



Cascade Resources
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Via Email to jeana.m.eastman@wrd.or.state.us

Ms. Jeana Eastman
Oregon Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301

**Re: Comment on New Water Rights for Snowmaking System
Permit Application S-86185 & Related Applications & Permits Listed Below**

Dear Jeana:

Thank you for your time the other day to answer questions on the new surface water right application filed by David Riley for Meadows Utilities, LLC (“MUL” or “Meadows”). As a recreation group, Friends of Mt. Hood understands the public’s desire to be able to ski even when nature does not provide sufficient snow. FOMH has informed Meadows that the organization might be willing to support a modest amount of snowmaking for the purpose of protecting wetlands if, and only if, the OWRD shows that the use is not causing water resource problems on Mt. Hood, such as harm to downstream fisheries. Due to past violations of law, Meadows must pursue a wetland restoration project. Meadows has been slow to respond and to date has not implemented a meaningful project. The snowmaking proposal is way out of scale with any seasonal snow needed to address a wetland restoration or its potential interference with skier movement to the lower terminals.

Meadows’ proposal for snowmaking is the usual excessive non-resource friendly reaction to the current snow problems, problems that are likely to continue into the future. FOMH provides these comments to aid OWRD in its effort to provide a legally supportable determination on this new surface water right in the East Fork of the Hood River.

1. No Surface Water is Available.

The Initial Review (IR) on the new surface water rights states that: “Because the Department’s model shows no water is available during any part of the requested period of use, the Department might ordinarily conclude that it is unlikely that a permit will be issued.” Later in the IR it states that:

“3. Water in the amount of 1.1 cubic feet per second for commercial uses is not available at any time of year. However, because a temporary reservation for multiple storage is causing no water to be available during the period January to May and the proposed use would allow surface water to be stored (as snow) until



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later in the year, it is likely that the Department will make findings to issue a permit with conditions for this application. If a permit were to be issued, it would likely allow the use of 1.1 CFS from EFHR, for commercial uses from January 1 through March 31 of each year.” (Emphasis added).

The FOMH asks the department to provide the legal basis for ignoring the fact that there is no water in the system simply by ignoring the temporary storage provided by the Hood Basin Plan. FOMH disputes the claim that all the water will be stored as snow until the spring run-off. FOMH requests that OWRD thoroughly analyze and obtain sound data regarding the amount of sublimation, evaporation, transpiration and other waste that occurs during the snowmaking process, during the winter months, and during the period when melt off begins. FOMH has learned that there is significant loss of water in the snowmaking process and through evaporation before the snow is returned to surface water as run-off. FOMH also requests that the OWRD address the timing of likely run-off, because it is more than likely that all additional contribution to surface water from snowmelt would occur during high flow periods of rain and precipitation.

The rules for Hood Basin 690-504-0100 state that: “(4) Reservations of water for future economic development in OAR 690-504-0110 through 0170 allocate surface water for storage in multipurpose reservoirs. The storage of up to 2,000 acre feet of water for livestock or domestic purposes authorized under water rights with priority dates after November 6, 1992 shall be exempt from regulation for storage of water reserved under OAR 690-504-0110 through 0170.”

OWRD’s proposes to ignore the temporary reservation as one part of two decisions to grant water to Meadows from a basin with no availability. FOMH asks OWRD to provide a justification for how this proposal complies with the rules in the Hood Basin Plan. Withdrawing water in the winter months can be equally devastating to a fishery and to the supporting aquatic life as over withdrawing water is in the summer. In the winter the wetter perimeter of a creek is already significantly impacted by ice, and even the slightest withdrawal could have severe and negative impacts.

2. Evaporation, Sublimation, Transpiration and Other Waste.

FOMH has heard directly from Meadows that snowmaking results in evaporation and transpiration of water during the snowmaking process. The application claims that all the water that is used will return to the streams. In addition, once the snow is on the ground (in open clear-cut areas) it will begin to melt due to warm temperatures, sunlight and other factors. OWRD must consider the amount of evaporation, transpiration, sublimation and other waste. The application is incorrect. FOMH requests that OWRD require Meadows to provide a corrected application and that OWRD conduct independent verification of any supporting data and analysis that Meadows might be able to provide.

3. Natural Low Flow & Withdrawal During Non-Irrigation Season.

Meadows may claim that evaporation is irrelevant because Meadows is not taking water below the natural low flow and the withdrawal is during the non-irrigation season. The applicant asserts that the water is going to be “stored” on the land in the form of snow thereby increasing spring run-off after the irrigation season has started. While there is not sufficient information at



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this point to provide comprehensive comments, the FOMH has identified the following issues with the application:

- A. How much water volume is lost during snowmaking?
- B. How much water volume is lost due to evaporation, transpiration and sublimation from the water that is converted into snow? How much per acre? How much for different slope aspects?
- C. Meadows is proposing to use its sewage effluent to provide the “minimum flows.” The sewage effluent use has already been used by Meadows to provide mitigation for the groundwater right #69976. How is this mitigation constrained by its previous use for the existing groundwater right? What effect would depleted the natural fresh water flow have on the effluent release due to lack of mixing?
- D. Meadows is withdrawing water at a different location from the location where Meadows proposes to measure whether minimum flows are being maintained in the stream. Could the stream be completely depleted below the diversion point and/or the effluent point? Does this measurement location double-dip the effect of the water for water quality and water quantity mitigation?

4. Comprehensive Review of Meadows Rights and Pending Applications.

FOMH requests that this new surface water right be reviewed in light of all the findings, recommendations and conditions in the existing water rights that Meadows Utilities has at this location and its application for a new groundwater right. For example, the outflow from the sewage treatment plant is part of the mitigation for the existing groundwater withdrawal. See Oregon Water Resources Department Memorandum date 1.19.1996 from Donn Miller to Weisha Meize regarding GW/SW Analysis of Application G-12250 and Possible Mt. Hood Meadows Permit Conditions to Mitigate Well Pumping Interference with Surface Water. In this new surface water right, Meadows proposes to use the outflow for its sewer system to provide minimum flows in the headwaters of the East Fork of the Hood River. OWRD has determined that there is a potential for interference between surface and groundwater. This issue must be addressed in considering this surface water right.

FOMH requests that OWRD consider the documentation that is contained in the files for the existing groundwater rights, and consider it in conjunction with the application for the new groundwater rights. Those files are for existing permits S-69976, S-54637, G-12550, G-13388, S-50037, S38081, R-71657, R-12758 and the newest groundwater application # G-16401.

5. Information Taken by Meadows Attorney from File.

In reviewing the existing files for the pending extension applications, I discovered that a vast amount of relevant technical information had been removed by Richard Whitman, the attorney for the applicant, Meadows Utilities, LLC. According to the documents in the file, Mr. Whitman removed a large portion of the file for permit S-69976 and promised to return that information (see OWRD note by Steve Brown & single sheet of yellow lined paper written with list of documents by Richard Whitman). The file does not contain these documents and it appears



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that those documents were not returned. The files that were removed include files related to public hearings in 1984 regarding water availability, compilations of water rights, studies of water availability, studies and analysis of groundwater availability and basin investigations. All together, Mr. Whitman indicated that he removed over sixteen different documents from the file. Those files were not returned. The file also appears to be missing additional information including, but not limited to, information from the Oregon Department of Fish and Wildlife and professional hydrologist Jon Rhodes.

6. Additional Information and Analysis from Federal Fish Agencies.

The applicant should be required to submit statements from NOAA Fisheries and the United States Fish and Wildlife Service regarding the impacts on endangered fish.

7. Water availability and protection of scenic flows and instream rights.

The initial review states that water is not available during the period. WRD's own water availability analysis (available on the WRD website) shows that water **is not** available for additional diversions during the months in the requested period at an 80% exceedence flow. Any analysis of water availability for this project must take into account flows needed for the federal Wild and Scenic River designations in the Hood River basin and senior instream water rights. Hood River scenic flows must be protected from any diminishment. ORS 390.825. Water is clearly not available for this proposed use – thus the public interest presumption does not apply and the proposed use should be denied.

8. Peak and Spring Flows.

FOMH has concerns about how this proposal would impact peak flows that are critical for triggering biological responses in fish and for maintaining stream habitat. The instream water rights, which are based on average flows, do not adequately capture the peak flows needed for this essential stream function. Protection of peak flows is especially important in this stream given the critical status of listed fish in the river system. The state would be violating law if it to take any action that would exacerbate this situation.

9. Endangered Species Act.

There are species listed under the federal Endangered Species Act in the Hood River Basin. The Act and implementing regulations prohibit take of a listed species. "Take" is defined to include habitat modification or degradation that actually kills or injures a fish by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Both the District and the State of Oregon are subject to the take prohibitions under the Act. Given that water in the Hood Basin is already over-appropriated, any proposal that would further diminish streamflows in the East Fork Hood River during any time of the year will likely result in an illegal taking under the Act.

10. Wasteful use of water.

Oregon statutes and rules call for the state to "aggressively promote" water conservation and place a high priority on eliminating waste and improving the efficiency of water use. The



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analysis and conditions outlined in the initial review on this application do note to ensure compliance with these policies. Efficient water use is especially important in this instance where the surface water is over-allocated and there are listed species in the affected Basin.

11. Division 33.

Applicable rules require the applicant to show that the proposed use will not result in loss of essential habitat for endangered and threatened fish. OAR 690-33-330(1). Any analysis under Division 33 must take into account the effect of the proposed use on listed fish in the lower Hood River basin. Reduction in streamflows will also exacerbate existing water quality problems in the basin. The Department of Environmental Quality should be consulted about the effect of this use on water quality in the basin. The proposed use does not meet the test set out in Division 33 and is not entitled to the public interest presumption.

12. No Permission from the Forest Service.

A permit application requires the applicant to obtain necessary permits to carry out the project. In this case the applicant has not provided any information from the Forest Service that show that it has the necessary land use permits from the Forest Service to construct a massive snowmaking operation. A review of Meadows' ski area master plan does not provide any information, analysis or permission for a snowmaking system. The applicant should also be required to indicate whether it has approval under its existing ski area master plan for snowmaking. FOMH includes its comments filed as part of the public process the Forest Service has initiated with respect to this proposal. There appear to be significant issues as to whether the Forest Service may legally approve the construction of a new snowmaking system. FOMH has also provided the comments of Jon Rhodes for OWRD's review and analysis of this request for snowmaking.

Since the applicant does not have the necessary NEPA and National Forest Management Act clearance and approval, the application should be put on hold pending any required NEPA or NFMA review so that analysis would be available to Water Resources for consideration.

These comments constitute an initial set of issues that FOMH has identified in response to the limited information in the file. As additional information becomes available, FOMH may provide additional comments, requests for information and identify additional issues. FOMH requests copies of the proposed final order and associated documents issued on this application and have enclosed a check for \$10. Please do not hesitate to call if you have any questions.

Sincerely,

Ralph O. Bloemers, Staff Attorney
Cascade Resources Advocacy Group
Counsel for Friends of Mt. Hood

cc: Doug Jones – United States Forest Service
Oregon Department of Fish & Wildlife