

FAX COVER SHEET

TO	Oregon Water Resources Department
COMPANY	
FAX NUMBER	15039860901
FROM	Brian Posewitz
DATE	2010-03-07 06:01:46 GMT
RE	Comments on R-87561 (Mostul)

COVER MESSAGE

Please see attached comments on alt. reservoir application referenced above.

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Application: R87561 (Burl Mostul)	)))	ADVERSE COMMENTS, REQUEST FOR PARTY STATUS AND PUBLIC RECORDS REQUEST
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Charles and Deborah Noble ("Noble") hereby submit the following adverse comments, request for party status and public records request regarding the above referenced application. These comments are timely. Although the public notice said comments were due March 6, 2010, that was a Saturday, making the comments due March 8, 2010.

INTERESTS OF NOBLE

Noble owns and resides on property near Beavercreek, Oregon. A tributary to Beaver Creek runs through Noble's property. Noble desires healthy native fish populations in Beaver Creek and its tributaries because the presence of native fish in the tributary on Noble's property would enhance Noble's use and enjoyment of the property. Noble has invested considerable amounts of money to improve fish habitat on Noble's property and to improve fish habitat and passage in downstream portions of the tributary that runs through Noble's property. Noble also desires the presence of healthy native fish populations in Beaver Creek and the Willamette River because healthy fish populations in the vicinity of Noble's property enhance Noble's use and enjoyment of their property and because Noble enjoys knowing that such fish populations exist.

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COMMENTS

Pursuant to ORS 537.409(5), Noble requests that the Department deny the above application on grounds the proposed reservoir poses a significant detrimental impact to existing fishery resources. Fish distribution maps of the Oregon Department of Fish and Wildlife ("ODFW") show that fish, including native cutthroat trout, are present in Beaver Creek and its tributaries.

The proposed reservoir, alone and cumulatively in combination with other reservoirs in the Beaver Creek watershed, will pose a significant detrimental impact to existing fishery resources by reducing flows in Beaver Creek. Flow reduction limits fish habitat and contributes to adverse warming of the waters in warmer months. Even during periods of high flows in the Beaver Creek system, flow reduction has a detrimental impact on habitat formation. The proposed reservoir also will have a significant detrimental impact on existing fishery resources if it is allowed to release warmed water during summer and/or early fall months and if that water reaches Beaver Creek or any tributary to Beaver Creek.

Without limiting the request for denial of the permit, if the requested permit is issued, it should be conditioned in the following ways:

- a. The permit should expressly require construction outside of any stream channel, including any intermittent stream channel.
- b. The permit should require measuring devices at the point of diversion sufficient to determine compliance with volume limitations and seasonal limitations on diversion.

c. The permit should prohibit releases of stored water from June through September to avoid adverse warming impacts on downstream waterways.

REQUEST FOR PARTY STATUS

To the extent Noble is not already a "party" that would be "affected" by allowance of the proposed permit, Noble hereby requests to participate before the Department as a "party" in this matter. Noble will be affected by the proceeding because the outcome will impact the fish populations in which Noble has an interest, as described above.

PUBLIC RECORDS REQUEST

Noble requests copies of all documents related to the above application, including but not limited to copies of all comments submitted by any other person, organization or agency, except to the extent such documents may be obtained via the Department's Internet website. Copies should be delivered to the undersigned counsel. The undersigned counsel will pay all reasonable copying charges upon receiving an estimate of such charges from the Department.

DATED: March 5, 2010.

By *Brian Posewitz*
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