

March 10, 2010

State of Oregon
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266

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MAR 12 2010

**WATER RESOURCES DEPT
SALEM, OREGON**

RE: Public Comment for Application #R-87574

To Whom It May Concern:

Thank you for the opportunity to comment on the Application for a Permit to Store Water in a Reservoir submitted by John McCall (#R-87574). We own property adjacent to Mr. McCall and have serious concerns regarding inaccurate information he has supplied in his application documents. Our property is directly south and west of the McCall property.

In 2006, the applicant brought in fill, excavated and constructed the pond that is the subject of this application. He constructed a portion of the pond on property owned by us. At our request he filled in the portion of the pond that was on our property; however, a culvert and fill he install still remain. Since that time a property line dispute has ensued and the matter is still under litigation (State of Oregon Appeals Court – Case A140319).

Prior to the construction of the pond, surface water from wetlands on our property would drain onto the applicant's property approximately 9-10 months each year. Only during the dry summer months would the drainage cease. The water that accumulated on the applicant's property would then be absorbed into the soil in a natural fashion serving as a water source for Hillcrest Creek, a tributary to Ferris Creek. Only during the winter with heavy rain would this surface water drain across the applicant's property directly into Hillcrest Creek.

When constructing the pond the applicant installed two culverts. The first culvert is on our property, which along with fill, channels the surface water into the pond. This fill acts as a dam or levee. The second culvert was installed on the applicant's property and drains water from the pond directly into Hillcrest Creek. The applicant has altered the natural flow of the water from our property with the installation of the culvert and fill. During times of heavy rain the water backs up onto our property causing an increase in water levels within the wetlands. This has a serious affect on our ability to utilize our property. In addition, the applicant has altered the manner in which this surface water enters Hillcrest Creek. As the Oregon Department of Fish and Wildlife and the Nicholi-Wickiup Watershed Council can attest, Hillcrest Creek and Ferris Creek have been the subjects of numerous habitat restoration projects.

During the construction of the pond Mr. McCall did not obtain any permits from local or State agencies. The Department of State Lands (DSL) fined Mr. McCall because he did not obtain a removal/fill permit. So clearly, the State of Oregon considers the pond area to be within a wetland.

During the dry summer months we have witnessed this pond filled to capacity although there is no surface water flowing through the culvert that feeds the pond. We have witnessed garden hoses running from Hillcrest Creek into the pond. We own property upstream and downstream from the pond and have a noticed significant difference in the stream flow of Hillcrest Creek below the pond when the hoses

are present. It is our belief that the applicant pumps water out of Hillcrest Creek during the summer months in order to maintain the water level in the pond; a pond that is strictly for aesthetic purposes.

The application documents also contain inaccurate information and these discrepancies are outlined below:

4. **PROPERTY OWNERSHIP**

The applicant answered YES to the question "Do you own all the land where you propose to divert, transport and use water?" However, this is an incorrect answer. The source of water for the pond is surface water within a wetland on our property. During the construction of the pond the applicant installed a culvert and fill to divert water from our property into his pond. As stated earlier, this culvert and fill were installed on our property. The location of the culvert is identified on the enclosed map.

5. **ENVIRONMENTAL IMPACT**

The applicant answered NO to the question "Is this project in a wetland?". Again, this is an incorrect answer. If the project is not located within a wetland then why did the Department of State Lands fine Mr. McCall for not obtaining a Removal/Fill permit from that agency?

LAND USE INFORMATION

B. Description of Proposed Use

The applicant identified the source of water is "Reservoir/Pond" when in fact the source of water feeding his pond is surface water from wetlands.

In addition, the location of the property line identified by Mr. McCall on the submitted site plan is inaccurate. Please refer to the enclosed map for an accurate rendering of the property lines. Regardless of the pending property dispute, we are still the legal owners of record despite Mr. McCall's claim of ownership.


We ask that you deny the application based on the following:

1. The applicant is not in ownership of all of the property that is the subject of this application.
2. The pond/reservoir is within acknowledged wetlands.
3. The project may be detrimental to the health of both Hillcrest Creek and Ferris Creek and the habitat that they provide.

This letter should be included in the record as our testimony and we should be considered a party to any hearing and be entitled to notice of future hearings or proceedings. Please provide us with a copy of the decision in this matter.

Sincerely,


James Michael Bunch


Jennifer J. Bunch

92167 KC Creek Rd
Astoria, OR 97103
(503) 458-5361

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McCall

Bunch

HILLCREST CREEK

Pond

Property Line

Wetlands

Wetlands

Culvert Location

Wetlands

Wetlands

Bunch

Surface Water Drainage

Hillcrest Ln

KC Creek Rd

Alternate Reservoir Applications (ORS 537.409)

For alternate reservoir applications filed under ORS 537.409, the public is invited to comment within 60 days of this notice. The law provides that within 60 days after the Department provides public notice of the application, any person may submit detailed, legally obtained information in writing, requesting the Department to deny the application for a permit on the basis that the reservoir:

- (A) Would result in injury to an existing water right; or
- (B) Would pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife.

Such comments must be submitted on or before April 10, 2010.

R-87572
TRUEBLOOD, NANCY
1290 ASH CREEK RD
RIDDLE OR 97469
POD: 1 MITCHELL CREEK > SHOESTRING CREEK
NE 1/4 SW 1/4 Section 31T 30.00S R 5.00W WM
Douglas County
1.0 A for MULTIPLE PURPOSE

R-87574
MCCALL, JOHN
40942 HILLCREST LOOP RD
ASTORIA OR 97103
POD: 1 RUNOFF > HILLCREST CREEK
NW 1/4 NE 1/4 Section 26T 8.00N R 8.00W WM
Clatsop County
0.26 A for MULTIPLE PURPOSE

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