

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

Water Right Application IS-70808 in the name) FINAL ORDER
of OREGON DEPARTMENT OF FISH AND) BY DEFAULT
WILDLIFE)

Summary: Order approving Application IS-70808 and issuing Certificate 98436.

Authority

The application is being processed in accordance with Oregon Revised Statutes (ORS) 537.153 through 537.175, 537.332 through 537.360, and Chapter 183, and Oregon Administrative Rules (OAR) Chapter 690, Divisions 77, 400, and 410, and Chapter 137, Division 003. These statutes and rules can be viewed on following websites:

Statutes: https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx

Rules: <https://secure.sos.state.or.us/oard/ruleSearch.action>

The Department’s main page is <https://www.oregon.gov/OWRD>.

This Final Order is issued pursuant to ORS 537.170(6) to (9), OAR 690-077-0047, ORS 183.417(3) and (4), and OAR 137-003-0670.

FINDINGS OF FACT

1. On October 26, 1990, the Oregon Department of Fish and Wildlife (“ODFW”) submitted an application to the Department for an instream water right in Deming Creek, tributary to the South Fork Sprague River.
2. On August 27, 1996, the Department issued a Proposed Final Order proposing to approve the application and issue an instream water right certificate with conditions.
3. On October 9, 1996, the following entities and natural persons collectively filed one timely protest of the Department’s Proposed Final Order (“Protest”): Newman Enterprises, Diamond Newman, Dale Newman, Stan Newman, Doug Newman, William V. and Lillian M. Hill, individually and as Co-Trustees of the William V. Hill Sr., and the Lillian M. Hill Trust dated July 15, 1991.
4. On October 11, 1996, WaterWatch of Oregon and Oregon Trout (“WaterWatch”) filed a request for standing in support of the Department’s Proposed Final Order in accordance with ORS 537.153(5).

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 183.482(1), ORS 536.075(2) and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. On May 7, 2024, the Department notified ODFW, protestants, and WaterWatch that the Department would soon refer this matter to the Office of Administrative Hearings for a contested case hearing. In accordance with OAR 690-077-0046(3), the Department advised WaterWatch that WaterWatch would become a party only if WaterWatch filed a petition for party status in accordance with OAR 690-002-0105 and the Department granted the petition.
6. While notifying protestants that the Department would soon refer this matter to the Office of Administrative Hearings, the Department learned that the protestants' address and phone number listed in the protest did not provide an effective means of contacting the protestants, and the protestants had not provided the Department with updated contact information since filing the protest. The Department therefore made reasonable efforts to find updated addresses for the protestants, provided notice of the upcoming referral to the updated addresses, and provided the updated addresses to the Office of Administrative Hearings as described in the Department's July 9, 2024 cover letter referring this matter to the Office of Administrative Hearings.
7. On July 9, 2024, the Department referred this matter to the Office of Administrative Hearings for a contested case hearing and issued an amended contested case notice in accordance with OAR 137-003-0530(4)(a)(A). The amended notice designated the Department's file on this matter, including materials submitted by protestants, as the record for purposes of default.
8. Office of Administrative Hearings Administrative Law Judge Alison G. Webster scheduled a contested case hearing to begin at 9:00 am on October 7, 2024, and notified the protestants and ODFW of the time and place of the hearing.
9. On September 17, 2024, protestant Newman Enterprises indicated that it would not participate in the contested case hearing and withdrew its interest in the Protest.
10. WaterWatch did not file a petition for party status prior to the October 7, 2024 contested case hearing.
11. On October 7, 2024, no protestant appeared for the scheduled contested case hearing, and Administrative Law Judge Webster declared a default.
12. The findings of fact in the Proposed Final Order are incorporated herein.
13. The draft certificate included with the Proposed Final Order includes five certificate conditions and does not include an express statement that this instream water right is subject to the Klamath River Basin Compact. Certificate 98436 issued with this order has been modified to add certificate condition #6, which reads "[t]his instream water right is subject to the Klamath River Basin Compact."

CONCLUSIONS OF LAW

1. The Department may issue a final order by default under ORS 183.417(3) and (4) and OAR 137-003-0670(1)(c) and (3)(b).
2. The conclusions of law in the Proposed Final Order are incorporated herein.

3. The proposed use, as conditioned, would not impair or be detrimental to the public interest.

ORDER

Application IS-70808 is approved, and Certificate 98436 is issued.

DATED JUNE 13, 2025


Katherine Ratcliffe, Administrator
Water Rights Services Division
for Ivan Gall, Director
Oregon Water Resources Department

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- If you have any questions about statements contained in this document, please contact Will Davidson at will.d.davidson@water.oregon.gov or 503 507-2749.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503 986-0900.
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