

BEFORE THE STATE ENGINEER OF OREGON

Hood River County

IN THE MATTER OF APPLICATIONS )  
NOS. R-37284 AND 37285 IN THE )  
NAME OF THE MIDDLE FORK IRRI- )  
GATION DISTRICT. )

ORDER

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Applications Nos. R-37284 and 37285, in the name of the Middle Fork Irrigation District were filed in the office of the State Engineer on January 2, 1962. The applications were protested by the Fish Commission of Oregon and the Oregon State Game Commission by formal protest filed on January 31, 1962 on the grounds that issuance of the permits would be prejudicial to the public interest.

A hearing on the protest was held by the State Engineer on February 21, 1962 in the Circuit Court Room of the County Court House in Hood River. At the hearing protestants were represented by Mr. Roy Atchison, Attorney, and the applicant was represented by Mr. Kenneth A. Abraham, Attorney.

After opening the hearing, counsel for both parties indicated the possibility of a stipulation which could result in withdrawal of the protest. After a short adjournment such a stipulation was offered and read into the record. Subsequently, said stipulation was signed and was filed with the State Engineer on March 21, 1962. Said stipulation reads as follows:

STIPULATION

WHEREAS, the Middle Fork Irrigation District, the applicant in the above matter, has made application for a permit to construct a dam and store 2650 acre feet of the waters of Clear Branch, a tributary of the Middle Fork of Hood River, under Public Law 566, and

WHEREAS, the Oregon State Game Commission is charged by law with the duty of the preservation, propagation, and promotion of game fish, and

WHEREAS, the Fish Commission of Oregon is charged by law with the duty of the preservation, propagation, and promotion of food fish, and

WHEREAS, in the opinion of the Oregon State Game Commission and the Fish Commission of Oregon, construction of the dam and the impoundment of the waters of the above-mentioned Clear Branch would be detrimental to fish life and production in said Clear Branch, mainly the anadromous species of silver salmon, steelhead and cutthroat trout, and

WHEREAS, by virtue of said duties the Oregon State Game Commission and the Fish Commission of Oregon in the performance of said duty would be obliged to protest the above application in the event that the granting of the above application and the use by the applicant of the waters of the above-mentioned stream would interfere with fish life and production in the waters therein, and

WHEREAS, certain precautions can be taken by the applicant herein which will insure a minimum of damage to the fish mentioned above.

NOW, THEREFORE, it is STIPULATED and AGREED as follows:

That the Middle Fork Irrigation District shall:

1. Provide an absolute minimum pool of 150 acre feet which would be reserved specifically for fish life use. Such pool will have a surface area of approximately 11.5 acres and a maximum depth of approximately 40 feet. This situation should not occur more than 20 percent of the years.

2. The project will be designed so that a minimum pool will be at least 300 acre feet for 75 percent of the years, and 900 acre feet at least 50 percent of the years. All available forecast information will be used at the earliest possible date to predict the minimum which the pool will reach in any year. These forecasts will be coordinated between the project operating personnel and fishery management agencies.

3. The applicant shall release water from the reservoir to provide the following minimum flow regimens in Clear Branch below the project dam.

- a. 3 cfs. for the period starting no earlier than May 15 and extending through August 31 of each year.
- b. Actual stream flow up to 15 cfs from September 1 through September 15 of each year.
- c. Actual stream flow up to 30 cfs from September 16 until the said reservoir has been filled.
- d. Actual stream flow throughout the remainder of the non-irrigation season.
- e. These flows can be reduced at the discretion of the fishery management agencies if it would be in the interest of fishery resources to do so insofar as such reduction does not interfere with the primary function of the reservoir.

4. Make certain improvements in the channel of Clear Branch between the project dam and the mouth of Coe Creek so that adequate conditions can be maintained for the survival of fish with the minimum flows stipulated in 3 above. Specific details on these improvements will have to be defined at a later date but they will be in the form of low retaining walls to create pools and channels where found necessary to concentrate low stream flows.

5. Provide protective screening of all irrigation diversions from natural waterways supporting fish life.

6. Provide a drain outlet at the base of the dam so as to make possible complete drainage of the reservoir for fish propagational purposes and to be accomplished only with the mutual consent of the state fishery agencies. Any drainage will be coordinated with the operating Irrigation District so as not to interfere with the primary function of the reservoir.

7. The applicant shall attempt to operate the reservoir, in conjunction with the other segments of their irrigation system, to do the least possible damage to the fishery resource. Whenever possible to do so, water from Eliot Creek and the smaller streams within the system will be fully utilized and only the essential needs beyond their capacities diverted from Clear Branch flow or storage.

IT IS FURTHER AGREED AND STIPULATED by the Oregon State Game Commission and the Fish Commission of Oregon that in consideration of said applicants having executed this stipulation the said Commissions will withdraw a protest to said applications, provided that this stipulation is accepted by the State Engineer and its terms are made a part of any permit which might be issued under this application.

IT IS FURTHER AGREED AND STIPULATED that the terms and conditions of this stipulation shall be made a part of any permit issued by the State Engineer under said application, by reference hereto, to the same effect and as fully as if it were fully set out in said permit. After the first five years of operation of the project and upon agreement between the parties to this stipulation

or their successors, the requirements of this stipulation with regard to minimum releases and minimum pool may be modified. Any such modification shall be reduced to writing and filed with the State Engineer. When so filed and upon order of the State Engineer based upon such agreement, the permits to store and appropriate water or the water right covered by such permits shall be modified and amended so as to carry out the provisions of such agreement.

DATED this 21st day of February, 1962.

MIDDLE FORK IRRIGATION DISTRICT

By /sgd/ Sheldon E. Laurance  
Sheldon E. Laurance, Chairman

OREGON STATE GAME COMMISSION

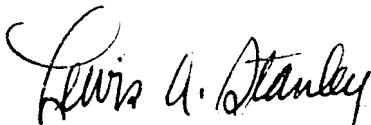
By /sgd/ P. W. Schneider  
P. W. Schneider, Director

FISH COMMISSION OF OREGON

By /sgd/ Robert W. Schoning,  
Robert W. Schoning, Director

It is ORDERED that applications Nos. R-37284 and 37285 be approved, subject to the terms of the stipulation.

Dated this 22nd day of March, 1962, at Salem, Oregon.



LEWIS A. STANLEY  
State Engineer