

Oregon Water Resources Department  
Water Rights Division

Water Rights Certificate  
Number 71791

## **Reservoir Mitigation Order**

### *Application History*

A reservoir was constructed prior to January 1, 1995. As evidence of the right to store water, pursuant to ORS 537.407(1), an application was submitted.

Pursuant to ORS 537.407(3)(a) the Department has received information from Oregon Department of Fish and Wildlife demonstrating that the reservoir poses a significant detrimental impact to existing fishery resources.

ORS 537.407(6) specifies that "...the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resource."

Therefore, the Department has determined that with the following additional mitigation condition(s), the injury to existing water rights and/or detrimental impact to existing fishery resources, described above, will be mitigated.

### **Order**

In accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate bypass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream passage for fish.

Therefore, pursuant to ORS 537.407, the use evidenced by certificate 71791 shall be allowed to continue if the injury/negative impact of the reservoir is mitigated as described above.

DATED January 16, 1998

  
\_\_\_\_\_  
Martha O. Pagel  
Director

## Notice of Right to Contested Case Hearing

The owner of the reservoir that is the subject of this mitigation order may request a contested case hearing if the owner disagrees with the order. Most disagreements are settled through a series of informal discussions before the hearing date arrives.

If the department does not receive a request for hearing within the time stated in this notice you have waived your right to a hearing under ORS Chapter 183, unless your failure to request a hearing was beyond your reasonable control, as provided in OAR 137-03-075.

The record of this proceeding to date, including information in Department files on the subject of this proceeding, is automatically part of the contested case record upon default for the purpose of proving a prima facie case.

In order to process your request for a contested case hearing please include the following in writing:

- The reference number (located near the top right corner of the order.);
- Your name, address, and telephone number;
- A detailed description of why the condition(s) proposed in this order is not necessary to protect existing water rights or fishery resources;
- Any citation of legal authority to support your protest, if known.

**Your request for a contested case hearing must be received by the Department no later than 60 days after the date of this order.**

Send your request for a contested case hearing to:

Ponds Program Appeals  
Water Rights Section  
Oregon Water Resource Department  
158 12<sup>th</sup> ST NE  
Salem OR 97310

# Mailing List for MO Copies

Application R-80150

MO Date January 6, 1998

**Original mailed to:**

Applicant:  Is there a new address? Y /  N

- 1. WRD - File # R-80150
- 2. WRD - Watermaster # 16 *Sabrina*
- 3. WRD - Regional Manager (~~not Bob Main~~) NWR  
*Bill Farber*

- Other Commenters:
- 4. ODFW District Biologist:  Steve Mamoyac *Danetta Elhers*
  - 5. WaterWatch of Oregon:  Y
  - 6. Other Commenters  Y \_\_\_\_\_

Other Interested Persons (CWRE, Agent, etc.)

- 7. Charles E. Spear, CWRE #187
- 8. \_\_\_\_\_
- 9. \_\_\_\_\_
- 10. \_\_\_\_\_
- 11. \_\_\_\_\_
- 12. \_\_\_\_\_
- 13. \_\_\_\_\_
- 14. \_\_\_\_\_
- 15. \_\_\_\_\_
- 16. \_\_\_\_\_

CASEWORKER :

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

January 16, 1998

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WATER  
RESOURCES  
DEPARTMENT

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BILL SANDERS  
P.O. BOX 3278  
NEWBERG, OR 97132

Reference: File R-80150

Dear Certificate Holder:

Thank you for your continuing efforts in our program for issuing final water rights certificates for existing ponds and reservoirs. We know it has been a long and complicated process, and we appreciate your cooperation.

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

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

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

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

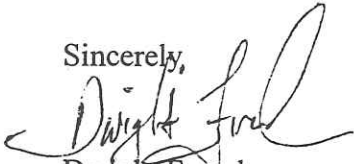


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Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

Once again, thank you for your participation in this program. If you have any questions please call one of the water rights staff listed below. My extension number is 268.

Sincerely,



Dwight French  
Water Rights Section Manager

Enclosures

cc: Watermaster

Russ Klassen	1-800-624-3199	Ext 266
Laura Snedaker		Ext 331
Dallas Miller		Ext 272