



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 83015

DAVID L STEARNS
STEARNS, ROBYNNE E; BLACK, ALTA M
PO BOX 225; 44345 HWY 62
PROSPECT, OR 97536

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

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

Date: July 30, 1997

Application # P-83015 Biologist's Name: Jerry Vogt
Address: 1495 East Gregory Rd., Central Point
Certificate # (If applicable) 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.

These 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 coho and chinook salmon, steelhead and trout populations in the Rogue River. While ODFW has not documented the presence of fish at the POD, this stream is a tributary of the Rogue River, a stream for which ODFW holds an instream water right (Certificate 59979, 59980). This section of the Rogue River also 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 the Rogue River. Withdrawals of water for this reservoir contribute to temperature problems on the Rogue River and injure ODFW's instream water right.

*******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.

MITIGATION CONDITIONS

File # P- 83015
Date 11-12-97
MC

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.

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.
