

Kerry Kavanagh

From: Brian Posewitz <brianposewitz@comcast.net>
Sent: Monday, October 15, 2012 4:37 PM
To: Kerry Kavanagh
Subject: R87825 - Comments
Attachments: 121015 Comments (R87825 - Marciel).pdf

Hi Kerry,

According to the online files, you are the caseworker for the above application. Please consider the attached comments. These are just on behalf of myself. Than you.

Brian

Brian Posewitz
8508 S.E. Eleventh Avenue | Portland, Oregon 97202
Phone: 503-432-8249 | Fax: 503-433-1004
Email: brianposewitz@comcast.net

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WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Application: R-87825
(Mary Marciel)

**COMMENTS ON ALTERNATE
RESERVOIR APPLICATION**

Please consider the following comments on the above reservoir application.

(These comments are timely because the last day of the comment period, Oct. 13, 2012, was a Saturday, which means the comments were not due until Monday, October 15.)

1. The application is internally inconsistent about whether the proposed reservoir will be located in a stream channel. The portion completed by the applicant (p. 3) says the reservoir will be in the channel. The portion completed by ODFW says the reservoir will not be in a stream channel. As a result of the inconsistency, the application fails to show that the proposed use will not injure existing water rights or pose significant detrimental impacts to existing fishery resources because it is unclear whether a premise of the watermaster and ODFW portions of the application is that the reservoir will be off-channel.

2. If the analysis of potential injury and fish impacts (by the watermaster and ODFW) assume the reservoir will be off-channel, then that assumption should be made explicit through a condition in the permit. The language of such a condition could be substantially similar to the following:

The reservoir shall be constructed and maintained outside the channel of any stream, perennial or intermittent, such that stream flow not diverted or stored under the permit will pass the reservoir site without going through the reservoir.

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bearing waters. The application therefore fails to show, as it must, that the reservoir will not have a significant detrimental impact to existing fishery resources.

5. Even if the reservoir is located off-channel, the permit should be conditioned to prohibit releases of water from the reservoir during months when downstream waters are water quality limited for temperature or other pollutants. Water in the reservoir is likely to be warmer and/or more polluted than downstream waters during those times such that releases from the reservoir could cause significant detrimental impacts to existing fishery resources by exacerbating temperature and/or pollution problems.

6. The portion of the application completed by the watermaster should specify the limited fill period to prevent injury to existing water rights, and any permit issued should conform to that limitation period.

DATED: October 14, 2012.

By *Brian Posewitz*
BRIAN J. POSEWITZ
8508 SE Eleventh Avenue
Portland, OR 97202
Telephone: (503) 432-8249
Facsimile: (503) 432-8427
Email: brianposewitz@comcast.net

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