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JAN - 8 1998

WATER RESOURCES DEPT.
SALEM, OREGON



DEPARTMENT OF
FISH AND
WILDLIFE

December 31, 1997

Mr. Dwight French
Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97310-0210

ROGUE DISTRICT
OFFICE

Dear Dwight:

I have reviewed the comments submitted by applicants regarding their exempt reservoir applications. Based on new information supplied by the applicant, I concur with the comments for the following exempt reservoir applications and have no objection to the removal of ODFW's previous mitigation requirements:

<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>
P-82432	P-82179	P-83099	P-83114 ✓
P-83146 ✓	P-83077 ✓	P-83119 ✓	P-83054
P-83124 ✓	P-83107 ✓	P-83109 ✓	P-83112 ✓
P-83165 ✓	P-82682 ✓	P-82751 ✓	P-82694 ✓
P-82813-1 ✓	P-83127 ✓	P-81818 ✓	P-83087 ✓
P-81152	P-83032 ✓	P-83046	P-83083 ✓
P-83093 ✓	P-83081	P-83098 ✓	P-83097 ✓
P-83096 ✓	P-83094 ✓	P-83092 ✓	P-83085 ✓
P-83082 ✓	P-83073 ✓	P-83108 ✓	P-83133 ✓
P-83134 ✓	P-83153 ✓	P-83147 ✓	P-83136
P-82935	P-74446	P-81156	P-82997 ✓
P-83001 ✓	P-83016 ✓	P-83019 ✓	P-83027 ✓



<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>	<u>Application Number</u>
P-83023 ✓	P-83020 ✓	P-83018 ✓	P-82999 ✓
P-83035 ✓	P-83038 ✓	P-83026 ✓	P-83033 ✓
P-82450 ✓	P-82872	P-82980	P-82933
P-82819 ✓	P-82836 ✓	P-82854 ✓	P-82783 ✓
P-82007 ✓	P-82021 ✓	P-82070 ✓	P-82214 ✓
P-82199 ✓	P-82426 ✓	P-82436 ✓	P-81848 ✓
P-81262 ✓	P-81301 ✓	P-81325 ✓	P-81259 ✓
P-81507 ✓	P-82211 ✓	P-82851 ✓	P-82920 ✓
P-82934 ✓	P-81684 ✓	P-81742 ✓	P-81819 ✓
P-81831 ✓	P-81830 ✓	P-80763 ✓	P-80764 ✓
P-80730 ✓	P-80821 ✓	P-80839 ✓	P-80860 ✓
P-80873 ✓	P-80907 ✓	P-80685 ✓	P-81562 ✓
P-81569	P-82991 ✓	P-81839	P-81812
P-81828	P-80864	P-83314	P-83313
P-83110	P-83050	P-83068	P-82591
P-82998	P-83028	P-82966	P-82930
P-82898	P-82700	P-82667	P-82466 ✓
P-82531 ✓	P-82537 ✓	P-83037 ✓	P-83116
P-82938	P-82965		

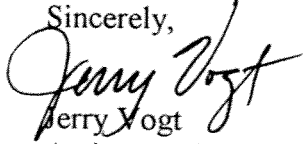
Mr. Dwight French

December 31, 1997

Page - 3

Thank you for the opportunity to respond to these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Vogt". The signature is written in black ink and is positioned above the printed name.

Jerry Vogt
Assistant District Fish Biologist

cc: Bruce Sund, WRD, Grants Pass
Larry Mentee, WRD, Medford
File

Mailing List for Commenter Letter

File #: P-83109

Letter & copies of rebuttal, comments, certificate or notice, and map sent to:

1. Watermaster: _____

2. ODFW District Bio: Jerry Wagt

3. Waterwatch

4. Other: _____

Copies Mailed
By: _____
(SUPPORT STAFF)
on: <u>12-19-97</u>
(DATE)

(Note: Materials mailed only to those individuals/parties that are checked off above.)

Copy of Letter to:

1. WRD File # P-83109



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

December 19, 1997

Jerry Vogt
Oregon Department of Fish & Wildlife
1495 East Gregory Rd.
Central Point, Oregon 97502

Dear Mr. Vogt:

You submitted comments on ponds filed under ORS 537.407 (HB 2153) or under ORS 537.405 (HB 2376). These laws provided an opportunity for the Oregon Department of Fish and Wildlife to comment on how a specific reservoir(s) will cause significant detrimental impacts to an existing fishery resource and allowed members of the public to comment on how the reservoir(s) will cause an injury to an existing water right(s). Based upon review of your comments, the Department prepared notices of proposed mitigation conditions. A notice was mailed to each of the registrants along with a copy of your comments. The registrants were provided an opportunity to submit additional information to the Department explaining how your comments were in error.

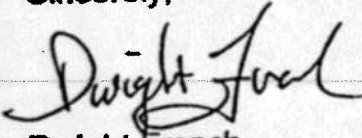
The Department received the attached rebuttals to your comments. If you do not agree with a rebuttal and believe that your comments are still valid, please send a written response to the Department identifying why you disagree with the rebuttal and affirming your position. However, if you agree with the rebuttal you need not respond, unless you determine that it is necessary. In order for us to issue a mitigation order within 180 days of receiving your comments, we need to have your response(s) received by the Department no later than January 7, 1998. If you need an additional day or two to look further at a couple of ponds, please send a request, attention to the appropriate file number.

If you choose to respond, the Department will determine whether a Mitigation Order is required based upon your response and the rebuttal submitted by the registrant. The Mitigation Order, if required, will identify any conditions that must be met in order to protect the fishery resource and/or existing water rights and for the reservoir to be authorized.

If no response to a rebuttal is received, the Department will conclude that you agree with the rebuttal and that a Mitigation Order is not necessary.

If you have any questions, please me at (503) 378-8455, extension 268, or toll free within Oregon at 1 (800) 624-3199.

Sincerely,



Dwight French
Water Rights Manager

Enclosures: Your Comments
Proposed Mitigation Conditions
Rebuttal from Registrant
Copy of Notice of Exempt Pond or Certificate and Map

Dec 10, 1997

Attention Water Resources Dept.

In regards to reference file #: P83109
& Talked to Jake & we needed to send
in a report in regards to our small
pond. It is fed by surface water
from a spring. We do not use
our pond as a water source.
We have irrigation & it is only
used by the wild birds. We do
not live near a creek or river.

Sincerely
Mrs Carl Baxter
6433 Colver Rd.
Talent, Ore 97540

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DEC 12 1997

WATER RESOURCES DEPT.
SALEM, OREGON





Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

November 12, 1997

FILE#: P 83109

CARL A BARTER
BARTER, ESTHER
6433 COLVER RD
TALENT, OR 97540

Dear Reservoir Owner,

You submitted a Notice of Exempt Reservoir under *ORS 537.405 (HB 2376)*. HB 2376 provided an opportunity for the Oregon Department of Fish and Wildlife to comment on how a specific reservoir(s) caused injury to an existing fishery resource. In addition the same law allowed members of the public to comment on how the storage or use of the water caused an injury to an existing water right. This comment period ended on August 1, 1997.

The Department received the attached injury allegation(s) related to your reservoir(s), as provided for in *ORS 537.405*. If you do not agree with the allegation of injury, please submit detailed information to the Department explaining why or how the allegation is in error. Your response must be postmarked no later than *December 10, 1997*.

The Department will review any submission you may make and determine if a Mitigation Order is required. If the Department finds that the allegation is factual and verifiable, the Department will issue a Mitigation Order requiring that the attached conditions, or other conditions that prove to be necessary after reviewing any information that is submitted, be met in order for the reservoir to maintain an exempt status.

If you receive a Mitigation Order, you may request a Contested Case Hearing to contest the findings of the Department and the allegation of injury. Information on how to request a Contested Case Hearing will be provided with the mitigation order, if issued.

If you have any questions, please call the Water Rights Information Group at (503) 378-3739 extension. 499.

Water Right Section

MITIGATION CONDITIONS

File # P- 83109
Date 11-12-97
LKS

Oregon Department of Fish and Wildlife Conditions

- _____ In accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate bypass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream passage for fish. (SMBS)
- _____ Install, maintain, and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the diversion. (SMSS)
- ✓ _____ The reservoir owner is required to by-pass flows from April 1 through October 31. (BPC)

Water Right Related Conditions

- _____ The pond may be filled one time only per year. No diversion of water to storage can occur during times all water rights are not met on the John Day river System. (KR1)
- _____ If required by the Watermaster, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Watermaster (Department). (KR2)
- _____ Live stream flow must be passed when required to satisfy existing water rights. In order to substantiate live flow is being passed, measuring devices may be required. (J)
- _____ Live flow must be by-passed all year. (BSD)
- _____ Any secondary use of stored water is limited each year to the capacity of the reservoir. (BSD2)
- _____ The water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

**ODFW BIOLOGIST COMMENTS FOR
HB 2153 CERTIFICATES
HB 2376 NOTICES**

Date: July 31, 1997

Application # P-83109 Biologist's Name: Jerry Vogt
Certificate # (If applicable) Address: 1495 East Gregory Rd., Central Point
Phone: (541) 826-8774

****Attach additional sheets if necessary**

Please specify which reservoir(s)/ponds(s) the comments pertain to:
*Describe by name, number or Township Range Section and 1/4 1/4 if necessary. If comments refer to all reservoir listed please specify. **Please provide enough information to accurately describe which reservoir the comment(s) pertain to.***

Comments apply to all reservoirs in the application.

Does the reservoir/pond cause a detrimental impact to existing fishery resource. Specify which fishery resource and the evidence which supports that finding. *Please describe for each reservoir listed above. If the water right and the supporting evidence are the same please indicate.*

This reservoir negatively impacts populations of chinook and coho salmon, steelhead and resident trout in the Rogue River. While ODFW has not documented the presence of fish at the POD, this reservoir is above ODFW's instream water right reach on the Rogue River (Certificate 59847, 59848, 59806, 59807, 59816, and 59817). The Rogue River appears on DEQ's 303 (d) list of water quality limited streams due to high summer water temperatures; these high water temperatures reduce salmonid habitat in this stream. Withdrawals of water for this reservoir contribute to existing temperature problems in the Rogue River and injure ODFW's instream water right on this stream.

*******BACK OF PAGE FOR LIST OF CONDITIONS TO MITIGATE INJURY*******

Which of the following conditions are required to mitigate the described injury?

The **reservoir owner** shall: (without ODFW approval)

- (a) install, maintain, and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. *The required screen is to be in place and functional prior to any further diversion of water.
- (b) in accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate by-pass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream and downstream passage for fish.
- (a & b) install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. *The required screen is to be in place and functional prior to any further diversion of water.

The **reservoir owner** shall: (with ODFW approval)

- (a) install, maintain, and operate fish screening device as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. *The required screen is to be in place, functional and approved by an ODFW representative prior to any further diversion of water.
- (b) in accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate by-pass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream and downstream passage for fish. *The required by-pass device is to be in place, functional and approved by an ODFW representative prior to any further diversion of water.
- (a & b) install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. *The required screens and by-pass devices are to be in place, functional and approved by an ODFW representative prior to any further diversion of water.

The **reservoir owner** shall by-pass flows during months when Instream Water Rights are not being met.

Other: (Please specify below)

Because the presence of fish at the POD is unknown, ODFW will not require the applicant to provide fish screens or fish passage. However, to prevent further degradation of stream temperature problems on the Rogue River, and to avoid injury to ODFW's instream water right for that stream, the reservoir owner should be required to by-pass flows from April 1 through October 31.

Rebuttal Y / N

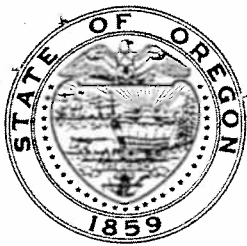
Exempt by WM comments Y / N

COMMENTOR:

WM and/or WM Dist: _____

ODFW Dist: Jerry Vogt

Water Watch: Y / N



Oregon Water Resources Department Notice of Exempt Reservoir

For reservoirs built before January 1, 1995, that:

- Store less than 9.2 acre-feet of water, or
- Have a dam less than 10 feet high.

The deadline for submitting a Notice of Exempt Reservoir is January 31, 1997.

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JAN 24 1997

WATER MASTER
DISTRICT 13

Landowner: Carl O & Esther Baxter
Last name First name MI

Authorized Agent: _____
Last name First name MI

Address: 6433 Colver Rd
Stahel Ore 97540
City State Zip

Phone: 535-2553
Home Work

FAX: _____ E-Mail Address: _____

A. County of use: Jackson . B. River basin (see reverse): Rogue (15) .

C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
38	10	22	NE of SE	4400

D. Name, if any, of reservoir: None . E. Reservoir in existence since: 1/1⁷⁶
MM DD YY

F. Source of water: Spring which flows into N/A
Name of river or creek Name of river or creek

G. Maximum height of dam: N/A feet.

H. Quantity of water stored in reservoir at maximum capacity (see reverse): .002 acre-feet.

I. Water stored in reservoir is used for (see reverse): wildlife + aesthetics

J. Rate and area of use—Refer to chart on the back of this form. For each type of water use listed in Item I., show the quantity of water used and, if applicable, the number of acres on which water is used. N/A

BEFORE YOU SIGN AND SUBMIT THIS APPLICATION . . . HAVE YOU:

Answered each question on this form as completely as possible?

Attached a legible map showing township, section, range, quarter-quarter & tax lot number?

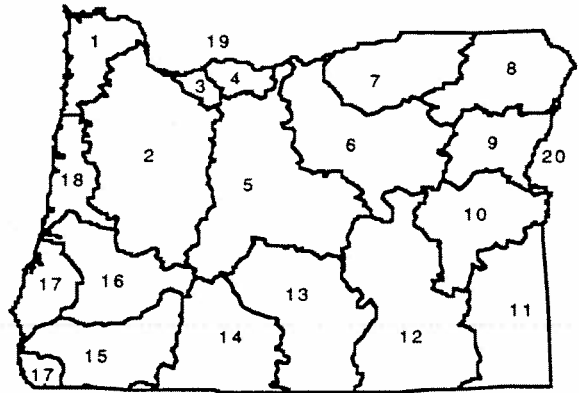
By my signature below, I swear that all statements made and information provided in this application are true to the best of my knowledge.

Carl O & Esther Baxter CARL O BAXTER & ESTHER BAXTER 1/23/97
(Signature of Landowner/Agent) (Printed name and title) (Date)

For Department Use P-83109 File # _____ Date received _____ 10-95

Oregon's major river basins:

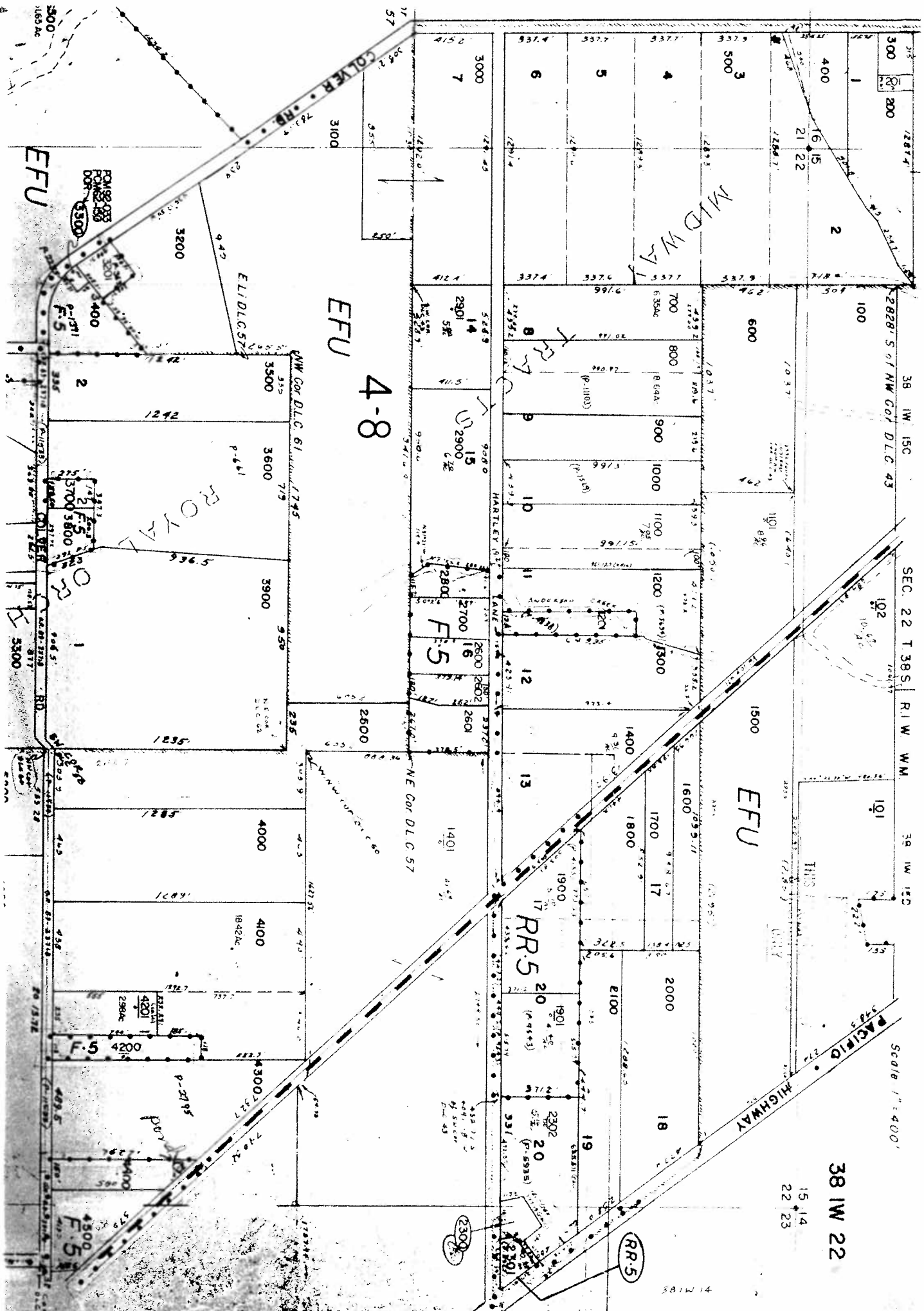
- | | | |
|---------------|-----------------|--------------|
| 1-North Coast | 8-Grande Ronde | 15-Rogue |
| 2-Willamette | 9-Powder | 16. Umpqua |
| 3-Sandy | 10-Malheur | 17-S. Coast |
| 4-Hood | 11-Owyhee | 18-Mid Coast |
| 5-Deschutes | 12-Malheur L. | 19-Columbia |
| 6-John Day | 13-Goose/Summer | 20-Snake |
| 7-Umatilla | 14-Klamath | |



One acre-foot is the volume of water that would cover one acre with one foot of water. To find out how much water your pond stores, multiply the surface area by the average depth. This will give you a rough estimate of cubic feet. One acre-foot equals 43,560 cubic feet. You can submit a Notice of Exempt Reservoir if your pond stores less than 400,752 cubic feet—43,560 X 9.2.

Rate and Area of Use					
		cfs—cubic feet per second	gpm—gallons per minute		
Agriculture, Land Management					
Gen. Agriculture	cfs/gpm	# acres	_____		
Irrigation	cfs/gpm	# acres	_____		
Stockwater	cfs/gpm	# acres	_____		
Aquatic Life	cfs/gpm	# acres	_____		
Other:	cfs/gpm	# acres	_____		
Cranberry	cfs/gpm	# acres	_____		
Nursery Operatn.	cfs/gpm	# acres	_____		
Temp. Control	cfs/gpm	# acres	_____		
Forest/Range Mgt	cfs/gpm	# acres	_____		
Other:	cfs/gpm	# acres	_____		
Industrial/Commercial Uses					
Industrial	cfs/gpm	_____	Commercial	cfs/gpm	_____
Fire Protection	cfs/gpm	_____	Mining	cfs/gpm	_____
Power Dev.	cfs/gpm	_____	Other:	cfs/gpm	_____
Drinking Water Supply					
Human Consumption	cfs/gpm	_____	Domestic	cfs/gpm	_____
Domestic			Other:	cfs/gpm	_____
Expanded	cfs/gpm	_____			
Community Water Supply					
Municipal	cfs/gpm	_____	Quasi-Municipal	cfs/gpm	_____
Group Domestic	cfs/gpm	_____	Storm Water Mgt	cfs/gpm	_____
Other:	cfs/gpm	_____	Other:	cfs/gpm	_____
Environmental Benefits					
Pollution Abatement	cfs/gpm	_____	Recreation	cfs/gpm	_____
Wetland Enhancement	cfs/gpm	_____	Wildlife	cfs/gpm	_____
Other:	cfs/gpm	_____	Other:	cfs/gpm	_____

Application No. P-8309
Permit No.



38 1W 22

15 14
22 23

Scale 1" = 400'



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

November 20, 1997

CARL A BARTER
BARTER, ESTHER
6433 COLVER RD
TALENT, OR 97540

REFERENCE: FILE#: P 83109

Dear Mr. and Ms. Barter,

I want to apologize for any confusion which may have resulted from the letter we sent to you about a week ago. I hope this follow-up letter will better explain our "ponds" program, and give you a clearer picture of what is happening with your pond.

In 1995, the legislature adopted a new law intended to help address a legal problem with many existing ponds throughout the state. These ponds had been developed over the years by land owners who were not aware that water rights may have been required. In order to make sure that all the ponds were "legal" the legislature approved HB 2376 in 1995, which set out a process for filing a notice of the pond with our department. Under the law, such notices could be filed until January 31, 1997. Our job was then to determine whether any of the ponds resulted in injury to other existing water rights, or created a detrimental impact on fish.

This simplified review process was intended to make it easier for the owners of existing ponds to receive final water right certificates. The 1995 law also required that we provide a comment period, which ended on August 1, 1997. During this time, we were required to accept comments as to whether a pond may in fact be resulting in injury to other water rights or creating a detrimental impact to fish. After the close of that comment period, our department was given 180 days in which to evaluate the comments, give notice to the pond owners, and identify whether mitigation measures would be required to alleviate the injury to other water rights or impacts to fish.

This is why you received a letter from us last week. For more than 16,000 ponds on which notices were filed under HB 2376, about 960 comments were received. From those comments, we determined that about half would appear to require mitigation measures. A total of 450 letters were sent out last week to pond owners like you.

The purpose of these letters was to advise you that the comments had been received, and to provide you with an opportunity to get back to us with any information you might have to show that the mitigation should not be required — either because you disagree with the comment that we received, or because you have a better idea of how to remedy the situation.

The letter you received included a copy of the comments we received about your pond, along with our proposed mitigation plan. We need to hear from you by December 10, 1997, as to whether you disagree with the underlying comment or with our proposed mitigation. We do encourage you to get back to us by the deadline, and we will make every effort to accommodate your suggestions.

Again, I offer my sincere apology for any confusion or irritation caused by our earlier letter. I hope this letter provides additional background information that will help you respond to the questions about your pond. If you have questions about this process, please let us know. I urge you to call our Water Rights Information staff at 1-800-624-3199 extension 499. In some circumstances they may also involve your local Watermaster for additional help. We will try our best to work through this with you.

Sincerely,



Martha O. Pagel
Director

m:955

HB 2376 EXEMPT NOTICE
COMPLETENESS CHECKLIST

- Landowner name and address*
- A.** County of use
- B.** River basin
- C.** Legal description of reservoir location*
(Includes quarter-quarter section and tax lot)
- D.** Reservoir name
- E.** Date of construction
- F.** Source of water and tributary*
- G.** Dam height
- H.** Quantity of water stored*
- I.** Use of water
- J.** Rate and area of use (if any)
- Signature of Landowner/agent
- Map showing Township, Range, Section, Quarter-quarter section and Tax Lot* and general location of pond.

Date Received 1-24-97

Received By Sue Waldron

* MINIMUM REQUIREMENT TO FILE

C:\wp51\pondchk

