

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

KLAMATH COUNTY

IN THE MATTER OF APPLICATION 63961 IN)
THE NAME OF ANADROMOUS, INC.,)
FOR PERMIT TO APPROPRIATE WATERS)
OF FORT CREEK)

ORDER APPROVING
APPLICATION

On August 27, 1982 Application 63961 in the name of Anadromous, Inc., was filed in the office of the Water Resources Director for a permit to appropriate not to exceed 44.7 cubic feet per second of water from Fort Creek at a point of diversion located 550 feet South and 810 feet East from the Northwest Corner of the NE 1/4 SW 1/4 of Section 23, being within the NE 1/4 SW 1/4 of Section 23, Township 33 South, Range 7 1/2 East, WM, for "fish cultural project to rear juvenile salmon in concrete ponds" within the said NE 1/4 SW 1/4 of Section 23 (Exhibit WRD 1).

On September 23, 1982 a protest in the names of "Owens and Haskins" and "Meadows Drainage District" was filed in the office of the Water Resources Director. In the protest it is alleged that the proposed appropriation would interfere with the downstream, existing water rights of the protestants (Exhibit WRD 2).

On October 11, 1982 a protest by Jack P. Owens, et al., was filed in the office of the Water Resources Director on the same grounds as alleged by the protest filed on September 23, 1982 (Exhibit WRD 3).

Pursuant to the Director's Notice of Hearing dated October 22, 1982, the matter of the pending Application 63961 and the protests against approval of the application was brought to hearing before James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside in behalf of the Director, at Klamath Falls, Oregon, on December 1, 1982 (Exhibit WRD 5).

The protestants are represented by George H. Proctor, Attorney at Law, of the firm of Proctor, Puckett and Fairclo, Klamath Falls, Oregon.

The applicant is represented by G. Todd Norvell, Attorney at Law, of the firm of Miller, Nash, Yerke, Wiener and Hager, Portland, Oregon.

By agreement of the parties, two letters were received into the record and identified as follows:

Protestants' Exhibit "A"

A letter to "Proctor, Puckett and Fairclo" under the date of October 8, 1982, and over the signature "Ernest R. Lewis, President", of Anadromous, Inc.

Protestants' Exhibit "B"

A letter to "Department of Environmental Quality, Charles K. Ashbaker, Supervisor", under the date of November 9, 1982, and over the signature "Ernest R. Lewis, President", of Anadromous, Inc.

The pertinent portions of Protestants' Exhibit "A" provide:

Fluctuating Flows:

The downstream users cannot manage their various irrigation systems if flows from our facility cause Fort Creek flow to increase or decrease periodically.

We are willing for our permit to state that flow leaving our facility must constantly equal the flow entering our facility as measured by your present techniques. Constant and easy access will be given to all interested parties to verify that we are meeting this condition. The permit may stipulate, that the facility can be closed by the watermaster if we fail to comply.

Total Flow and Evaporation:

We will be non-consumptive users. All flow will be returned into the river. Evaporation or losses through seepage will be controlled by facility design such that a measurable loss will not occur.

Again, our water use permit may stipulate that the watermaster may stop all flow into our facility if our design fails in this aspect.

The pertinent portion of Protestants' Exhibit "B" provides:

Anadromous will provide clay, concrete and reservoir liners as well as underground soil drainage systems as required to assure that water is not lost through seepage. Anadromous will not operate its facility in such a way as to cause fluctuations in flow which would affect downstream users.

We are willing that our permit stipulate the above, and be revokable if we are found to not be in compliance.

No witness was called by either party.

By agreement of counsel, the record was held open subsequent to the close of the hearing on December 1, 1982 to allow for preparation and execution of the following easement which has now been received by the Water Resources Director and recorded at page 1089, Volume 6 of the Miscellaneous Records of the Water Resources Department, and at page 18568, Volume M-82 of the Deed Records of Klamath County.

EASEMENT

The concrete flume intake and discharge structures to be constructed by Anadromous, Inc., in connection with appropriation of water for fish rearing purposes as described by Application 63961, will at time of low flow in Fort Creek serve, in effect, as a relocation of the channel of Fort Creek.

In recognition of the above stated circumstance, Anadromous, Inc., hereby grants and conveys to the State of Oregon, acting by and through its Water Resources Department, a perpetual easement of reasonable ingress and egress and right to inspect, operate and control water control structures and devices to obtain distribution of the flow of Fort Creek among the legal users of such waters in accord with their relative entitlements to such water, by the Water Resources Director and employees of the Director. This grant of easement and right shall be upon the real property located in Klamath County, Oregon, more particularly described as follows:

The Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter and that portion of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter lying east of Highway 62, all in Section 23, Township 33 South and range 7-1/2 East of the Willamette Meridian, county of Klamath, State of Oregon.

This grant of easement and right shall not be construed to diminish the obligation of Anadromous, Inc., for maintenance, repair and replacement of water control structures and devices as may be operated and controlled by the Water Resources Director or the employees of the Director, not to convey any such obligation upon the State of Oregon.

It is hereby recognized by Anadromous, Inc., that, should the water supply necessary to the operation of Anadromous, Inc., upon said real property be interrupted by action of the Water Resources Director or the Director's employees as a consequence of operation and control of said water control structures and devices by Anadromous, Inc., in violation of the permit issued pursuant to Application 63961, any losses incurred by Anadromous, Inc., as a result of such interruption of water supply shall not constitute a cause for action against the Water Resources Director or employees of the Director. Except as provided in the immediately preceding sentence, Anadromous, Inc., shall retain all rights it may have to assert claims for losses or damages it may suffer as a consequence of the exercise of the easement granted herein by the Water Resources Director or employees of the Director.

ANADROMOUS, INC.

By /s/ Ernest R. Lewis
President

STATE OF OREGON)
) ss
County of Multnomah)

The foregoing instrument was acknowledged before me this 20th day of December, 1982, by Ernest R. Lewis, president of Anadromous, Inc., an Oregon corporation, on behalf of the corporation.

/s/ G. W. Norvell
Notary Public for Oregon
My commission expires: 11/12/85

Protestants, acting by and through their attorney, Mr. Proctor, stipulated that in recognition that any permit issued in approval of pending Application 63961 would be subject to the provisions of the Klamath Compact and to prior existing water rights, and in further recognition of the limitations imposed upon the proposed appropriation and use of water by the aforesaid documents received into the record by agreement of the parties, they have no further objection to approval of Application 63961 in the name of Anadromous, Inc.

NOW, THEREFORE, it appears that pending Application 63961 should be approved pursuant to the provisions of ORS 537.150 to 537.211, by issuance of a permit which includes the following limitations and conditions:

- (a) The right granted herein shall be subject to the provisions of the Klamath Compact.
- (b) The right granted herein shall be subject to prior existing water rights.
- (c) The diversion of water from Fort Creek under the right granted herein shall be subject to maintaining no measurable difference between the rate of flow of the water being diverted from Fort Creek into the facilities of the permittee and the rate of flow of the water being discharged into Fort Creek from the said facilities of the permittee.

THEREFORE, it is ORDERED that pending Application 63961 in the name of Anadromous, Inc., be so approved.

Dated at Salem, Oregon this 3rd day of January, 1983.


JAMES E. SEXSON
Director

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