

Appendix D

**Notice of Intent and Oregon A-95
Clearing House Responses**

1990 DEC 13 AM 9:24
GAY FIELDS
DOUGLAS COUNTY CLERK

**NOTICE OF INTENT
SMALL RECLAMATION PROJECTS ACT
(Public Law 84-984)**

December 12, 1990

Regional Director
Pacific Northwest Region
Bureau of Reclamation
Federal Building
Box 043-550 West Fort Street
Boise, Idaho 83724

Dear Sir:

As a result of the Northern Douglas County cooperative study for water development opportunities, the County has elected to proceed with the Milltown Hill Project on Elk Creek under the Small Reclamation Projects Act as administered by the Bureau of Reclamation.

Douglas County, Oregon hereby gives notice of its intent to apply for Federal financing under the Small Reclamation Projects Act of 1956, as amended. The following information is submitted for your consideration.

- A. Douglas County was established January 7, 1852, under the laws of the State of Oregon and has the authority to contract with individuals, corporations, the State of Oregon and the United States.

- B. Offices of the applicant are located in Roseburg, Oregon. The proposed project and its service area is in Douglas County and in the Fourth Congressional District.

Names of the County Commissioners are:

Joyce Morgan, Chair
Doug Robertson
Doris Wadsworth

All correspondence should be addressed to M. John Youngquist, Water Resources Coordinator, Room 103, Justice Building, Roseburg, Oregon, 97470.

- C. Applicant's legal representative is Paul Nolte, County Counsel, Courthouse, Roseburg, Oregon, 97470

Applicants engineering representative is Dave Leonard P.E., Director of Public Works, Room 219, Courthouse, Roseburg, Oregon, 97470.

- D. The applicant proposes to design and construct the Milltown Hill Project on Elk Creek, a tributary of the Umpqua River, in Douglas County, as shown on the attached location map.

- E. The applicant would use Federal financing to construct the project, consisting of:

1. A roller compacted concrete (RCC) 190 foot high dam at the Milltown Hill site forming a 24,143 acre-foot reservoir to provide storage for:
 - a. irrigation and municipal/industrial water supplies for diversion from Elk Creek downstream of the dam and from a pressure pipeline distribution system in Yoncalla and Scotts Valleys,
 - b. enhancement of anadromous fish habitat in Adams, Yoncalla and Elk Creeks,
 - c. flood control downstream of the dam, and
 - d. reservoir recreation, fish and wildlife uses.
2. A pressure-pipeline distribution system for delivery of water for irrigation of 2,700 acres of new lands in Yoncalla and Scotts Valleys, municipal/industrial water supplies to the city of Yoncalla and the community of Rice Hill and aquatic habitat enhancement in Yoncalla and Adams Creeks.
3. Aquatic habitat improvement structures in 46 miles of Elk Creek stream channel below the dam for enhancement of anadromous fish.
4. Recreation facilities, such as boat ramps, picnic sites, sanitation facilities and hiking trails at two locations on the reservoir.

The project also will include facilities for surface and sub-surface drainage of irrigated lands, to be installed as determined necessary during development of irrigated lands.

The total cost of the project is estimated to be \$37,800,000, with the County contributing \$9,450,000.

- F. The basic effect of the project on the environment would be to provide a firm water supply for the cities of Drain and Yoncalla and the community of Rice Hill for a projected 40 year period, enhance anadromous fish habitat through water quantity and quality improvements in Adams, Yoncalla and Elk Creeks, reduce flood damage in the city of Drain, and to provide a firm water supply for irrigation in Yoncalla and Scotts Valleys and in riparian areas along Elk Creek. Construction activities would be restricted to the minimum necessary for project purposes. The county will consult with all concerned agencies during the preconstruction period to assure the least possible adverse effects from the proposed project.

The County desires to prepare a draft environmental impact statement, therefore, we would appreciate the Bureau proceeding with a notice of intent in the Federal Register.

- G. The applicant understands that the estimated total cost of the project cannot exceed the limitation imposed by section 2(f) of the Small Reclamation Projects Act of 1956 as amended, and that the limitation so established for calendar year 1990 is \$46,600,000. The applicant further understands that the maximum amount of a loan, or combination of loan and grant, which can be obtained for a small reclamation project cannot exceed the limitation imposed by section 5(a) of the Small Reclamation Projects Act as amended. The limitation as established for calendar year 1990 is \$31,100,000, and any cost in excess of the maximum permissible loan amount must be obtained from sources other than the loan or grant. The applicant hereby certifies that, to its best knowledge, the total project costs will not exceed the authorized ceiling.
- H. The applicant understands that to obtain a loan, it must enter into a contract with the United States for repayment of the loan within 40 years or less from the date when the principal benefits of the project first become available.

The applicant understands further that interest will not be charged on that portion of the project cost which is properly assigned to irrigation or drainage of land not in excess of 160 acres in a single ownership. The applicant also understands that the amount of the loan allocated to irrigating or draining excess lands, municipal and industrial

water, commercial power, and the reimbursable portion of costs allocated to fish and wildlife enhancement and outdoor recreation will be interest bearing.

I. The applicant understands that preparation of its application is to be financed with its own funds, and the application is to be in the form of a resolution by the Board of Commissioners accompanied by a report giving information on:

1. History, organization, operation, and financial condition of the applicant.
2. Lands to be served by the proposed project, crops produced on the lands, and types of agricultural enterprise.
3. Water rights and existing and potential water supplies and their quality.
4. Requirements for water for irrigation and, if applicable, for municipal, industrial, and domestic uses including the basis for projection of future use.
5. The proposed project including descriptions of the various works; explanations of project operation; estimates of construction, operation, maintenance, and replacement costs; and appropriate maps and drawings.
6. Benefits attributable to purposes involving grants, allocation of costs between purposes, and the ability of the applicant to repay the loan.

J. The applicant is willing and able to pay \$5,000, at the time of its application, to cover part of the cost incurred by the Bureau of Reclamation in reviewing and processing the application.

K. The applicant understands that approval of the loan (or grant) will be dependent, among other things, on a satisfactory showing in the application that:

1. The proposed project will serve its intended purpose.
2. The plans are in accordance with sound engineering principles.
3. The applicant has or can acquire all lands, and land and water rights required for satisfactory construction, operation, and maintenance of the project.

4. The applicant has given due consideration under the Water Pollution Control Act and the Clean Air Act in the development of its plans for construction and operation, to the prevention or abatement of the pollution of streams, reservoirs, ground water or water courses, with respect to thermal or air pollution or the discharge of refuse, garbage, sewage effluent, industrial wastes, oil, mill tailings, mineral salts, or other water or air pollutants, and to opportunities for water quality control through storage or by other means. Also, consideration of Executive Orders 11988 and 11990, for Floodplain Management and Protection of Wetlands, respectively, is made. The applicant also must include a "Clean Air and Water Certification" and an Assurance of Compliance Form-Civil Rights Act with the application.
 5. The estimate of the construction cost is satisfactory and adequate for determining the amount of the loan and/or grant.
 6. The construction cost of the project has been allocated properly among the various purposes of the project.
 7. The costs allocated to nonreimbursable purposes are justified Federal expenditures.
 8. The applicant is or can reasonably become a suitable entity for contracting with the United States for repayment of the loan.
 9. The applicant is willing and financially able to provide proper operation, maintenance, and replacement of its works including the proposed works, and to repay the loan within a period not to exceed 40 years from the date when the principal benefits of the project first become available.
- L. The applicant understands that it will be required to finance from its own resources such portion of the project construction cost (which portion shall include the costs of acquiring necessary lands, land rights, and water rights) as the Secretary of the Interior shall determine to be proper.
- M. The applicant understands that before a loan (or grant) can be approved, it must submit copies of the application (1) to the States of the drainage basin in which the project is located,

for review in a like manner to that provided in Section (c) of the Flood Control Act of 1944; (2) to the Fish and Wildlife Service and to the fish and game organizations of the States affected by the project for review in accordance with provisions of the Fish and Wildlife Coordination Act; (3) to the Environmental Protection Agency in conformance with the provisions of the Federal Water Pollution Control Act; and (4) to the appropriate State contact point(s) in accordance with Title IV of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

- N. The applicant understands that the Governor of the State in which the project is located (or an appropriate State agency designated by him) must find the project to be financially feasible before a loan (or grant) can be approved.

- O. The applicant understands that it will be required to prepare and submit an environmental assessment as a basis for preparation by Reclamation of necessary environmental reports.

- P. The applicant understands that as a clearinghouse function, a copy of its application will be furnished for review and comment to the public agency charged with enforcing civil rights laws.

- Q. The applicant understands that information covering the participation of minority groups and women on the board of commissioners, management staff, and among employees must be provided to the Regional Director. Such data will be used for "Pre-Award Review" by the Office for Equal Opportunity of the Department of the Interior to determine the status of compliance with title VI of the Civil Rights Act of 1964.

- R. The applicant understands that:
 - 1. It must pay in advance for all work performed by the Bureau of Reclamation, at the applicant's request, for use in the application.
 - 2. All reimbursable costs, in excess of the \$5,000 advanced by the applicant, incurred by the Bureau of Reclamation in processing the application and administering the proposed program will become a part of the loan.
 - 3. Upon approval of the proposal, execution of the repayment contract, appropriation of funds by Congress, and release of these funds by the Office of Management and Budget, the Bureau of Reclamation will advance funds as required

for preconstruction activities including the preparation of construction designs and specifications, to the extent that funds are available.

4. Approval of designs and specifications by the Bureau of Reclamation contingent on the designs and specifications being in accordance with sound engineering principles and being capable of accomplishing their purpose.
5. Upon approval of the designs and specifications, the Bureau of Reclamation will advance funds as required for construction of the project, to the extent of available funds.

We are sending a copy of this Notice of Intent to each of the agencies listed on the attached Distribution List.

BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY, OREGON

By: *Joyce Morgan*
Chair

By: *Doris L. Wadsworth*
Commissioner

By: *Dee Robertson*
Commissioner 12-12-90

Enclosures:

Project Location Map
Distribution List

Distribution List:

**U.S. Fish and Wildlife Service
Portland, Oregon**

**Environmental Protection Agency
Seattle, Washington**

**Governor of Oregon
Salem, Oregon**

**State of Oregon
A95 Clearinghouse
Water Resources Department
Department of Environmental Quality
Department of Fish and Wildlife
Department of Forestry
Division of State Lands
Department of Parks and Recreation
Oregon Department of Transportation**

ORIGINAL



OREGON INTERGOVERNMENTAL PROJECT REVIEW

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
503)373-7652

BUREAU OF RECLAMATION
OFFICIAL FILE COPY
JAN 28 1991
TO
105 K 1/30
700
200

CONCLUSIONS

APPLICANT: Douglas County
PROJECT TITLE: Milltown Hill Dam on Elk Creek
DATE: January 22, 1991

The State of Oregon (and local clearinghouses if listed) has reviewed your project and reached the following conclusions:

- No significant conflict with the plans, policies or programs of state or local government have been identified.
- Relevant comments of state agencies and/or local governments are attached and should be considered in the final design of your proposal.
- Potential conflicts with the plans and programs of state and/or local government:
 - may exist.
 - have been identified and remain unresolved. The final proposal has been reviewed and final comments and recommendations are attached.
 - have been satisfactorily resolved. No significant issues remain.

State of Oregon Department of Agriculture

A copy of this notification and attachments, if any, must accompany your application to the federal agency.

FEDERAL CATALOG # 15.503

NOTICE TO FEDERAL AGENCY
THE FOLLOWING IS THE OFFICIALLY ASSIGNED STATE IDENTIFIER NUMBER

OR901214-041-2

Solomon Street
Clearinghouse Coordinator



OREGON INTERGOVERNMENTAL PROJECT REVIEW

JAN 19 1991

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
373-7652

PLEASE RETURN ORIGINAL FORM

STATE AGENCY REVIEW

Project Number OR 901214-041-2 Return Date: ASAP (1-18-91)

To Agency Addressed: If you intend to comment but cannot respond by the return date, please notify us immediately. If no response is received by the due date, it will be assumed that you have no comment and the file will be closed.

Douglas

PROGRAM REVIEW AND COMMENT

TO STATE CLEARINGHOUSE: We have reviewed the subject Notice and have reached the following conclusions on its relationship to our plans and programs:

- It has no adverse effect.
- We have no comment.
- Effects, although measurable, would be acceptable.
- It has adverse effects. (Explain in Remarks Section.)
- We are interested but require more information to evaluate the proposal. (Explain in Remarks Section.)
- Additional comments for project improvement. (Attach if necessary.)

REMARKS (Please type or print legibly)

See attached letter. Douglas County's plan for providing the information we requested is satisfactory.

Agency Forestry
IPR #2 2

By [Signature]
Phone Number 373-5387

JAN 15 1991

Oregon

January 14, 1991

DEPARTMENT
OF FORESTRY

State Foresters Office

State Clearinghouse
Intergovernmental Relations Division
155 Cottage St. N.E.
Salem, Oregon 97310

SUBJECT: COMMENTS IRD #OR901124-041-2
Douglas Countys' Milltown Hill Dam



"STEWARDSHIP IN
FORESTRY"

Gentlemen:

We have received notice of the above and offer the following comments in regards to the proposed project.

This Department is responsible for fire protection on private forest lands in Oregon and all BLM lands in western Oregon. Prior to commencing operations on any forest land in Oregon, state laws require that contractors must notify the State Forester of that operation (ORS 527.670), obtain a permit to use power driven machinery (ORS 477.625) and if applicable; obtain a permit to clear rights-of-way (ORS 477.685).

The Oregon State Board of Forestry and this Department are concerned with reduction of the State's forest land base and associated losses of timber revenue, jobs, wages and other benefits. This loss of forest land base over the years has been due to many factors, including conversion of forest land to water impoundments.

Because of these concerns, we would like to see the following information provided in Douglas Countie's Draft Environmental Impact Statement for this project:

1. How many acres of productive forest land (by site class) will be affected by roads, transmission lines, buildings, penstocks, ditches or canals?
2. What values were used to arrive at estimated forest productivity losses for timber stumpage, wages, taxes, recreation, fish and wildlife?
3. Was the estimated value lost from forest productivity included in the economic analysis of the proposed project?



4. Are alternative rights-of-way or locations available for part or all of the project which do not involve forest land? If so, please give the reason for not selecting the alternative location.

The answers to these questions will be useful to us in making our analysis of the effect of this proposed project on the State's forest resources.

Please contact Bob Bourhill (phone 378-2553) if you need clarification.

Sincerely,



David H. Stere, Director
Forest Resource Planning

DHS/BB

RECEIVED

DEC 18 1990

STATE PARKS AND RECREATION DEPARTMENT



OREGON INTERGOVERNMENTAL PROJECT REVIEW

I. R. D.

DEC 20 1990

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
373-7652

PLEASE RETURN ORIGINAL FORM

STATE AGENCY REVIEW

Project Number OR901214-041-2 Return Date: JAN 18 1991

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REMARKS (Please type or print legibly)

The studies regarding cultural inventories and site evaluation in the 1988 BOR study of Heritage Research associated should be implemented

*BOR
Mullman Hill Project
at Gresham*

Agency SHPD

By _____

FOR FURTHER INFORMATION
FILE IN _____ LELAND

IPR #2

Phone Number _____

~~373-7652~~
GILSEN 378-5023

DEC 18 1990



OREGON INTERGOVERNMENTAL PROJECT REVIEW

JAN 11 1991

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
373-7652

PLEASE RETURN ORIGINAL FORM

STATE AGENCY REVIEW

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REMARKS (Please type or print legibly)

The Department of Fish and Wildlife has been communicating directly with Douglas County and the Bureau of Reclamation regarding the Milltown Hill Project.

Agency F&W By Mary J. Patten

IPR #2 Phone Number 229-5410 x 464

Steve ✓
Bill ✓

VERNMENTAL PROJECT REVIEW

JAN 18 1991

State Clearinghouse
Environmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
373-7652

PLEASE RETURN ORIGINAL FORM

STATE AGENCY REVIEW

Project Number OR901214-041-2 Return Date: JAN 18 1991

To Agency Addressed: If you intend to comment but cannot respond by the return date, please notify us immediately. If no response is received by the due date, it will be assumed that you have no comment and the file will be closed.

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- Additional comments for project improvement. (Attach if necessary.)

If the project would require the removal, fill, or alteration of 50 cubic yards or more of material within the banks of the waterway(s) or wetland area(s), we urge the applicant to apply for state removal or fill permits well in advance of construction deadlines to prevent unnecessary project delays. Specific information on the need for permits may be obtained from the Division of State Lands' office at 1600 State Street, Salem, OR 97310.

Thank you for the opportunity to comment on this project.

OF
HDS
AM '90

Agency Lands By W. Parks

IPR #2

Phone Number 8345

RECEIVED



DEC 18 1990

WATER RESOURCES DEPT.
SALEM, OREGON

OREGON INTERGOVERNMENTAL PROJECT REVIEW

I. H. D.

JAN 23 1991

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
373-7652

PLEASE RETURN
ORIGINAL FORM

STATE AGENCY REVIEW

Project Number OR901214-041-2 Return Date: JAN 18 1991

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- Additional comments ~~for project improvement.~~ (Attach if necessary.)

REMARKS (Please type or print legibly)

See attached.

Agency Water Res By _____

IPR #2 Phone Number _____



I. R. D.

JAN 22 1991

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3671

MEMORANDUM

TO: State Clearinghouse, IRD
FROM: Rick Bastasch, Resource Management Division
DATE: January 17, 1991
SUBJECT: OR 901214-041-2: Milltown Hill Project on Elk Creek

The proposed project appears to be consistent with Water Resources Commission findings in the Umpqua River Basin Program. The findings document insufficient water supplies in all streams in the Elk Creek subbasin during low-flow periods. The program also notes insufficient streamflows to supply future municipal, industrial, and agricultural needs. In many of the subbasin's streams, storage of winter flows is described as necessary to provide adequate late season streamflows for anadromous fish. Lastly, the program states that "full utilization of the water resource potential in the ... Elk Subbasin will be obtained only through storage of surplus winter flows."

The Water Resources Department looks forward to reviewing more specific information provided in environmental assessments and through the water right application process.

cc: District 15
Watermaster



PUBLIC WORKS DEPARTMENT

Administration
Room 219 / Courthouse
Roseburg, Oregon 97470
(503) 440-4308

Engineering and Construction
Room 304 / Courthouse
Roseburg, Oregon 97470
(503) 440-4481

Operations and Maintenance
2586 N.E. Diamond Lake Blvd
Roseburg, Oregon 97470
(503) 440-4268

Water Resources Survey
Room 103 / Justice Building
Roseburg, Oregon 97470
(503) 440-4255

January 14, 1991

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street NE
Salem, Oregon 97310

RE: Milltown Hill Dam
Project No. OR901214-041-2

Dear Sir/Madam:

On December 20, 1990, a notice of continuing interest was sent to Douglas County with additional questions from the Department of Environmental Quality (DEQ) concerning the above referenced project. The DEQ requested additional information on water quality issues.

The County agrees that additional information should be provided to the Department prior to their final comments on the project. The County would prefer to address those comments in more detail in the Draft Environmental Impact Statement (DEIS) we are currently preparing.

This project has been under study for the past two years and considerable data has been accumulated. The Bureau of Reclamation had intended to produce a DEIS, however, when the County elected to proceed with the project under the Small Reclamation's Act of 1956 the DEIS will be produced by the County.

While local scoping for the document has been done through a series of public meetings on the project, the County intends to have a formal coordination meeting in Portland with all the State Agencies during the month of February.

RE: Milltown Hill Dam OR901214-041-2
January 2, 1991
Page 2

After the coordination meeting, the County will provide the DEQ with the water quality data to date for their input prior to printing the DEIS. In addition, the County will be requesting the DEQ for a "clean water certification" prior to proceeding with the project construction.

If this is not satisfactory or if there are additional questions, please contact me.

Yours truly,



M. John Youngquist
Water Resources Coordinator

RECEIVED

FEB 14 1991

**DOUGLAS COUNTY
PUBLIC WORKS ADMINISTRATION**

February 8, 1991

County Board of Commissioners
Douglas County
1036 S.E. Douglas
Roseburg, OR 97470

Re: Milltown Hill Project

REVIEWED:

Doug: _____

Doris: _____

Joyce: _____

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

RECEIVED

FEB 13 1991

DOUGLAS COUNTY
BOARD OF COMMISSIONERS

This is to acknowledge receipt of your Notice of Intent to apply for Federal financing under the Small Reclamation Projects Act for the Milltown Hill Project on Elk Creek.

The County has clearly indicated it recognizes the need to obtain a water quality standards compliance certification from the Department pursuant to Section 401 of the federal Water Pollution Control Act and the Oregon Administrative Rules (OAR 340-48). As you proceed to study and pursue financing of your project proposal, we wish to draw your attention to some specific information and documents.

An applicant for water quality certification of a new hydroelectric project must pay a minimum fee of \$5000 to the Department at the time the application is filed. The fee pays for the expenses incurred by the Department and the Environmental Quality Commission related to review and decision on a certification request. See Oregon Revised Statute (ORS) 468.065 (3) and 468.732 which are enclosed for additional information.

Also enclosed are materials explaining the 401 certification process and requirements, including:

1. OAR Chapter 340, Division 48.
2. ORS 468.065 (3) and ORS 468.732
3. A "Format for Evaluation Report and Findings on the Application for Certification Pursuant to Section 401 of the Federal Clean Water Act", DEQ April, 1989.



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

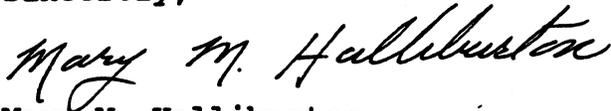


County Board of Commissioners
February 8, 1991
Page 2

The DEQ April 1989 document describes the type of information the Department will look for and how the application will be evaluated. The application need not follow the exact format of the document, however.

If you have any questions or would like additional information, please contact me at 229-6978.

Sincerely,



Mary M. Halliburton
Standards and Assessments
Water Quality Division

MMH:crw
SA\WC7793

cc: Rick Bastasch, Oregon Water Resources Department

OREGON ADMINISTRATIVE RULES

CHAPTER 340, DIVISION 48 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 48

CERTIFICATION OF COMPLIANCE
WITH WATER QUALITY
REQUIREMENTS AND STANDARDS

Purpose

340-48-005 The purpose of these rules is to describe the procedures to be used by the Department of Environmental Quality for receiving and processing applications for certification of compliance with water quality requirements and standards for projects which are subject to federal agency permits or licenses and which may result in any discharge into navigable waters or impact water quality. In this certification process, the Department of Environmental Quality acts pursuant to Section 401 of the Federal Clean Water Act. The Department will also comply with state law to the extent that federal law does not supersede state law.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 18-1985, f. & cf. 12-3-85; DEQ 1-1987, f. & cf. 1-30-87

Definitions

340-48-010 As used in these rules unless otherwise required by context:

(1) "Certification" means a written declaration by the Department of Environmental Quality, signed by the Director, that a project or activity subject to federal permit or license requirements will not violate applicable water quality requirements or standards.

(2) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, Public Law 92-500, as amended.

(3) "Coast Guard" means U.S. Coast Guard.

(4) "Commission" means Oregon Environmental Quality Commission.

(5) "Corps" means U.S. Army Corps of Engineers.

(6) "Department" or "DEQ" means Oregon Department of Environmental Quality.

(7) "Director" means Director of the Department of Environmental Quality or the Director's authorized representative.

(8) "Local Government" means county and city government.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 18-1985, f. & cf. 12-3-85

Certification Required

340-48-015 Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities which may result in any discharge to waters of the state, must provide the licensing or permitting agency a certification from the Department that any such activity will comply with Sections 301, 302, 303, 306, and 307 of the Clean Water Act which generally prescribe effluent limitations, water quality related effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 18-1985, f. & cf. 12-3-85

Application for Certification

340-48-020 (1) Except as provided in section (6) below, completed applications for project certification shall be filed directly with the DEQ.

(2) A completed application filed with DEQ shall contain, at a minimum, the following information:

(a) Legal name and address of the project owner.

(b) Legal name and address of owner's designated official representative, if any.

(c) A description of the project location sufficient to locate and distinguish proposed project facilities.

(d) Names and addresses of immediately adjacent property owners.

(e) A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials.

(f) Name of involved waterway, lake, or other water body.

(g) Copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements.

(h) Copy of any public notice and supporting information, issued by the federal permitting or licensing agency for the project.

(i) An exhibit which:

(A) Identifies and cites the specific provisions of the appropriate local land use plan and implementing regulations that are applicable to the proposed project;

(B) Describes the relationship between the proposed project and each of the provisions identified in paragraph (A) of this section; and

(C) Discusses the potential direct and indirect relationship to water quality of each item described in paragraph (B) of this section.

(D) If specific land use compatibility findings have been prepared by the local planning jurisdiction, these findings should be submitted as part of this exhibit and may be substituted for the requirements in paragraphs (A) and (B) of this section.

(j) For hydroelectric projects, an exhibit which:

(A) Identifies and cites the applicable provisions of ORS 469.371 and 343.017 and implementing rules adopted by the Energy Facility Siting Council and Water Resources Commission;

(B) Describes the relationship between the proposed project and each of the provisions identified in paragraph (A) of this section; and

(C) Discusses the potential direct and indirect relationship to water quality each item described in paragraph (B) of this section.

(k) An exhibit which identifies and describes any other requirements of state law applicable to the proposed project which may have a direct or indirect relationship to water quality.

(3) The DEQ reserves the right to request any additional information necessary to complete an application or to assist the DEQ to adequately evaluate the project impacts on water quality. Failure to complete an application or provide any requested additional information within the time specified in the request shall be grounds for denial of certification.

OREGON ADMINISTRATIVE RULES

CHAPTER 340, DIVISION 48 - DEPARTMENT OF ENVIRONMENTAL QUALITY

appropriate requirements of state law according to Section 401 of the Federal Water Pollution Control Act, Public Law 92-500, as amended.

(h) A condition which requires the certificate holder to notify the Department of all changes in the project proposal subsequent to certification.

(3) If the applicant is dissatisfied with the conditions of any granted certification, the applicant may request a hearing before the Commission. Such requests for a hearing shall be made in writing to the Director within 30 days of the date of mailing of the certification. Any hearing shall be conducted pursuant to the rules of the Commission for contested cases.

(4) Certifications granted pursuant to these rules are valid for the applicant only and are not transferable.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 13-1985, f. & ef. 12-3-85; DEQ 1-1987, f. & ef. 1-30-87

Certification Delivery

340-48-030 For projects where application for certification is filed directly with DEQ by the applicant, the DEQ certification will be returned directly to the applicant. For those applications that are coordinated by the Division of State Lands, DEQ certification will be delivered to the Division of State Lands for distribution to the applicant and the federal permitting agencies as part of the Oregon coordinated response.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 13-1985, f. & ef. 12-3-85

Denial of Certification

340-48-035 If the Department proposes to deny certification for a project, a written notice setting forth the reasons for denial shall be served upon the applicant following procedures in OAR 340-11-097. The written notice shall advise the applicant of appeal rights and procedures. A copy

shall also be provided to the federal permitting agency. The denial shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 13-1985, f. & ef. 12-3-85

Revocation or Suspension of Certification

340-48-040 (1) Certification granted pursuant to these rules may be suspended, or revoked if the Director determines that:

(a) The federal permit or license for the project is revoked.

(b) The federal permit or license allows modification of the project in a manner inconsistent with the certification.

(c) The application contained false information or otherwise misrepresented the project.

(d) Conditions regarding the project are or have changed since the application was filed.

(e) Special conditions or limitations of the certification are being violated.

(2) Written notice of intent to suspend or revoke shall be served upon the applicant following procedures in OAR 340-11-097. The suspension or revocation shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be filed with the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 13-1985, f. & ef. 12-3-85

so provided, as may be fixed by the director, and shall be reimbursed for all expenses actually and necessarily incurred by the deputy director in the performance of the official duties of the deputy director. [1973 c.291 §2]

Note: 468.050 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.055 Contracts with Health Division. In addition to the authority granted under ORS 190.003 to 190.110, when authorized by the commission and the Health Division, the director and the Assistant Director for Health may contract on behalf of their respective agencies for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employees by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon. Each contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest. [Formerly 449.062]

468.060 Enforcement of rules by health agencies. On its own motion after public hearing, the commission may grant specific authorization to the Health Division or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes. [Formerly 449.064]

468.065 Issuance of permits; content; fees; use. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be made in a form prescribed by the department. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) By rule and after hearing, the commission may establish a schedule of fees for permits issued pursuant to ORS 468.310, 468.315, 468.555 and 468.740. The fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompli-

ance with the permit. The fee shall accompany the application for the permit.

(3) An applicant for certification of a project under ORS 468.732 or 468.734 shall pay as a fee all expenses incurred by the commission and department related to the review and decision of the director and commission. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing or denying certification and expenses of commissioning an independent study by a contractor of any aspect of the proposed project. These expenses shall not include the costs incurred in defending a decision of either the director or the commission against appeals or legal challenges. Every applicant for certification shall submit to the department a fee at the same time as the application for certification is filed. The fee for a new project shall be \$5,000, and the fee for an existing project needing relicense shall be \$3,000. To the extent possible, the full cost of the investigation shall be paid from the application fee paid under this section. However, if the costs exceed the fee, the applicant shall pay any excess costs shown in an itemized statement prepared by the department. In no event shall the department incur expenses to be borne by the applicant in excess of 110 percent of the fee initially paid without prior notification to the applicant. In no event shall the total fee exceed \$40,000 for a new project or \$30,000 for an existing project needing relicense. If the costs are less than the initial fee paid, the excess shall be refunded to the applicant.

(4) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

(5) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(6) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commis-

hereby declared to be the public policy of the state:

- (1) To conserve the waters of the state;
- (2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;
- (3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;
- (4) To provide for the prevention, abatement and control of new or existing water pollution; and
- (5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives. [Formerly 449.077]

468.715 Prevention of pollution. (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468.710.

(2) In order to carry out the public policy set forth in ORS 468.710, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710 and to conform to the standards of water quality and purity established under ORS 468.735. [Formerly 449.095]

468.720 Prohibited activities. (1) Except as provided in ORS 468.740, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468.740.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079]

468.725 Effluent limitations. In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081]

468.730 Implementation of Federal Water Pollution Control Act. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation of this section. [1973 c.92 §3]

468.732 Certification of hydroelectric power project; comments of affected state agencies. The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In making a decision as to whether to approve or deny such certification, the director shall:

(1) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) Approve or deny a certification only after making findings that the approval or denial is consistent with:

(a) Rules adopted by the Environmental Quality Commission on water quality;

(b) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(c) Standards established in ORS 469.371 and 543.017 and rules adopted by the Water

PN 150

JUN 19 1987

Memorandum

To: Field Supervisor, Ecological Services, Fish and Wildlife Service,
Portland Field Office, 727 NE. 24th Avenue, Portland, Oregon

From: ^{Asst.} Regional Director, Bureau of Reclamation, Boise, Idaho

Subject: Request for List of Threatened and Endangered Species, Endangered
Species Act of 1973, Northern Douglas County Cooperative Water
Resources Study

We are requesting a list of endangered or threatened plant and animal species as required by the Endangered Species Act for the subject project. The principal feature of the project is a dam and reservoir with a capacity of 35,000 acre-feet. The dam would be located on Elk Creek in Douglas County, T. 23 S., R. 4 W., S. 4. Enclosed is a map which illustrates the location of the dam and reservoir.

Project purposes include: municipal and industrial water supply for the Yoncalla area; irrigation water for existing farmland (for conversion of dryland pasture to irrigated pasture); flood control; and instream flows for fish and wildlife.

Please send the list to this office, Attention: 150.

/s/ KENNETH R. PEDDE

Enclosure

bc: Commissioner, Washington, D.C.; Attention: WO-150 (L. Roberts)
RO 730
(each w/copy of enclosure)

RA Adair:cmc 6-17-87