

Name ODFW
By PO BOX 59
Address PORTLAND OR 97207

Date filed SEP 24 1990
Priority
Action suspended until
Return to applicant
Date of approval

CONSTRUCTION

Date for beginning
Date for completion
Extended to
Date for application of water
Extended to

PROSECUTION OF WORK

Form "A" filed
Form "B" filed
Form "C" filed

FINAL PROOF

Blank mailed
Proof received
Date certificate issued

Application No. *JWR* 70695 *WF*
Permit No.
Certificate No.

Stream Index, Page No. *5*
Deschutes R

FEES PAID		
Date	Amount	Receipt No.
FEES REFUNDED		
Date	Amount	Check No.

ASSIGNMENTS				
Date	To Whom	Address	Volume	Page

REMARKS
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Other
patents
pending

Big Falls Ranch
Recipient

2006 **PHONE CALL**

FOR	WED x F.D.	DATE	2-15	TIME	458	A.M. P.M.	
M	LEAM	SHARLTON					
OF	ISWR	RETURN TO MIKE R				<input checked="" type="checkbox"/> RINGED	
PHONE	<input type="checkbox"/> FAX <input checked="" type="checkbox"/> MOBILE	(541)	389	-	7614	<input type="checkbox"/> RETURNED YOUR CALL	
MESSAGE	AD # 70695					<input checked="" type="checkbox"/> PLEASE CALL	
	D E & Assoc	BEND				<input type="checkbox"/> WILL CALL AGAIN	
	1990	-	250	CFS	LIC	DISC	<input type="checkbox"/> CAME TO 444
SIGNED	(2)(3)	541-389-7637					<input type="checkbox"/> WANTS TO SEE YOU
	873	WED					

TOPS FORM 4003

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF OREGON

for the

OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF:

Instream Water Right Application #70695

) **NOTICE OF SUBSTITUTION OF COUNSEL**
)
) OAH Reference No. 2019-OWRD-00031
) Agency Case No. IS #70695
)

PLEASE TAKE NOTICE that effective immediately, Assistant Attorney in Charge, Renee Moulun, of the Oregon Department of Justice, OSB #963707, substitutes for Mariel J. Combs, Senior Assistant Attorney General, as lead counsel for the Oregon Water Resources Department. All future pleadings and correspondence related to the above case should be served on Ms. Moulun at:

Renee Moulun
Assistant Attorney in Charge
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Phone: 503-947-4576
Fax: 503-378-3784
renee.m.moulun@doj.state.or.us

DATED this 11th day of March 2020.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

Renee Moulun

Renee Moulun, ##963707
Assistant Attorney in Charge
Of Attorneys for Oregon Water Resources
Department

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MAR 13 2020
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CERTIFICATE OF FILING/SERVICE

I hereby certify that on March 11, 2020, I electronically filed a full, true and correct copy of the NOTICE OF SUBSTITUTION OF COUNSEL to the Office of Administrative Hearings.

I further hereby certify that on March 11, 2020, I served a full, true and correct copy of the NOTICE OF SUBSTITUTION OF COUNSEL upon the party or parties hereto as follows:

Alek A. Wipperman
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile # _____
- by certified mail # _____
- Other: CMS

Kirk B. Maag
Stoel Rives LLP
760 SW 9th Avenue, Suite 3000
Portland, OR 97205
kbmaag@stoel.com

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile # _____
- by certified mail # _____
- Other: Email

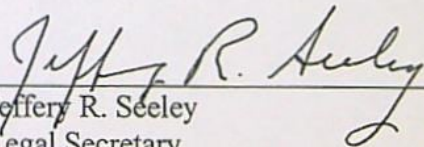
Patricia E. McCarty
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1279
patricia.e.mccarty@state.or.us

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile # _____
- by certified mail # _____
- Other: Email

Anna Pakenham Stevenson
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302
anna.p.stevenson@state.or.us

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile # _____
- by certified mail # _____
- Other: Email

DATED this 11th day of March 2020.



Jeffery R. Seeley
Legal Secretary
Natural Resources Section

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OWRD Hearing Referral Form
Office of Administrative Hearings

Has this case been previously referred to the OAH? **No**

Case Information		
Agency Action Date August 27, 1996	Hearing Request Date October 10, 1996	Referral Date October 21, 2019
Case Type Water Right Application - Surface Water	Agency Case No IS #70695	OAH Case No 2019-OWRD-00031
Case Caption Instream Water Right Application #70695		
Issue(s) ORS Chapter 537.140-537.626		

Case Processing Information
Will OAH send the Notice of Hearing? Yes
Will OAH send the Notice of Contested Case Rights and Procedures? N
Is a pre-hearing conference necessary? Yes
Estimated hearing length: 1 To 2 Days
Will agency provide exception language to include in Proposed Order? No
Is a site visit anticipated/required? No
Address of site location:
Requested hearing location: OAH Salem Office

People		
Agency Representative Patricia McCarty	725 Summer St NE, Ste A Salem OR 97301	Primary: (503) 986-0820 Patricia.E.McCarty@oregon.gov
Assistant Attorney General Mariel J Combs	1162 Court Street NE Salem OR 97301	Primary: (503) 947-4552 mariel.j.combs@doj.state.or.us
Protestant Big Falls Ranch Company Rex Barber	P.O. Box 434 Terrebonne OR 97760	Language: English Primary: (541) 948-6325 bigfalls@cbbmail.com
Interested Party Oregon Department Of Fish And Wildlife Anna Pakenham Stevenson	4034 Fairview Industrial Drive SE Salem OR 97302	Language: English Primary: (503) 947-6084 anna.p.stevenson@state.or.us

Attached Supporting Documents	
Description OWRD: Referral - OWRD referral materials	RECEIVED
Comments:	OCT 23 2019

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All parties were served at their addresses of record with a copy of this document and all of the attached documents.

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON WATER RESOURCES DEPARTMENT

Water Right Application IS 70695 in the name of the Oregon Water Resources Department as trustee for the people of the State of Oregon

NOTICE OF CONTESTED CASE
RIGHTS AND PROCEDURES

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** The hearing is not yet scheduled. The Office of Administrative Hearings will send you notice of the time, date and place of the hearing when it is scheduled.
2. **Authority and Jurisdiction for Hearing.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, ORS 537.153; ORS 537.170; Oregon Administrative Rules (OAR) Chapter 690, Divisions 2 and 77; and the Attorney General's Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700.
3. **Issues to be considered at hearing.** The hearing involves Water Right Application IS 70695. The issues to be considered at hearing are set forth in the Protest of Proposed Final Order, dated October 10, 1996. You have the right to respond to all issues properly before the administrative law judge that will be assigned to the hearing and to present evidence and witnesses on those issues.
4. **Right to attorney.** You may be represented by an attorney at the hearing. Parties are ordinarily and customarily represented by counsel. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. **Legal aid organizations may be able to assist a party with limited financial resources.** Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. OAR 137-003-0550. However, consistent with OAR 137-003-0555, an authorized representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Administrative Law Judge determines that the appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.
5. **Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 USC App. §§ 3901-4043. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The telephone number for the Oregon Military Department is: (503) 584-3980. The Oregon Military Department does not have a toll free telephone number. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is:
<http://legalassistance.law.af.mil>.

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6. **Administrative Law Judge.** The person presiding at the hearing is known as the administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to review under OAR 137-003-0640. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Oregon Water Resources Department Director.

7. **Discovery.** Discovery is permitted in this proceeding. Discovery is permitted as provided in OAR 137-003-0566 – OAR 137-003-0569. You must first ask the agency to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the agency or the other parties, you may ask the ALJ to order production of the information you seek in accordance with applicable rules.

8. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The Oregon Water Resources Department or ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. OAR 137-003-0585. If you are represented by an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.

9. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Oregon Water Resources Department's proposed action is appropriate. The order of presentation of evidence is normally as follows:

- a. Testimony of witnesses and other evidence of the Oregon Water Resources Department in support of its proposed action.
- b. Testimony of your witnesses and your other evidence.
- c. Rebuttal evidence by the Oregon Water Resources Department and by you.

10. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. Normally, each fact must be proven by a preponderance of evidence, meaning each fact must be shown to be more likely than not. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.

11. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. ORS 183.450; OAR 137-003-0610. Evidence that is irrelevant, immaterial, or unduly repetitious is

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excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the agency or ALJ will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or ALJ. The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or ALJ takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed. OAR 137-003-0615.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.

12. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

13. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

14. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.

15. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed.

16. **Final Order.** The Oregon Water Resources Department Director will issue the final order in this case. The Director may modify the proposed order issued by the ALJ. If the Director modifies the proposed order in any substantial manner, the order will identify the modification and explain why the Director made the modification. The Director may modify a proposed finding of "historical" fact only if the agency determines that there is clear and convincing evidence in the record that the finding was wrong. Unless otherwise required by law, the Director must consider any exceptions to the proposed order and issue a final order.

17. **Appeal.** If you wish to appeal the final order resolving this contested case, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.482 and ORS 536.075.

DATED this 21st day of October 2019.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General



Mariel J. Combs, #004551
Senior Assistant Attorney General
Of Attorneys for Oregon Water Resources
Department

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BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON
WATER RIGHTS DIVISION

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In the Matter of Surface Water Application)
IS #70695 in the Name of Oregon Department)
of Fish and Wildlife for Water Use,)
Deschutes County, Jefferson County)

PROTEST TO) WATER RESOURCES DEPT.
PROPOSED FINAL) SALEM, OREGON
ORDER)

Protestant Rex Barber Jr., and Big Falls Ranch Company, in accordance with ORS 537.153 (6) and OAR 690-77-043, submits the following Protest to Proposed Final Order for Application IS #70695.

I. INTRODUCTION

Protestant's address is 70470 N.W. Lower Bridge Way, Terrebonne, Oregon, 97760; phone number (541) 548-8954. Big Falls Ranch Company, P.O. Box 434, Terrebonne, Oregon, 97760; phone number (541) 548-8954. Protestant is the owner and water user of irrigation water rights from Deep Canyon Creek and McKenzie Canyon Creek, a tributary of the Deschutes River.

Protestant asserts that the Proposed Final Order by the Water Resources Department ("WRD" or "Department") is defective and in error and that there are elements of the water right as approved that will impair or be detrimental to the public interest, based on the facts and issues set forth below.

II. FLOWS REQUESTED WILL BE DETRIMENTAL TO MANY FORMS OF WILDLIFE INCLUDING ENDANGERED SPECIES AND THEREFORE WILL BE DETRIMENTAL TO THE PUBLIC INTEREST.

The instream water right flows requested will have a detrimental impact on the eco-system that has developed over the past 50 to 100 years. Average flows during the months of April - October are substantially lower than those requested. Nesting habitat (islands) for a variety of waterfowl are created by the present low flows during April - October and would be destroyed if higher flows were granted during this time period. A partial list of the effected species include Blue Heron (an endangered species), a variety of ducks including the Canvas Back, Mallard and Teal, and at least one species of Canadian Goose. This eco-system should be viewed with equal importance as fish habitat and would be destroyed by the high flows requested.

III. PREFERENTIAL TREATMENT GIVEN TO OREGON DEPARTMENT OF FISH AND WILDLIFE.

Private citizens are not allowed to apply for water that is not there. The flows requested during April - October are virtually never there and are certainly not there 50 percent of the time as is required for all other water right applications. I believe there are serious legal questions which arise from this preferential treatment.

RB

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CONCLUSION

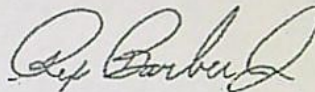
This protest is filed in accordance with OAR 690-77-043. The issues raised should be considered as part of a contested case hearing. The WRD's Proposed Final Order is inadequate and defective and has failed to follow applicable rules. A thorough review of the Application is necessary to determine the quantity of water necessary to support all forms of wildlife to determine all aspects of the public interest issue.

For the reasons set forth above, the protestant asserts that the application is defective and should be returned to the applicants. The flow levels requested are excessive and are detrimental to many aspects of public use. Tunnel vision in favor of fish habitat is not in the overall public interest. Flow levels set at the rates proposed will interfere with future maximum economic development of the waters of the State of Oregon. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved. (ORS 537.170 (8)(e)) . If approved, an exception for the stockwater use should be added as a condition of the right.

Based on the points discussed above, the Proposed Final Order should deny the application for a permit.

Respectfully submitted the 10th day of October, 1996.

By:



By:

Big Falls Ranch Co
by [Handwritten Signature]

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WATER RESOURCES DEPT.
SALEM, OREGON

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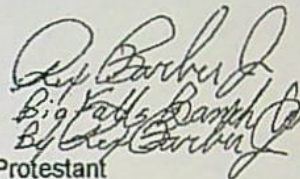
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 1996 I served a true and accurate copy of the foregoing Protest to the Proposed Final Order on the applicant by mailing said copy by first class mail, postage prepaid, by depositing said copy in the United States Post Office in Terrebonne, Oregon, addressed as set forth below:

Oregon Department of Fish & Wildlife
2501 SW First Avenue
P.O. Box 59
Portland, Oregon 97207

By: 
Big Falls Ranch Co
Protestant

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WATER RESOURCES DEPT.
SALEM, OREGON

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Oregon Water Resources Department
Water Rights/Adjudication Section

Water Right Application Number: IS 70695

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft certificate be issued with conditions.

Application History

On 9/19/90, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: DESCHUTES R tributary to COLUMBIA R

County: Deschutes

Purpose: Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

The amount of water (in cubic feet per second) requested by month:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

To be maintained in:

DESCHUTES RIVER FROM NORTH CANAL DAM RIVER MILE 165
(SECTION 29, T17S, R12E); TO ROUND BUTTE RESERVOIR RIVER
MILE 119.5 (NENE, SECTION 29, T12S, R12E)

The Department mailed the applicant notice of its Initial Review on December 12, 1995. Public notice of the application was provide in the Department's weekly public notice on December 27, 1996. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Deschutes Basin, Oregon, and Their Water Requirements; (an unpublished report).
- (b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.
- (c) Developing and Application of Spawning Velocity and Depth Criteria for Oregon Salmonids, Alan K. Smith, Transactions of the American Fisheries Society, April 1973.
- (d) Determining Stream Flows for Fish Life, Oregon State Game Commission Report, March 1972.

- (e) A letter dated April 5, 1996, stating that the flows requested in this application are the minimum amount necessary to restore, protect and enhance populations and habitats of native wildlife species at self-sustaining levels

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the proposed rate of use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

An assessment with respect to conditions previously imposed on other instream water rights granted for the same source has been completed.

An evaluation of the information received from the local government(s) regarding the compatibility of the proposed instream water use with land use plans and regulations has been completed.

The level of instream flow requested is based on the methods of determining instream flow needs that have been approved by administrative rule of the agency submitting this application.

Findings of Fact

The basin Basin Program allows the proposed use.

Senior water rights exist on this source or on downstream waters.

The source of water is within or above a State Scenic Waterway.

The source of water is not withdrawn from appropriation by order of the State Engineer or legislatively withdrawn by ORS 538.

The estimated average natural flow for the lower end of the requested reach is as follows (in cubic feet per second):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1380	1460	1470	1640	1720	1840	1390	1320	1340	1380	1330	1370

Conclusions of Law

Under the provisions of ORS 537.153, the Department must

presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complied with rules of the Water Resources Commission.

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The proposed use requested in this application is allowed in the basin Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

The proposed use complies with the State Agency Agreement for land use.

The proposed instream flows do not fully appropriate this source of water year round. Water is available for additional storage.

Water is not available for the proposed use at the amount requested year round because the unappropriated water available is less than the amounts requested during some months.

For these reasons, the presumption set forth in ORS 537.153, as discussed above, has not been established. The application therefore has been processed without the statutory presumption.

"When instream water rights are set at levels which exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses." OAR 690-77-015(2).

"The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right." "The amount allowed during any time period for the water right shall not exceed the estimated average natural flow ..." (excerpted from OAR 690-77-015 (3) and (4)).

Because the proposed use exceeds the available water, it can not be presumed to be in the public interest. However, under the direction of OAR 690-77-015 (2)(3) and(4), the proposed use is in the public interest up to the limits of the estimated average natural flow.

Oregon law allows certain uses of water to take precedence over other uses in certain circumstances. When proposed uses of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption over any other use (excerpted from ORS 536.310 (12)).

The Department therefore concludes that

- the proposed use, as limited in the draft certificate, will not result in injury to other water rights,
- the proposed use, as limited in the draft certificate, will not impair or be detrimental to the public interest as provided in ORS 537.170.
- the proposed use, as limited in the draft certificate, will include the following conditions: for purposes of water distribution, this instream right shall not have priority over

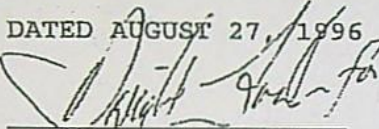
- human or livestock consumption.
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

Recommendation

The Department recommends that the attached draft certificate be issued with conditions.

DATED AUGUST 27, 1996


 Steven P. Applegate
 Administrator
 Water Rights and Adjudications Division

Protest Rights

Under the provisions of ORS 537.153(6) or 537.621(7), you have the right to submit a protest against this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050.
- Proof of service of the protest upon the applicant.

Your protest must be received in the Water Resources Department no later than October 11, 1996.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled *only* if a protest has been submitted and if

- upon review of the issues the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

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DRAFT
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310

The specific limits for the use are listed below along with conditions of use.

Source: DESCHUTES R tributary to COLUMBIA R

County: Deschutes

Purpose: Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

DESCHUTES RIVER FROM NORTH CANAL DAM RIVER MILE 165
(SECTION 29, T17S, R12E); TO ROUND BUTTE RESERVOIR RIVER
MILE 119.5 (NENE, SECTION 29, T12S, R12E)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 9/19/90.

The following conditions apply to the use of water under this certificate:

1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.
4. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this _____ day of _____, 19____.

RECEIVED

OCT 23 2019

OWRD

Water Resources Director

Recorded in State Record of Water Right Certificate number _____.

IS 70695

RECEIVED

OCT 23 2019

OWRD

CERTIFICATE OF FILING/SERVICE

I hereby certify that on October 21, 2019, I filed a full, true and correct copy of the Oregon Water Resources Department's October 21, 2019 Hearing Referral form; October 21, 2019 NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES; October 10, 1996 PROTEST TO PROPOSED FINAL ORDER; and Oregon Water Resources Department's August 27, 1996 PROPOSED FINAL ORDER to the Office of Administrative Hearings.

I further certify that on October 21, 2019, I served full, true and correct copies of all of the documents listed above, upon the party or parties hereto as follows:

Office of Administrative Hearings
P.O. Box 14020
Salem, Oregon 97309-4020

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile #
- by certified mail #
- Other: CMS

Rex Barber
Big Falls Ranch Company
P.O. Box 434
Terrebonne, Oregon 97760
bigfalls@cbbmail.com

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile #
- by certified mail #
- Other: Email

Patricia E. McCarty
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1279
patricia.e.mccarty@state.or.us

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile #
- by certified mail #
- Other: Email

Anna Pakenham Stevenson
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, Oregon 97302
anna.p.stevenson@state.or.us

- by regular mail, postage prepaid
- by hand-delivery
- by facsimile #
- by certified mail #
- Other: Email

DATED this 21st day of October 2019.



Mariel J. Combs (OSB# 004551)
Senior Assistant Attorney General
Natural Resources Section

RECEIVED

OCT 23 2019

OWRD

RECEIVED

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON OCT 15 1996
WATER RIGHTS DIVISION

O.D.F.W. MAIL DEPT.

In the Matter of Surface Water Application)
IS #70695 in the Name of Oregon Department)
of Fish and Wildlife for Water Use,)
Deschutes County, Jefferson County)

PROTEST TO
PROPOSED FINAL
ORDER

RECEIVED

FEB 19 1999

Protestant Rex Barber Jr., and Big Falls Ranch Company, in accordance with ORS 537.153 (6) and OAR 690-77-043, submits the following Protest to Proposed Final Order for Application IS #70695. WATER RESOURCES DEPT. SALEM, OREGON

I. INTRODUCTION

Protestant's address is 70470 N.W. Lower Bridge Way, Terrebonne, Oregon, 97760; phone number (541) 548-8954. Big Falls Ranch Company, P.O. Box 434, Terrebonne, Oregon, 97760; phone number (541) 548-8954. Protestant is the owner and water user of irrigation water rights from Deep Canyon Creek and McKenzie Canyon Creek, a tributary of the Deschutes River.

Protestant asserts that the Proposed Final Order by the Water Resources Department ("WRD" or "Department") is defective and in error and that there are elements of the water right as approved that will impair or be detrimental to the public interest, based on the facts and issues set forth below.

II. FLOWS REQUESTED WILL BE DETRIMENTAL TO MANY FORMS OF WILDLIFE INCLUDING ENDANGERED SPECIES AND THEREFORE WILL BE DETRIMENTAL TO THE PUBLIC INTEREST.

The instream water right flows requested will have a detrimental impact on the ecosystem that has developed over the past 50 to 100 years. Average flows during the months of April - October are substantially lower than those requested. Nesting habitat (islands) for a variety of waterfowl are created by the present low flows during April - October and would be destroyed if higher flows were granted during this time period. A partial list of the effected species include Blue Heron (an endangered species), a variety of ducks including the Canvas Back, Mallard and Teal, and at least one species of Canadian Goose. This eco-system should be viewed with equal importance as fish habitat and would be destroyed by the high flows requested.

III. PREFERENTIAL TREATMENT GIVEN TO OREGON DEPARTMENT OF FISH AND WILDLIFE.

Private citizens are not allowed to apply for water that is not there. The flows requested during April - October are virtually never there and are certainly not there 50 percent of the time as is required for all other water right applications. I believe there are serious legal questions which arise from this preferential treatment.

CONCLUSION

This protest is filed in accordance with OAR 690-77-043. The issues raised should be considered as part of a contested case hearing. The WRD's Proposed Final Order is inadequate and defective and has failed to follow applicable rules. A thorough review of the Application is necessary to determine the quantity of water necessary to support all forms of wildlife to determine all aspects of the public interest issue.

For the reasons set forth above, the protestant asserts that the application is defective and should be returned to the applicants. The flow levels requested are excessive and are detrimental to many aspects of public use. Tunnel vision in favor of fish habitat is not in the overall public interest. Flow levels set at the rates proposed will interfere with future maximum economic development of the waters of the State of Oregon. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved. (ORS 537.170 (8)(e)) . If approved, an exception for the stockwater use should be added as a condition of the right.

Based on the points discussed above, the Proposed Final Order should deny the application for a permit.

Respectfully submitted the 10th day of October, 1996.

By: *[Signature]*
By: *Big Falls Ranch Co*
By: *[Signature]*

MCCARTY Patricia E * WRD

From: RANCIER Racquel R
Sent: Friday, August 26, 2016 1:51 PM
To: KOESAN Richard
Cc: BYLER Thomas M; MCCARTY Patricia E
Subject: Follow up on ISWR Questions

Hi Richard,

This email is in response to some of the questions that you had asked us in regards to instream water rights, and more specifically, the protest to IS 70695. We have reviewed the Division 77 rules and our staff's response to Mr. Barber, and we believe that these rules are consistent with the statutes. At this point in time, we are not inclined to change our longstanding policies and interpretation of the statutes or our rules.

Patricia McCarty can answer any questions in regards to the resolution of the outstanding protests and any potential next steps. In addition, you noted that Patricia had stated in a previous email that she had consulted with the Department of Justice and that you wanted to see that written advice. The email states that she had consulted with DOJ on interpretation of OAR 690-505-0010(1)(D). This consultation was a phone call to our attorney, and was not written advice.

Please let me know if you have further questions.

Best,

Racquel Rancier
Senior Policy Coordinator
Oregon Water Resources Department
Office: 503-986-0828
Cell: 503-302-9235
racquel.r.rancier@wrdd.state.or.us

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Thursday, July 21, 2016 1:10 PM
To: RANCIER Racquel R
Subject: RE: ISWR comm w/ Rex Barber

It was a phone call with Renee. She looked at the protest and the rule and we discussed them in a call for about 20 to 30 minutes.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: RANCIER Racquel R
Sent: Thursday, July 21, 2016 12:25 PM
To: MCCARTY Patricia E
Subject: FW: ISWR comm w/ Rex Barber

Hi Patricia,
Have we gotten any written DOJ advice on this or was it all verbal? Can you send to me if it was written?

Thanks,

Racquel

From: MCCARTY Patricia E
Sent: Friday, June 17, 2016 2:42 PM
To: RANCIER Racquel R
Subject: ISWR comm w/ Rex Barber

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Tuesday, May 03, 2016 11:52 AM
To: 'Rex Barber'
Cc: FAUCERA Danette L
Subject: RE: BFR instream protest

Thank you for sending the list. It will help focus the conversation. ODFW and WRD are still available on the 12th. WRD is available after 11 am, and I will let Ms. Faucera answer for ODFW. Are you still planning on coming over to Salem, or shall we arrange for a conference call? Also, please give me an indication as to what you are looking for when we discuss the issues – will we be attempting to agree on the issues or discussing how to proceed regardless of agreement?

As a preliminary matter, WRD responded to your issue #1, and I think we may have to agree to disagree on that point. This issue was not raised in the protest so it would not be included if the protest was referred to a hearing, but we can discuss it within settlement talks. As to #2, OWRD relies on 690-077-015 (2), (3) & (4); the proposed order did find that the public interest presumption was not met because water was not available, but found the proposed use was in the public interest based on the Div. 77 rule paragraphs cited. This issue was raised in the protest. As to #3, WRD believes that the clear statement in 690-077-015 (9) effectively amends Div. 505 because it classifies all natural lakes and streams in the Deschutes Basin (and all others) for instream uses. WRD might agree with your conclusion in #4; new domestic and livestock applications in the Middle Deschutes may be denied because no water is available most of the year. This may have been the case since before the instream application was filed because the reach and downstream was already severely over-appropriated, and I am checking on this. But, you are correct, the basin program did not set aside water for future applications for domestic or livestock uses. However, there is some water labeled as “reserved” in the water availability program and I am looking into it to find out what it is reserved for. The existing junior domestic & livestock uses will be protected from being regulated off for the instream. ODFW can respond to issue #5.

I've provided WRD's response to your issues so that you understand the agency's point of view and can consider what you will be seeking in discussions with WRD. Right now, WRD is comfortable proceeding with its positions, either in a hearing or on appeal, and is unlikely to agree with your perspective, at least to the point of denying the instream application but both OWRD and ODFW are open to discussions.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: Rex Barber [mailto:bigfalls@cbbmail.com]
Sent: Monday, May 02, 2016 11:44 AM
To: MCCARTY Patricia E
Subject: BFR instream protest

Patricia,

Attached are the issues I have with the ODFW instream application.

Let me know when the meeting can be scheduled.

Rex Barber

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department

Thank you for the update. There are several objections to the instream application which I mentioned in our phone call which have not been addressed. I will outline in no particular order.

1. 690-505-0010 (1)(D)" No further appropriations except for domestic or livestock uses shall be permitted for waters of the mainstem Deschutes River, from the head of Lake Billy Chinook near river mile 120 to the North Canal Dam near river mile 165."

The **only** exception for a new appropriation is domestic or livestock uses (see above). This is a specific exception for this specific reach of the mainstem Deschutes as allowed in OAR 690-505-0010 (1)(a).

690-077-0015 (9) "Instream water rights shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses **unless specifically withdrawn from appropriation for such use.**" (see 690-505-0010 (1) (D))

Since domestic and livestock uses are the only uses allowed, instream uses are excluded from new appropriations for this section of the river.

2. The water is not available the majority of the year. As part of the public interest review the water must be available. 690-310-0110 (1) (b).

3. As 690-077-0015(9) relates per the DOJ opinion, this rule simply established that as a general rule an instream water right was, upon passage of this rule, classified as a beneficial use. Prior to passage of this rule there was no provision for an instream water right. It did **nothing** to amend the basin plan for the Middle Deschutes River Basin under 690-505-0010 (1) (D) as it relates to this specific section of river.

4. If this proposed instream right were to be granted it would preclude new domestic and livestock appropriations if and until the flow levels (that aren't currently there) were reached. This is contrary to the water use objectives of the state giving priority to these uses. (See ORS 536.310 (12))

5. The application favors aquatic species vs terrestrial species and is contrary to ODFW's management of all wildlife.

I can meet on either 5/12 or 5/16.

Rex Barber
541-948-6325
Date: 05/02/2016

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Monday, April 25, 2016 9:24 AM
To: 'Rex Barber'
Subject: RE: Barber protest to IS-70695

Mr. Barber,
OWRD and ODFW are available May 12th and possibly May 16th. Unfortunately, we are not available again until the week of June 6th. Both agencies would like to be prepared to make it a productive meeting, so please send an agenda and your outline of issues to be addressed beforehand. When you have the time, let me know if any of these dates are compatible with your schedule.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: Rex Barber [mailto:bigfalls@cbbmail.com]
Sent: Tuesday, April 12, 2016 8:22 AM
To: MCCARTY Patricia E
Cc: Neil Bryant
Subject: Re: Barber protest to IS-70695

Thank you for the update.

Planting took precedence. I am preparing a complete outline with the issues which need to be addressed. Could we schedule a meeting in Salem in May after the 9th?

Thank you
Rex Barber

----- Original Message -----

From: "MCCARTY Patricia E" <patricia.e.mccarty@state.or.us>
To: "Rex Barber (bigfalls@cbbmail.com)" <bigfalls@cbbmail.com>
Sent: 3/30/2016 10:54:24 AM
Subject: Barber protest to IS-70695

Dear Mr. Barber,
The Department has looked into an issue you raised during our phone conversation in early January. You mentioned that the Deschutes Basin Program did not allow further appropriations from the Middle Deschutes River, and specifically, for an instream right. The Department has consulted the Department of Justice on the interpretation of OAR 690-505-0010(1)(D). The Department and DOJ interpret the language to restrict classified uses in the mainstem of the Middle Deschutes River to only domestic or livestock uses. OAR 690-77-0015(9) establishes instream water rights as one additional classified use in the Deschutes River. Read together there is authority for an instream water right in the Middle Deschutes River.

As we mentioned in the call, the pending instream applications have been pending for quite some time. The Department needs to complete the processing of the applications. Your protest raises issues regarding the effect of the flow levels set out in the draft certificate on the ecosystem of the reach and therefore the public interest, the fact that the instream rules do not require instream rights to be restricted to unappropriated water, and that the Proposed Final Order failed to follow applicable rules.

The Director has two options for completing the processing of the application. He can either issue a Final Order and Certificate, or refer the protest to a contested case hearing. The Department will refrain from doing either to allow for discussions on possible settlement until June of this year. I will work with you to see if there is any basis for settlement. If we can achieve a settlement by June, the Director will not deny the protest or refer it to a hearing.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Thursday, April 21, 2016 2:12 PM
To: FAUCERA Danette L
Subject: FW: Barber protest to IS-70695

Danette,

Here is the latest communication with one of the instream protestants. It would probably be worthwhile for someone from ODFW to attend the meeting with Mr. Barber. I'll be asking him for more information about what he would like to discuss at an in-person meeting. Can you give me some blocks of time after the 9th that someone from ODFW could come to WRD? I'll suggest those times for him. For me, the open days are the 12th, 16th, and then not until the 31st.

Thanks,
Patricia

From: Rex Barber [mailto:bigfalls@cbbmail.com]
Sent: Tuesday, April 12, 2016 8:22 AM
To: MCCARTY Patricia E
Cc: Neil Bryant
Subject: Re: Barber protest to IS-70695

Thank you for the update.

Planting took precedence. I am preparing a complete outline with the issues which need to be addressed. Could we schedule a meeting in Salem in May after the 9th?

Thank you
Rex Barber

----- Original Message -----

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To: "Rex Barber (bigfalls@cbbmail.com)" <bigfalls@cbbmail.com>
Sent: 3/30/2016 10:54:24 AM
Subject: Barber protest to IS-70695

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Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Wednesday, March 30, 2016 10:54 AM
To: Rex Barber (bigfalls@cbbmail.com)
Subject: Barber protest to IS-70695

Dear Mr. Barber,

The Department has looked into an issue you raised during our phone conversation in early January. You mentioned that the Deschutes Basin Program did not allow further appropriations from the Middle Deschutes River, and specifically, for an instream right. The Department has consulted the Department of Justice on the interpretation of OAR 690-505-0010(1)(D). The Department and DOJ interpret the language to restrict classified uses in the mainstem of the Middle Deschutes River to only domestic or livestock uses. OAR 690-77-0015(9) establishes instream water rights as one additional classified use in the Deschutes River. Read together there is authority for an instream water right in the Middle Deschutes River.

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The Director has two options for completing the processing of the application. He can either issue a Final Order and Certificate, or refer the protest to a contested case hearing. The Department will refrain from doing either to allow for discussions on possible settlement until June of this year. I will work with you to see if there is any basis for settlement. If we can achieve a settlement by June, the Director will not deny the protest or refer it to a hearing.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

MCCARTY Patricia E * WRD

From: Rex Barber <bigfalls@cbbmail.com>
Sent: Tuesday, January 05, 2016 9:52 AM
To: dwight.w.french@state.or.us
Cc: MCCARTY Patricia E; Neil Bryant
Subject: ODFW protest Rex Barber

Dwight,

Thanks for the meeting yesterday. I got sidetracked a little and another issue I forgot to bring up is that the water isn't there. Without the physical water how can a water right be issued?

Thanks again,
Rex Barber

MCCARTY Patricia E

From: MCCARTY Patricia E
Sent: Monday, January 04, 2016 3:00 PM
To: 'Rex Barber'
Subject: RE: Re[2]: Protest IS-70695 Deschutes River

Mr. Barber,

Dwight French and I may be available today between 3:30 and 5. We will give you a call when Dwight is free, and will hope to catch you. Will you need to have Mr. Bryant on the phone?

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: Rex Barber [mailto:bigfalls@cbbmail.com]
Sent: Monday, January 04, 2016 2:14 PM
To: MCCARTY Patricia E
Cc: Neil Bryant; MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Subject: Re[2]: Protest IS-70695 Deschutes River

Patricia,

Are you available to speak on the phone re this matter? I am available the rest of today and most of tomorrow.

Thanks
Rex Barber
541-948-6325

----- Original Message -----

From: "MCCARTY Patricia E" <patricia.e.mccarty@state.or.us>
To: "Rex Barber" <bigfalls@cbbmail.com>
Cc: "Neil Bryant" <bryant@bljlawyers.com>; "MCCARTY Patricia E (patricia.e.mccarty@state.or.us)" <patricia.e.mccarty@state.or.us>
Sent: 12/18/2015 3:18:24 PM
Subject: RE: Protest IS-70695 Deschutes River

Thank you Mr. Barber,

Can you give me a sense of your availability to meet and discuss the different paths forward? We can meet in person when Dwight French is traveling your direction, or by phone if that works out for everyone. WRD wants to go over the options of a contested case hearing and/or a settlement with ODFW. We'd like to answer any questions about timing and about the various parties' obligations, and see if we can get a sense of the best way to structure things so all parties can end up with some sort of resolution within this next year.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department

(503) 986-0820

From: Rex Barber [mailto:bigfalls@cbbmail.com]

Sent: Friday, December 18, 2015 3:09 PM

To: MCCARTY Patricia E

Cc: Neil Bryant

Subject: Protest IS-70695 Deschutes River

Patricia,

Thank you for the update on this application. We do plan to continue with our protest of this application.

Rex Barber
541-948-6325

MCCARTY Patricia E * WRD

From: Rex Barber <bigfalls@cbbmail.com>
Sent: Monday, January 04, 2016 2:14 PM
To: MCCARTY Patricia E
Cc: Neil Bryant; MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Subject: Re[2]: Protest IS-70695 Deschutes River

Patricia,
Are you available to speak on the phone re this matter? I am available the rest of today and most of tomorrow.

Thanks
Rex Barber
541-948-6325

----- Original Message -----

From: "MCCARTY Patricia E" <patricia.e.mccarty@state.or.us>
To: "Rex Barber" <bigfalls@cbbmail.com>
Cc: "Neil Bryant" <bryant@bljlawyers.com>; "MCCARTY Patricia E (patricia.e.mccarty@state.or.us)" <patricia.e.mccarty@state.or.us>
Sent: 12/18/2015 3:18:24 PM
Subject: RE: Protest IS-70695 Deschutes River

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Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

From: Rex Barber [<mailto:bigfalls@cbbmail.com>]
Sent: Friday, December 18, 2015 3:09 PM
To: MCCARTY Patricia E
Cc: Neil Bryant
Subject: Protest IS-70695 Deschutes River

Patricia,

Thank you for the update on this application. We do plan to continue with our protest of this application.

Rex Barber

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E <patricia.e.mccarty@state.or.us>
Sent: Friday, December 18, 2015 3:18 PM
To: Rex Barber
Cc: Neil Bryant; MCCARTY Patricia E (patricia.e.mccarty@state.or.us)
Subject: RE: Protest IS-70695 Deschutes River

Thank you Mr. Barber,

Can you give me a sense of your availability to meet and discuss the different paths forward? We can meet in person when Dwight French is traveling your direction, or by phone if that works out for everyone. WRD wants to go over the options of a contested case hearing and/or a settlement with ODFW. We'd like to answer any questions about timing and about the various parties' obligations, and see if we can get a sense of the best way to structure things so all parties can end up with some sort of resolution within this next year.

Sincerely,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

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Sent: Friday, December 18, 2015 3:09 PM
To: MCCARTY Patricia E
Cc: Neil Bryant
Subject: Protest IS-70695 Deschutes River

Patricia,

Thank you for the update on this application. We do plan to continue with our protest of this application.

Rex Barber
541-948-6325

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Wednesday, December 02, 2015 3:43 PM
To: FAUCERA Danette L
Subject: IS-70695 Deschutes
Attachments: PacifiCorp Deschutes R ISWR ltr.pdf; Big Falls Ranch Co Deschutes R ISWR ltr.pdf

Danette,

Attached are letters to the protestants on the Deschutes application. This is it for moving on additional applications.

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

www.wrd.state.or.us

December 2, 2015

John Sample, Senior Counsel
PacifiCorp
825 NE Multnomah Street
Portland, OR 97232

Re: Protest to ODFW Instream Water Right Application IS-70695 Deschutes River

Dear Mr. Sample:

The Oregon Department of Fish and Wildlife filed numerous applications for instream water rights in 1990 on various streams around Oregon. Your organization protested Application #70695 on the Deschutes River. Water Resources is working to resolve the protests where possible, and where resolution is not possible, preparing the application for referral to contested case hearing. OWRD would like to arrange a meeting to discuss the application, the protest and possible next steps for the parties. We are hoping to arrange a meeting in early 2016 with all protestants to the application.

Please contact me at the number or email address below and let me know whether your organization still has an interest in pursuing the protest in light of developments since 1990.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Right Services Division
Phone: 503-986-0820
Email: patricia.e.mccarty@wrd.state.or.us



MCCARTY Patricia E * WRD

From: MCCARTY Patricia E
Sent: Wednesday, December 02, 2015 4:04 PM
To: GORMAN Kyle G
Subject: ODFW instream apps on Crooked and Deschutes

Kyle,
I've sent a letter to Big Falls Ranch, PacifiCorp and Ochoco I.D. asking if they are still interested in pursuing their protests on ODFW's applications. I expect to hear that they are, and Dwight would like to schedule a sit-down meeting in early 2016, in conjunction with another trip. He wants to tell the protestants what the next process steps are, possibly without ODFW. The plan is to set a limited time for any settlement efforts, and if they can't reach agreement in that time we'll send it to hearing. This is just a heads-up, but do tell me if you know anything about any current activities by the protestants or anyone else that you think could impact our conversation with them, or their stance on ODFW's application. No hurry on this.

Thanks,
Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

December 2, 2015

Mr. Rex Barber
Big Falls Ranch Co.
P.O. Box 434
Terrebonne, OR 97760

Re: Protest to ODFW Instream Water Right Application IS-70695 Deschutes River

Dear Mr. Barber:

The Oregon Department of Fish and Wildlife filed numerous applications for instream water rights in 1990 on various streams around Oregon. Your organization protested Application #70695 on the Deschutes River. Water Resources is working to resolve the protests where possible, and where resolution is not possible, preparing the application for referral to contested case hearing. OWRD would like to arrange a meeting to discuss the application, the protest and possible next steps for the parties. We are hoping to arrange a meeting in early 2016 with all protestants to the application.

Please contact me at the number or email address below and let me know whether your organization still has an interest in pursuing the protest in light of developments since 1990.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Right Services Division
Phone: 503-986-0820
Email: patricia.e.mccarty@wrd.state.or.us

Enc. IS-70695 file copy



Patricia McCarty

From: Patricia McCarty
Sent: Friday, May 06, 2011 2:32 PM
To: John Sample (john.sample@pacificorp.com)
Subject: 1996 Pacificorp protest of ODFW instream appl

Hi John,

Who would be to right person at PacifiCorp to consult regarding a protest filed in 1996 to a ODFW instream application? The protest is on IS-70695, for the Deschutes River from North Canal Dam, RM 165 to Round Butte Reservoir, RM 119.5. PacifiCorp was concerned that it would affect the operation of the Cline Falls project.

It is still a live application and protest, so I need for PacifiCorp to either withdraw the protest or be prepared to see a final order denying the protest (the instream would be junior to PacifiCorp's rights).

Hope to hear from you soon,

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

INTEROFFICE MEMORANDUM
Water Rights Section

~~TO: Rick Bailey~~

FROM: Dwight French, x268 *DF*

DATE: March 26, 1997

RE: Water Availability for ISWR applications/files

You asked about the file copies of Estimated Average Natural Flow (EANF) for ISWR applications.

There is not a printout in each file similar to what you would generally see in an out of stream application file. The EANF information is in either the Technical Review (TR) or Initial Review (IR) as well as the Proposed Final Order (PFO).

During the processing of the ISWR applications, Rick Cooper and/or Ken Stahr would provide us with a electronic copy of the water availability information for a particular group of ISWR applications. We would then cut and paste that information directly into the TR or IR. When preparing the PFO, we would cut and paste from the TR or IR directly into the PFO.

In summary, our EANF numbers are in the TR or IR and the PFO for each particular ISWR application file.

cc: Mike Mattick

All Protested ISWR Files

Basin	App Num
-------	---------

2

OK 71556 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 2 : 1

4

OK 71793 W

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 71798 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72076 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72077 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72078 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72079 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72080 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72081 W

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 4 : 8

5

OK 70353 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70354 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70357 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70605 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70612 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

73199 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 5 : 13

6

Checked out to Dwight

69949 A

69949 S

69951 S

69951 A

69958 S

69958 A

69958 S

69959 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

8
9
18
74
2
1
3
9
19
2
12
12

4/2/97

Basin	App Num
-------	---------

6

	69959	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69959	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69961	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69961	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69961	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69963	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69963	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
	69963	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS	
OK	70251	A	OREGON DEPARTMENT OF FISH & WILDLIFE	
OK	70589	A	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70640	S	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70640	A	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70641	A	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70641	S	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70642	A	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70642	S	OREGON DEPARTMENT OF FISH & WILDLIFE	
	OK	70645	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70645	S	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70646	S	OREGON DEPARTMENT OF FISH & WILDLIFE	
	70646	A	OREGON DEPARTMENT OF FISH & WILDLIFE	
70651	S	OREGON DEPARTMENT OF FISH & WILDLIFE		
70651	A	OREGON DEPARTMENT OF FISH & WILDLIFE		
70652	A	OREGON DEPARTMENT OF FISH & WILDLIFE		
70652	S	OREGON DEPARTMENT OF FISH & WILDLIFE		
70653	S	OREGON DEPARTMENT OF FISH & WILDLIFE		
70653	A	OREGON DEPARTMENT OF FISH & WILDLIFE		
70654	S	OREGON DEPARTMENT OF FISH & WILDLIFE		
70654	A	OREGON DEPARTMENT OF FISH & WILDLIFE		
70655	S	OREGON DEPARTMENT OF FISH & WILDLIFE		
70655	A	OREGON DEPARTMENT OF FISH & WILDLIFE		

Total for Basin 6 : 38

9

	70863	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70864	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70870	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72163	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72168	S	OREGON DEPARTMENT OF FISH & WILDLIFE

Instream Applications with Protests
4/2/97

Basin	App Num		
9			
	72168	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72169	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72169	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	72170	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72173	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72181	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72186	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72187	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72188	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72191	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72194	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin	9 :	16	
10			
	71450	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71455	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	71455	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin	10 :	3	
11			
	<i>Dwight Done Right!</i> 70024	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
Total for Basin	11 :	1	
12			
	71467	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71468	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71472	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin	12 :	3	
13			
	70486	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70487	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70656	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70657	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70658	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70659	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70662	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70663	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70664	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin	13 :	9	

Instream Applications with Protests

4/2/97

Basin	App Num
-------	---------

14

DWF	70094	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	70094	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	70094	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	70798	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70798	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70799	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70799	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70800	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70800	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70801	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70801	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70802	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70802	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70804	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70804	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70807	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70807	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70807	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70808	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70808	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70809	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70809	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70809	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70815	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70815	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70816	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70816	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70821	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Instream Applications with Protests

4/2/97

Basin	App Num		
14			
	70824	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70826	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 14 :	46		
15			
	70982	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70993	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70998	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	71008	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71201	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71614	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71622	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72843	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 15 :	8		
16			
			1
	71172	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71173	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71174	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71181	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71182	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71183	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71184	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71185	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71190	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71192	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71193	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	73350	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 16 :	12		
17			
	70228	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Instream Applications with Protests

4/2/97

Basin	App Num		
17			
	70229	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70230	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70348	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70348	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70448	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70448	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70574	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70877	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70891	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70895	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70895	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70915	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71697	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	80446	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 17 : 15

173

STATE OF OREGON
WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: MARIE LICARI, FISCAL
CC: FILE
FROM: Russ Klassen

original

SUBJECT: REQUEST FOR REFUND CHECK

PLEASE REFUND \$ 200⁰⁰ TO Arnold Lee Dist
FILE # 70695, RECEIPT # 7069. THESE FUNDS ARE
REFUNDED DUE TO :

- APPLICATION REJECTED
- APPLICATION WITHDRAWN
- EXCESS FEES COLLECTED FOR APPLICATION
- FILE CLOSED
- PROTEST FILING FEE
- OTHER: _____

*772³⁵
0223*

PLEASE INCLUDE THE FOLLOWING MAILING ADDRESS ON THE CHECK:

*19885 Rocking Horse Road
Bend, OR 97702*

SEE 70764

MAR 20 1997

March 18, 1997

Curt A. Baney
Chair, Arnold Irrigation District
19885 Rocking Horse Road
Bend, Oregon 97702

WATER
RESOURCES
DEPARTMENT

RE: Protest on Proposed Final Order - Instream Water Right
Application IS-70695

Dear Mr. Baney:

On October 11, 1996, the Department received your protest to the Proposed Final Order for Instream Water Right Application IS-70695. The protest you submitted was within the protest deadline, however, it does not meet the requirements of a complete protest under Oregon law. The protest cannot be accepted.

Specifically, under ORS 537.153(6)(f) a protest must be accompanied by the statutorily required fee of \$200.00. The protest fee submitted by the District was received (7) days after the close of the protest period. In addition, Oregon Administrative Rules 690-02-030 and 690-02-050, require that a protest contain proof of service upon the applicant, Oregon Department of Fish and Wildlife. Your protest was not served on Oregon Department of Fish and Wildlife by mail or in person. The fee requirement, protest deadline, and proof of service requirement are described under "Protest Rights" on page (4) of the Proposed Final Order. The protest does not meet the legal requirements of a complete protest and therefore cannot be accepted.

I want to assure you that your comments remain an important part of the water right file. In developing the final order and certificate your comments will be considered along with any other protests and comments in the file.

By copy of this letter I am requesting the Department's fiscal section refund the fees you submitted in the amount of \$200.00.

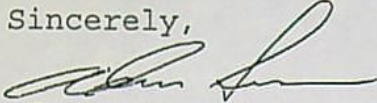


Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

Page 2.

If you have any question please feel free to contact me at 1-800-624-3199 ex. 262.

Sincerely,



Adam Sussman
Program Analyst, Water Rights Section

cc: Dwight French, OWRD
Dick Bailey, OWRD
Rick Kruger, ODFW
Fiscal Section
File

Jerry Gainey, OWRD
Watermaster District 11
Bob Main, OWRD

388572

WARRANT NO.
114426090

WATER RESOURCES DEPARTMENT

(503) 378-8455

INVOICE NO.	INVOICE DATE	INVOICE DESCRIPTION	AGY	DOCUMENT	AMOUNT
		REV REF 70764 7669	690	VP003147	200.00
		REV REF 70695 7669	690	VP003148	200.00

VENDOR NAME:	ARNOLD IRR DIST	ISSUE DATE:	WARRANT AMOUNT
VENDOR NUMBER:	9690000001	03/24/97	400.00

11387

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # 7669

158 12TH ST. N.E.
SALEM, OR 97310-0210
378-8455 / 378-8139 (FAX)

INVOICE #

Debit	Cred Taken	Net Amt
00	0.00	200.00
00	0.00	200.00
: Check Amount		400.00

RECEIVED FROM: Arnold Ingolia
BY: Diet

APPLICATION	
PERMIT	
TRANSFER	

CASH: CHECK: # 96-45 OTHER: (IDENTIFY)

TOTAL REC'D \$ 400.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS	\$
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY)	\$
OTHER: (IDENTIFY)	\$

REDUCTION OF EXPENSE

CASH ACCT.	\$
VOUCHER #	

0427 WRD OPERATING ACCT

0407 MISCELLANEOUS		
0410 COPY & TAPE FEES		\$
0410 RESEARCH FEES		\$
0408 MISC REVENUE: (IDENTIFY)		\$
TC165 DEPOSIT LIAB. (IDENTIFY)		\$
WATER RIGHTS:		
0201 SURFACE WATER	EXAM FEE	RECORD FEE
0203 GROUND WATER	\$	0202 \$
0205 TRANSFER	\$	0204 \$
WELL CONSTRUCTION		
0218 WELL DRILL CONSTRUCTOR	EXAM FEE	LICENSE FEE
LANDOWNER'S PERMIT	\$	0219 \$
		0220 \$

IS 70764
IS 70695

11387

0223 OTHER (IDENTIFY) Protest PRA 77235 \$ 400.00

0437 WELL CONST. START FEE

0211 WELL CONST START FEE	\$	CARD #	
0210 MONITORING WELLS	\$	CARD #	
OTHER (IDENTIFY)			

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS	\$
-----------------------	----

0467 HYDRO ACTIVITY


0233 POWER LICENSE FEE (FW/WRD)	LIC NUMBER	\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HRDRO APPLICATION		\$

RECEIPT # 7669

DATED: 10/18/96 BY: C. Rich

Distribution-White Copy-Customer, Yellow Copy-Fiscal, Blue Copy-File, Buff Copy-Fiscal

Arnold Irrigation District
 19885 Rocking Horse Rd
 Bend, Oregon 97702
 Phone: (541) 382-7664
 Fax: (541) 385-0335



The following transmission consists of 2 pages, including this cover.

PLEASE DELIVER THIS TRANSMISSION IMMEDIATELY TO:

Name: *Adam Sussman*
Company: *OWRD*
This transmission is from: *Marlene*

IF ANY OF THESE PAGES ARE NOT LEGIBLE OR YOU DO NOT
RECEIVE ALL THE PAGES, PLEASE NOTIFY.

Telephone (503) 382-7664
Fax (503) 385-0335

Message:

The \$400.00 fee will be mailed No Later than
~~Monday~~ Tuesday the 15th.

This Letter addresses IS 70764 +
IS 70695



Arnold Irrigation District
19885 Rocking Horse Road
Bend, Oregon 97702
541-382-7664 FAX 541-385-0335

October 11, 1996

PFO Requests
Proposed Final Order Team
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97310

Dear Sir or Madam,

We are submitting this protest of IS 70764 Deschutes River from Crane Prairie Reservoir at River Mile 237.0 (NWNW, Section 16, Township 21S, Range 8E WM) to Wickiup Reservoir at River Mile 238.5 (SENW, Section 21, Township 21S, Range 8E WM) because the Instream Water Right Application is more than the historical natural flow and the long term implications to our water rights.

We are also submitting a protest of IS 70695 Deschutes River From North Canal Dam River Mile 165 (Section 29, T17S, R12E); to Round Butte Reservoir River Mile 119.5 (NENE, Section 29, T12S, R12E) because the Instream Water Right Application is more than the historical natural flow and the long term implications to our water rights. Enclosed is the required \$400 fee, \$200 for each protest.

Sincerely,

Curt A. Baney, Jr.
Chairman
Board of Directors

RECEIVED

OCT 18 1996

WATER RESOURCES
SALEM, OREGON



Arnold Irrigation District
19885 Rocking Horse Road

Bend, Oregon 97702
541-382-7664 FAX 541-385-0335

October 11, 1996

PFO Requests
Proposed Final Order Team
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97310

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Sincerely,

Curt A. Baney, Jr.
Chairman
Board of Directors



Oregon

John A. Kitzhaber, M.D., Governor

Department of Fish and Wildlife

Habitat Conservation Division

2501 SW First Avenue

PO Box 59

Portland, OR 97207

(503) 872-5255

FAX (503) 872-5269

TDD (503) 872-5259

Internet www: <http://www.dfw.state.or.us/>

//www.dfw.state.or.us/

RECEIVED

FEB 19 1999

WATER RESOURCES DEPT.
SALEM, OREGON



DATE: February 12, 1999

TO: Karen Russell, WaterWatch of Oregon

FROM: Rick Kruger, Instream Water Right Program Leader, Habitat Division

SUBJ: Middle Deschutes River, Protested Instream Water Right

Per your verbal request, enclosed please find copies of protests by Rex Barber and PacifiCorp on the Instream Water Right Application for the Middle Deschutes River (App No. 70695). Please let me know if you have any questions or desire any additional information. I can be reached by telephone at 503-872-5255 ext 5584, or by email at rick.kruger@state.or.us.

c: Jill Zarnowitz, Water Policy
Kay Brown, Acting Division Director
File: IWR 70695

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **7489**

158 12TH ST. N.E.
 SALEM, OR 97310-0210
 378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Big Falls Ranch Co APPLICATION 70695
 BY: _____ PERMIT _____
 TRANSFER _____

CASH: CHECK: # 96-618 OTHER: (IDENTIFY) _____
 TOTAL REC'D \$ 200.

0417 WRD MISC CASH ACCT

ADJUDICATIONS	\$
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY) _____	\$
OTHER: (IDENTIFY) _____	\$

REDUCTION OF EXPENSE

CASH ACCT. _____ \$ _____
 VOUCHER # _____

0427 WRD OPERATING ACCT

PCA AND OBJECT CLASS		VOUCHER #
MISCELLANEOUS		
0407 COPY & TAPE FEES		\$
0410 RESEARCH FEES		\$
0408 MISC REVENUE: (IDENTIFY) _____		\$
TC165 DEPOSIT LIAB. (IDENTIFY) _____		\$
WATER RIGHTS:		
0201 SURFACE WATER	EXAM FEE \$	0202 RECORD FEE \$
0203 GROUND WATER	\$	0204 \$
0205 TRANSFER	\$	0206 \$
WELL CONSTRUCTION		
0218 WELL DRILL CONSTRUCTOR	EXAM FEE \$	0219 LICENSE FEE \$
LANDOWNER'S PERMIT		0220 \$

0223 OTHER (IDENTIFY) Protest \$200.

0437 WELL CONST. START FEE

0211 WELL CONST START FEE	\$	CARD #
0210 MONITORING WELLS	\$	CARD #
OTHER (IDENTIFY) _____		

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS	\$
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0467 HYDRO ACTIVITY

0233 POWER LICENSE FEE (FW/WRD)	LIC NUMBER	\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HRDRO APPLICATION _____		\$

RECEIPT # **7489**

DATED: 10-11-96 BY: D. Bushnell

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON
WATER RIGHTS DIVISION

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OCT 11 1996

In the Matter of Surface Water Application)
IS #70695 in the Name of Oregon Department)
of Fish and Wildlife for Water Use,)
Deschutes County, Jefferson County)

PROTEST TO)
PROPOSED FINAL)
ORDER)
WATER RESOURCES DEPT.
SALEM, OREGON

Protestant Rex Barber Jr., and Big Falls Ranch Company, in accordance with ORS 537.153 (6) and OAR 690-77-043, submits the following Protest to Proposed Final Order for Application IS #70695.

I. INTRODUCTION

Protestant's address is 70470 N.W. Lower Bridge Way, Terrebonne, Oregon, 97760; phone number (541) 548-8954. Big Falls Ranch Company, P.O. Box 434, Terrebonne, Oregon, 97760; phone number (541) 548-8954. Protestant is the owner and water user of irrigation water rights from Deep Canyon Creek and McKenzie Canyon Creek, a tributary of the Deschutes River.

Protestant asserts that the Proposed Final Order by the Water Resources Department ("WRD" or "Department") is defective and in error and that there are elements of the water right as approved that will impair or be detrimental to the public interest, based on the facts and issues set forth below.

II. FLOWS REQUESTED WILL BE DETRIMENTAL TO MANY FORMS OF WILDLIFE INCLUDING ENDANGERED SPECIES AND THEREFORE WILL BE DETRIMENTAL TO THE PUBLIC INTEREST.

The instream water right flows requested will have a detrimental impact on the eco-system that has developed over the past 50 to 100 years. Average flows during the months of April - October are substantially lower than those requested. Nesting habitat (islands) for a variety of waterfowl are created by the present low flows during April - October and would be destroyed if higher flows were granted during this time period. A partial list of the effected species include Blue Heron (an endangered species), a variety of ducks including the Canvas Back, Mallard and Teal, and at least one species of Canadian Goose. This eco-system should be viewed with equal importance as fish habitat and would be destroyed by the high flows requested.

III. PREFERENTIAL TREATMENT GIVEN TO OREGON DEPARTMENT OF FISH AND WILDLIFE.

Private citizens are not allowed to apply for water that is not there. The flows requested during April - October are virtually never there and are certainly not there 50 percent of the time as is required for all other water right applications. I believe there are serious legal questions which arise from this preferential treatment.

RB

CONCLUSION

This protest is filed in accordance with OAR 690-77-043. The issues raised should be considered as part of a contested case hearing. The WRD's Proposed Final Order is inadequate and defective and has failed to follow applicable rules. A thorough review of the Application is necessary to determine the quantity of water necessary to support all forms of wildlife to determine all aspects of the public interest issue.

For the reasons set forth above, the protestant asserts that the application is defective and should be returned to the applicants. The flow levels requested are excessive and are detrimental to many aspects of public use. Tunnel vision in favor of fish habitat is not in the overall public interest. Flow levels set at the rates proposed will interfere with future maximum economic development of the waters of the State of Oregon. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved. (ORS 537.170 (8)(e)) . If approved, an exception for the stockwater use should be added as a condition of the right.

Based on the points discussed above, the Proposed Final Order should deny the application for a permit.

Respectfully submitted the 10th day of October, 1996.

By:



By:

Big Falls Ranch Co
By Guy Barber

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WATER RESOURCES DEPT.
SALEM, OREGON

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 1996 I served a true and accurate copy of the foregoing Protest to the Proposed Final Order on the applicant by mailing said copy by first class mail, postage prepaid, by depositing said copy in the United States Post Office in Terrebonne, Oregon, addressed as set forth below:

Oregon Department of Fish & Wildlife
2501 SW First Avenue
P.O. Box 59
Portland, Oregon 97207

By:

Ray Barber
Big Falls Ranch Co
By Ray Barber

Protestant

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WATER RESOURCES DEPT.
SALEM, OREGON

CC: Adam

STOEL RIVES LLP

ATTORNEYS

STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE, SUITE 2300
PORTLAND, OREGON 97204-1268

Phone (503) 224-3380 Fax (503) 220-2480
TDD (503) 221-1045
Internet: www.stoel.com

May 16, 1997

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MAY 19 1997

WATER RESOURCES DEPT.
SALEM, OREGON

WILLIAM H. HOLMES
Direct Dial
(503) 294-9207
email whholmes@stoel.com

Mr. Dwight French
Water Rights and Adjudication Division
Oregon Water Resources Department
158 12th Street, N.E.
Salem, OR 97310-0210

Re: Instream Flow Application Nos. IS-73368, IS-73369, IS-73370,
IS-73371, IS-70094, IS-70812, IS-70813, IS-71172, IS-71173,
IS-71174, IS-71175, IS-73350, IS-70695, IS-73379

Dear Mr. French:

The Water Resources Department (the "Department") recently issued a series of superseding proposed final orders ("PFOs") for four instream water rights applications in the Rogue River Basin. The applications were originally submitted by the Oregon Department of Fish and Wildlife ("ODFW") and include Applications IS-73368, IS-73369, IS-73370, and IS-73371. PacifiCorp operates hydroelectric facilities on the Rogue River and, on behalf of PacifiCorp, we have filed protests to all four applications.

PacifiCorp is prepared, however, to enter into a global settlement with ODFW concerning the various instream rights that affect rivers where PacifiCorp conducts hydroelectric operations. The language that the Department added to the superseding Rogue River PFOs provides a good starting point.

If the Department, ODFW, and PacifiCorp can agree on the following points, PacifiCorp would be willing to withdraw its objections to the instream water rights that it has protested:

1. PacifiCorp's hydroelectric facilities on the Rogue River and elsewhere are federally licensed. Therefore, condition no. 6 in the Rogue River Draft Certificates, (including IS-73368, IS-73369, IS-73370, and IS-73371) should be amended as follows:

STOEL RIVES LLP

Mr. Dwight French
May 16, 1997
Page 2

“6. The instream water right will have no effect on hydroelectric uses authorized by the State of Oregon or any federal agency.” (Emphasis shows addition.)

2. Condition Nos. 6 (as amended above), 7, and 8,¹ which were added to the Rogue River Draft Certificates, should be added to the certificates accompanying the following applications: IS-70094, IS-70812, and IS-70813 (Klamath Basin); IS-71172, IS-71173, IS-71174, IS-71175, and IS-73350 (North Umpqua Basin); IS-70695 (Deschutes Basin); and IS-73379 (Rogue Basin).

3. PacifiCorp believes that ODFW's requested instream flows are too large and are not supported by substantial evidence in the record. This issue is partly resolved by Condition Nos. 6, 7, and 8, which make it clear that each instream flow is subordinate to PacifiCorp's hydroelectric rights. However, these conditions do not resolve PacifiCorp's remaining concern, which is that ODFW's claimed flow levels could be used against PacifiCorp in a future proceeding.

PacifiCorp believes that this issue can be resolved if ODFW submits for the record in each of the instream applications described above a letter stating that (1) ODFW recognizes that PacifiCorp disagrees with the instream flow levels proposed by ODFW; (2) the parties have agreed to disagree for purposes of the issuance of the instream water rights certificates; (3) ODFW will not attempt to use an instream water right in any future state or federal proceeding as evidence that PacifiCorp has agreed to or acquiesced in such instream flows; (4) PacifiCorp shall not be collaterally estopped or barred by administrative res judicata in any future state or federal proceeding to raise such arguments or introduce such evidence as it deems reasonable or appropriate regarding appropriate flow levels; (5) ODFW will negotiate in good faith should PacifiCorp ever request the use of additional stream flows that are in conflict with the instream rights, just as it has with respect to instream flows at the Powerdale facility in the Hood River; and (6) ODFW understands that these representations

¹ Conditions 7 and 8, as they appear in the Rogue River Draft Certificates, are as follows:

“7. The instream water right will not be enforceable against non-consumptive hydroelectric uses.

“8. The instream water right will have no call on water legally stored under a senior water right.”

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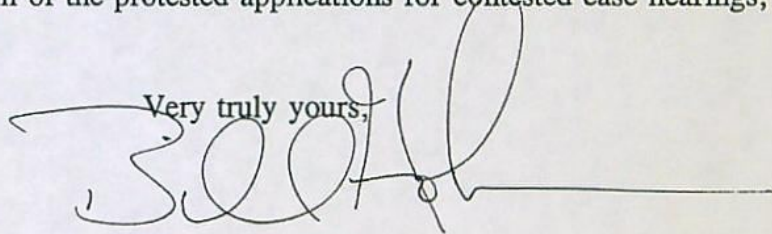
and understandings are a material inducement to PacifiCorp to withdraw its objections to the pending instream flow applications.

In exchange for these actions, PacifiCorp would be willing to withdraw its objections to all of the currently contested instream water rights applications and to dismiss its pending petition for review of IS-71175 (North Umpqua Basin). PacifiCorp v. Oregon Water Resources Department and Oregon Water Resources Commission, No. 96C14220.

After you have had an opportunity to review this settlement proposal, please contact me at 294-9207 or my associate, David Filippi, at 294-9529. We would, of course, be willing to meet with both Department and ODFW representatives to discuss a settlement of PacifiCorp's protests.

If ODFW is unwilling to further discuss settlement at this time, we request that the Department promptly schedule all of the protested applications for contested case hearings, as required by ORS 537.175.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. H. Holmes', with a long horizontal line extending to the right.

William H. Holmes

cc: William R. Cook, Esq.
Karen L. Moynahan, Esq.

STATE OF OREGON
WATER RESOURCES DEPARTMENT

158 12TH ST. N.E.
 SALEM, OR 97310-0210
 378-8455 / 378-8130 (FAX)

RECEIPT # **7531**

INVOICE # _____

RECEIVED FROM: Stall River
 BY: _____

APPLICATION	70695
PERMIT	
TRANSFER	

CASH: CHECK: # 54-12 OTHER: (IDENTIFY)

TOTAL REC'D \$ 200.-

0417 WRD MISC CASH ACCT

ADJUDICATIONS	\$
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY)	\$
OTHER: (IDENTIFY)	\$

RECEIVED
 OVER THE COUNTER

REDUCTION OF EXPENSE

CASH ACCT.	\$
VOUCHER #	

0427 WRD OPERATING ACCT

MISCELLANEOUS		
0407 COPY & TAPE FEES		\$
0410 RESEARCH FEES		\$
0408 MISC REVENUE: (IDENTIFY)		\$
TC165 DEPOSIT LIAB. (IDENTIFY)		\$
WATER RIGHTS:		
0201 SURFACE WATER	\$	0202
0203 GROUND WATER	\$	0204
0205 TRANSFER	\$	0206
WELL CONSTRUCTION		
0218 WELL DRILL CONSTRUCTOR	\$	0219
LANDOWNER'S PERMIT		0220

PCA 77235

0223 OTHER (IDENTIFY) Protect \$200.-

0437 WELL CONST. START FEE

0211 WELL CONST START FEE	\$	CARD #
0210 MONITORING WELLS	\$	CARD #
OTHER (IDENTIFY)		

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS	\$
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0467 HYDRO ACTIVITY

0233 POWER LICENSE FEE (FW/WRD)	LIC NUMBER	\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HRDRO APPLICATION		\$

RECEIPT # **7531**

DATED: 10-11-96 BY: D. Bradwell

STOEL RIVES LLP

ATTORNEYS

STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE, SUITE 2300
PORTLAND, OREGON 97204-1268
Phone (503) 224-3380 Fax (503) 220-2480
TDD (503) 221-1045
Internet: www.stoel.com

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WATER RESOURCES DEPT.
SALEM, OREGON

October 11, 1996

PETER L. SERRURIER

Direct Dial Number
(503) 294-9190
internet:plserrurier@stoel.com

VIA HAND DELIVERY

Mr. Dwight French, Acting Administrator
Water Rights and Adjudications Division
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97310

Re: Protest of PacifiCorp to the Proposed Final Order for Instream Water Rights Application No. 70695

Dear Mr. French:

PacifiCorp operates the Cline Falls hydroelectric project (the "Project"). The Oregon Department of Fish and Wildlife ("ODFW") has submitted an application (application no. 70695) for an instream water right on the Deschutes River. Because the instream right may affect PacifiCorp's operation of the Project, PacifiCorp has a strong interest in the Water Resources Department's (the "WRD" or "Department") review of this matter. PacifiCorp submits this protest to the Department's Proposed Final Order ("PFO") recommending the approval of application no. 70695.

The name of the protestant is PacifiCorp. Its address is 920 SW Sixth Avenue, 610 PSB, Portland, Oregon 97204. Mr. Stanley A. deSousa is the contact person at PacifiCorp (503/464-5343). All formal correspondence regarding the protest should be sent to me at the letterhead address with a copy to Mr. deSousa. Any questions or comments on technical or policy matters should be addressed to Mr. deSousa.

PacifiCorp's interest in the proposed final order ("PFO") is as a holder of a hydroelectric license and senior water rights for the Project. A detailed description of how the PFO would impair PacifiCorp's interest and how it is otherwise deficient is provided below, along with citations to legal authority supporting PacifiCorp's position. Although this protest attempts to raise all reasonably ascertainable issues, because

PDX1A-51154.1 58815-0017

RB

STOEL RIVES LLP

A T T O R N E Y S

STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE, SUITE 2300
PORTLAND, OREGON 97204-1268

Phone (503) 224-3380 Fax (503) 220-2480
TDD (503) 221-1045
Internet: www.stoel.com

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PacifiCorp received actual notice of the PFO on the day before the close of the protest period, PacifiCorp reserves the right to raise additional issues after it has had an adequate opportunity to review the complete WRD file on this application.

1. The Application and Proposed Final Order are Incomplete and Deficient.

Under OAR 690-77-020(6) applicants requesting instream water rights to be supplied from stored water must refer to the reservoir as the source of supply and show by documentary evidence "that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request." Although this rule was not adopted until after this application was filed, the rule is now in effect and the application should have been required to be supplemented to add this required information. In fact, even though the requested instream water right is dependent on stored water, ODFW has not entered into such an agreement with PacifiCorp. Without the information required by WRD rules for instream flow applications, the application should be rejected as incomplete.

2. The Proposed Final Order Contains Incorrect Findings of Fact.

The estimated average annual natural flows for the reach is not based on accurate, up-to-date information about the flows in this reach of the Deschutes River and fails to correctly differentiate between natural flows, storage releases and natural inflows.

3. The Public Interest Presumption Is Not Established.

- a. The Proposed Final Order Fails To Recognize Injury to and Impairment of PacifiCorp's State Water Rights.

The Department may not grant instream water rights if such action would impair the exercise of preexisting water rights. ORS 537.334(2); OAR 690-77-015(1). PacifiCorp holds both certificated and unadjudicated pre-1909 water rights within or above the reach affected by this application. The PFO concludes, incorrectly, that the instream water right will not injure other water rights.

PacifiCorp's state hydroelectric license grants it an additional right to store the amount of flows from Deschutes River necessary to store water at the Project. This license is a fully effective and enforceable water right. ORS 543.110; see also Op Atty Gen No. 8208 (May 26, 1989) (rights to store water are not subordinate to direct use

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 SALEM, OREGON

rights with junior priority dates). Thus, the PFO also is flawed for failing to consider the rights granted by the hydroelectric license.

The grant of the requested instream right could injure PacifiCorp's existing water rights. The PFO and draft certificate do not condition the instream right upon senior water rights being satisfied. As proposed, the certificate might be interpreted to require PacifiCorp to meet instream flow levels by releases from storage, or by-passes of the reservoirs. This would reduce hydro-electric generation, at considerable cost to PacifiCorp. Unless the Department makes additional specific findings and adds conditions assuring that the proposed use would not injure PacifiCorp's water rights, the Department has no choice but to deny the application. OAR 690-77-037(2).

To respond to PacifiCorp's concerns, the following conditions should be included in any instream water right certificate issued on the Deschutes River River:

1. "The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights."
 (This is a standard condition in most water right permits).
 2. "This water right shall not take away or impair any vested, permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date of the issuance of this certificate." This is consistent with ORS 537.334(2))
 3. "The instream right shall not require any releases from ~~Falls~~^{the} Reservoir."
- b. There is No Evidence that the Proposed Use Complies with the State Agency Agreement for Land Use.

There is no evidence of any kind in the WRD file for this application indicating that the county was ever notified of this application. There is no land use compatibility statement in the file. The requirements of OAR 690, Division 5 have not been met. The water right cannot be granted unless they are met.

- c. Water is Not Available for the Proposed Use.

The PFO correctly concludes that water is not available for the proposed use in the amounts requested. Although the proposed instream flows may not fully appropriate the source, no water is available for additional storage given the water

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rights already held by PacifiCorp. The PFO is incorrect in concluding that water is available for storage, and in any case, the proposed use does not involve storage.

For the reasons stated above, the public interest presumption of ORS 537.153(2) and OAR 690-77-033(1) is not met. Not only is water not available, ~~the proposed use is not consistent with the Klamath Basin Compact,~~ will injure existing water rights, and fails to comply with other rules of the WRD and state law relating to land use.

4. The Proposed Use Cannot Be Found to be in the Public Interest Based on the Existing Record.

Under OAR 690-77-037(2), if the public interest presumption is not established, the WRD must determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8). Rather than doing this, the PFO simply concludes that the proposed use is consistent with the public interest "up to the limits of the estimated average natural flows." This conclusion is based only on the general provisions of OAR 690-77-015(2), (3) and (4) without any consideration of the specific factors listed in ORS 537.170(8). The PFO conclusions regarding even the general provisions relied upon are incorrect.

First, under OAR 690-77-015(2), if instream rights are requested at levels that exceed available water, it is recognized that the instream right protects the remaining supplies from future appropriation and "establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses." Here, the management objectives necessary to support the identified public uses are not at all clear. The PFO, at a minimum, must address how the proposed flows actually achieve the management objectives contained in the applications.

Second, under OAR 690-77-015(3) the amount of water appropriated for "out-of-stream purposes" are not to be considered in determining the amount of an instream water right. This rule is simply inconsistent with state law, which recognizes that existing water rights must be protected in granting instream water rights. Beyond this, it is inapplicable here since the water rights held by PacifiCorp are largely not for out-of stream purposes. They are for hydroelectric generation instream.

Finally, as noted above, it is unclear whether the "estimated average natural flow" in this reach is accurately stated in the PFO. For these reasons, the PFO does not support the conclusion that the proposed use will not impair or be detrimental to the public interest.

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If the WRD had actually considered the factors it is required to consider in order to issue an instream water right when the public interest presumption has not been established, it could not find that this application is in the public interest. An examination of the statutory standards reveals several public interests that the proposed use would impair. These interests include: (1) power development, ORS 537.170(8)(a) (any required release of water from storage would result in a reduction in power generating capacity); (2) public recreation, ORS 537.170(8)(a) (any drawdown of the reservoirs to meet the requested flows would adversely affect recreational opportunities on reservoir); (3) "the maximum economic development of the waters involved," ORS 537.170(8)(b) (the economic loss caused by the reduction of power generating capacity greatly exceeds the negligible economic impact of greater instream flow on this reach); (4) "the prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved," ORS 537.170(8)(e) (maintenance of the requested instream flow would require costly and complex modifications to the Project, without any corollary economic benefit); and (5) the "vested or inchoate rights to the waters of this state or to the use of the waters of this state," ORS 537.170(8)(f) (the use would injure PacifiCorp's water rights unless further conditioned).

In addition, the PFO does not address the impacts of the proposed instream flow on the parameters limiting the water quality of this reach of the river. It is unclear what the effect of the requested instream flow will be on water quality, but the effect must be evaluated before a finding can be made that the requested flows will not adversely affect or impair the public interest.

Because the proposed use impairs the public interest according to the standards described in ORS 537.170(8), the Department is obligated to deny the application, unless it makes specific findings that, "considering all of the public interest factors listed in ORS 537.170(8) the issuance of an instream water right certificate will not impair or be detrimental to the public interest." OAR 690-77-037(5). Given the range of public interest factors that an instream water right would adversely affect, as described above, such findings would be impossible to make based on the existing record.

5. The Proposed Instream Water Right Is Restricted or Prohibited by the Federal Power Act.

The Department is required to assess potential statutory provisions in its technical review. OAR 690-77-029(1)(a). The PFO fails to address the effect of the Federal Power Act ("FPA") on ODFW's application, and is, therefore, deficient. If the PFO had considered the FPA, it would have been clear that the FPA precludes

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enforcement of the proposed instream right as against PacifiCorp's rights to generate electrical energy pursuant to its current or any future federal power license.

Several federal cases establish clearly that when Congress enacted the FPA, it asserted federal regulatory power over hydroelectric projects to the maximum extent of the federal government's constitutional authority, reserving to the states only their traditional authority to regulate out-of-stream, consumptive uses such as those associated with irrigation and municipal water systems. See First Iowa Hydro-Elec. Cooperative v. Federal Power Com'n, 328 US 152, 66 S Ct 906, 90 L Ed 1143 (1946); California v. FERC, 495 US 490, 110 S Ct 2024, 109 L Ed 2d 474 (1990); Sayles Hydro Associates v. Maughan, 985 F2d 451 (9th Cir 1993). In each case the court concluded that allowing states to enforce state instream flow requirements against federal licensees impermissibly conflicts with FERC's statutory duty to balance power and non-power values in licensing proceedings. Accordingly, the state instream flow requirements at issue in all three cases were held to be preempted by the FPA.⁹

Under the rule established by these cases, the proposed instream water right, whatever their legal effect with respect to other water users in the Deschutes River Basin, are not enforceable against PacifiCorp.

6. The Proposed Instream Water Rights Flow Levels are Not Supported by the Record.

Oregon law limits the amount of water that may be included in a request for a new instream right to "the amount necessary to support those public uses as recommended by the State Department of Fish and Wildlife." ORS 537.336(1) (emphasis added). However, the proposed instream water rights exceeds the level of flow necessary to protect the intended public use.

⁹ In PUD No. 1 v. Washington Dept. of Ecology, 511 US 700, 114 S Ct 1900, 128 L Ed 2d 716 (1994), the U.S. Supreme Court recognized state imposition of minimum stream flows in the certification of a hydroelectric power plant. However, the holding in PUD No. 1 is inapplicable because that case involved permitting requirements under the Clean Water Act, which is not an issue in ODFW's application. In addition, the proposed power plant in PUD No. 1 had not yet received a license from FERC, so the minimum flow requirement did not interfere with the existing rights of a federal licensee.

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a. ODFW's Use of the Oregon Method Is Impermissible.

According to the PFO, ODFW followed the so-called "Oregon Method" as the basis for its recommendations about the flows necessary to promote the stated public use. ODFW's own regulations indicate this method is less precise than the Instream Flow Incremental Methodology ("IFIM"). Indeed, these regulations require ODFW to use IFIM instead of the Oregon Method "if Department resources are available." OAR 635-400-015(14)(c)(A). IFIM data were readily available to ODFW, and ODFW's use of the Oregon Method violates its own regulations. Consequently, the PFO is flawed in its conclusion that the method of determining instream flow needs has been approved by administrative rule of the agency submitting the application.

b. No Support Exists for ODFW's Contention that the Requested Flows Are "Necessary."

Neither ODFW's application nor the Department's PFO provide any information about how ODFW applied the Oregon Method to arrive at its proposed flows for the Deschutes River. None of the reports cited in the application provide specifics to support the proposed flows and none of them are in the WRD file for this application. ODFW's letter of April 5, 1996, contains only the bare assertion that the flows requested are the minimum amount necessary to maintain native wildlife. It provides no support for this claim. Without support for its numbers, ODFW fails to make even a minimal showing that the amount of water in its application is either "necessary" or reasonable. Without this information, the application is defective for seeking water not demonstrated to be in the public interest, and the PFO is deficient for failing to identify this flaw.

6. The Average Flow Data Fail To Take Into Account the Distinction Between Stored Water and Natural Flows.

The PFO states the estimated amount of "natural flows available from the proposed source" but it fails to cite the source for this information. The report also fails to state whether the Department evaluated its "available water" analysis pursuant to the 80 percent availability requirement of the state water resources policy. OAR 690-400-010(11)(a). Given the design and operation of the Deschutes River system, it seems unlikely that average streamflows at these levels exist. Under Oregon law and the terms of PacifiCorp's hydroelectric license, releases of stored water are not "available" for new appropriation; they are being released for hydroelectric generation at PacifiCorp's downstream facilities.

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Page 8

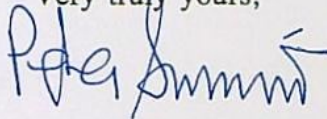
CONCLUSION

As discussed in the preceding paragraphs, application 700⁶⁹⁵~~94~~ and the Department's Proposed Final Order are defective on public interest and technical grounds. For that reason, PacifiCorp urges the Department to deny the application in its current form. PacifiCorp also requests that the Department recognize that significant water rights already exist on the Deschutes River in both existing certificated rights and pre-1909 unadjudicated rights that call into question whether any new rights, instream or otherwise, can be issued.

PacifiCorp recognizes the important public policy considerations reflected in the instream water right statutes. Nonetheless, Congress and the Oregon legislature also have codified public policies in the statutes regulating the operation of hydropower operations. More important, the Oregon legislature and Water Resources Commission have established specific laws and regulations for approving applications for instream water rights. The application for (IS 700⁶⁹⁵~~94~~) and its respective PFO are incorrect, incomplete and not consistent with Oregon laws and regulations. Accordingly, the WRD should issue an Order denying the application.

Please call if you have any questions or would like to meet with PacifiCorp to address its concerns.

Very truly yours,



Peter L. Serrurier

P-S:d-r
Enclosures

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OCT 11 1996

WATER RESOURCES DEPT.
SALEM, OREGON

CERTIFICATE OF SERVICE AND FILING

I certify that I served a true and correct copy of the foregoing Protest by mailing it in a sealed envelope, with first class postage prepaid, on October 11, 1996, to the following person:

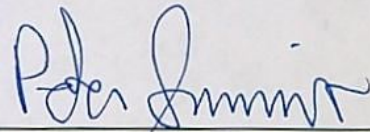
Mr. Al Mirati
Oregon Department of Fish & Wildlife
2501 SW First Avenue
Portland, OR 97207

I also certify that I filed the original of the foregoing Protest by hand delivering it in a sealed envelope on October 11, 1996, to:

Dwight French
Administrator, Water Rights and Adjudications Division
Oregon Water Resources Department
158 12th Street, N.E.
Salem, OR 97310-0210

STOEL RIVES LLP

By: _____



Peter L. Serrurier, OSB No. 90150
Of Attorneys for Protestants
PacifiCorp

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 70695

WATERMASTER # KYLE GORMAN

REGIONAL MANAGER: ~~BOB MAIN~~

ODF&W - County: Deschutes

DEQ

PARKS

OTHER STATE AGENCY IF NECESSARY:

DIVISION 33 LIST: _____ COLUMBIA RIVER INTERTRIBAL FISH COMMISSION; U.S. FISH & WILDLIFE;
(CHECK ONLY IF APPLICABLE) NORTHWEST POWER PLANNING COUNCIL & NATIONAL MARINE FISHERIES

POWER BUILDER UPDATER; _____

WATER FOR LIFE (TODD HEIDGERKEN)

OTHER ADDRESSES OF PEOPLE WHO PAID THE \$10 FEE:

PEOPLE WITH OBJECTIONS, COMMENTS OR REQUESTED COPY W/O \$10 (SEND THE \$10 LETTER):

CASEWORKER : CINDY SMITH

Oregon Water Resources Department
Water Rights/Adjudication Section

Water Right Application Number: IS 70695

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft certificate be issued with conditions.

Application History

On 9/19/90, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: DESCHUTES R tributary to COLUMBIA R

County: Deschutes

Purpose: Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

The amount of water (in cubic feet per second) requested by month:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

To be maintained in:

DESCHUTES RIVER FROM NORTH CANAL DAM RIVER MILE 165
(SECTION 29, T17S, R12E); TO ROUND BUTTE RESERVOIR RIVER
MILE 119.5 (NENE, SECTION 29, T12S, R12E)

The Department mailed the applicant notice of its Initial Review on December 12, 1995. Public notice of the application was provide in the Department's weekly public notice on December 27, 1996. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Deschutes Basin, Oregon, and Their Water Requirements; (an unpublished report).
- (b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.
- (c) Developing and Application of Spawning Velocity and Depth Criteria for Oregon Salmonids, Alan K. Smith, Transactions of the American Fisheries Society, April 1973.
- (d) Determining Stream Flows for Fish Life, Oregon State Game Commission Report, March 1972.

- (e) A letter dated April 5, 1996, stating that the flows requested in this application are the minimum amount necessary to restore, protect and enhance populations and habitats of native wildlife species at self-sustaining levels

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the proposed rate of use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

An assessment with respect to conditions previously imposed on other instream water rights granted for the same source has been completed.

An evaluation of the information received from the local government(s) regarding the compatibility of the proposed instream water use with land use plans and regulations has been completed.

The level of instream flow requested is based on the methods of determining instream flow needs that have been approved by administrative rule of the agency submitting this application.

Findings of Fact

The basin Basin Program allows the proposed use.

Senior water rights exist on this source or on downstream waters.

The source of water is within or above a State Scenic Waterway.

The source of water is not withdrawn from appropriation by order of the State Engineer or legislatively withdrawn by ORS 538.

The estimated average natural flow for the lower end of the requested reach is as follows (in cubic feet per second):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1380	1460	1470	1640	1720	1840	1390	1320	1340	1380	1330	1370

Conclusions of Law

Under the provisions of ORS 537.153, the Department must

presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complied with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the basin Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

The proposed use complies with the State Agency Agreement for land use.

The proposed instream flows do not fully appropriate this source of water year round. Water is available for additional storage.

Water is not available for the proposed use at the amount requested year round because the unappropriated water available is less than the amounts requested during some months.

For these reasons, the presumption set forth in ORS 537.153, as discussed above, has not been established. The application therefore has been processed without the statutory presumption.

"When instream water rights are set at levels which exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses." OAR 690-77-015(2).

"The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right." "The amount allowed during any time period for the water right shall not exceed the estimated average natural flow ..." (excerpted from OAR 690-77-015 (3) and (4)).

Because the proposed use exceeds the available water, it can not be presumed to be in the public interest. However, under the direction of OAR 690-77-015 (2)(3) and(4), the proposed use is in the public interest up to the limits of the estimated average natural flow.

Oregon law allows certain uses of water to take precedence over other uses in certain circumstances. When proposed uses of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption over any other use (excerpted from ORS 536.310 (12)).

The Department therefore concludes that

- the proposed use, as limited in the draft certificate, will not result in injury to other water rights,
- the proposed use, as limited in the draft certificate, will not impair or be detrimental to the public interest as provided in ORS 537.170.
- the proposed use, as limited in the draft certificate, will include the following conditions: for purposes of water distribution, this instream right shall not have priority over

human or livestock consumption.

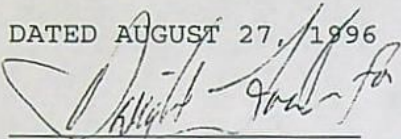
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

Recommendation

The Department recommends that the attached draft certificate be issued with conditions.

DATED AUGUST 27, 1996


Steven P. Applegate
Administrator
Water Rights and Adjudications Division

Protest Rights

Under the provisions of ORS 537.153(6) or 537.621(7), you have the right to submit a protest against this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050.
- Proof of service of the protest upon the applicant.

Your protest must be received in the Water Resources Department no later than October 11, 1996.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

DRAFT
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310

The specific limits for the use are listed below along with conditions of use.

Source: DESCHUTES R tributary to COLUMBIA R

County: Deschutes

Purpose: Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

DESCHUTES RIVER FROM NORTH CANAL DAM RIVER MILE 165
(SECTION 29, T17S, R12E); TO ROUND BUTTE RESERVOIR RIVER
MILE 119.5 (NENE, SECTION 29, T12S, R12E)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 9/19/90.

The following conditions apply to the use of water under this certificate:

1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.
4. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this ____ day of _____, 19__.

Water Resources Director

Recorded in State Record of Water Right Certificate number _____.

IS 70695

December 12, 1995

WATER
RESOURCES
DEPARTMENT

Rick Kruger
Oregon Department of Fish and Wildlife
2501 SW First Ave
PO Box 59
Portland OR 97207

Reference: Instream water rights in the Deschutes Basin,
Files 70087, 70247, 70339, 70353-70358, 70587,
70591, 70594-70598, 70605, 70606, 70611,
70695, 70698, 70752-70754, 70757, 70760, 71795,
71797, 73197

Dear Oregon Department of Fish and Wildlife:

This document, called and "Initial Review", is to inform you of the potential limitations to your proposed instream water right and to describe some of your options. Based on the information you have supplied, the Water Resources Department has made several determinations:

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under OAR 505, the Deschutes River Basin Program;

1. Application 70087

DESCHUTES R tributary to COLUMBIA R

DESCHUTES RIVER FM PELTON REGULATION DAM AT RIVER MILE 100.1 (SESW, SECTION 1, T10S, R12E WM); TO THE CONFLUENCE WITH COLUMBIA R AT RIVER MILE 0.0 (SWSW, SECTION 24, T2N, R15E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3000.0	3000.0	3500.0	3500.0	3500.0	3500.0	3500.0	3500.0	3500.0	3000.0	3000.0	3000.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5840.0	7050.0	7500.0	8230.0	7450.0	6570.0	5160.0	4750.0	4770.0	4910.0	5030	8653.70.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3000.0	3000.0	3500.0	3500.0	3500.0	3500.0	3500.0	3500.0	3500.0	3000.0	3000.0	3000.0



Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

Rick Kruger
 Oregon Department of Fish and Wildlife
 December 12, 1995
 page two

2. Application 70247

TROUT CR tributary to DESCHUTES R

TROUT CREEK AT CONFLUENCE WITH ANTELOPE CREEK RM 13.3
 (SWSE, SECTION 34, T8S, R15E) AT MOUTH OF TROUT CREEK RM 0.0 (NWNW, SECTION
 5, T9S, R14E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	67.0	73.0	73.0	73.0	67.0	67.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	73.0	73.0	73.0	73.0	67.0	25.0	25.0	25.0	25.0	25.0	25.0

b. The amount of water available in the appropriate reach is at a %50
 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
72.2	177.0	205.0	210.0	118.0	33.5	6.19	1.94	1.94	2.83	9.67	38.4

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	67.0	73.0	73.0	73.0	33.5	6.19	1.94	1.94	2.83	9.67	25.0
2nd½	25.0	73.0	73.0	73.0	73.0	33.5	6.19	1.94	1.94	2.83	9.67	25.0

3. Application 70339

TROUT CR tributary to DESCHUTES R

TROUT CREEK AT MOUTH OF CLOVER CREEK AT RIVER MILE 35.4
 (SWSE, SECTION 28, T10S, R17E); TO THE MOUTH OF ANTELOPE CREEK
 RM 13.3 (SWSE, SECTION 34, T8S, R15E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	67.0	73.0	73.0	73.0	67.0	67.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	73.0	73.0	73.0	73.0	67.0	25.0	25.0	25.0	25.0	25.0	25.0

b. The amount of water available in the appropriate reach is at a %50
 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
28.3	72.9	86.5	88.3	54.5	16.4	2.98	0.93	0.93	1.30	4.09	15.8

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	67.0	73.0	73.0	54.5	16.4	2.98	0.93	0.93	1.30	4.09	15.8
2nd½	25.0	72.9	73.0	73.0	54.5	16.4	2.98	0.93	0.93	1.30	4.09	15.8

Rick Kruger
 Oregon Department of Fish and Wildlife
 December 12, 1995
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4. Application 70353

CROOKED R tributary to DESCHUTES R

CROOKED RIVER AT MOUTH OF N FK CROOKED RIVER RM 114.0 (NENE, SECTION 7, T16S, R21E); TO PRINEVILLE RESERVOIR RM 90.0 (SESE, SECTION 13, T16S, R17E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	50.0	50.0	113.0	113.0	113.0	75.0	50.0	50.0	50.0	50.0	50.0	50.0
2nd½	50.0	75.0	113.0	113.0	113.0	75.0	50.0	50.0	50.0	50.0	50.0	50.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	192.0	392.0	741.0	960.0	622.0	321.0	93.2	47.8	55.7	66.3	80.6	134.0

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	50.0	50.0	113.0	113.0	113.0	75.0	50.0	47.8	50.0	50.0	50.0	50.0
2nd½	50.0	75.0	113.0	113.0	113.0	75.0	50.0	47.8	50.0	50.0	50.0	50.0

5. Application 70354

CROOKED R tributary to DESCHUTES R

CROOKED RIVER FROM BOWMAN DAM RIVER MILE 71.0 (SOWN, SECTION 11, T17S, R16E); TO LAKE BILLY CHINOOK RIVER MILE 6.0 (NWNE, SECTION 33, T12S, R12E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	75.0	75.0	255.0	255.0	255.0	150.0	75.0	75.0	75.0	75.0	75.0	75.0
2nd½	75.0	150.0	255.0	255.0	255.0	150.0	75.0	75.0	75.0	75.0	75.0	75.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	303.00	641.00	1100.0	1320.0	805.0	391.0	112.0	55.8	64.0	75.6	97.2	192.0

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	75.0	75.0	255.0	255.0	255.0	150.0	75.0	55.8	64.0	75.0	75.0	75.0
2nd½	75.0	150.0	255.0	255.0	255.0	150.0	75.0	55.8	64.0	75.0	75.0	75.0

Rick Kruger
Oregon Department of Fish and Wildlife
December 12, 1995
page four

6. Application 70355

N FK CROOKED R tributary to CROOKED R

N FK CROOKED RIVER AT MOUTH OF GRAY CREEK RIVER MILE 44.0 (SWSW, SECTION 8, T15S, R21E); TO MOUTH OF INDIAN CREEK RIVER MILE 35.5 (SWNE, SECTION 22, T14S, R21E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	5.0	5.0	16.0	16.0	16.0	12.0	5.0	5.0	5.0	5.0	5.0	5.0
2nd½	5.0	12.0	16.0	16.0	16.0	12.0	5.0	5.0	5.0	5.0	5.0	5.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.12	19.2	39.4	84.7	56.1	13.2	3.51	1.81	2.15	2.6	3.39	7.01

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	5.0	5.0	16.0	16.0	16.0	12.0	3.51	1.81	2.15	2.6	3.9	5.0
2nd½	5.0	12.0	16.0	16.0	16.0	12.0	3.51	1.81	2.15	2.6	3.9	5.0

7. Application 70356

N FK CROOKED R tributary to CROOKED R

N FK CROOKED RIVER AT MOUTH OF INDIAN CREEK RIVER MILE 35.5 (SWNE, SECTION 22, T14S, R22E); TO MOUTH OF DEEP CREEK RIVER MILE 26.0 (NESW, SECTION 27, T14S, R22E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	20.0	20.0	75.0	75.0	75.0	55.0	20.0	20.0	20.0	20.0	20.0	20.0
2nd½	20.0	55.0	75.0	75.0	75.0	55.0	20.0	20.0	20.0	20.0	20.0	20.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.3	67.7	148.0	308.0	234.0	118.0	27.9	13.4	13.9	10.3	9.78	19.6

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	20.0	20.0	75.0	75.0	75.0	55.0	20.0	13.4	13.9	10.3	9.78	19.6
2nd½	20.0	55.0	75.0	75.0	75.0	55.0	20.0	13.4	13.9	10.3	9.78	19.6

Rick Kruger
Oregon Department of Fish and Wildlife
December 12, 1995
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10. Application 70587

PETERSON CR tributary to N FK CROOKED R

PETERSON CREEK FROM MCCARTHY SPRINGS (SENW, SECTION 15, T13S, R22E); TO THE MOUTH RIVER MILE 0.0 (SENE, SECTION 22, T14S, R21E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	10.0	10.0	10.0	4.0	4.0	4.0	10.0	6.0	6.0	6.0
2nd½	6.0	6.0	10.0	10.0	10.0	4.0	4.0	6.0	10.0	6.0	6.0	6.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2.68	4.52	10.1	20.8	16.4	9.45	2.2	1.05	1.07	0.71	0.6	1.19

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2.68	4.52	10.0	10.0	10.0	4.0	2.2	1.05	1.07	0.71	0.6	1.19

11. Application 70591

WILLOW CR tributary to DESCHUTES R

WILLOW CREEK FROM COON CREEK (SENW, SECTION 27, T12S, R15E); TO THE MOUTH RIVER MILE 0.0 (SWNW, SECTION 30, T10S, R13E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	5.0	5.0	13.0	13.0	13.0	8.0	5.0	5.0	5.0	5.0	5.0	5.0
2nd½	5.0	8.0	13.0	13.0	13.0	8.0	5.0	5.0	5.0	5.0	5.0	5.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.01	10.6	23.3	23.4	16.0	8.78	2.54	1.16	1.19	1.01	0.92	2.38

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	4.01	5.0	13.0	13.0	13.0	8.0	2.54	1.16	1.19	1.01	0.92	2.38
2nd½	4.01	8.0	13.0	13.0	13.0	8.0	2.54	1.16	1.19	1.01	0.92	2.38

Rick Kruger
Oregon Department of Fish and Wildlife
December 12, 1995
page seven

12. Application 70594

MCKAY CR tributary to CROOKED R

MCKAY CREEK FROM LITTLE MCKAY CREEK (NWSE, SECTION 5, T13S, R17E); TO ALLEN CREEK (SENE, SECTION 28, T13S, R16E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	21.0	21.0	37.0	37.0	37.0	31.0	21.0	21.0	21.0	21.0	21.0	21.0
2nd%	21.0	31.0	37.0	37.0	37.0	31.0	21.0	21.0	21.0	21.0	21.0	21.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5.64	14.6	17.3	17.6	10.9	3.27	0.59	0.19	0.19	0.26	0.82	3.16

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5.64	14.6	17.3	17.6	10.9	3.27	0.59	0.19	0.19	0.26	0.82	3.16

13. Application 70595

MCKAY CR tributary to CROOKED R

MCKAY CREEK FROM ALLEN CREEK (SENE, SECTION 28, T13S, R16E); TO THE MOUTH RIVER MILE 0.0 (NESW, SECTION 27, T14S, R15E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	26.0	26.0	50.0	50.0	50.0	39.0	26.0	26.0	26.0	26.0	26.0	26.0
2nd%	26.0	39.0	50.0	50.0	50.0	39.0	26.0	26.0	26.0	26.0	26.0	26.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.0	28.4	33.7	34.4	21.2	6.37	1.16	0.36	0.36	0.51	1.59	6.16

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	11.0	26.0	33.7	34.4	21.2	6.37	1.16	0.36	0.36	0.51	1.59	6.16
2nd%	11.0	28.4	33.7	34.4	21.2	6.37	1.16	0.36	0.36	0.51	1.59	6.16

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14. Application 70596

ALLEN CR tributary to MCKAY CR

ALLEN CREEK FROM FALL CREEK (SWNE, SECTION 3, T13S, R16E);
TO THE MOUTH RIVER MILE 0.0 (SENE, SECTION 28, T13S, R16E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	13.0	13.0	32.0	32.0	32.0	19.0	13.0	13.0	13.0	13.0	13.0	13.0
2nd½	13.0	19.0	32.0	32.0	32.0	19.0	13.0	13.0	13.0	13.0	13.0	13.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.05	7.86	9.33	9.53	5.88	1.77	0.32	0.10	0.10	0.14	0.44	1.71

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.05	7.86	9.33	9.53	5.88	1.77	0.32	0.10	0.10	0.14	0.44	1.71

15. Application 70597

LITTLE MCKAY CR tributary to MCKAY CR

LITTLE MCKAY CREEK FROM HUNT SPRINGS (NESW, SECTION 24, T17S,
R12E); TO THE MOUTH RIVER MILE 0.0 (NWSE, SECTION 5, T13S,
17E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	9.0	9.0	29.0	29.0	29.0	14.0	9.0	9.0	9.0	9.0	9.0	9.0
2nd½	9.0	14.0	29.0	29.0	29.0	14.0	9.0	9.0	9.0	9.0	9.0	9.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.60	4.14	4.91	5.01	3.09	0.93	0.17	0.05	0.05	0.07	0.23	0.90

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	1.60	4.14	4.91	5.01	3.09	0.93	0.17	0.05	0.05	0.07	0.23	0.90
2nd½	1.60	4.14	4.91	5.01	3.09	0.93	0.17	0.05	0.05	0.07	0.23	0.90

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16. Application 70598

JOHNSON CR tributary to N FK CROOKED R

JOHNSON CREEK FROM POLIE CREEK (NESW, SECTION 13, T14S, R20E);
TO THE MOUTH RIVER MILE 0.0 (SWNE, SECTION 22, T14S, R21E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	10.0	10.0	10.0	6.0	4.0	4.0	4.0	10.0	6.0	6.0
2nd½	6.0	6.0	10.0	10.0	10.0	6.0	4.0	4.0	6.0	10.0	6.0	6.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.5	34.6	77.2	160.0	126.0	72.5	16.9	8.05	8.18	5.46	4.64	9.14

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	10.0	10.0	10.0	6.0	4.0	4.0	4.0	5.46	4.64	6.0
2nd½	6.0	6.0	10.0	10.0	10.0	6.0	4.0	4.0	6.0	5.46	4.64	6.0

17. Application 70605

BEAVER CR tributary to CROOKED R

BEAVER CREEK FROM WOLF CREEK RIVER MILE 10.9 (SESW, SECTION 18
T16S, R24E); TO THE MOUTH RIVER MILE 0.0 (NENW, SECTION 14,
T17S, R22E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	34.0	34.0	84.0	84.0	84.0	84.0	50.0	34.0	34.0	34.0	34.0	34.0
2nd½	34.0	50.0	84.0	84.0	84.0	84.0	50.0	34.0	34.0	34.0	34.0	34.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
53.4	116.0	257.0	255.0	150.0	80.4	25.3	11.5	12.2	13.3	14.1	32.8

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	34.0	34.0	84.0	84.0	84.0	80.4	25.3	11.5	12.2	13.3	14.1	32.8
2nd½	34.0	50.0	84.0	84.0	84.0	80.4	25.3	11.5	12.2	13.3	14.1	32.8

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18. Application 70606

BEAR CR tributary to CROOKED R

BEAR CREEK FROM LITTLE BEAR CREEK RIVER MILE 9.0 (NWNW,
SECTION 21, T18S, R17E); TO THE MOUTH RIVER MILE 0.0 (SENE,
SECTION 24, T17S, R16E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	10.0	10.0	25.0	25.0	25.0	18.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	15.0	25.0	25.0	25.0	18.0	10.0	10.0	10.0	10.0	10.0	10.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.11	8.94	20.5	20.0	11.8	6.33	1.98	0.88	0.91	0.94	0.94	2.44

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.11	8.94	20.5	20.0	11.8	6.33	1.98	0.88	0.91	0.94	0.94	2.44

19. Application 70611

OCHOCO CR tributary to CROOKED R

OCHOCO CREEK FROM OCHOCO RESERVOIR RIVER MILE 10.7 (SWNW,
SECTION 5, T15S, R17E); TO THE MOUTH RIVER MILE 0.0 (NESE,
SECTION 26, T14S, R15E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	23.0	23.0	45.0	45.0	45.0	35.0	23.0	23.0	23.0	23.0	23.0	23.0
2nd½	23.0	35.0	45.0	45.0	45.0	35.0	23.0	23.0	23.0	23.0	23.0	23.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
43.7	102.0	186.0	183.0	109.0	51.1	14.7	6.27	6.5	6.89	8.62	25.4

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	23.0	23.0	45.0	45.0	45.0	35.0	14.7	6.27	6.5	6.89	8.62	23.0
2nd½	23.0	35.0	45.0	45.0	45.0	35.0	14.7	6.27	6.5	6.89	8.62	23.0

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20. Application 70695

DESCHUTES R tributary to COLUMBIA R

DESCHUTES RIVER FROM NORTH CANAL DAM RIVER MILE 165
 (SECTION 29, T17S, R12E); TO ROUND BUTTE RESERVOIR RIVER
 MILE 119.5 (NENE, SECTION 29, T12S, R12E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

b. The amount of water available in the appropriate reach is at a %50
 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1380.0	1460.0	1470.0	1640.0	1720.0	1840.0	1390.0	1320.0	1340.0	1380.0	1330.0	1370.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

21. Application 70698

METOLIUS R tributary to DESCHUTES R

METOLIUS RIVER FROM CANYON CREEK RIVER MILE 35.6 (SENW,
 SECTION 27, T12S, R9E); TO LAKE BILLY CHINOOK RIVER MILE
 12 (SWSE, SECTION 18, T11S, R11E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	200.0	200.0	335.0	335.0	335.0	200.0	200.0	200.0	335.0	335.0	335.0	335.0
2nd½	200.0	200.0	335.0	335.0	335.0	200.0	200.0	335.0	335.0	335.0	335.0	335.0

b. The amount of water available in the appropriate reach is at a %50
 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1480.0	1570.0	1550.0	1590.0	1600.0	1650.0	1510.0	1430.0	1390.0	1370.0	1410.0	1450.0

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	200.0	200.0	335.0	335.0	335.0	200.0	200.0	200.0	335.0	335.0	335.0	335.0
2nd½	200.0	200.0	335.0	335.0	335.0	200.0	200.0	335.0	335.0	335.0	335.0	335.0

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24. Application 70754

SQUAW CR tributary to DESCHUTES R

SQUAW CREEK FROM S FK SQUAW CREEK RIVER MILE 35.0
(NWNW, SECTION 32, T16S, R9E); TO INDIAN FORD CREEK
RIVER MILE 19.5 (SESW, SECTION 3, T13S, R12E)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	30.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	50.0	30.0	30.0
2nd½	30.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	30.0	50.0	30.0	30.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
64.9	61.8	61.0	65.7	121.0	213.0	167.0	103.0	75.6	61.2	65.6	67.2

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	30.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	50.0	30.0	30.0
2nd½	30.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	30.0	50.0	30.0	30.0

25. Application 70757

LITTLE DESCHUTES R tributary to DESCHUTES R

LITTLE DESCHUTES RIVER FROM CRESCENT CREEK RIVER MILE
57.5 (NWNE, SECTION 4, T24S, R9E); TO THE MOUTH RIVER
MILE 0.0 (NWSE, SECTION 7, T20S, R11E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
200.0	200.0	240.0	240.0	240.0	200.0	135.0	135.0	135.0	135.0	240.0	240.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
204.0	244.0	236.0	331.0	388.0	311.0	126.0	74.5	92.2	116.0	164.0	196.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
200.0	200.0	236.0	240.0	240.0	200.0	126.0	74.5	92.2	116.0	164.0	196.0

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26. Application 70760

INDIAN FORD CR tributary to SQUAW CR

INDIAN FORD CREEK FROM HEADWATERS (SPRINGS) (SWSW,
 SECTION 15, T14S, R9E); TO THE MOUTH RIVER MILE
 0.0 (SESW, SECTION 3, T15S, R10E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	10.0	6.0	6.0

b. The amount of water available in the appropriate reach is at a %50
 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
9.1	10.1	9.26	9.95	11.9	8.82	6.0	5.34	5.16	5.4	6.41	8.31

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	5.4	6.0	6.0

27. Application 70795

BUCK HOL tributary to DESCHUTES R

BUCKHOLLOW CREEK FROM MACKEN CANYON CREEK (NW1/4, SECTION 20,
 TOWNSHIP 5S, RANGE 17E WM); TO THE MOUTH AT RIVER MILE 0.0
 (SESW, SECTION 35, TOWNSHIP 3S, RANGE 14E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
35.0	60.0	60.0	60.0	60.0	35.0	25.0	25.0	25.0	25.0	25.0	25.0

b. The amount of water available in the appropriate reach is at a %50
 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
25.1	52.0	54.8	56.8	19.5	3.02	0.7	0.23	0.23	0.46	2.55	11.4

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
25.1	52.0	54.8	56.8	19.5	3.02	0.7	0.23	0.23	0.46	2.55	11.4

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28. Application 71797

ANTELOPE CR tributary to TROUT CR

ANTELOPE CREEK FROM GRUB HOLLOW CREEK (SE1/4, SECTION 32,
TOWNSHIP 7S, RANGE 17E WM); TO THE MOUTH AT RIVER MILE 0.0
(SESW, SECTION 34, TOWNSHIP 8S, RANGE 15E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30.0	50.0	50.0	50.0	50.0	30.0	20.0	20.0	20.0	20.0	20.0	20.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
13.7	35.2	41.8	42.7	26.3	7.91	1.44	0.45	0.45	0.63	1.98	7.64

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
13.7	35.2	41.8	42.7	26.3	7.91	1.44	0.45	0.45	0.63	1.98	7.64

29. Application 73197

DEEP CR tributary to N FK CROOKED R

DEEP CREEK FROM HAPPY CAMP CREEK (NW1/4, SECTION 5, TOWNSHIP
14S, RANGE 22E WM); TO THE MOUTH AT RIVER MILE 0.0 (SE1/4,
SECTION 26, TOWNSHIP 14S, RANGE 22E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	31.0	31.0	113.0	113.0	113.0	60.0	31.0	31.0	31.0	31.0	31.0	31.0
2nd½	31.0	60.0	113.0	113.0	113.0	60.0	31.0	31.0	31.0	31.0	31.0	31.0

b. The amount of water available in the appropriate reach is at a %50
exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
21.4	39.8	86.8	181.0	137.0	69.2	16.4	7.86	8.15	6.04	5.75	11.5

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	21.4	31.0	86.8	113.0	113.0	60.0	16.4	7.86	8.15	6.04	5.75	11.5
2nd½	21.4	39.8	86.6	113.0	113.0	60.0	16.4	7.86	8.15	6.04	5.75	11.5

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NOTE: Exceptions to the instream water right flows are likely to appear on the certificate if one is issued. The Department is working on the exact wording of the conditions. The conditions are likely to allow some amount of additional appropriations for human and livestock consumption.

Your applications can be moved to the next phase of the water rights application review process.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period, will be evaluated at the next phase of the process.

At this time, you must decide whether to proceed or to withdraw your applications as described below.

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by December 27, 1995. For your convenience you may use the enclosed "STOP PROCESSING" form.

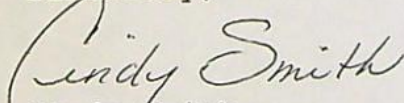
To Proceed With Your Application:

If you choose to proceed with an application, you do not have to notify the Department. Your applications will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a proposed final order.

If you have any questions:

Feel free to call Michael Mattick at (503) 378-8455 ext. 276 or 1 (800) 624-3199 if you have any questions. Please have your application number(s) available if you call.

Sincerely,


Cindy Smith
Initial Review Team

cc: Regional Manager, Watermaster, Water Availability Section
enclosures: Stop Processing Form

April 12, 1991

Ron Nelson, Secretary Manager
Central Oregon Irrigation District
P.O. Box 548
Redmond, OR 97756

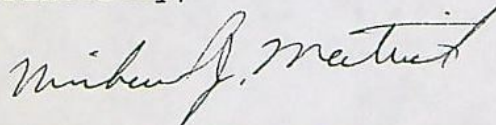
Dear Ron,

On December 20, 1990 you sent us a letter describing your concern with the instream water rights program. I can affirm that the Water Resources Department will not take any action that would lead to the injury of existing water rights.

You also requested the opportunity to more fully discuss the proposed water rights with us. I have not responded to this request sooner because we have been in the process of resolving related issues internally. I am enclosing a staff report for the April 19 Water Resources Commission meeting, here in Salem. The report includes a discussion of the application on the Deschutes River below Bend.

If you have specific concerns with this application, please let me know by April 26, 1991. I would be happy to discuss this application or the broader issues associated with instream water rights ant any time.

Sincerely,



MICHAEL J. MATTICK
Water Rights Specialist

MJM:

enclosure: Agenda Item H, April 19, 1991 WRC meeting
[IWR.L10]



April 12, 1991

H.V. Schonneker
North Unit Irrigation District
2024 N.W. Beach St.
Madras, Oregon 97741

WATER
RESOURCES
DEPARTMENT

Dear Chuck,

I am writing in response to your December 3, 1991 letter pertaining to instream water right application # 70695. This application is for 250 cfs year round below Bend.

In answer to your specific questions:

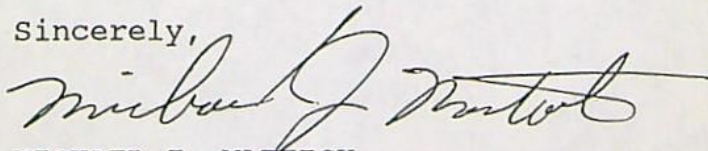
1. Since these flows are no longer meet half the year they are target flows.
2. All I know of the method used to come up with this figure is that the Oregon Method was used and this is an optimum flow.
3. Our current legislation does not allow a priority change for an instream right. There is no action we can take to preclude any future changes to the state's water laws.
4. When conservation practices are entered into in the upper Deschutes Basin, these flows will be used to point out the need for higher summer streamflows. However, the need for additional streamflow in the river below Bend during the summer months has been common knowledge. This just quantifies it. This will be factored into the consideration of where the, to be determined, percentages of conserved water go. There are 5 other factors that have some bearing on that decision.

The instream water right will have no effect on stored water or on senior water rights.

I will review this application with the Water Resources Commission on April 19, 1991. Any additional comments you can provide me before the 19th will be appreciated.

If you feel my evaluation has missed the point or if you have additional information we should consider, please respond in writing by April 26, 1991.

Sincerely,



MICHAEL J. MATTICK
Water Rights Specialist

[IWR.L17]



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX 378-8130

April 12, 1991

Barry H. Slaughter
Arnold Irrigation District
37 N.W. Irving Avenue
Bend, Oregon 97701

Dear Barry,

I am responding to your November 29, 1990 letter regarding instream water right applications # 70695 and 70764.

Staff had previously chosen application 70695, along with 10 others, to highlight important policy issues pertaining to instream water rights. Our staff report discussing this applications and other related issues is enclosed.

Regarding your specific concerns:

1. You suggested that the requests should be looked at to see if there is, or ever has been, sufficient streamflow to satisfy the request without necessitating the release of stored water.

The Water Resources Department compares the flows applied for with what the estimated average natural flows (EANF). EANF means the amount of water which would flow in a stream if no water were removed from it. The idea is to simulate a pristine or pre-development condition. If the requested flows are equal to or below this amount, the Department may issue the water right. If the request exceeds the EANF, we work with the applicant to resolve this problem. We can issue the instream water right for more than the EANF if the flows are significant for the public use applied for.

2. The method used to determine the requests should be made public.

ODFW relied upon the Oregon Method to identify these flow levels. As shown on page 5 of the enclosed staff report, the 250 cfs is less than 25% of what the stream would naturally flow. As I understand it, the Oregon Method is no longer used, however, the IFIM methodology now in use does not typically result in a lower recommendation. I am not qualified to explain the Oregon Method. The local fish biologist should be able to explain the process.



I am
8858 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX 378-8130

Barry H. Slaughter
April 12, 1991
Page Two

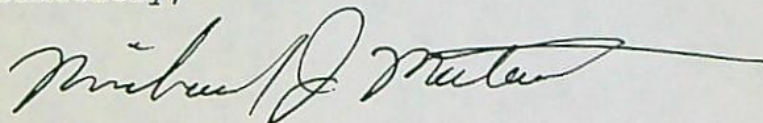
The Department and Water Resources Commission are aware of what effect these instream water rights would have on existing water rights if they somehow gained an earlier priority date. However, there is nothing the Department nor the Commission can do to prevent new legislation from being enacted. The Commission, at its March 8, 1991 meeting, considered putting a statement on instream water rights that would clarify that these rights only limit future uses. This clause was not endorsed because the Commission did not feel it really added anything. There is nothing the Commission can do to prevent some future legislation, except lobby against it when it is introduced.

I will review this application with the Water Resources Commission on April 19, 1991. Any additional comments you can provide me before the 19th will be appreciated.

If you feel my evaluation has missed the point or if you have additional information we should consider, please respond in writing by April 26, 1991.

We have not evaluated application 70764, I am therefore not prepared to discuss it at this time. However, I am enclosing the USGS statistical summary of the data on this gage. Admittedly, this reflects the flows present due to storage and not the natural flows.

Sincerely,



MICHAEL J. MATTICK
Water Rights Specialist

MJM:

enclosure

*P.S. Feel Free to call me about
this if you want my*

04-10-91 10:15a
Free: 352,256

Directory A:*.*

.	Current	<Dir>		..	Parent	<Dir>	
IWR	.L10	463	04-10-91 10:10a	IWR	.L11	414	04-10-91 10:11a
IWR	.L12	417	04-10-91 10:13a	IWR	.L13	459	04-10-91 10:14a
IWR	.L14	491	04-10-91 10:15a	IWR	.L4	723	04-10-91 10:06a
IWR	.L5	761	04-10-91 10:07a	IWR	.L6	414	04-10-91 10:03a
IWR	.L8	439	04-10-91 10:08a	IWR	.L9	491	04-10-91 10:09a

1/4
-1

- IWR.L1 Richard Hutton Roebury
- 2 equipped water are in Noel Grostong
- 3 Allen Prigle - Jackson Co Stockmen's
- 4 Josephine Co Jennie Benke
- 15 Lucille Wolf - Pine Co
- 5 Janet Moorhouse BLM Roebury
- 6 Overt - Roebury
- 7 Dick Bauer, FFF Stevedore Committee
- 8 Ma Mills, Stevedore
- 9 Tracy Reinhardt - Douglas Timber O.I.
- 16 Barry Slaughter AIP
- 17 HV Schumaker N. Unit

BEN LOMBARD JR

ATTORNEY AT LAW
622 SISKIYOU BLVD.
POST OFFICE BOX 1090
ASHLAND, OREGON 97520
(503) 482-8491

FAX TRANSMISSION COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME & TITLE MIKE MATHICK

COMPANY/DEPARTMENT Water Resources Dept.

FROM: Kip Lombard for OWRG

RE: Instream Water Rights Applications

DATE: 12-21-90 TIME: 10:55 AM

NUMBER OF PAGES (Including Cover Sheet) 5

Unable to send on 12/21 due to power outage.

We are transmitting from a CANON FAX 225.

If you do not receive all of the described material, please
telephone immediately, to:

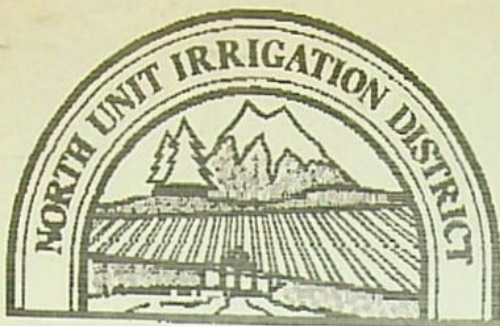
Business Phone: (503) 482-8491

FAX Phone: (503) 488-3239

Sender's Name: KL

COMMENTS: Mike, these are letters were received on the IWR applications on the Deschutes and Klamath while they don't give rise to specific grounds for a request for public hearing on our part, please consider them generally when you review these IWR's. Thank you.

Kip Lombard



RECEIVED

DEC 17 1990

2024 N.W. Beech Street • Madras, Oregon 97741 • (503) 475-3825

December 14, 1990

Kip Lombard
P.O. Box 1090
Ashland, OR 97520

Dear Kip:

In reference to application 70695, we were informed that the Oregon Department of Fish & Wildlife filed for an instream right of 260 cfs below the North Dam on the Deschutes River. The district feels that Fish & Wildlife should justify how they arrived at the requested flow.

Also, the district is concerned; not that instream water rights with a priority date of 1990 or 1991 may affect North Unit's rights now, but of the possibility that sometime later the priorities may change. If the instream rights became senior to ours it would have a dramatic impact on our storage and withdrawal rights. Right now, about one third of our diverted water comes from natural flow that the other districts cannot use. Any change in the appropriation of the natural flow would be costly to our district.

If the stream flows for the instream water rights became senior or for some other reason had to be met, it would mean that the reservoir would be drawn down completely each year. This would have a dramatic effect on the fishery and recreation. When the Coalition of the Deschutes did a study on the Deschutes River they found that as many or more recreation hours were spent at the reservoirs as on the river.

I feel with the flows being requested by Fish & Wildlife that this is more reason to explore the possibility of upstream storage or offstream storage. If you need more information please feel free to contact me.

Sincerely,

H.V. Schonneker
Secretary-Manager

HVS/ag

CENTRAL OREGON IRRIGATION DISTRICT

MUNICIPAL CORPORATION OF THE STATE OF OREGON

847 SOUTH SIXTH STREET • P.O. BOX 548
REDMOND, OREGON 97756

PHONE: 548-6047

RECEIVED

DEC 24 1990

WATER RESOURCES DEPT.
SALEM, OREGON

December 20, 1990

Mr. Mike Mattick
Water Resources Department
3850 Portland Road N.E.
Salem, OR 97310

RE: Oregon Department of Fish & Wildlife
November 1990 Water Right Applications, Deschutes River


Dear Mr. Mattick:

The members of the Central Oregon Irrigation District would like to advise the Oregon Water Resources Department that we object to the granting of water rights that could, in any manner, interfere with our water rights.

It is our understanding that, in it's evaluation of new applications, the Water Resources Department will not undertake any actions that would lead to the injury of our rights.

Central Oregon Irrigation District would like an opportunity to more fully discuss the proposed Oregon Department of Fish and Wildlife water rights with the Water Resources Department.

Yours Very Truly,



Ron Nelson
Secretary Manager

RN:ja

cc: COID Board of Directors
Oregon Water Resources Congress

Arnold Irrigation District

November 29, 1990

37 N.W. Irving Avenue
Bend, Oregon 97701
Telephone 382-7664

Mr. William Young
Director
Oregon Dept of Water Resources
3850 Portland Road, N E
Salem, OR 97310

RECEIVED
DEC 10 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Subject: Instream Water Rights Applications #70695 & #70764
Deschutes Basin

Dear Bill:

Recently we were informed of the subject applications (that are part of a much larger group) filed by Oregon Department of Fish & Wildlife. We would like to offer the following thoughts and suggest that these constitute a public interest item, especially among central Oregon irrigators, and may require special scrutiny.

The requests as a group should be looked at to see if there is, or ever has been, sufficient stream flow to satisfy the requirements without necessitating release of any water from permitted storage rights. (Some of the requested stream flows probably never were there for some of the period requested.)

We also believe that the methods used to determine the requested flows should be examined - and made public - prior to any instream right assignment and approval.

Bill, these rights in and of themselves do not at this time constitute a problem for this district. They would become a problem, however, if now or in the future they were to usurp any existing right, whether for storage or withdrawal held by Arnold Irrigation District. Given the priority date which would normally be assigned (e.g.; 1990 or 1991) these should not comprise any loss of water to Arnold. BUT should any future changes be made in instream water priority dates, then they would dramatically impact our storage and withdrawal rights!

Please consider this our request to intervene so that each of these applications is reviewed for present and future impact and that if you deem appropriate, hearings be held to assure that all facets of these requests are brought to light.

Thank you for your special look at these applications.

Barry

Barry H. Slaughter
Manager

BHS/jp

CC: OWRC
Bob Main

APPLICATION PROCESSING OUTLINE

IWR

Application No. 70695
Permit No. _____

Basin: _____
Sub-basin: _____
Fees paid: Examination fee: _____
Recording fees: _____
Total: _____

RATE AND DUTY _____ for irrigation

1. Check for minimum information (OAR 690-11-020)

yes	no	
_____	_____	Name and mailing address of the applicant.
_____	_____	Source of the water.
_____	_____	Quantity of water to be appropriated.
_____	_____	Location of point of diversion to 1/4 1/4 Section.
_____	_____	Nature and place of use.
_____	_____	Name and mailing address of all legal owners of the properties involved.
_____	_____	Signature of the applicant
_____	_____	Examination fees.

If minimum information not supplied, excepting legal owner information, then return to applicant with letter explaining deficiencies.

yes	no	
_____	_____	Water Resources Commission classification limits or restrictions -- If yes, note: _____
_____	_____	State Engineer's withdrawals -- If yes, note: _____
_____	_____	Legislative withdrawals -- If yes, note: _____
_____	_____	If policy statement is unclear check with Resources Management Division.
_____	_____	Scenic Waterway: _____
_____	_____	_____ on _____ up-stream _____ w/in 1/4 mile
_____	_____	Notify Parks and Recreation Department
_____	_____	Out-of-basin diversion
_____	_____	Need to route to Geology Section due to:
_____	_____	well within one mile of a stream
_____	_____	well within restricted surface water area
_____	_____	wells with request for greater than 3 cfs
_____	_____	well is for heating &/or cooling
_____	_____	well constructed by land owner
_____	_____	well is artesian
_____	_____	artificial ground water recharge project
_____	_____	ground water area under study
_____	_____	Within Irrigation District: _____
_____	_____	Notify _____ Need excerpt from District
_____	_____	Legal description of property
_____	_____	Ownership statement
_____	_____	Other parties to Notify: _____
_____	_____	Water Resources Commission review if:
_____	_____	Request for greater than 3 cfs
_____	_____	Dam height greater than 10 feet
_____	_____	Storage of more than 9.2 acre-feet
_____	_____	Out-of-basin diversion
_____	_____	within or above a scenic waterway
_____	_____	conditional uses under basin program
_____	_____	requests for larger rate or duty than allowed
_____	_____	ground water recharge project
_____	_____	other substantial public interest issues
_____	_____	requests for review by an agency or person
<i>X</i>	_____	Watermaster consent forms sent with copy of draft permit application and app. _____
_____	_____	Watermaster comments received _____
_____	_____	Hydrographic section comments requested _____
_____	_____	Hydrographic section comments received _____
<i>X</i>	_____	O.D.F.W. sent copy of application and app (except groundwater) requesting comment _____
_____	_____	O.D.F.W. comments received _____
_____	_____	Report from D.E.G. received _____
<i>X</i>	_____	Publish application information in weekly public notice. _____
_____	_____	Notify other owners of development _____
_____	_____	PROTESTED
_____	_____	filed _____
_____	_____	resolved _____



2024 N.W. Beech Street • Madras, Oregon 97741 • (503) 475-3625

December 3, 1990

RECEIVED
DEC 6 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Mike Mattick
Water Resources Department
3850 Portland Road, NE
Salem, OR 97310

Dear Mike:

In reference to application #70695, it is our understanding that the Department of Fish and Wildlife has requested 250 cfs below the North Dam year round for instream use. I have some questions regarding this request:

1. Are these real target flows?
2. Is there any information as to how Fish & Wildlife arrived at the amount of 250 cfs?
3. Is there the possibility of a priority change for an instream right?
4. When we enter into conservation practices, since North Unit is junior to all other districts, who will receive conserved water, instream or North Unit?

As we move through the process I see that some applications for instream water rights will be detrimental to the irrigation districts. The plan does not seem to be to stop with just instream water rights, but to achieve earlier priority dates than existing water rights.

At this time loss of any water above the 30 cfs that is now being released could become a problem for North Unit. About one third of our water use is from natural flow, so it would put the district at an undeniable disadvantage. This is one more reason why upstream storage needs should be considered when attempting to accommodate the kind of flows which are being requested. Not only will the district be short of water for irrigation practices but Wickiup Reservoir fisheries will suffer also.

North Unit Irrigation District will be working though OWRC to present formal objections.

Sincerely,

H.V. Schonneker
Secretary-Manager

"Conserve Water - The Supply Is Limited"

IWR Application # 70695 Certificate # _____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

Application for Instream Water Right
by a State Agency

RECEIVED

SEP 24 1990

WATER RESOURCES DEPT.
SALEM, OREGON

There is no fee required for this application.

Applicant: Randy Fisher for Oregon Department of Fish and
Wildlife, PO Box 59, Portland, OR 97207

1. The name of the stream of the proposed instream water right is Deschutes River, a tributary of Columbia River.
2. The public uses this instream water right is based upon include providing required stream flows for bull, rainbow, and brown trout, chinook and coho salmon, kokanee, and smallmouth bass for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

3. The amount of water (in cubic feet per second) needed by month for each category of public use is as follows:

USE(S): Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250	250	250	250	250	250	250	250	250	250	250	250

4. The reach of the stream identified for an instream water right is from (upstream end) North Canal Dam (Bend), river mile 165, within Section 29, Township 17S, Range 12E W.M., in Deschutes County...

Downstream to Round Butte Reservoir, river mile 119.5, within the NE quarter of the NE quarter of Section 29, Township 12S, Range 12E W.M., in Jefferson County.

5. The method used to determine the requested amounts was the Oregon Method.
6. When were the following state agencies notified of the intent to file for the instream water right?

Dept. of Environmental Quality	Date: September 4, 1990
ODFW (Fish, Wldlf, and Habitat)	Date: September 4, 1990
Parks and Recreation Division	Date: September 4, 1990

7. If possible, include recommendations for measuring locations

IWR Application # 70695 Certificate # _____

or methods:

Use USGS gage # 14076500.

8. If possible, include recommendations for assisting the Water Resources Department (WRD) in measuring and monitoring procedures:

Local ODFW personnel will assist the watermaster in establishing and implementing a monitoring program.

9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5)(c)]: None.

10. Remarks: Bull trout is listed as a "sensitive" species (a candidate for listing under the Threatened and Endangered Species Act if population declines from present level) by ODFW.

The lower 19 miles of this section is designated "scenic" under the federal Wild and Scenic Rivers Act.

THIS APPLICATION MUST BE ACCOMPANIED BY A BASIN MAP WITH THE APPLICABLE LAKE OR STREAM REACH IDENTIFIED.

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights with an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: 9/19/90

Signed: Nancy M. MacHugh

Oregon Department of Fish and Wildlife

Assistant Director
Habitat Conservation Div.

File: DESCHUT1.APP

IWR Application # 70695 Certificate # _____

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return them for:

In order to retain its priority, this application must be returned to the Water Resources Department with corrections on or before

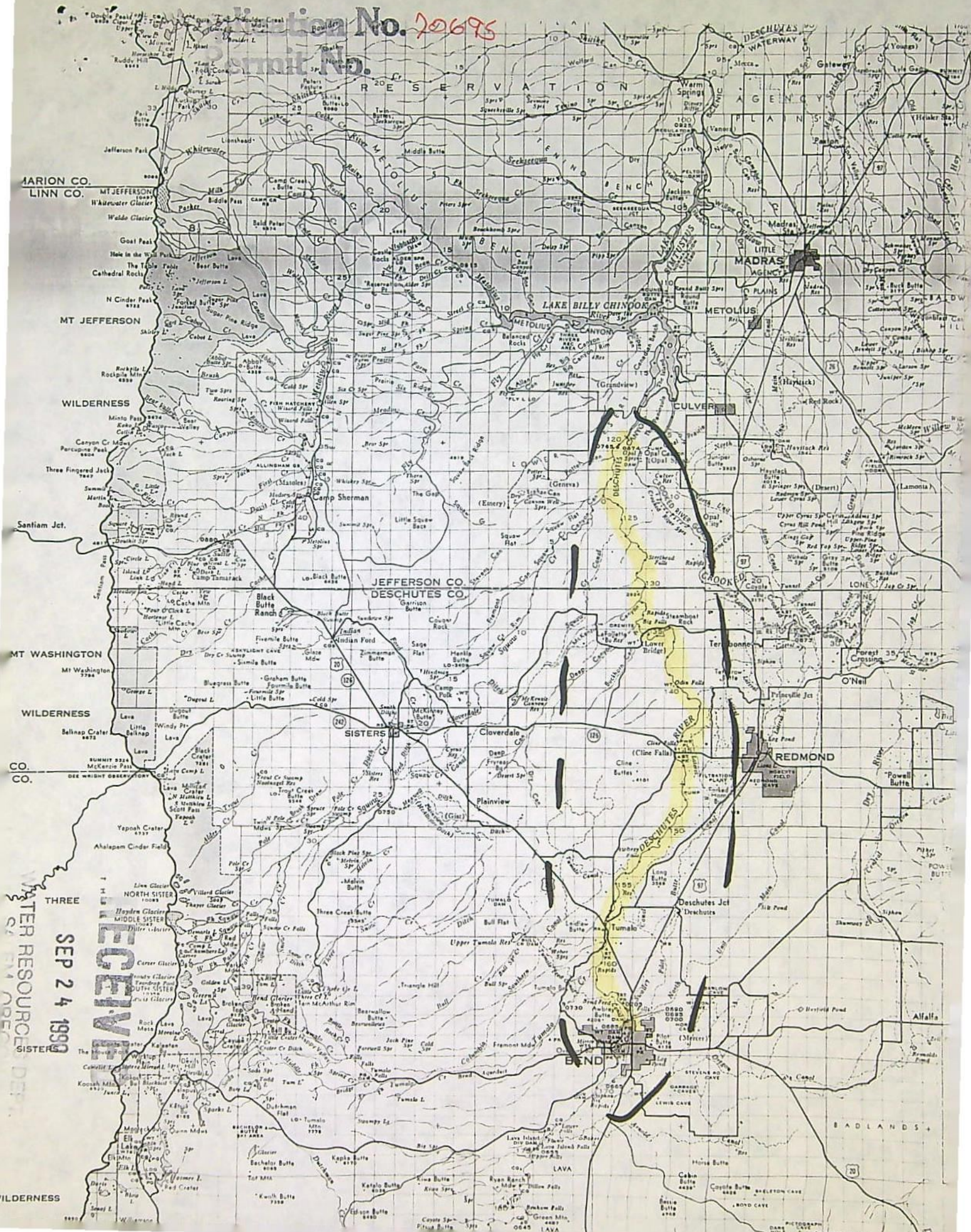
_____, 19__.

Date: _____, 19__.

This document was first received at the Water Resources Department in Salem, Oregon, on the 24th day of September, 1990, at 8:00 o'clock A M.

Water Resources Department
3850 Portland Rd. NE
Salem, OR 97310

Section No. 20695
Summit No.



MARION CO.
LINN CO.

MT JEFFERSON

WILDERNESS

Santiam Jct.

MT WASHINGTON

WILDERNESS

CO. CO.

THREE

SEP 24 1939

WATER RESOURCE DEPT.

WILDERNESS

THE MOUNT JEFFERSON
NORTH SISTER
MIDDLE SISTER
SOUTH SISTER
CAREER GLACIER

PHOTOGRAPH BY G. W. PROBERT, MARCH 1939



Department of Fish and Wildlife

2501 SW FIRST AVENUE, PO BOX 59, PORTLAND, OREGON 97207 PHONE (503) 229-5400

September 20, 1990

Jake Szramek
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97310

Dear Jake:

Attached are 8 Instream Water Right applications for streams in the Deschutes River basin:

Canyon Creek
Candle Creek
Deschutes River
Jack Creek
Jefferson Creek
Metolius River (2)
Odell Creek

Below is a list of potentially affected local governments that were notified by letter (copy attached) of ODFW's intent to apply for IWR's on the subject streams.

Jefferson County
Deschutes County
Bend
Redmond
Klamath County

Sincerely,

Albert H. Mirati, Jr.
Instream Water Right Coordinator
Habitat Conservation Division

STREAM	SYSTEM	FROM	TO
DESCHUTES R > COLUMBIA R	DESCHUTES R	N CANAL DAM	ROUND BUTTE RES
JEFFERSON CR > METOLIUS R	DESCHUTES R	PARKER CR	MOUTH
METOLIUS R > DESCHUTES R	DESCHUTES R	CANYON CR	LK BILLY CHINOD
METOLIUS R > DESCHUTES R	DESCHUTES R	METOLIUS SPRING	CANYON CR
CANDLE CR > METOLIUS R	DESCHUTES R	CABDT CR	MOUTH
CANYON CR > METOLIUS R	DESCHUTES R	BEAR VALLEY CR	MOUTH
JACK CR > METOLIUS R	DESCHUTES R	UNNAMED TRIB	MOUTH
ODELL CR > DAVIS LK	DESCHUTES R	ODELL LK	DAVIS LK



Department of Fish and Wildlife

2501 SW FIRST AVENUE, PO BOX 59, PORTLAND, OREGON 97207 PHONE (503) 229-5400

MEMORANDUM

Date: September 20, 1990
To: Interested Parties
From: Al Mirati, Instream Water Right Coordinator
Subject: Instream Water Rights Applications

OAR 690-77-020 requires Oregon Department of Fish and Wildlife to notify affected local governments of our intent to apply for instream water rights. Attached is a list of streams on which applications have recently been submitted to Water Resources Department. If you have questions or concerns on any of the listed applications, contact:

Jake Szramek
Water Resources Dept.
3850 Portland Rd., NE
Salem, Or 97310

Sent to:
Jefferson County
Deschutes County
Bend
Redmond
Klamath County

ARNOLD IRRIGATION DISTRICT

**37 N.W. Irving Avenue
Bend, Oregon 97 701**



Mr. William Young
Director
Oregon Dept. of Water Resources
3850 Portland Road, N. E.
Salem, OR 97310



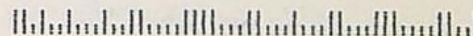
CENTRAL OREGON IRRIGATION DISTRICT

P.O. Box 548
Redmond, Oregon 97756

*Address correction requested
Forwarding postage guaranteed*



Mr. Mike Mattick
Department of Water Resources
3850 Portland Road N.E.
Salem, OR 97310



Application No. IWR 70695
Permit No. _____

SEP 24 1990

Name ODFW
Address PO Box 59
Assigned Address Portland, OR 97207
Beginning construction
Completion of construction
Extended to
Complete application of water
Extended to

Form 111

NUMBER 8026
Check PO Mo _____ Cash _____

- ___ Surface Application
 - ___ Reservoir Application
 - ___ Ground Water Application
 - ___ Transfer Application
 - ___ PFO Request
 - ___ Research
 - ___ Hydroelectric Fees
 - ___ Copying
 - ___ Assignment
 - ___ Extension of Time
 - Protest
 - ___ Other
- adlem*