



# Oregon

Theodore R. Kulongoski, Governor

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## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Phillip C. Ward, Director

**SUBJECT:** Agenda Item I, May 30, 2008  
Water Resources Commission Meeting

### **Impoundments Storing More Than 3,000,000 Gallons – Rogue Basin Application R-86873, Rogue River Estates**

#### **I. Issue Statement**

Under the Rogue Basin Program (Upper Rogue Basin, OAR 690-515-0000(3)(a), the Commission<sup>1</sup> shall review all applications proposing to impound more than 3,000,000 gallons of water, equivalent to 9.2 acre feet (AF), prior to approval and the issuance of a permit. During the review, the Commission may establish additional minimum flows on the natural flow of the proposed stream source to support aquatic life or to minimize pollution. These rules encourage storage projects that are consistent with the purposes of the minimum perennial streamflows. R-86873 proposes to store more than 9.2 AF within the Rogue Basin.

#### **II. Background**

Application R-86873, in the name of Rogue River Estates, within the Upper Rogue Basin, proposes the storage of 60.0 AF. The Department asked Mr. Jay Doino, District Fish Biologist with the Oregon Department of Fish and Wildlife (ODFW), and Ms. Heather Tugaw, Rogue Basin Specialist with the Department of Environmental Quality (DEQ), whether they recommend any additional minimum flows to support aquatic life or minimize pollution in regards to the proposed impoundments for these two pending applications. Neither recommended additional minimum flows, but both did provide additional comments for the record. See below.

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<sup>1</sup> The basin program makes reference to the “Water Policy Review Board” which was the name of the Water Resources Commission when the program was adopted.

### **III. Discussion**

ODFW raised concerns, and recommended conditions to support aquatic life.

1. ODFW's data show that peak steelhead smolt out-migration occurs in mid-April, and coho smolt out-migration occurs in late-April. Therefore, ODFW recommends that the period of appropriation be limited to January 1 through March 31 in order to minimize impacts to out-migrating salmonids. This limited season may also help to ensure that withdrawals occur during periods of peak storm flow.
2. ODFW recommends that the appropriation for storage be limited to a maximum volume of 60.0 acre feet, and further limited to an instantaneous rate of 1.0 cubic foot per second.
3. ODFW recommends that water only be diverted when minimum instream water rights are being met.
4. ODFW recommends that the permit, if issued, be conditioned to allow only a one-time fill of the proposed reservoir.

If a permit is issued for Application R-86873, the Water Rights Section will incorporate the first two of ODFW's recommendations listed above. The third and fourth recommendations are inherent in the Department's application processing procedures. Specifically, the following standard permit condition addresses instream flows:

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.

Departmental guidance is that reservoir applications may secure one fill annually. Additional water for reservoir maintenance requires a separate water right evaluated for water availability at the 80% exceedance level.

Ms. Tugaw of DEQ did not recommend any additional minimum flows to minimize pollution either, but did indicate DEQ is currently developing the Total Maximum Daily Loads (TMDLs) for bacteria and temperature for the Upper Rogue River. Ms. Tugaw noted that impacts to water quality are expected to be minimal due to the proposed timing of the water withdrawal (December 1 through May 31). High winter and spring runoff provides cool seasonal temperatures and increased flow to the Rogue River. During a typical winter/spring water year, in-stream temperature should not be affected significantly by the withdrawal. Therefore, no additional minimum flows are required to minimize pollution.

## **Conclusion**

The Department has determined that DEQ and ODFW have not recommended any additional minimum flows in order to support aquatic life or minimize pollution. However, ODFW did recommend a shorter storage season (January 1 through March 31), and a maximum instantaneous rate (1.0 CFS) of appropriation.

The Department finds that with incorporation of ODFW recommendations, along with standard permit conditions, application R-86873 may continue to be processed without the need for additional minimum flows to support aquatic life or minimize pollution.

## **V. Alternatives**

The Commission may consider the following actions:

1. Direct the Water Rights Section to continue processing application R-86873 without additional minimum flows to support aquatic life or minimize pollution.
2. Recommend additional minimum flows to support aquatic life or minimize pollution, to be incorporated in any permits issued.
3. Require the Department to conduct further review of the applications and report to the Commission at a future meeting.

## **VI. Recommendation**

The Director recommends Alternative 1, that the Commission direct the Water Rights Section to continue processing application R-86873 without additional minimum flows to support aquatic life or minimize pollution.

Attachment:

1. Upper Rogue Basin, OAR 690-515-0000(3)(a)
2. Area Location Map

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**Upper Rogue Basin, OAR 690-515-0000(3)(a):**

(3) Storage:

(a) All applications for appropriations of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution. Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.