WaterWatch
RIVERS NEED WATER

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WATER RESOURCES DEPT.
SALEM, OREGON

Via FAX and Regular Mail

July 22, 1997

Water Rights Section
Water Resources Department
158 12th Street NE
Salem, OR 97310

RE: Comments, Expedited Reservoir Applications in the Rogue River Basin:
Bear Creek Subbasin: 83136, 83436, 83437, 83394, 83314, 83449, 82667, 82896, 82898, 82938, 83069, 83089, 82965, 82966, 82995
Sucker Creek: 83002, 83166, 882818, 83012, 83024, 83264
Little Applegate: 83474, 83110, 83137, 82038
Applegate: 83028, 82137, 83429, 83050, 83036, 82998, 83066, 83142, 83059, 83068, 83118
Little Butte Creek Subbasin: 83140, 83141, 83313, 82933, 82935, 82936, 82937, 82960, 82967, 83090

Dear Water Rights Section:

WaterWatch requests that the Department deny the above listed reservoir requests on the basis that, if issued, they would result in injury to instream water rights and would pose a significant detrimental impact to existing fishery resources.

I. Summary of Facts:

a. Water Availability: There is no water available for further appropriation for these requested reservoirs. Bear Creek, Sucker Creek, the Little Applegate River, the Applegate River and Little Butte Creek and their tributaries are seriously overappropriated as is evidenced by attached water availability tables. *See Attachment 1, Water Availability Tables generated from WRD's WRIS.* It is important to note that the water availability tables for these creeks do not account for the water appropriated by these "existing" reservoirs.

b. Instream Water Rights: Instream water rights[1] and/or pending senior instream water rights[2] exist on all of these streams. These rights are not being met. Flows at the mouth of the Applegate River are not sufficient to meet the instream water right at least half of the time during the months June through November. *See Attachment 2, Report of Quantificaiton of Unmet Instream Flow Needs, OCSRI-WRD Measure 6, June 1997.* The instream water right at the mouth of the Little Applegate is only met more than half of the time

[1] Including 66612, 66613, 66614, 72673, 72702, 72670, 59820, 59818, 62323, 73050, 59822, 72681, 72682

[2] Including 70993, 70982, 71622, 71028

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during February. *Id. at 6.* Flows are insufficient to satisfy the instream water rights on Bear Creek at least half of the time during all months except April and May. *Id.* The flows on Jackson and Emigrant Creeks, tributaries to Bear Creek, are not met at least half of the time during all months.*Id.* Streamflows at the mouth of Little Butte Creek are insufficient to satisfy the instream water right at least half of the time during the months July through November.*Id.* Flows in Lake Creek and the upper reaches of the North Fork Little Butte Creek are insufficient to meet the instream water rights during 12 and 10 months of the year, respectively.

c. Fishery Resources: The aforementioned creeks support a wide variety of fish life, including coho and winter steelhead. Both species are in serious decline. Coho are a state sensitive species. Coho were petitioned for listing under the Federal Endangered Species Act. In April of 1997, the National Marine Fisheries Service decided not to list coho as threatened (for now) based largely upon representations and commitments made in the Oregon Coastal Salmon Restoration Initiative (OCSRI) that the state, including the WRD, would work towards the recovery and restoration of coastal salmon. Though coho were not listed in April, NMFS can still list coho as threatened or endangered at any time. Winter steelhead have also been petitioned for listing under the federal ESA.

II. Objections to applications on Bear Creek, Sucker Creek, Little Applegate River, Applegate River, Little Butte Creek and their tributaries.

1. The proposed reservoirs will result in injury to instream water rights.

As noted, the affected streams and their tributaries are overappropriated most, if not all, months of the year. Moreover, as was found by the WRD in their own assessment under the OCSRI, most instream water rights on these streams are not being met. *See Attachment 2, at page 6.* See summary of facts above.

Given that instream water rights are already not being met, any further use will exasperate the situation. The result is that the instream water rights will not get the water they are legally entitled to and thus will be "injured" if the Department issues these permits.

2. Water is not available for the proposed reservoirs

As is evidenced from the attached water availability tables, all the rivers and streams in question are overappropriated most, if not all, months of the year. *See attachment 1.* Moreover, the existing water availability information does not even take the reservoirs in question into account; if it did, the streams would be even more overappropriated. To put it simply, these rivers and streams cannot support any more uses than those that already have existing water rights.

3. The reservoirs pose a significant detrimental impact to existing fishery resources

The aforementioned reservoirs would decrease flows needed for imperiled coho and

steelhead populations. As the Department is well aware, both coho and steelhead were proposed for issuance under the federal Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) decided not to list the coho salmon (for now), not because of the state of the fish but because of promises of "restoration" by the state of Oregon in both the Oregon Coastal Salmon Restoration Initiative (OCSRI) and in a MOU between the state and the NMFS. The adoption and fulfillment of instream water rights was a major "tool" identified by the state to help restore salmon populations.

Instream water rights are already not being met. This means the needs of fish are already not being met. Given that these reservoir permits, if issued, will reduce flows even more, these proposed uses pose a "significant detrimental impact to fishery resources". For this reason, these applications should be denied.

III. Conclusion

Given that there is no water available for further appropriation, that permitting the reservoirs will cause injury to instream water rights and that the uses will have a significant detrimental impact to existing fishery resources, all of these applications should be denied.

Sincerely,

Kimberley Priestley
Legal/Policy Analyst

cc: Nancy Couch, ODFW

Attachment 1

LIMITING WATER AVAILABILITY SUBBASINS
Water Availability Subbasin: 0102679293000000
Basin: ROGUE
Exceedance Level: 80
Time: 10:33 Date: 07/18/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0102670000000000	ROGUE R ab GRAVE CR	NO	-901.0
2	0102670000000000	ROGUE R ab GRAVE CR	NO	-601.0
3	0102670000000000	ROGUE R ab GRAVE CR	NO	-521.0
4	0102670000000000	ROGUE R ab GRAVE CR	NO	-647.0
5	0102679293000000	LITTLE BUTTE CR @ mouth	YES	46.3
6	0102670000000000	ROGUE R ab GRAVE CR	NO	-1081.0
7	0102670000000000	ROGUE R ab GRAVE CR	NO	-1147.0
8	0102670000000000	ROGUE R ab GRAVE CR	NO	-1662.0
9	0102670000000000	ROGUE R ab GRAVE CR	NO	-1618.0
10	0102670000000000	ROGUE R ab GRAVE CR	NO	-470.0
11	0102670000000000	ROGUE R ab GRAVE CR	NO	-2240.0
12	0102670000000000	ROGUE R ab GRAVE CR	NO	-1130.0
Stor	0102679293000000	LITTLE BUTTE CR @ mouth	YES	62500.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

LIMITING WATER AVAILABILITY SUBBASINS
Water Availability Subbasin: 0102679291000000
Basin: ROGUE
Exceedance Level: 80
Time: 10:31 Date: 07/18/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0102670000000000	ROGUE R ab GRAVE CR	NO	-901.0
2	0102670000000000	ROGUE R ab GRAVE CR	NO	-601.0
3	0102670000000000	ROGUE R ab GRAVE CR	NO	-521.0
4	0102670000000000	ROGUE R ab GRAVE CR	NO	-647.0
5	0102679291000000	BEAR CR @ mouth	NO	-61.5
6	0102670000000000	ROGUE R ab GRAVE CR	NO	-1081.0
7	0102670000000000	ROGUE R ab GRAVE CR	NO	-1147.0
8	0102670000000000	ROGUE R ab GRAVE CR	NO	-1662.0
9	0102670000000000	ROGUE R ab GRAVE CR	NO	-1618.0
10	0102670000000000	ROGUE R ab GRAVE CR	NO	-470.0
11	0102670000000000	ROGUE R ab GRAVE CR	NO	-2240.0
12	0102670000000000	ROGUE R ab GRAVE CR	NO	-1130.0
Stor	0102679291000000	BEAR CR @ mouth	YES	4420.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

LIMITING WATER AVAILABILITY SUBBASINS
Water Availability Subbasin: 0101217110000000
Basin: ROGUE
Exceedance Level: 80
Time: 10:32 Date: 07/18/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0101210000000000	ILLINOIS R @ 14378000	NO	-410.0
2	0101217110000000	SUCKER CR @ mouth	YES	85.9
3	0101210000000000	ILLINOIS R @ 14378000	NO	-20.4
4	0101210000000000	ILLINOIS R @ 14378000	NO	-30.3
5	0101210000000000	ILLINOIS R @ 14378000	YES	15.7
6	0101217110000000	SUCKER CR @ mouth	NO	-5.7
7	0100000000000000	ROGUE R @ mouth	NO	-425.0
8	0100000000000000	ROGUE R @ mouth	NO	-1204.0
9	0100000000000000	ROGUE R @ mouth	NO	-1193.0
10	0101000000000000	ILLINOIS R @ mouth	NO	-141.0
11	0101210000000000	ILLINOIS R @ 14378000	NO	-1214.0
12	0101210000000000	ILLINOIS R @ 14378000	NO	-611.0
Stor	0101217110000000	SUCKER CR @ mouth	YES	64400.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

LIMITING WATER AVAILABILITY SUBBASINS
Water Availability Subbasin: 0102678820000000
Basin: ROGUE
Exceedance Level: 80
Time: 10:35 Date: 07/18/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0102670000000000	ROGUE R ab GRAVE CR	NO	-901.0
2	0102670000000000	ROGUE R ab GRAVE CR	NO	-601.0
3	0102670000000000	ROGUE R ab GRAVE CR	NO	-521.0
4	0102670000000000	ROGUE R ab GRAVE CR	NO	-647.0
5	0102678820000000	LITTLE APPLEGATE R @ mouth	NO	-25.9
6	0102670000000000	ROGUE R ab GRAVE CR	NO	-1081.0
7	0102670000000000	ROGUE R ab GRAVE CR	NO	-1147.0
8	0102670000000000	ROGUE R ab GRAVE CR	NO	-1662.0
9	0102670000000000	ROGUE R ab GRAVE CR	NO	-1618.0
10	0102670000000000	ROGUE R ab GRAVE CR	NO	-470.0
11	0102670000000000	ROGUE R ab GRAVE CR	NO	-2240.0
12	0102670000000000	ROGUE R ab GRAVE CR	NO	-1130.0
Stor	0102678820000000	LITTLE APPLEGATE R @ mouth	YES	749.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 0102678830000000
Basin: ROGUE
Exceedance Level: 80
Time: 10:38 Date: 07/18/1997

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0102670000000000	ROGUE R ab GRAVE CR	NO	-901.0
2	0102670000000000	ROGUE R ab GRAVE CR	NO	-601.0
3	0102670000000000	ROGUE R ab GRAVE CR	NO	-521.0
4	0102670000000000	ROGUE R ab GRAVE CR	NO	-647.0
5	0102670000000000	ROGUE R ab GRAVE CR	YES	165.0
6	0102670000000000	ROGUE R ab GRAVE CR	NO	-1081.0
7	0102670000000000	ROGUE R ab GRAVE CR	NO	-1147.0
8	0102670000000000	ROGUE R ab GRAVE CR	NO	-1662.0
9	0102670000000000	ROGUE R ab GRAVE CR	NO	-1618.0
10	0102670000000000	ROGUE R ab GRAVE CR	NO	-470.0
11	0102670000000000	ROGUE R ab GRAVE CR	NO	-2240.0
12	0102670000000000	ROGUE R ab GRAVE CR	NO	-1130.0
Stor	0102678800000000	APPLEGATE R @ 14366000	YES	67400.0

Enter (1) to CONTINUE; (2) to WRITE the Table:

Attachment 2

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Oregon Coastal Salmon Restoration Initiative
Water Resources Department Measure 6

REPORT ON QUANTIFICATION OF UNMET INSTREAM FLOW NEEDS

The Water Resources Department has evaluated streamflow levels for each of the instream water rights in the North Coast, Mid Coast, South Coast, Umpqua and Rogue Basins. The purpose of the evaluation was to determine the extent to which instream water rights are not met, to identify the months during which the rights are not met, and to quantify the difference between streamflows and each of the instream water rights during each month of the year. Tables and charts showing monthly natural streamflows, consumptive uses and storage, instream water rights, and flow deficits for each instream water right are attached.

The Department's water availability model was used to perform the analysis. In developing the model, staff divided each major river basin into sub-areas which are called water availability basins (WABs). The estimated natural flow is that quantity of water which, on a long term basis, would flow from the WAB in the absence of any consumptive uses or storage. The WABs are "nested," each WAB being included within all other downstream WABs. Thus, the consumptive use shown for each WAB includes all consumptive uses upstream of the lowest point in that WAB.

The Department used the 50 percent exceedance streamflow level in determining if instream water right levels are met. The 50 percent exceedance value is the flow level that would be equaled or exceeded half of the time and corresponds to the median value. The natural flow level is calculated for each month of the year. Natural streamflow is the flow that would occur without any consumptive uses or storage on the stream. Estimated consumptive use in and above the WAB and monthly values for any instream water rights in the WAB were subtracted from the monthly natural flow levels. If there is more than one instream water right within a WAB, the highest monthly flow levels for the instream water rights are used. A positive result indicates that the instream water right is satisfied as least 50 percent of the time during the given month. A negative value indicates that the instream water right is met less than 50 percent of the time. On some streams, the instream water right levels exceed natural flows and could not be met 50 percent of the time without flow augmentation.

Many stream reaches have more than one instream water right protecting flows. As instream water rights have been established during the last 40 years, the level of protection afforded some streams has been increased through the establishment of additional instream water rights on streams with earlier

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instream rights. Generally, the result has been one instream water right protecting an increment of the needed flow and a second instream right with a later priority date protecting an additional quantity of flow. For those stream reaches on which there is more than one instream water right, the higher of each of the monthly flow values was used in determining if streamflows are sufficient to meet the instream flow requirement.

The following summary table lists the number of stream reaches on which there are instream water rights, by major river basin, and identifies the extent to which streamflows are sufficient to meet the instream water right levels 50 percent of the time.

	Number of months instream water rights met			
	12	8-11	4-7	0-3
North Coast Basin	54	48	26	6
Mid Coast Basin	22	51	21	8
South Coast Basin	71	41	83	17
Umpqua Basin	12	46	42	3
Rogue Basin	28	19	66	41

North Coast Basin

Certificates have been issued or applications are being processed for instream water rights on 134 stream reaches in the North Coast Basin. Annual consumptive use and storage accounts for less than one percent of total annual natural yield in 103 of the streams with instream water rights. Consumptive use and storage accounts for one to five percent of natural yield on 16 streams.

The use and storage of water have a significant effect on streamflows in the South Fork Necanicum River,[1] Peterson Creek tributary to the Nehalem River,[2] the Trask River and major tributaries[3], and the Tillamook River[4] and two tributaries (Killiam[5] and Fawcett[6] Creeks).

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1 WAB #0802000000000000
2 WAB #1004000000000000
3 WAB #1600000000000000
4 WAB #1700000000000000
5 WAB #1701210000000000
6 WAB #1701220000000000

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Flows in Peterson Creek, the Middle Fork of the North Fork Trask River,[7] and Fawcett Creek are not sufficient to satisfy the instream rights during any month of the year on a 50 percent exceedance basis. Consumptive use and storage in these streams accounts for 29 percent of natural flows in Peterson Creek where most of the uses are for industrial purposes, 55 percent in the Middle Fork of the North Fork Trask River where the primary use is by the City of Hillsboro, and 81 percent in Fawcett Creek where the primary use is by the City of Tillamook.

Mid Coast Basin

Certificates have been issued or applications are being processed for instream water rights on 102 stream reaches in the Mid Coast Basin. Few streams in the basin have significant uses affecting natural flow levels. Annual consumptive use and storage accounts for less than one percent of total annual natural yield in 90 of the streams with instream water rights. Consumptive use and storage accounts for one to five percent of natural yield on nine streams.

The use and storage of water have a significant effect on streamflows in Olalla[8] and Mill[9] Creeks (tributaries to the Yaquina River). Consumptive use and storage on Olalla Creek account for 13 percent of annual yield. The predominate use of Olalla Creek is for industrial and manufacturing purposes. The instream water right on Olalla Creek is not met 50 percent of time during eight months of the year. The instream water right is equal to the natural flow during the months May through October. A deficit occurs with any out-of-stream use during this six-month period.

Flows in Mill Creek are not sufficient to satisfy the instream water right 50 percent of the time during nine months of the year. Consumptive use and storage on Mill Creek account for 37 percent of annual discharge. Mill Creek is a source of water for the City of Toledo. The instream water right level is equal to natural flow during April through June and September through November.

South Coast Basin

Certificates have been issued or applications are being processed for instream water rights on 212 stream reaches in the South Coast Basin. Most streams in the basin have small quantities or no uses affecting natural flow levels. Annual consumptive use and storage accounts for less than one percent of total annual

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7 WAB #1602223000000000
8 WAB #0601000000000000
9 WAB #0602000000000000

natural yield in 181 of the streams with instream water rights. Consumptive use and storage accounts for one to five percent of natural yield on 17 streams.

Consumptive use and storage account for a significant amount of natural flow in Tenmile Creek[10] where an application for permit by the Coos Bay-North Bend Water Board is pending. In addition, an application for permit from Eel Creek,[11] a tributary of Tenmile Creek, by the Lakeside Water District is pending. With these uses of water, the 50 percent exceedance flow would be less than provided for under the instream water rights during all months of the year on Tenmile Creek and during seven months of the year on Eel Creek.

Ferry,[12] Sevenmile,[13] Bear,[14] and Rink[15] Creeks, all tributary to the Coquille River, have significant amounts of use. Irrigation and agricultural uses account for about two-thirds of the use from these streams. Most of the remainder is municipal use by the cities of Bandon and Coquille. The 50 percent exceedance flow is insufficient to meet the instream water rights on Rink Creek during all months.

Twomile,[16] Johnson,[17] and Crooked[18] Creeks which flow directly to the Pacific Ocean also support significant amounts of use, virtually all of which is for irrigation and agricultural purposes. The instream water rights on Crooked Creek are not met at least half of the time during all months of the year.

Umpqua Basin

Certificates have been issued or applications are being processed for instream water rights on 103 stream reaches in the Umpqua Basin. The North Umpqua River has only small quantities or no uses affecting natural flow levels. Annual consumptive use and storage accounts for less than one percent of total annual natural yield in 67 of the streams with instream water rights. Consumptive use and storage accounts for one to five percent of natural yield on 14 stream reaches in the Elk Creek and South Umpqua drainages.

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10 WAB #0100000000000000
11 WAB #0101000000000000
12 WAB #1601000000000000
13 WAB #1602000000000000
14 WAB #1603000000000000
15 WAB #1607000000000000
16 WAB #1900000000000000
17 WAB #1700000000000000
18 WAB #1800000000000000

Elk Creek,[19] a tributary of the mainstem Umpqua River, supports a significant amount of domestic, livestock, irrigation and municipal use, particularly above the gage near Drain.[20] Irrigation is the primary use of water from Elk Creek, but none of the individual water rights are for large quantities of water. The municipal rights are held by the cities of Drain and Yoncalla. The instream water rights on these streams are not met at least half of the time during four to six months of the year.

Significant quantities of water are used from Cow,[21] Lookingglass,[22] and Myrtle[23] Creeks, all tributary to the South Umpqua River. The predominate uses of water from Cow Creek are for irrigation and industrial purposes. There is a total of more than 1,000 water rights from Cow Creek for domestic, livestock, irrigation, municipal, and other uses. The instream water right at the mouth of Cow Creek is met at least half of the time during all months except October. The instream water right at the mouth of Windy Creek[24] is not met at least half of the time during May through November.

The predominate uses of water from Lookingglass and Myrtle Creeks are for irrigation and industrial purposes, but there are no large, individual water rights in the drainages. The city of Myrtle Creek holds water rights from the Harrison Young Branch of North Myrtle Creek and Myrtle Creek. The 50 percent exceedance flows are not sufficient to meet the instream water right at the mouth of Lookingglass Creek during the months of July through November. The instream water right is not met at least half of the time during the months July through October.

Rogue Basin

Certificates have been issued or applications are being processed for instream water rights on 154 stream reaches in the Rogue Basin. Annual consumptive use and storage accounts for less than one percent of total annual natural yield in 69 of the streams with instream water rights. Consumptive use and storage accounts for one to five percent of natural yield on 45 streams.

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19 WAB #0105300000000000
20 WAB #0105335100000000
21 WAB #0105742600000000
22 WAB #0105742100000000
23 WAB #0105742500000000
24 WAB #0105742632000000

Consumptive uses and storage account for significant percentages of natural flow in the Applegate River[25], Bear Creek[26], and Little Butte Creek[27] drainages. Most water rights in the Applegate River drainage are small individual irrigation rights, however, the Talent Irrigation District does hold water rights from the Little Applegate River.[28] Flows at the mouth of the Applegate River are not sufficient to meet the instream water right at least half of the time during the months June through November. The instream water right at the mouth of the Little Applegate is only met more than half of the time during February.

Bear Creek supports a large amount of irrigation use and some industrial and municipal uses. The Medford, Talent, and Rogue River Valley Irrigation Districts hold large water rights in the drainage. In addition, there are numerous smaller irrigation rights. The City of Ashland also has municipal water rights from Ashland Creek, a tributary of Bear Creek. Flows are insufficient to satisfy the instream water right on Bear Creek at least half of the time during all months except April and May. The flows on Jackson[29] and Emigrant[30] Creeks, tributaries to Bear Creek, are not met at least half of the time during all months.

There are numerous small irrigation rights and a number of storage rights for irrigation water in Little Butte Creek. In addition, the Medford, Talent and Rogue River Valley Irrigation Districts hold large direct flow and storage rights for flows in Little Butte Creek. The water to be stored is diverted to Howard Prairie Reservoir in the Klamath Basin for use by the districts in the Bear Creek drainage. Streamflows at the mouth of Little Butte Creek are insufficient to satisfy the instream water right at least half of the time during the months July through November. Flows in the Lake Creek[31] and the upper reaches of the North Fork Little Butte Creek[32] are insufficient to meet the instream water rights during 12 and 10 months of the year, respectively.

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25 WAB #0102678000000000
26 WAB #0102679291000000
27 WAB #0102679293000000
28 WAB #0102678820000000
29 WAB #0102679291100000
30 WAB #0102679291500000
31 WAB #0102679293200000
32 WAB #0102679293310000