



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

January 16, 1998

RAY M STEPHENS
6934 HOLLAND LOOP RD
CAVE JUNCTION, OR 97523

Reference: File P-82818

Dear Applicant:

Thank you for your continuing efforts in our program for authorizing exemptions for existing ponds and reservoirs. We know it has been a long and complicated process, and we appreciate your cooperation.

As indicated in our letters to you last November, we had previously received written comments indicating that your reservoir could be detrimental to fish or might cause injury to other water rights. You took advantage of an opportunity that was provided to address those comments. The additional information that you submitted was sent to the commenter indicating that they must reply if there are still concerns regarding detriment to fish or injury to other water rights.

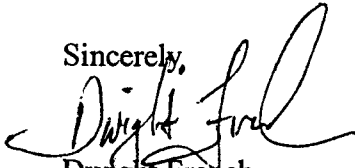
Since then, we have reviewed all the information available to us, including any reply from the commenter, and have determined that certain conditions are necessary to mitigate the potential harm to fish or other water rights. The enclosed Mitigation Order spells out the additional conditions we are proposing.

If you agree with these conditions, and comply with the Mitigation Order, the process will be complete.

If you disagree with this order, you may request a contested case hearing, and submit in writing your reasons why the order should be changed or rescinded. You may wish to submit maps or sketches to help us to better understand the particulars of your situation. Once we receive your request for a contested case hearing, we will contact you to discuss the situation and how we might be able to settle disagreements without holding a hearing. If we are unable to agree on a solution, we will schedule a contested case hearing at a time that is agreeable to both you and the Department. The appeal rights are described in more detail in the order enclosed.

Once again, thank you for your participation in this program. If you have any questions please call one of the water rights staff listed below. My extension number is 268.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight French", written over the word "Sincerely,".

Dwight French
Water Rights Section Manager

Enclosures

cc: Watermaster

Russ Klassen	1-800-624-3199 Ext 266
Laura Snedaker	Ext 331
Dallas Miller	Ext 272

Oregon Water Resources Department
Water Rights Division

Notice of Existing Reservoir
Number P-82818

Reservoir Mitigation Order

Application History

A reservoir was constructed prior to January 1, 1995. As evidence of the right to store water, pursuant to ORS 537.405(2)(a), notice of existing reservoir was submitted.

Pursuant to ORS 537.405(4)(a) the Department has received information from Oregon Department of Fish and Wildlife demonstrating that the reservoir poses a significant detrimental impact to existing fishery resources.

ORS 537.405(7) specifies that "...the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resource."

Therefore, the Department has determined that with the following additional mitigation condition(s), the injury to existing water rights and/or detrimental impact to existing fishery resources, described above, will be mitigated.

Order

Install, maintain, and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the diversion.

Therefore, pursuant to ORS 537.405, the use evidenced by notice of existing reservoir number P-82818, shall be allowed to continue if the injury/negative impact of the reservoir is mitigated as described above.

DATED January 16, 1998


Martha O. Pagel
Director

Notice of Right to Contested Case Hearing

The owner of the reservoir that is the subject of this mitigation order may request a contested case hearing if the owner disagrees with the order. Most disagreements are settled through a series of informal discussions before the hearing date arrives.

If the department does not receive a request for hearing within the time stated in this notice you have waived your right to a hearing under ORS Chapter 183, unless your failure to request a hearing was beyond your reasonable control, as provided in OAR 137-03-075.

The record of this proceeding to date, including information in Department files on the subject of this proceeding, is automatically part of the contested case record upon default for the purpose of proving a prima facie case.

In order to process your request for a contested case hearing please include the following in writing:

- The reference number (located near the top right corner of the order.);
- Your name, address, and telephone number;
- A detailed description of why the condition(s) proposed in this order is not necessary to protect existing water rights or fishery resources;
- Any citation of legal authority to support your protest, if known.

Your request for a contested case hearing must be received by the Department no later than 60 days after the date of this order.

Send your request for a contested case hearing to:

Ponds Program Appeals
Water Rights Section
Oregon Water Resource Department
158 12th ST NE
Salem OR 97310

Mailing List for MO Copies

Application P 82818

MO Date January 16 1998

Original mailed to:

Applicant: _____ Is there a new address? Y _____

1. WRD - File # 82818
2. WRD - Watermaster # 14
3. WRD - Regional Manager (not Bob Main): SW

Other Commenters:

4. ODFW District Biologist: Y VOGHT
5. WaterWatch of Oregon: Y
6. Other Commenters Y

Other Interested Persons (*CWRE, Agent, etc.*)

7. _____
8. _____
9. _____
10. _____

CASEWORKER :

Information Below This For Mitigation Team Use Only

SMBS	SMSS	BPC	KR1	KR2	J	BSD	BSD2	1A	MD
MD1	MD2	MD3	B57	B58	BYPASS	B51A			Basin

TO: Water Rights Section, OWRD

FROM: Norm Daft, Dist. 14 

DATE: January 12, 1998

SUBJECT: Mitigation for Ponds

I have reviewed rebuttal submitted by pond registrants. I am suggesting that mitigation conditions remain the same unless I have specifically referenced them.

P74446	Schiffiler	Applicant admits there was no prior use of stored water so no mitigation is required.
P80689	Gonzales	Headgate requirements can be removed.
P80826	Caldwell	Change meter requirements to if required by Watermaster.
P81156	Roberts	Change meter requirements to if required by Watermaster.
P81681	Rendata	Remove period of use requirement. Change meter requirement to if required by Watermaster.
P81780	Young	The applicant rebuttal states that no water is diverted from Louse Creek, therefore no mitigation is required.
P82015	Canevari	Change meter requirement to if required by Watermaster.
P82076	Burns	No mitigation required.
P82179	Blakely	Remove meter requirement.
P82432	Walther	No mitigation required.
P82818	Stephens	Since the registrant clarified the use of water, no mitigation is required.
P83004	Applegate	No change
P83005	Robinson	It might be better to say "any secondary use, other than those uses covered by existing water rights, are limited to storage capacity of the reservoir." Headgate requirement can be deleted as it can be required for an existing water right.

P83006	Peltier	No mitigation required.
P83021	Vahrenwald	No change.
P83022	Nicholson	Headgate requirement not needed.
P83044	Ormsby	Headgate requirement can be removed.
P83054	Baumann	No change.
P83099	Evensen	No mitigation required.
P83101	Garnett	Totalizing meter condition can be removed. It might be better to change condition on groundwater use to say "no groundwater use allowed in excess of existing rights and statutory groundwater exemption".
P83156	Vawter	Headgate condition can be removed. Has water right.
P83157	Tunberg	No mitigation required.
P83158	Rodine	Steam Beer Mining Ltd. Headgate condition can be removed.
P83160	Dunn	Headgate condition can be removed.
P83315	Baas	No mitigation required. Has water right for pond #2, Per 4060.

RECEIVED

JAN - 5 1998

WATER RESOURCES DEPT.
SALEM, OREGON

Oregon

DEPARTMENT OF
FISH AND
WILDLIFE



ROGUE DISTRICT
OFFICE

December 31, 1997

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

RE: Exempt Reservoir Application P-82818

Dear Dwight:

I have reviewed the comments submitted by the applicant regarding the above exempt reservoir application. After reviewing this new information, I request that my original comments on this application be modified as follows:

1. Because the applicant has an existing water right to utilize surface flow from Sucker Creek during the irrigation season, I have no objection to the removal of the April 1 – Oct. 31 bypass flow requirement.
2. Since the POD does not involve a dam or other structure that blocks fish passage, I have no objection to the removal of the requirement to provide fish passage facilities or devices at the POD.
3. Because game fish are present at the POD, ODFW believes that the original comments requiring the applicant to provide fish screening are still valid and requests that WRD include them in the final order. The applicant has indicated that he has a fish screen in place and is therefore in compliance with this mitigation requirement.

Thank you for the opportunity to comment on this application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Vogt".

Jerry Vogt
Assistant District Fish Biologist

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



1495 E Gregory Road
Central Point, OR 97502
(503) 826-8774
FAX (503) 826-8776

Date: Fri, 2 Jan 1998 09:08:11 -0800 (PST)
X-Sender: frenchdw@mailhub.wrd.state.or.us
To: Russell.W.KLASSEN@wrд.state.or.us
From: Dwight W French <Dwight.W.FRENCH@wrд.state.or.us>
Subject: Re: Exempt Reservoir Mitigation Orders
Cc: Laura.K.SNEDAKER@wrд.state.or.us

>Date: Fri, 02 Jan 1998 09:14:18
>To: "Jerry Vogt" <medodfw@cdsnet.net>
>From: Dwight W French <Dwight.W.FRENCH@wrд.state.or.us>
>Subject: Re: Exempt Reservoir Mitigation Orders
>
>Happy New Year!
>
>I'm going to have Russ Klassen of my staff look into this to see what
happened.

>
>If you will confirm that you want fish screening on the file numbers listed
below we will include that condition on the mitigation order. If the
applicant thinks that is unreasonable, they can challenge.

>
>Dwight
>
>
>
>
>

>At 05:42 PM 12/31/97 -0800, you wrote:

>>Dwight,
>>As I mentioned in my phone message to you, I discovered that a number of
>>the exempt reservoir mitigation orders that WRD sent out omitted my
>>recommendations for fish screening and/or fish passage devices. I'm not
>>sure what happened - the hard copy of my comments that I got back with the
>>applicants comments doesn't show any of the boxes checked for any of the
>>fisheries concerns, even though my original hard copies (and my computer
>>files for these comments) do have the boxes checked. Maybe when you
>>printed these files the boxes were left unchecked - could you look at some
>>of these files on the computer to see if the same is true?

>>
>>The following is a list of applications for which I recommended both fish
>>screening and fish passage; none of these mitigation orders sent to the
>>applicants have screening requirements and not all of them have fish
>>passage requirements:

>>
>>P-78796
>>P-81681
>>P-81341
>>P-82892
>>P-82595
>>P-83066
>>P-83005
>>P-82818
>>P-82995

>>P-83142
>>P-82939
>>P-82040
>>P-82993
>>P-82006
>>P-81832
>>P-81781
>>P-81442

>>

>>I'm sure there are more than those listed here because I have only looked
>>at the mitigation orders for the people who sent in protests. There are
>>probably mitigation orders that were sent to people who didn't protest that
>>have omitted screening or passage conditions.

>>

>>At any rate, this may cause some problems, because these applicants should
>>get a corrected final order that will contain these conditions, and that
>>may give them more to complain about.

>>

>>Please look into this to see if you can tell why these conditions were
>>omitted. Thanks for your help.

>>

>>

>>

>

Dwight French
Water Rights Section Manager
Oregon Water Resources Department
158 12th ST NE, Salem Oregon 97310
1 800 624-3199 ext. 268 or 503 378-8455 x268
FAX: 503 378-6203

==--==--=> In the middle of difficulty lies opportunity.

Mailing List for Commenter Letter

File #: P-82818

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

☒ 1. Watermaster: NORM DAFT

☒ 2. ODFW District Bio: JERRY UOGT

☒ 3. Waterwatch

☐ 4. Other: _____

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

Copy of Letter to:

☒ 1. WRD File # P-82818

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



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

Bruce Sund
Norman Daft
Watermaster District 14

Dear Bruce and Norman:

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.

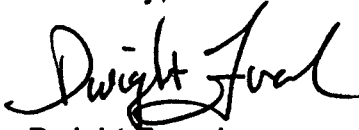
The Department received the attached rebuttals to your comments. If you do not agree with a rebuttal and believe that your comments are still valid, please send a written response to the Department identifying why you disagree with the rebuttal and affirming your position. However, if you agree with the rebuttal you need not respond, unless you determine that it is necessary. In order for use 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 and attention the request 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 exempt status of 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,

A handwritten signature in black ink, appearing to read "Dwight French". The signature is fluid and cursive, with the first name "Dwight" being more prominent than the last name "French".

Dwight French
Water Rights Manager

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



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

Waterwatch
213 SW Ash #208
Portland, Oregon 97204

Dear Waterwatch:

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.

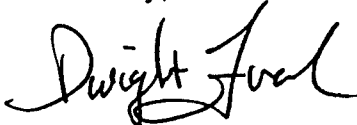
The Department received the attached rebuttals to your comments. If you do not agree with a rebuttal and believe that your comments are still valid, please send a written response to the Department identifying why you disagree with the rebuttal and affirming your position. However, if you agree with 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.

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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.

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Dwight French
Water Rights Manager

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



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.

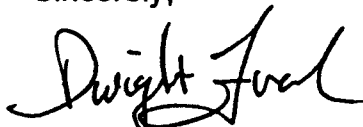
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If no response to a rebuttal is received, the Department will conclude that you agree with the rebuttal and that a Mitigation Order is not necessary.

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Dwight French
Water Rights Manager

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

GROEN & STEPHENS

ATTORNEYS AT LAW
ONE BELLEVUE CENTER
411 108TH AVENUE NE
SUITE 1750

BELLEVUE, WASHINGTON 98004-5515

JOHN M. GROEN
RICHARD M. STEPHENS
CHARLES A. KLINGE

ALSO ADMITTED IN
ALASKA, OREGON & CALIFORNIA

RECEIVED

DEC 15 1997

WATER RESOURCES DEPT.
SALEM, OREGON

TELEPHONE
(425) 453-6206

FACSIMILE
(425) 453-6224

December 10, 1997

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

Re: Your reference file no: P-82818

I am writing on behalf of Ray Stephens at 6934 Holland Loop Road, Cave Junction, OR 97523. The purpose of this letter is to respond to the comments on his Notice of Exempt Reservoir which you received and forwarded to him from the Watermaster, Norman E. Daft; Water Watch; and ODFW Biologist, Jerry Vogt.

ORS 537.405(1) provides that reservoirs that meet the requirements of that section "are exempt from regulation by the Water Resources Commission and the Water Resources Department and are not required to obtain a permit or certificate." One exception exists under subsection (4). That subsection states that "Detailed, legally obtained information demonstrating that a specific reservoir exempt under subsection (1) of this section should not be exempt shall be submitted in writing to the department on or before August 1, 1997."

The information submitted by the Watermaster, Norman E. Daft should be disregarded because it was submitted too late—on August 29, 1997. As a practical matter the Watermaster may or may not have had enough time to submit comments on all the Notices of Exempt Reservoir. Any problem with the reasonableness of the time given can only be addressed by the Legislature because the statute is quite specific about the August 1st deadline. Nevertheless, many of the concerns raised by Mr. Daft are echoed by WaterWatch and Mr. Vogt and the following response applies to all comments, even those submitted beyond the deadline in the statute.

The statute provides two criteria for requiring a permit for an otherwise exempt reservoir: "detrimental impact to existing fishery resources" and "injury to an existing water right." ORS 537.405(4).

The comments submitted by WaterWatch center around two issues: water availability and instream water rights. These comments may have some application to the 45 other exempt reservoirs, but not

to application P-82818. The assumption of the WaterWatch comments is that the water in the pond is *in addition* to established water rights. That is not true in this case.

Mr. Stephens owns a water right dated 1875 to use .8 cfs to irrigate 40 acres and a water right dated 1908 to use .16 cfs to irrigate 12.65 acres. When water is available to satisfy these rights, it is withdrawn from Sucker Creek and temporarily stored in the pond from where it is pumped into a sprinkler system. Mr. Stephens was encouraged by the Water Resources Department to convert from flood irrigation to a sprinkler system several years ago in order to conserve water. In order to pump the water into the sprinkler system, a small pond must exist. That is the pond at issue in this case. Mr. Stephens should not be penalized for saving water by pumping from a pond, rather than the more wasteful method of flood irrigation.

WaterWatch summarizes: "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." WaterWatch also summarizes that "these rivers and streams cannot support any more uses than those that already have existing water rights."

As addressed above, the pond covered by P-82818 is not a "further use", nor is it "more use." It is merely a temporary storage of the water to which the applicant has a water right—the very rights WaterWatch is concerned about protecting. When necessary to protect more senior water rights the Watermaster has stopped the diversion to the pond.

WaterWatch also claims detriment to existing fishery resources. Specifically, it argues that instream water rights are not being met for Sucker Creek. Since the water in the pond comes by means of a water right, we expect the diversion to be closed when there is insufficient water to meet more senior water rights. Moreover, a fish screening device already exists at the headgate. (Incidentally, no one has argued that the pond itself is a detriment to fishery resources.)

The mitigation condition proposed by WaterWatch is that "live stream flow must be passed when required to satisfy exiting water rights. In order to substantiate live flow is being passed, measuring devices may be required." Mr. Stephens agrees that live flow must be passed to satisfy more senior water rights. That would be true whether or not he irrigated from the pond. However, unless the holders of all water rights are required to install measuring devices, Mr. Stephens objects to being required to install a measuring device simply because he uses the water from a pond. Moreover, the point of diversion is used to service the water rights of other landowners. Mr. Stephens should not be required to install a measuring device because he has a pond when that measuring device would be used to measure other's water to which they have a right, but no pond.

The comments by the ODFW biologist center around a claim that this reservoir negatively impacts various species of fish and ODFW's instream water right for Sucker Creek. Again, the water in this pond is water to which Mr. Stephens has a water right. Any detriment to fish is not due to the pond, but to the 1875 and 1908 water rights. His proposed condition of an automatic by-pass of flows from April 1 to October 21 would deprive Mr. Stephens of 1875 and 1908 water rights.

The other condition proposed is the installation, maintenance and operation of bypass devices to provide adequate upstream passage for fish. This condition is inappropriate. No device is necessary

December 10, 1997

Page 3 of 3

for upstream passage of fish. ORS 498.351(1) provides that no person shall construct, operate or maintain any "dam or artificial obstruction **across** any body of water ..." ORS 509.605 is worded similarly. The "obstruction" in this case is not across Sucker Creek. Instead, a small obstruction lies in part of Sucker Creek and diverts some water toward the headgate to service the water rights of several landowners. Because the obstruction does not go across Sucker Creek, the remainder of Sucker Creek constitutes a natural "by-pass" device. (Incidentally,

Finally, in regard to the Watermaster's conditions, the same agreement and objection applies to the condition of passing live stream flow and measuring devices. We agree that any secondary use of stored water is limited to the capacity of the reservoir if "secondary use" means use for which there is no water right.

The Watermaster also recommends that the water user install a "headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted." A headgate already exists for the point of diversion. Mr. Stephens objects to being required to change the headgate simply because he has a pond. Only if all diversions to facilitate water rights are required to install new devices should he be required to do the same. The same is true for the recommendation for a "totalizing flow meter."

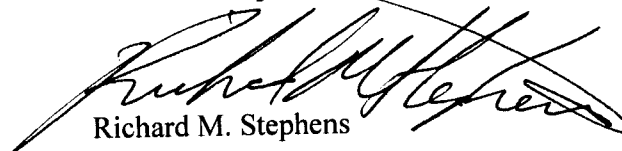
In summary, the water which feeds into this exempt "reservoir" is water to which Mr. Stephens has water rights. It is not **in addition to** established water rights. Mr. Stephens chose to divert the water to which he has established rights to a pond in order to enable him to use an expensive sprinkler system. He was encouraged to use a sprinkler system in order to conserve water. He should not now be penalized for taking that water conservation step by the imposition of conditions not applied to all water users (even those without a pond).

If the conditions recommended by the three commentators are imposed, it will be better for Mr. Stephens to satisfy his water right by going back to flood irrigation, rather than pumping into the sprinkler system from a pond. That result would frustrate Water Resources laudable goal of conserving water.

We look forward to your decision in this matter. Please let me know if we can provide additional information.

Sincerely,

Groen & Stephens



Richard M. Stephens

RMS:hkh

I:\RMS\Water Resources 01.doc

cc: Ray Stephens



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

RAY M STEPHENS
6934 HOLLAND LOOP RD
CAVE JUNCTION, OR 97523

REFERENCE: FILE#: P 82818

Dear Mr. Stephens,

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.

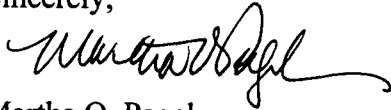
This is why you received a letter from us last week. For more than 16,000 ponds on which notices were filed under HB 2376, about 960 comments were received. From those comments, we determined that about half would appear to require mitigation measures. A total of 450 letters were sent out last week to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

A handwritten signature in cursive script, appearing to read "Martha O. Pagel".

Martha O. Pagel
Director

m:955



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 10, 1997

FILE#: P 82818

RAY M STEPHENS
6934 HOLLAND LOOP RD
CAVE JUNCTION, OR 97523

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

_____ The following provision for a measuring device shall be effective:

_____ the pump system shall include an access port for measuring the water level;

_____ the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;

_____ the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said Watermaster.

✓ _____ A totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

_____ A staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed.

_____ Live stream flow must be by-passed between _____ and _____.

_____ The period of use has been limited to _____ through _____.

MITIGATION CONDITIONS

File # P- 92818

Date 11-7-97

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 _____ through _____. (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.
- ☒ Other (See watermaster comments/conditions listed under other)

_____ The following provision for a measuring device shall be effective:

_____ the pump system shall include an access port for measuring the water level;

_____ the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;

_____ the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said Watermaster.

✓ _____ A totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

_____ A staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed.

_____ Live stream flow must be by-passed between _____ and _____.

_____ The period of use has been limited to _____ through _____.

AUG 29 1997

WATER RESOURCES DEPT.
SALEM, OREGON

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

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

✓ (1)

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.

(2)

The following provision for a measuring device shall be effective:

- (a) the pump system shall include an access port for measuring the water level;
- (b) the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;
- (c) the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said Watermaster.

✓ (3)

A totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

(4)

A staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed.

*Please specify whether the installation of the weir(s) will provide no public benefit.

✓ (5)

Live stream flow must be by-passed between WHEN REGULATED and _____.

(6)

The period of use has been limited to _____ through _____.

Other (Please specify below)

USE LIMITED TO QUANTITY STORED ONLY
EXEMPTION DOES NOT ALLOW THE USE OF GROUNDWATER
AND DOES NOT ALLOW IRRIGATION OF LANDS NOT ALREADY
COVERED BY SUCKER OR WATER RIGHTS.



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.

RECEIVED

JAN 21 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Landowner: Stephens, Ray M.
Last name First name MI

Authorized Agent: _____
Last name First name MI

Address: 6934 Holland Loop Rd.

Care Junction Ore 97523

City State Zip

Phone: (541) 592-2478

Home Work

FAX: _____ E-Mail Address: _____

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

C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
<u>39</u>	<u>7</u>	<u>33</u>	<u>NE 1/4 of NW 1/4</u>	<u>500</u>

D. Name, if any, of reservoir: _____ E. Reservoir in existence since: 1/1/94
MM DD YY

F. Source of water: Sucker Creek which flows into Illinois River
Name of river or creek Name of river or creek

G. Maximum height of dam: no dam feet.

H. Quantity of water stored in reservoir at maximum capacity (see reverse): 14 1/3 acre-feet.

I. Water stored in reservoir is used for (see reverse): irrigation.

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.

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.

Ray M. Stephens
(Signature of Landowner/Agent)

Ray M. Stephens
(Printed name and title)

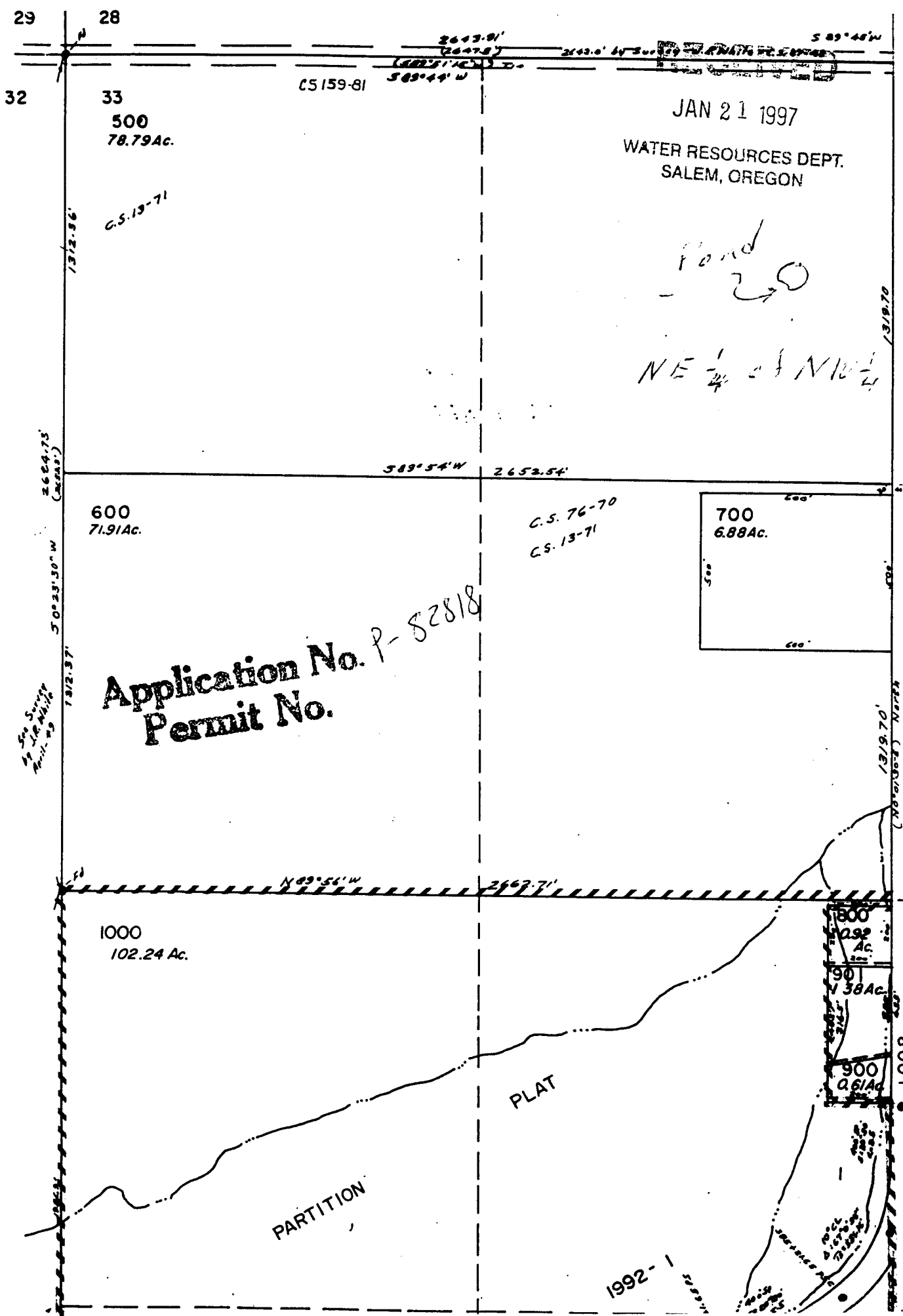
1/17/97
(Date)

Department Use: _____ Date received: _____

182818

assessment purpose only.

39-17-33-500 SEE MAP



RECEIVED

JAN 21 1997

DEC 1 1994

WATER RESOURCES DEPT.
SALEM, OREGON

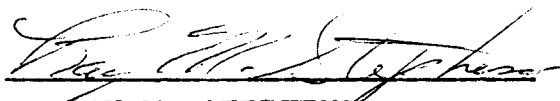
SALEM, OREGON

AFFIDAVIT OF
RAY M. STEPHENS

STATE OF OREGON)
JOSEPHINE COUNTY)

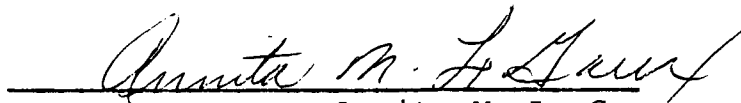
I, Ray M. Stephens, declare under penalty of perjury that:

1. I am the owner of property commonly known as 6934 Holland Loop Road, Cave Junction, Oregon;
2. A reservoir is located on said property which is capable of storing no more than 9.2 acre feet of water;
3. The reservoir has no man-made dam;
4. Said reservoir is off-channel and outside stream bank areas--no water is diverted from any natural waterway by the reservoir;
5. Said reservoir was constructed by a contractor at my direction prior to 1990.


RAY M. STEPHENS

Subscribed and sworn to me this 24th day of December, 1994.




Annita M. Le Gaux

My commission expires March 14, 1997



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 82818

RAY M STEPHENS
6934 HOLLAND LOOP RD
CAVE JUNCTION, OR 97523

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**

Application # P-82818 Date: July 30, 1997
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.***

Unnamed Pond, T39S, R7W, Sec. 33, NE 1/4, NW 1/4

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 coho salmon (a federally-listed threatened species), fall chinook salmon and steelhead in Sucker Creek by inhibiting the upstream and downstream movement of adult and juvenile fish. Sucker Creek has been identified as a core area for coho salmon in Oregon's Coastal Salmon Restoration Initiative. Sucker Creek 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 stream. In 1995, water temperatures in lower Sucker Creek exceeded the DEQ temperature standard on 29 days. Withdrawals of water for these reservoirs contribute to temperature problems in Sucker Creek and injure ODFW's instream water right for the stream (Certificate 69808).

*****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)

MITIGATION CONDITIONS

File # P- 82818
Date 11-12-97
ML

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.



Oregon

John A. Kitzhaber, M.D., Governor

November 12, 1997

Water Resources Department

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

FILE#: P 82818

RAY M STEPHENS
6934 HOLLAND LOOP RD
CAVE JUNCTION, OR 97523

Dear Reservoir Owner,

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Water Right Section

MITIGATION CONDITIONS

File # P 82818
Date 11.7.97
DWP

Oregon Department of Fish and Wildlife Conditions

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- ☐ The reservoir owner is required to by-pass flows from _____ through _____. (BPC)

Water Right Related Conditions

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JUL 23 1997

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 rights¹ and/or pending senior instream water rights² 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 Quantification 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

JUL 23 1997

WATER RESOURCES DEPT.
Salem, Oregon

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

RECEIVED

JUL 23 1997

WATER RESOURCES DEPT.
SALEM, OREGON

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:

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WATER RESOURCES DEPT.
SALEM, OREGON

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:

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WATER RESOURCES DEPT.
SALEM, OREGON

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:

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SALEM, OREGON

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 APPLGATE 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 APPLGATE R @ mouth	YES	749.0

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

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WATER RESOURCES DEPT.
SALEM, OREGON

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:

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SALEM, OREGON

Oregon Coastal Salmon Restoration Initiative
Water Resources Department Measure 6

Attachment
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WATER RESOURCES DEPT.
SALEM, OREGON

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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SALEM, OREGONUnmet Instream Flow Needs
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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 tributaries³, and the Tillamook River⁴ and two tributaries (Killiam⁵ and Fawcett⁶ Creeks).

¹ WAB #0802000000000000

² WAB #1004000000000000

³ WAB #1600000000000000

⁴ WAB #1700000000000000

⁵ WAB #1701210000000000

⁶ WAB #1701220000000000

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SALEM, OREGON

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 Olalla⁸ and Mill⁹ 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

⁷ WAB #1602223000000000

⁸ WAB #0601000000000000

⁹ WAB #0602000000000000

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SALEM, OREGONUnmet Instream Flow Needs
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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 Creek¹⁰ 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 Rink¹⁵ 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 Crooked¹⁸ 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.

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

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SALEM, OREGON

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 Myrtle²³ 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 Creek²⁴ 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.

¹⁹ WAB #0105300000000000

²⁰ WAB #0105335100000000

²¹ WAB #0105742600000000

²² WAB #0105742100000000

²³ WAB #0105742500000000

²⁴ WAB #0105742632000000

JUL 23 1997

WATER RESOURCES DEP
SALEM, OREGON

Consumptive uses and storage account for significant percentages of natural flow in the Applegate River²⁵, Bear Creek²⁶, and Little Butte Creek²⁷ 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 Jackson²⁹ and Emigrant³⁰ 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 Creek³¹ and the upper reaches of the North Fork Little Butte Creek³² are insufficient to meet the instream water rights during 12 and 10 months of the year, respectively.

²⁵ WAB #0102678000000000

²⁶ WAB #0102679291000000

²⁷ WAB #0102679293000000

²⁸ WAB #0102678820000000

²⁹ WAB #0102679291100000

³⁰ WAB #0102679291500000

³¹ WAB #0102679293200000

³² WAB #0102679293310000



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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WATER RESOURCES DEPT.
SALEM, OREGON

Landowner: Stephens, Ray M.
Last name First name MI

Authorized Agent: _____
Last name First name MI

Address: 6934 Holland Loop Rd.

Care Junction Ore 97523

Phone: (541) 592-2478 City State Zip

FAX: _____ Home Work E-Mail Address: _____

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

C. Legal description of reservoir location:

Township	Range	Section	Quarter/Quarter	Tax Lot #
<u>39</u>	<u>7</u>	<u>33</u>	<u>NE 1/4 of NW 1/4</u>	<u>500</u>

D. Name, if any, of reservoir: _____ E. Reservoir in existence since: prior to 1/1/90

F. Source of water: Sucker Creek which flows into Illinois River
Name of river or creek Name of river or creek

G. Maximum height of dam: 0 feet. no dam

H. Quantity of water stored in reservoir at maximum capacity (see reverse): 1440 1/3 acre-feet.

I. Water stored in reservoir is used for (see reverse): irrigation

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.

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?

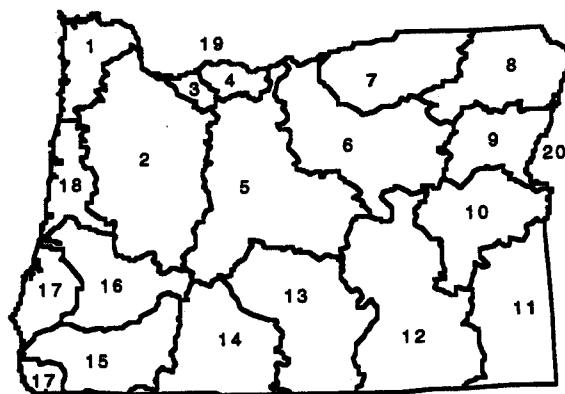
By my signature below, I swear that all statements made and information provided in this application are true to the best of my knowledge.

Ray M. Stephens Ray M. Stephens 1/7/97
(Signature of Landowner/Agent) (Printed name and title) (Date)

For Department Use P-82818 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 the number of acre-feet in a pond or reservoir, 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. For example, if a pond is 100 feet long, 50 feet wide, and 2 feet deep, it contains 100 x 50 x 2 = 10,000 cubic feet, or 10,000 / 43,560 = 0.23 acre-feet.

Rate and Area of Use

cfs-cubic feet per second

gpm-gallons per minute

Agriculture, Land Management

Gen. Agriculture	cfs/gpm	# acres	Cranberry	cfs/gpm	# acres
Irrigation	cfs/gpm	# acres	Nursery Operatn.	cfs/gpm	# acres
Stockwater	cfs/gpm	# acres	Temp. Control	cfs/gpm	# acres
Aquatic Life	cfs/gpm	# acres	Forest/Range Mgt	cfs/gpm	# acres
Other:	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	cfs/gpm	_____	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	_____

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DEC 20 1994

WATER RESOURCES DEPT.
SALEM, OREGON

WATER RESOURCES DEPT.
SALEM, OREGON

AFFIDAVIT OF
RAY M. STEPHENS

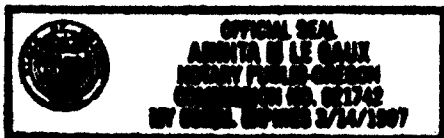
STATE OF OREGON)
JOSEPHINE COUNTY)

I, Ray M. Stephens, declare under penalty of perjury that:

1. I am the owner of property commonly known as 6934 Holland Loop Road, Cave Junction, Oregon;
2. A reservoir is located on said property which is capable of storing no more than 9.2 acre feet of water;
3. The reservoir has no man-made dam;
4. Said reservoir is off-channel and outside stream bank areas--no water is diverted from any natural waterway by the reservoir;
5. Said reservoir was constructed by a contractor at my direction prior to 1990.


RAY M. STEPHENS

Subscribed and sworn to me this 24th day of December, 1994.




Annita M. Le Gaux

My commission expires March 14, 1997

