



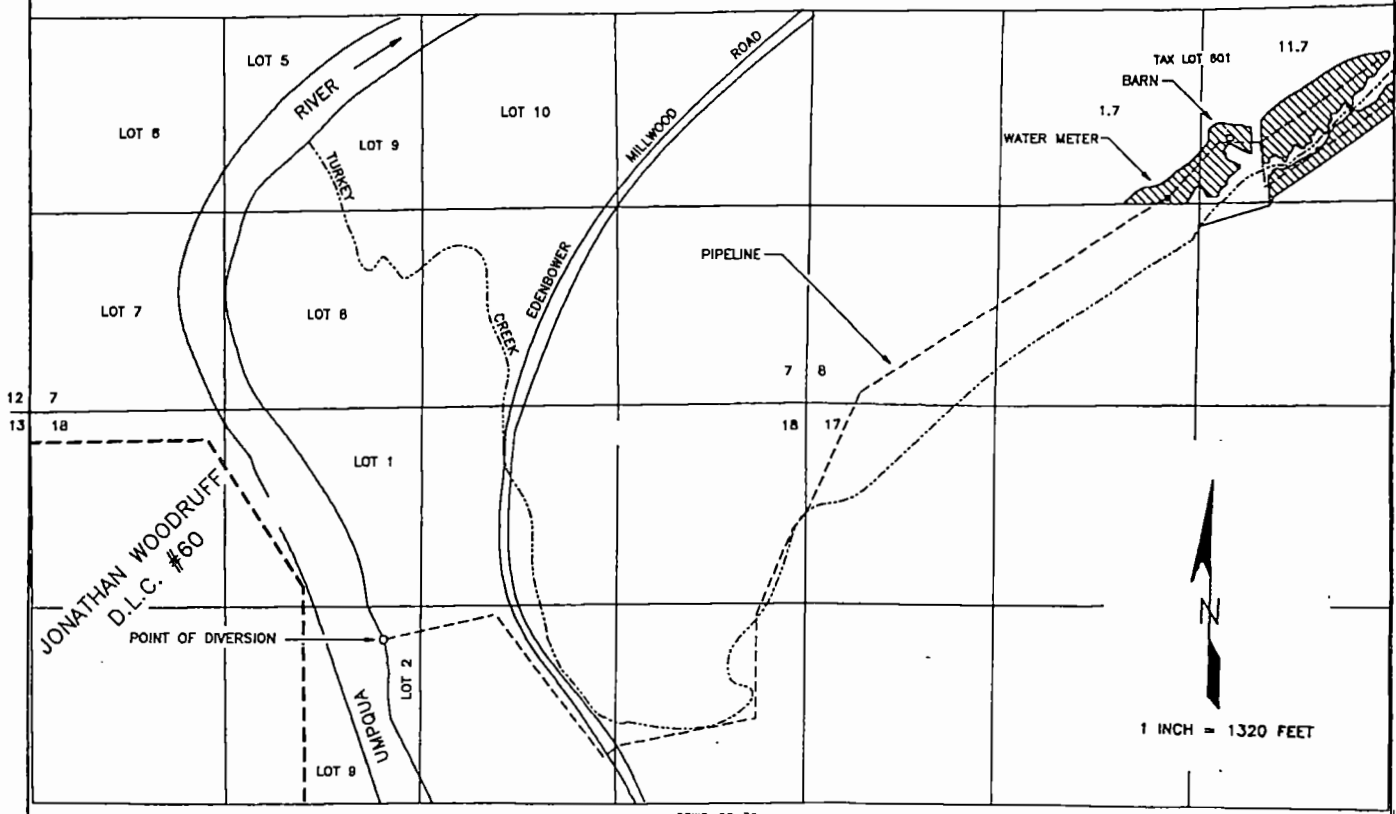
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DEC 21 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

# FINAL PROOF SURVEY MAP IN THE NAME OF DAVID G. AND DIANA M. HARLAND SECTIONS 8, 17 AND 18, TOWNSHIP 26, SOUTH, RANGE 6 WEST, W.M.

APPLICATION S-73313      PERMIT S-54019



-DRWC. 98-36

THE POINT OF DIVERSION IS LOCATED 1560 FEET SOUTH AND 280 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 18, BEING WITHIN THE SOUTH 1/4 ST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M. DOUGLAS COUNTY.

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

James F. Gosson  
 Nov. 19, 1987  
 STATE OF OREGON

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DEC 21 1998

WATER RESOURCES DEPT.  
SALEM, OREGON

**CLAIM OF BENEFICIAL USE AND SITE REPORT  
IN THE NAME OF DAVID G. and DIANA M. HARLAND**

**APPLICATION S-73313**

**PERMIT S-54019**

**SECTIONS 8, 17 AND 18, TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.**

**GENERAL INFORMATION**

The methods used to determine the information contained in this document are as follows:

1. Examination of Permit S-54019,
2. Examination of Assessor's Map 26-6-8,
3. Examination of Assessor's Map 26-6-17,
4. Examination of Assessor's Map 26-6-18,
5. Examination of U.S.G.S. 7 1/2' Quadrangle Map (Garden Valley),
6. Examination of Aerial Photograph 26-6-8,
7. Examination of Aerial Photograph 26-6 17,
8. Examination of Aerial Photograph 26-6-18,
9. Examination of Donation Land Claim Index 26-6,
10. On-site survey, 17 September, 1998,
11. Interview with David Harland, 17 September, 1998.

**SOURCE**

The source of water is the Umpqua River, a tributary of the Pacific Ocean.

**POINT OF DIVERSION**

The point of diversion is located 1560 feet south and 280 feet west from the north 1/4 corner of Section 18, being within the southeast 1/4 of the northwest 1/4 of Section 18, Township 26 South, Range 6 West, W.M. Douglas County.

**USE, AND PLACE OF USE**

The use of the water is the irrigation of 13.4 acres of hay, lawn, garden and pasture in Section 8, T26 S, R6 W, WM.

NE 1/4 SW 1/4: 1.7 ACRES

NW 1/4 SE 1/4: 11.7 ACRES

**METERING**

A 4-inch McCrometer water meter (Serial # 97-5537-4) is located in the mainline, immediately inside the permittee's property-line, and prior to the release of any water to the permittee's lands.

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DEC 21 1998

WATER RESOURCES DEPT.  
SALEM, OREGON

CLAIM OF BENEFICIAL USE - HARLAND  
PAGE 2

DIVERSION WORKS AND DELIVERY SYSTEM

An electric motor and centrifugal pump delivers the water via a 5-inch diameter aluminum mainline, then a 4-inch diameter PVC buried mainline through an elevation range of 150 feet to the highest place of use. Sprinkler irrigation is by Rainbird #30H sprinkler heads with 5/32" and 3/32" nozzles.

MOTOR:

Super "E" (electric)  
20 hp  
3ph  
Serial # 2930-112  
Catalog # A150420-55  
3525 rpm

PUMP:

Cornell Centfigugal  
Model # 1-5Y-20-2  
Serial # 78875 8.12  
Intake: 2 1/2"  
Discharge: 2"

CAPACITY OF THE DELIVERY SYSTEM

USING:

$$Q = \frac{(K)(HP)}{H_{TOTAL}}$$

WHEN:

$$K = 6.61$$

$$HP = 20$$

$$H_{ELEVATION} = 140 \text{ FEET}$$

$$H_{PRESSURE} = 50 \text{ psi} = 116 \text{ FEET}$$

$$H_{FRICTION} = 0.3' / 100' = (0.3)(75) = 23 \text{ FEET}$$

$$H_{TOTAL} = 140 + 116 + 23 = 279 \text{ FEET}$$

THEN:

$$Q_{PUMP} = \frac{(6.61)(20)}{279} = 0.474 \text{ cfs} > 0.26 \text{ cfs OK}$$

$$Q_{NOZZLES} = (5.02)(32) = 160.1 \text{ CPM} = 0.358 \text{ cfs} > 0.26 \text{ OK}$$

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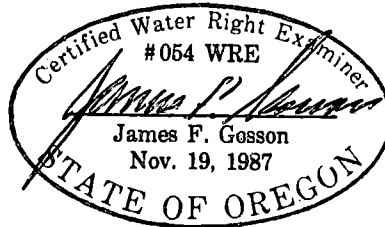
DEC 21 1998

WATER RESOURCES DEPT.  
SALEM, OREGON

CLAIM OF BENEFICIAL USE - HARLAND  
PAGE 3

CERTIFICATION

The Final Proof Survey and inspection of the use as found to be completed under the terms and conditions of Permit S-54019, were completed by James F. Gosson, Certified Water Right Examiner #54, on 17 September, 1998, and the facts contained in this report and accompanying Final Proof Map are correct to the best of my knowledge.



We, David <sup>G.</sup> and Dianna M. Harland, agree to the findings of James F. Gosson, Certified Water Right Examiner #54, and do submit this site report and map as Claim of Beneficial Use of the water as provided under the terms and conditions of permit S-54019.

David G. Harland  
Signature

12-16-98  
Date

Dianna M. Harland  
Signature

12-16-98  
Date

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FEB 14 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

DOLE, COALWELL & CLARK, P.C.

DONALD A. DOLE  
BRUCE R. COALWELL  
DAN W. CLARK  
STEPHEN MOUNTAINSPRING  
JEFFREY A. MORNARICH  
KIM V. RONAI

LAWYERS  
810 S.E. DOUGLAS AVENUE  
ROSEBURG, OREGON 97470

MAILING ADDRESS  
P.O. BOX 1205  
(541) 673-5541  
FAX (541) 673-1156

February 13, 1997

Adam Sussman  
Oregon Water Resources Department  
Commerce Building  
158 12th Street NE  
Salem, Oregon 97310

Re: Protest of Water Right Application S-73073 (Bacon)  
Protest of Water Right Application S-73313 (Harland)  
Protest of Water Right Application S-73853 (Woodruff)  
Protest of Water Right Application S-80636 (Bacon)

Dear Mr. Sussman:

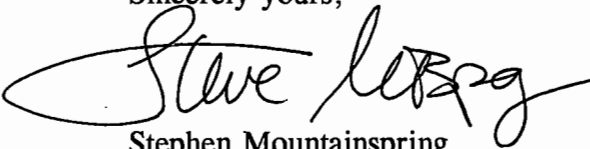
My clients have reviewed the proposed stipulated agreement, final order, and draft permit proposed in your letters of February 3, 1997. They have authorized me to enter into the agreement on their behalf.

Enclosed are the stipulated agreements executed as appropriate by me.

I appreciate the opportunity of working with the Department in this matter.

Please call or write if you have any questions or need additional material.

Sincerely yours,

  
Stephen Mountainspring

Enclosures (4 executed stipulated agreements)

cc (w/encs.):

J. Gerald & Doris L. Bacon  
David G. & Diana M. Harland  
Dale L. Woodruff

**State of Oregon  
Water Resources Department**

**In the Matter of the Water Right Applications**

S71884, S72605, S73096, S74037, S74489, S69980 & R69989, S71915,  
S71997, S73073, S80636, S73853, S73313, S72636, S71987, S70715,  
S71817, S71908, S72152, S72868, S72922, S73007, S73747, S72478,  
S72919, S73334, S69537, S73065, R73469 & S71883, S72496, S73251,  
S71837 & R71840, S72420, S74530 & S74531 & S74532, S72547, and  
S72262

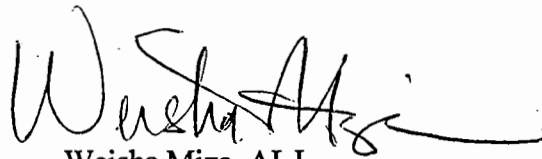
**Order Postponing  
Contested Case Hearing**

TO: The parties addressed as shown on the attached Certificate of October 25, 1996:

The Oregon Water Resources Department moved on October 14 for an indefinite continuance of the contested case proceeding in this matter. Grant of the request means that the October 18th motion and memorandum filing deadline, the October 25th response deadline, the October 29th prehearing telephone conference set for 1:30 p.m. and the hearing set to commence on November 18th would not occur as presently scheduled.

The reasons given in support of the Department's second request for continuance are appropriate. The request does not appear to be made solely for the purpose of unreasonable delay. The Motion for Continuance is GRANTED. The dates and times for document and response filings, prehearing conference and hearing will be reset after January 1, 1997. The parties will be notified of the new dates and times after January 1, 1997.

Dated this 21st day of October, 1996.

  
Weisha Mize, ALJ

Certificate of Service

I certify that on October 25, 1996, I hand-delivered a copy of this Order Postponing Contested Case Hearing in a sealed envelope to the office of Melinda Bruce, Assistant Attorney General; Oregon Dept. of Justice; 100 Justice Building, Salem, OR 97310; and mailed, first-class postage prepaid, a copy of this Notice and the agency's file to:

<u>Applicant</u>	<u>Appl. #</u>
Sonja Lindbloom/Carol Hamil	71884
Diana Cariaga	72605
WC Albro	73096
Donna Semas & Albert Smith	74037
Greg Russell	74489
Raymond Gardner	69980, R69989
Gilbert and Rosalind Rubin	71915
Robert and Norma Scharf	71997
Robert Stolz	69537
George Bussman	72496
Donald J. Brown	72547
Watson Escola Partners, James L. Watson c/o Ron Yockim, Attorney at Law PO Box 2456 Roseburg OR 97470	72420
J. Gerald & Doris L. Bacon	73073, 80636
Dale Woodruff	73853
Dave & Diana Harland c/o Stephen Mountainspring, Attorney at Law DOLE, COALWELL & CLARK, P.C. 810 SE Douglas Ave. Roseburg, OR 97470	73313
Hazel Gladwill Trust c/o Gary Hill, Attorney at Law PO 1146 Roseburg OR 97470	72636
Steven and Marion Scheel 895 Riverwood Lane Oakland OR 97462	71987



Frank Nielson, Manager 70715  
Douglas Co. Nat'l Resources  
Rm 103, Justice Building  
Roseburg OR 97470

Donald Kilcrease 71817  
601 Lone Rock Rd..  
Glide OR 97443

Art Adams 71908  
6600 Camino De Luna  
Rancho Murieta CA 95683

Randy Albertson 72152  
849 Darrell St.  
Costa Mesa CA 92627

Lori Depew & Paul Czemerys 72868  
6038 South Umpqua Rd..  
Tiller OR 97484

Juliane Schnieder 72922  
149 Lone Pine Lane  
Roseburg OR 97470

John Irvine 73007  
1304 SE 58th  
Portland OR 97215

Wm. Bonaiuto 73747  
1420 Echo Drive  
Roseburg OR 97470

DeAnna Moore 72478  
PO Box 75  
Umpqua OR 97486

Donald Stearns 72919  
Stearns Family Trust  
18057 Tyee Rd.  
Umpqua OR 97486

Walter & Kathleen Loomis  
PO Box 195  
Winchester OR 97495

73334

K. V. Miller  
PO Box 7366  
Brookings OR 97415

73065

James Deatherage  
PO Box 248  
Allegany OR 97407

71883, R73469

Darlene & Kenneth Fulk  
HC 83 Box 2010  
Coquille OR 97423

73251

Robert & Norma Spring  
606 Lone Rock Rd.  
Glide OR 97443

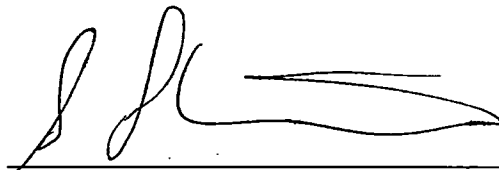
71837, R71840

Paul F. Pilger  
704 Douglas Avenue, Apt. G  
Bakersfield, CA 93308

74530, 74531, 74532

Aaron Kenton, Janice Tetreault, and  
Royal and Debbie Kenton  
13560 Loon Lake Rd.  
Reedsport, OR 97467

72262



---

Sara Carter, Administrative Hearings Coordinator

September 17, 1996

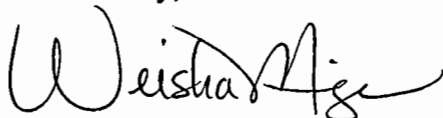
To: The parties addressed

RE: Pre-hearing filings

All parties to the contested case hearing set for the week of November 18 must have any pre-hearing memoranda, motions, objections, and other pleadings filed with me and received by the other parties in the case no later than October 18. Any responses are to be filed with me and received no later than October 25.

Where appropriate, I will rule on any pre-hearing motions and objections at the October 29, 1996, pre-hearing telephone conference.

Sincerely,



Weisha Mize, ALJ



Certificate of Service

I certify that on September 17, 1996, I hand-delivered a copy of this Letter of Pre-hearing Filings in a sealed envelope to the office of Melinda Bruce, Assistant Attorney General; Oregon Dept. of Justice; 100 Justice Building, Salem, OR 97310; and mailed, first-class postage prepaid, a copy of this Notice and the agency's file to:

<u>Applicant</u>	<u>Appl. #</u>
Sonja Lindbloom/Carol Hamil	71884
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WC Albro	73096
Donna Semas & Albert Smith	74037
Greg Russell	74489
Raymond Gardner	69980, R69989
Gilbert and Rosalind Rubin	71915
Robert and Norma Scharf	71997
c/o Ron Yockim, Attorney at Law PO Box 2456 Roseburg OR 97470	
J. Gerald & Doris L. Bacon	73073, 80636
Dale Woodruff	73853
Dave & Diana Harland	73313
c/o Stephen Mountainspring, Attorney at Law DOLE, COALWELL & CLARK, P.C. 810 SE Douglas Ave. Roseburg, OR 97470	
Hazel Gladwill Trust	72636
c/o Gary Hill, Attorney at Law PO 1146 Roseburg OR 97470	
Steven Scheel	71987
895 Riverwood Lane Oakland OR 97462	
Frank Nielson, Manager	70715
Douglas Co. Nat'l Resources Rm 103, Justice Building Roseburg OR 97470	
Donald Kilcrease	71817
601 Lone Rock Rd.. Glide OR 97443	

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Glide OR 97443

DeAnna Moore 72478  
PO Box 75  
Umpqua OR 97486

Donald Stearns 72919  
Stearns Family Trust  
18057 Tyee Rd.  
Umpqua OR 97486

Walter & Kathleen Loomis 73334  
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Robert Stolz 69537  
Route 1 Box 2030  
Bandon OR 97411

K. V. Miller 73065  
PO Box 7366  
Brookings OR 97415

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PO Box 248  
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71883, R73469

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HC 83 Box 2010  
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71837, R71840

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Kailua, HI 96734

72420

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704 Douglas Avenue, Apt. G  
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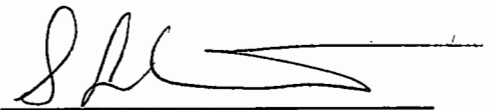
74530, 74531, 74532

Donald J. Brown  
PO Box 536  
Sitka, AK 99835

72547

Aaron Kenton, Janice Tetreault, and  
Royal and Debbie Kenton  
13560 Loon Lake Rd.  
Reedsport, OR 97467

72262



Sara Carter, Administrative Hearings Coordinator

August 26, 1996

WATER  
RESOURCES  
DEPARTMENT

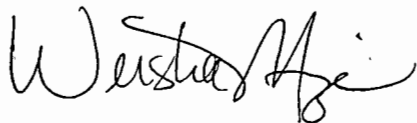
To the parties addressed:

The following applications were inadvertently omitted from the Order and Notice of Rescheduled Contested Case Hearings mailed to you on Friday, August 23, 1996. Enclosed please find a corrected Order and Notice of Hearing adding these applications:

S74037, Donna Semas & Albert Smith, represented by Ronald Yockim  
S74489, Greg Russell, represented by Ronald Yockim  
S69980 & R69989, Raymond Gardner, represented by Ronald Yockim  
S71987, Steven Scheel  
S71837 & R71840, Robert & Norma Spring

My apologies for any confusion this omission may have caused.

Sincerely,



Weisha Mize, ALJ

encl.



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

**State of Oregon  
Water Resources Department**

In the Matter of the Water Right Applications		CORRECTED Order and
S71884, S72605, S73096, S47037, S74489, S69980 & R69989,		Notice of Rescheduled
S73073, S73853, S73313, S72636, S71987, S70715, S71817,		Contested Case Hearings
S71908, S72152, S72868, S72922, S73007, S73747, S72248,		
S72478, S72919, S73334, S69537, S73065, R73469 & S71883,		
S72496, S73251, S71837 & R71840		

TO: The parties addressed as shown on the attached Certificate of Service

Hearings Rescheduled to New Date and Time

Pursuant to the request made by the Water Resources Department, the contested case hearings on the above-listed applications are hereby POSTPONED.

All hearings on all the applications listed above are consolidated and are RESCHEDULED for the week of November 18, 1996. The hearing will be held in Room 216 of the Douglas County Courthouse in Roseburg, Oregon, before Weisha Mize, Administrative Law Judge. The hearing will commence at 1 p.m. on Monday, November 18, recess at 5:00 p.m. and reconvene at 9:00 a.m. the following day.

The hearings on the applications listed above are being consolidated as they share the common issues of the review by the interagency team and restrictions placed on the proposed use as a result of that review.

The Water Resources Department will present its case first. Ron Yockim, Attorney at law, representing the applicants for applications S71884, S72605, S73096, S74037, S74489, S69980 & R69989, will present the case on behalf of these applicants, followed by Steven Mountainspring, legal counsel presenting the applicants on applications S73073, S73853 and S73313, and Gary Hill, legal counsel for the applicant on application S72636. The individual unrepresented applicants will then present their cases in the order set out in the above case caption and attached certificate of service.

Prehearing telephone conference call

A prehearing conference will be conducted by telephone on October 29th, using Oregon's Meet Me Teleconferencing system. The prehearing conference will begin at 1:30 p.m. and must conclude no later than 3:30 p.m. To participate, parties must call 1-503-378-3333 no earlier than 1:30 p.m. As there are a maximum of 20 ports (in-coming lines) available through this system, applicants on applications S69537, S73065, S71883 & R73469, S72496, and S73251 in the south coast area will be connected through an ATT conference operator.



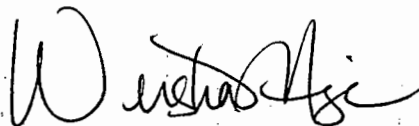
The purpose of the prehearing conference call will be to discuss and establish clear procedures and guidelines for the consolidated hearing, including order of presentation and time requirements; to identify, simplify and clarify issues; to specify matters on which judicial notice may be taken; to obtain stipulations of fact; and to discuss settlement or other resolution or partial resolution of the cases.

Department Representative

The Department has provided notice that it will be represented in this matter by Melinda Bruce, Assistant Attorney General, Department of Justice. Assisting Ms. Bruce will be Paul Conable, law clerk, and Adam Sussman, lay representative for the Department.

Any witness lists, copies of proposed exhibits, motions, pleadings or other filings to be served on the Department should be directed to Melinda Bruce at the address set out in the attached certificate of service.

DATED this 26th day of August, 1996.



Weisha Mize  
Administrative Law Judge

Certificate of Service

I certify that on August 26, 1996, I hand-delivered a copy of this Notice of Hearing in a sealed envelope to the office of Melinda Bruce, Assistant Attorney General; Oregon Dept. of Justice; 100 Justice Building, Salem, OR 97310; and mailed, first-class postage prepaid, a copy of this Notice and the agency's file to:

<u>Applicant</u>	<u>Appl. #</u>
Sonja Lindbloom/Carol Hamil	71884
Diana Cariaga	72605
WC Albro	73096
Donna Semas & Albert Smith	74037
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Gerald & Doris Bacon	73073
Dale Woodruff	73853
Dave & Diana Harland	73313
c/o Stephen Mountainspring, Attorney at Law DOLE, COALWELL & CLARK, P.C. 810 SE Douglas Ave. Roseburg, OR 97470	
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849 Darrell St.  
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Lori Depew & Paul Czemerys 72868  
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Juliane Schnieder 72922  
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Wm. Bonaiuto 73747  
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Robert Stolz 69537  
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K. V. Miller 73065  
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Brookings OR 97415

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72496

Darlene & Kenneth Fulk  
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Coquille OR 97423

73251

Robert & Norma Spring  
606 Lone Roack Rd.  
Glide OR 97443

71837, R71840



Sara Carter, Administrative Hearings Coordinator

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**AUG 23 1996**

**WATER RESOURCES DEPT.  
SALEM, OREGON**

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

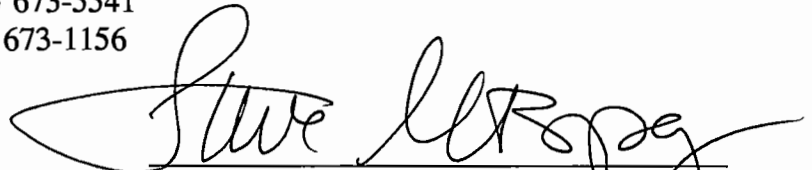
In the Matter of Water Right Application )  
73313, ) Notice of  
and others, ) Representation by Counsel  
for use of water in Douglas County, Oregon. )

Notice is hereby given that Dave Harland and Diana Harland, applicants S-73313 are represented by Dole, Coalwell & Clark, P.C., Stephen Mountainspring (OSB #90346), and Donald A. Dole (OSB #51025) in this contested case proceeding.

All correspondence concerning this matter should be directed to:

Stephen Mountainspring  
Attorney at Law  
P.O. Box 1205  
Roseburg, Oregon 97470  
Telephone: (541) 673-5541  
Facsimile: (541) 673-1156

Dated August 21, 1996.



Stephen Mountainspring, OSB #90346  
Attorney for Dave Harland and Diana Harland

Page 1 — NOTICE OF REPRESENTATION

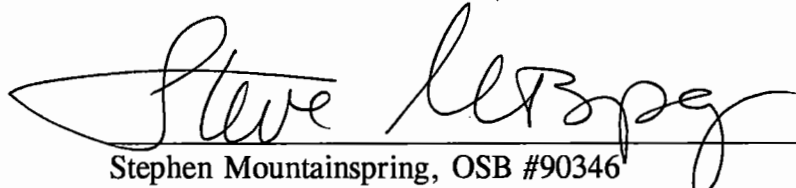
DOLE, COALWELL & CLARK, P.C.  
810 S.E. Douglas Avenue — P. O. Box 1205  
Roseburg, Oregon 97470  
Telephone: (541) 673-5541

1 **CERTIFICATE OF SERVICE**

2 I certify that I filed the original and served a true copy of the Notice of  
3 Representation by Counsel upon the following by depositing it in the United States Post Office  
4 at Roseburg, Oregon, on August 21, 1996, in a sealed envelope, postage paid, addressed to:

5 Weisha Mize  
6 Administrative Law Judge  
7 Water Resources Department  
8 158 12th Street NE  
9 Salem, Oregon 97310  
10 (Original)

11 Melinda L. Bruce  
12 General Counsel Division  
13 Oregon Department of Justice  
14 1162 Court Street NE  
15 Salem, Oregon 97310

16   
17 Stephen Mountainspring, OSB #90346  
18 Of Attorneys for Dave Harland and Diana Harland

**CERTIFICATE OF SERVICE**

DOLE, COALWELL & CLARK, P.C.  
P. O. Box 1205 - 810 S.E. Douglas Avenue  
Roseburg, Oregon 97470  
Telephone: (541) 673-5541

RECEIVED

AUG 23 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

A TRUE COPY

*SH*

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STATE OF OREGON  
WATER RESOURCES DEPARTMENT

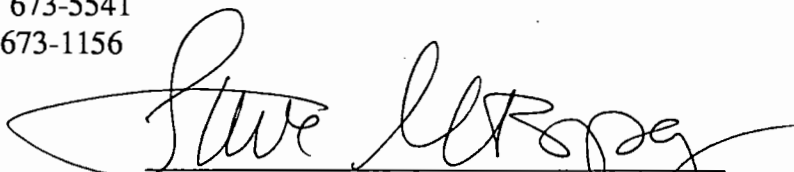
In the Matter of Water Right Application )  
73313, ) Notice of  
and others, ) Representation by Counsel  
for use of water in Douglas County, Oregon. )

Notice is hereby given that Dave Harland and Diana Harland, applicants S-73313 are represented by Dole, Coalwell & Clark, P.C., Stephen Mountainspring (OSB #90346), and Donald A. Dole (OSB #51025) in this contested case proceeding.

All correspondence concerning this matter should be directed to:

Stephen Mountainspring  
Attorney at Law  
P.O. Box 1205  
Roseburg, Oregon 97470  
Telephone: (541) 673-5541  
Facsimile: (541) 673-1156

Dated August 21, 1996.



Stephen Mountainspring, OSB #90346  
Attorney for Dave Harland and Diana Harland

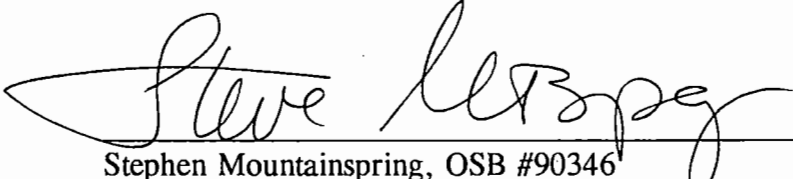
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CERTIFICATE OF SERVICE

I certify that I filed the original and served a true copy of the Notice of Representation by Counsel upon the following by depositing it in the United States Post Office at Roseburg, Oregon, on August 21, 1996, in a sealed envelope, postage paid, addressed to:

Weisha Mize  
Administrative Law Judge  
Water Resources Department  
158 12th Street NE  
Salem, Oregon 97310  
(Original)

Melinda L. Bruce  
General Counsel Division  
Oregon Department of Justice  
1162 Court Street NE  
Salem, Oregon 97310

  
\_\_\_\_\_  
Stephen Mountainspring, OSB #90346  
Of Attorneys for Dave Harland and Diana Harland

CERTIFICATE OF SERVICE

DOLE, COALWELL & CLARK, P.C.  
P. O. Box 1205 - 810 S.E. Douglas Avenue  
Roseburg, Oregon 97470  
Telephone: (541) 673-5541



**State of Oregon  
Water Resources Department**

In the Matter of the Water Right Applications S71884, S72605, S73096, S73073, S73853, S72636, S73313, S70715, S71817, S71908, S72152, S72868, S72922, S73007, S73747, S72248, S72478, S72919, S73313, S73334, S69537, S73065, R73469 & S71883, S72496, and S73251		Order and Notice of Rescheduled  Contested Case Hearings
---	--	---

TO: The parties addressed as shown on the attached Certificate of Service

Hearings Rescheduled to New Date and Time

Pursuant to the request made by the Water Resources Department, the contested case hearings on the above-listed applications are hereby POSTPONED.

All hearings on all the applications listed above are consolidated and are RESCHEDULED for the week of November 18, 1996. The hearing will be held in Room 216 of the Douglas County Courthouse in Roseburg, Oregon, before Weisha Mize, Administrative Law Judge. The hearing will commence at 1 p.m. on Monday, November 18, recess at 5:00 p.m. and reconvene at 9:00 a.m. the following day.

The hearings on the applications listed above are being consolidated as they share the common issues of the review by the interagency team and restrictions placed on the proposed use as a result of that review.

The Water Resources Department will present its case first. Ron Yockim, Attorney at law, representing the applicants for applications S71884, S72605 and S73096 will present the case on behalf of these applicants, followed by Steven Mountainspring, legal counsel presenting the applicants on applications S73073 and S73853, and Gary Hill, legal counsel for the applicant on application S72636. The individual unrepresented applicants will then present their cases in the order set out in the above case caption.

Prehearing telephone conference call

A prehearing conference will be conducted by telephone on October 29th, using Oregon's Meet Me Teleconferencing system. The prehearing conference will begin at 1:30 p.m. and must conclude no later than 3:30 p.m. To participate, parties must call 1-503-378-3333 no earlier than 1:30 p.m. As there are a maximum of 20 ports (in-coming lines) available through this system, applicants on applications S69537, S73065, S71883 & R73469, S72496, and S73251 in the south coast area will be connected through an ATT conference operator.

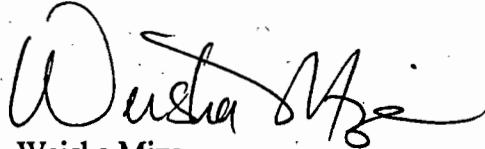
The purpose of the prehearing conference call will be to discuss and establish clear procedures and guidelines for the consolidated hearing, including order of presentation and time requirements; to identify, simplify and clarify issues; to specify matters on which judicial notice may be taken; to obtain stipulations of fact; and to discuss settlement or other resolution or partial resolution of the cases.

Department Representative

The Department has provided notice that it will be represented in this matter by Melinda Bruce, Assistant Attorney General, Department of Justice. Assisting Ms. Bruce will be Paul Conable, law clerk, and Adam Sussman, lay representative for the Department.

Any witness lists, copies of proposed exhibits, motions, pleadings or other filings to be served on the Department should be directed to Melinda Bruce at the address set out in the attached certificate of service.

DATED this 23rd day of August, 1996.



Weisha Mize  
Administrative Law Judge

### Certificate of Service

I certify that on August 23, 1996, I hand-delivered a copy of this Notice of Hearing in a sealed envelope to the office of Melinda Bruce, Assistant Attorney General; Oregon Dept. of Justice; 100 Justice Building, Salem, OR 97310; and mailed, first-class postage prepaid, a copy of this Notice and the agency's file to:

<u>Applicant</u>	<u>Appl. #</u>
Sonja Lindbloom/Carol Hamil	71884
Diana Cariaga	72605
WC Albro	73096
c/o Ron Yockim, Attorney at Law	
PO Box 456	
Roseburg OR 97470	
Gerald & Doris Bacon	73073
Dale Woodruff	73853
Dave & Diana Harland	73313
c/o Stephen Mountainspring, Attorney at Law	
DOLE, COALWELL & CLARK, P.C.	
810 SE Douglas Ave.	
Roseburg, OR 97470	
Hazel Gladwill Trust	72636
c/o Gary Hill, Attorney at Law	
PO 1146	
Roseburg OR 97470	
Frank Nielson, Manager	70715
Douglas Co. Nat'l Resources	
Rm 103, Justice Building	
Roseburg OR 97470	
Donald Kilcrease	71817
601 Lone Rock Rd..	
Glide OR 97443	
Art Adams	71908
6600 Camino De Luna	
Rancho Murieta CA 95683	
Randy Albertson	72152
849 Darrell St.	
Costa Mesa CA 92627	
Lori Depew & Paul Czemerys	72868
6038 South Umpqua Rd..	
Tiller OR 97484	

Juliane Schnieder 72922  
149 Lone Pine Lane  
Roseburg OR 97470

John Irvine 73007  
1304 SE 58th  
Portland OR 97215

Wm. Bonaiuto 73747  
1420 Echo Drive  
Roseburg OR 97470

Donald & Norma Jean Wright 72248  
1187 Little River Rd.  
Glide OR 97443

DeAnna Moore 72478  
PO Box 75  
Umpqua OR 97486

Donald Stearns 72919  
Stearns Family Trust  
18057 Tyee Rd.  
Umpqua OR 97486

Walter & Kathleen Loomis 73334  
PO Box 195  
Winchester OR 97495

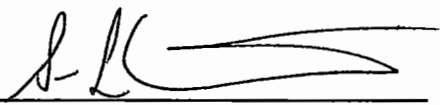
Robert Stolz 69537  
Route 1 Box 2030  
Bandon OR 97411

K. V. Miller 73065  
PO Box 7366  
Brookings OR 97415

James Deatherage 71883, R73469  
PO Box 248  
Allegany OR 97407

George Bussman 72496  
2090 North Bank Rd.  
Bandon OR 97411

Darlene & Kenneth Fulk 73251  
HC 83 Box 2010  
Coquille OR 97423

  
Sara Carter, Administrative Hearings Coordinator

August 19, 1996

Dave and Diana Harland  
1110 Turkey Creek Lane  
Roseburg, OR 97470

WATER  
RESOURCES  
DEPARTMENT

RE: Application 73313

Dave and Diana Harland:

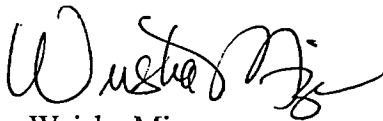
I have received your exhibit list of August 12, 1996. This letter is to correct what appears to be a misunderstanding.

Mr. James F. Gosson, as a non-attorney, cannot represent you. You may call him as a witness on the issues as set out in the hearing notice. The same holds true for Mr. Youngquist. You can represent yourself, or an attorney may represent you, but a non-attorney cannot represent an individual except as provided in ORS 183.457 and OAR 137-03-008 (copy enclosed).

If you are unable to attend the set hearing date, you must let me know on or before Monday, August 26, 1996. If you do not attend the hearing, either in person or through your legal representative, you will be found to be in default. The agency file on your application will be designated as the record.

You may avoid default by attending the hearing, retaining an attorney to represent you at the scheduled hearing, or contacting me by phone or fax no later than August 26 to reschedule your hearing date to a time when you will be able to attend, either in person or by phone. My extension is 311.

Sincerely,



Weisha Mize  
Administrative Law Judge



Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-~~2496~~

2496

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August 12, 1996

Oregon Water Resources Department  
Commerce Building  
158 12th Street NW  
Salem, Oregon 97310

AUG 15 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Attn: Weisha Mize

Re: Application 73313 (Dave and Diana Harland)

Listed below are the documents that we may choose to use as exhibits at our Contested Case Hearing scheduled for August 28th and 29th, 1996 at Roseburg. Mr Youngquist will provide you with a copy of the Douglas County Land Use and Development Ordinance, the Douglas County Water Resources Management Program and any other exhibits that are required.

James F. Gosson, Certified Water Right Examiner, will speak on our behalf.

Our testimony will be centered around the two issues described in the Notice of Contested Case Hearing we received from you, dated July 8, 1996.

PROPOSED EHXIBITS

Application For a Permit w/Associated Documents; March, 1993,  
Satisfactory Report of Technical Review; October 27, 1993,  
Proposed Final Order; May 21, 1996,  
Draft Permit; undated,  
Protest to Proposed Final Order; June, 1996,  
Notice of Contested Case Hearing; July 8, 1996,  
1995 Oregon Water Laws; Volume 1,  
Douglas County Land Use and Development Ordinance,  
Douglas County Water Resources Management Program,  
Administrative Rule; Chapter 690, Division 516.

Very Truly Yours,

  
Dave and Diana Harland

**State of Oregon**  
**Water Resources Department**

In the Matter of the Water Right Applications  
72248, 72478, 72636, 72919, 73313 and 73334  
for use of water in Douglas County, Oregon

|                   **Notice of**  
|                   **Contested Case Hearing**

TO:   The parties addressed as shown on the attached Certificate of Service

A consolidated contested case hearing on the above-listed applications will commence at 1:00 p.m., Thursday, August 29, 1996, in Room 310, Douglas County Courthouse, 1036 SE Douglas, Roseburg, Oregon. The hearing will be conducted by Administrative Law Judge (ALJ) Weisha Mize, and will examine the following issues:

Whether, based on the review and recommendations made by an interagency review team, the Department has the legal authority to issue a Proposed Final Order which imposes requirements or restricts the requested period of use; and

Whether the conditions and restrictions based on the interagency review team's recommendations are necessary to protect the public interest in fisheries and are supported by fact.

The hearing will commence promptly and will conclude no later than 5:00 p.m., at which time the hearing record will be closed.

As the hearing is a consolidated one involving 6 individual applications with common grounds for protest, the Department is directed to present its factual case first and to complete its presentation on all cases, not including any rebuttal, within 1 hour. Each applicant will then have 30 minutes in which to present testimony and exhibits in support of the applicant's position on the issues in this hearing. The order of applicant presentation will be in the order set out in the caption above. Applicants are advised to be in the hearing room at least one hour prior to the time they are to present their case.

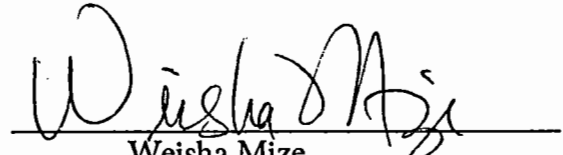
The agency's file on each application will be proposed exhibits. Any objections to entry of a specific file into the record should be raised at the hearing at the time the case on that application is presented.

Both the Protestant and the Department are ordered to provide each other and the Administrative Law Judge lists of any witnesses whom they propose to call, with a brief summary of anticipated testimony, and copies of any exhibits that they propose to introduce, hand-delivered or postmarked no later than Monday, August 19, 1996. Failure to deliver or mail witness lists and copies of exhibits by that postmark date may result in exclusion of the proposed evidence.

In the event the Department will not be represented by counsel at the hearing, the Department is further directed to file its argument on the legal issue set out above at the same time it files its witness list and exhibits.

Enclosed is a copy of STATEMENT OF PARTIES' RIGHTS IN CONTESTED CASE HEARINGS.

Dated July 8, 1996.

  
Weisha Mize,  
Administrative Law Judge  
Water Resources Department  
158 12th Street NE.  
Salem, OR 97310



Certificate of Service

I certify that on July 8, 1996, I hand-delivered a copy of this Notice of Hearing in a sealed envelope to the office of Steven P. Applegate, Acting Administrator, and Adam Sussman, Water Rights Division, 158 12th St. NE, Salem, OR 97310; mailed, first-class postage prepaid, a copy of this Notice to Stephen E.A. Sanders, Assistant Attorney General; Oregon Dept. of Justice; 100 Justice Building, Salem, OR 97310; and mailed, first-class postage prepaid, a copy of this Notice and the agency's file to:

<u>Applicant</u>	<u>Appl. #</u>
Donald & Norma Jean Wright 1187 Little River Rd. Glide OR 97443	72248
DeAnna Moore PO Box 75 Umpqua OR 97486	72478
Hazel Gladwill Trust 17503 North Bank Rd. Roseburg OR 97470	72636
Donald Stearns Stearns Family Trust 18057 Tyee Rd. Umpqua OR 97486	72919
Dave & Diana Harland 1110 Turkey Creek Lane Roseburg OR 97470	73313
Walter & Kathleen Loomis PO Box 195 Winchester OR 97495	

Dated July 8, 1996.

  
Weisha Mize, ALJ

# PROTEST TO PROPOSED FINAL ORDER

Any person may protest the Proposed Final Order. Applicants are not required to pay a fee, but non-applicant protestants must include a \$200 fee as part of their protests. The protest must be submitted to the Water Resources Department; 158 12th St., NE; Salem, OR 97310, and must include the following:

Application No. S-73313 Applicant's Name David G. and Diana M. Harland

Protestant's Name David G. and Diana M. Harland

Address 1110 Turkey Creek Lane

City Roseburg State Oregon Zip Code 97470

Describe your interest in the proposed final order. If you claim to represent the public interest, include a precise statement of the public interest that you represent.

See statement #1, Supplemental Sheet

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SALEM, OREGON

Describe in detail how the proposed final order will impair or be detrimental to your interest.

See statement #2, Supplemental Sheet

Describe in detail how the proposed final order is deficient or in error, and how to correct it.

See statement #3, Supplemental Sheet

Cite any legal authority that supports your protest.

See statement #4, Supplemental Sheet

I certify that to the best of my knowledge the information I have provided in this protest is accurate, true, and correct.

Protestant's Signature

David G. Harland  
Diana M. Harland

Date

6-10-96  
6-10-96



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WATER RESOURCES DEPT.  
SALEM, OREGON

PROTEST TO PROPOSED FINAL ORDER  
IN THE NAME OF DAVID G. AND DIANA M. HARLAND  
SUPPLEMENTAL SHEET #1

Statement #1

We are the applicants. Our interest in the Proposed Final Order is based upon the difference between owning a parcel of land zoned agricultural with a water right for irrigation, as compared to the same land and same zoning, without irrigation.

Allow us to begin by reminding all interested parties that the measurement of water in non-uniform open channels is subject to limits of accuracy. To quote one authority: "The measurement of open channel flows can never be other than a study in nice approximations. No absolute values can be obtained."

The flow of water over weirs, or through Parshall flumes can be measured much more accurately, the result of empirical experimentation over many years, but even so, when making calculations of relatively small flows, values of flow in cubic feet per second beyond two significant figures becomes meaningless. The measurement of flowing water in non-uniform open channels with flows similar to that of the Umpqua River are considered to be acceptable by the industry, if within 5%, and very good if the range of accuracy can be proven to be within 2%.

Using mean flow records of the North Umpqua River gauge at Winchester (river mile 2) for the period from 1906 to 1993, and the main Umpqua River gauge at Elkton (river mile 57) for the period from 1905 to 1987, and disregarding any flow from the South Umpqua River, the mean flow during August and September, historically the lowest flow months of the year, has been about 1000 cfs at Winchester and about 1200 cfs at Elkton. Making no allowance for the increased flow between Winchester and the proposed point of diversion (river mile 109), the proposed diversion would represent 0.00018, or 0.018%, say 0.02 % of the total flow. From this simple calculation it is shown that the difference in flow, with or without the diversion, is far below the capability of being measured by any means known to man, and not only can it not be measured, no prudent scientist in the land would dare be so rash as to suggest that 0.175 cfs of difference in the flow would have any influence on any of the parameters of water quality, including its temperature.

In conclusion of statement #1, it is not only unfair, but grossly deceptive to the public at large, for the State of Oregon to develop and implement a procedure for determining water availability that is not based upon sound scientific concepts, in accordance with the standards of the industry.

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PROTEST TO PROPOSED FINAL ORDER - HARLAND  
PAGE 2

JUN 12 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Statement #2

Application was made for a permit to develop a right to irrigate land. The irrigation season in this part of Oregon is from April 1st to October 31st. For most irrigated crops, irrigation begins during the first two weeks in May. The intensity increases as the season progresses, with the highest use normally being during July and August, then decreasing, and with many crops ending between September 15th and October 1st, with some irrigation continuing until October 31st. The way in which the Proposed Final Order will impair, or be detrimental to our interest does not require a rocket scientist to determine. It will not provide us with water to irrigate during the critical part of the irrigation season, and by not having that right, the Proposed Final Order describes a proposed permission that is worthless to us.

Statement #3

The Proposed Final Order is in error, as it unsuccessfully attempts to predict the availability of water during the irrigation season for all time, based upon analysis by unqualified individuals, faulty assumptions and short-sighted logic.

The issuance of a permit associated with this application will not injure other water rights. The doctrine of prior appropriation applies to the Umpqua River in the same manner that it does to all the other streams in the state of Oregon, and to presume that it would injure other water rights, demonstrates a significant level of ignorance of basic Oregon water law.

It is interesting to note that while the State of Oregon is attempting to deny the further appropriation of water during some months of the year, this reach of the stream, historically, has received little in the way of distribution because of a lack of water, and yet as a result of the process called *water availability determination*, the stream is essentially closed to further appropriation for irrigation, all based upon an erroneous application, or worse, no application of the stream flow records, and then to have the audacity to refer to the document as a proposed water right permit is a mockery.

It is also interesting to note the grammar on the single-page handout referring to the process of "regulatory actions to shut off junior users" (distributing water) as being expensive, and claiming that if the Department is "taking regulatory action" (distributing water) that a senior user has already been negatively impacted. The distribution of water is one of the basic functions of your Department, and distribution will continue to be a basic responsibility and function of it so long as the doctrine of prior appropriation remains the foundation of Oregon water law. To imply to a water right applicant that it is expensive, is irresponsible, and alludes to there being a better way to administer this responsibility of the department. There is no better way, or

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PROTEST TO PROPOSED FINAL ORDER - HARLAND  
PAGE 3

WATER RESOURCES DEPT.  
SALEM, OREGON

alternative to administrating that responsibility. The responsibility of distributing water has always been, and will continue to be that of the Department of Water Resources, and for the Department to attempt to alter that basic function, or to allude to the function as being one that can be massaged into some less costly function because of conditions pertaining to a particular water right permit, is deceptive and irresponsible.

To state that a senior user has already been impacted if the Department is "taking regulatory action" is simply not true, and for the Department to claim otherwise, further demonstrates the level of either ignorance, arrogance, or both, on the part of the Department.

Those are some of the ways in which the proposed final order is deficient and in error.

Some of the ways in which the deficiencies and errors can be corrected are:

Process applications for both in-stream and out of stream appropriation in the order in which they are received, the criteria by which they are processed, being those in effect at the time the application is received. No subsequent criteria to be considered.

Call the state legislative body and the Governor's attention to the fact that some of the effects of Ballot Measure #5, and other ballot measures, have made it necessary for your Department to require additional information with every application; information that is basically immaterial to the issuance of a permit to develop a water right, but yet, have forced your Department to assign personnel to tasks only remotely related at best to the basic responsibilities of your Department.

Example #1: At this time there are no complete and reliable data for determining the relationship between surface water and ground water throughout the State of Oregon from your Department. To compound the problem, your Department has adopted a rule that presumes there to be interference between the two if they are within some absolute distance from one another. Currently, in many areas, it happens to be 1/4 of one mile. That rule in all probability, is an embarrassment to the scientists within your Department, as it has no basis for validity, as to being applied throughout the entire state. The effort to put this subject in proper focus will cost several million dollars, is in dire need, and yet it appears to occupy no significant priority in terms of a plan, budget

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PROTEST TO PROPOSED FINAL ORDER - HARLAND  
PAGE 4

WATER RESOURCES DEPT.  
SALEM, OREGON

preparation, personnel and the other basic ingredients necessary for so large an undertaking.

- Example #2: At this time there are pitifully few operating gauging stations throughout the State of Oregon, and to compound this problem, your Department seems reluctant to commit itself to a program to even maintain the status quo, let alone expand it to an appropriate level. The smaller streams in western Oregon seem to be especially vulnerable, sometimes when an in-stream water right has been, or is going to be filed, or an individual files for an appropriation, the stream suddenly comes into focus, with no flow records, or other identification other than the name and location of the stream.
- Example #3: Your Department has adopted a process of attempting to determine the availability of water with insufficient data, and where data is sufficient, it is used incorrectly, resulting in faulty information being used in an attempt to resolve issues.
- Example #4: Your Department, for some reason, has been diverging from the basic ingredient of Oregon water law, that being the doctrine of prior rights. Water availability is not the concern of your Department, but of the water right holder, whether it be an old right, a new right, or somewhere in between. To abandon the efforts associated with the ineffectual attempts to determine the availability of water is a decision that cannot be taken too soon.
- Example #5: Your Department seems determined to produce new forms at a rate that defies comprehension. We now have forms that require the applicant to sign oaths, certifications and other forms of testimony, as if the applicant were awaiting an opportunity to commit some illegal act. Your department is not dealing with a group of parolees, but ordinary citizens, most of whom are land owners and sincere in what they are attempting to accomplish. Could not those efforts be spent on tasks more closely associated with those in need of attention within the Department?

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PROTEST TO PROPOSED FINAL ORDER - HARLAND  
PAGE 5

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WATER RESOURCES DEPT.  
SALEM, OREGON

Statement #4

The legal authority that supports our protest is the Douglas County Land Use Plan. If these arguments are unsuccessful, we reserve the right to amend our application to include the use of stored water from Galesville Reservoir.

David J. Harland

6-10-96

Dora M. Harland

6-10-96

David G. Harland  
Diana M Harland  
1110 Turkey Crick Ln.  
Roseburg, Or. 97470  
File # S-73313

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WATER RESOURCES DEPT.  
SALEM, OREGON

6/4/96

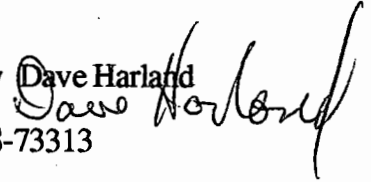
Oregon Water Resources Board  
Attention Gary Holliday

Dear Mr. Holliday:

Regarding your letter to me, dated 5-21-96 about the proposed final order . Enclosed are the requested ownership/easement forms mentioned in your letter. I'm sorry for any delay that not receiving these papers might have caused. It was my understanding after reading the correspondence from September 26-1995 that I didn't have to send these papers until your office requested them. At any rate I hope everything is in order.

Sincerely Dave Harland

File # S-73313  
6-4-96



r



WATER RESOURCES DEPT.  
SALEM, OREGON

**WATERLINE EASEMENT**

1  
2 J. GERALD BACON, individually, and with DORIS L. BACON, as husband and  
3 wife, and as trustees of the Vera E. Bacon trust under agreement dated September 24, 1975,  
4 ("the Bacons") hereby grant a waterline easement to TALBOT P. KENDALL and HELEN  
5 S. KENDALL, husband and wife ("the Kendalls"); and RAYMOND W. GIBBY and  
6 BARBARA A. GIBBY, husband and wife ("the Gibbys"); and DAVID G. HARLAND and  
7 DIANA M. HARLAND, husband and wife ("the Harlands"); and WALTER C. LOOMIS  
8 and KATHLEEN LOOMIS, husband and wife ("the Loomises"); and MELVIN E.  
9 TORGUSON and JUDITH TORGUSON, husband and wife, upon the following terms and  
10 conditions.

11 1. **Easement Description.** This easement is appurtenant to the properties owned  
12 by the grantees which are situated to the north and east of grantors' properties, and the  
13 additional property hereinafter described in paragraph 4. The easement is only for the one-  
14 time placement and maintenance of one 5" diameter waterline. The easement is located  
15 where said 5" waterline has already been placed; to wit, approximately 200 feet, more or  
16 less, north of Turkey Creek, across grantors' property, east of Edenbower-Millwood Road  
17 (aka Garden Valley Road, County Road 6) in the north half of the northeast quarter of  
18 Section 18, Township 26 South, Range 6 West, W.M., Douglas County, Oregon, and in the  
19 northwest quarter of the northwest quarter of Section 17 of said Township 26 South.

20 2. **Future Use.** Any future waterlines and any change of this 5" waterline (such  
21 as upgrading to an 8" line) must use another route and shall not rely on any right granted  
22 by the Bacons in this instrument. Any maintenance or repair of the 5" waterline shall be  
23 conducted in such a manner as to return the grantors' property as near as possible to its  
24 state prior to such disturbance.

25 3. **Grantors' Liability.** The Bacons shall not be responsible for the installation,  
26 maintenance, or repair of the waterline or pump, nor shall they be liable for any damage  
27 to the waterline or pump caused by their negligence or accident, nor by the act or omission  
28 of any third person or entity.

29 4. **Additional Property Served.** The easement shall be appurtenant to the  
30 following additional property in Section 17 of said Township 26 South: (1) the east half of  
31 the northwest quarter of the northeast quarter; (2) the northeast quarter of the northeast  
32 quarter; and (3) the southeast quarter of the northeast quarter.

Page 1 — WATERLINE EASEMENT

DOLE, COALWELL, CLARK & WHITE, P.C.  
810 S.E. Douglas Avenue — P. O. Box 1205  
Roseburg, Oregon 97470  
Telephone: (503) 673-5541

*Loomis  
Handed*

WATER RESOURCES DEPT.  
SALEM, OREGON

1           5.       **Other Parties Entitled to Use.** The Kendalls, Gibbys, Harlands, and Loomises  
2 hereby grant to the Torgusons and any other owner of the property described in paragraph  
3 4 (said grantees hereinafter collectively referred to as "the Torgusons") the right to obtain  
4 water conveyed through the waterline on this easement and through any other waterline  
5 from which these parties obtain water. Such right includes a grant to the Torgusons of  
6 waterline easements across properties owned by the Kendalls, Gibbys, Harlands, or  
7 Loomises to secure the right to obtain said water. The location of these easements may be  
8 more explicitly described in later instruments. The right of the Torgusons to obtain water  
9 may be conditioned only upon their payment of an equal share of the original cost of the  
10 installation of the waterlines involved, and upon an agreement to share equally with the  
11 other parties in the maintenance and repair of the waterline and pump facility used to  
12 provide water; in all regards the Torgusons shall be entitled to use said water on an equal  
13 basis with the other parties in this paragraph 5.

14           6.       **Cooperation and Benefit.** The Kendalls, Gibbys, Harlands, Loomises, and  
15 Torgusons agree to cooperate in all regards with one another to obtain the beneficial use  
16 of water from this waterline, including granting of any necessary easements across one  
17 another's properties on reasonable terms. The terms of this easement shall be binding  
18 upon, and inure to the benefit of, the heirs, assignees, and successors of the parties herein.

19           It is so agreed.

20 *Gerald Bacon*  
21 GERALD BACON  
22 as individual and as trustee

*Doris L. Bacon*  
DORIS L. BACON  
as individual and as trustee

23 *Talbot P. Kendall*  
24 TALBOT P. KENDALL

*Helena S. Kendall*  
HELEN S. KENDALL

25 *Raymond W. Gibby*  
26 RAYMOND W. GIBBY

*Barbara A. Gibby*  
BARBARA A. GIBBY

*David G. Harland*  
DAVID G. HARLAND

*Diana M. Harland*  
DIANA M. HARLAND

Page 2 — WATERLINE EASEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

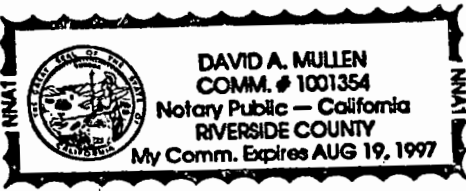
State of California

County of Riverside

On 12/14/93 before me, David A. Mullen Notary Public

personally appeared Raymond W. Sibley & Barbara A. Sibley

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
David A. Mullen  
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
- TITLE(S) \_\_\_\_\_
- PARTNER(S)  LIMITED  GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

WATER RESOURCES DEPT.  
SALEM, OREGON

*Walter C. Loomis*

WALTER C. LOOMIS

*Kathleen Loomis*

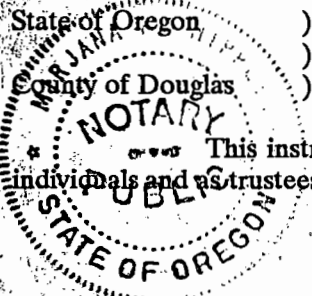
KATHLEEN LOOMIS

*Melvin E. Torguson*

MELVIN E. TORGUSON

*Judith Torguson*

JUDITH TORGUSON



State of Oregon )  
County of Douglas ) ss.

This instrument was acknowledged before me by J. Gerald Bacon and Doris L. Bacon, as individuals and as trustees of the within named trust, on November 17, 1993.

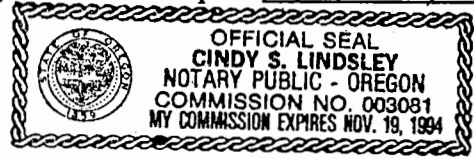
*Mirjana M. Hippler*  
Notary Public for Oregon  
My Commission Expires: 7/30/97

State of Oregon )  
County of Douglas ) ss.



This instrument was acknowledged before me by Talbot P. Kendall and Helen S. Kendall on December 1, 1993

*Cindy S. Lindsley*  
Notary Public for Oregon  
My Commission Expires: 11-19-94



RECEIVED

BOOK 1270 PAGE 600

JUN - 6 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

1 State of Oregon )  
2 )  
3 County of Douglas ) ss.

4 This instrument was acknowledged before me by Raymond W. Gibby and Barbara A. Gibby  
5 on \_\_\_\_\_

6  
7 Notary Public for Oregon  
8 My Commission Expires: \_\_\_\_\_

9 State of Oregon )  
10 )  
11 County of Douglas ) ss.

12 This instrument was acknowledged before me by David G. Harland and Diana M. Harland  
13 on Dec 3, 1993

*Rita L Nunes*

14 Notary Public for Oregon  
15 My Commission Expires: 4-12-97

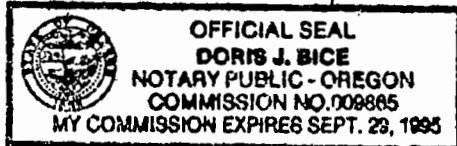


17 State of Oregon )  
18 )  
19 County of Douglas ) ss.

20 This instrument was acknowledged before me by Walter C. Loomis and Kathleen Loomis on  
21 Nov 22nd 1993

*Doris Bice*

22 Notary Public for Oregon  
23 My Commission Expires: Sept 29, 1995

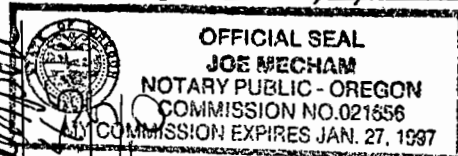
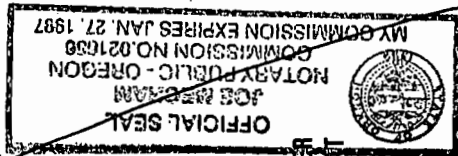


25 State of Oregon )  
26 )  
27 County of Douglas ) ss.

28 This instrument was acknowledged before me by Melvin E. Torguson and Judith Torguson  
29 on 12/7/93

*Joe Mecham*

30 Notary Public for Oregon  
31 My Commission Expires: 12/7/93



32 Page 4 — WATERLINE EAST

DOLE, COALWELL, CLARK & WELLS  
810 S.E. Douglas Avenue — P.O. Box 200  
Roseburg, Oregon 97470  
Telephone: (503) 673-5511

HANDED

93-25250

STATE OF OREGON  
COUNTY OF DOUGLAS  
I, GAY FIELDS, COUNTY CLERK AND RECORDER  
OF CONVEYANCES, DO HEREBY CERTIFY THAT  
THIS INSTRUMENT WAS RECORDED  
93 DEC 15 PM 3:51

GAY FIELDS  
DOUGLAS COUNTY CLERK

IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

BY *Walter R. Davenport*  
DEPUTY

FEE 15

**RECEIVED**

JUN - 6 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

## Grant and Easement Agreement

An easement and agreement by and between Talbot P. Kendall and Helen S. Kendall, his wife herein known as (Kendall); and Raymond W. Gibby and Barbara A. Gibby, his wife, herein known as (Gibby); and David G. Harland and Diana M. Harland, his wife, herein known as (Harland); and Walter C. Loomis and Kathleen Loomis, his wife, herein known as (Loomis).

(Kendall) grants to (Gibby), (Harland) and (Loomis) that portion of the herein Exhibit "A" Easement as described under courses (13) through (17); (Gibby) grants to (Harland) that portion of the herein Exhibit "A" Easement as described under courses (18) through (20). (Gibby) grants to (Loomis) that portion of the herein Exhibit "A" Easement described under courses (18) and through a portion of course (19) to a point hereinafter designated "G" and also the Exhibit "B" Easement herein described.

RECEIVE

## Exhibit "A" Easement.

JUN - 6 1996

An easement 10.0 feet wide for a 5 inch pipe for water together with maintenance and repair over a portion of the NE  $\frac{1}{4}$  of Section 18, the NW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 17 and the S  $\frac{1}{2}$  of SW  $\frac{1}{4}$  of Section 8 in T 26 S.R. 6 W., Willamette Meridian Douglas County, Oregon described as follows:

Beginning at a point on the easterly boundary of Garden Valley Road in the SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 18 from which a point in Garden Valley Road marked L 3 203 + 88.20 P.T. bears S. 51°28'35" W., 35.0 feet, thence from said point of beginning,

- (1) N. 24° W., 140.0 feet to a point, thence
- (2) N. 8° E., 52.0 feet to a point on the north side of Turkey Crick, thence along the north side of Turkey Crick
- (3) N. 74° E., 450.0 feet to a point, thence
- (4) S. 74° E., 149.0 feet to a point, thence
- (5) N. 49° E., 96.0 feet to a point, thence
- (6) N. 0° E., 240.0 feet to a point, thence
- (7) N. 34° E., 60.0 feet to a point, thence
- (8) N. 12° E., 55.0 feet to a point, thence
- (9) N. 0° E., 344.0 feet to a point, thence
- (10) N. 27° E., 259.0 feet to a point, thence
- (11) N. 31° E., 531.0 feet to a point, thence
- (12) N. 72° E., 231.0 feet to the west boundary of the property described in the Memorandum of Sale to Talbot P. Kendall and Helen S. Kendall, husband and wife recorded July 3, 1990 in Book 1103 at page 783 Official Records of Douglas County, Oregon and then continuing,
- (13) N. 72° E., 94.0 feet to a point, thence
- (14) N. 41° E., 370.0 feet to a point, thence
- (15) N. 69° E., 363.0 feet to a point, thence
- (16) N. 25° E., 354.0 feet to a point, thence
- (17) N. 49° E., 55.0 feet to a point on the East boundary of the property described in the Memorandum of Sale referred to above, said point bears N. 0°21'36" W., 309.0 feet more or less from the centerline of Turkey Crick Lane, and from this point the pipe shall be reduced to 4 inches, thence
- (18) N. 44° E., running over the lands of Raymond W. Gibby and Barbara A. Gibby, husband and wife as described in the Contract Memo recorded June 17, 1980 in Volume 758 at page 62 Official Records of Douglas County, Oregon 500.0 feet to a point, thence continuing over the lands of Gibby
- (19) N. 60° E., at 94.0 feet a point herein designated "G" for further description to be herein described a total distance of 177.0 feet to a point, thence
- (20) N. 54° E., 985.0 feet to a point on the North boundary of the lands of Gibby.

WATER RESOURCES DIVISION  
SALEM, OREGON

Exhibit "B" Easement.

BOOK 1270 RECEIVED 692

JUN - 6 1996

WATER RESOURCES DEP'

An Easement 10.0 feet wide for a 2 inch pipeline and water, SALEM, OREGON together with maintenance and repair over a portion of the lands of Raymond W. Gibby, et. ux. as described in the Contract Memo recorded June 17, 1980 in Volume 758 at page 62 described as follows:

Beginning at point "G" referred to in the Exhibit "A" Easement, thence

- (1) S. 30° E., 141.0 feet to a point, thence
- (2) S. 36° E., 400.0 feet to a point, thence
- (3) S. 13° E., 96.0 feet to a point, thence
- (4) S. 59° E., 90.0 feet to a point, thence
- (5) S. 43° E., 50.0 feet to a point, thence
- (6) S. 62° E., 100.0 feet to a point, thence
- (7) S. 40° E., 554.0 feet to the end of this easement at a point on the easterly line of the lands of Gibby referred to above on the north-south centerline of Section 17 T 26 S.R. 6 W. W.M. said point bears, N 2°38'33"E., 30.0 feet more or less from the centerline of a 60.0 foot wide easement at the southeast corner of the lands of Gibby as referred to above.



E  $\frac{1}{2}$  of NW  $\frac{1}{4}$  of NE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  and SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of section  
17 in T. 26 S.R. 6 W., W.M. Douglas County Oregon.

**RECEIVED**

JUN - 6 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

WATER RESOURCES DEPT.  
SALEM, OREGON

(1) (Kendall), (Gibby), (Harland), and (Loomis) agree to share the maintenance and repair of the pipeline, proportionately and the installation and removal of the pump, equally.

(2) The Exhibit "A" Easement as described under courses (1) through (12) shall be only one pipe line not to exceed more than 5 inches in diameter.

(3)a. The Exhibit "A" Easement and the Exhibit "B" Easement shall also be appurtenant to the property described in Exhibit "C", but only if the owners of Exhibit "C" agree to pay an equal share of the original cost of the installation of the Exhibit "A" and Exhibit "B" Easement pipelines.

(3)b. If the owners of Exhibit "C" elect to use the Exhibit "A" Easement and the Exhibit "B" Easement they shall also be subject to paragraph (1) herein.

In witness where of, the parties have executed this Grant and Easement Agreement.

Dated: August 5, 1993

*Talbot P. Kendall*  
Talbot P. Kendall

*Helen S. Kendall*  
Helen S. Kendall

*Raymond W. Gibby*  
Raymond W. Gibby

*Barbara A. Gibby*  
Barbara A. Gibby

*David G. Harland*  
David G. Harland

*Diana M. Harland*  
Diana M. Harland

*Walter C. Loomis*  
Walter C. Loomis

*Kathleen Loomis*  
Kathleen Loomis

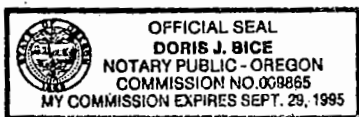
STATE OF OREGON,  
County of Douglas } ss.

FORM No. 23—ACKNOWLEDGMENT.  
Stevens-Ness Law Publishing Co. NL  
Portland, OR 97204 © 1992

BE IT REMEMBERED, That on this 8th day of Dec, 1993, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named Walter C Loomis & Kathleen Loomis

known to me to be the identical individual, described in and who executed the within instrument and acknowledged to me that They executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



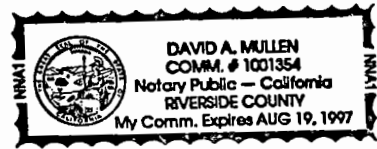
*Doris Bice*  
Notary Public for Oregon  
My commission expires Sept 29, 1995

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Riverside }
On 12/14/93 before me, David A. Mullen / Notary Public
personally appeared Raymond W. Gibby & Barbara A. Gibby

BOOK 1270 PAGE 606

SALE OF REAL ESTATE - OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER
INDIVIDUAL
CORPORATE OFFICER(S)
PARTNER(S) LIMITED GENERAL
ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER:



proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) were subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Signature of David A. Mullen

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:
Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

OPTIONAL SECTION
TITLE OR TYPE OF DOCUMENT
NUMBER OF PAGES DATE OF DOCUMENT 12-14-93
SIGNER(S) OTHER THAN NAMED ABOVE

INDIVIDUAL ACKNOWLEDGMENT

State of OREGON }
County of DOUGLAS } SS.

On this the 3 day of DEC 1993, before me,

RITA L. NUNES
the undersigned Notary Public, personally appeared
DAVID G. HARLAND & DIANA M. HARLAND



proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) they subscribed to the within instrument, and acknowledged that they executed it.
WITNESS my hand and official seal.

Signature of Rita L. Nunes
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document GRANT & EASEMENT AGREEMENT
Number of Pages 5 Date of Document 12-3-93
Signer(s) Other Than Named Above KENDALL/GIBBY/LOOMIS

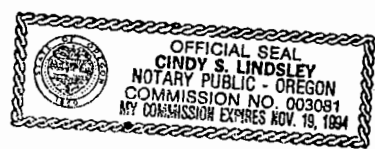
STATE OF OREGON, }
County of Douglas } SS.

FORM NO. 23 - ACKNOWLEDGMENT
STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 1st day of December, 1993, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Talbot P. Kendall & Helen S. Kendall

known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that their executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Signature of Cindy S. Lindsley
Notary Public for Oregon.
My Commission expires 11-19-93

**RECEIVED**

JUN - 6 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

STATE OF OREGON )  
COUNTY OF DOUGLAS ) SS.  
I, GAY FIELDS, COUNTY CLERK AND RECORDER  
OF CONVEYANCES, DO HEREBY CERTIFY THAT  
THIS INSTRUMENT WAS RECORDED  
93 DEC 15 PM 3: 33

GAY FIELDS  
DOUGLAS COUNTY CLERK  
IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

BY *Nancy R. Davenport*  
DEPUTY

FEE 55  
5  
60

93-25251

HANDED

Application S-73313

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # S-73313✓

WATERMASTER # 15✓

REGIONAL MANAGER: SOUTHWEST✓

ODF&W - Douglas County:✓

CWRE (if agent): JAMES F GOSSON #054✓

DEQ✓

OTHER STATE AGENCY IF NECESSARY: KEN STAHR, OWRD, WATER AVAILABILITY SECTION

DIVISION 33 LIST: COLUMBIA RIVER INTERTRIBAL FISH COMMISSION; U.S. FISH & WILDLIFE;  
(CHECK ONLY IF APPLICABLE) NORTHWEST POWER PLANNING COUNCIL & NATIONAL MARINE FISHERIES

POWER BUILDER UPDATER; FRONT COUNTER

OTHER ADDRESSES OF PEOPLE WHO PAID THE \$10 FEE:

---

---

---

---

---

PEOPLE WITH OBJECTIONS, COMMENTS OR REQUESTED COPY W/O \$10 (SEND THE \$10 LETTER):  
GERALD AND DORIS BACON 10176 GARDEN VALLEY ROAD ROSEBURG, OR. 97470  
DOUGLAS COUNTY ROAD DEPARTMENT 2586 N.E. DIAMOND LAKE BOULEVARD ROSEBURG, OR. 97470  
TALBOT KENDALL 1251 N.W. JEFFERSON STREET ROSEBURG, OR. 97470  
RAYMOND AND BARBARA GIBBRY 14015 EL MESA DRIVE RIVERSIDE, CA. 92503

CASEWORKER : GH

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-73313

**Proposed Final Order**

*Additional Information:* A copy of written authorization or easement needs to be submitted to our Department before a permit will be issued.

*Summary of Recommendation:* The Department recommends that the attached draft permit be issued with conditions.

*Application History*

On April 2, 1993, DAVID G or DIANA M HARLAND submitted an application to the Department for the following water use permit:

- Amount of Water: 0.175 cubic foot per second
- Use of Water: Irrigation of 14.0 acres
- Source of Water: Umpqua River, a tributary of Pacific Ocean
- Area of Proposed Use: Douglas County within
  - NE 1/4 SW 1/4
  - NW 1/4 SE 1/4
  - SW 1/4 SE 1/4SECTION 8  
TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.
- Water Delivery System: An electric motor with a pump and a pipeline to the place of use with sprinklers connected.

The Department mailed the applicant notice of its Technical Review October 27, 1993, determining that use of water for Irrigation purposes may be allowed March 1 through October 31. The 60-day objection period closed January 7, 1994.

Within the 60-day period, objections were received from WaterWatch of Oregon.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835

- applicable statutes, administrative rules, and case law
- any comments received

*Findings of Fact*

The Umpqua Basin Program allows the following use: Irrigation  
Senior water rights exist on the Umpqua River and on downstream waters.  
The Umpqua River is not within or above a State Scenic Waterway.  
Water is available for further appropriation (at an 80 percent exceedance probability) for the period March 1 through October 31.

The Department finds that no more than 0.175 cfs would be necessary for the proposed use. The amount of water requested, 0.175 cfs, is allowable.

The Oregon Department of Fish and Wildlife has advised that one or more species of game fish are present at the described point of diversion.

An interagency team reviewed this proposed use for potential adverse impacts on declining fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

The use of water is further restricted to March 1 through June 15 and September 16 through October 31.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The required screens and fishways are to be in place, functional, and approved by Oregon Department of Fish and Wildlife before diversion of any water.

The Department proposes to issue the attached permit contingent on the receipt of the attached "Limited Period of Use Acknowledgement Letter." This letter must be signed and returned to the Department within 45 days. Failure to return the letter may result in the Department withholding issuance of the permit and may result in the eventual rejection of your application.

*Conclusions of Law*

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure

other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Umpqua Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
  - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

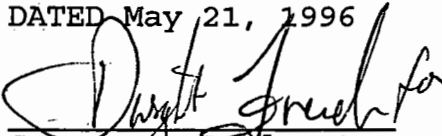
The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

#### Recommendation

The Department recommends that the attached draft permit be issued with conditions.



DATED May 21, 1996

  
Steven P. Applegate  
Administrator  
Water Rights Division

### Protest Rights

Under the provisions of ORS 537.153(6) or 537.621(7), you have the right to submit a protest against this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050.
- If you are the applicant, a statement of whether or not you are requesting that a contested case hearing be held. If you do not request a hearing, the Department will presume that you do not wish for a hearing to be held.

Your protest must be received in the Water Resources Department no later than July 5, 1996.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

GH

DRAFT

This is not a permit!!!

DRAFT

STATE OF OREGON

COUNTY OF Douglas

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DAVID G HARLAND  
DIANA M HARLAND  
1110 TURKEY CREEK LANE  
ROSEBURG, OREGON 97470

(541) 459-5923

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73313

SOURCE OF WATER: UMPQUA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION OF 14.0 ACRES

MAXIMUM RATE/VOLUME ALLOWED: 0.175 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH JUNE 15 AND SEPTEMBER 16 THROUGH  
OCTOBER 31

DATE OF PRIORITY: APRIL 2, 1993

POINT OF DIVERSION LOCATION: NE 1/4 NW 1/4, SECTION 18, T 26S, R 6W,  
W.M.; 1030 FEET SOUTH & 400 FEET WEST FROM N1/4 CORNER, SECTION 18

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 ACRE-FEET acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4 2.6 ACRES  
NW 1/4 SE 1/4 10.7 ACRES  
SW 1/4 SE 1/4 0.7 ACRE  
SECTION 8  
TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The required screens and fishways are to be in place, functional, and approved by Oregon Department of Fish and Wildlife before diversion of any water.

**STANDARD CONDITIONS**

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Application S-73313

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Issued \_\_\_\_\_, 199\_

**DRAFT - THIS IS NOT A PERMIT**

---

Water Resources Department  
Director

Application S-73313    Water Resources Department  
Basin 16                    Volume 1 UMPQUA RIVER AND MISC.  
GH    MGMT.CODE

PERMIT DRAFT  
District 15

**CERTIFIED MAIL**  
**Return Receipt Requested**

WATER  
RESOURCES  
DEPARTMENT

May 21, 1996

David G Harland  
Diana M Harland  
1110 Turkey Creek Lane  
Roseburg, OR. 97470

RE: Application File # S-73313

Dear Applicant:

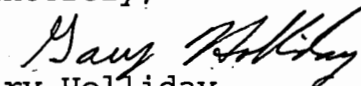
On May 21, 1996, a Proposed Final Order was sent from the Department requesting additional information necessary to complete your application for water use. As of today, these items have not been received:

- ▶ A completed ownership/easement form showing ownership or permission to cross property not owned. Douglas Baers' September 26, 1995 letter requested written authorization or an easement from Marion County. We have not received this authorization as of today, please forward this information.

Please submit these items by **July 5, 1996**. If we do not receive the items requested above by this time, we may reject your application consistent with ORS 537.153. If your application is rejected, any fees submitted in excess of the examination fee will be refunded; however, the examination fee is non-refundable and will not be returned. In addition, the priority date associated with your application will be lost.

Should you have any questions regarding your application or the required materials listed above, or if you need to request an extension of time, please call me personally at 1-800-624-3199, extension 454.

Sincerely,

  
Gary Holliday  
Water Right Specialist



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

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

DAVID CHARLAND  
 DIANA M HARLAND  
 1110 TURKEY CREEK LANE  
 ROSEBURG OR 97470

4a. Article Number

P56267

4b. Service Type

- Registered  Certified
- Express Mail  Insured
- Return Receipt for Merchandise  COD

7. Date of Delivery

5. Received By: (Print Name)

DAVE HARLAND

6. Signature (Addressee or Agent)

X Dave Harland

8. Addressee's Address (Only if requested and fee is paid)

**PFO CHECKLIST**

Application #: Σ 73313 01

Subbasin \_\_\_\_\_

Basin: 16

WAB: \_\_\_\_\_

Township \_\_\_\_\_

Range \_\_\_\_\_

Section \_\_\_\_\_

1/4 1/4

- 1. Completeness checklist verified?  Y /  N
- 2. Indicators that the process should not continue (ie - protest, items missing, letter to file indicating hold, other)  Y /  N
- N/A 3. Groundwater review A B C D
  - a. Is second groundwater review necessary? Y /  N reason \_\_\_\_\_
  - b. Is the well located in a groundwater limited area? Y /  N
- 4. SWW  Y /  N Triage  Y /  N conditions/restrictions Y /  N \_\_\_\_\_
- 5. Basin Program limitations? Y  N \_\_\_\_\_
- 6. Withdrawal? Y  N season allowed \_\_\_\_\_
- 7. Basin Maps have been checked  Y /  N The River Mile is \_\_\_\_\_
- 8. Water Availability (50% < July 17, 1992 OR 80% [50% storage] > July 17, 1992) NA \_\_\_\_\_
  - a. Notify Ken Stahr Y /  N (Q, Duty, or Season) \_\_\_\_\_
- 9. Rate/Duty/Season 1/80 2.5 March 1 - Oct. 31
- 10. Use Irrig. Period of Allowed Use \_\_\_\_\_
- 11. Priority Date(s) April 2, 1993 TR / IR mail date \_\_\_\_\_
- 12. B.O.R. project Y  N contract # \_\_\_\_\_
- 13. TMDL Basin? Y  N (Tualatin, Yamhill, Pudding) Division 33 Y /  N (Abv Bonn. > July 17, 92 //// Blw Bonn > April 18, 94 or June 3, 94)
- 14. Conflicts Y /  N \_\_\_\_\_
- 15. Objections?  Y /  N WU PFO different from IR/TR Y /  N \_\_\_\_\_
- 16. Conditions (from IR/TR/ or Additional)  Y /  N (macro series 4 - 7) 4B
- 17. Land use approval  OK'd  needs approval  county notified  NA
- 18. SIZE Small (<0.1cfs, <9.2AF),  Medium (>0.1 or <1.5cfs, >9.2 or <100AF) Large (>1.5 cfs, >100 AF)?
- 19. Watermaster Dist: (1 2 16 18 - NWR) (3 4 5 - NCR) (6 8 9 10 - ER) (11 12 17 - SCR) (14  15) 19 -  SWR

Name: J. H.

Date: 5-10-96

save to m:\t\pfo\done\week#\app#.w51

Fish District: Umpqua

WAB #

Application # S-73313

Applicant Name D. Harland

Date: March 19, 1996

AREA

Source Watershed

Senior instream water right application to junior out-of-stream application

No water availability information

INFORMATION/CONDITIONS

1. Are there water quality concerns related to salmon/steelhead/trout?  Y  N

Should the application be denied?  Y  N

Should the application be restricted?  Y  N

Jan	Feb	Mar	Apr	May	Jun 1-15	June 16-30	Jul	Aug	Sep 1-15	Sep 16-30	Oct	Nov	Dec
						X	X	X	X				

2. Are there adequate flows to protect salmon/steelhead/trout?  Y  N

Should the application be denied?  Y  N

Should the application be restricted?  Y  N  Based on water availability

Jan	Feb	Mar	Apr	May	Jun 1-15	June 16-30	Jul	Aug	Sep 1-15	Sep 16-30	Oct	Nov	Dec
						X	X	X	X				

3. Domestic

Should domestic use be conditioned to human consumption?  Y  N  Based on water availability

4. Fish Screening and Passage

- A. Requires fish screening and passage, with ODFW certification (applications > 0.5 cfs).
- B. Requires fish screening and passage, without ODFW certification (applications < 0.5 cfs).
- C. No dam or obstruction without a fishway.

5. Miscellaneous

- A. Reservoir Filling \_\_\_\_\_
- B. Water Quality Permits \_\_\_\_\_
- C. Return Flow \_\_\_\_\_
- D. Time Limited Water Right \_\_\_\_\_
- E. Other \_\_\_\_\_

6. Measurement and Reporting

- A. Small diversions (<0.1 cfs or <9.2 ac/ft. may/may)
- B. Medium diversions (0.1 cfs or >9.2 and <1.5 cfs or <100 ac/ft. shall/may)
- C. Large diversions (1.5 cfs or >100 ac/ft. shall/shall)

FINDINGS

Permit is proposed for denial prior to interagency team review for fishery concerns.

Deny permit due to fishery concerns, except for

- A. Domestic (which may be limited to human consumption, see above)
- B. Livestock
- C. Unless water is from storage

Do not condition further due to fishery concerns.

Condition permit due to fishery concerns listed above.



October 27, 1993

DAVID G. or DIANA M. HARLAND  
1110 TURKEY CREEK LANE  
ROSEBURG, OREGON 97470

Reference: File [S 73313]

Hello:

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

**AS THE RESULT OF OUR TECHNICAL EVALUATION OF YOUR APPLICATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.**

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

All evidence and objections must be received by our Salem office **no later than 5:00 p.m. on or before January 7, 1994** or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



STEVE BROWN  
Manager  
Water Rights Division

Enclosures

SB/glb

Report Date: October 27, 1993

OREGON WATER RESOURCES DEPARTMENT

**SATISFACTORY REPORT OF TECHNICAL REVIEW**

**FOR WATER USE PERMIT(S)**

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD N.E., SALEM, OREGON 97310, BY 5 P.M. ON OR BEFORE: January 7, 1994

1. APPLICATION FILE NUMBER - S 73313
2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:

DAVID G. or DIANA M. HARLAND  
1110 TURKEY CREEK LANE  
ROSEBURG, OREGON 97470  
DOUGLAS CO. 503-459-5923

Date application received for filing and/or tentative date of priority: 04/02/1993

SOURCE: UMPQUA R TRIBUTARY TO: PACIFIC OCEAN

Purpose and/or use: IRRIGATION

Flow: 0.175 CFS

Point of Diversion Location:

NE 1/4 NW 1/4, SECTION 18, R 26 S, R 6 W, W.M.; 1030 FEET SOUTH AND 400 FEET WEST FROM THE NORTH 1/4 COR. OF SEC. 18.

Place of use:

NE 1/4 SW 1/4	2.6 ACRES
NW 1/4 SE 1/4	10.7 ACRES
SW 1/4 SE 1/4	0.7 ACRE

SECTION 8

TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.

**SURFACE WATER AVAILABILITY**

Water is likely available in excess of needs for all existing rights 80% of the time during each monthly period proposed by the technical review.

Water availability tables are available in the application file and may be reviewed in the office of the Water Resources Department in Salem.

CONFLICTS WITH OTHER WATER RIGHTS:

There **are no** existing rights from this point of diversion.

There **are no** existing water rights appurtenant to the lands described in the application.

REPORT CONCLUSIONS:

Water in the amount of 0.06 CFS is likely available for **8** months of the **8** months normal period of use. Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

**THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.**

This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.

## PROPOSED PERMIT CONDITIONS

Application: S 73313

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

1. Use of water under this permit is subject to all prior rights.
2. Period of allowed use: MARCH 1 - OCTOBER 31
3. Rate of use: 0.175 CFS
4. Water use development requirements:
  - A. Begin construction by (one year from issuance of permit).
  - B. Complete construction by October 1, 1996.
  - C. Completely apply the water to beneficial use by October 1, 1997.
5. Measurement, recording and reporting conditions:
  - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
  - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
  - C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
6. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation

of the permit.

7. The permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
8. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
9. The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

RECEIVED

OCT 11 1995

WATER RESOURCES DEPT. SALEM, OREGON

I/We certify that the information I have provided in application # 573313 is an accurate representation of the proposed water use and is true and correct to the best of my knowledge.

Dave Horland Landowner - Former 10-7-95  
Name Title Date

Diana H O wife 10-7-95  
Name Title Date

\_\_\_\_\_  
Name Title Date

\_\_\_\_\_  
Name Title Date

73313

RECEIVED

OCT 11 1995

WATER RESOURCES DEPT. SALEM, OREGON

1. Do you own all property related to this application?

YES /  NO  
(circle your answer)

If you answered "NO," please submit the names and addresses of the legal owners of all property related to this application that you do not own.

2. If you answered "NO" to question #1 above, do you have written authorization or an easement permitting access to the lands you do not own?

YES / NO / NOT APPLICABLE (I answered "YES" to #1.)  
(circle your answer)

I understand that if I do not own all property associated with this application, I may be required to submit a copy of my written authorization or easement for access before a permit can be issued.

SIGNATURE: Dave Horland TITLE: Landowner - Former DATE: 10-7-95

**COMPLETED**  
10-11-95

### COMPLETENESS DETERMINATION CHECKLIST

Application #	Review Date	Reviewer
5 - 73313	10/13/95	mc

A checkmark (✓) indicates that the item is incomplete or defective.

- 1. Examination fees (and recording fees, if for PFO/FO). /
- 2. Name and address of the applicant, and title if applicable. /
- 3. Source of water. /
- 4. Use of water. /
- 5. Amount of water. /
- 6. Description of delivery system. /
- 7. A statement of whether the applicant has written authorization or easements permitting access to lands owned by others.
- 8. Name(s) and address(es) of the owners of any lands involved, but not owned by the applicant. /
- 9. Proposed dates of beginning and completion of construction, and complete application of water. /
- 10. If for **municipal use**, the present population to be served and expected future water requirements. /
- 11. If for **mining use**, the type of mines and methods of supplying & utilizing the water.
- 12. If for a **reservoir**:
  - a. The height of the dam.
  - b. The storage capacity.
  - c. The area submerged.
  - d. The maximum depth.
  - e. The construction method (earthfill, concrete, flashboard, etc.).
  - f. A description of the outlet conduit.
  - g. A description of the spillway.
- 13. If for **groundwater**, the horizontal distance from the well to the nearest surface water source (if within one mile), and the difference in land surface elevation between them. /
- 14. If the application was made under **HB 2107**: /
  - a. Name and address of each adjacent property owner and verification that each owner has been mailed a copy of the completed notice.
  - b. A description of the proposed water used and related project, the condition it will address, and the benefits that are expected to result from the project.
  - c. The number of reservoirs per application is appropriate as per OAR 690-11-049 (3)(b)
- 15. An oath that the application information is true and correct.
- 16. The signature of the applicant(s). /
- 17. A satisfactory map of the proposed POD & POU. /
- 18. A Land Use Information Form or receipt. /
- 19. A legal description of the property where water will be used. /



October 3, 1995

DAVID G HARLAND  
HARLAND, DIANA M  
1110 TURKEY CREEK LANE  
ROSEBURG OREGON 97470

RE: Application File # S-73313

Dear DAVID G HARLAND,

The Water Resources Department is currently reviewing your application for water use. Preliminary review indicates the following items were not included with your application:

- ▶ An oath that the information in the application is true and accurate. Please sign and return the enclosed oath.
- ▶ Your application indicates you may not own all lands crossed by your proposed water works. Please complete and return the enclosed OWNERSHIP/EASEMENT FORM.

In order to expedite the processing of your application, we request that you submit these items by **October 18, 1995**. I have enclosed a stamped envelope for your use.

Should you have any questions regarding your application or the required materials listed above, please call me personally at 1-800-624-3199 extension 327.

Sincerely,



Meredith Carine  
Completeness Team

Enclosures



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

# WaterWatch

O F O R E G O N

By Fax 378-8130 and Regular Mail

January 3, 1994

Oregon Water Resources Department  
Water Rights Section  
3850 Portland Road NE  
Salem, Oregon 97310

Re: Objection to Technical Reports for:  
72743, R 72742, McCracken, Domestic, Livestock, Irrigation, Sprng.  
R 72666, Sherlock, Livestock, Unnamed Strm  
~~73313, Harland, Irrigation, Umpqua~~  
73126, Osekowsky, Irrigation & Livestock, Umpqua  
73179, Ewing, Irrigation, Umpqua  
73089, International Paper Company, Domestic, Springs  
73073, Bacon, Irrigation, Umpqua  
73096, Albro, Domestic, Unnamed Strm  
73097, 73007, Neideigh, Domestic, Umpqua  
73011, Nicastro, Irrigation, Umpqua  
73160, Bemetz, Irrigation, Umpqua  
R 71965, Kalchert, Livestock, Fire Protection, Recreation, Unnamed Strm  
72631, Cmueller, Livestock & Irrigation, Umpqua  
72902, Mills, Domestic, Umpqua  
72915, Smith, Irrigation, Umpqua  
73002, Preston, Irrigation, Umpqua  
72263, Sand, Irrigation, Umpqua  
71598, Tryon, Irrigation, Umpqua  
72667, Owens, Irrigation, Umpqua  
72599, 72598, McHugill, Irrigation, Umpqua  
72415, Neilsen, Irrigation, Umpqua  
72152, Albertson, Irrigation, Umpqua  
72619, Rainbow Ranch, Irrigation, Dean Creek  
71167, Elkton School District No. 34, Irrigation, Umpqua  
71966, Kalchert, Domestic, Spring  
71888, Lilly, Irrigation, Umpqua  
71997, Scharf, Domestic, Irrigation, Livestock, Unnamed sprg. & crk  
71987, Scheel, Irrigation & Stock, Umpqua & two Springs  
72058, Rogers, Irrigation & Stock, Umpqua  
72223, Woodruff, Irrigation, Umpqua  
72405, West, Irrigation, Umpqua  
72270, River Bend West Water Association, Domestic, Umpqua  
72384, Gunn II, Domestic & Irrigation, Unnamed strm.  
Umpqua River

WaterWatch submits the following objections pursuant to OAR 690-11-170:

◆ **The Technical Reports are Defective**

The technical reports fail to contain many of the elements and evaluations required in OAR 690-11-160(1). The areas of deficiency are the same as those identified in WaterWatch's April 5 objection to application #69165 which we hereby incorporate into this objection.

WaterWatch of Oregon 921 SW Morrison, Suite 438 Portland, Oregon 97205  
phone: (503) 295-4039; fax (503) 227-6847

Page 2

◆ **The Water Availability Analyses in the Technical Reports are Defective**

The analyses are defective for the following reasons:

- The technical reports fail to contain any analysis of water availability, contrary to OAR 690-11.
- The reports fail to take into account existing water rights of record. It is unclear from the technical reports to what extent the water availability analysis takes into account upstream water rights. As we understand it, water rights are taken into account either by assuming the streamflow data reflects the amount of use or by using estimates of consumptive use. Both methods fail to give adequate consideration to rights-of-record. Failure to account for future increases in water use pursuant to rights of record results in an over-estimation of water availability and over-allocation of the resource. This is contrary to the statewide Water Allocation Policy. OAR 690-400-010.
- The water availability analyses fail to take into account applications that have been proposed for issuance. Failure to subtract these proposed uses overestimates the amount of water available.
- The water availability analyses fails to differentiate between natural flows and regulated flows (water released from upstream storage). As you know, there are several storage facilities in the Umpqua River system. These facilities release stored water into the Umpqua mainstem. This application is for a right to use natural flow not stored water. Failure to differentiate between natural flows and regulated flows in the analyses overestimates the amount of natural flow available for use, leads to unrealistic expectations on the part of the applicant and will result in the ultimate over-allocation of the resource. This is contrary to the statewide Water Allocation Policy. OAR 690-400-010. As a policy matter the Department should be differentiating between stored water and natural flow in it's water availability analysis for new permits and in it's regulation activities on existing permits.

◆ **The Uses As Proposed are Not in the Public Interest**

The proposed uses fail to pass the public interest considerations in ORS 537.170. *See also*, OAR 690-11-195(3)(d), (4)(a), (4)(c)(A), (4)(d)(A), (4)(f).

1. The proposed uses are not in the public interest because it will interfere with flows needed to support public instream uses of water.

The proposed uses would deplete flows needed for numerous public instream uses of the Umpqua River. The Umpqua River system supports a variety of fish life including sea-run cutthroat trout, coho, spring and fall chinook, and spring and winter steelhead. A petition has been filed seeking protection for two stocks of sea-run cutthroat trout under the Federal Endangered Species Act. Two petitions have been filed requesting listings for

Page 3

coastal coho and other anadromous coastal fish populations are being considered for listing petitions. Low flows during summer months impair fish survival by among other things raising water temperatures and decreasing aquatic habitat and trout rearing areas. Low flows in the winter adversely affect fish habitat by among other things exposing spawning gravel and reducing feeding and rearing areas in the river. In addition, water diversions create problems for fish passage and survival in the basin.

The Umpqua mainstem has been identified by the Oregon Department of Environmental Quality (DEQ) as "Water Quality Limited" in the summer and cannot support the listed beneficial use of water contact. Agriculture is identified as a possible source of pollution. DEQ has identified water withdrawals as one of the causes of these stream quality problems. Further depletion of surface water flow will only exacerbate these existing water quality problems. The proposed uses will also add additional sources of pollution in the already degraded streams and the mainstem making the uses as proposed not in the public interest. The failure to prohibit livestock from entering riparian areas as a condition of use of water for livestock will also add to the already existing water quality problems. In addition, the existing poor water quality of the Umpqua makes it a questionable source of water for domestic use.

Currently there are several existing instream water rights which protect flows in the Umpqua River and an instream water right application pending for the Umpqua mainstem. These flows are needed for fish populations which rely on water instream for survival. These fish populations have statewide and even national significance. The proposed uses will likely interfere with these instream water rights and the pending application.

## 2. Measurement and reporting

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The surface waters of the Umpqua basin are overallocated. The information generated by these proposed conditions are essential to the management and control of the water resource. If these uses were to be permitted, water use measurement and reporting would be essential for protection of the public interest in the resource and must be a condition of use. However, we question the Department's ability to control this use, even with these requirements.

The applicants have asked for water to provide for multiple uses. The technical reports propose to limit the months in which water can be used for each of these proposed uses. The Department's enforcement staff is already stretched thin. These proposed uses add yet another enforcement responsibility on top of an already unmanageable load. Under these circumstances, it is difficult if not impossible for the state to ensure that the applicant will, at all times, use water in compliance with the permit conditions. Given the critical state of the water resource in the creeks and the Umpqua River basin and the Department's

Page 4

inability to control these uses, even with measurement and reporting, these uses are not in the public interest.

**3. The uses will impair the public interest because fish screening and passage facilities are not a condition of use.**

There are no requirements for fish screening and passage facilities. The permits must clearly require installation prior to any use. The permits must also require maintenance of screening facilities as a condition of use. Given the critical status of fish populations in the Umpqua and the adverse impact additional diversions have on fish habitat, screening and passage should clearly be required to be in place before any diversion water. In addition, failure to maintain screening and passage facilities must be grounds for shutting off water use.

**4. The proposed uses are contrary to Oregon policy.**

ORS 537.170(5)(a) and (c) require the Department to ensure that waters in the basin will be used and controlled for all purposes, not just consumptive purposes. The Statewide Instream Flow Protection Policy states that "(w)here streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented." OAR 690-410-030(1). When considering applications for new water rights the agency is required to consider the needs of instream and out-of-stream uses and the need to develop streamflow restoration programs. OAR 690-410-030(2)(a).

The recent petitions for listing of searun cutthroat and coho in the basin makes the protection of instream flows even more important for achieving a balance in this basin. The establishment of instream water rights will help to achieve a balanced allocation of water between public instream and other uses in Basin and throughout the state.

Establishment of the instream water right also furthers statewide policies, priorities and goals for streamflow restoration including those in OAR 690-11-030(1), 690-410-070, and 690-77-015. Providing streamflow protection for fish is also necessary in order to carry out the state policy of restoring native fish stocks. ORS 496.435. Thus, protection of the public interest requires denial of these applications.

#### **Domestic Uses**

Allowing the proposed domestic uses is contrary to the Commission's Water Allocation Policy. The policy allows additional uses on overappropriated streams only "where public interest in those uses is high and uses are conditioned to protect instream values." OAR 690-410-070(1)(a) (emphasis added). While the exceptions contained in the existing instream water rights in the basin seem to indicate high public interest in the proposed uses of human consumption, livestock and irrigation of non-commercial gardens, they are not included in the pending instream water right application for this proposed source of water.

In addition, the mere fact that the proposed uses seem to fall within the exception in the existing instream water rights does not relieve the Department from its duty to consider

Page 5

and protect the public interest, including the public value of instream flows and the needs of anadromous fish. Furthermore, these proposed uses fails to fit within the exception because it is impossible to condition these uses in a way that will protect instream values. *See above.*

The exceptions in the instream water right certificates are narrowly worded and should not be applied unless there is absolutely no other alternative sources of water. It is bad public policy to automatically apply this exemption without looking for other possible sources that can accommodate this water use. Human beings can go elsewhere for water, fish can not.

Failure by the State to look for or provide other sources of water, in the face of potential listing of the sea-run cutthroat and coastal coho, creates expectations for water that may not be fulfilled if/when the species are listed. Instream flows in the Umpqua Basin provide critical habitat for fish - without water instream there is no habitat. Continuing to issue water rights on a river with a possibility of a listed species, as well as existing water availability and water quality problems makes little sense.

There are many small domestic uses in the basin consuming both ground and surface waters, all vital sources for instream flow. Individually, the quantity of water consumed may not be large, but cumulatively these uses adversely effect instream flows and water quality. Ignoring this problem is bad public policy. The state should be looking for alternate sources for these uses and ways to provide regional water supplies for these uses in a way that will result in the least amount of impact for the resource.<sup>1</sup>

ORS 537.170(5)(a) and (c) require the Department to ensure that waters in the basin will be used and controlled for all purposes, not just consumptive purposes. The Statewide Instream Flow Protection Policy states that "(w)here streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented," OAR 690-410-030(1). When considering applications for new water rights the agency is required to consider the needs of instream and out-of-stream uses and the need to develop streamflow restoration programs. OAR 690-410-030(2)(a).

### Conservation

Oregon statutes and rules also call for the state to "aggressively promote" water conservation and places a high priority on eliminating waste and improving the efficiency of water use. ORS 537.460(2)(a) and OAR 690-410-060(1). The proposed conditions in the technical reports do little to further these policies. Given the presence of potentially listed searun cutthroat and coho, the water quality problems and the fact that the proposed use is these type of uses are known to cause these existing problems it is imperative that the water

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<sup>1</sup> If hypothetically, these proposed uses were allowed, they should be conditioned to protect instream flows. Critical to the protection of instream flows is knowing where water is being used and how much is instream. These and other potential water users in the basin should be required to contribute to activities that enable the state to better manage and control the resource - such as gauging stations in key locations.

Page 6

use be as efficient as possible. A conservation plan should be in place prior to any approval of these proposed uses.

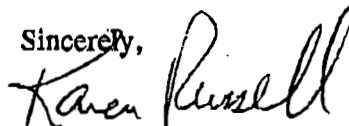
### Storage

Oregon's statewide storage policy recognizes that storage is an "integral part" of the State's "strategy to enhance the public" benefits resulting from instream uses of Oregon's waters. OAR 690-410-080(1). The policy also recognizes that "(s)storage can provide increased water management flexibility and control." *Id.* One of the principles of the policy is to require that storage projects be managed in a way that will "protect and enhance the public health, safety and welfare, and the state's natural resources." OAR 690-410-080(2)(d). The Department's historic failure manage stored water once it is released from storage and to distinguish between natural and regulated flows is not consistent with these policy mandates.

### ◆ Conclusion

We are open to discussion with the Department and the applicants on all of the issues raised in this objection letter.

Sincerely,



Karen A. Russell  
Assistant Director

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JAN 19 1994

WATER RESOURCES DEPT.  
SALEM, OREGON



DEPARTMENT OF  
FISH AND  
WILDLIFE

January 14, 1994

Water Rights Section  
Water Resources Department  
3850 Portland Rd., NE  
Salem, OR 97310

RE: Water Right Application #71987, 72058, 71997, 72152,  
72223, 72263, 72270, 72405, 72415, 72147, 71888,  
71598, 71167, 72599, 72667, 72598, 72631, 72915,  
73002, 73011, 73073, 73160, 73126, 73179, 73313 and  
73334; Correction of table submitted with comments.

In our original comment letters submitted for the listed applications, I inadvertently included the wrong table. Attached is the correct table. Please accept my sincere apologies for the inconvenience this will cause. I try to avoid errors but some do manage to slip through the net.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Mirati, Jr.", written in dark ink.

Albert H. Mirati, Jr.  
Water Right Review Coordinator

FILE: ERROR.TEC



2501 SW First Avenue  
PO Box 59  
Portland, OR 97207  
(503) 229-5400  
TDD (503) 229-5459



# WaterWatch

O F O R E G O N

By Fax 378-8130 and Regular Mail

January 3, 1994

Oregon Water Resources Department  
Water Rights Section  
3850 Portland Road NE  
Salem, Oregon 97310

- Re: Objection to Technical Reports for:
- 72743, R 72742, McCracken, Domestic, Livestock, Irrigation, Sprng.
  - R 72666, Sherlock, Livestock, Unnamed Strm
  - 73313, Harland, Irrigation, Umpqua
  - 73126, Osekowsky, Irrigation & Livestock, Umpqua
  - 73179, Ewing, Irrigation, Umpqua
  - 73089, International Paper Company, Domestic, Springs
  - 73073, Bacon, Irrigation, Umpqua
  - 73096, Albro, Domestic, Unnamed Strm
  - 73097, 73007, Neideigh, Domestic, Umpqua
  - 73011, Nicastro, Irrigation, Umpqua
  - 73160, Bemetz, Irrigation, Umpqua
  - R 71965, Kalchert, Livestock, Fire Protection, Recreation, Unnamed Strm
  - 72631, Cmueller, Livestock & Irrigation, Umpqua
  - 72902, Mills, Domestic, Umpqua
  - 72915, Smith, Irrigation, Umpqua
  - 73002, Preston, Irrigation, Umpqua
  - 72263, Sand, Irrigation, Umpqua
  - 71598, Tryon, Irrigation, Umpqua
  - 72667, Owens, Irrigation, Umpqua
  - 72599, 72598, McHugill, Irrigation, Umpqua
  - 72415, Neilsen, Irrigation, Umpqua
  - 72152, Albertson, Irrigation, Umpqua
  - 72619, Rainbow Ranch, Irrigation, Dean Creek
  - 71167, Elkton School District No. 34, Irrigation, Umpqua
  - 71966, Kalchert, Domestic, Spring
  - 71888, Lilly, Irrigation, Umpqua
  - 71997, Scharf, Domestic, Irrigation, Livestock, Unnamed sprg. & crk
  - 71987, Scheel, Irrigation & Stock, Umpqua & two Springs
  - 72058, Rogers, Irrigation & Stock, Umpqua
  - 72223, Woodruff, Irrigation, Umpqua
  - 72405, West, Irrigation, Umpqua
  - 72270, River Bend West Water Association, Domestic, Umpqua
  - 72384, Gunn II, Domestic & Irrigation, Unnamed strm.
- Umpqua River

WaterWatch submits the following objections pursuant to OAR 690-11-170:

◆ **The Technical Reports are Defective**

The technical reports fail to contain many of the elements and evaluations required in OAR 690-11-160(1). The areas of deficiency are the same as those identified in WaterWatch's April 5 objection to application #69165 which we hereby incorporate into this objection.

WaterWatch of Oregon 921 SW Morrison, Suite 438 Portland, Oregon 97205  
phone: (503) 295-4039; fax (503) 227-6847

Page 2

◆ **The Water Availability Analyses in the Technical Reports are Defective**

The analyses are defective for the following reasons:

- The technical reports fail to contain any analysis of water availability, contrary to OAR 690-11.
- The reports fail to take into account existing water rights of record. It is unclear from the technical reports to what extent the water availability analysis takes into account upstream water rights. As we understand it, water rights are taken into account either by assuming the streamflow data reflects the amount of use or by using estimates of consumptive use. Both methods fail to give adequate consideration to rights-of-record. Failure to account for future increases in water use pursuant to rights of record results in an over-estimation of water availability and over-allocation of the resource. This is contrary to the statewide Water Allocation Policy. OAR 690-400-010.
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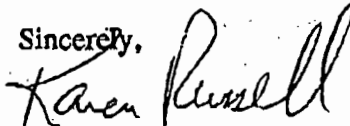
**Storage**

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◆ **Conclusion**

We are open to discussion with the Department and the applicants on all of the issues raised in this objection letter.

Sincerely,



Karen A. Russell  
Assistant Director

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JAN 11 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

January 4, 1994

DEPARTMENT OF  
FISH AND  
WILDLIFE



Water Rights Section  
Water Resources Department  
3850 Portland Rd., NE  
Salem, OR 97310

RE: Water Right Application #73313; Report of Technical Review

The Umpqua River and its major tributaries support native populations of fall and spring chinook and coho salmon, summer and winter steelhead, cutthroat trout and Pacific lamprey. Hatchery stocks of some of these are also present. The mainstem Umpqua River, at various times of the year, supports juvenile rearing and adult migration and spawning for all of these species.

In its 1993 assessment of Umpqua River fishery resources, ODFW evaluated the status of basin fish stocks (see attached table). This assessment consistently listed water quantity and quality during summer low-flow periods as factors limiting fish distribution, habitat and production. With summer rearing conditions already critical, recovery of depressed stocks will be difficult. Lower flows due to continued appropriations will make the task even more onerous.

As indicated in WRD's Report of Technical Review for instream water right application # 73350, mainstem Umpqua River flows are currently inadequate to meet ODFW's recommended flows for fish in October. Continued appropriations, such as those requested in the subject application(s), will exacerbate low-flow problems in this reach of river. Therefore, as a matter of public interest in maintaining and improving fishery resources of this basin, ODFW objects to the subject application as currently conditioned and recommends that no additional appropriations be granted for uses other than domestic and livestock during October.

In the event this application moves forward in processing, ODFW will require fish screening and by-pass facilities as needed to protect indigenous fish populations as per ORS 498.248. To this end, ODFW requests the following condition be added to those being proposed for this



2501 SW First Avenue  
PO Box 59  
Portland, OR 97207  
(503) 229-5400  
TDD (503) 229-5459

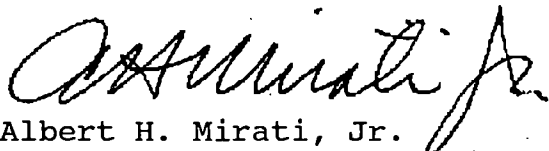
WR 73313  
January 4, 1994  
Page 2

application:

*The permittee shall 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 and functional prior to diversion of any water.*

Thank you for the opportunity to comment.

Sincerely,



Albert H. Mirati, Jr.  
Water Right Review Coordinator

c. WaterWatch of Oregon (public information request)  
Loomis, Roseburg

FILE: 73313.TEC



RECEIVED

JAN 19 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

STATUS OF INFORMATION BASE FOR STOCKS OF CONCERN UMPQUA DISTRICT -- FEBRUARY 1993				
STOCK	CURRENT STATUS	INFORMATION BASE SINCE 1992		
		NO CHANGE	ADDED ONE YEAR OF DATA	ADDED NEW INFORMATION
Umpqua Chub, Umpqua River	Proposed Sensitive (Default Status)			X
Pacific Lamprey, Umpqua River	Proposed Sensitive (Statewide)			X
Migratory Cutthroat, North Umpqua	Severely Depressed Population (Recommend "Sensitive")			X
Chum Salmon, Umpqua River	Sensitive (Statewide)		X	
Spring Chinook Salmon, South Umpqua	Documented Depressed Population			X
Coho Salmon, Umpqua River	Documented Depressed Population		X	
Winter Steelhead, Umpqua River	Suspected Declining Population		X	
Summer Steelhead, North Umpqua	Documented Declining Population		X	
Fall Chinook Salmon, North Umpqua	Potential Genetic Problems		X	
Brown Trout, Upper North Umpqua	Suspected Declining Population		X	
Migratory Cutthroat, Umpqua River	Suspected Declining Population			X
Sturgeon, Umpqua Estuary	Suspected Declining Population (Statewide)		X	
Resident Trout, Umpqua River	Suspected Declining Populations	X		

Taken from Fish Management Review; Southwest Region: A Review of Stocks of Concern and Habitat Protection and Habitat Restoration Priorities and Programs. Oregon Department of Fish and Wildlife, February, 1993.

**STATUS OF INFORMATION BASE FOR STOCKS OF CONCERN  
COOS / COQUILLE DISTRICT -- FEBRUARY 1993**

STOCK	CURRENT STATUS	INFORMATION BASE SINCE 1992		
		NO CHANGE	ADDED ONE YEAR OF DATA	ADDED NEW INFORMATION
Coho Salmon, Coos River	Documented Depressed Population & Suspected Genetic Problems			X
Coho Salmon, Tenmile Lakes	Documented Depressed Population		X	
Spring Chinook Salmon, Coquille River	Documented Depressed Population & Potential Genetic Problems		X	
Winter Steelhead, Tenmile Lakes	Suspected Declining Population and Suspected Genetic Problems	X		
Fall Chinook Salmon, Coos River	Documented Habitat Loss and Suspected Genetic Problems		X	
Striped Bass, Coos River	Documented Depressed Population		X	
Searun/Resident Cutthroat Trout	Suspected Declining Population			X
Resident Coastal Rainbow Trout	Two Isolated Populations			X
Brook Trout, Coos River	Suspected Declining Population		X	
Chum Salmon, Coos/Coquille Rivers	Sensitive		X	
Sturgeon, Coos/Coquille Rivers	Suspected Low Population		X	
Millicoma Dace, Coos River	Suspected Declining Population		X	
Winter Steelhead, Coquille River	Potential Genetic Problems	X		

Taken from Fish Management Review; Southwest Region: A Review of Stocks of Concern and Habitat Protection and Habitat Restoration Priorities and Programs. Oregon Department of Fish and Wildlife, February, 1993.

COPY CHECK-OFF SHEET FOR TECHNICAL REVIEWS

CC: FILE # 73313

WATERWATCH

ODF&W

WATERMASTER # 15

REGIONAL MANAGER - SW

CWRE - James Gosson

Ken Stahl

OTHER ADDRESSES:

Eveland & Doris Bacon / 10176 Garden Valley Road / Roseburg 97970

Douglas Co Rd. Dept / 2586 NE Diamond Lake Blvd / Roseburg

Talbot Kendall / 1251 NW Jefferson St. / Rsbj

Raymond & Barbara Gibby / 14015 El Mesa Drive / Riverside CA 92503

CASEWORKER GLB

ORIGINAL TO APPLICANT 7/29/93



0105742400000000	-7.46	-4.60	-7.52	-11.10	-8.36	-4.57	-57.70	-81.50	-62.20	-170.00	-140.00	-11.20	893.00
0105742500000000	34.10	69.00	53.00	22.70	5.50	-3.70	-57.70	-81.50	-62.20	-170.00	-140.00	13.90	36700.00
0105742510000000	7.80	23.00	13.60	-2.60	-3.20	-3.70	-57.70	-81.50	-62.20	-170.00	-140.00	-4.90	15300.00
0105742520000000	3.60	22.00	17.10	2.40	1.70	-3.70	-57.70	-81.50	-62.20	-170.00	-140.00	-3.60	14400.00
0105742600000000	234.00	481.00	389.00	316.00	124.00	25.30	-57.70	-81.50	-62.20	-170.00	-140.00	68.00	244000.00
0105742610000000	70.00	126.00	100.00	43.00	11.40	6.30	-57.70	-81.50	-62.20	-170.00	-140.00	39.60	69300.00
0105742620000000	-16.50	11.30	-1.10	-13.40	-15.50	-8.16	-57.70	-81.50	-62.20	-170.00	-140.00	-30.10	9280.00
0105742630000000	48.00	138.00	112.00	139.00	52.00	7.20	-57.70	-81.50	-62.20	-170.00	-140.00	-8.30	90200.00
0105742631000000	-10.70	-1.20	-5.20	-4.10	-4.91	-2.69	-57.70	-81.50	-62.20	-170.00	-140.00	-15.00	1630.00
0105742632000000	-11.90	2.70	-4.00	-11.10	-10.10	-8.99	-57.70	-81.50	-62.20	-170.00	-140.00	-19.20	3850.00
0105742633000000	4.10	35.30	30.60	71.00	26.90	7.20	-57.70	-81.50	-62.20	-170.00	-140.00	-20.90	50200.00
0105742633100000	-15.00	-4.80	-8.70	-7.40	-8.75	-2.05	-57.70	-81.50	-62.20	-170.00	-140.00	-20.90	516.00
0105742633200000	-6.57	2.20	-1.30	.10	-3.28	-2.85	-57.70	-81.50	-62.20	-170.00	-140.00	-20.90	2390.00
0105742633300000	-13.50	-6.70	-9.20	-6.40	-5.51	-2.62	-57.70	-81.50	-62.20	-170.00	-140.00	-20.90	-439.00
0105742700000000	545.00	870.00	780.00	710.00	468.00	97.00	-57.70	-81.50	-62.20	-170.00	-146.00	370.00	401000.00
0105742710000000	-4.60	1.80	-2.80	-14.20	-7.43	-2.90	-57.70	-81.50	-62.20	-170.00	-146.00	-14.90	6770.00
0105742720000000	-8.92	-7.22	-8.48	-11.50	-8.33	-4.32	-57.70	-81.50	-62.20	-170.00	-146.00	-11.60	-784.00
0105742730000000	-5.40	.60	-4.20	-15.80	-13.40	-5.62	-57.70	-81.50	-62.20	-170.00	-146.00	-15.50	5860.00
0105742740000000	-6.00	-2.40	-5.10	-11.90	-11.20	-6.50	-57.70	-81.50	-62.20	-170.00	-146.00	-11.40	2520.00
0105742750000000	-4.10	34.80	30.00	6.90	1.90	-6.32	-57.70	-81.50	-62.20	-170.00	-146.00	-28.10	23700.00
0105742760000000	406.00	631.00	566.00	557.00	393.00	97.00	-57.70	-81.50	-62.20	-170.00	-146.00	295.00	295000.00
0105742761000000	67.00	143.00	144.00	154.00	138.00	30.40	-57.70	-81.50	-62.20	-170.00	-146.00	27.00	73800.00
0105742762000000	13.40	30.00	20.60	15.40	3.10	-4.59	-57.70	-81.50	-62.20	-170.00	-146.00	7.80	19500.00
0105742763000000	17.10	37.90	29.50	26.90	17.40	-.50	-57.70	-81.50	-62.20	-170.00	-146.00	10.10	25500.00
0105742764000000	3.80	15.90	12.80	14.20	11.10	1.79	-57.70	-81.50	-62.20	-170.00	-146.00	8.30	11200.00

80

TECHNICAL REVIEW CHECKLIST

FORM-71393

- (1) Application: 73313  
 (2) Review Date: 10/22/93

S Indicates information was completed or adequately addressed.  
 U Indicates information is needed, or incomplete, or inadequately addressed  
 N/A Indicates Not Applicable

SUMMARY	
<u>U</u>	Completeness OATH
<u>S</u>	Land Use
<u>N/A</u>	GW Interference (if potential interference with surface water, see results of water availability analysis)
<u>S</u>	Conflicts
<u>S</u>	Water Availability

(3) U The applicant has certified that the information provided in the application is an accurate representation of the proposed use and is true and correct to the best of their knowledge.

(4) N/A No oath is required because application was filed before June 5, 1992.

(5) S Application fees:

Examination fee:	\$ 200
Recording fee:	\$ 108
TOTAL REQUIRED	\$ 308
TOTAL SUBMITTED	\$ 308
AMOUNT DUE prior to issuance of permit	\$ 0
AMOUNT OVERPAID	\$ 0
refund due applicant	\$ 0

(6) S Proposed dates of beginning and completion of construction, and complete application of water.

(7) S MAP:  Prepared by a CWRE  
 Exempt under OAR 690-11-150(3)  
 A map or drawing included (non-CWRE)  
 No map or drawing in file

- (8) N/A A CWRE map is not required for applications filed before November 9, 1987.
- (9) S A written copy of the legal description of the property on which the water is to be used.
- (10) S A copy of written authorization, contract or easement permitting access to the land or reservoir not owned by the applicant.
- (11) S The proposed use is not restricted or prohibited by statute.
- (12) S The source of water is not withdrawn from appropriation by order of the State Engineer or Water Resources Commission, or legislatively withdrawn under ORS Chapter 538.
- (13) S IRRIG. use(s) is/are classified uses(s) under the UMPANA Basin Program, OAR 690 -516-001
- (14) S The application, map and supporting data are complete and free of defects.

Land Use Compatibility:

- (15) As expressed by the Planning Department of Douglas Co.
- (16) S The land uses to be served by proposed water uses (including proposed construction) are allowed or are not regulated by the local comprehensive plan (ordinance section 3.3.000 ).
- (17) N/A The land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals which have been obtained.
- (18) N/A The local government was notified, and sent no comment pursuant to the rules at the time; land use was presumed in compliance per such statement printed on the application.

For ground water applications:

- (20) N/A A copy of the constructor's log, if available, for any well already constructed, or required information regarding actual or anticipated construction.
- (21) N/A The report from groundwater section has been received.

For reservoir applications:

- (22) N/A Plans, specifications and supporting information for the dam and impoundment area.

RECEIVED

APR 27 1993

WATER RESOURCES DEPT  
SALEM, OREGON

April 24, 1993

Water Resources Department  
3850 Portland Rd. N. E.  
Salem, OR 97310

RE: Application for Permit #73313, D. Harland  
Umpqua R., Douglas Co., Irrigation

WaterWatch has reviewed the limited amount of information contained in the public notice of this water right application. Based upon that information, WaterWatch raises the following issues, questions, and concerns:

Is there unappropriated water available for this proposed use? Does the Department have adequate data to accurately determine the 80% exceedence level?

What effect will this proposed use have on instream flows necessary to protect the public's interest in fish, wildlife, recreation, and a healthy aquatic system?

This water source may suffer from water quality problems. Has the Department consulted with the Department of Environmental Quality to determine the effect this proposed withdrawal will have on water quality?

If this water source provides habitat to native fish during any phase of their life cycle, we request that the Department include conditions requiring the installation and maintenance of fish screening and bypass devices prior to any diversion of water.

Given the importance of surface water sources, and the Department's limited enforcement staff, it only makes sense to require this applicant to measure and record water use. Measurement not only helps the Department carry out its statutory mandate to promote the control of water resources for all beneficial uses, it helps the Department protect the public's interest in assuring the use is within the bounds of the permit. ORS 536.220(1)(a), 537.170(5).

Will this proposed use be compatible with Goal 5 elements of the local comprehensive plan?

It is a high priority of the state to eliminate waste and improve the efficiency of water use. OAR690-410-060(1). Statewide policy also calls upon water users to use and maintain their water systems in a manner consistent with the state's priority. OAR 690-410-060(2)(a). What conditions are proposed for this permit that will carry out and encourage compliance with state policy?

Is this an existing illegal use of water? If so, will the continued use without a permit cause harm to existing water rights and the public interest?

We request copies of the draft permit and the Department's technical review of this application.

Sincerely,

  
Jim Myron



April 13, 1993

DAVID G HARLAND  
HARLAND, DIANA M  
1110 TURKEY CREEK LANE  
ROSEBURG, OR 97470

REFERENCE: File(s) S-73313

We have received your application(s) for a water use permit along with your supporting data, documentation, and fees. A receipt is enclosed here unless you were previously issued one. Your application has been assigned the above referenced file number. Please refer to this number whenever you contact us about your application.

After an application has been accepted for filing, public notification of the application is made, followed by a mandatory 30-day comment period. Thereafter, applications which have been received in proper form with required maps, documentation, and fees can be considered for processing as time allows.

At present the Water Resources Department has a backlog of applications for water use permits; therefore there may be some delay in our application processing time. Applications are processed in the order in which they are received.

When your application comes up for processing the Department will conduct a specialized analysis called a technical review. During the course of the evaluation, additional information may be required to complete the processing of your application. We will let you know if additional information is needed when we begin the technical evaluation of your application.

When the report on the technical review is completed and sent to you, a 60-day objection period begins during which you, the applicant, or anyone who has expressed an interest in your proposed water use may communicate to us their disagreement with what we have said in our report on your application. After the 60-day objection period, the Department must also conduct a public interest review of each application for a water use permit.



REFERENCE: File(s) - S-73313

After any objections have been considered, there may follow time to allow parties to resolve conflicts over the proposed water use. In addition, a 30-day protest period may be required. Lastly, it may be necessary to schedule a hearing or send the application to the Water Resources Commission for their review.

In most cases no objections are received and the application processing can proceed without further conflict resolution, protest, or hearing.

If your application is recommended for approval and a permit is issued, the use allowed by the permit will be subject to the Basin Program Rules of the Water Resources Commission, instream flow requirements, and the demands of prior right holders, and other conditions to conform the water use to particular standards.

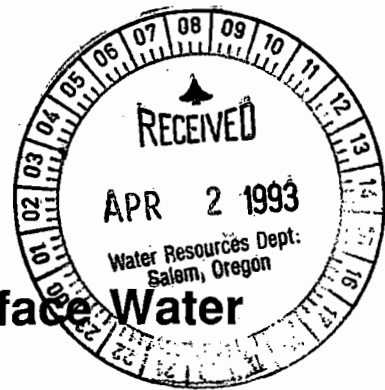
Please contact the Water Rights Section of the Water Resources Department if you have any questions. You may write to us at 3850 Portland Road, Northeast, Salem, Oregon 97310 or you may call 378-3739 in Salem or toll free from within the state 1-800-624-3199.

Sincerely,

Laurie Beth English  
Water Rights Program Analyst

cc:CWRE

Application No. 733 13



State of Oregon  
WATER RESOURCES DEPARTMENT

# Application for a Permit to Appropriate Surface Water

Applicant(s) DAVID G. OR DIANA M. HARLAND

*(Please print or type - use dark ink)*

Mailing Address: 1110 Turkey Creek Lane

Roseburg                      Oregon                      97470                      503/459-5923  
City                                      State                                      Zip                                      Daytime Phone No.

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: Umpqua River,  
a tributary of Pacific Ocean

2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: 0.175 cubic feet per second, OR \_\_\_\_\_ gallons per minute. If water is to be used from more than one source, give the quantity of water from each: \_\_\_\_\_

3. **INTENDED USE(s) OF WATER:** Irrigation

If for more than one use, give the quantity of water from each source for each use; \_\_\_\_\_

If for **DOMESTIC** use, state the number of households to be supplied; \_\_\_\_\_

If for **MUNICIPAL OR QUASI-MUNICIPAL** use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.)

If for **MINING** use, state the nature (gold, silver, etc.) of the mines to be served; \_\_\_\_\_

If for **IRRIGATION**, or other land area use, state the **TOTAL** number of acres to be developed under each use;

Irrigation                      14.0

Other (describe) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).

An electric motor with pump at the point of diversion with a pipeline to the place of use. Irrigation will be by sprinklers.

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5. **PROJECT SCHEDULE:** (List month and year)

Proposed date construction work will begin October 1, 1994

Proposed date construction work will be completed October 1, 1995

Proposed date water use will be completed October 1, 1996

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

6. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

         Applicant            X   CWRE                   Other (Identify in REMARKS section)

b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

         Applicant            X   CWRE                   Other (Identify in REMARKS section)

7. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? no. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

**REMARKS:** The motor, pump and a majority of the delivery system will be the same as those presently serving permits 51433 (Kendall), permit 23703 (Bacon), and application 73073 (Bacon). The pipeline crossing of Douglas County Road #6 at milepoint 9.66 will also utilize the same pipeline as the permits and the application described above.

OTHER PROPERTY OWNERS

Gerald and Doris Bacon  
 10176 Garden Valley Road  
 Roseburg, Oregon 97470

Douglas County Road Department  
 2586 N.E. Diamond Lake Boulevard  
 Roseburg, Oregon 97470

Talbot P. Kendall	Raymond & Barbara Gibby
1251 N.W. Jefferson Street	14015 El Mesa Drive
Roseburg, Oregon 97470	Riverside, California 92503

*NOTE: The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.*

x David G. Horland  
 Signature of Applicant

x 3-29-93  
 Date

x Dora M. Hand  
 Signature of Co-Applicant, if any

x 3-29-93  
 Date

-----  
**FOR WATER RESOURCES DEPARTMENT USE ONLY**

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

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-----  
In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

\_\_\_\_\_, 19\_\_\_\_.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
*Water Resources Director*

By: \_\_\_\_\_

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 2nd day of April, 1993, at 8:00 o'clock, A. M.

APPLICATION NO: 73313

PERMIT NO: \_\_\_\_\_

Application No. 73313  
Permit No.

RECEIVED  
APR 2 1993

DOUGLAS COUNTY ROAD DEPARTMENT  
APPLICATION FOR PERMIT

Date November 23, 1990 Authorization No. WATER RESOURCES DEPT. 3109  
SALEM, OREGON

I, Talbot P. Kendall, hereby make application for an activity permit upon  
(Firm Name/Applicant's Name - Please Print)  
the right of way of Garden Valley # 6 Dist. 4 M.P. 9.66  
(Road Name)

in strict conformity to the attached exhibits, subject to all terms and conditions  
contained in the application and permit, and applicable State and local laws, ordinances,  
rules and regulations regarding roads and rights of way.

DESCRIPTION OF WORK TO BE PERFORMED: install waterline in an existing 12" diameter utility  
C.M.P. under the county road.

This work will be performed by: Applicant X Contractor \_\_\_\_\_ Other \_\_\_\_\_

I have read and understand the Permit Conditions as listed on the reverse side of this  
permit.

Signature For Talbot P. Kendall [Signature] Mailing Address P. O. Box 352

Phone - where you can be reached 209/728-2619 City Murphys State California Zip 95247

\*\*\*\*\* (Applicant - Do Not Write Below This Line) \*\*\*\*\*  
County Representative: [Signature] Recommended \_\_\_\_\_ Not Recommended \_\_\_\_\_ Date 12-10-90

PERMIT TO PERFORM OPERATIONS ON THE COUNTY ROAD RIGHT OF WAY

SPECIAL PROVISIONS: The terms and conditions which apply to this permit are set forth on  
the attached exhibits and on the reverse side of this application.

- 1. An adequate certificate of insurance /is not required.
- 2. Permittee shall provide a restoration performance bond in the sum of \$           .
- 3. Open cutting of the pavement /is not permitted.
- 4. Other special provisions: \_\_\_\_\_

This permit is issued by the County Roadmaster subject to the terms and provisions  
contained herein and attached hereto and applicable State laws and County ordinances.

Roadmaster ROBERT PARKHILL Effective Date 12-11-90 Expiration Date \_\_\_\_\_

Inspected and approved by \_\_\_\_\_ Date \_\_\_\_\_  
\*\*\*\*\*

Submit to:

- White - Office File Douglas County Road Department
- Canary - County Inspector 2586 NE Diamond Lake Blvd.
- Pink - Permittee (on approval) Roseburg, OR 97470
- Goldenrod - Permittee (on completion) (503) 440-4268 or 1-800-452-0991, ext. 268

# Application No. 73313 Permit No.

RECEIVED

APR 2 1993

## Land Use Information Form: Permits, Hydroelectric Licenses, Water Uses in Addition to Classified Uses

WATER RESOURCES DEPT.  
SALEM, OREGON

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. **DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.**

Applicant's Name: David G. or Diana M. Harland  
Address: 1110 Turkey Creek Lane  
City: Roseburg State: OR Zip: 97470 Day Phone: 503/459-5923

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Use
	See supplemental sheet			
SEE ATTACHED	RRT / RF			
	AGG / FG			

Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used. Douglas County

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

### For Local Government Use Only

Local government planning officials are to complete the remainder of this form. If this form can not be completed while the applicant waits, please sign and detach the receipt as instructed below. Please mail the completed form directly to the Water Resources Department (3850 Portland Rd. NE, Salem, OR, 97310) within 60 days of the date of receipt as shown below. If the form is not completed within 60 days, the Department may take action to approve the water use.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3-3-000. Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. **Note:** Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily



(For Local Use Continued)

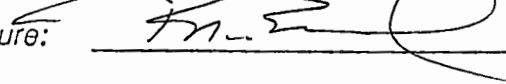
b) Please provide printed name and written signature.

Name: ROBERT A. DEIL

Date: 3-24-93

Title: RAINING TECH

Phone: 440-4287

Signature: 

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet. For additional information call Roberta Jortner or Rick Bastasch at 378-3671.

Additional Comments:

Lined area for additional comments.

# Application No. 73313 Permit No.

Description of Water Use

Planning Official Initials: *[Signature]*

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: David G. or Diana M. Harland  
 Address: 1110 Turkey Creek Lane  
Roseburg, Oregon 97470  
 Phone: 503/459-5923

**RECEIVED**  
 APR 2 1993  
 WATER RESOURCES DEPT.  
 SALEM, OREGON

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- Irrigation (crop type, golf course, nursery or greenhouse): hay, pasture, lawn & garden
- Livestock (type of livestock, feedlot, slaughterhouse): \_\_\_\_\_
- Residential (# units, single or multi-family, # lots if partition or subdivision): \_\_\_\_\_
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): \_\_\_\_\_
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): \_\_\_\_\_
- Institutional (i.e., school, library, etc.): \_\_\_\_\_
- Mining (aggregate, metal, open pit, placer, etc.): \_\_\_\_\_
- Recreation (park, campsite, pond, etc.): \_\_\_\_\_
- Fish and Wildlife (pond, hatchery, etc.): \_\_\_\_\_
- Hydropower (dam, reservoir, power generating or transmitting facilities): \_\_\_\_\_
- Other (Name and list key characteristics): \_\_\_\_\_

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name sources: <u>Umpqua River</u> _____ _____	<u>0.175</u> Cubic feet per second. <u>78.5</u> Gallons per minute. _____ Acre-Feet
<input type="checkbox"/> Reservoir or pond	
<input type="checkbox"/> Ground Water	

RECEIVED

APR 2 1993

LAND USE INFORMATION SHEET  
SUPPLEMENTAL SHEET

WATER RESOURCES DEPT.  
SALEM, OREGON

PARCEL ID#	PLAN DESIGNATION	WATER DIVERTED	WATER CONVEYED	WATER USED
7402.00	FARM FOREST & FARM GRAZING	X		
7397.02	FARM & FOREST LAND		X	
7364.00	FARM & FOREST LAND		X	
7403.00	FARM LAND		X	
7364.05	FARM LAND		X	
7364.01	FARM LAND			X
7364.11	FARM LAND			X

Application No. 73313  
Permit No.

Application No. 73313  
Permit No.

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APR 2 1993

WATER RESOURCES DEPT.  
SALEM, OREGON

EXHIBIT "A"

The Northeast quarter of the Southwest quarter and the Southeast quarter of Section 8, Township 26 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

EXCEPTING that portion lying Northerly of the following described line: BEGINNING at a 5/8" iron rod set in the East-West centerline of Section 8, Township 26 South, Range 6 West, Willamette Meridian, from which point the quarter corner between Sections 7 and 8, Township 26 South, Range 6 West, Willamette Meridian, bears North 89° 52' 02" West 1627.75 feet; thence South 3° 13' 54" East 326.86 feet; thence South 51° 57' West 271.96 feet; thence South 34° 29' 42" West 258.17 feet; thence South 62° 40' 29" West 348.24 feet; thence South 69° 33' 19" West 424.08 feet; thence South 65° 19' 41" West 195.47 feet; thence South 50° 00' 59" West 290.99 feet; thence South 51° 18' 20" West 311.98 feet; thence South 23° 46' 49" West 200.92 feet; thence South 27° 18' 53" West 225.61 feet; thence South 30° 31' 42" West 451.76 feet.

Together with a non-exclusive easement for road purposes, 60 feet in width, over and across the existing road lying within Sections 8, 17 and 18, Township 26 South, Range 6 West, Willamette Meridian, Douglas County, Oregon: Beginning at County Road No. 6, and proceeding northeasterly and southeasterly through said Sections 8, 17 and 18 to the herein described land.

Together with a non-exclusive waterline easement to the main Umpqua River along the above described road from County Road No. 6 through Sections 8, 17 and 18, together with the right to set up and maintain a pump and electrical service at the river and the right to extend an electrical line from said pump to the County road; said waterline easement to be for the purpose of conveying water under, across and over property of Grantors to the property herein described, which easement shall be a construction easement 10 feet in width and shall provide that Grantees shall have the right to disturb the surface ground for the purpose of installing an underground waterline. Grantors shall have the right to tie into any waterline installed in said easement to service other property of Grantors, the expense associated therewith to be borne by Grantors.

Subject to:

ROADS AND HIGHWAYS and the rights of the public therein.

RIGHT OF WAY granted to THE CALIFORNIA OREGON POWER COMPANY.

UNRECORDED OIL AND GAS LEASE dated December 7, 1976, including the terms and provisions therein contained, from J. Gerald Bacon, et al, to MOBIL OIL CORPORATION, as disclosed by "Memorandum of Oil and Gas Lease" recorded December 23, 1976, in Book 620, Page 72, Records of Douglas County, Oregon, Recorder's No. 76-20904. (Affects herein

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Application No. 73313  
Permit No. DISTRICT 4

APR 2 1993

WATER RESOURCES DEPT.  
SALEM, OREGON

RD 6  
GARDEN VALLEY, HUBBARD CO.,  
T26 R6W S19/18  
(EDENBOWER-MILLWOOD)

8.93  
8.92  
8.92  
8.92

18" CMP E8"L, E6"R  
LOWER GARDEN VALLEY RD 191  
UBWA 2" PVC  
PNB

9.88  
9.88

PVT WTR 4" W/POWER  
PVT WTR 3/4"

8.83

18" CMP E12"L, E10"R

9.80

24" CMP E4"L, E4"R

8.77  
8.77

UBWA 2" PVC  
18" CMP E15"L, E10"R

9.76

24" CMP E4"L, E4"R

9.69  
9.69  
9.66  
9.66

PNB  
TURKEY CRICK LN.  
12" CMP E8"L, E8"R  
72" CMP E8"L, E8"R RT.

8.62

UBWA  
PNB  
CLEVELAND RAPIDS RD 208  
UBWA

9.63

DCS "JANE"

8.61  
8.61  
8.61  
8.60  
8.57  
8.57  
8.55  
8.55  
8.52

18" CMP E4"L, E3"R  
PNB  
PNB  
DCS U-3  
UBWA  
UPPER CLEVELAND RAPIDS EXTENSION  
RD 208  
72" CMP E11"L, E13"R

8.50  
8.50

RD 208 SPUR ACCESS ONE WAY  
PNB

8.36

18" CMP E3"L, E6"R

9.37

8" PP E5"R

8.32  
8.31  
8.31  
8.31

PNB  
UBWA  
BIG BEND RD 220  
UBWA

9.31  
9.30

60" CMP E18"L, 15"R  
PVT WTR

8.25

18" C E6"L, E3"R

8.10

24" CMP E8"L, E4"R

9.08  
9.07

18" CMP E7"L, E8"R  
PAVING 32' NO SHLDR

PAVING 40'  
1" SHLDR  
MP 8  
-0.05 ERROR

UBWA PNB

PAVING 40'  
NO SHLDR  
MP 9

9.00

18" CMP E10"L, E5"R

JANUARY 1980

Application S-73313

COPY CHECK-OFF SHEET FOR ~~PROPOSED~~ FINAL ORDERS

CC: FILE # S-73313✓

WATERMASTER # 15✓

REGIONAL MANAGER: SOUTHWEST✓

ODF&W - Douglas County:✓

CWRE (if agent): JAMES F GOSSON #054✓

DEQ✓

OTHER STATE AGENCY IF NECESSARY: KEN STAHR, ✓OWRD, WATER AVAILABILITY SECTION

DIVISION 33 LIST: COLUMBIA RIVER INTERTRIBAL FISH COMMISSION; U.S. FISH & WILDLIFE;  
(CHECK ONLY IF APPLICABLE) NORTHWEST POWER PLANNING COUNCIL & NATIONAL MARINE FISHERIES

POWER BUILDER UPDATER; FRONT COUNTER

OTHER ADDRESSES OF PEOPLE WHO PAID THE \$10 FEE:

STEPHEN MOUNTAIN SPRING  
ATTY @ LAW  
PO Box 1205  
ROSEBURG, OREGON 97470

PEOPLE WITH OBJECTIONS, COMMENTS OR REQUESTED COPY W/O \$10 (SEND THE \$10 LETTER):

GERALD AND DORIS BACON 10176 GARDEN VALLEY ROAD ROSEBURG, OR. 97470  
DOUGLAS COUNTY ROAD DEPARTMENT 2586 N.E. DIAMOND LAKE BOULEVARD ROSEBURG, OR. 97470  
TALBOT KENDALL 1251 N.W. JEFFERSON STREET ROSEBURG, OR. 97470  
RAYMOND AND BARBARA GIBBRY 14015 EL MESA DRIVE RIVERSIDE, CA. 92503

WATERWATCH

CASEWORKER : GH

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WATER RESOURCES DEPT.  
SALEM, OREGON

State of Oregon  
Water Resources Department

In the matter of Water Right )  
Application S-73313 ) Agreement and  
David G. and ) Stipulated Final Order  
Diana M. Harland )

**Application History**

On April 2, 1993, David G. and Diana M. Harland submitted an application to the Department for a water use permit. The proposed use requests the use of 0.175 cubic foot per second (cfs) of water from the Umpqua River, tributary of the Pacific Ocean for irrigation of 14.0 acres.

On May 21, 1996, the Department issued a Proposed Final Order conditionally approving Application S-73313. The Department found that water is available for irrigation March 1 through October 31 of each year. The Department also found that the use, pursuant to the Umpqua Basin Program OAR 690-516-001, is allowable as requested. However, based on input from an interagency review of the application and a preliminary public interest review conducted by the Department, the Department found that in order to establish the presumption under ORS 537.153(2), the use of water for irrigation shall not be allowed June 15 through September 15 of each year.

The protest period closed July 5, 1996. On June 12, 1996, the applicant submitted a protest. On July 8, 1996, Administrative Law Judge Weisha Mize set the matter for hearing on August 29, 1996. On August 23, 1996, the hearing was rescheduled for November 18, 1996. On October 14, 1996, the Department requested and Judge Mize granted a continuance while settlement negotiations took place.

The applicant and the Department agree that the issue(s) in this case may be settled on the following terms and conditions, and hereby stipulate to the following:

- 1) Applicant waives the right to file exceptions to this order and the right to judicial review under ORS 536.075(2) and 183.482.
- 2) Entry of this stipulated final order by the Administrative Law Judge.
- 3) Issuance of a permit based on the analysis which follows.
- 4) Issuance of the permit, a draft of which is attached and incorporated herein by reference.

Department AS

PLACED IN U.S. MAIL  
FEB 26 1997  
OREGON WATER RESOURCES DEPT.

Applicant SM

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Page 2

FEB 14 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

*Findings of Fact and Conclusions of Law*

In response to declining coastal fish runs, and the prospect of a federal listing, Governor Kitzhaber launched a "Coastal Salmon Recovery Initiative." As part of that initiative the Department convened a multi-disciplinary, multi-agency review team to evaluate coastal water right applications with respect to fishery impacts. Application S-73313 was reviewed by the team March 19, 1996. The review team found that the proposed use would negatively impact water quality (temperature) during the period June 16 through September 15. In addition, the team found that the proposed use would adversely impact streamflows necessary for fishery resources during the period June 15 through September 15. The Director, in evaluating the public interest under ORS 537.153(2) and ORS 537.170(8) found that in order to establish the public interest presumption under ORS 537.153(2) the irrigation use shall not be allowed during the period June 15 through September 15. On May 21, 1996, the Director issued a Proposed Final Order for Application S-73313 proposing to allow the irrigation use but limiting the use to the period March 1 through June 14 and September 16 through October 31.

Upon further evaluation of Application S-73313, the Department now finds that impacts to water quality from the proposed use are negligible. With respect to streamflow needed for fishery resources, the Department finds that Application S-73313 is junior in priority date and that the proposed irrigation use is subject to regulation in favor of Instream Water Right Certificates 59801, and 59965 which protect streamflow for fishery resources in the Umpqua River. Therefore, the Department finds and the applicant agrees that the proposed use may be allowed for the period of use and rate of use as follows without detriment or impairment to the public interest.

USE:           IRRIGATION OF 14.0 ACRES   -   MARCH 1 THROUGH OCTOBER 31

RATE:          0.175 CFS

Department   RS  

Applicant   SM




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WATER RESOURCES DEPT.  
SALEM, OREGON

Page 3

The Department and the applicant agree that all other aspects of the Proposed Final Order dated May 21, 1996, should apply to this application, and therefore agree to the entry of this Stipulated Final Order. Therefore, the Department finds and the applicant agrees that, if exercised in accordance with the attached permit, the proposed use will not impair or be detrimental to the public interest.

  
On Behalf of Applicant  
OSB # 96346

  
On Behalf of the Water Resources  
Department

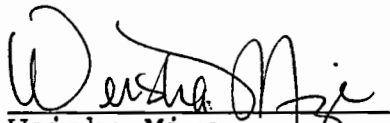
Dated 2-13-97

Dated 2/20-97

Stipulated Final Order

Pursuant to the Agreement described above, Application S-73313 therefore is approved with the above modifications to the Proposed Final Order, and a permit shall be issued as set forth in the attached draft permit.

DATED February 18<sup>th</sup>, 1997

  
Weisha Mize  
Administrative Law Judge

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WATER RESOURCES DEPT.  
SALEM, OREGON

STATE OF OREGON

COUNTY OF DOUGLAS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVID G & DIANA M HARLAND  
1110 TURKEY CREEK LANE  
ROSEBURG, OREGON 97470

(541) 459-5923

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73313

SOURCE OF WATER: UMPQUA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION OF 14.0 ACRES

MAXIMUM RATE/VOLUME ALLOWED: 0.175 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 2, 1993

POINT OF DIVERSION LOCATION: NE 1/4 NW 1/4, SECTION 18, T 26S, R 6W, W.M.; 1030 FEET SOUTH & 400 FEET WEST FROM N1/4 CORNER, SECTION 18

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 ACRE-FEET acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4 2.6 ACRES  
NW 1/4 SE 1/4 10.7 ACRES  
SW 1/4 SE 1/4 0.7 ACRE  
SECTION 8  
TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.

Application S-73313 Water Resources Department

PERMIT XXXXX

Department \_\_\_\_\_

Applicant Su

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FEB 14 1997

Page 5

WATER RESOURCES DEPT. PAGE 5  
SALEM, OREGON

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The required screens and fishways are to be in place, functional, and approved by Oregon Department of Fish and Wildlife before diversion of any water.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Application S-73313 Water Resources Department

PERMIT XXXXX

Department \_\_\_\_\_

Applicant SU

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WATER RESOURCES DEPT.  
SALEM, OREGON

PAGE 6

Page 6

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1999. Complete application of the water to the use shall be made on or before October 1, 2000.

Issued \_\_\_\_\_, 1997

\_\_\_\_\_  
Water Resources Department  
Director

Application S-73313 Water Resources Department  
Basin 16 Volume 1 UMPQUA RIVER AND MISC.

PERMIT XXXXX  
District 15

Department \_\_\_\_\_

Applicant 84

STATE OF OREGON

COUNTY OF DOUGLAS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVID G & DIANA M HARLAND  
1110 TURKEY CREEK LANE  
ROSEBURG, OREGON 97470

(541) 459-5923

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PURPOSE OR USE: IRRIGATION OF 14.0 ACRES

MAXIMUM RATE ALLOWED: 0.175 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 2, 1993

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NE 1/4 SW 1/4 2.6 ACRES  
NW 1/4 SE 1/4 10.7 ACRES  
SW 1/4 SE 1/4 0.7 ACRE

SECTION 8

TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.

Measurement, recording and reporting conditions:

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- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Application S-73313 Water Resources Department

PERMIT S-54019

- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The required screens and fishways are to be in place, functional, and approved by Oregon Department of Fish and Wildlife before diversion of any water.

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By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1999. Complete application of the water to the use shall be made on or before October 1, 2000.

Issued February 26, 1997

  
Water Resources Department Director

February 3, 1997

Stephen Mountainspring  
Attorney at Law  
810 SE Douglas Avenue  
Roseburg, Oregon 97470

RE: Protest on Water Right Application S-73313

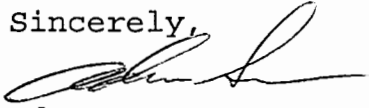
Dear Mr. Mountainspring:

The Department has been working to resolve the protest on the above referenced water right application for David G & Diana M Harland. The main issue is a seasonal limitation placed on application S-73313. The limitation was placed on the water use request due to fishery concerns in the Umpqua River Basin.

Attached is an agreement and stipulated final order and draft permit for your review. If you find that the attached material addresses the protest please initial each page of the attached packet in the lower right corner. Also please be sure to sign and date the appropriate page. Please return the material to my attention.

Once all parties have signed the order a permit, consistent with the one attached, will be issued. If you have additional questions or would like to meet to discuss this matter feel free to contact me at (503) 378-8455 ex. 262.

Sincerely,

  
Adam Sussman  
Program Analyst and  
Department Representative

cc: Watermaster, District 15  
Dick Bailey, Administrator Water Rights and Adjudications  
David G & Diana M Harland  
1110 Turkey Creek Lane  
Roseburg, OR 97470



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

State of Oregon  
Water Resources Department

In the matter of Water Right )  
Application S-73313 )  
David G. and )  
Diana M. Harland )

**Agreement and  
Stipulated Final Order**

***Application History***

On April 2, 1993, David G. and Diana M. Harland submitted an application to the Department for a water use permit. The proposed use requests the use of 0.175 cubic foot per second (cfs) of water from the Umpqua River, tributary of the Pacific Ocean for irrigation of 14.0 acres.

On May 21, 1996, the Department issued a Proposed Final Order conditionally approving Application S-73313. The Department found that water is available for irrigation March 1 through October 31 of each year. The Department also found that the use, pursuant to the Umpqua Basin Program OAR 690-516-001, is allowable as requested. However, based on input from an interagency review of the application and a preliminary public interest review conducted by the Department, the Department found that in order to establish the presumption under ORS 537.153(2), the use of water for irrigation shall not be allowed June 15 through September 15 of each year.

The protest period closed July 5, 1996. On June 12, 1996, the applicant submitted a protest. On July 8, 1996, Administrative Law Judge Weisha Mize set the matter for hearing on August 29, 1996. On August 23, 1996, the hearing was rescheduled for November 18, 1996. On October 14, 1996, the Department requested and Judge Mize granted a continuance while settlement negotiations took place.

The applicant and the Department agree that the issue(s) in this case may be settled on the following terms and conditions, and hereby stipulate to the following:

- 1) Applicant waives the right to file exceptions to this order and the right to judicial review under ORS 536.075(2) and 183.482.
- 2) Entry of this stipulated final order by the Administrative Law Judge.
- 3) Issuance of a permit based on the analysis which follows.
- 4) Issuance of the permit, a draft of which is attached and incorporated herein by reference.

Department \_\_\_\_\_

Applicant \_\_\_\_\_



**Findings of Fact and Conclusions of Law**

In response to declining coastal fish runs, and the prospect of a federal listing, Governor Kitzhaber launched a "Coastal Salmon Recovery Initiative." As part of that initiative the Department convened a multi-disciplinary, multi-agency review team to evaluate coastal water right applications with respect to fishery impacts. Application S-73313 was reviewed by the team March 19, 1996. The review team found that the proposed use would negatively impact water quality (temperature) during the period June 16 through September 15. In addition, the team found that the proposed use would adversely impact streamflows necessary for fishery resources during the period June 15 through September 15. The Director, in evaluating the public interest under ORS 537.153(2) and ORS 537.170(8) found that in order to establish the public interest presumption under ORS 537.153(2) the irrigation use shall not be allowed during the period June 15 through September 15. On May 21, 1996, the Director issued a Proposed Final Order for Application S-73313 proposing to allow the irrigation use but limiting the use to the period March 1 through June 14 and September 16 through October 31.

Upon further evaluation of Application S-73313, the Department now finds that impacts to water quality from the proposed use are negligible. With respect to streamflow needed for fishery resources, the Department finds that Application S-73313 is junior in priority date and that the proposed irrigation use is subject to regulation in favor of Instream Water Right Certificates 59801, and 59965 which protect streamflow for fishery resources in the Umpqua River. Therefore, the Department finds and the applicant agrees that the proposed use may be allowed for the period of use and rate of use as follows without detriment or impairment to the public interest.

USE:            IRRIGATION OF 14.0 ACRES   -   MARCH 1 THROUGH OCTOBER 31  
RATE:           0.175 CFS

Department \_\_\_\_\_

Applicant \_\_\_\_\_

The Department and the applicant agree that all other aspects of the Proposed Final Order dated May 21, 1996, should apply to this application, and therefore agree to the entry of this Stipulated Final Order. Therefore, the Department finds and the applicant agrees that, if exercised in accordance with the attached permit, the proposed use will not impair or be detrimental to the public interest.

\_\_\_\_\_  
On Behalf of Applicant

\_\_\_\_\_  
On Behalf of the Water Resources  
Department

Dated \_\_\_\_\_

Dated \_\_\_\_\_

**Stipulated Final Order**

Pursuant to the Agreement described above, Application S-73313 therefore is approved with the above modifications to the Proposed Final Order, and a permit shall be issued as set forth in the attached draft permit.

DATED February , 1997

\_\_\_\_\_  
Weisha Mize  
Administrative Law Judge

STATE OF OREGON

COUNTY OF DOUGLAS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVID G & DIANA M HARLAND  
1110 TURKEY CREEK LANE  
ROSEBURG, OREGON 97470

(541) 459-5923

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73313

SOURCE OF WATER: UMPQUA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION OF 14.0 ACRES

MAXIMUM RATE/VOLUME ALLOWED: 0.175 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 2, 1993

POINT OF DIVERSION LOCATION: NE 1/4 NW 1/4, SECTION 18, T 26S, R 6W, W.M.; 1030 FEET SOUTH & 400 FEET WEST FROM N1/4 CORNER, SECTION 18

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 ACRE-FEET acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4 2.6 ACRES  
NW 1/4 SE 1/4 10.7 ACRES  
SW 1/4 SE 1/4 0.7 ACRE  
SECTION 8  
TOWNSHIP 26 SOUTH, RANGE 6 WEST, W.M.

Application S-73313 Water Resources Department

PERMIT XXXXX

Department \_\_\_\_\_

Applicant \_\_\_\_\_

## Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The required screens and fishways are to be in place, functional, and approved by Oregon Department of Fish and Wildlife before diversion of any water.

**STANDARD CONDITIONS**

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Application S-73313 Water Resources Department

PERMIT XXXXX

Department \_\_\_\_\_

Applicant \_\_\_\_\_

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1999. Complete application of the water to the use shall be made on or before October 1, 2000.

Issued \_\_\_\_\_, 1997

\_\_\_\_\_  
Water Resources Department  
Director

CHRONOLOGY

APPLICATION DATE 4/2/93

TR/IR DATE 10/27/93

PFO DATE 5/21/96

PROTEST DEADLINE 7/5/96

FO \_\_\_\_\_

PROTEST DEADLINE \_\_\_\_\_

PROTEST DATE 6/12/96

REQUESTED HEARING \_\_\_\_\_

HEARING DATE SCHEDULED 7/8/96 8/23/96

HEARING DATE 8/23/96 11/18/96

POSTPONED 10/21/96

HEARING WITHDRAWAL DATE letter dated \_\_\_\_\_  
letter received \_\_\_\_\_

HEARING DISMISSAL DATE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PFO  
3/1 - 6/15 & 9/10 - 10/31

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

POD POW (ok)

FILE # 73313

# FO CHECKLIST

REVIEW DATE: 1/22/97

PROTESTED FILE TO FO CONVERSION

INITIALS: FWK

In preparing the FO, you should check the following:

1. Protests from whom APP
2.  Verify names and addresses on the PFO CC list. **ALL** commentors (regardless of comment date), **affected landowners (were they notified?)**, and **those who paid the \$10 fee** should be listed.
3.  Verify payment of recording fees (circle the appropriate option)
  - (1) Issue FO w/permit if fees are paid -- Prepare refund request for excess fees, including **standing fees if no protest is filed and no modifications are being made to the PFO**
  - (2) Issue FO w/o permit if fees are lacking <sup>PO 308</sup>
    - 200 (Exam)
    - 100 (10 AC)
    - 8 (4 AC)
4. Y /  N Is the file lacking a signed oath of accuracy for the application?

Modify FO as needed to:

5. Y /  N revise, add, or exclude permit conditions or management codes \_\_\_\_\_

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6. Y /  N Correct PFO errors (such as POD or POU location (verify from map), Permit format)
7. \_\_\_\_\_ Permit number \_\_\_\_\_ (to files with oath, fees, and other issues)

Once FO document is completed:

8. \_\_\_\_\_ Save WordPerfect document in M:\T\FO\DONE\WEEK &  
M:\T\FO\PROTESTS\DONEWEEK m:\exchg\kassr\chkprot  
January 13, 1997

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THEODORE R. KULONGOSKI  
ATTORNEY GENERAL

THOMAS A. BALMER  
DEPUTY ATTORNEY GENERAL



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Salem, Oregon 97310

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DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

December 18, 1996

Stephen Mountainspring  
Attorney at Law  
810 SE Douglas Ave.  
Roseburg, Or 97470

Re: Application Nos. 73073, 80636, 73853, 73313

Dear Mr. Mountainspring:

This letter is to advise you that the Department of Justice no longer represents the Water Resources Department with respect to your client's application or the pending administrative hearing. Consequently, you should deal directly with Adam Sussman at the Water Resources Department (Telephone (503) 378-8455, ext 262) regarding matters of scheduling, settlement, discovery and any other matter relating to the application. Mr. Sussman is the lay representative for the Water Resources Department and is already familiar with your client's case.

Sincerely,

Melinda L. Bruce  
Assistant Attorney General  
Natural Resources Section

MLB:SEAS:prv/SEA0273.LET  
c: Adam Sussman