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To:

Name: Attn: 87334

Company: Oregon Water Resources Dept

From:

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Comment:

Please see the attached comments.

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WATER RESOURCES DEPT
SALEM, OREGONBEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Application: R87334 (Pat Voigt/Ricco Ranch)	)))	COMMENTS, REQUEST FOR PARTY STATUS AND PUBLIC RECORDS REQUEST
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WaterWatch of Oregon, Inc. ("WaterWatch") hereby submits the following comments, request for party status and public records request regarding the above referenced application.

As a preliminary matter, WaterWatch notes that these comments are timely. Although 60 days from the public notice date was January 17, 2009, that day was a Saturday and the following Monday, January 19, was a state holiday (Martin Luther King Day). Therefore, the final day of the comment period is January 20, 2009, which is date on which these comments are being submitted.

COMMENTS

Pursuant ORS 537.409(5), WaterWatch requests that the Department deny the application on grounds the reservoir poses a significant detrimental impact to existing fishery resources. The reservoir is located on a tributary to the mainstem John Day River ("River") near Prairie City, Oregon. The River supports fish including wild spring Chinook salmon and wild summer steelhead, the latter of which are listed as a threatened species under federal law and as a sensitive species under state law. The tributary on which the reservoir is located also may support fish populations.

The reservoir, alone and cumulatively in combination with other reservoirs, including reservoirs maintained by the same applicant and subject to related applications,

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would pose a significant detrimental impact to existing fishery resources by impairing fish passage in the tributary, by reducing flows in the tributary and in the River, and, most significantly, by contributing to warming of water in the tributary and the River. Even if a permit for the reservoir is conditioned to allow storage only during cooler weather, the reservoir still will contribute to warming of the tributary and the River because, according to the application, the reservoir is in the stream channel. Thus, even if flows during warmer months are not stored, they will be slowed and exposed to thermal warming as a result of the increased surface area created by the reservoir. The temperature impact is particularly significant because the River in the area at which the tributary enters already is too warm to meet water quality standards designed to protect salmon, steelhead and trout during rearing and migration.

If the proposed application is not denied, it should be conditioned in several ways. First, any permit should be conditioned to prohibit storage during periods when low flows are a limiting factor for fish and to preserve peak flows important to fish and their habitat. Second, to prevent adverse temperature impacts, the permit should require that the reservoir be located away from the stream channel so that the tributary does not flow through the reservoir during times when storage is not permitted. Third, the permit should prohibit release of water from the reservoir during times when the reservoir water is likely to be warmer than water in the tributary and the River. Fourth, the permit should be conditioned to prohibit any impoundment or diversion device from impairing fish passage relative to the passage that would be present at the site if the stream were in its natural condition. Fifth, the permit should require measuring devices and reporting sufficient to ensure practical and

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accurate determination of whether conditions on storage volumes and storage seasons are met.

REQUEST FOR PARTY STATUS

To the extent WaterWatch is not already a "party" that would be "affected" by allowance of the proposed permit, WaterWatch hereby requests to participate before the Department as a "party" in this matter. WaterWatch will be affected by the proceeding because WaterWatch represents public interests in restoring and protecting instream flows for the benefit of benefit fish, wildlife and recreation. WaterWatch also works to ensure that water allocation decisions, including decisions regarding permits for storage of water in reservoirs, adequately protect fish, wildlife and recreation. WaterWatch has invested time and money in pursuing these purposes and its investment would be harmed by allowance of the proposed permit. WaterWatch also represents the interests of its members, some of whom use and enjoy, and will use and enjoy in the future, the waterways that would be affected by the proposed permit.

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PUBLIC RECORDS REQUEST

WaterWatch 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. 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: January 20, 2009.

By *Brian Posewitz*
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