Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item H, June 1, 2007
Water Resources Commission Meeting

Request for an Exception to the Willamette Basin Program by David Bugni under ORS 536.295

I. Issue Statement

Under ORS 536.295 the Water Resources Commission may, under certain circumstances, allow the Department to consider an application to appropriate water for a use not classified as an allowable use by the applicable basin program. David and Mary Ann Bugni ("the applicant") have requested an exception to the Willamette Basin Program. According to their request, the use "is largely non-consumptive in nature and not likely to be regulated for other water rights" as provided in ORS 536.295(1)(c). In addition, the applicant maintains that the use of the water will provide a public benefit as provided in ORS 536.295(1)(f) .

This report summarizes the information provided by the applicant and evaluates the request against statutory criteria and rules of the Commission. The question before the Commission is whether to allow the Department to consider the application even though the use is not classified under the Willamette Basin Program. If the exception is granted, the application will be reviewed in the same manner as any other hydropower water right application.

II. Background

Basin programs are administrative rules adopted by the Commission that prescribe future allowable uses of water. The act of specifying the allowable future beneficial uses is called "classification" and is authorized under ORS 536.340. Classifying beneficial uses in a basin program involves analysis of basin-specific data and substantial public involvement. However, under ORS 536.295 the Commission may allow the Department to consider an application for a use not "classified" in a basin program if the use meets one or more of the criteria under subsection (1) of ORS 536.295 (Attachment 1). The

Commission also must evaluate whether the proposed use is consistent with the general policies of the applicable basin program.

Commission approval of a request for an exception to a basin program does not guarantee that a water right will be issued, or if issued how it may be conditioned. The Commission is not making a public interest determination on the application. In allowing a basin program exception, the Commission allows the Department to complete the application review process where issues such as the acceptability of the project considering the basin plan, scenic waterway flow requirements, potential conflict with existing water rights, and the resource standards in OAR 690-051-0160 through 690-051-0270. Public notice and comment opportunities will be provided in the same manner as any other hydroelectric water right application. If the Commission does not grant the request, the application will continue to be processed but will likely be denied due to the fact that the proposed use is not a classified use in the basin program.

III. Discussion

A. Application Summary

The applicants have operated an aquaculture facility at the proposed hydroelectric location for the past 14 years. The Department issued a permit March 18, 1991 for a fish rearing facility; largely because the Department was able to find that the "proposed use of water is non-consumptive," because water passed through the project and returned in equal amount at a location upstream from a scenic waterway" (Attachment 2, Permit 51200).

In January 2006, they applied for a water right for 0.75 (May through October) to 2.75 (November through April) cubic feet per second (cfs) from Suter Creek, for operation of a small hydroelectric facility that would be operated in conjunction with their fish rearing facility. The diverted water will be fed through a screened, side-bank reinforced pre-cast concrete intake structure into a 750 foot long 10-inch pipe which will feed both the existing aquaculture facility and the proposed small hydroelectric facility. The water will return into the creek adjacent to the location of the proposed powerhouse, where it currently returns under their existing permit for aquaculture (Permit 51200).

A map showing the location of the facility is provided as Attachment 3**.** The Willamette Basin Program classifies the Clackamas River and its tributaries for "…only domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from June 1 through October 31."

B. Exception Request

The Department received the applicants' basin program exception request on February 8, 2007 (Attachment 4). The application and supporting documents are provided in Attachment 5. ORS 536.295 provides that the Commission may allow the Department to

consider an application to appropriate water for a use not classified in the applicable basin program if the use is consistent with any one of seven statutory criteria. In their request, the applicants assert that their use "is largely nonconsumptive in nature and not likely to be regulated for other water rights" [ORS 536.295(1)(c)] and "will provide a public benefit such as riparian or watershed improvement" [ORS 536.295(1)(f)].

Department Analysis: The Department believes that the proposed use is largely non-consumptive in nature and not likely to be regulated for other water rights since all flows are returned to the creek and both the diversion and return of flow occurs solely on the applicants' property. There are no other water rights on Suter Creek within the project zone. If a permit is issued, it would likely be conditioned such that the diverted water is returned to the creek at a point described in the permit to insure that the non-consumptive nature of the use is maintained.

The applicants also claim that their hydropower project will reduce carbon dioxide emissions by an estimated 12 tons annually because they will be using the electricity that is developed from the new hydroelectric project to meet their household needs. The Department does not have the information or expertise to analyze this request against ORS 536.296(f), that the use "will provide a public benefit such as riparian or watershed improvement."

General Policies of the Willamette Basin Program

ORS 536.295(4) requires the Commission to evaluate whether the proposed use is consistent with the general policies of the Willamette Basin Program, provided in Attachment 6. The applicants, in their exception request, do not address whether their proposed use is consistent with the general policies of the Willamette Basin Program. A comparison of the surface water allocation policy with information submitted by the applicants demonstrates that the proposed use is consistent with the policies of the basin program:

- The applicants proposed point of diversion is not within an instream water right reach or minimum perennial streamflow.
- Instream water rights below the proposed project will not be affected by this diversion since the use is primarily non-consumptive.
- The applicants have applied for water from a source that has no history of regulation.
- The proposed use will not result in over-appropriation.
- Hydroelectric time-limited water rights are subordinated to all other uses, so opportunities are preserved for future economic development.
- The Clackamas River has water availability limitations but they are due to instream water rights that are located on downstream waters.

Department Analysis: The Department believes that the proposed use is consistent with the general policies of the Willamette Basin Program.

IV. Conclusion

To approve a basin program exception request under ORS 536.295, the Commission must find that the request meets statutory criteria and the proposed use is consistent with the general policies of the applicable basin program. The applicant has demonstrated that approval of this request will allow for consideration of a proposed use that is largely non-consumptive in nature and not likely to be regulated for other water rights and is consistent with the general policies of the Willamette Basin Program.

V. Alternatives

The Commission may consider the following actions:

1. Approve the request for a basin plan exception.

2. Deny the request for a basin program exception.

3. Take no action and direct staff to continue to work with the applicant.

VI. Recommendation

The Director recommends Alternative 1, that the Commission approve the request by the applicant for an exception to the Willamette Basin Program as the use is largely non-consumptive in nature.

Attachments:
1. ORS 536.295
2. Permit 51200
3. Copy of application map
4. David and Mary Ann Bugni's Exception Request
5. Application and supporting documents
6. Willamette Basin Program General Policies

Dwight French
(503) 986-0819

Attachment 1

ORS 536.295 Conditions for consideration of application for use not classified in basin program; rules. (1) Notwithstanding any provision of ORS 536.300 to 536.340, the Water Resources Commission may allow the Water Resources Department to consider an application to appropriate water for a use not classified in the applicable basin program is the use:

a) Will be of short duration during each year;

b) Will be for a continuous period of no longer than five years;

c) Is largely nonconsumptive in nature and not likely to be regulated for other water rights;

d) Is necessary to ensure public health, welfare and safety;

e) Is necessary to avoid extreme hardship;

f) Will provide a public benefit such as riparian or watershed improvement; or

g) Is of an unusual nature not to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program including but not limited to:

   A. Exploratory thermal drilling;

   B. Heat exchange;

   C. Maintaining water levels in a sewage lagoon; or

   D. Facilitating the watering of livestock away from a river or stream.

Attachment 2

STATE OF OREGON

COUNTY OF CLACKAMAS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVID A. AND MARY A. BUGNI
5784 SE MCNARY ROAD
MILWAUKIE, OREGON 97267

503-289-2661

to use the waters of SUTTER CREEK, a tributary of NORTH FORK EAGLE CREEK, for FISH REARING.

This permit is issued approving Application 71156. The date of priority is JANUARY 30, 1991. The use is limited to not more than 1.0 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SW 1/4 SW 1/4, SECTION 18, T 3 S, R 5 E, W.M.; 290 FEET NORTH AND 150 FEET WEST FROM SE CORNER, SW 1/4 SW 1/4, SECTION 18.

Diversion screening or fish passage facilities shall be designed, installed, and operated to Oregon Department of Fish & Wildlife specifications.

The applicant shall install and maintain boulder placement as required by Oregon Department of Fish and Wildlife to dissipate energy from the discharge of hatchery waste water to Sutter Creek to prevent bank erosion.

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

A description of the proposed place of use under this permit is as follows:

SW 1/4 SW 1/4
SECTION 18
TOWHSHIP 3 SOUTH, RANGE 5 EAST, W.M.

Actual construction work shall begin on or before March 18, 1992, and shall be completed on or before October 1, 1992. Complete application of the water to the use shall be made on or before October 1, 1993.

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 rights for maintaining instream flows.

Issued this date, MARCH 18, 1991.

/s/ YOUNG

Water Resources Department
William H. Young
Director

DAVID BUGNI
&ASSOCIATES
Consulting Structural Engineers
30265 S.E. Kowall Road
Estacada, OR 97023
(503) 630-3506
Fax: (503) 630-3507

Attachment 3

CLIENT: _____

PROJECT: _____

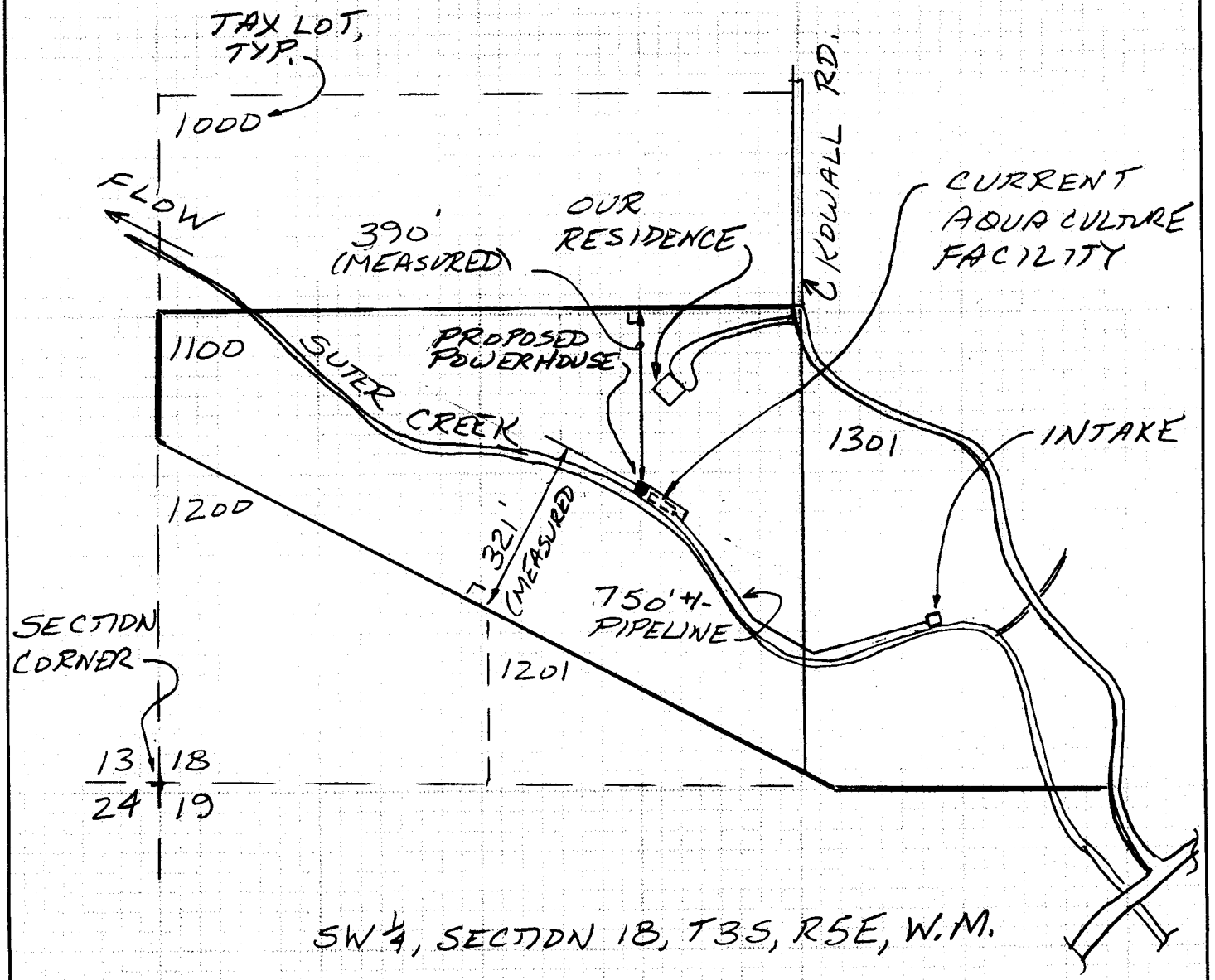
CALCULATED BY: DB DATE: _____

CHECKED BY: _____ DATE: _____

Sheet 1 OF 1

Project No. _____

EXHIBIT B



SW 1/4, SECTION 18, T3S, R5E, W.M.

N

SITE PLAN
1" = 300'

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Attachment 4

February 7, 2007

Mr. R. Craig Kohanek
Oregon Water Resources Department
725 Summer St. NE
Suite A
Salem, OR 97301-1271

Re: Request for Exception of Surface Water Appropriation as Allowed Under ORS 536.295

Dear Mr. Kohanek:

We have been operating a small aquaculture facility on our property for the past 14 years utilizing a 1 cubic foot per second (cfs), year round, non-consumptive diversion water right, permitted by your department, from Suter Creek, a tributary to North Fork Eagle Creek (Permit #51200). We now would like to utilize a significant fraction of that water flow to also produce electricity from a micro-hydroelectric facility (application HE 576). Consequently, we request from the Oregon Water Resources Commission an exception to Oregon Administrative Rule 690-502-0140 (4). This rule limits the use of tributaries of the Clackamas River for beneficial uses other than "... domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from June 1 through October 31."

We request an exception to the classified uses of surface water under the provisions of ORS 536.295 subsections (c) and (f). We will remain within the 1 cfs currently allowed from June 1 through October 31 for the combined uses.

Subsection (c) allows consideration of a use if it is largely non-consumptive in nature and not likely to be regulated for other water rights. Our use has been, and will continue to be, non-consumptive, as we would continue to divert water from the creek, feed it through a penstock, and completely return it back into the creek. Our use is also not regulated for other water rights.

Subsection (f) allows consideration of a use if it will provide a public benefit. The main reason we are undertaking this project is to reduce our reliance on fossil fuel sources that provide electricity for our home as well as reduce our need for domestic home heating oil as our only source of heat. We estimate we will be able to reduce our emissions of carbon dioxide into the atmosphere by about 12 tons per year (through a complete elimination of our electricity purchased from PGE and minimizing, though not eliminating, our purchase of home heating oil by providing an electrical assist for our domestic water and hydronic heat). This reduction represents approximately a 62% reduction in our annual carbon dioxide emissions for our residence.

Please do not hesitate to contact me if you have any questions.

Thank you.

Sincerely,

David Bugni
30265 SE Kowall Rd.
Estacada, OR 97023
503-630-3506

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Attachment 5

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1271
(503) 986-0900
www.wrd.state.or.us

Application to Develop a Minor Hydroelectric Project (Less than 100 theoretical horsepower)

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply, please insert "n/a". Please read and refer to the instructions guide when completing your application. A summary of review criteria and procedures that are applicable to minor hydroelectric projects is available at www.wrd.state.or.us Thank you.

1. APPLICANT INFORMATION

Applicants: DAVID & MARY ANN BUGNI
First Last

Organization: —
First Last

Mailing Address: 30265 SE KOWALL RD., ESTACADA, OR 97023
City State Zip

Phone: 503 630-4427 503-630-3506
Home Work Other

*Fax: 503 630-3507 E-mail address: dbugni@cascadeaccess.com

**Optional Information*

2. PROPERTY OWNERSHIP

Do you own all the land where you propose to divert, transport, and use water? This includes diversion location and place of use; roads; rights-of-way; and canals or ditches.

☒ Yes (*Skip to section 3 "Water Use"*)

☐ No Please check the appropriate box below.

- ☐ I have a recorded easement or written authorization permitting access.
- ☐ I do not currently have written authorization or easement permitting access. ***Note: A water right cannot be issued without written authorization or easement provided to the Department.***

List the names and mailing addresses of all affected landowners.

Attach a separate sheet if needed.

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3. WATER USE

A. Proposed Source and Amount of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so. If the source will be a reservoir, list reservoir name and/or permit number:

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (CFS) or gallons per minute (GPM). If the proposed use is from storage, provide the amount in acre-feet (AF):

(1 cubic foot per second = 448.8 gallons per minute 1 acre-foot = 43,560 cubic feet)

Source Tributary to	Amount (AF, CFS, GPM)
SUTER CR. (TRIBUTARY OF THE NORTH FORK OF EAGLE CREEK)	1 CFS FOR 6 SUMMER MONTHS (0.75 CFS FOR HYDROPOWER) & 3 CFS FOR 6 WINTER MONTHS (2.75 CFS FOR HYDROPOWER). CURRENTLY HAVE 1 CFS WATER RIGHT.

B. Period of Use

Indicate the time of year when you propose to use water:
ALL YEAR

C. Power Development

The project will utilize 38.4' (*number of feet*) of gross head to develop 12 (*number*) theoretical horsepower (*THP*).

THP is calculated by multiplying the quantity of water to be diverted in cubic feet per second by the vertical head in feet and dividing the product by 8.8). The head is the difference in elevation between the intake of the pipeline and the return discharge to the stream.

D. Location

The point of diversion is located within the SE ¼ of the SW ¼ of Section 18, Township 3S, Range 5E, W.M.,
The power plant is located within the SW ¼ of the SW ¼ of Section 18, Township 3S, Range 5E, W.M., in CLACKAMAS County.

After passing through the power plant, the water utilized will be returned to STREAM (*stream*) in the SW ¼ of the SW ¼ of Section 18, Township 3S, Range 5E, W.M.

E. Project Facilities

(IF APPLICABLE) The diversion dam will have a height of _____ feet, a crest width of _____ feet, an upstream slope of _____ feet horizontal to one foot vertical, and a downstream slope of _____ feet horizontal to one foot vertical.
Describe the type of dam and the material with which it will be constructed:

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(IF APPLICABLE) The storage reservoir will be located on _____ *(body of water)*, tributary to _____ *(body of water)* in Section _____, Township _____, Range _____, W.M. When full the reservoir will have a surface area of _____ acres and a total storage volume of _____ acre-feet.

(IF APPLICABLE) The canal will have a length of _____ feet, a slope of _____ feet horizontal /feet vertical, a base width of _____ feet, and a top width of _____ feet.

(IF APPLICABLE) The pipeline will have a length of 750 feet, a diameter of 10 inches, and the difference in elevation between the intake and discharge will be 38.4 feet. The type of pipe used is SCH. 40 PVC.

Describe the type of water wheel and generator that will be used: A CROSS FLOW TURBINE AND AN 1800 RPM, SINGLE PHASE, BRUSHLESS INDUCTION MOTOR (AS A GENERATOR)

4. WATER MANAGEMENT

A. Monitoring

How will you monitor your diversion to be sure you are within the limits of your water right and you are not wasting water? USE WATT METER TO MEASURE POWER PRODUCTION WHICH IS A FUNCTION OF WATER FLOW RATE. DEVELOP INITIAL CORRELATION AS A BENCHMARK.

☐ Weir ☒ Meter ☐ Periodic Sampling

Have you planned for a minimum bypass flow?

☐ Describe

3 CFS +/-

5. RESOURCE PROTECTION

In granting permission to use water from a stream or lake, the state requires, careful control of activities that may affect the waterway or streamside area. Please indicate any of the practices you plan to undertake to protect water resources.

☒ Diversion will be screened to prevent uptake of fish and other aquatic life.

Describe planned actions:

PLEASE REFER TO EXHIBIT A.

☒ Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas. Describe planned actions: PLEASE REFER TO EXHIBIT A.

☒ Operating equipment in a water body will be managed and timed to prevent damage to aquatic life.
Describe: PLEASE REFER TO EXHIBIT A.

☒ Water quality will be protected by preventing erosion and run-off of waste or chemical products.
Describe: PLEASE REFER TO EXHIBIT A.

6. FINANCES AND SCHEDULE

The estimated cost of the project is $ 29,000.

The proposed use or market for the power to be developed is: TO OFFSET (PARTIALLY, NOT COMPLETELY) OUR OWN RESIDENTIAL ENERGY USE.

The time schedule for completing the project after a water right is issued is 6 MONTHS.

The estimated life of this project is 30 years. Upon a decision to terminate project operations, the project must be decommissioned under applicable Oregon laws. Upon project termination, the proposed method of removal is BY USE OF MANUAL LABOR TO REMOVE POWERHOUSE STRUCTURE & PIPING. [redacted] INTAKE WILL BE REMOVED WITH CONCRETE SAW DURING PERIOD OF LOW STREAM FLOW (SUMMER MONTHS).

7. NEIGHBORS

The following individuals own property within 300 feet of the proposed powerhouse:
(include names, physical addresses, and mailing addresses)

NONE.

8. REMARKS

If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.

PLEASE REFER TO EXHIBIT "A".

9. MAP REQUIREMENTS

The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter-quarter section of the proposed diversion location and powerhouse. See the map guidelines sheet for detailed map specifications.

10. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided.
- I cannot legally use water until the Water Resources Department issues a water right to me.
- If I get a water right, I must not waste water.
- If development of the water use is not according to the terms of the water right, the water right can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a water right to me, I may have to stop using water to allow senior water right holders, instream water rights or minimum bypass flows to get water they are entitled to, and

I affirm that all information provided in this application is true and correct to the best of my knowledge.

David Burgi — 1/10/07

Signature of applicant — Date

Mary A Burgi — 1-10-07

Signature of applicant — Date

11. EXHIBITS

The following Exhibits must be included as a part of this application:

Exhibit A Narrative Statement describing the proposed project from the point(s) of diversion to the water return area.

Exhibit B Project Map (See Guide for Minor Hydroelectric Applications)

Exhibit C Tax Assessors map showing all property lines within 300 feet of the proposed powerhouse.

Exhibit D Attach land use form. Land use form must be signed by the local planning official, certifying that the use and structures associated with this project are allowed. The land use form is available from the OWRD Salem office or OWRD web site, http://www1.wrd.state.or.us/pdfs/landuseform.pdf

NARRATIVE STATEMENT:

Provide a detailed written description of each component of the proposed Project from the point(s) of diversion to the water return area. The reader should be able to draw a basic picture of the Project based on the Narrative Statement. Such features include points of diversion, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, conduits or pipes, powerhouses, water wheels, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with the Project or any part thereof, rights of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation and maintenance of the Project.

Before you submit your application be sure you have:

- Answered each question completely.
- Attached a legible map which includes township, range, section and quarter-quarter section.
- Attached an assessor's map showing tax lots within 300 feet of powerhouse.
- Included a Land Use Information Form or receipt stub signed by a local official from a city or county planning office.
- Included a check payable to the Water Resources Department for $500. (If a water right is approved, an additional $500 is required before the right can be issued.)

S:\groups\wr\Hydro\Hydro Desk Manual\K. Applications for New Minor Hydro Water Rights\Minor hydroelectric application.wpd

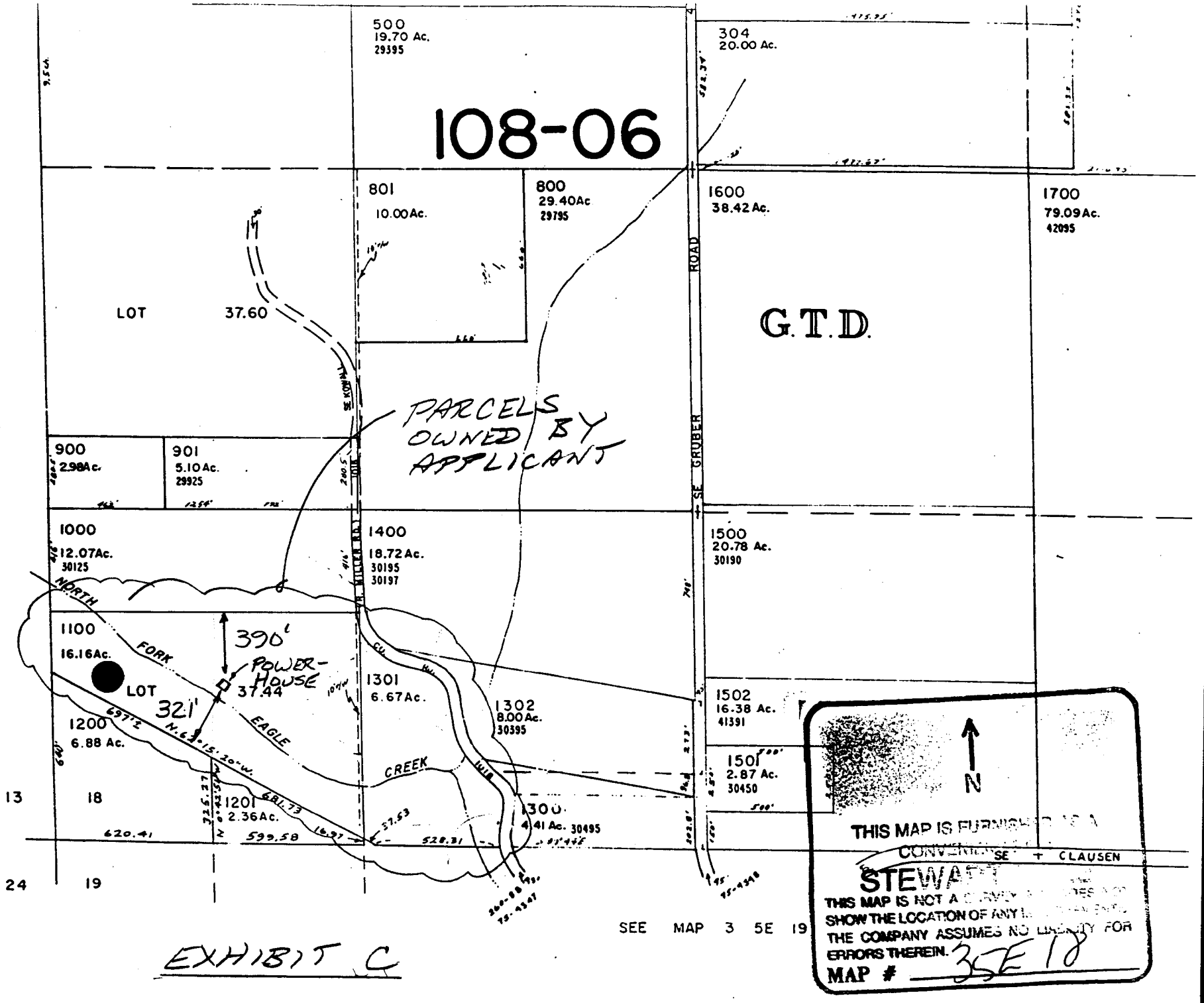

EXHIBIT C

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DAVID BUGNI
& ASSOCIATES
Consulting Structural Engineers
30265 S.E. Kowall Road
Estacada, OR 97023
(503) 630-3506
Fax: (503) 630-3507

CLIENT: _____

PROJECT: _____

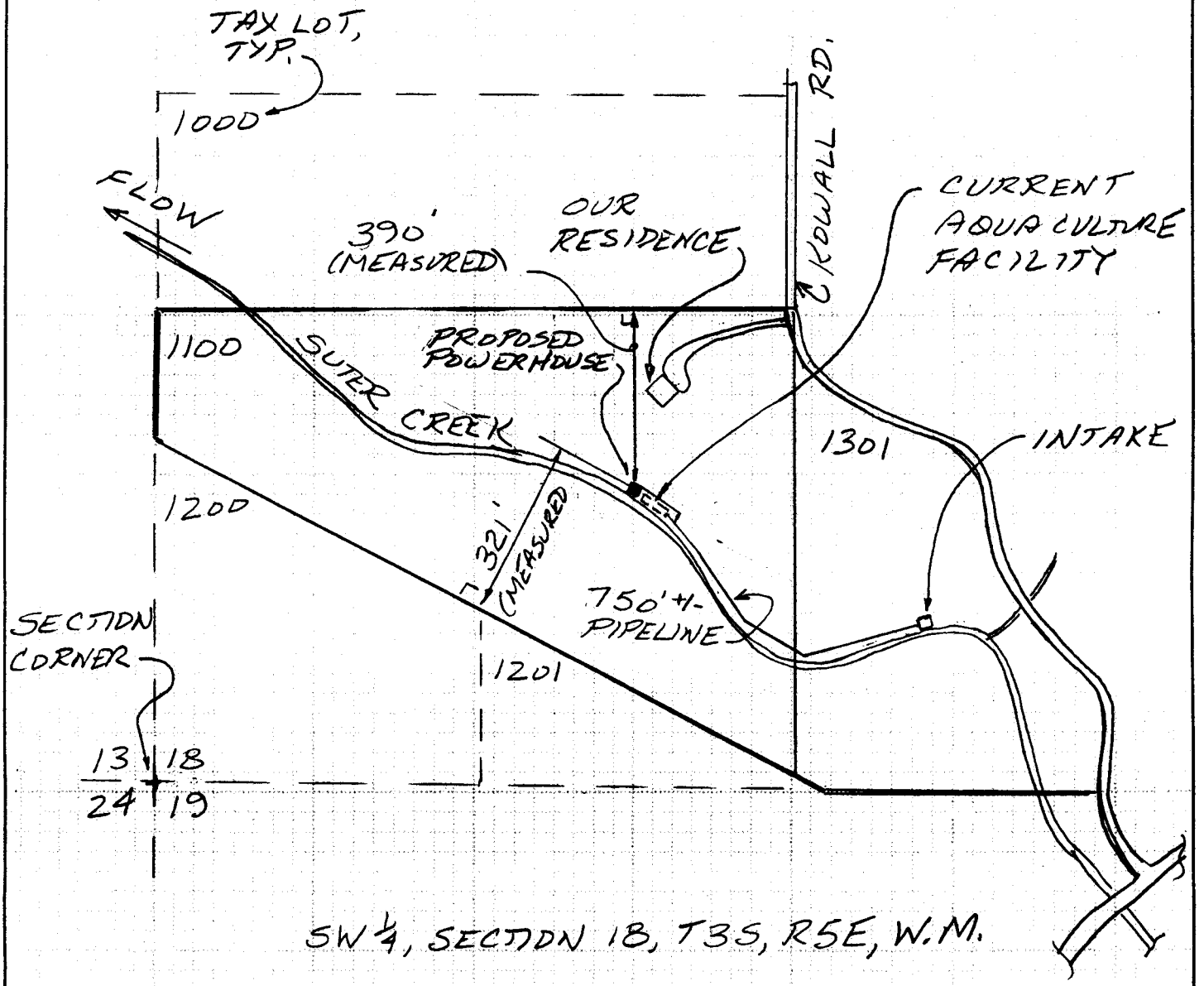
CALCULATED BY: DB DATE: _____

CHECKED BY: _____ DATE: _____

Sheet 1 OF 1

Project No. —

EXHIBIT B



SW ¼, SECTION 18, T3S, R5E, W.M.

N

SITE PLAN

1" = 300'

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Oregon Water Resources Department
Land Use Information Form

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. WRD will use this and other information to evaluate the water use application. THIS FORM IS NOT REQUIRED IF: 1) water is to be diverted, conveyed, and/or used only on federal lands; or 2) the application is for a water right transfer, allocation of conserved water, or exchange and all of the following apply: a) only the place of use is proposed for change, b) there are no structural changes, c) the use of water is for irrigation, and d) the use is located in an irrigation district or exclusive farm use zone.

To Be Completed By Applicant

This section must be completed by the individual or group that is filing an application with the Water Resources Department. Attach a copy of the map from the application to this form.

A. Applicant

Name: DAVID & MARY ANN BUGNI

Address: 30265 SE KOWALL RD.

City: ESTACADA State: OR Zip: 97023 Day Phone: 503 630 3506

B. Land and Location

Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (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 I.D.	Plan Designation (e.g. Rural Residential/RR-5)	Water to be: *(check all that apply)*	Proposed Land Use
1301	AG/F	☒ Diverted ☒ Conveyed ☐ Used	ELECTRIC POWER
1100	AG/F	☐ Diverted ☒ Conveyed ☒ Used	ELECTRIC POWER
		☐ Diverted ☐ Conveyed ☐ Used	
		☐ Diverted ☐ Conveyed ☐ Used	
		☐ Diverted ☐ Conveyed ☐ Used	
		☐ Diverted ☐ Conveyed ☐ Used	

List counties and cities where water is proposed to be diverted, conveyed, or used. CLACKAMAS COUNTY

C. Description of Proposed Use

Indicate the type of application to be filed with the Water Resources Department.

☒ Water Use Permit ☐ Water Right Transfer ☐ Allocation of Conserved Water ☐ Exchange

Indicate the intended use of water and describe the key characteristics of the project.

☐ Commercial ☐ Industrial ☐ Instream ☐ Irrigation
☐ Municipal ☐ Quasi-municipal ☐ Domestic (indicate number of households) ____
☒ Other NON-CONSUMPTIVE DIVERSION

Briefly describe: MODIFY EXISTING WATER RIGHT FROM AQUACULTURE USE TO AQUACULTURE/HYDROELECTRIC USE.

Indicate the source of the water to be used.

☐ Reservoir/Pond ☐ Ground Water ☒ Surface Water SUTER CREEK (source)

Indicate the estimated quantity of water the use will require: 3 ☒ CFS ☐ GPM ☐ Acre-Feet (TOTAL), WITH 2.75 CFS OF THE 3 CFS FOR HYDROPOWER PRODUCTION.

Last revised: 04/06/04

Receipt for Request for Land Use Information

State of Oregon
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
(503) 986-0900

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For Local Government Use Only

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

A. Allowed Use

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): 407.04(B)(3). Go to section B "Approval" below.

☐ Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below.

Type of Land Use Approval Needed (e.g. plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	*Check the item that applies:* Land Use Approval:	
		☐ Obtained ☐ Denied	☐ Being pursued ☐ Not being pursued
		☐ Obtained ☐ Denied	☐ Being pursued ☐ Not being pursued
		☐ Obtained ☐ Denied	☐ Being pursued ☐ Not being pursued
		☐ Obtained ☐ Denied	☐ Being pursued ☐ Not being pursued

Note: *Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action/land use decision and accompanying findings are sufficient.)*

B. Approval

Please provide printed name and written signature.

Name: GARY HEWITT Date: 12-6-06

Title: SR. PLANNER Phone: 503-353-4519

Signature: [signature]

C. Additional Comments

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.

THE GENERATION FACILITY SHALL NOT BE GREAT THAN 5 KW UNIT.

Note: *If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.*

Receipt for Request for Land Use Information

Name of applicant: _____

This receipt must be signed by a local government representative and returned to the applicant at the time they present this form. This receipt must be included with the application filed with the Water Resources Department if the local government cannot provide the requested land use information while the applicant waits.

City or County: _____

Staff contact: _____ Phone: _____

Signature: _____ Date: _____

RECEIVED
JAN 18 2007
WATER RESOURCES DEPT
SALEM, OREGON

David & Mary A. Bugni

Exhibit A

The proposed project is located on Suter Creek (also known incorrectly as the North Fork of Eagle Creek on most tax maps). It will consist of a modification to an existing aquaculture facility (permitted under Water Right Permit No. 51200 back in 1994) that the applicant currently operates. The current aquaculture facility consists of a 1 cfs non-consumptive diversion which flows into a screened side-bank intake and then into a 215 foot long 6" PVC pipe that feeds a fish raceway and rearing trough system. The proposed modification consists of a 1 cfs diversion (to be used during the months of May through October) and a 3 cfs diversion (to be used during the months of November through May). Of the 1 cfs, up to 0.75 cfs will be used for hydropower (the remaining for a portion of the aquaculture facility) and of the 3 cfs, up to 2.75 cfs will be used for hydropower (the remaining for a portion of the aquaculture facility). The water from this diversion will be fed through a screened, side bank, reinforced precast concrete intake structure into a 750 foot long 10" PVC schedule 40 pipe which will then feed both the aquaculture facility and the proposed micro-hydroelectric facility. The new intake will be about 535 feet upstream from the current intake, which will be removed. The water will then be returned back into the creek adjacent to the location of the proposed powerhouse (where the water currently returns into the creek). At the location of the water return, the boulders currently used for energy dissipation will continued to be used, and added to as required to accommodate the increased flow.

The hydroelectric facility will consist of the following items:

1. A crossflow turbine
2. Either an AC or DC generation package
3. A buried transmission line that will feed into the residence's current electrical system utilizing Portland General Electric's "net metering" method.
4. The power generation equipment will be housed within a small wood-framed enclosure attached to a concrete slab-on-grade, immediately adjacent to the applicant's current concrete fish raceway.

The applicant's current total, annual energy budget (electric plus home heating oil) will not be offset by the micro-hydroelectric facility; rather, the proposed facility will provide, on an annual basis, about one half of the applicant's total residential energy needs.

One of the main goals of this project is to reduce the applicant's use of energy generated with fossil fuels.

To more fully describe the proposed project, each question posed in Section II of the "Instruction Guide for Minor Hydroelectric Applications" will be answered. The answers provided by the applicant are in **bold**:

A. Restriction on Filing

1. Is the project located in any of the following areas?
    a. National Parks [**No**]
    b. National Monuments [**No**]
    c. Wilderness areas established by federal law [**No**]
    d. Bureau of Land Management areas [**No**]
    e. Wild and scenic rivers established by federal law [**No**]

f. Estuarine sanctuaries [**No**]
g. Federal research areas [**No**]
h. State parks and waysides [**No**]
i. Scenic waterways designated under ORS Chapter 390 [**No**]
j. State wildlife refuges [**No**]
k. State dedicated natural heritage areas [**No**]

B. Water Resources

2. Is there water available to provide reasonable operation of the proposed project? [**Yes. This is based upon our 13 year history of operating our present aquaculture facility and being familiar with annual stream flows.**]
3. Does the proposed use preclude or interfere with any existing rights or permits for the use of water? [**No, our current water right, with the modifications proposed, will accommodate both the proposed hydroelectric facility in combination with the current aquaculture facility.**]
4. Is the proposed use consistent with the applicable State water Resources Policies in OAR 690, Divisions 400, 410 and the Basin Program in OAR Chapter 690, Divisions 500 through 520 or, in the absence of a policy, is the proposed use consistent with the policies set forth in ORS 536.300 through 536.350? [**We believe the proposed use is consistent with these policies and intentions.**]
5. Is the project consistent with achieving maximum economic development of the waters involved? [**We believe it is without compromising the natural requirements of the creek for plants, fish and wildlife.**]
6. Is the project consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity? [**We believe it is without compromising the natural requirements of the creek for plants, fish and wildlife.**]
7. Will the project constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved? [**No.**]
8. Is the project, including mitigation and enhancement measures, consistent with conserving the highest use of the waters of the state for all beneficial purposes? [**Yes.**]
9. Is the project consistent with controlling the waters of the state for all beneficial purposes, including drainage, sanitation and floor control? [**Yes.**]
10. Construction and operation of the proposed project shall comply with water quality standards established in OAR Chapter 340, Division 41. [**Project will be constructed and operated in accordance with the mentioned water quality standards.**]

C. Fish Resources

Please note that the Oregon Department of Fish & Wildlife (ODFW) visited the site in December 2006 to review the proposed micro-hydropower project. No concerns about the project were expressed by the ODFW to the applicant during that visit.

11. Will project facilities and operations have significant adverse impacts on fish populations? [**No. The intake will be screened in accordance with ODFW criteria and the amount of water used in this diversion will allow for enough water to remain in the creek and flow over the length of the diversion for fish passage. At the outfall, the water from the diversion will flow over boulders, which are currently in place for the current aquaculture operation, to dissipate the energy of the flowing water. Over the length of the proposed diversion, the stream gradient is fairly high and no**

fish redds have ever been observed; although, a few redds have been found down stream.]

12. Will project facilities and operations unreasonably interfere with upstream and downstream passage of fish through the project vicinity? **[No.]**
13. Have project facilities and operation been designed to mitigate, to the greatest extent practicable, adverse impacts upon spawning, rearing or other habitat areas necessary to maintain levels and existing diversity of fish species? **[Yes.]**
14. Will unavoidable adverse impacts on fish or to fish management programs be mitigated? **[We believe there are no unavoidable adverse impacts.]**
15. Are project construction, timing, and procedures designed to minimize fishery impacts from instream construction work and premature or unnecessary land clearing and disturbances? **[Yes. The only site work and stream work contemplated are to construct a small, precast concrete side-bank diversion (about 2'-6" x 8'-10" long) and a six foot square slab-on-grade to support the powerhouse during the low water summer months. The precast structure will allow for a relatively quick installation schedule of the intake structure as well as eliminate the possibility of uncured concrete making its way into the waterway. The piping will be supported at about 10 feet on center with wood X-brace supports (as the current piping, which will be removed, is). The only location where mechanized construction equipment will be used will be at the intake structure. About 10 feet of the right bank will be diverted to construct the side-bank diversion. Ground disturbance activities will be minimized and any stream bank disturbed by this activity will be replanted with native plantings (we have undertaken over the years, and currently undertake, such activities as an on-going program to plant western hemlock and western redcedar in areas devoid of these species to enhance diversity.]**
16. Are all fishery protective measures scheduled to be fully functional when the project commences operations? **[Yes.]**
17. Is the proposed project consistent with ODFW management programs in force on the effective date of these rules **[Yes.]**
18. Is any part of the project located on a river or stream reach used by wild game fish, or that would adversely affect wild game fish? **[Yes. The ODFW has been walking the stream over the past several years to ascertain the existence of any anadromous fish. ODFW has found a few fall-run Coho salmon redds in the area. As a result, it can be assumed that this species of wild fish is present in the creek. Cutthroat trout have also been observed. As previously mentioned, the intake will be screened and the out fall will have boulders placed to dissipate the water's energy, thereby not creating any adverse impact.]**
19. If the answer to question 18 is YES, the project shall include mitigation measures which:
    a. Are located in the project vicinity. **[It will, as described above.]**
    b. Are in effect at the time of the adverse impact or start of project operation, whichever comes first. **[Measures will be in place.]**
    c. Will prevent a net loss to individual species of wild game fish. **[It will.]**
    d. Will prevent conversion of a wild game fish population and fishery to a hatchery dependent resource. **[This project will not create such a condition.]**
    e. Are consistent with ODFW management plans and programs in force on the effective date of these rules. **[It will.]**
    f. Employ workable and generally accepted methods and techniques of mitigation best suited to the affected fish resource. **[It will as required.]**
20. If proposed at an undeveloped site, is it reasonably foreseeable that the location, design, construction or operation of the project may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat. **[No.]**

21. Modification of an existing facility or project on a stream reach used by anadromous salmon or steelhead or providing anadromous salmon or steelhead habitat shall include measures that:
    a. Are reasonably certain to restore, enhance or improve existing salmon and steelhead populations in the affected river. [**The current aquaculture facility was designed and constructed in accordance with ODFW criteria in affect in 1992 and resulted in no degradation of the reach due to its limited extent (about 270' long, overall) and size. The proposed modification, other than an increase in pipe length will be very similar in character.**]
    b. Comply with wild game fish standards in paragraphs (2)(a)(C) and (D) of OAR 690-051-0200 if the affected salmon or steelhead populations contain wild fish. [**It will.**]
    c. Are consistent with ODFW Fishery management plans and programs in force on the effective date of these rules. [**It will.**]
    d. Employ workable and generally accepted methods and techniques best suited to the fish resources affected by the proposed project. [**It will.**]
    e. Are in effect at the time of adverse impact or start of project operation, whichever comes first. [**It will.**]
22. **See response to question 28.**

D. Wildlife

23. Will the location, design, construction or operation of the proposed project jeopardize the continued existence of animal species that have been:
    a. Designated, or officially proposed by the USF&WS or the NMFS as threatened or endangered pursuant to the Endangered Species Act of 1973? [**No.**]
    b. Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon; [**No.**] or
    c. Identified by the Oregon Fish and Wildlife Commission as threatened or endangered in Oregon. [**No.**]
24. Will the location, design, construction and operation of project facilities minimize adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes? [**Yes.**]
25. Will project construction methods and scheduling minimize disruption of wildlife and avoid premature or unnecessary land clearing in the project vicinity? [**Yes.**]
26. Will unavoidable adverse impacts on wildlife or wildlife habitat be mitigated in the project vicinity by methods such as replacement or vegetation, regulation of reservoir levels, creation of aquatic habitat, improvements in wildlife carrying capacity in the project vicinity or acquisition of land or management rights? [**Yes.**]
27. Will the project be consistent with applicable ODFW management programs in force on the effective date of these rules? [**Yes.**]
28. If within the Columbia River Basin, will the project be consistent with the provisions of the NWPPC's Columbia River Basin Fish and Wildlife program and the Northwest Conservation and Electric Power Plan? Certification of compliance by the NWPPC shall satisfy this standard. [**Yes, we believe it will. Additionally, upon review of the Protected Areas Map as found from the NWPPC's website (see attached), Suter Creek is designated as an "Unprotected" creek.**]]
29. Will the location, design, construction or operation of the proposed project jeopardize the continued existence of plant species that are:
    a. Designated or officially proposed by the USF&WS as threatened or endangered pursuant to the Endangered Species Act of 1973: [**No.**]

b. Identified by the Oregon Natural Heritage Database as endangered, threatened or limited in Oregon? [**No.**]

F. Recreation

30. Will project facilities be designed, located and operated to substantially avoid visible or audible intrusion on the natural setting integral to existing recreational facilities, activities, or opportunities? [**We are not aware of any recreational facilities, activities or opportunities anywhere near the proposed location. This facility resides completely within private property and cannot be seen from any public right-of-way.**]
31. Will the proposed project reduce the abundance or variety of recreational facilities or opportunities in the project vicinity? [**No.**]
32. Will unavoidable adverse impacts on nonwater-dependent recreation facilities, activities or opportunities be mitigated in the project vicinity by providing replacement facilities or opportunities of the same nature and abundance? [**There are no nonwater-dependent recreation facilities, activities or opportunities in the project area.**]
33. Will the project have significant adverse impact on any unique, unusual or distinct natural feature that provides the focus or attraction for nonwater-dependent recreational facilities or activities? [**No.**]
34. Will unavoidable adverse impacts on any water-dependent recreational opportunity be mitigated with replacement by or enhancement or another water-dependent recreational opportunity available in the project vicinity? [**No unavoidable adverse impacts are contemplated.**]
35. Will the proposed project cause the loss of or significant adverse impact to any water-dependent recreational opportunities of state-wide significance? [**No.**]
36. Will adverse impacts on any specific elements, such as flow regime, length of reach, access, season of use, degree of difficulty, of a water-dependent recreational opportunity of statewide significance, be offset by enhancement to other element(s) of the same water-dependent recreational opportunity in the project vicinity? [**No.**]

G. Historic, Cultural, and Archaeological Resources

37. Will the project result in significant adverse impact on any historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places? [**No.**]
38. Will the project comply with state laws to protect Indian graves, historic material and archaeological objects and sites? [**Yes.**]
39. Will unavoidable adverse impacts on historic, cultural and archaeological resources be mitigated in accordance with generally accepted professional standards? [**Yes.**]
40. Will archaeological data of significant associated with a site not eligible for inclusion in the National Register of Historic Places be recovered in accordance with generally accepted professional standards? [**Yes, if any are found.**]
41. Have you consulted with the State Historic Preservation Office, the State Legislative Commission on Indian Services and appropriate tribes about Indian historic and cultural resources in the project vicinity? [**No. The only excavation contemplated is at the right bank as noted above and this excavation will be limited to approximately a four foot by ten foot area that will be shallow in depth (approximately 12" to 18").**]

H. Land Resources

42. Will adverse impacts on high value or important farmlands or agricultural land as identified in OAR Chapter 660, Division 33, be avoided, minimized or offset by acceptable mitigation? [**The project location is in an area completely unsuitable for any agricultural use.**]
43. Will adverse impacts on prime forestlands as defined by the city or county and by the Oregon Forestry Department be avoided, minimized, or offset by acceptable mitigation? [**No adverse impact on forest lands will occur as the project is laid out so no trees need be removed.**]
44. Will adverse impacts on wetlands be avoided, minimized, or offset by acceptable mitigation? [**No wetlands exist within the project area.**]
45. Will project facilities be designed and located to avoid or minimize adverse impacts on:
    a. Outstanding scenic and aesthetic views and sights inventoried in city and county comprehensive plans as required by Statewide Planning Goal 5? [**No views or sights as described exist within, or are within sight of, the project area**]
    b. Scenic and aesthetic resources identified by state or federal agencies as outstanding, significant or deserving special protection? [**None exist within, or are in sight of, the project area.**]
46. Will project facilities be designed and located to blend with adjacent features? [**Yes.**]
47. Will mechanical noise caused by the project comply with applicable noise standards in OAR Chapter 340, Division 35? [**Yes.**]
48. Will the location, design, construction or operation of the project:
    a. Disturb fragile or unstable soils? [**No, the intake structure is founded on rock.**]
    b. Cause soil erosion which would impair other water uses. [**No.**]
49. Will the design, location, construction and operation of the proposed project avoid or minimize adverse impacts on natural communities or geological features identified by the Oregon Natural Heritage Data Base as threatened or endangered in Oregon? [**No such features as identified by the Data Base exist within, or near, the proposed project location.**]
50. Will project facilities located in geologically unstable areas be designed with appropriate safeguards? [**Project is not located in a geologically unstable area.**]
51. Will project facilities located in areas subject to naturally occurring conditions or hazards, such as flooding or ice formation be designed to withstand damage to project facilities and allow reasonable access for project maintenance or operation under such conditions? [**Yes.**]

I. Land Use

52. It does not appear as if the applicant is intended to respond to this statement.

Attachment 6

690-502-0020

Policies

Water Resources Commission and Department activities which affect the waters of the Willamette River Basin shall be compatible with the policies established in this rule. Surface water allocation, groundwater management, municipal; and domestic water systems, reservoir coordination, conservation and land use coordination are important issues in the Willamette Basin. The Commission's policies on these issues are as follows:

(1) Surface water allocation:

(a) Protect undeveloped streams with instream values for public instream uses;

(b) Seek a balance in the future appropriation of water between instream and total out-of-stream uses on those streams already significantly developed for out-of-stream purposes;

(c) Preserve opportunities for future economic development by reserving water for future use;

(d) Minimize the likelihood of over-appropriation due to new uses;

(e) Manage stored waters which have been released for instream purposes to meet flow needs reflected in established instream water rights;

(f) Allow irrigation use for the longest period possible between March 1 and October 31 provided sufficient water is available.

(2) Groundwater management:

(a) Prevent excessive water level declines, restore aquifer stability in areas of decline and preserve with limited storage capacity for designated uses;

(b) Identify low-yield aquifers and inform local agencies of probable groundwater capacity limitations for some uses.

(c) Ensure safe municipal and domestic groundwater supplies by participating with the Department of Environmental Quality and the State Health Division in a formal monitoring program to document changes in quality and provide data for aquifer management;

(d) Minimize impairment of surface water uses resulting form hydraulic connection between groundwater and surface water;

(e) Encourage the development of programs for making groundwater resource information available to the public and local agencies.

(3) Municipal and domestic water systems: Support coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin.

(4) Reservoir coordination:

(a) Promote funding to study and implement the Willamette River Basin Review Study reconnaissance phase recommendations with significant potential to assist the state in meeting its resource management objectives;

(b) Formalize reservoir operation guidelines with the Corps of Engineers to meet state water management objectives and enter into a memorandum of understanding or other agreement that defines the reservoir coordination process and water management objectives.

(5) Water conservation:

(a) Implement programs to eliminate wasteful water use;

(b) Improve the efficiency of water use through implementation of voluntary conservation measures ;

(c) Give priority to developing subbasin conservation plans and providing public assistance in areas of known over-appropriation of surface water and groundwater and in water quality problem areas as listed by the Department of Environmental Quality.

(6) Land use coordination: Promote effective state and local water resource planning and protection and efficient water use through coordination with land use programs.