



# Oregon Water Resources Department Notice of Exempt Reservoir

RECEIVED

JAN 28 1997

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.

WATER MASTER  
DISTRICT 13

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

Landowner: Durham, Ken & Mary  
Last name First name MI

Authorized Agent: \_\_\_\_\_, \_\_\_\_\_  
Last name First name MI

Address: 10620 E EVANS CV RD

Rogue River OR 97537  
City State Zip

Phone: 541 582 4550 541 826-2111  
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 #
35	4W	12	NE of NW	41

D. Name, if any, of reservoir: Sweet Ben Spring E. Reservoir in existence since: 1 <sup>(ca)</sup> 174  
MM DD YY

F. Source of water: Spring fed which flows into Sykes Cr  
Name of river or creek Name of river or creek

G. Maximum height of dam: none feet.

H. Quantity of water stored in reservoir at maximum capacity (see reverse): .01 acre-feet.

I. Water stored in reservoir is used for (see reverse): Fire protection, Wildlife, scenery  
*Aquatic life*

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.

Mary Hannah-Durham  
(Signature of Landowner/Agent)

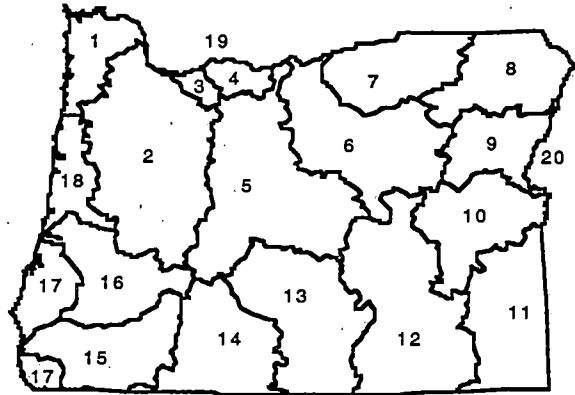
Mary Hannah-Durham  
(Printed name and title)

1-28-97  
(Date)

For Department Use P-83080 File # 10-95 Date received

## 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	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 Expanded	cfs/gpm	_____	Other:	cfs/gpm	_____

#### Community Water Supply

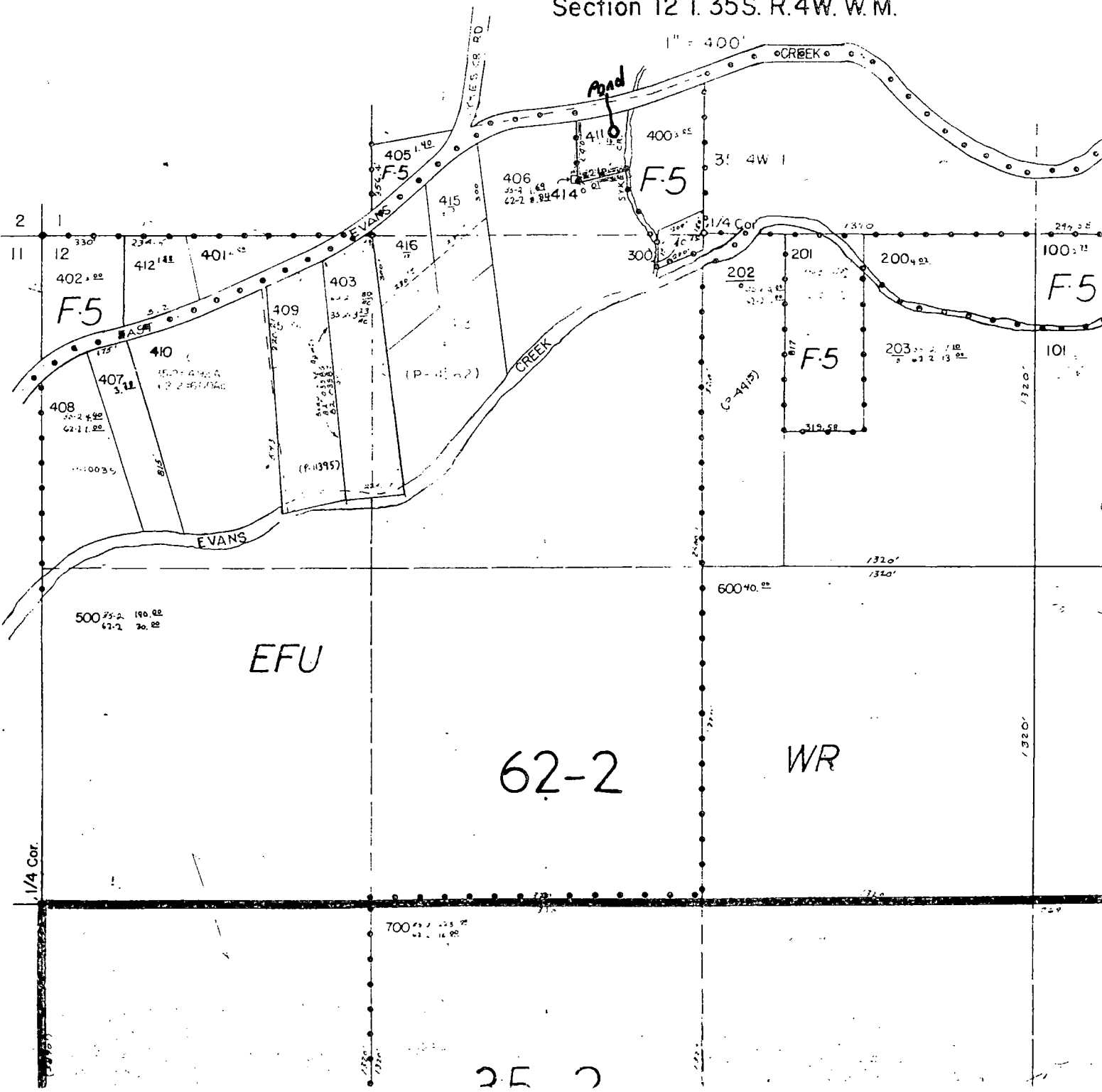
Municipal	cfs/gpm	_____	Quasi-Municipal	cfs/gpm	_____
Group Domestic	cfs/gpm	_____	Storm Water Mgt	cfs/gpm	_____
Other:	cfs/gpm	_____	Other:	cfs/gpm	_____

#### Environmental Benefits

Pollution Abatement	cfs/gpm	_____	Recreation	cfs/gpm	_____
Wetland Enhancement	cfs/gpm	_____	Wildlife	cfs/gpm	_____
Other:	cfs/gpm	_____	Other:	cfs/gpm	_____

Section 12 T. 35S. R. 4W. W. M.

1" = 400'



EFU

62-2

WR

Application No. P-83080  
 Permit No.

Oregon Water Resources Department  
Water Rights Division

Notice of Existing Reservoir  
Number P-83080

## **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.

Pursuant to ORS 537.405(4)(b) the Department has received information demonstrating that the reservoir results in injury to an existing water right.

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."

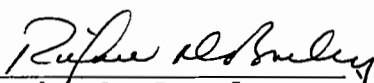
Therefore, the Department has determined that with the following additional mitigation condition(s), the injury to existing water rights and/or detrimental impact to existing fishery resources, described above, will be mitigated.

### **Order**

The reservoir owner is required to by-pass flows from APRIL 1 through OCTOBER 31.

Therefore, pursuant to ORS 537.405, the use evidenced by notice of existing reservoir number P-83080, 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



# 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 83080

KEN DURHAM  
DURHAM, MARY  
10620 E EVANS CREEK RD  
ROGUE RIVER, OR 97537

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- 83080

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 30, 1997

Application # P-83080      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.*

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This reservoir negatively impacts populations of chinook and coho salmon, steelhead and resident trout in Evans Creek. While ODFW has not documented the presence of fish at the POD, this reservoir is above ODFW's instream water right reach on Evans Creek (Certificate 59705 and 73027). Evans Creek 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 Evans Creek 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 Evans Creek, 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.

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