

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF THE CONVERSION OF ) FINAL ORDER DISMISSING  
THE MINIMUM STREAMFLOW ON COW CREEK,) PROCEEDING AND CONVERTING  
UMPQUA BASIN, DOUGLAS COUNTY, OREGON) MINIMUM STREAMFLOW TO  
INSTREAM WATER RIGHT

STATEMENT

Pursuant to ORS 537.346, the Water Resources Commission was directed to convert all existing minimum streamflows to instream water rights.

Douglas County Water Resources Survey filed a protest against conversion to an instream water right of the minimum streamflow between RM 58.2 on Cow Creek to its confluence with Windy Creek. Douglas County Water Resources Survey alleged that direct conversion without conditions would not be in the public interest. It further alleged that while the minimum streamflow set for this stretch was set for 60 cfs between November through April, the Oregon Department of Fish and Wildlife (ODFW) had determined that a better flow would be 40 cfs, with the remaining 20 cfs to be left as a minimum streamflow administered by ODFW.

Following receipt of this protest, the Commission directed that a hearing be held to determine whether the conversion would adversely affect the public interest. Notice of Hearing was sent on November 2, 1989, to Douglas County Water Resources Survey and to 26 owners of lands contiguous to the affected stretch of Cow Creek. Notice was also published for two consecutive weeks in the Roseburg News-Review. The hearing was set for December 6, 1989, in Roseburg, Oregon.

ODFW filed a request for full party status on November 13, 1989. No other petitions for party status were filed within the time allowed.

The parties were directed to address two issues for hearing: 1) should the Commission include a condition in the instream water right that would allow temporary enforcement of the right at reduced levels in low water years to allow for storage of water for later release for benefit of aquatic life, and if so, to set out proposed language for such a condition; and 2) on what basis may the Commission find that such a condition would be in the public interest as defined in ORS 537.170 and OAR Chapter 690 Division 11.

As the parties had indicated that their goals were the same in this matter and that they intended to settle, times for filing settlement agreement and legal memoranda were also given.

The hearing was postponed on November 24, 1989 following receipt of a written request for postponement by the parties, who indicated that they were nearing agreement but needed additional time, and that satisfactory resolution of the matter would benefit from such a postponement.

The matter was postponed a second time until February 1, 1990. Prior to the hearing, the parties filed a document entitled Stipulated Facts, and the Douglas County Water Resources Survey withdrew its protest of the conversion.

The hearing was convened on February 1, 1990 for the purpose of entering the Stipulated Facts, Proposed Condition and Withdrawal of Protest into the record. Neither Douglas County Water Resources Survey nor ODFW had anything further to enter into the record. Testimony was taken from Doug Parrow, Conservation Program Manager for the Water Resources Department regarding the stipulated facts and proposed condition, the possible need for further action to realize the benefits of the instream water right as conditioned, and to review those standards set out in OAR 690-77-045(2)(a-e) as they relate to this proceeding.

Judicial notice was taken of the Umpqua Basin Plan and Program, and of the finding of public interest made by the Commission in adoption of the minimum stream flow on Cow Creek and contained in that Basin Program.

Based on the record, the Director now makes the following

#### FINDINGS OF FACT

1. All facts set forth in the Statement are hereby incorporated as findings of the Director.

2. The facts stipulated to by the parties are hereby incorporated as findings of the Director and are attached hereto.

The minimum streamflow subject to conversion is established in the Umpqua Basin Program as follows:

3. Cow Creek--to be maintained from USGS-State Engineer Gage 14-3090 at stream mile 58.2 (NE ¼ Section 4, Township 32 South, Range 4 West) to its confluence with Windy Creek (stream mile 48.1, SW¼ Section 33, Township 32 South, Range 6 West)

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept
1-15											
10											
16-31											
30	60	60	60	60	60	60	40	20	10	10	10

Priority date: 3/26/74

4. The statement in Douglas County's Withdrawal of Protest that conversion from the minimum streamflow to an instream water right of 60 cfs in Cow Creek from rivermile 58.2 to rivermile 41.6, subject to the condition set out below, is in the public interest is incorporated as a finding of the Director.

5. Conversion of this minimum streamflow to an instream water right, as conditioned, will not take away or impair any permitted, certificated, or decreed right to any waters or to the use of any vested waters by altering the availability and timing of water to any user with an earlier priority date.

6. There are no known planned uses with a reasonable chance of being developed that would provide a greater benefit to the public from the use of the unappropriated water available than would be provided by this water right.

7. There are no other instream water rights in this stretch of Cow Creek. The cumulative total of instream water rights in Cow Creek does not exceed the amount needed to support public uses.

8. In conjunction with approval of an application by Douglas County and/or ODFW for storage between November and April and later release of 20 cfs for the benefit of aquatic life, the instream water right, as conditioned, will allow water to be used for a higher public purpose expected to provide greater benefits to the public.

9. The estimated average natural flow is substantially higher than the amount required for this instream water right. The instream water right does not exceed the estimated average natural flow.

#### CONCLUSIONS OF LAW

The conversion of the minimum streamflow on Cow Creek from rivermile 58.2 to its confluence with Windy Creek at rivermile 41.6, Umpqua Basin, Douglas County, Oregon, to an instream water right is not contrary to any standards set out in ORS 537.170. The instream water right, as conditioned, is in the public interest.

#### ORDER

The minimum streamflow on Cow Creek, as described in the Umpqua Basin Program, is hereby converted to an instream water right, conditioned as follows:

The Water Resources Department may temporarily enforce this instream water right at reduced levels in order to store water in Galesville Reservoir for release for aquatic life. Temporary enforcement at reduced levels shall only take place from January 1 through April 30 and only when the Galesville Reservoir elevation is less than rule curve during that period of time.

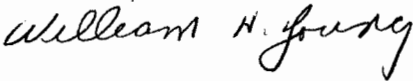
The additional water stored for aquatic life shall be released only for aquatic life at the direction of the Oregon Department of Fish and Wildlife. Temporary enforcement at reduced levels shall occur only on written request from the Director of the Department of Fish and Wildlife or the ODFW Director's designee. The request to enforce at reduced levels shall be made to the Water Resources Department's Director or the WRD Director's designee.

The ODFW Director, or the ODFW Director's designee, may request cancellation or modification of the temporary enforcement at any time. Upon cancellation of the temporary enforcement, the Water Resources Department shall enforce this instream water right at the levels specified in the certificate of instream water right.

During the temporary enforcement described above, the instream water right shall be enforced at no less than 40 cfs at USGS Gage 14-3090.

It is further ORDERED that a certificate for said instream water right, containing the above condition and with a priority date of March 26, 1974, shall be issued.

DATED and SIGNED this 6<sup>th</sup> day of February, 1990.

  
WILLIAM H. YOUNG  
Director

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF THE CONVERSION OF )  
THE MINIMUM STREAM FLOW ON COW ) STIPULATED FACTS  
CREEK, DOUGLAS COUNTY, OREGON )

The following facts are stipulated by the Department of Fish and Wildlife and Douglas County:

1. Douglas County has been granted water storage permit R-9964, priority date of May 6, 1981, for 38,000 acre feet and February 23, 1982, for 4,225 acre feet, at the Galesville Reservoir on Cow Creek, a tributary of the South Umpqua River in Douglas County, for the primary purposes of irrigation, municipal-industrial water supplies and fish enhancement. Secondary purposes include flood control, recreation and power development.

2. A minimum perennial streamflow has been established on Cow Creek to be maintained from USGS station 14-3090 to its confluence with Windy Creek. The priority date of the minimum perennial streamflow is March 26, 1974. The purpose of the minimum perennial streamflow is the maintenance of aquatic life. The minimum perennial streamflow will be converted to an instream water right with the same priority date.

3. Administration of flows in Cow Creek from the reservoir are based on gaged inflow as a measure of water available to meet vested, inchoate, statutory rights and the established minimum flow. The amount of monthly storage releases equals the sum of minimum flow requirements for vested, inchoate, and statutory ~~and~~ water rights and storage requirements for irrigation, municipal, industry and fishery. Whenever the inflow is less than the minimum flow requirements, however, the amount of reservoir release required is the inflow plus storage releases for irrigation, municipal, industry and fishery requirements. The storage of a portion of the converted instream water right in the reservoir will not interfere with vested, inchoate or statutory water rights and the established minimum perennial flows.

4. 14,951 acre feet of capacity has been set aside in the Galesville Reservoir for irrigation use. This capacity is sufficient to serve current and future users. Irrigation water is released during the irrigation season which is May through September. Irrigation releases will not be affected by the storage of a portion of the converted instream water right in the reservoir.

5. 4,450 acre feet of capacity has been set aside in the Galesville Reservoir for municipal use. This capacity is sufficient to serve current and future users. Municipal water requirements from the project are supplemental, occurring as communities need additional supplies during the low flow season.

1-STIPULATED FACTS (bcm\cowcreek.stp)

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The monthly distribution of these requirements reflect some water needs in June, large requirements in July and August due to peak needs and lesser requirements in September and October. The acre feet allotted for municipal use from the Galesville project presently serves or is capable of serving in the future these users: Glendale, South Umpqua Water District, Riddle, the area of Tri City, Clarks Branch Water District, and Roberts Creek Water District. Municipal releases will not be affected by the storage of a portion of the converted instream water right in the reservoir.

6. 2,400 acre feet of capacity has been set aside in the Galesville Reservoir for industrial use. Current industrial water users utilize reservoir water supplies during low flow periods to maintain their industrial operations without interruption. The reserved capacity is sufficient to serve current and future users. Industrial releases will not be affected by the storage of a portion of the converted instream water right in the reservoir.

7. The construction of the Galesville Dam resulted in a considerable reduction of flood stage at Glendale and Riddle and a lesser but significant reduction at Brockway on the South Umpqua River. During less severe flooding episodes, the flood control capacity of the Galesville reservoir is able to keep Cow Creek within its banks. The dam is operated for flood control from October to February each year. The retention of releases by ODFW for the converted instream water right during the months of January through April will never result in storage exceeding the flood curve and will not affect the existing flood control beneficial use.

8. Hydropower is generated only when the reservoir water surface is above elevation 1809. No other potential for hydropower development exists that would be affected by this conversion. The storage of a portion of the converted instream water right in the reservoir will not affect the existing Galesville hydropower generation.

9. 4,000 acre feet of capacity has been set aside in the Galesville Reservoir for downstream flows for fish enhancement. This volume is utilized by the Oregon Department of Fish and Wildlife (ODFW), at its direction, to maintain appropriate flows and temperatures for downstream fish. The outlet works of the Galesville Dam make controlled releases for the various functions for downstream uses and allow for selected release of stored waters from different temperature and turbidity horizons within the reservoir as required to meet fish habitat needs.

10. Cow Creek supports a fish population consisting of three species of anadromous fish: winter steelhead, coho salmon and chinook salmon.

2-STIPULATED FACTS (bcm\cowcreek.stp)

11. The temperature of water released from the Galesville Dam is projected on computer modeling of reservoir temperature profiles. Temperature is controlled by use of multiple level intakes to achieve target release temperatures. Resulting water temperatures downstream are projected using a computer program that considered factors such as solar radiation, local lateral inflow, diversions, shade factors and travel time. In general, as the release proceeds farther downstream, it is subject to a warming trend caused by heat absorption during daytime and heat losses during nighttime. Losses of water in the natural channel of Cow Creek from the reservoir to the place of use have been included in the computer projections.

12. Cow Creek is generously provided with good habitat for anadromous fish such as spawning gravels, riffles and pools. Because of the lowered water temperature and increased flows in the summer as a result of the Galesville Dam, the habitat for steelhead and chinook salmon have been greatly enhanced below the dam. In addition, there has been an increased rearing of juvenile coho in the main stem of Cow Creek below the dam after construction.

13. By allowing ODFW to request temporary enforcement of reduced releases for the converted instream water right during the months of January through April, additional waters over the amount currently allocated for fish enhancement will be stored for later release in low flow months. The additional amounts released will enhance to an even a greater extent the improvement of habitat for anadromous fish. In some years the amount of water available for such purposes could be triple the amount now reserved for such purposes.

14. The ODFW approves the means and methods of protection of the fishery resource and will enter into an agreement with the petitioner for the protection of fish resources for the additional discharge of water.

15. The proposed use is consistent with the provisions of the Water Use Program for the Umpqua Basin.

#### ULTIMATE FACTS

ORS 537.170(3a) through (3g) directs the Water Resources Commission to determine whether the proposed use would impair or be detrimental to the public interest.

A. The control to be exercised by ODFW of the converted instream water right in the months of January through April will not affect and therefor will allow the continuance of the beneficial use of stored water for municipal, industrial, irrigation,

3-STIPULATED FACTS (bcm\cowcreek.stp)

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vested, inchoate, and statutory uses, and for flood control, recreation and power development .

B. The resident and anadromous fishery in Cow Creek is an important economic and recreational asset and contributes to the well being of the Umpqua Basin fishery as a whole. Fishery enhancement is a primary purpose of the proposed use.

C. The anadromous fish population will be enhanced and due regard has been given to the means and methods for the protection of the fishery resource. The releases controlled by ODFW for the instream water right can be efficiently and beneficially used and such use complies with the Basin Program.

D. Cow Creek supports runs of wild anadromous and hatchery fish of value to the State of Oregon. Project facilities and operational measures meeting the specifications of the Department of Fish and Wildlife will provide protection to the fish life in the river and enhancement of their habitat.

E. No other uses or potential uses for these waters have been identified nor is there any shown in the program statement which would conflict with this proposed use. The proposed use is not wasteful.

F. Consideration has been given for the integration and coordination of uses of available water and the potential for augmentation of existing supplies in the South Umpqua Subbasin. The proposed use does not preclude or substantially interfere with maximum economic development.

G. There is no evidence in the record that the use represents a wasteful, uneconomic, impracticable or unreasonable use of the water involved.

Stipulated to this \_\_\_\_\_ day of \_\_\_\_\_, 1990, by the Oregon Department of Fish and Wildlife and Douglas County.

DEPARTMENT OF FISH AND WILDLIFE

BY Renny H. Harrison

Title: Counsel for (ODFW)  
the Oregon Department of  
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DOUGLAS COUNTY, OREGON

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