farms, Boulder Creek (trib to Floras Lake) New River Basin

Dear Water Rights Section,

WaterWatch of Oregon opposes the issuance of the two above mentioned alternative reservoir applications for Boulder Creek tributary to Floras Lake because of the potential to harm fishery resources in this river system.

Boulder Creek is part of the New River system. It is a tributary to Floras Lake which flows into the New River. The New River is a unique estuarine and freshwater ecosystem that supports a wide mix of wildlife, fisheries, botanical and cultural resources found in association with few other coastal rivers in the Pacific Northwest. Approximately 200 species of wildlife use the New River area for some parts of their life cycle. Nine species of wildlife that use the area are designated as either threatened or endangered under the federal Endangered Species Act. Moreover, under a recent 2007 federal court case, the Judge invalidated the Bush Administrations attempt to strip coho salmon from ESA protection. The court ruled that coho's legal "threatened" status be reviewed and a new listing decision be finalized within 60 days. Restoration of ESA listing would prohibit actions that harm the species. The importance of the New River watershed has been recognized by the BLM through the designation of the watershed as an Area of Critical Environmental Concern.

In 1994 WaterWatch filed objections to over 70 pending applications in the New River Basin. In late 1995, the Water Resources Department initiated an alternative dispute resolution process in an attempt to resolve issues raised as to the individual and cumulative impacts of the proposed uses on the resources and declining fish populations in the New River system. The New River Alternative Dispute Resolution Team was formed consisting of representatives from the Water Resources Department, Oregon Department of Fish and Wildlife, Department of Environmental Quality, Bureau of Land Management, Cranberry Farmers Alliance, Bandon Cranberry Water Control District, WaterWatch, Croft Lake Association, the Audubon Society and others. After nearly a year of negotiations, a precedent setting agreement was reached. Pending and new applications are all supposed to be subject to the New River Alternative Dispute Resolution Team Agreement on file with the Department. Applications R-87020 and R-87021 are requests for alternative reservoirs on tributaries to Boulder Creek, which is tributary to Floras Lake. There was no mention of the New River conditions in the file, nor any indication that the WRD was proposing to condition the proposed reservoirs (if approved) with the required New River conditions.

In addition to a dearth of information on the New River conditions, we could find no analysis of the impacts to fisheries on this stream system of the proposed reservoirs. The WRD did find that "water was available". However, as Boulder Creek has no instream water rights this finding does not in any way speak to the potential harm that these reservoirs could pose to coho salmon. Regardless of the presence of instream water rights, the state has a duty to consider the needs of fish when looking at any new use of water, including alternative reservoir applications. See OAR 690-410-030(2)(a). The alternative

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reservoir statute directs review of the "potential detrimental impact to existing fishery resources." ORS 537.409. Again, we could find nothing in the file regarding the analysis of the potential impact to existing fishery resources. Nor any indication that the WRD had contacted ODFW with regards to these applications. Given that there are coho salmon on this stream and the fact that water availability is very limited (and doesn't protect flows for instream water rights), it is likely that the requests will in fact pose a detriment to existing fisheries. For this reason, we oppose the issuance of these alternative reservoir requests.

Please keep us advised on your decision on this matter.

Sincerely,


Kimberley Priestley

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