

3

Name OREGON DEPARTMENT OF FISH AND WILDLIFE
 By 4034 FAIRVIEW INDUSTRIAL DRIVE SE
 Address SALEM, OR 97302-1142

Application No. IS-88333

Permit No. _____

Certificate No. _____

FEES PAID

Date	Amount	Receipt No.
12-1-17	\$810.00	125333

Date

DENIED _____

MISFILED _____

WITHDRAWN _____

CANCELLED _____

Volume | Page

FEES REFUNDED

Date	Amount	Receipt No.

Cert. Fee

Priority _____

County _____ WM# _____

RELATED FILES

ASSIGNMENTS

Date	To Whom	Address

DEVELOPMENT

Date

Completion _____

Extended to _____

Final Proof received _____

Proposed Cert. Mailed _____

REMARKS _____

02 SWR Application Hood Basin Cae Branch

MAP LOCATION _____

Rev. 04/03

MCCARTY Patricia E * WRD

From: MCCARTY Patricia E * WRD
Sent: Monday, January 22, 2018 2:11 PM
To: STEVENSON Anna P; FAUCERA Danette L; ZATTA Jaclyn D
Cc: STEVENSON Anna P; MCCARTY Patricia E * WRD
Subject: RE: New ISWRs Protests and administrative hold

Hi Anna,
OWRD will take no action on the listed applications before April 20, 2018.

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

From: Anna Pakenham Stevenson [<mailto:Anna.P.Stevenson@state.or.us>]
Sent: Thursday, January 18, 2018 10:03 AM
To: FAUCERA Danette L; ZATTA Jaclyn D; MCCARTY Patricia E * WRD
Cc: STEVENSON Anna P
Subject: New ISWRs Protests and administrative hold

Hello Patricia,
I wanted to let you know that ODFW reached out to the protestants associated with the new ISWR applications in the Hood and Sandy Basins (IS-88322, IS-88323, IS-88326, IS-88327, IS-88328, IS-88329, IS-88330, IS-88331, IS-88334, IS-88335, IS-88337, IS-88355, IS-88332, IS-88333, and IS-88336). We have requested meetings with these groups to discuss their concerns pertinent to ODFW aspects of the applications and if a resolution can be found. To allow time for this conversation ODFW is requesting from OWRD a 90-day administrative hold on these applications. We will be sure to let you know how those discussions proceed. Please let me know if you need further information.

Have a great day,
Anna

Anna Pakenham Stevenson
ODFW Water Program Manager
503-947-6084 (office)
971-718-2058 (cell)
anna.p.stevenson@state.or.us

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # 125333

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

INVOICE #

RECEIVED FROM: Steel River LLP
BY:

APPLICATION IS88333
PERMIT
TRANSFER

CASH: ☐ CHECK: # 907923 OTHER: (IDENTIFY)

TOTAL REC'D \$ 810.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$
OTHER: (IDENTIFY) \$

0243 I/S Lease 0244 Muni Water Mgmt. Plan 0245 Cons. Water

4270 WRD OPERATING ACCT

MISCELLANEOUS 47235
0407 COPY & TAPE FEES \$
0410 RESEARCH FEES \$
0408 MISC REVENUE: (IDENTIFY) \$
TC162 DEPOSIT LIAB. (IDENTIFY) \$
0240 EXTENSION OF TIME \$

WATER RIGHTS:
0201 SURFACE WATER EXAM FEE \$ RECORD FEE \$
0203 GROUND WATER \$
0205 TRANSFER \$
WELL CONSTRUCTION
0218 WELL DRILL CONSTRUCTOR EXAM FEE \$ LICENSE FEE \$
LANDOWNER'S PERMIT \$

0223 OTHER (IDENTIFY) Protest Fees \$810.00

0536 TREASURY 0437 WELL CONST. START FEE

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

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FWWRD) \$
0231 HYDRO LICENSE FEE (FWWRD) \$
HYDRO APPLICATION \$

TREASURY OTHER / RDX

FUND TITLE
OBJ. CODE VENDOR #
DESCRIPTION \$

RECEIPT: 125333

DATED: 12-1-17 BY: V. J. L. L.

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

Please detach at perforation before depositing check

TOTAL

810.00

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760 SW Ninth Ave., Suite 3000
Portland, OR 97205-2584

State of Oregon Water Resources D

SUPPLIER NUMBER
16765

CHECK NUMBER
907923

CHECK DATE
11-30-17

INVOICE NUMBER

INVOICE DATE

DESCRIPTION

AMOUNT

SR112917-10

11-29-17

FILING FEE-Protest of IS-88333

810.00

STATE OF OREGON
WATER RESOURCES DEPARTMENT
WATER RIGHTS DIVISION

Before the Director of the Water Resources Department

In the Matter of Water Right)	PROTEST OF OREGON FARM
Application IS-88333 in the name of)	BUREAU FEDERATION, HOOD
Oregon Department of Fish and Wildlife)	RIVER COUNTY FARM BUREAU,
)	AND COLUMBIA GORGE FRUIT
)	GROWERS AND REQUEST FOR
)	CONTESTED CASE

On October 17, 2017, the Oregon Water Resources Department (the "Department") issued a proposed final order ("PFO") recommending approval of water right application IS-88333 (the "Application") filed by Oregon Department of Fish and Wildlife ("ODFW") on May 1, 2017. The PFO is attached hereto as Exhibit A, and the Application is attached hereto as Exhibit B. Pursuant to ORS 537.170 and OAR 690-077-0043, Oregon Farm Bureau Federation ("OFB"), Hood River County Farm Bureau ("HRFB"), and Columbia Gorge Fruit Growers ("CGFG") (collectively, "Protestants") protest the PFO and request a contested case hearing. Approval of the Application would limit the ability of Protestants and their members to respond to instream and out-of-stream water resources demands in the Hood River basin, and the Application is contrary to extensive cooperative planning efforts undertaken by Protestants and their members.

1. Protestants' Name, Address, and Telephone Number

The Protestants' contact information is as follows:

Mary Anne Cooper
Public Policy Counsel, Oregon Farm Bureau Federation
1320 Capitol Street NE, Suite 200
Salem, OR 97301
(503) 399-1701 (telephone)

Randy Kiyokawa
President, Hood River County Farm Bureau
1320 Capitol Street NE, Suite 200
Salem, OR 97301
(503) 399-1701 (telephone)

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Mike Doke
Executive Director, Columbia Gorge Fruit Growers
P.O. Box 168
Odell, OR 97044
(541) 387-4769 (telephone)

Orders, notices, and other correspondence concerning this matter should be sent to legal counsel representing Protestants in this matter as follows:

David Filippi
Hayley Siltanen
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
(503) 294-9529 (telephone)
david.filippi@stoel.com (email)
hayley.siltanen@stoel.com (email)

2. Protestants' Interest in the PFO

a. OFB and HRFB's Interests

OFB is a voluntary, grassroots, nonprofit organization representing Oregon's farmers and ranchers in the public and policymaking arenas. As Oregon's largest general farm organization, its primary goal is to promote educational improvement, economic opportunity, and social advancement for its members and the farming, ranching, and natural resources industry. Today, OFB represents over 7,000-member farm families professionally engaged in the industry and has a total membership of over 60,000 Oregon families. HRFB is the voice of agriculture in Hood River County, representing over 180 member farm families across Hood River County.

b. CGFG's Interests

CGFG is a non-profit organization of 440 growers and 20 shippers of tree fruit in the Mid-Columbia area, including Hood River County and Wasco County. The Mid-Columbia area in which CGFG's members operate produces more than 225,000 tons of cherries, apples and pears each year. CGFG encourages and promotes the fruit industry through legislation, research, education and marketing and supports growers through the exchange of information regarding sound practices and regulations. In so doing, CGFG aims to work cooperatively with other industries and organizations.

c. Injury to the Protestants' Interests

Water is essential for agriculture across the Hood River basin. In recent years, the water supply from the Hood River Basin has been barely sufficient or insufficient to meet irrigators' needs during the late summer and fall months. The instream water rights proposed to be granted in the PFO could severely curtail Protestants' and their members' ability to utilize their water.

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rights as needed to successfully manage their operations and adapt to changing circumstances. The instream water rights could also limit Protestants' and their members' ability to apply for new water rights in the Hood River basin in the future and to access the water already reserved for future multipurpose storage in the basin. Protestants were among the primary proponents of the recent extension of the Hood River basin reservation, and the instream filing has the potential to limit future use of and access to that water.

3. Argument

a. The Department wrongly determined that ODFW established a presumption that the Application is in the public interest.

An application for an instream water right is presumed to be in the public interest when each of the following criteria is met:

- “(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under 536.310(12);
- “(b) Water is available;
- “(c) The proposed use will not injure other water rights; and
- “(d) The proposed use complies with the rules of the Commission.”

OAR 690-077-0033(1). If any one of the above-listed criteria is not satisfied, the presumption that the proposed instream use is in the public interest must be reversed. OAR 690-077-0033(2)(a).

Here, the public interest presumption is not established, because the proposed instream use has the potential to injure other water rights and the proposed use does not comply with the rules of the Water Resources Commission (“Commission”). Given that the criteria at OAR 690-077-0033(1) are not satisfied, the Department erred by failing either to deny the Application or to make “specific findings” that the Application will not impair or be detrimental to the public interest. See OAR 690-077-0037(2).

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i. The Application will impair other water rights.

To establish a presumption that a proposed instream use is in the public interest, the Department must determine that the proposed use will not impair other water rights. Specifically, ORS 537.334(2) requires that an instream water right “not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established[.]” (Emphasis added.) In this case, the Department wrongly concluded that the Application will not impair existing water rights on the sole basis that “the proposed use is junior in priority and by operation of the prior appropriation doctrine will not injure other water rights.” PFO, at 3. As discussed in more detail in the pages that follow, the Application has the potential to impair not only future water right applications pursuant to the existing reservation, but the Application also has the potential to impair existing water rights that may be subject to future transfer applications or other proposed modifications, as well as other water-right related activities, whether related to storage, aquifer recharge, aquifer

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storage and recovery, etc. In addition, the Protestants are concerned that the establishment of the instream water rights as proposed in the Application, without appropriate findings in the final order or conditions in the final certificate, could undermine and result in impairment to existing water rights in other state and federal environmental reviews and permitting processes.

ii. The Application does not comply with the Commission's rules, because ODFW did not provide sufficient documentation of compliance with its own administrative rules.

The Commission's rules require ODFW to provide written documentation of compliance with the "requirements contained in [ODFW's] administrative rules for instream water rights, including application of the required methods to determine the requested flows." See OAR 690-077-0020(4)(k). Among the administrative rules with which ODFW must comply is OAR 635-400-0020, which provides standards for selection of streams or stream reaches for instream water right applications. In the Application, ODFW represented that it used the following resources to prioritize waterways for instream water right applications:

"1) basin and subbasin plans, management objectives, statutes, administrative rules and Commission policies; 2) the presence of fish and wildlife species that are considered endangered, threatened, sensitive or otherwise important; 3) the need to conserve, maintain or enhance fish or wildlife habitats or functions, including but not limited to, passage, spawning, incubation, rearing, and wintering habitats that maintain or improve the species."

ODFW's explanation for compliance with OAR 635-400-0020 is little more than a restatement of the administrative rule.¹ ODFW does not specify, with any particularity, the standards

¹ OAR 635-400-0020 provides, in relevant part:

"When applying for instream water rights the Department shall use the following resources and standards for prioritizing waterways: .

..

"(2) Highest priority waterways for instream water right applications shall have one or more of the following conditions existing at the time of application:

"(a) State or federal sensitive, threatened or endangered fish or wildlife species, or important populations of native resident or anadromous fish, as defined by fish species plans, basin and subbasin plans, management objectives, other Commission policies, statutes, administrative rules, treaties or other legal agreements;

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applicable to Coe Branch, tributary to Clear Branch. For that reason, the Application does not comply with the Commission's rules as required by OAR 690-077-0033(1)(a).

b. The Department violated its rules by failing to adequately consider factors necessary to determine whether the public interest presumption was overcome.

Even assuming that the Department correctly determined that the Application satisfies the criteria necessary to establish a public interest presumption, the Department erroneously failed to evaluate whether the presumption was overcome. Pursuant to OAR 690-077-0037(3), if the Department determines that the criteria for the public interest presumption are satisfied, the Department must "further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the public interest presumption is overcome." OAR 690-077-0037(3)(a). Such evaluation requires the Department to consider, "at minimum," the following factors:

- "(A) Threatened, endangered or sensitive species;
- "(B) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under Section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0002(42);
- "(C) Fish or wildlife;
- "(D) Recreation;
- "(E) Economic development; and
- "(F) Local comprehensive plans, including supporting provisions such as public facilities plans."

(... continued)

"(b) Important populations of native wildlife species, as defined by wildlife species plans, management objectives, other Commission policies, statutes, administrative rules, treaties or other legal agreements; ...

"(3) An instream water right application may also be requested to conserve, maintain or enhance one or more of the following fish or wildlife habitats or functions of a waterway by protecting instream flows or water surface elevations that provide for:

"(a) Passage of adult or juvenile fish;

"(b) Access to important spawning or rearing areas;

"(c) High quality critical rearing areas; ..."

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OAR 690-077-0037(3)(b).

In this case, the PFO suggests that the Department did not properly “further evaluate the proposed use . . . to determine whether the public interest presumption is overcome.” See OAR 690-077-0037(3). The Department’s statement that, “[b]ased on an evaluation of the proposed use, the comments received, information available in its files or received from other interested and any other available information, . . . the proposed use will not impair or be detrimental to the public interest,” is conclusory and does not address the above-listed factors. See Protest, at 3. Specifically, the PFO fails to evaluate the likely effect of the Application on economic development. See OAR 690-077-0037(3)(b)(E). As discussed more fully in Part 3.c, the Application would further constrain the already limited supply of available irrigation water in the Hood River basin, which is necessary to sustain the Hood River basin’s agriculture-based economy. The Department erred by not considering the effect of additional water supply constraints on agricultural users.

In addition, the PFO does not contain any indication that the Department meaningfully considered public comments, including the April 20, 2017 letter submitted by East Fork Irrigation District (“EFID”), attached hereto as Exhibit C. Although the Department need not address every comment individually, the Department nevertheless must “consider all comments received[.]” OAR 690-077-0037(1). The Department’s conclusions in the PFO are unchanged from the Department’s Initial Review, and the PFO does not include any response to concerns voiced by EFID in its comment letter. Thus, there is no evidence that the Department considered EFID’s comments.

Because the PFO does not include any discussion of the effect of the Application on the factors listed at OAR 690-077-0037(3)(b), including economic development, and because there is no evidence that the Department considered the public comments submitted on the Application, the Department failed to comply with the requirements of OAR 690-077-0037.

- c. The proposed instream use would be detrimental to the public interest because it limits the ability of agricultural users to secure future water rights and to develop needed storage.**

If a proposed use “may impair or be detrimental to the public interest according to standards described in ORS 537.170(8),” the public interest presumption is overcome, and an application must be denied or conditioned to prevent harm to the public interest. OAR 690-077-0037(4)(b). Several of the standards listed in ORS 537.170(8) apply to evaluation of the Application.² Especially relevant here, ORS 537.170(8) requires the Department to consider

² ORS 537.170(8) lists, in full, the following standards:

- “(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to

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whether a proposed use “[c]onserv[es] the highest use of the water for all purposes, including irrigation, . . .” and provides for “[t]he maximum economic development of the waters involved.” ORS 537.170(8)(a),(b).

The economy of Hood River County is primarily dependent on irrigated agriculture.³ Because the Application would impair the ability of agricultural users to secure irrigation water, today and in the future, ORS 537.170(8) weighs against approval of the Application.

i. The Department must consider potential future uses of water when evaluating the public interest.

As a threshold matter, the Department must consider potential future water uses when evaluating whether the Application is detrimental to or impairs the public interest. Previously, the Department *expressly rejected* the argument that “[p]otential future uses of water are not properly to be considered in deciding whether to allow an Instream Water Right.”⁴ The Department explained that, because the public interest factors at ORS 537.170(8) are “very broad,” potential future uses of water *must* be considered when determining whether a proposed instream water right will impair or be detrimental to the public interest. *Id.*

(... continued)

which the water may be applied for which it may have a special value to the public.

- “(b) The maximum economic development of the waters involved.
- “(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.
- “(d) The amount of waters available for appropriation for beneficial use.
- “(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.
- “(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.
- “(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.”

³ U.S. Dep’t of the Interior, Bureau of Reclamation, Hood River Basin Study, at ES-2 (Nov. 2015) (hereinafter, “Basin Study”).

⁴ Memorandum from Paul R. Cleary, Director, to Water Resources Commission, 6 (June 7, 2002) (Agenda Item E: Considerations of Exceptions and Issuance of Final Order on Water Right Application 70606 in the Name of Oregon Department of Fish and Wildlife).

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ii. The Application blocks future appropriations for landowners who are already seeking water rights.

In this case, the proposed instream use could affect potential future uses of water in several ways. First, approval of the Application would prevent landowners who are already seeking water rights from securing water rights in the future. The demand for water rights stems from the fact that the Hood River Basin is closed to new appropriations of water. If the Application is approved, and should water rights be cancelled in the future, such cancellation would not make water available for new appropriations. Instead, the cancelled water rights would be swallowed up by the instream rights proposed in the Application. Thus, the Application significantly reduces the ability of landowners already seeking water rights to secure water rights in the future.

iii. The Application precludes future appropriation for storage, counter to the recommendations in Oregon's 2017 Integrated Water Resources Strategy and the Hood River Basin Study.

The proposed instream use further injures the public interest by limiting future appropriations from the Hood River basin for storage. This outcome conflicts with the recommendations in Oregon's 2017 Integrated Water Resources Strategy (the "Water Resources Strategy") and in the locally-developed Hood River Basin Study (the "Basin Study"), both of which recognize storage as an important tool for satisfying water resource needs.

The Water Resources Strategy recognizes that, "[i]ncreasingly, water users are relying on tools such as water conservation, re-use, transferring existing water rights, and water storage to meet their needs during the summer months." *Id.* at 16. For that reason, the Water Resources Strategy concludes that "[s]toring water, via built and natural systems, will be an important tool to meet Oregon's water needs." *Id.* at 59. To help meet future instream and out-of-stream water needs, the Water Resources Strategy recommends improving water-use efficiency and conservation and improving access to built storage. *Id.* at 95.

The need for increased storage is similarly recognized at a local level in the Basin Study. The Basin Study is the product of collaborative efforts by the U.S. Bureau of Reclamation and the Hood River County Water Planning Group (the "Planning Group"), who worked together to assess current and future water supply and demand in the Hood River basin and adjacent areas, and to identify a range of potential strategies to address any projected imbalances. Basin Study, at ES-1. Planning Group members included the Hood River Watershed Group, Columbia Gorge Fruit Growers Association, Hood River County Soil and Water Conservation District, multiple water districts, environmental groups, local resource specialists, Confederated Tribes of Warm Springs Oregon, Natural Resources Conservation Service, and a number of irrigation districts. *Id.* at ES-3.

The Basin Study determined that, "[i]f no action is taken, potable and irrigation demands will continue to increase and exacerbate water imbalances in the future, particularly during the summer months." *Id.* at ES-7. To address water demand challenges, the study evaluated three categories of actions: water conservation, groundwater recharge, and surface water storage. *Id.*

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Ultimately, the Basin Study concluded that “no single alternative will satisfy all of the water resource needs,” but that “due to the projection that summer streamflows are expected to get lower, a priority could be given to projects in the basin that have the ability to increase summer streamflow.” *Id.* at ES-10. Beyond conservation strategies (e.g., conversion of sprinkler systems to micro- or drip-irrigation), which are not independently sufficient to satisfy all water needs, the Basin Study’s top recommendation for safeguarding water resources related to increased storage. *Id.* at ES-10, 103.

The Application runs counter to the recommendations in the Water Resources Strategy and in the Basin Study because it inhibits Protestants’ members and irrigation districts’ ability to appropriate water for future storage. Approval of the Application could result in the loss of benefits associated with increased storage, which include: increased flows during low water months, water supply security for irrigators, and improved water quality. For those reasons, the Application is detrimental to the public interest.

iv. The Application contradicts the Commission’s renewal of water reservations in the Hood River basin.

Finally, approval of the Application does not align with the Commission’s recent decision to extend reservations for future economic development in the Hood River basin. In 2016, the Commission voted to extend reservations for the West Fork Hood River subbasin, East Fork Hood River subbasin, Neal Creek subbasin, Mosier Creek subbasin, Eightmile Creek subbasin and Fifteenmile Creek subbasin of the Hood River basin for an additional 20 years.⁵ Reservations for future economic development are intended “to ensure sufficient surface water will be available in the future to meet expected needs.” OAR 690-504-0100(1). Although water rights developed from the reservations in the Hood River basin have a priority date of November 6, 1992, which would make them senior to instream rights proposed in the Application, approval of the Application still has the potential to frustrate the purpose of the reserved rights. Specifically, water right permit applications to store reserved water must undergo public interest review. OAR 690-504-0100(6). Approval of the Application would likely increase the difficulty of successfully applying for reserved water rights in the future.

d. The amount of water requested in the Application for instream use is not supported by substantial evidence.

As a final matter, the monthly streamflow quantities⁶ requested in the Application are not supported by substantial evidence, because the study relied on by ODFW does not identify, with sufficient certainty, flow levels necessary to support fish life.

⁵ Meeting Minutes, Joint Water Resources Commission and Environmental Quality Commission Meeting Hermiston, Oregon, 4 (Aug. 18, 2016).

⁶ The amount of water allocable to an instream water right is limited to the estimated natural average flow (“ENAF”) occurring from the drainage system, except where periodic flows that exceed the natural flow are significant for the applied public use. OAR 690-077-0015(4). To the extent that ENAF quantities specified in the PFO differ from ENAF quantities previously

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To determine requested instream amounts, ODFW relied on the Hood River Tributaries Instream Flow Study prepared by Normandeau Associates, Inc. in 2014 (the "Flow Study"). The Flow Study considered four streams: Green Point Creek, Neal Creek, East Fork Hood River, and West Fork Hood River. Flow Study, at 48. As acknowledged in the study, the streams "vary in size and respond differently to hydrologic events," and "the hydraulic habitat characterized by each instream flow study will vary differently in response [to] climatic induced changes in flow." *Id.* In addition, the Flow Study found that higher flows are not always better for fish. *Id.* Specifically, the Flow Study concluded that *low* flows were favorable for adult and juvenile salmonids in the East Fork of the Hood River. *Id.*

In its concluding discussion, the Flow Study acknowledges:

"Even when considering only a single species, the index of hydraulic habitat for different life-stages will response to differently to changing flow and *no one flow will be the best for all life-stages.*"

Id. (emphasis added). Finally, the Flow Study acknowledges that habitat mapping was limited to one mile of stream for each stream reach and recommends:

"for a flow prescription in any of these streams, additional habitat mapping and potentially additional transects will be required to determine the applicability of the AWS/flow relationship to reaches no habitat mapped in the study."

Id. at 49. Because the Flow Study concludes that recommended flow levels vary significantly from stream-to-stream, and additional information is required for stream reaches that were not mapped (which includes the majority of the stream reach covered by the Application), ODFW's requested streamflows are not supported by substantial evidence.

4. Protest Filing Requirements

This Protest is timely filed. Any person may submit a written a protest to the PFO within 45 days from the date of publication of the PFO in the Department's Weekly Notice. OAR 690-077-0043(6). The Department published notice of the PFO on October 17, 2017. Therefore, this protest must be filed on or before December 1, 2017.

(... continued)

calculated by the Department for Coe Branch, tributary to Clear Branch, the Department has the burden of justifying the change. For example, as discussed in the Protest of Water Right Application IS-88329, the Department previously calculated different ENAF quantities for the South Fork Mill Creek than the ENAF quantities specified in the Proposed Final Order for that application.

Protestants have included with this Protest the protest fee of \$810. *See* ORS 536.050(j).

Protestants have complied with the provisions of OAR 690-077-0043 and OAR 690-002-0030. The Protest is in writing and signed by the Protestant or the Protestant's attorney. OAR 690-002-0030(1). The Protest also includes:

- “(a) The name, address and telephone number of the protestant;
- “(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- “(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
- “(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
- “(e) Any citation of legal authority supporting the protest, if known[.]”

OAR 690-077-0043(1).

5. Conclusion and Request for Contested Case Hearing

For the reasons set forth above, the Department should either deny the Application or condition approval of the Application to subordinate instream rights to water rights for irrigation use.

DATED: December 1, 2017

Respectfully submitted,



David Filippi, OSB No. 965095
Hayley Siltanen, OSB No. 164825
Of Attorneys for Oregon Farm Bureau
Federation, Hood River County Farm
Bureau, and Columbia Gorge Fruit Growers

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Instream Water Right Proposed Final Orders

Proposed Final Order Stage (PFO)

The proposed final order is the Department's penultimate decision on the water use request. The PFO documents the agency's decision through specific findings, including review of comments received. If appropriate, it includes a draft permit specifying any conditions or restrictions on the use. Persons interested in receiving a mailed copy of a PFO must pay a statutorily-required fee of \$25. (Any person paying \$25 to receive a PFO by mail will also receive a copy of the Final Order when it is issued.) PFO's may be viewed free of charge online at: <http://apps.wrd.state.or.us/apps/wr/wrinfo/>. Those disagreeing with the Department's decision as expressed in the PFO have 45 days to file a protest.

The protest deadline for proposed final orders appearing in this public notice is 5 p.m., Friday, December 1, 2017.

The protest filing fee is \$410 for the applicants and \$810 for non-applicants. Detailed requirements for filing a protest are included in the PFO. Persons who support the PFO may file a "standing" fee of \$230 to retain the ability to participate in future proceedings relating to an application. Before participation in a hearing is allowed, an additional \$580 will be required to request to participate as a party or limited party.

Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing, or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue, precludes judicial review based on that issue.

App#	<u>IS-88322</u>
County/Basin	Hood River / Hood (4)
Applicant Name	OREGON DEPARTMENT OF FISH AND WILDLIFE 4034 FAIRVIEW INDUSTRIAL DR SE SALEM, OR 97302-1142
Sources/TRSQ40Q160	EAST FORK HOOD RIVER > HOOD RIVER / 1.00N 10.00E 28 SENW
Use/Quantity	INSTREAM USES / 210.000 CFS
Quantity by month	JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS	180 210 210 210 210 210 150 150 169 160 180 180
Stream Reach	River Mile 6.2 to Mouth
Priority Date	12/01/2016
Stage/Status	PFO / PROPOSE TO APPROVE

App#	<u>IS-88323</u>
County/Basin	Hood River / Hood (4)
Applicant Name	OREGON DEPARTMENT OF FISH AND WILDLIFE 4034 FAIRVIEW INDUSTRIAL DR SE SALEM, OR 97302-1142
Sources/TRSQ40Q160	GREEN POINT CREEK > WEST FORK HOOD RIVER / 1.00N 9.00E 9 NWNE
Use/Quantity	INSTREAM USES / 120.000 CFS
Quantity by month	JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS	90 110 107 120 120 64.7 26.8 16.5 16.2 29 65.2 87.9
Stream Reach	River Mile 3.1 to Mouth
Priority Date	12/01/2016
Stage/Status	PFO / PROPOSE TO APPROVE

App# IS-88326
County/Basin Wasco / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 MILL CREEK > COLUMBIA RIVER / 1.00N 12.00E 22 SESW
Use/Quantity INSTREAM USES / 26.000 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 10 10 15 26 25.5 15.4 12.6 10.7 9.72 8.43 10 10
Stream Reach River Mile 8.1 to Mouth
Priority Date 12/01/2016
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88327
County/Basin Hood River / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 NEAL CREEK > HOOD RIVER / 1.00N 11.00E 6 SWSW
Use/Quantity INSTREAM USES / 41.900 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 26.4 41.9 40.1 27.6 9.98 4.91 2.41 1.95 2.15 2.96 4.8 10.6
Stream Reach River Mile 5.8 to Mouth
Priority Date 12/01/2016
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88328
County/Basin Hood River / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 ODELL CREEK > HOOD RIVER / 2.00N 10.00E 34 NESW
Use/Quantity INSTREAM USES / 16.300 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 8.55 15.7 16.3 9.25 .88 .17 .08 .09 .07 .13 .43 2.75
Stream Reach River Mile 4.0 to Mouth
Priority Date 12/01/2016
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88329
County/Basin Wasco / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 SOUTH FORK MILL CREEK > MILL CREEK / 1.00S 11.00E 20 NENW
Use/Quantity INSTREAM USES / 12.100 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 0 0 0 0 0 12.1 10 8.7 7 7 7 0
Stream Reach River Mile 10.1 to Mouth
Priority Date 12/01/2016
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88330
County/Basin Hood River / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 WEST FORK HOOD RIVER > HOOD RIVER / 1.00S 8.00E 25 SWNW
Use/Quantity INSTREAM USES / 250.000 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 150 250 250 250 250 250 150 147 139 141 190 190
Stream Reach River mile 14.7 to Mouth
Priority Date 12/01/2016
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88331
 County/Basin Wasco / Hood (4)
 Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
 4034 FAIRVIEW INDUSTRIAL DR SE
 SALEM, OR 97302-1142
 Sources/TRSQ40Q160 FIFTEENMILE CREEK > COLUMBIA RIVER / 1.00S 13.00E 25 SWSE
 Use/Quantity INSTREAM USES / 34.000 CFS
 Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
 In CFS 13 13 20 34 34 34 12.8 5.9 6.1 7.9 11.2 13
 Stream Reach River Mile 30.6 to Mouth
 Priority Date 12/01/2016
 Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88337
 County/Basin Wasco / Hood (4)
 Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
 4034 FAIRVIEW INDUSTRIAL DR SE
 SALEM, OR 97302-1142
 Sources/TRSQ40Q160 FIFTEENMILE CREEK > COLUMBIA RIVER / 2.00S 11.00E 28 NWSW
 Use/Quantity INSTREAM USES / 26.000 CFS
 Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
 In CFS 10 10 15 26 26 26 9 4 4 7 10 10
 Stream Reach River Mile 49.4 to 30.6
 Priority Date 12/31/2016
 Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88334
 County/Basin Hood River / Hood (4)
 Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
 4034 FAIRVIEW INDUSTRIAL DR SE
 SALEM, OR 97302-1142
 Sources/TRSQ40Q160 EAST FORK HOOD RIVER > HOOD RIVER / 2.00S 10.00E 5 SESE
 Use/Quantity INSTREAM USES / 175.000 CFS
 Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
 In CFS 175 175 175 175 175 175 110 110 145 145 175 175
 Stream Reach River Mile 16.8 to 6.2
 Priority Date 12/31/2016
 Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88335
 County/Basin Hood River / Hood (4)
 Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
 4034 FAIRVIEW INDUSTRIAL DR SE
 SALEM, OR 97302-1142
 Sources/TRSQ40Q160 EAST FORK HOOD RIVER > HOOD RIVER / 2.00S 10.00E 8 SWSE
 Use/Quantity INSTREAM USES / 127.000 CFS
 Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
 In CFS 75 75 75 127 127 127 127 75 75 50 50 75
 Stream Reach River Mile 17.8 to 16.8
 Priority Date 12/31/2016
 Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88355
 County/Basin Clackamas / Sandy (3)
 Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
 4034 FAIRVIEW INDUSTRIAL DR SE
 SALEM, OR 97302-1142
 Sources/TRSQ40Q160 CLEAR CREEK > SANDY RIVER / 2.00S 7.00E 13 SENW
 Use/Quantity INSTREAM USES / 45.000 CFS
 Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
 In CFS 45 45 45 45 45 45 27 8/6 6 6/35 45 45
 Stream Reach River Mile 4.3 to Mouth
 Priority Date 01/16/2017
 Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88332
County/Basin Hood River / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 CLEAR BRANCH > MIDDLE FORK HOOD RIVER / 1.00S 9.00E 27 NWNE
Use/Quantity INSTREAM USES / 45.000 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 44 39 42 50 50 50 30 21 18 21 34 35
Stream Reach River Mile 1.2 to Mouth
Priority Date 05/01/2017
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88333
County/Basin Hood River / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 COE BRANCH > CLEAR BRANCH / 2.00S 9.00E 4 NWSE
Use/Quantity INSTREAM USES / 20.000 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 14 14 20 20 20 14 14 20 20 20 14 14
Stream Reach River Mile 3.5 to Mouth
Priority Date 05/01/2017
Stage/Status PFO / PROPOSE TO APPROVE

App# IS-88336
County/Basin Hood River / Hood (4)
Applicant Name OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1142
Sources/TRSQ40Q160 ELIOT BRANCH > CLEAR BRANCH / 2.00S 9.00E 10 NESW
Use/Quantity INSTREAM USES / 11.000 CFS
Quantity by month JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
In CFS 11 11 11 11 11 11 11 11 11 11 11 11
Stream Reach River Mile 4.5 to Mouth
Priority Date 05/01/2017
Stage/Status PFO / PROPOSE TO APPROVE

Mailing List for IS PFO
Scheduled Mailing Date:

Application: IS-88333

Applicant:

Oregon Department of Fish & Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

WRD - Watermaster: Bob Wood, District 3
WRD - Regional Manager: Mike Ladd
WRD - Data Center
WRD - Water Availability
WRD - File

Caseworker: Craig Kohanek

Copies Mailed

by:

JP

(STAFF)

on:

10-17-17

(DATE)

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application IS-88333 in the)	PROPOSED FINAL ORDER
name of Oregon Department of Fish &)	
Wildlife)	

Summary: The Department proposes to issue an order approving Application IS-88333 and issue a certificate consistent with the attached draft certificate.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.140 to 537.250 and 537.332 through 537.360, and Oregon Administrative Rule (OAR) Chapter 690, Division 77 and Hood Basin Program Division 504. These statutes and rules can be viewed on the Oregon Water Resources website: <http://www.oregon.gov/owrd/pages/law/index.aspx>

The Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- (a) 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);
- (b) Water is available; OAR 690-077-0015(4)
- (c) The proposed use will not injure other water rights; and
- (d) The proposed use complies with the rules of the Commission. OAR 690-077-0033(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-077-0037(3).

If the Department determines that the presumption is established and not overcome the Department shall issue a proposed final order recommending issuance of the certificate subject to any appropriate modifications or conditions.

FINDINGS OF FACT

Application History

1. On May 1, 2017, Oregon Department of Fish & Wildlife filed a complete application for the following water use:

Use of Water: Public use, specifically fish life and wildlife.

County: Hood River County

Location: COE BRANCH, TRIBUTARY TO THE CLEAR BRANCH, BEGINNING AT APPROXIMATELY RIVER MILE 3.5 (45.422902, -121.675658) (NWSE, SECTION 4, TOWNSHIP 2S, RANGE 9E, WM): CONTINUING DOWNSTREAM TO THE MOUTH AT

APPROXIMATELY RIVER MILE 0.0 (45.46307, -121.645767) (SWSW, SECTION 23, TOWNSHIP 1S, RANGE 9E, WM) HOOD RIVER COUNTY

Source of Water: Coe Branch in Hood River Basin

Amount of Water (in cubic feet per second "CFS") requested by month

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
14	14	20	20	20	14	14	20	20	20	14	14

- On July 7, 2017, the Department mailed the applicant notice of its Initial Review, determining that "Some percentage of the water applied for has been determined allocable for the purposes identified in this application." The applicant did not notify the Department to stop processing the application within 14 days of that date.
- On July 11, 2017, the Department gave public notice of the initial review in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
- Written comments were received from Middle Fork Irrigation District. The Department has carefully considered the comments.
- This Proposed Final Order confirms the preliminary findings made in the initial review.

Presumption Criteria (a) Consistency with Basin Program

- "Fish life" is a classified use allowed under the Hood River Basin Program (OAR 690-504-0000(1)). ORS 537.343(1); OAR 690-077-0039(2)

Presumption Criteria (b) Water Availability

- An assessment of surface water availability was completed and a copy of this assessment is in the file. The amount of out-of-stream appropriations is not a factor in determining the amount of an instream water right. OAR 690-077-0015(3). The amount allocable to an instream water right is limited to the estimated average natural streamflow occurring from the drainage system, except where periodic flows that exceed the natural flow are significant for the applied public use. OAR 690-077-0015(4). The table below compares the estimated average natural flow (EANF) of the Coe Branch on a monthly basis (in CFS) to the requested flows in the application. The last row is the allowable amount and the amount in the proposed certificate. Water is available in the times and amounts requested. ORS 537.343(1); OAR 690-077-0039(2)(c)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
EANF	39	35	31	44	71	68	48	30	26	26	38	40
Flows Requested	14	14	20	20	20	14	14	20	20	20	14	14

Allowable amount	14	14	20	20	20	14	14	20	20	20	14	14
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Presumption Criteria (c) Injury Determination

8. The proposed use is junior in priority and by operation of the prior appropriation doctrine will not injure other water rights. ORS 537.343(1); OAR 690-077-0039(2)(d)

Presumption Criteria (d) Whether the use complies with rules of the Commission

9. The Department placed the application on the Department's Public Notice for a 30-day comment period. Consistent with OAR 690-077-0031, copies of the notice were sent to the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse. No land use information was received by the Department during the initial review 30 day public comment period. Pursuant to OAR 690-077-0031(5) the Department may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.
10. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

Whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170

11. Based on an evaluation of the proposed use, the comments received, information available in its files or received from other interested agencies and any other available information, the Department has determined that the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170. OAR 690-077-0039(2)(e)

Determination of Presumption that a proposed surface water use will not impair or be detrimental to the public interest

12. Based on the review of the presumption criteria (a)-(d) above, and Finding of Fact #9, #10 and #11, the Department finds that a rebuttable presumption has been established. 537.343(1); OAR 690-077-0039(2)(g)

CONCLUSIONS OF LAW

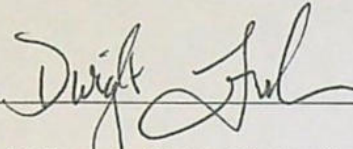
The proposed use would not impair or be detrimental to the public interest.

When issuing certificates, ORS 537.343(1) authorizes the Department to include provisions or restrictions concerning the use, control and management of the water to be appropriated for the project. The attached draft permit is conditioned accordingly.

PROPOSED ORDER

The Department recommends approval of Application IS-88333 and issuance of a certificate consistent with the attached draft certificate.

DATED October 17, 2017



Dwight French, Water Rights Services Division Administrator, for
Thomas M. Byler, Director

STATE OF OREGON
COUNTY OF HOOD RIVER
PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER STREET NE, STE A
SALEM, OR 97301

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

APPLICATION FILE NUMBER: IS-88333

SOURCE OF WATER: COE BRANCH, TRIBUTARY TO THE CLEAR BRANCH

COUNTY: HOOD RIVER

BENEFICIAL USE: PUBLIC USE, SPECIFICALLY FISH LIFE AND WILDLIFE

DATE OF PRIORITY: MAY 1, 2017

To be maintained in:

COE BRANCH, TRIBUTARY TO THE CLEAR BRANCH, BEGINNING AT APPROXIMATELY RIVER MILE 3.5 (45.422902, -121.675658) (NWSE, SECTION 4, TOWNSHIP 2S, RANGE 9E, WM): CONTINUING DOWNSTREAM TO THE MOUTH AT APPROXIMATELY RIVER MILE 0.0 (45.46307, -121.645767) (SWSW, SECTION 23, TOWNSHIP 1S, RANGE 9E, WM) HOOD RIVER COUNTY.

The right is established under Oregon Revised Statute 537.341

The following conditions apply to the use of the 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
14	14	20	20	20	14	14	20	20	20	14	14

The water right holder shall measure and report the instream flow along the reach of the stream or river described in the certificate as may be required by the standards for instream water right reporting of the Water Resources Commission.

For purposes of water distribution, this instream right shall not have priority over human consumption.

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.

The flows are measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Issued _____

DRAFT

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7), the Proposed Final Order may be protested. Protests must be received in the Water Resources Department no later than **December 1, 2017**. Protests 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 the 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;
- To affect the department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(6) requires that a protest demonstrate by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **December 1, 2017**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$230. If a hearing is scheduled, an additional fee of \$580 must be submitted along with a petition for party status.

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 either:

- 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.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. 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. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. 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 toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

This document was prepared by R. Craig Kohanek. If you have any questions about any of the statements contained in this document I can be reached at 503-986-0823.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem OR 97301-1266
503-986-0900
www.oregon.gov/owrd

RECEIVED

MAY 01 2017

Application for Instream Water Right Certificate

OWRD

SECTION 1: ORGANIZATION INFORMATION AND SIGNATURE

Organization Information

NAME OREGON DEPT. OF FISH AND WILDLIFE		PHONE 503-947-6000	FAX 503-947-6202
ADDRESS 4034 FAIRVIEW INDUSTRIAL DR. SE			CELL
CITY SALEM	STATE OR	ZIP 97302-1142	E-MAIL *

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME ANNA PAKENHAM STEVENSON / OREGON DEPT. OF FISH AND WILDLIFE		PHONE 503-947-6084	FAX 503-947-6202
ADDRESS 4034 FAIRVIEW INDUSTRIAL DR. SE			CELL
CITY SALEM	STATE OR	ZIP 97302-1142	E-MAIL * ANNA.P.STEVENSON@STATE.OR.US

* By providing an e-mail address, consent is given to receive all correspondence from the Department electronically. (Note that paper copies of the Final Order documents will also be mailed.)

Applicant Signature

Anna Pakenham Stevenson
Water Program Manager

Print Name and Title

5/1/17

Date

Applicant Signature

Print Name and Title

Date

SECTION 2: NOTIFICATION TO DEQ, ODFW, AND PARKS

Please indicate the date you notified other state agencies of your intent to file an instream water right application.

Oregon Department of Environmental Quality was notified on: October 17 2016

Oregon Department of Fish and Wildlife was notified on: N/A

Oregon Parks and Recreation Department was notified on: October 17 2016

SECTION 3: NOTIFICATION TO AFFECTED LOCAL GOVERNMENTS

☒ Please provide copies of letters of your intent to file an instream water right application to each affected local government within whose jurisdiction the instream use is proposed. Affected local government means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land-use planning functions under ORS 197.190.

RECEIVED

MAY 01 2017

OWRD

SECTION 4: SOURCE AND REACH

Stream or lake name: Coe Branch Tributary to: Clear Branch

If the source is a stream, indicate the reach delineated by river mile (the upstream point to the downstream point) of the proposed instream water right:

Coe Branch, tributary to Clear Branch, beginning at river mile 3.5 (NWSE, S4, T2S, R9E, WM) in Hood River County (45.422902, -121.675658) and continuing downstream to river mile 0.0 (SWSW, S23, T1S, R9E, WM) in Hood River County (45.46307, -121.645767).

If the source is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume and page, or decree name). _____

☐ If the source is stored water and you do not, or will not, own the reservoir(s), please enclose a copy of your written agreement with the owner of the reservoir to release flows identified in this application.

SECTION 5: PUBLIC USES AND AMOUNTS

ODFW Administrative Rule 635-400-0015(7) & (8) require ODFW to request flows that meet the following standard:

(7) An instream flow requirement shall be specified as a quantity of water or water surface elevation as determined by the methodologies in this section and dependent upon other habitat factors, fish or wildlife species plans, basin or subbasin plans, management objectives or other commission policies for the waterway.

(8)(a) The instream flow requirement for any specified period shall be no less than the highest instream flow or water surface elevation required by any of the fish or wildlife species of management interest during that period;

OWRD Administrative Rule 690-077-0015(4) requires OWRD to limit the approved flow to meet the following standard:

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

The public uses to be served by the requested instream water right are: For the conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat. Applied flows include water for fish and wildlife migration, spawning, nesting, brooding, egg incubation, larval or juvenile development, juvenile and adult rearing and aquatic life. Flow levels will vary based on life cycle and life stage development needs.

The monthly (or half-monthly) flows in cubic feet-per-second (CFS) or acre-feet (AF) or by lake elevation (LE) necessary to support the public uses are:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
14	14	20	20	20	14	14	20	20	20	14	14	CFS

If this is a multi-agency request, please indicate the monthly (or half-monthly) flows in cubic feet-per-second (cfs) or acre-feet (af) or by lake elevation (le) that are necessary to support the public uses for each category of public use.

USE	J	F	M	A	M	J	J	A	S	O	N	D	
													<input type="checkbox"/> CFS
													<input type="checkbox"/> AF
													<input type="checkbox"/> LE
													<input type="checkbox"/> CFS
													<input type="checkbox"/> AF
													<input type="checkbox"/> LE

SECTION 6: DATA, METHODS, AND COMPLIANCE

Please describe the technical data and methods used to determine the requested amounts.

ODFW relied on an IFIM/PHABSIM study to determine the requested amounts (Middle Fork Hood River IFIM Study, Watershed Professionals Network 2013. See attached). This method quantifies physical habitat at different streamflow rates for all life stages of fish, based on stream hydraulics (Bovee et al 1998; Bovee 1997; Bovee 1982). It typically requires measurements at one to three flows, and uses hydraulic simulation to predict habitat over a wide range of flows. Results are tabulated for spawning and incubation, fry, juvenile and adult rearing, and passage flows. Criteria for spawning, rearing, and incubation include depth, velocity, substrate and cover. Fish passage is based on depth and velocity only.

ODFW used the habitat vs. flow relationships produced by this study to derive recommended flows in Coe Branch. ODFW used the habitat vs. flow relationships for appropriate species and life stages to recommend flow levels specifically designed to meet the seasonal biological requirements of important fish species in the Coe Branch. These recommended flows were used in this instream water right application. The desired flow levels are determined by examining habitat vs. flow over the range of flows simulated, for each species and life stage according to the appropriate time periods.

Please provide written documentation of how your agency complied with the requirements contained in your own administrative rules for instream water rights, including application of the required methods to determine requested flows.

OAR 635-400-0015 Determination of Instream Flow Measurement Methodologies

The methodology used in the study was IFIM/PHABSIM (Middle Fork Hood River IFIM Study, Watershed Professionals Network 2013. See attached). As such, it conformed to the procedures laid out in the agency's rules- Determination of Instream Flow Measurement Methodologies, Oregon Administrative Rules Division 400, 635-400-0015. Specifically, the studies on Coe Branch used IFIM/PHABSIM to produce a relationship between physical habitat and flow. ODFW is satisfied that correct field and computer procedures were followed to produce the results (Bovee et al 1998; Bovee

1997; Bovee 1982). ODFW examined and interpreted the results of the study to determine the requested flows.

OAR 635-400-0020- Standards for Selection of Streams or Stream Reaches for Instream Water Right Applications

Consistent with our rules, ODFW used the following resources and standards to prioritize waterways for instream water right applications: 1) basin and subbasin plans, management objectives, statutes, administrative rules and Commission policies; 2) the presence of fish and wildlife species that are considered endangered, threatened, sensitive or otherwise important; 3) the need to conserve, maintain or enhance fish or wildlife habitats or functions, including but not limited to, passage, spawning, incubation, rearing, and wintering habitats that maintain or improve the species.

OAR 635-400-0025- Responsibilities to WRD

ODFW will coordinate with OWRD for instream water rights monitoring as necessary for priority reaches. Specifically, ODFW will coordinate with OWRD to develop monitoring plans for instream water rights, revise or create a Memorandum of Understanding between the ODFW and WRD to include issues related to instream water rights, such as measuring, monitoring and enforcement of instream water rights.

OAR 635-400-0030- Internal Process for Instream Water Right Application

Instream Water Rights application initiation, consultation, review, processing, submittal, and record keeping was consistent with ODFW rules. Specifically, the application was initiated and processed by the proper ODFW staff, was presented to OWRD within the timelines stated in the internal rules, and ODFW shall also abide by the review requirements and make any required corrections requested by OWRD.

References:

- Bovee, K.D., B.L. Lamb, J.M. Bartholow, C.B. Stalnaker, J. Taylor, and J. Henriksen. 1998. Stream habitat analysis using the Instream Flow Incremental Methodology. U.S. Geological Survey, Biological Resources Division Information and Technology Report USGS/BRD-1998- 0004. viii+131 pp. <https://www.fort.usgs.gov/publication/3910>
- Bovee, K.D. 1997. Dave collection procedures for the Physical Habitat Simulation System. . U.S. Geological Survey, Biological Resources Division Information and Technology Draft Report USGS/BRD-1997- 146pp. <https://www.fort.usgs.gov/sites/default/files/products/publications/20002/20002.pdf>
- Bovee, K.D. 1982. A guide to stream habitat analysis using the instream flow incremental methodology. Instream Flow Information Paper 12. U.S. Fish and Wildlife Service FWS/OBS-82/26. 248 pp. <http://www.arlis.org/docs/vol1/Susitna/1/APA193.pdf>

SECTION 7: REMARKS

Use this space to clarify any information you have provided in the application. _____

SECTION 8: MAP

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OWRD

Proposed Instream Water Rights

Coe Branch

site

HOOD DRAINAGE BASIN OREGON

WATER RESOURCES DEPT.
SALEM, OREGON
1975

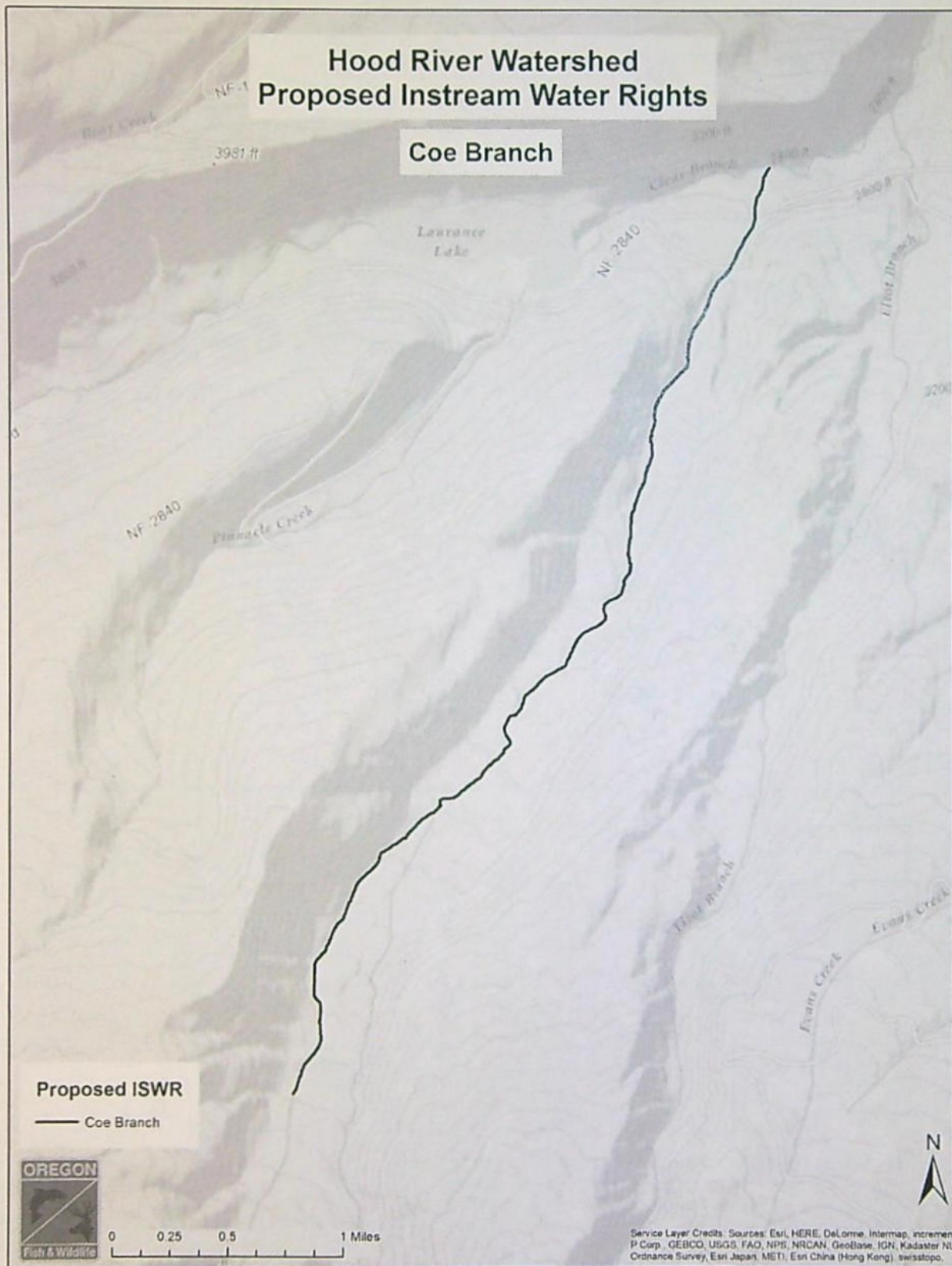
MAP NO. 46

MAY 01 2017

Revised 4/7/17

Application for Instream Water Right Certificate

4





MARTEN LAW

July 17, 2017

RECEIVED BY OWRD

JUL 19 2017

SALEM, OR

Via mail

Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Re: Comments from Middle Fork Irrigation District Concerning Instream
Applications #88332, #88333, and #88336

Dear Water Resources Department:

Please accept the following comments submitted on behalf of the Middle Fork Irrigation District (MFID) concerning instream water right applications #88332, #88333, and #88336. On December 1, 2016 the Oregon Department of Fish and Wildlife (ODFW) submitted these applications for instream rights on Clear Branch, Coe Branch, and Eliot Branch, respectively.

MFID services irrigation customers over thousands of acres of land in the Hood River Valley. Among MFID's customers are a number of orchards, which are critically dependent on a predictable and sufficient water supply to ensure their continued productivity and vital contribution to the economy of the Hood River Valley and the state of Oregon as a whole.

MFID has long focused on the implementation of innovative solutions to provide a consistent, sufficient supply of water to its customers while furthering the health and productivity of the surrounding waterways. MFID has a long history of collaboration with ODFW to achieve these mutually beneficial outcomes. Given the water supply challenges facing both MFID and ODFW as a result of climate change and shrinking glaciers, MFID's creative, collaborative, and flexible approach to securing sufficient and predictable supplies and instream flows is becoming increasingly critical both to MFID's service of its customers, and to the overall health of the Hood River Valley waterways and ecosystem.

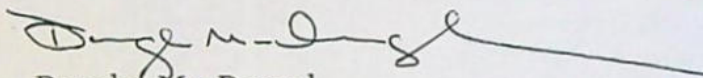
MFID wishes to continue this successful approach and is concerned that this new instream right could potentially complicate its efforts to implement creative fish-friendly solutions and continue to collaborate with ODFW in furtherance of mutual goals. MFID is especially attuned to the need for proactive future planning because MFID is preparing for the fast-approaching renewal of its U.S. Forest Service special use permit in 2021. As it engages in National

Environmental Policy Act analysis and Endangered Species Act consultation required by the permit renewal, MFID wishes to preserve the widest possible array of options for developing fish-friendly policies.

It is possible future efforts could require new rights that would be subordinate to the proposed instream right. Therefore, an additional instream right on East Fork Hood River may have the potential to limit MFID's options in the future or complicate implementation of fish-friendly initiatives. Should the proposed instream right be granted, MFID asks that OWRD commit to subordinating or modifying ODFW's instream right where doing so would serve mutual goals in the basin.

Thank you for your attention to MFID's comments concerning this very important matter. Please do not hesitate to contact me if you have any questions or concerns about these comments or if I can be of any further assistance. MFID is eager to collaborate with OWRD on this matter however it can.

Sincerely,

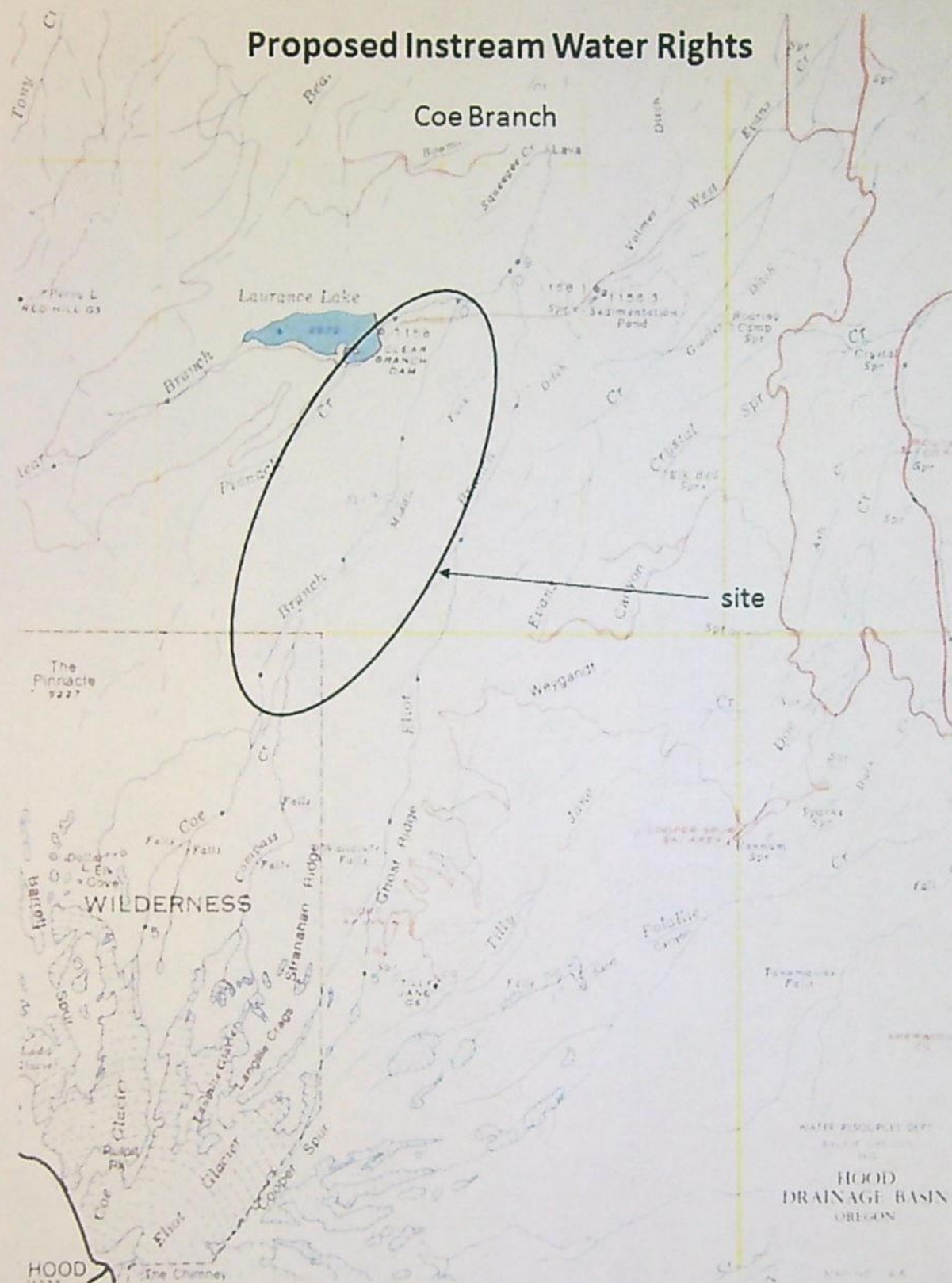


Douglas MacDougal

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JUL 19 2017

SALEM, OR



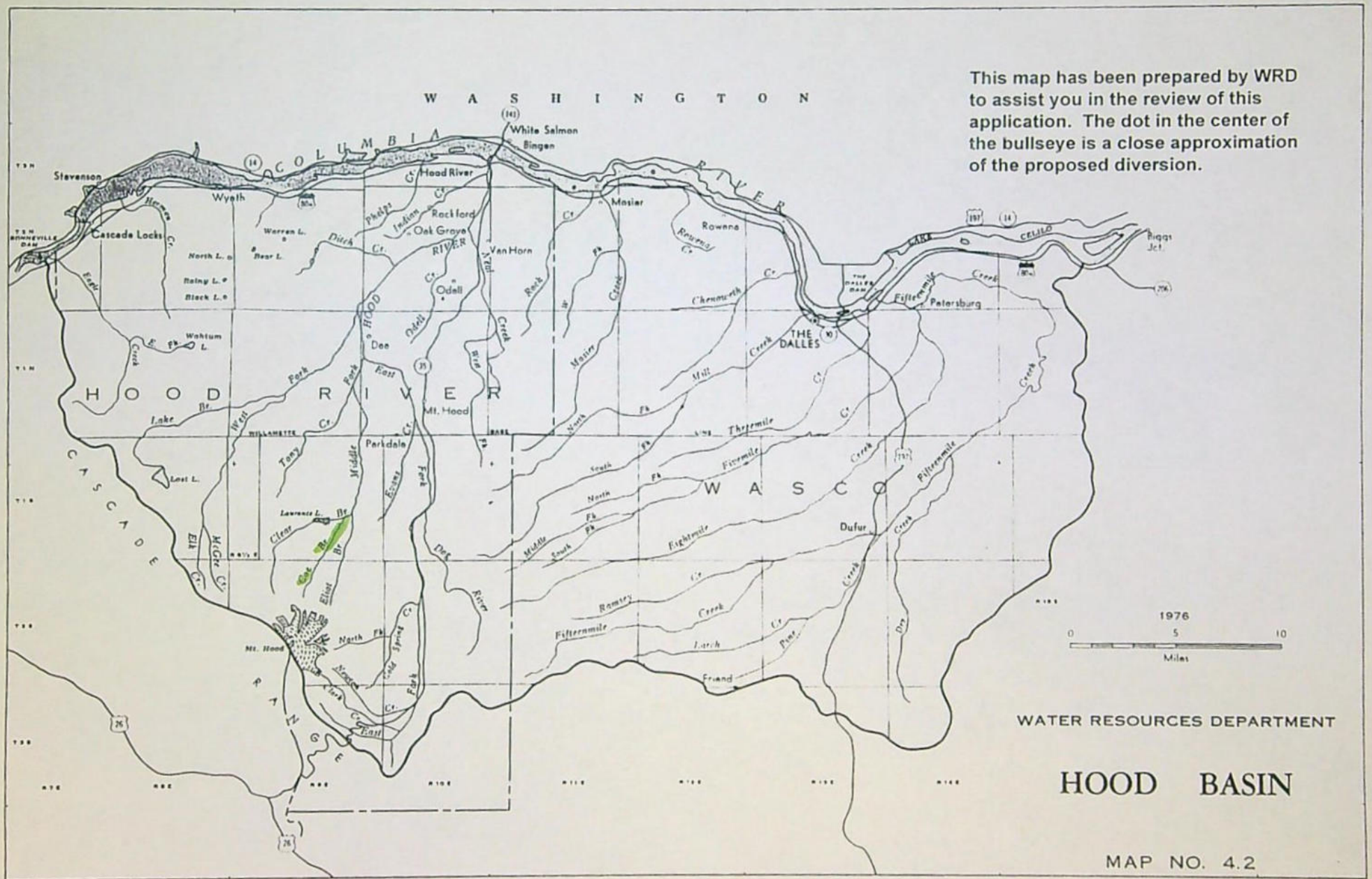
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OWRD

W A S H I N G T O N

This map has been prepared by WRD to assist you in the review of this application. The dot in the center of the bullseye is a close approximation of the proposed diversion.



WATER RESOURCES DEPARTMENT

HOOD BASIN

MAP NO. 4.2

KOHANEK Ron C * WRD

From: KOHANEK Ron C * WRD
Sent: Tuesday, June 06, 2017 10:26 AM
To: BEAMER Jordan P * WRD
Cc: STAHR Kenneth L * WRD; WALLIN Timothy * WRD (Timothy.Wallin@oregon.gov)
Subject: Estimated average natural flow data

Jordan,

I am checking to find out when I may expect to receive from you the estimated average natural flow data for instream applications :

IS 88332, IS 88333 and IS 88336?

I look forward to your response.

Craig Kohanek



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

July 6, 2017

Director
In Care of Anna Pakenham-Stevenson
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302-1142

Reference: Instream water right in the Hood Basin, File IS 88332, IS 88333 and IS 88336.

Dear Oregon Department of Fish and Wildlife:

THIS IS THE INITIAL REVIEW AND IS SUBJECT TO CHANGE
AT THE NEXT PHASE OF PROCESSING

This letter is to inform you of the preliminary analysis of the water right application. This document, called an "Initial Review", is to inform you of the potential limitations to the proposed instream water rights and to describe some options. Based on the information you provided, the Oregon Water Resources Department (OWRD) has made the following initial determinations:

Initial Determinations:

1. The referenced applications are complete and not defective.
2. The proposed use is not prohibited, restricted or limited by law.
3. Water is available from the proposed source during the times and in the amounts requested.
4. The reaches proposed in this application for instream water rights are in the Hood Basin.
5. Per the Hood Basin Program (OAR 690-504-0000(1)), fish life and wildlife are classified as Public Uses as defined in ORS 537.332(5)(b) and OAR 690-077-0010(27)(b).
6. All amounts of water are in cubic feet per second.
7. For these applications the estimated monthly average natural flow exceeds the amount that the applicant requested.

Summary of determination:

The water applied for has been determined allocable in the amounts requested for the purpose identified in each application.

Protests

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Under the provisions of ORS 537.153(7), the Proposed Final Order may be protested. Protests must be received in the Water Resources Department no later than **February 18, 2022**. Protests 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 the 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;
- To affect the department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(6) requires that a protest demonstrate by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **February 18, 2022**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;

- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

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 either:

- 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.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. 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. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers:

Active duty servicemembers have a right to stay a proceeding under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260 the Oregon Military Department at 503-584-3571, or the nearest United State Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a tollfree telephone number.

APPLICATION FACT SHEET

Application File Number: IS 88332, IS 88333 and IS 88336

Applicant: Oregon Department of Fish and Wildlife

County: **Sandy Hood**

Watermaster: Bob Wood, District 3

Priority Date: May 1, 2017

Source: 1) Clear Branch, tributary to Middle Fork Hood River, Coe Branch, tributary to Clear Branch, Eliot Branch, tributary to Clear Branch.

Uses: Fish life and wildlife

Water Quantity:

IS 88332: (All amounts of water are in cubic feet per second)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
44	39	42	50	50	50	30	21	18	21	34	35

IS 88333: (All amounts of water are in cubic feet per second)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
14	14	20	20	20	14	14	20	20	20	14	14

IS 88336: (All amounts of water are in cubic feet per second)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
11	11	11	11	11	11	11	11	11	11	11	11

Basin Name & Number: Hood Basin #4

Stream Index Reference: OWRD Streamcode 04174001500010260 - Clear Br, 04174001500010230 - Eliot Br, 04174001500010250 - Coe Br.

PUBLIC NOTICE DATE: July 11, 2017

30 DAY COMMENT DEADLINE DATE: August 10, 2017

Estimated average natural flow

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
18	16	15	22	40	39	27	16	14	14	19	19

Allowable water use

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
11	11	11	11	11	11	11	11	11	11	11	11

The applications may move to the next phase of the water rights application review process. Comments received within the comment period will be evaluated at the next phase of the process.

To Proceed with Your Application:

If you choose to proceed with an application, you do not have to notify the Department. Your application 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.

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by July 25, 2017.

If you have any question:

Feel free to call Craig Kohanek at (503) 986-0823 if you have questions. Please have the application number(s) available if you call.

Mailing List for IR Copies

Application: IS 88332, IS 88333 and IS 88336 - sent 1 copy on file IS-88332

Date: July 6, 2017

Original mailed to:

Applicant:

Director
In Care of Anna Pakenham-Stevenson
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302-1142

Copies Mailed	
by:	CH (STAFF)
on:	7/7/17 (DATE)

Copies sent to:

1. WRD - File
2. WRD - Water Availability: Carlos Ortiz-Turner
3. WRD - Laura Wilke

IR, Map, and Fact Sheet Copies sent to:

(NOTE: please send only one copy per office, even if there is more than one name on the list)

1. Watermaster: Bob Wood, District 3
2. ODFW District Biologists: Rod French
3. ODFW: Anna Pakenham Stevenson
4. Columbia River Intertribal Fish Commission:
5. US Fish & Wildlife: Nancy Gilbert, 63095 Deschutes Market Rd, Bend OR 97701-9794
6. NW Power & Conservation Council, 851 SW Sixth Ave., Suite 1020, Portland, OR 97204-1347
7. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
8. DOA: Salem: Jim Johnson & Paul Measeles
9. DSL: Shawn Zumwalt
10. Confederated Tribes of the Warm Springs Indian Reservation: Robert Brunhoe - Natural Resources Mgr.

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.):

Caseworker: Ronald C. Kohanek

S:\groups\wr\instream - state agency\Hood Basin IS rights\2nd set of Applications\Clear, Coe, Eliot Branch

Instream Water Right Application Completeness Checklist

Minimum Requirements OAR 690-077-0020

Application IS 88333 County Hood River Priority Date 5-1-2017
 Township 15 Range 9E Section 23 Downstream end of ISWR
 Amount 14-20 CFS Use Fish life, Wildlife WM Dist. # 3
 Agency (ies) Applying Oregon Department of Fish & Wildlife

Caseworker Assigned: ☐ Barbe ☒ Craig ☐ Kim ☐ Lisa ☐ Scott

☒ Contact info: Name(s) and address(es) of the agency(ies) applying (OAR 690-077-0020(4)(a));

☒ Public uses that will be served by the requested instream water right and the flows necessary to support the public uses (OAR 690-077-0020(4)(b));

☒ River, stream, or lake name (OAR 690-077-0020(4)(c)); Coe Branch, tributary to Clear Branch

☒ If a stream, the reach delineated by river mile and stream to which it is tributary (OAR 690-077-0020(4)(d));

☒ The appropriate section of a Department basin map with the applicable lake or stream identified (OAR 690-077-0020(4)(e));

☒ The instream flow requested by month and year in cubic feet per second or acre-feet or lake elevation (OAR 690-077-0020(4)(f));

☒ A description of the technical data and methods used to determine the requested amounts (OAR 690-077-0020(4)(g));

☒ Evidence of notification of other qualified applicant agencies (OAR 690-077-0020(4)(h));

☒ If a multi-agency request, the amounts and times requested for each category of public use (OAR 690-077-0020(4)(i));

☒ Identification of affected local governments (pursuant to OAR 690-077-0010) and copies of letters notifying each affected local government of the intent to file the instream water right application (OAR 690-077-0020(4)(j)); Find out from OAR if notification letter was specific to Coe Branch, Clear Branch & Eliot Branch.

☒ Written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights including application of the required methods to determine the requested flows (OAR 690-077-0020(4)(k));

☒ Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements (OAR 690-077-0020(4)(l))

Does the applicant:

- ☒ propose a means and location for measuring the instream water right; (OAR 690-077-0020(5)(a)) See Section 6
- ☒ propose a strategy and responsibility for monitoring flows for the instream right; (OAR 690-077-0020(5)(b)) of Application form
- ☒ Identify any provisions needed for managing the water right to protect the public uses; (OAR 690-077-0020(5)(c))

Instream Water Right Application Completeness Checklist

Minimum Requirements OAR 690-077-0020

If this is a request for an instream water right to be supplied from stored water, does it identify the reservoir and have 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. (OAR 690-077-0020(6));

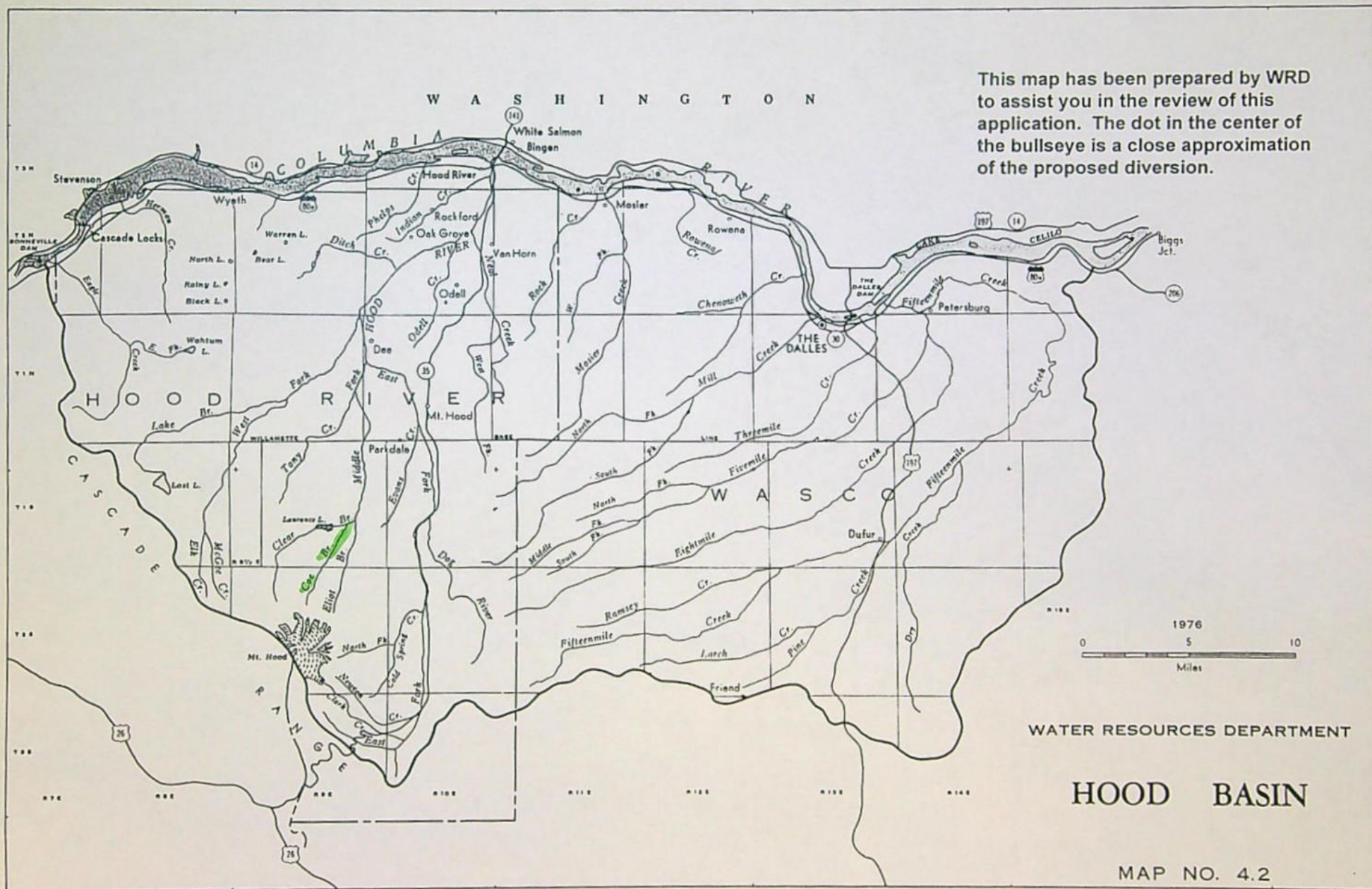
☐ Yes

☐ No

N/A

Reviewed by: B. Craig Kohonen

Date: 5-1-2017



YOU ARE ENCOURAGED TO PROVIDE THIS INFORMATION:

A means and location for measuring the instream water right:

- Please see section 6

The strategy and responsibility for monitoring flows for the instream right:

- Please see section 6

Any provisions needed for managing the water right to protect the public uses: None

- Please see section 6

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- ☐ SECTION 1: _____
- ☐ SECTION 2: _____
- ☐ SECTION 3: _____
- ☐ SECTION 4: _____
- ☐ SECTION 5: _____
- ☐ SECTION 6: _____
- ☐ SECTION 7: _____
- ☐ SECTION 8: _____
- ☐ Other: _____

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OWRD



Oregon

Kate Brown, Governor

Department of Fish and Wildlife

Fish Division

4034 Fairview Industrial Drive SE

Salem, OR 97302

(503) 947-6201

FAX (503) 947-6202

www.dfw.state.or.us/

Date: November 14, 2016

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MAY 1 2017



OWRD

[Enter Addressee Here]

Generic Notification letter: See addressee list on Page 9

REFERENCE: Proposed Instream Water Right Application in Your Jurisdiction

The Water Resources Department requires applicants intending to file an application for an instream water right to notify local governments that could be affected, so that the local government can make sure that the proposed new use does not result in a land use that would be incompatible with its comprehensive plan.

As such, we are notifying you under OAR 690-077-0020 (j) that we intend to submit applications to the Oregon Water Resources Department for instream rights in your area.

The proposed place of instream use would be in the following streams and respective reaches:

Eagle Creek, tributary to the Columbia River:

Reach #1:

Description:

- Eagle creek, tributary to the Columbia River, beginning at the mouth, river mile 0.0 in the SWNE quarter of Section 22, Township 2 N, Range 7 E W.M. in Multnomah County (45.6405, -121.9319) and continuing upstream to Metlako Falls at river mile 2.1 in the SWNW quarter of Section 25, Township 2 N, Range 7 E W.M. in Hood River County (45.6278, -121.8988).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
70	70	70	120	120	120	70	84	143	143	120	120	CFS

Herman Creek, tributary to the Columbia River:

Reach #1:

Description:

- Beginning at the mouth of Herman Creek, tributary to the Columbia River, at river mile 0.0 in the NESE quarter of Section 6, Township 2 N, Range 8 E W.M. in Hood River

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County (45.6834, -121.8616) and continuing upstream to the confluence of East Fork Herman Creek and Herman Creek at river mile 4.2 in the NW SW quarter of Section 15, Township 2 N, Range 8 E W.M. in Hood River County (45.6549, -121.819).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
60	60	60	102	102	102	60	72	122	122	102	72	CFS

Fifteenmile Creek, tributary to the Columbia River:

Reach #1: Upstream of Dufur

Description:

- In Fifteenmile Cr, tributary to the Columbia River, beginning in Dufur at the Highway 197 crossing, river mile 30.6 in the SWSE quarter of Section 25, Township 1 S, Range 13 E W.M. in Wasco County (45.4504, -121.1196), and continuing upstream to the unnamed barrier at river mile 49.4 in the NWSW quarter of Section 28, Township 2 S, Range 11 E W.M. in Wasco County (45.3656, -121.4402).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
10	10	15	26	26	26	15	15	10	10	10	10	CFS

Reach #2: Beginning at the mouth

Description:

- In Fifteenmile Creek, tributary to the Columbia River, beginning at the mouth, river mile 0.0 in the SWNW quarter of Section 31, Township 2 N, 14 E W.M. in Wasco County (45.6141, -121.1231) and continuing upstream to Dufur at the Highway 197 crossing, river mile 30.6 in the SWSE quarter of Section 25, Township 1 S, Range 13 E W.M. in Wasco County (45.4504, -121.1198).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
13	13	20	34	34	34	20	20	13	13	13	13	CFS

Lindsey Creek, tributary to the Columbia River:

Reach #1:

Description:

- Beginning at the mouth of Lindsey Creek, tributary to the Columbia River, river mile 0.0 in the NENE quarter of Section 5, Township 2 N, Range 9 E W.M. in Hood River County (45.6903, -121.7136) and continuing to river mile 4.2 at North Lake Dam, in the NESE

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OWRD

quarter of Section 24, Township 2 N, Range 8 E W.M. in Hood River County (45.6429, -121.757).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
20	20	20	34	34	34	20	20	41	41	34	20	CFS

Mill Creek, tributary to the Columbia River:

Reach #1:

Description:

- Beginning at the mouth of Mill Creek, tributary to the Columbia River, river mile 0.0 in the SWSW quarter of Section 34, Township 2 N, Range 13 E W.M. in Wasco County (45.6068, -121.1872), continuing upstream to the confluence of North Fork and South Fork Mill Creek, river mile 8.1 in the SESW quarter of Section 22, Township 1 N, Range 12 E W.M. in Wasco County (45.5506, -121.3079).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
10	10	15	26	26	26	15	15	10	10	10	10	CFS

South Fork Mill Creek, a tributary of Mill Creek:

Reach #1:

Description:

- Beginning at the mouth of South Fork Mill Creek, tributary to Mill Creek, river mile 0.0 in the SESW quarter of Section 22, Township 1 N, Range 12 E W.M. in Wasco County (45.5506, -121.3079) and continuing upstream to the Crow Creek Reservoir Dam at river mile 10.1 in the NENW quarter of Section 20, Township 1 S, Range 11 E W.M. in Wasco County (45.474998, -121.451698).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
0	0	0	0	0	17	10	10	7	7	7	0	CFS

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Neal Creek, a tributary to the Columbia River:

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Reach #1:

Description:

- Beginning at the mouth of Neal Cr, tributary to Hood River, river mile 0.0 in the NENE quarter of Section 14, Township 2 N, Range 10 E W.M. in Hood River County (45.6639, -121.5256), and continuing upstream to the confluence of West Fork Neal Creek and Neal Creek, river mile 5.8 in the SESW quarter of Section 6, Township 1 N, 11 E W.M. in Hood River County (45.5951, -121.4995).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
45	45	45	45	45	45	45	45	45	25	25	25	CFS

Odell Creek, tributary to the Hood River:

Reach #1:

Description:

- Beginning at the mouth of Odell Creek, tributary to the Hood River, at river mile 0.0 in the NESW quarter of Section 14, Township 2 N, Range 10 E W.M. in Hood River County (45.6566, -121.5396) and continuing upstream to river mile 4.0 in the NESW quarter of Section 34, Township 2 N, Range 10 E W.M. in Hood River County (45.6121, -121.5587).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
20	50	50	50	50	50	20	20	20	20	20	20	CFS

West Fork Hood River, a tributary of the Hood River:

Reach #1:

Description:

- In West Fork Hood River, tributary to Hood River, beginning at the mouth, river mile 0.0 in the NWNE quarter of Section 1, Township 1 N, Range 9 E W.M. in Hood River County (45.6052, -121.6333) and continuing upstream to the confluence of Elk Creek and McGee Creek, river mile 14.7 in the SWNW quarter of Section 25, Township 1 S, Range 8 E W.M. in Hood River County (45.4569, -121.7818).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
150	250	250	250	250	250	150	165	165	165	190	190	CFS

Green Point Creek, tributary to the West Fork Hood River:

Reach #1:

Description:

- Beginning at the mouth of Green Point Creek, tributary to West Fork Hood River, river mile 0.0 in the SENW quarter of Section 12, Township 1 N, Range 9 E W.M. in Hood River County (45.5873, -121.6439), and continuing upstream to the confluence of Green Point Creek and Long Branch Creek, river mile 3.1 in the NWNE quarter of Section 9, Township 1 N, Range 9 E W.M. in Hood River County (45.5914, -121.6987).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
90	120	120	120	120	120	50	80	80	80	120	120	CFS

Middle Fork Hood River, a tributary of the Hood River:

Reach #1:

Description:

- Beginning at the mouth of Middle Fork Hood River, tributary to Hood River, river mile 0.0 in the NWNW quarter of Section 18, Township 1 N, Range 10 E W.M. in Hood River County (45.5755, -121.6269) and continuing upstream to Eliot Branch at river mile 9.1 in the NESW quarter of Section 23, Township 1 S, Range 10 E W.M. in Hood River County (45.4655, -121.6381).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
0	0	0	255	255	255	0	150	0	255	255	0	CFS

Clear Branch, tributary to the Middle Fork Hood River:

Reach #1:

Description:

- Beginning at the mouth of Clear Branch, tributary to the Middle Fork Hood River, river mile 0.0 in the NESW quarter of Section 23, Township 1 S, Range 9 E W.M. in Hood

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River County (45.4655, -121.6381) and continuing upstream to river mile 1.3 in the NWNE quarter of Section 27, Township 1 S, Range 9 E W.M. in Hood River County (45.459, -121.6579).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
44	44	50	50	50	50	44	35	35	35	35	35	CFS

Coe Branch, tributary to Clear Branch:

Reach #1:

Description:

- Beginning at the mouth of Coe Branch, tributary to Clear Branch, river mile 0.0 in the SWSW quarter of Section 23, Township 1 S, Range 9 E W.M. in Hood River County (45.4631, -121.6458) and continuing upstream to river mile 3.5 in the NWSE quarter of Section 4, Township 2 S, Range 9 E W.M. in Hood River County (45.4229, -121.6757).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
18	18	20	20	20	18	18	20	20	20	18	18	CFS

Eliot Branch, tributary to Clear Branch:

Reach #1:

Description:

- Beginning at the mouth of Eliot Branch, tributary to Clear Branch, river mile 0.0 in the NESW quarter of section 23, Township 1 S, Range 9 E W.M. in Hood River County (45.4655, -121.6381) and continuing upstream to river mile 4.5 in the NESW quarter of Section 10, Township 2 S, Range 9 E W.M. in Hood River County (45.4084, -121.6574).

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

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East Fork Hood River, a tributary of the Hood River:

Reach #1: Beginning at the mouth

Description:

- The East Fork Hood River, tributary to Hood River, beginning at river mile 0.0 in the NWNE quarter of Section 1, Township 1 N, Range 9 E W.M. in Hood River County (45.6053, -121.6333) and continuing upstream to river mile 6.2 in the SENW quarter of Section 28, Township 1 N, Range 10 E W.M. in Hood River County (45.5451, -121.5814).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
180	210	210	210	210	210	150	150	175	175	180	180	CFS

Reach #2:

Description:

- In the East Fork Hood River, tributary to Hood River, beginning at river mile 6.2 in the SENW quarter of Section 28, Township 1 N, Range 10 E W.M. in Hood River County (45.5451, -121.5814), and continuing upstream to river mile 16.8, just above the confluence of Polallie Creek and the East Fork Hood River in the SESE quarter of Section 5, Township 2 S, Range 10 E W.M. in Hood River County (45.4185, -121.5685).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
175	175	175	175	175	175	110	110	145	145	175	175	CFS

Reach #3:

Description:

- The East Fork Hood River, tributary to Hood River, beginning at river mile 16.8, just above the confluence of Polallie Creek and the East Fork Hood River in the SESE quarter of Section 5, Township 2 S, Range 10 E W.M. in Hood River County (45.4185, -121.5685) and continuing upstream to the confluence of Cold Spring Creek and East Fork Hood River, river mile 17.8 in the SWSE quarter of Section 8, Township 2 S, Range 10 E W.M. in Hood River County (45.4048, -121.5703).

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
75	75	75	127	127	127	127	75	75	50	50	75	CFS

Letter to [Name}
November 14, 2016
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If you have any questions regarding the proposed applications, or are interested in receiving additional information, please contact Anna Pakenham Stevenson at 503-947-6084 or Anna.p.stevenson@state.or.us

Sincerely,

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Anna Pakenham Stevenson
Water Quality and Quantity Program Manager

Addressee's for Hood Basin Notification Letter

Hood River County
Planning and Zoning
601 State St.
Hood River, OR 97031

Wasco County
Planning Department
2705 East 2nd Street
The Dalles, OR 97058

Multnomah County
Land Use Planning
1600 SE 190th Avenue
Portland, Oregon 97233

CONFEDERATED TRIBES OF THE
WARM
SPRINGS RESERVATION OF OREGON
PO Box C
1233 Veteran's Street
Warm Springs, OR 97761

CONFEDERATED TRIBES OF SILETZ
INDIANS
201 SE Swan Avenue
P.O. Box 549
Siletz, OR 97380

CONFEDERATED TRIBES OF GRAND
RONDE
9615 Grand Ronde Road
Grand Ronde, OR 97347

City of Hood River
Planning Department
211 2nd Street
Hood River, OR 97031

Cascade Locks City Hall
P.O. Box 308
140 SW WaNaPa
Cascade Locks, OR 97014

The Dalles City Hall
Planning Department
313 Court Street
The Dalles, Oregon 97058

City of Dufur
PO Box 145
175 NE Third St
Dufur, Oregon 97021

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KOHANEK Ron C * WRD

From: BEAMER Jordan P * WRD
Sent: Tuesday, May 02, 2017 9:05 AM
To: KOHANEK Ron C * WRD; STAHR Kenneth L * WRD
Cc: HOSKINSON Mellony D * WRD
Subject: RE: ISWR applications- Hood, Clear, Coe, and Elliot

Hi Craig,

You are correct that we have generated new watersheds and generated flows for the three contributing branches on the Middle Fork Hood River. Let me review that the water sheds and flows are correct and then get that data sent your direction.

Thanks,
Jordan

From: KOHANEK Ron C * WRD
Sent: Monday, May 01, 2017 2:52 PM
To: STAHR Kenneth L * WRD
Cc: HOSKINSON Mellony D * WRD; BEAMER Jordan P * WRD
Subject: FW: ISWR applications- Hood, Clear, Coe, and Elliot

Ken Et al;

I was looking at water availability for these three applications and noticed that when I whet I went to these Lat/Long's that the WAB was for the Middle Fork Hood River and not for these contributing branches. May I assume that you good folks have or will work-up WABs for these three branches?

Craig

From: Anna Pakenham Stevenson [<mailto:anna.p.stevenson@state.or.us>]
Sent: Monday, May 01, 2017 8:53 AM
To: WRD_DL_ISWR_APP
Cc: STEVENSON Anna P
Subject: ISWR applications- Hood, Clear, Coe, and Elliot

Hello WRD,
Please see the applications for Clear, Coe, and Elliot in the Hood Basin. Also included is the original notification letter and the PHABSIM study.
Hope you all have a great week,
Anna

Anna Pakenham Stevenson
ODFW Water Program Manager
503-947-6084 (office)
971-718-2058 (cell)
anna.p.stevenson@state.or.us



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HAYLEY K. SILTANEN
D. 503.294.9295
hayley.siltanen@stoel.com

December 1, 2017

BY HAND DELIVERY

Tom Byler
Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Protests to PFOs Issued for Water Right Application Nos. IS-88322, IS-88323, IS-88326, IS-88327, IS-88328, IS-88329, IS-88330, IS-88331, IS-88332, IS-88333, IS-88334, IS-88335, IS-88336, IS-88337, and IS-88355

Dear Director Byler:

Please find enclosed protests of the above-referenced instream water right applications and required filing fees.

This firm represents East Fork Irrigation District, Oregon Farm Bureau Federation, Hood River County Farm Bureau, and Columbia Gorge Fruit Growers in connection with protests of application numbers IS-88322, IS-88327, IS-88334, and IS-88335.

This firm represent Oregon Farm Bureau Federation, Hood River County Farm Bureau, and Columbia Gorge Fruit Growers in connection with protests of application numbers IS-88323, IS-88328, IS-88330, IS-88332, IS-88333, and IS-88336.

This firm represent Oregon Farm Bureau Federation, Wasco County Farm Bureau, and Columbia Gorge Fruit Growers in connection with protests of application numbers IS-88326, IS-88329, IS-88331, and IS-88337.

Finally, this firm represents Oregon Farm Bureau Federation and Clackamas County Farm Bureau in connection with protest of application number IS-88355.

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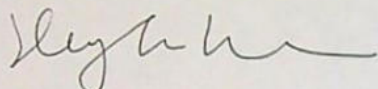
DEC 01 2017

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Tom Byler
December 1, 2017
Page 2

Please contact David Filippi at (503) 294-9529 or david.filippi@stoel.com if you have any questions regarding this letter or the above-listed protests.

Sincerely,



Hayley K. Siltanen

Enclosures

cc (via email):

John Buckley
Mary Anne Cooper
Randy Kiyokawa
Ken Polehn
Mike Doke
Matt Bunch

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