

Name .....  
By ..... Oregon Dept Fish & Wildlife  
Address ..... Randy Fisher  
PO Box 59 Portland OR 97207

Application No. *IWTZ* 70815

Permit No. ....

Certificate No. ....

Stream Index, Page No. ....

*Lake Co.*

Date filed **OCT 26 1990**

Priority .....

Action suspended until .....

Return to applicant .....

Date of approval .....

#### CONSTRUCTION

Date for beginning .....

Date for completion .....

Extended to .....

Date for application of water .....

Extended to .....

#### PROSECUTION OF WORK

Form "A" filed .....

Form "B" filed .....

Form "C" filed .....

#### FINAL PROOF

Blank mailed .....

Proof received .....

Date certificate issued .....

#### FEES PAID

Date	Amount	Receipt No.
------	--------	-------------

Cert. Fee

#### FEES REFUNDED

Date	Amount	Check No.
------	--------	-----------

#### ASSIGNMENTS

Date	To Whom	Address	Volume	Page
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#### REMARKS

*See 70722*

# Mailing List for Commentor Letters

Application IS-70815

Certificate 98437

Copies Mailed

By: AH  
(SUPPORT STAFF)

On: 06/17/2025  
(DATE)

## Copies mailed to:

- ✓ Rocking AC Ranch  
Attn: Bernard L. Simonsen  
9390 Hwy 140 E  
Klamath Falls, OR 97603
- ✓ Bernard L. Simonsen  
6847 Alta Vista Dr  
Rancho Palos Verdes, CA 90274
- ✓ WaterWatch  
Attn: Kimberley Priestley  
913 SW Ash St  
#208  
Portland, OR 97204
- ✓ Silver Lake Irrigation District  
PO Box 97  
Silver Lake, OR 97638
- ✓ Dr. Earl Harris  
PO Box 467  
Chiloquin, OR 97624
- ✓ J-Spear Ranch  
Attn: William M. Ganong  
PO Box 691  
Klamath Falls, OR 97601

**WR Support:** Please place a copy of this mailing list and each letter sent in each of the associated application folders.

Protest Program Coordinator: Will Davidson



# Oregon

Tina Kotek, Governor

Water Resources Department  
North Mall Office Building  
725 Summer St NE, Suite A  
Salem, OR 97301  
Phone (503) 986-0900  
Fax (503) 986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

June 17, 2025

J-Spear Ranch  
Attn: William M. Ganong  
PO Box 691  
Klamath Falls, OR 97601

Reference: Applications IS-70815, IS-70816

Dear Commenter:

In accordance with ORS 537.170(9) and OAR 690-077-0047(5), the Department would like to notify you that the Final Orders for Applications IS-70815, IS-70816 were issued on June 13, 2025. Our records indicate you submitted written comments related to these applications.

If you would like to receive copies of these Final Orders, please review the options below.

**Access documents online:** The Final Orders for these applications are available on the Department's website. To access this information, please visit <https://apps.wrd.state.or.us/apps/wr/wrinfo/> and use the application number in the subject line of this letter to search for the relevant records. Please note, you will need to expand the "Scanned Documents" section to locate the Final Order.

**Receive a printed copy:** Copies of the Final Orders can be mailed to you at your request with submission of a \$35 fee for each requested order. Your request and payment can be sent to the address at the top of this letter. Please include "ATTN: Customer Service Group" on the envelope and ensure the application number(s) associated with the final orders you would like copies of are written on your request.

Please feel free to contact me at 503.507.2749 or [will.d.davidson@water.oregon.gov](mailto:will.d.davidson@water.oregon.gov) if you have any questions.

Sincerely,

Will Davidson  
Protest Program Coordinator

CC: File



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Fax (503) 986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

June 17, 2025

Silver Lake Irrigation District  
PO Box 97  
Silver Lake, OR 97638

Reference: Applications IS-70799, IS-70800, IS-70801, IS-70802, IS-70815, IS-70816

Dear Commenter:

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Salem, OR 97301  
Phone (503) 986-0900  
Fax (503) 986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

June 17, 2025

WaterWatch  
Attn: Kimberley Priestley  
913 Ash St #208  
Portland, OR 97204

Reference: Applications IS-70799, IS-70800, IS-70801, IS-70802, IS-70804, IS-70808, IS-70815, IS-70816

Dear Commenter:

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Protest Program Coordinator

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Fax (503) 986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

June 17, 2025

Dr. Earl Harris  
PO Box 467  
Chiloquin, OR 97624

Reference: Applications IS-70799, IS-70800, IS-70801, IS-70802, IS-70804, IS-70815, IS-70816

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[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

June 17, 2025

Rocking AC Ranch  
Attn: Bernard L. Simonsen  
9390 Hwy 140 E  
Klamath Falls, OR 97603

Reference: Applications IS-70799, IS-70800, IS-70801, IS-70802, IS-70804, IS-70808, IS-70815, IS-70816

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Salem, OR 97301  
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Fax (503) 986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

June 17, 2025

Bernard L. Simonsen  
6847 Alta Vista Dr  
Rancho Palos Verdes, CA 90274

Reference: Applications IS-70799, IS-70800, IS-70801, IS-70802, IS-70804, IS-70808, IS-70815, IS-70816

Dear Commenter:

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Sincerely,

Will Davidson  
Protest Program Coordinator


CC: File



# Mailing List for FO Copies

Application IS-70815

Certificate 98437

Copies Mailed	
By:	
	(SUPPORT STAFF)
On:	06/13/2025
	(DATE)

**Original FO and copy of certificate mailed to applicant and copies mailed to protestant:**  
(Also include a copy of the cover letter for the applicant)

**Applicant:**

- ✓ OREGON DEPARTMENT OF FISH AND WILDLIFE  
ATTN: SPENCER SAWASKE  
4034 FAIRVIEW INDUSTRIAL DR SE  
SALEM OR 97302

**Protestant:**

- ✓ PIERRE A. KERN  
RIVER SPRINGS RANCH  
PIERRE A. KERN TRUST  
2730 AVENIDA CABALLO  
SANTA YNEZ, CA 93460
- ✓ OBENCHAIN CATTLE CO.  
C/O MARGARET JACOBS  
PO BOX 62  
BLY, OR 97622
- ✓ DOMINIC CAROLLO  
CAROLLO LAW GROUP  
PO BOX 2465  
ROSEBURG, OR 97470

**Sent via auto email:**

1. WRD – Watermaster District #17
2. WRD – Tom Skiles, SC
3. WRD – SW Section

*See back also*



**Copies sent to:**

- ✓ 1. WRD – File IS-70815
- ✓ 2. Applicant, Spencer Sawaske, Oregon Department of Fish and Wildlife – [spencer.r.sawaske@odfw.oregon.gov](mailto:spencer.r.sawaske@odfw.oregon.gov)
- ✓ 3. Applicant's attorney - Anika Marriott, Oregon Department of Justice – [anika.e.marriott@doj.oregon.gov](mailto:anika.e.marriott@doj.oregon.gov)
- ✓ 4. Protestant Obenchain Cattle Co.'s attorney - Dominic Carollo, Carollo Law Group LLC – [dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)
- ✓ 5. OWRD's attorney - Jesse Ratcliffe, Oregon Department of Justice – [jesse.d.ratcliffe@doj.oregon.gov](mailto:jesse.d.ratcliffe@doj.oregon.gov)
- ✓ 6. OWRD's attorney's assistant - Denise Ruttan, Oregon Department of Justice – [denise.ruttan@doj.oregon.gov](mailto:denise.ruttan@doj.oregon.gov)

Protest Program Coordinator: Will Davidson

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

Water Right Application IS-70815 in the name )	FINAL ORDER
of OREGON DEPARTMENT OF FISH AND )	BY DEFAULT
WILDLIFE )	

**Summary:** Order approving Application IS-70815 and issuing Certificate 98437.

***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](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 the North Fork Sprague River, tributary to the 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"): River Springs Ranch; Pierre A. Kern Trust, Pierre A. Kern, Obenchain Cattle Co., Ruth Obenchain, Carolyn Obenchain, Margaret Jacobs, Larry Olson, and 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.

**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.

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).
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 July 28, 2024, protestants Pierre A. Kern, River Springs Ranch, and the Pierre A. Kern Trust indicated that they did not wish to participate in the contested case hearing and withdrew their interests in the Protest.
10. On September 17, 2024, protestant Obenchain Cattle Co. indicated that it would not participate in the contested case hearing and withdrew its interest in the Protest.
11. WaterWatch did not file a petition for party status prior to the October 7, 2024 contested case hearing.
12. On October 7, 2024, no protestant appeared for the scheduled contested case hearing, and Administrative Law Judge Webster declared a default.
13. The findings of fact in the Proposed Final Order are incorporated herein.
14. 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 98437 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."



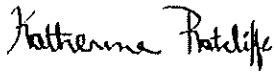
**CONCLUSIONS OF LAW**

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-70815 is approved, and Certificate 98437 is issued.

DATED JUNE 13, 2025



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

- 
- If you have any questions about statements contained in this document, please contact Will Davidson at [will.davidson@water.oregon.gov](mailto:will.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.
-

STATE OF OREGON

COUNTY OF LAKE

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

OREGON WATER RESOURCES DEPARTMENT  
725 SUMMER ST NE SUITE A  
SALEM OR 97301

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

APPLICATION FILE NUMBER: IS-70815

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, TRIBUTARY TO SPRAGUE RIVER

PURPOSE: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE, AND JUVENILE REARING

DATE OF PRIORITY: OCTOBER 26, 1990

TO BE MAINTAINED IN: NORTH FORK SPRAGUE RIVER FROM HEAD OF RIVER SPRING AT RIVER MILE  
34.0 (SWSW, SECTION 15, TOWNSHIP 35S, RANGE 16E WM) TO SHEEPY CREEK  
AT RIVER MILE 17.5 (SEnw, SECTION 15, TOWNSHIP 35S, RANGE 15E WM)

The right is established under Oregon Revised Statutes 537.341.

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

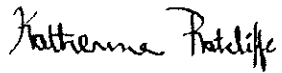
1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30.0	30.0	30.0	30.0	30.0	20.0	10.0	10.0	10.0	30.0	30.0	30.0

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

5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
6. This instream water right is subject to the Klamath River Basin Compact.

ISSUED JUNE 13, 2025



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

INTEROFFICE MEMORANDUM  
Water Rights Section

TO: ~~PHIL BARKLEY~~

FROM: Dwight French, x268 *DF*

DATE: March 26, 1997

RE: Water Availability for ISWR applications/files

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

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

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

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

cc: Mike Mattick

*All Protested ISWR Files*



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

2

OK 71556 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 2 : 1

4

OK 71793 W

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 71798 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72076 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72077 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72078 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72079 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72080 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72081 W

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 4 : 8

5

OK 70353 A

OREGON DEPARTMENT OF FISH & WILDLIFE

I 70354 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70357 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70605 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70612 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

73199 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 5 : 13

6

Checked out to Dwight

69949 A

69949 S

69951 S

69951 A

69958 S

69958 A

69958 S

69959 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

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OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

8

9

18

74

2

1

3

9

19

2

12

12

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

6

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

Total for Basin 6 : 38

9

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

## Instream Applications with Protests

4/2/97

Basin	App Num	
<b>9</b>		
	72168	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72169	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72169	S OREGON DEPARTMENT OF FISH & WILDLIFE
	72170	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72173	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72181	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72186	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72187	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72188	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72191	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72194	A OREGON DEPARTMENT OF FISH & WILDLIFE
<b>Total for Basin</b>	<b>9 :</b>	<b>16</b>
<b>10</b>		
	71450	A OREGON DEPARTMENT OF FISH & WILDLIFE
	71455	S OREGON DEPARTMENT OF FISH & WILDLIFE
	71455	A OREGON DEPARTMENT OF FISH & WILDLIFE
<b>Total for Basin</b>	<b>10 :</b>	<b>3</b>
<b>11</b>		
	<i>Dwight Done Right!</i> 70020	A OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
<b>Total for Basin</b>	<b>11 :</b>	<b>1</b>
<b>12</b>		
	71467	A OREGON DEPARTMENT OF FISH & WILDLIFE
	71468	A OREGON DEPARTMENT OF FISH & WILDLIFE
	71472	A OREGON DEPARTMENT OF FISH & WILDLIFE
<b>Total for Basin</b>	<b>12 :</b>	<b>3</b>
<b>13</b>		
	70486	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70487	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70656	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70657	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70658	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70659	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70662	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70663	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70664	A OREGON DEPARTMENT OF FISH & WILDLIFE
<b>Total for Basin</b>	<b>13 :</b>	<b>9</b>

## 4/2/97

DWF



**Instream Applications with Protests**  
**4/2/97**

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

**14**

70824	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70826	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE
70830	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE

**Total for Basin 14 : 46**

**15**

70982	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70993	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70998	W	OREGON DEPARTMENT OF FISH & WILDLIFE
71008	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71201	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71614	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71622	A	OREGON DEPARTMENT OF FISH & WILDLIFE
72843	A	OREGON DEPARTMENT OF FISH & WILDLIFE

**Total for Basin 15 : 8**

**16**

71172	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71173	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71174	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71181	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71182	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71183	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71184	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71185	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71190	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71192	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71193	A	OREGON DEPARTMENT OF FISH & WILDLIFE
73350	A	OREGON DEPARTMENT OF FISH & WILDLIFE

**Total for Basin 16 : 12**

**17**

70228	A	OREGON DEPARTMENT OF FISH & WILDLIFE
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Basin	App Num		
17			
	70229	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70230	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70348	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70348	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70448	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70448	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70574	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70877	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70891	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70895	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70895	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70915	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71697	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	80446	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 17 : 15

173

# COPY

RECEIPT # **7540**STATE OF OREGON  
WATER RESOURCES DEPARTMENT158 12TH ST. N.E.  
SALEM, OR 97310-0210  
378-8455 / 378-8130 (FAX)

INVOICE # \_\_\_\_\_

RECEIVED FROM: <u>Water Watch</u>	APPLICATION
BY: _____	PERMIT
	TRANSFER

CASH: <input type="checkbox"/>	CHECK: # <input checked="" type="checkbox"/> <u>2412</u>	OTHER: (IDENTIFY) _____	RECEIVED OVER THE COUNTER	TOTAL REC'D \$ <u>750.</u>
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**0417 WRD MISC CASH ACCT**

ADJUDICATIONS	FOR DEPOSIT ONLY TO ACCT. OF	\$
PUBLICATIONS / MAPS	STATE TREASURER-STATE OF ORE.	\$
OTHER: (IDENTIFY) _____	WATER RESOURCES DEPARTMENT	\$
OTHER: (IDENTIFY) _____	69000-00-40-1	\$

**REDUCTION OF EXPENSE**

CASH ACCT.	\$
VOUCHER #	

**0427 WRD OPERATING ACCT**

MISCELLANEOUS	70815-16, 70799, 70800, 70808,	\$
0407 COPY & TAPE FEES	70809, 70807, 70810,	\$
0410 RESEARCH FEES	70819, 70829, 70830,	\$
0408 MISC REVENUE: (IDENTIFY) <u>70831</u>		\$
TC165 DEPOSIT LIAB. (IDENTIFY) _____		\$
<b>WATER RIGHTS:</b>		
0201 SURFACE WATER	EXAM FEE	RECORD FEE
0203 GROUND WATER	\$	\$
0205 TRANSFER	\$	\$
<b>WELL CONSTRUCTION</b>		
0218 WELL DRILL CONSTRUCTOR	EXAM FEE	LICENSE FEE
LANDOWNER'S PERMIT	\$	\$
		\$

0234 OTHER (IDENTIFY) Request for Starting \$250.

**0437 WELL CONST. START FEE**

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

**0539 LOTTERY PROCEEDS**

1302 LOTTERY PROCEEDS	\$
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**0467 HYDRO ACTIVITY**

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

RECEIPT # **7540**DATED: 10-11-96 BY: D. Bushnell

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



# Water Watch

R I V E R S N E E D W A T E R

Delivered via messenger

October 11, 1996

Water Rights Section  
Water Resources Department  
158 12th Street NE  
Salem, OR 97310

**RE: Request for Standing, Instream Water Rights, Klamath River Basin**

70804 Sprague  
70815 NF Sprague  
70816 NF Sprague  
70799 SF Sprague  
70800 SF Sprague  
70801 SF Sprague  
70802 SF Sprague  
70808 Deming trib. to Sprague  
70809 Fishhole Creek to Sprague  
70807 Wood River  
70810 Wood River  
70819 Annie Creek trib. to Wood  
70829 Wood River  
70830 Sevenmile Creek  
70831 Annie Creek trib. to Wood

RECEIVED

OCT 11 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Dear Water Rights Section:

Pursuant to ORS 537.153(5) and OAR 690-310-160(3) WaterWatch and Oregon Trout file this Request for Standing along with the required fee of \$50 per application for applications 70804, 70815, 70816, 70799, 70800, 70801, 70802, 70808, 70809, 70807, 70810, 70819, 70829, 70830, and 70831.



**Elements for Request for Standing as required by OAR 690-310-160(3)**

**a. Name, address, telephone number of requester**

WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
(503) 295-4039  
contacts: Kimberley Priestley, Karen Russell

Oregon Trout  
117 NW Front  
Portland, OR 97204  
(503) 222-9091  
contact: Jim Myron

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SALEM, OREGON

**b. Statement of support of the Proposed Final Order**

WaterWatch and Oregon Trout support the proposed issuance of these instream water rights.

**c. How WaterWatch and Oregon Trout would be harmed if the Proposed Final Orders are modified**

WaterWatch of Oregon is a nonprofit organization dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation, biological diversity, ecological values, public health and a sound economy. Oregon Trout is a nonprofit organization dedicated to promoting and restoring wild native fish habitat.

In requesting standing for the aforementioned instream water right applications, WaterWatch and Oregon Trout are representing the general public interest in the water resources and associated fish and wildlife resources of this state, as well as the specific interest of WaterWatch and Oregon Trout members. WaterWatch and Oregon have members throughout the Pacific Northwest, including the Klamath River basin specifically, who use and enjoy the watershed. All of WaterWatch's and Oregon Trout's members, board members and staff benefit from knowing that such a resource exists even if they have not visited the watershed.

If the PFOs are modified to either deny the applications, decrease the flows proposed, or otherwise alter the rights to the detriment of the resource, WaterWatch's and Oregon Trout's interest would be harmed because denial and/or lower flows pose a risk to the fish species they are intended to benefit, including the federally and state listed Lost River and Short Nosed Suckers. It would also impair a number of other public interest values including, but not limited to, wildlife, scenic waterway values and water quality.



1. If the PFOs are modified to either decrease proposed flows and/or deny the applications, WaterWatch's interests will be harmed because flows vital to the survival of aquatic species, including endangered sucker fish, will be compromised.

ODFW has requested these flows to provide for the minimum amount necessary for the survival of endangered lost river and shortnosed suckers (federal and state listings), state sensitive redband trout, as well as rainbow trout. WaterWatch supports the flows requested by ODFW. If the Department modifies the PFOs to either deny the applications or propose flows lower than those requested by ODFW, the survival of all of these species will be jeopardized.

This is not only a violation of the public interest but could result in a violation of the state and federal Endangered Species Acts. Under the state act the Department is required to consult with ODFW to ensure that any action taken by the Department is consistent with ODFW programs to conserve the species, or, if no plan is in place, that the action will not "reduce the likelihood of the survival or recovery" of the state listed species. ORS 496.182(2). The flows requested by ODFW are in the amounts ODFW has determined are necessary for the survival of these fish. To comply with the intention and mandates of the State Endangered Species Act, the Department should issue the instream water rights at the amounts requested.

Under the federal Act, there is a prohibition against "taking" of endangered species. 16 USCA § 1538(a)(1)(B). Issuing the instream water rights at the amounts requested by ODFW is obviously within the Department's authority. To do such is consistent with the intent and mandates of the Federal ESA. To the contrary, to deny or lower the instream water rights could result in a taking of the endangered suckers, for it would deny these fish the flows determined by ODFW as necessary for survival.

Again, if the Department modifies the PFOs to either deny the applications or propose flows lower than those requested by ODFW, the survival of all of these species will be jeopardized and WaterWatch's and Oregon Trout's interests, including ensuring the viability of these fish, will be impaired.

2. If the PFOs are modified, WaterWatch's and Oregon Trout's interests will be harmed because we will have been precluded from fully evaluating the actions of the Department. Thus, WaterWatch and Oregon Trout, by filing this standing statement, reserve the right to raise the following concerns in any contested case hearing or judicial review if any PFO is modified:

- a. The condition of use proposed in the PFO exempting human consumption and livestock use will impair WaterWatch's and Oregon Trout's interest in ensuring that the purposes of the instream water rights are fulfilled.**

The PFOs contain a condition that subordinates the instream water right to human consumption and livestock uses in perpetuity. Individual exceptions will directly lessen the amount of water available instream to satisfy the purposes of the instream water right. Since the flows represented by the instream water right are those ODFW has determined are needed for fish, even the slightest diminishment of these flows will have adverse effects on the fishery resource. Moreover, the cumulative effects that will result from this exception could eventually lead to the total negation of the instream water right.

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WATER RESOURCES DEPT.  
SALEM, OREGON



The Department has cited to ORS 536.310(12) as authority for allowing this condition. This section of the statute states that:

When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposed over all other uses and for livestock consumption, over any other use....

ORS 536.310(12)(emphasis added).

While this statute does provide for a preference for human consumption and livestock, this preference has a specific statutory application.<sup>1</sup> The statute governs situations where there is a conflict between competing applications at the time the permitting decision is taking place. This statute does not address situations of conflict at some nebulous future date. Thus, while the Department may rely on this statute to subordinate the instream water right to the applications pending at the time of the instream water rights adoption, the Department's reliance on this section to attach this open-ended exception is in error.

If the statute were to mandate the open-ended subordination of new rights to human consumption and livestock uses, then equity demands that this condition be placed on every new permit or certificate issued, whether instream or out-of-stream. The statute does not differentiate between instream and out-of-stream water rights.<sup>2</sup> Rather, it specifically states that "preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use...." ORS 536.310(12) (*emphasis added*). Thus, if the Department finds that the law requires it to subordinate instream water rights to human consumption and livestock uses, the Department must subordinate all water rights, including agriculture, industry, municipal and mining to human consumption and livestock use. To fail to do this would not only be inequitable, but it would prove the Department insincere in their intent to protect human consumption and livestock above all else.

WaterWatch and Oregon Trout acknowledge that under the law, the Director may include any condition she considers necessary; however, it must be consistent with the intent of ORS 537.332 to 537.360 (Instream Water Right Statutes). ORS 537.343. An instream water right is a water right held by the Department in trust for the benefit of the people of the State of Oregon to maintain water in-stream for public use. ORS 537.332(3). "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small groups of persons or to a private enterprise. ORS 537.332(3). To subordinate an instream water right to human consumption and/or livestock uses would specifically benefit a person, or a small group of persons rather than the public at large. This is not consistent with the intent of the instream

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<sup>1</sup> In addition, this policy is one of the "purposes and policies to be considered in formulating the state water resources program" under ORS 536.300(2). ORS 536.310 (*emphasis added*). The statute referred to, ORS 536.300(2), is the law specifically guiding the formulation of basin plans.

<sup>2</sup> Under the law, "public uses" (recreation; conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; pollution abatement; navigation) are legal beneficial uses. ORS 537.334(1). Instream water rights enjoy the same legal protections as consumptive water rights.

water right act. Thus, this type of conditioning is not allowed under the Instream Water Right Act.

Moreover, this proposed condition is contrary to the public interest in protecting the resource. The Commission's statewide policies recognize the importance of maintaining streamflows and place high priority on protecting streamflows. OAR 690-410-030(1). This policy directs the state to take action to restore flows in critical areas such as this system. Id. The public uses of the Illinois river system have been impaired. Adoption of this instream water rights without conditions is just one small step towards restoring this system.

Furthermore, this open-ended exception cannot be attached given the mandates of the state Scenic Waterway Act and the Federal Wild and Scenic Rivers Act. Both the state and federal scenic designations carry with them reserved rights that must be protected against impairment or substantial interference. *See Section I.c. above.* No diminishment of these flows are allowed from surface rights unless the new uses meet a very narrow exception under the state Scenic Waterway Act.<sup>3</sup> The federal Wild and Scenic Rivers Act mandates even greater protections by defining impairment as any reduction in streamflows beyond the flows needed to preserve the "free-flowing condition" of designated rivers for their "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." 16 USC § 1271.

The open-ended exception for human consumption and livestock proposed by the Department would result in impairment of the state and federal scenic designations and the reserved rights that flow from these designations and therefore is contrary to the mandates of these acts and cannot be attached to this permit. The state Scenic Waterway Act does not allow for diversions of water in or above the designated reach unless there is a finding of necessity and the use meets the extremely limited exceptions in the Act. The state Scenic Waterway Act allows for exceptions for human consumption and livestock only "upon a finding of necessity" for and only if a number of findings are made by the Department, including but not limited to, findings that the applicant cannot reasonably obtain water from any other source; that, if for human consumption, denial of the water right would result in loss of reasonable expectations for use of property; and, if for livestock use, the applicant has excluded livestock from the stream and its adjacent riparian zone. ORS 390.835(5). Moreover, exceptions cannot be in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, except in rare instances. ORS 390.835(7). Thus, if the Department were to allow an exception for human consumption and livestock use, then this exception must abide by the mandates of the Scenic Waterway Act.<sup>4</sup>

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<sup>3</sup> The exception allowed under the Scenic Waterway Act is only allowed upon a finding that such diversion is necessary to uses designated in ORS 536.310(12) and in a manner consistent with the policies set forth in the Instream Water Right Act. Both aspects of this must be met. ORS 390.835(1). Thus, even though human consumption and livestock are given preference over all other uses in ORS 536.310, these uses cannot be allowed unless the free flowing character of the scenic waterway is maintained in quantities necessary for recreation, fish and wildlife uses.

<sup>4</sup> In cases of instream water rights not in or above scenic waterways, the Department should, at the very least, put a cap on the amount that can be exempted for human consumption or livestock for any single stream. Without such a cap, instream water rights will be undercut bit



b. The flows proposed in the PFO that are less than those requested by ODFW will impair WaterWatch's and Oregon Trout's interest in ensuring that flows for optimizing habitat are protected.

For some of these applications, ODFW's requested flows exceed the Department's estimated average natural flow for some months. For these months, the Department has proposed to limit the flows requested by ODFW to the estimated average natural flow.

The Department's rules mandate that instream water rights cannot be granted for amounts greater than the estimated average natural flow, except where periodic flows that exceed the natural flow or level are significant for the public use applied for. OAR 690-77-015(4). An example of such an exception would be high flow events that allow for fish passage or migration over obstacles. *Id.* It appears that the Department has limited all the instream water right applications to the estimated average natural flow without determining whether the periodic flows that exceed the natural flow are "significant" for the public use applied for.

The flows requested by ODFW are necessary for the requested beneficial use of water - fish life. These flows are needed for migration, spawning, egg incubation, fry emergence and juvenile rearing and for fish passage and habitat maintenance. Given that ODFW's flow requests are to provide for the various lifecycles of fish which are already on the brink of extinction, periodic flows are necessary for fulfillment of the purpose of this instream water right. There should be no reduction in the requested flows. The Department's rules specifically state "an example of such an exception would be high flow events that allow for fish passage or migration over obstacles." OAR 690-77-015(4). This is exactly the type of event ODFW's instream water right application includes. In sum, the agency has the information to find that the higher flows are significant. The instream water rights should be granted at the amounts requested by ODFW.

For the months that ODFW's flow requests were higher than the estimated average natural flow, the Department limited the instream water right because "water is not available for the proposed use." This limitation, and the reasoning behind it, is a clear indication that this system cannot sustain any further water withdrawals. Given this, no further appropriations can take place in this system during the months where the instream water right is limited. The Department should ensure that this basin is closed to any further allocation in order to ensure against any further overallocation of the resource. The Department should either institute closure of the basin classification or withdrawal of the resource from further appropriation.

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by bit until there are insufficient flows left to fulfill the senior instream water rights. Instream water rights are legally protected rights. To allow such a diminution of such a vested water right at some point in the future is inconsistent with the underlying premise of the prior appropriation doctrine--first in time, first in right.

In addition, if the Department allows this exception, the exception should be limited to human consumption where (1) measurement and reporting are mandatory, (2) the applicant has demonstrated that no other alternative supply exists, and (3) the permit is subject to periodic review to ensure that there is still no alternative water source. The exception should be limited to livestock where (1) watering is off stream and (2) the cows are prevented from entering the riparian zone and stream bed.



Moreover, in cases where streamflows are not being met, the Department should take steps to ensure metering and reporting of all water uses through designations of serious water management areas.

c. The measurement and reporting condition proposed in the PFO will impair the WaterWatch's and Oregon Trout's interest in ensuring that the instream water right is fulfilled throughout the reach.

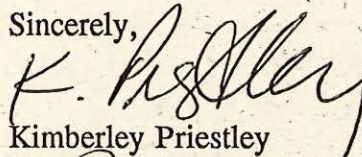
The Department has proposed a condition of use mandating measurement at the lower end of the stream reach to protect necessary flows throughout the reach. To ensure that flows are being protected throughout the reach, measurement must take place at both the upper and lower ends of the stream reach.

In any given stream reach, there are a number of ways water enters the stream whether it be tributaries, runoff, or groundwater seepage. If, for instance, there was a major inputting factor near the lower end of the reach where the measuring device was located this could artificially inflate the amount of water in the stream upstream from that spot. Thus, to ensure that the instream water rights are protected throughout their reach, there should be measuring devices at both the upper and lower end of the reach.

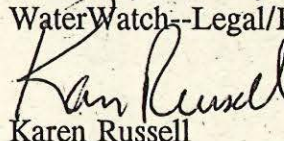
#### Conclusion

The proposed instream water rights will protect flows needed for fish life, including endangered suckers. Adoption of these and other instream flows is critical to the health of Oregon's watersheds and must be a high priority for Oregon if the state is to develop solutions to the resource crises that threatens to destroy the livability of Oregon. Instream water rights not only help to achieve a more equitable allocation of water between instream and out of stream uses, they also establish management objectives for Oregon's rivers.

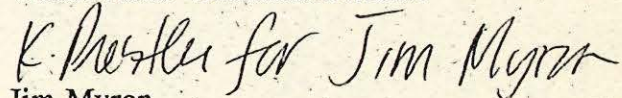
Sincerely,



Kimberley Priestley  
WaterWatch--Legal/Policy Analyst



Karen Russell  
WaterWatch--Assistant Director



Jim Myron  
Oregon Trout--Conservation Director

RECEIVED  
OCT 11 1996  
WATER RESOURCES DEPT.  
SALEM, OREGON



**COPY**

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

RECEIPT # **7351**

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

INVOICE # \_\_\_\_\_

RECEIVED FROM: River Springs Ranch APPLICATION  
BY: \_\_\_\_\_ PERMIT  
TRANSFER

CASH: ☐ CHECK: # 24-12 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 1,600.

**0417 WRD MISC CASH ACCT**

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

**REDUCTION OF EXPENSE**

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

**0427 WRD OPERATING ACCT**

70815 - 70816

MISCELLANEOUS IS 70808

0407 COPY & TAPE FEES

70799-70802

\$

0410 RESEARCH FEES

70804

\$

0408 MISC REVENUE: (IDENTIFY)

\$

TC165 DEPOSIT LIAB. (IDENTIFY)

\$

**WATER RIGHTS:**

**EXAM FEE**

**RECORD FEE**

0201 SURFACE WATER

\$

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

0206

\$

**WELL CONSTRUCTION**

**EXAM FEE**

**LICENSE FEE**

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

0223 OTHER (IDENTIFY) Protest \$1,600. PCA 72235

**0437 WELL CONST. START FEE**

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY)

**0539 LOTTERY PROCEEDS**

1302 LOTTERY PROCEEDS

\$

**0467 HYDRO ACTIVITY**

**LIC NUMBER**

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HRDRO APPLICATION

\$

RECEIPT # **7351**

DATED: 10-9-96 BY: D. Bushnell

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

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON  
WATER RIGHTS DIVISION

In The Matter Of Surface Water Application	)	
IS 70815 in the Name of Oregon Department	)	PROTEST TO
of Fish and Wildlife for Water Use,	)	PROPOSED FINAL
Klamath County	)	ORDER

Protestants River Springs Ranch, Pierre A. Kern Trust, Pierre A. Kern, Obenchain Cattle Co., Ruth Obenchain, Carolyn Obenchain, Margaret Jacobs, Larry Olson; 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, in accordance with ORS 537.153 (6) and OAR 690-77-043, submits the following Protest to Proposed Final Order for Application IS 70815.

1. INTRODUCTION

Protestants address for purpose of this Protest is care of the River Springs Ranch, P.O. Box 324, Bly, Oregon 97622; phone number for purposes of this application is (541) 353-2504. Protestant is the owner and water user of irrigation water rights from North Fork of the Sprague River, a tributary of Sprague River.

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

II. PROPOSED ORDER DETRIMENTAL TO PROTESTANTS

The flow rates proposed may be more than is in the stream at certain times of the year. If flow rates of those amounts were required, then the ability of the Protestants to receive and divert water to support Protestants irrigation would be interfered with.

III. PROPOSED ORDER IS IN CONFLICT WITH THE KLAMATH RIVER COMPACT

The Proposed Order fails to recognize the provisions of the Klamath River Basin Compact (Compact). ORS 542.620. The Compact was enacted by the states of Oregon and California and approved by the United States. Compact terms apply directly to the waters in question, as Compact jurisdiction includes the Sprague River drainage area. See official map of the Upper Klamath River Basin approved on September 6, 1956, by the commissions negotiating the Compact and filed with the Secretaries of the states of Oregon and California and the General Services Administration of the United States, and incorporated into the Compact. ORS 542.620, Art. II. B. The terms of the Compact include priorities for the appropriation of water which the Proposed Order fails to enumerate or recognize. ORS 542.620, Art.

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OCT - 9 1996 *RZ*

WATER RESOURCES DEPT.  
SALEM, OREGON



III. B. and C. Compact priorities place domestic and irrigation uses ahead of the proposed use of fish and wildlife. Any final order for the proposed use must recognize that such proposed right is inferior to present and future rights for domestic and irrigation purposes, as well as other provisions of the Compact.

#### IV. PROPOSED FLOW RATES ARE IN EXCESS OF MINIMUM QUANTITY NECESSARY

The instream water right flow rates proposed are excessive and unnecessary for the use applied for. The flow rates proposed are higher than the minimum quantity necessary for the public use of the instream water right, and are, therefore, contrary to the definition of "In-stream flow" of ORS 537.332(2) and OAR 690-77-010 (14). Water use of the instream right, if approved, would adversely affect the Protestant and other potential water users from the stream by appropriating excess quantities of water and preventing any other new appropriations of water.

#### V. INADEQUATE TECHNICAL DATA OR INFORMATION SUBMITTED BY ODFW

The above referred to application, as submitted by the Oregon Department of Fish & Wildlife to the Water Resources Department, failed to include sufficient technical data or information to support the flow rates requested by said agency, as required by OAR 690-77-020 and ORS 537.336.

OAR 690-770-020 (3)(g) requires an application to include at a minimum "a description of the technical data and methods used to determine the requested amounts;" (emphasis added). The only information submitted in support of the application is a flow rate conclusion included in an appendix in the Basin Investigation or Environmental Investigation for the river basin; no "technical data" nor any of the factual data used to arrive at the flow rate conclusions was submitted with the application.

No analysis of supporting data, or the lack thereof, appears in the WRD file for this application. The Proposed Final Order is defective in that the WRD did not evaluate whether the level of instream flow requested was "based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications." (OAR 690-77-020 (3)).

Apparently the flow levels applied for are based on an appendix in the Basin Investigation or Environmental Investigation for recommended flows. It is impossible to tell, however, what factual data said recommendation was based on. No data has been submitted to support the flows requested and the application should therefore be rejected.

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation and Environmental Investigation has apparently been lost or misplaced. No other supporting data or



Actual measurements of streamflow were not made at times when key life stages occurred and, in fact, the severe limitations of the data available show that they are inadequate to validate the requested flows: "Actual measurement of streamflow made at or near recommended instream flow requirements and made at times when key life stages occur are important to validate the methodology used, and to validate that the recommended instream flow requirements provide desirable habitat conditions." Instream Flow Methodologies. Louis C. Fredd, Oregon Department of Fish and Wildlife (1989), page 12.

#### IX. 'EANF' CALCULATIONS ARE DEFECTIVE OR INCOMPLETE

There are no calculations for information in the WRD file to show what "ratios" were used or how adjustments were made to any gauged flows to determine the 50% exceedance flows, and there is also no information in the technical review to show the type of statistics used (see "Methods for Determining Streamflows and Water Availability in Oregon", Robison, P22 and 23). The EANF calculations are defective resulting in high EANF levels and thus allowing excessive recommended flows by the WRD.

#### CONCLUSION

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

The Proposed Final Order fails to consider and note the superiority of priorities as enumerated in the Klamath River Compact, and other provisions contained therein.

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

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

Respectfully submitted this 8 day of Oct, 1996.

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WATER RESOURCES DEPT.  
SALEM, OREGON



"technical data" was submitted by the applicant as required by OAR 690-77-020 (4)(g). Since no technical data was included with ODFW's application, the application should be returned to the applicant for curing of defects or resubmittal.

#### VI. WRD FAILED TO ANALYZE FLOW NEEDS

The flow levels approved by the Proposed Final Order are not based on any analysis of the need for the flows requested. ORS 537.332(2) sets out the definition of "in-stream flow" which the Department is supposed to follow when determining instream water rights: the "minimum quantity of water necessary to support the public use requested by an agency." The Proposed Final Order does not address the minimum quantity of water or flow levels necessary to support the uses applied for. A review of the WRD file shows that no such analysis has occurred. The only review undertaken by the WRD was a check to see if the requested flows are less than the average estimate natural flow ("EANF"; OAR 690-77-015 (4)).

#### VII. OREGON METHOD IS INHERENTLY FLAWED

The methodology used for this application, the "Oregon Method", is inherently flawed in that it is based on a methodology that has been superseded and is not reliable, and is based on outdated or insufficient information (testimony is cited by Al Mirati of the Oregon Department of Fish and Wildlife regarding the "Oregon Method", to the Oregon Water Resources Commission, on December 6, 1990). The determinations made from the Oregon Method are not reliable and should therefore be rejected by the WRD or the Commission as the final authority in determining the level of instream flows necessary to protect the public use (ORS 537.343 (2)).

#### VIII. OREGON METHOD IS INHERENTLY FLAWED - WRD SHOULD REJECT APPLICATION

One of the requirements of the Department's application review is contained in OAR 690-77-020 (3): "...all applications for instream water rights shall be based on the methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications." (See also part V. above). This requirement does not mean that the Department can simply accept ODFW's assertion that the "Oregon Method" is the basis for the requested flows. The Department must actively review the application to see if the Oregon Method and ODFW's instream rules are being followed. Where applicable, ODFW must also submit supporting data to show that the standards and criteria contained in their rules have been followed.

The actual measurements used by ODFW to set requested flow levels are totally inadequate to validate those amounts; these measurements were made by ODFW's predecessor, the Oregon State Game Commission, as shown in the Appendices to the Basin Investigations and the Environmental Investigations.

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William V. Hill Sr., and Rebecca M. Hill Trust  
dated July 15, 1991 Pierre A. Kern Trust  
William V. Hill Sr. Trustee  
Rebecca M. Hill - Trustee  
Pierre A. Kern - By Mike Jelmon  
(manager)

Gary Olson by agent Matt Muckley  
Oberchain Cattle Co. - Keith Oberchain  
Carolyn Oberchain Margant Jacobz  
Rivers Spring Ranch  
Pierre A. Kern By Mike Jelmon  
Ranch - manager

### CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of OCT, 1996, I served a true and accurate copy of the foregoing Protest to the Proposed Final Order on the applicant by mailing said copy by first class mail, postage prepaid, by depositing said copy in the United States Post Office in Klamath Falls, Oregon addressed as set forth below:

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

By: Mike Jelmon  
For Protestants

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WATER RESOURCES DEPT.  
SALEM, OREGON



**Oregon Water Resources Department**  
**Water Rights/Adjudication Section**

Water Right Application Number: IS 70815

**Proposed Final Order**

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

**Application History**

On 10/26/90, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: N FK SPRAGUE R TRIB SPRAGUE R

County: Lake

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	D	E	C
30	30	30	30	30	20	10	10	10	30	30	30		

To be maintained in:

NORTH FORK SPRAGUE RIVER FROM HEAD OF RIVER SPRING AT RIVER MILE 34.0 (SWSW, SECTION 15, TOWNSHIP 35S, RANGE 16E WM) TO SHEEPY CREEK AT RIVER MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E WM)

The Department mailed the applicant notice of its Initial Review on April 29, 1996. Public notice of the application was provide in the Department's weekly public notice on May 13, 1996. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Klamath Basin, Oregon, and Their Water Requirements; April, 1970.
- (b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.
- (c) Developing and Application of Spawning Velocity and Depth Criteria for Oregon Salmonids, Alan K. Smith, Transactions of the American Fisheries Society, April 1973.
- (d) Determining Stream Flows for Fish Life, Oregon State Game

Commission Report, March 1972.

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

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

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

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

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

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

### Findings of Fact

The basin Basin Program allows the proposed use.

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

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

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
71.2	62.7	52.5	97.8	199	143	79	66.2	76.8	88.9	86.3	79.2

### Conclusions of Law

Under the provisions of ORS 537.153, the Department must

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

with rules of the Water Resources Commission.

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

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

The proposed use will not injure other water rights.

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

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

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

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

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

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

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

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

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

The Department therefore concludes that

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

distribution, this instream right shall not have priority over human or livestock consumption.

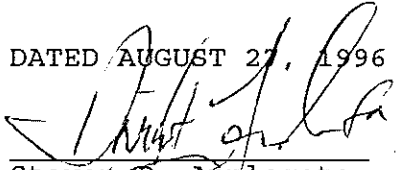
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30	30	30	30	30	20	10	10	10	30	30	30

### Recommendation

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

DATED AUGUST 27, 1996

  
Steven P. Applegate  
Administrator  
Water Rights and Adjudications Division

### Protest Rights

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

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

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

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

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

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 70815

WATERMASTER # DEL SPARKS

REGIONAL MANAGER: BOB MAIN

ODF&W - County: Lake

DEQ

PARKS

OTHER STATE AGENCY IF NECESSARY:

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

POWER BUILDER UPDATER;

WATER FOR LIFE (TODD HEIDGERKEN)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CASEWORKER : CINDY SMITH

April 29, 1996

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

WATER  
RESOURCES  
DEPARTMENT

Reference: Instream water rights in the Klamath Basin,  
Files 70094, 70799, 70800, 70808, 70809, 70813-  
70815, 70817, 70819, 70820, 70830-70832

Dear Oregon Department of Fish and Wildlife:

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

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under ORS 542.620, the Klamath River Compact;

1. **Application 70094** **Priority date: 10/13/89**  
JOINT APPLICATION FROM ODFW AND OREGON PARKS AND RECREATION DEPT.  
KLAMATH R TRIB PACIFIC OCEAN  
KLAMATH COUNTY

KLAMATH R FM THE CONFLUENCE OF JC BOYLE POWERHOUSE TAILRACE &  
THE NATURAL CHANNEL AT R.M. 220.4 (NWNW, S 13, T40S, R6E WM);  
TO THE OREGON/CALIFORNIA BORDER R.M. 209.3 (NWNE, S13, T41S, R5E WM)

a. The amount of water requested for instream use:

Recreation

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500

Fish life and fish habitat

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
550	550	550	550	550	550	550	550	550	550	550	550

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2170	2290	2840	3390	3230	2780	1900	1330	1160	1260	1500	1800



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

## c. Allowable water use

## Recreation

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1500	1500	1500	1500	1500	1500	1500	1330	1160	1260	1500	1500

## Fish life and fish habitat

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
550	550	550	550	550	550	550	550	550	550	550	550

## 2. Application 70799

Priority date: 10/26/90

S FK SPRAGUE R TRIB SPRAGUE R  
LAKE COUNTY

SOUTH FORK SPRAGUE RIVER FROM CAMP CREEK AT RIVER MILE 28.7 (SESW, SECTION 14, TOWNSHIP 36S, RANGE 16E WM); CREEK RIVER MILE 21.6 (NWSW, SECTION 10, TOWNSHIP 37S, RANGE 16E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
40	40	40	40	40	20	10	10	10	40	40	40

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.9	12.9	17.6	54.4	92	37.1	9.61	6.58	7.68	9.72	11.5	12.5

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.9	12.9	17.6	40	40	20	9.61	6.58	7.68	9.72	11.5	12.5

## 3. Application 70800

Priority date: 10/26/90

S FK SPRAGUE R TRIB SPRAGUE R  
LAKE COUNTY

SOUTH FORK SPRAGUE RIVER FROM THE HEADWATERS AT RIVER MILE 32.0 (NENE, SECTION 2, TOWNSHIP 36S, RANGE 16E WM); TO CAMP CREEK AT RIVER MILE 28.7 (SESW, SECTION 14, TOWNSHIP 36S, RANGE 16E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6	6	10	10	10	7	4	4	4	10	6	6

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.52	3.66	4.91	15.7	29.3	12.3	3.22	2.16	2.51	3.11	3.58	3.78

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.52	3.66	4.91	10	10	7	3.22	2.16	2.51	3.11	3.58	3.78

## 4. Application 70808

Priority date: 10/26/90

DEMING CR TRIB S FK SPRAGUE R  
KLAMATH COUNTY

DEMING CREEK FROM THE HEADWATERS (SECTION 1, TOWNSHIP 36S, RANGE 15E WM); TO ROCKY FLAT CREEK (DRAINING CAMPBELL RESERVOIR) (SENE, SECTION 24, TOWNSHIP 36S, RANGE 14E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	5	1	1	5	10	10	10

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.72	10.1	18	66.4	75.2	18.4	3.18	2.34	2.89	4.05	5.92	7.48

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.72	10	10	10	10	5	1	1	2.89	4.05	5.92	7.48

## 5. Application 70809

Priority date: 10/26/90

FISHHOLE CR TRIB S FK SPRAGUE R  
KLAMATH COUNTY

FISHHOLE CREEK FROM BRIGGS SPRINGS (NENW, SECTION 35, TOWNSHIP 38S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWSE, SECTION 27, TOWNSHIP 36S, RANGE 14E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	7	4	4	4	10	6	6

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.5	25.6	48.2	55.1	33.3	23.5	10.9	5.02	4.81	5.43	5.35	8.08

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	7	4	4	4	5.43	5.35	6



## 6. Application 70813

Priority date: 10/26/90

UPPER KLAMATH L TRIB KLAMATH R  
KLAMATH COUNTY

LINK RIVER FROM LINK RIVER DAM (SECTION 30, TOWNSHIP 38S, RANGE 9E WM); TO LAKE EWAUNA AT RIVER MILE 0.0 (SECTION 32, TOWNSHIP 38S, RANGE 9E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60	60	80	80	80	30	20	40	30	30	30	50

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2120	2210	2680	3210	3120	2740	1880	1310	1140	1240	1470	1760

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60	60	80	80	80	30	20	40	30	30	30	50

## 7. Application 70814

Priority date: 10/26/90

LONG CR TRIB SYCAN R  
KLAMATH COUNTY

LONG CREEK FROM UNNAMED TRIBUTARY (SW1/4, SECTION 1, TOWNSHIP 33S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE, SECTION 36, TOWNSHIP 32S, RANGE 14E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	6	3	3

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	4.83	8.5	28.5	58.4	21.1	3.83	2.28	2.45	2.89	3.59	4.22

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	2.89	3	3

## 8. Application 70815

Priority date: 10/26/90

N FK SPRAGUE R TRIB SPRAGUE R  
LAKE COUNTY

NORTH FORK SPRAGUE RIVER FROM HEAD OF RIVER SPRING AT RIVER MILE 34.0 (SWSW, SECTION 15, TOWNSHIP 35S, RANGE 16E WM) TO SHEEPY CREEK AT RIVER MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30	30	30	30	30	20	10	10	10	30	30	30

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
71.2	62.7	52.5	97.8	199	143	79	66.2	76.8	88.9	86.3	79.2

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30	30	30	30	30	20	10	10	10	30	30	30

## 9. Application 70817

Priority date: 10/26/90

PARADISE CR TRIB SKULL CR  
KLAMATH COUNTY

PARADISE CREEK FROM HEADWATER SPRINGS (NENE, SECTION 21, TOWNSHIP 34S, RANGE 15E WM) TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 22, TOWNSHIP 33S, RANGE 15E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	6	3	3

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.15	3.82	6.91	24.3	49.2	17	2.94	1.75	1.89	2.23	2.81	3.32

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	2.23	2.81	3

## 10. Application 70819

Priority date: 10/26/90

SUN CR TRIB ANNIE CR  
KLAMATH COUNTY

SUN CREEK FROM CRATER LAKE NATIONAL PARK BOUNDARY (SENW, SECTION 17, TOWNSHIP 32S, RANGE 7.50E WM); TO THE MOUTH AT RIVER MILE 0.0 (SECTION 4, TOWNSHIP 33S, RANGE 7.50E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	10	8	8	8/15	15	15/10	10

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.3	9.49	9.86	14.9	26.6	32.8	27	16.9	13.4	16	12.7	13.8

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	9.49	9.86	10	10	10	8	8	8/13.4	15	12.7/10	10

## 11. Application 70820

Priority date: 10/26/90

SYCAN R TRIB SPRAGUE R  
LAKE COUNTY

SYCAN RIVER FROM SOUTH FORK SYCAN RIVER AT RIVER MILE 68.2 (SECTION 35, TOWNSHIP 33S, RANGE 16E WM); TO PARADISE CREEK AT RIVER MILE 58.2 (SWNE, SECTION 22, TOWNSHIP 33S, RANGE 15E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15	15	20	20	20	15	12	10	10	20	15	15

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.5	12	18.2	50.9	116	54.8	13	7.42	7.95	8.99	10.2	11.3

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.5	12	18.2	20	20	15	12	7.42	7.95	8.99	10.2	11.3

## 12. Application 70830

Priority date: 10/26/90

SEVENMILE CR TRIB UPPER KLAMATH L  
KLAMATH COUNTY

SEVENMILE CREEK FROM DRY CREEK AT RIVER MILE 17.9 (NWSW, SECTION 11, TOWNSHIP 33S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 9, TOWNSHIP 35S, RANGE 7.50E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15	15	15	15	15	12	10	10	8	15	15	15

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
90.3	93	97.3	102	106	105	71.1	59.9	64	73.2	88.7	90.5

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15	15	15	15	15	12	10	10	8	15	15	15

## 13. Application 70831

Priority date: 10/26/90

ANNIE CR TRIB WOOD R  
KLAMATH COUNTY

ANNIE CREEK FROM EAST FORK ANNIE CREEK AT RIVER MILE 13.0 (SECTION 18, TOWNSHIP 31S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (SESW, SECTION 10, TOWNSHIP 33S, RANGE 7.50E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
40	40	40	40	40	30	20	20	20	40	40	40

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
44.4	41.1	42.7	64.3	115	142	117	73	57.9	69.4	54.8	59.7

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
40	40	40	40	40	30	20	20	20	40	40	40

## 14. Application 70832

Priority date: 10/26/90

BROWNSWORTH CR TRIB S FK SPRAGUE R  
KLAMATH COUNTY

BROWNSWORTH CREEK FROM HAMMOND CREEK AT RIVER MILE 3.0 (NWNE, SECTION 31, TOWNSHIP 36S, RANGE 16E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE, SECTION 2, TOWNSHIP 37S, RANGE 15E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	6	3	1	1	3	10	10

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.36	9.64	14.2	45.1	66.5	23.2	5.39	3.81	4.52	5.91	7.46	8.55

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.36	9.64	10	10	10	6	3	1	1	3	7.46	8.55

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

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

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by May 13, 1996. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With Your Application:

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

If you have any questions:

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

Sincerely,

Cindy Smith

Cindy Smith  
Initial Review Team

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

IWR Application # 70815

Certificate # \_\_\_\_\_

STATE OF OREGON

WATER RESOURCES DEPARTMENT

**Application for Instream Water Right  
by a State Agency**

There is no fee required for this application.

**RECEIVED**

OCT 26 1990

WATER RESOURCES DEPT.  
SALEM, OREGON

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

1. The name of the stream of the proposed instream water right is N. Fk. Sprague River, a tributary of Sprague River.
2. The public uses this instream water right is based upon include providing required stream flows for redband, brown, and brook trout for migration, spawning, egg incubation, fry emergence, and juvenile and adult rearing.
3. The amount of water (in cubic feet per second) needed by month for each category of public use is as follows:

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30	30	30	30	30	20	10	10	10	30	30	30

4. The reach of the stream identified for an instream water right is from (upstream end) Head of River Spring, river mile 34, within the SW quarter of the SW quarter of Section 15, Township 35S, Range 16E W.M., in Lake County...

Downstream to Sheepy Creek, river mile 17.5, within the SE quarter of the NW quarter of Section 15, Township 35S, Range 15E W.M., in Klamath County.

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

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



IWR Application # 70815 Certificate # \_\_\_\_\_

7. If possible, include recommendations for measuring locations or methods:

Establish a gaging structure at or near the lower limit of the reach.

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

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

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

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

The requested flows are the minimum required to maintain fish populations at their current levels. No provision is made at these flows for population restoration or enhancement.

The upper (15 mile) section of the reach is designated "scenic" under the federal Wild and Scenic Rivers Act.

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

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

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

Date: 10/23/90 Signed: Nancy M. MacHugh  
Oregon Department of Fish and Wildlife Assistant Director  
Wildlife Habitat Conservation Div.

File: NFSPRG1.APP



IWR Application # 70815 Certificate # \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_, 19\_\_\_\_.

Date: \_\_\_\_\_, 19\_\_\_\_.

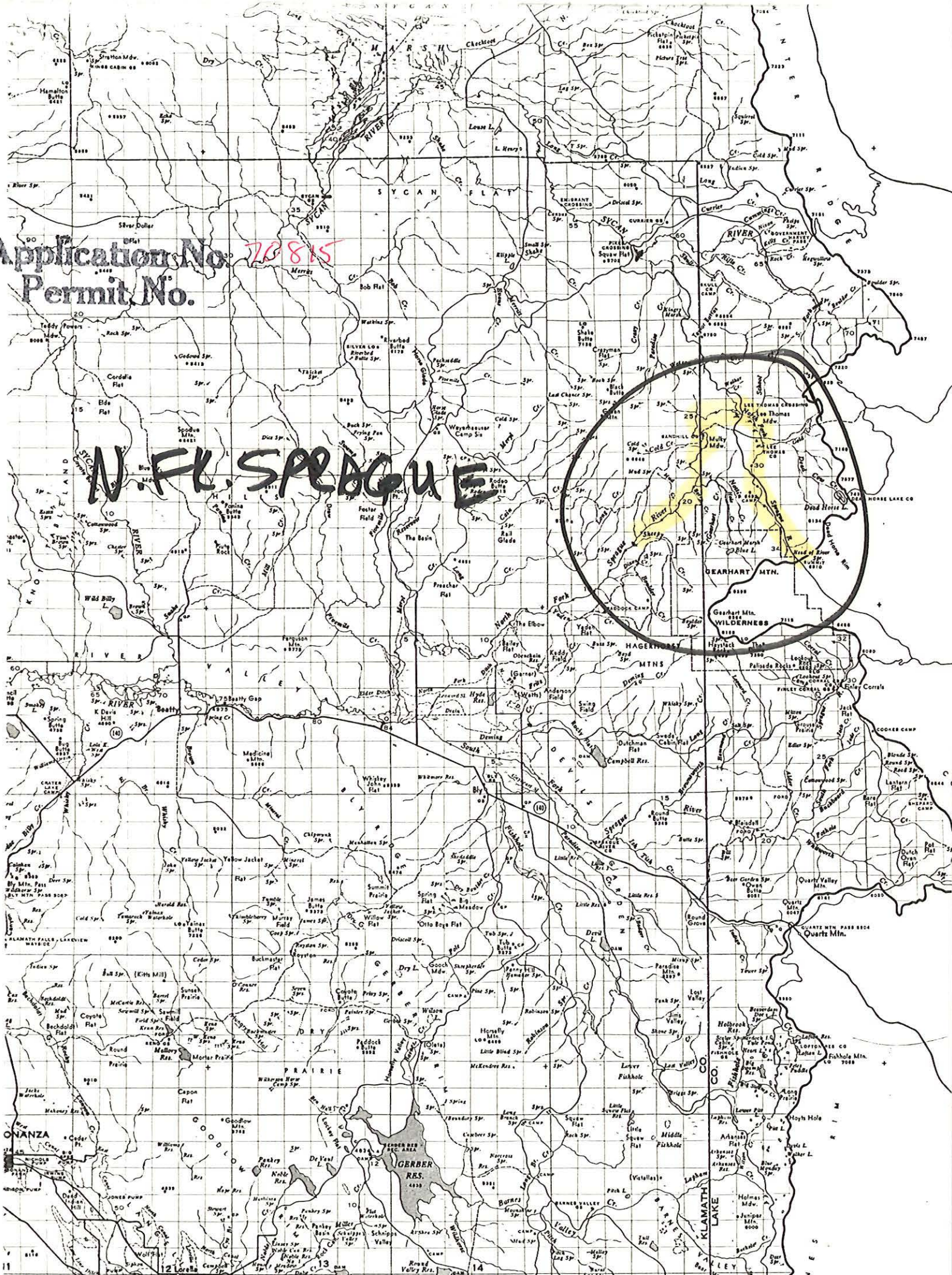
\_\_\_\_\_

\_\_\_\_\_

This document was first received at the Water Resources Department in Salem, Oregon, on the 26<sup>th</sup> day of October, 1990, at 8 o'clock A. M.

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



[illegible]



August 18, 1994

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WATER  
RESOURCES  
DEPARTMENT

---

Bernard L. Simonsen  
Rocking AC Ranch  
9390 Highway #140 East  
Klamath Falls, OR 97498

Reference: File G-12868 - Rocking AC Ranch  
File G-13712 - Robert and Helen Cheyne  
Instream water right applications - IS-70094,  
IS-70799 through IS-70802, IS-70804, IS-70805,  
IS-70806, IS-70808, IS-70809, IS-70812 through  
IS-70817, IS-70820 through IS-70823 and IS-70832

Dear Mr. Simonsen:

Your letters of February 6, February 16, March 31 and July 21 were recently brought to my attention. I apologize for the delay in responding to your letters in a more timely fashion, however the demands on my time seem to exceed my ability to preform tasks as promptly as I would like.

In regards to Application G-12868, we have received, what we consider two letters of objections to the technical review report. One from WaterWatch of Oregon and your letter of February 6, 1994. Both of these letters will be addressed by staff as soon as time allows.

Application G-13712 in the name of Mr. and Mrs. Cheyne, filed on June 13, 1994, has yet to receive a review by staff and will receive a technical review report in the order it is was received with other requests. Your comment form was received on June 28, 1994 as an interested party and you will be placed on our distribution list to receive a copy of the technical review report when it is completed.

I am enclosing a list of instream water right applications that were submitted by the Oregon Department of Fish and Wildlife for the waters of the Klamath River Basin. I have highlighted the applications in which you expressed an interest in. These applications are referenced above. Please review the list. If there are any other instream water right applications you wish to receive a technical review report and have an opportunity to object, please notify me and I will include you as an interested party.



---

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

August 18, 1994  
Bernard L. Simonsen  
Rocking AC Ranch  
Page Two

The process for instream water right applications is described by our Division 77 Administrative Rules (copy enclosed), and is similar to our out-of-stream or groundwater application process.

Again I apologize for the delay in responding to your request. Please feel free to contact me if you have any questions and I will be happy to address any concerns you may have.

Respectfully,

Steve Brown  
Water Rights Program Analyst  
Water Right/Adjudication Division

cc: files

files 70799, 70800, 70801, 70802, 70808, 70809,  
70815, 70816, 70832, 70812, 70813, #

RECEIVED

FEB 22 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

**Rocking AC Ranch**  
9390 Highway #140 East  
Klamath Falls, OR 97603

February 16, 1994

Mr. Steve Brown  
Water Resources Department  
3850 Portland Road, NE  
Salem, OR 97310

Dear Mr. Brown,

I have been advised that you are beginning the technical review of the instream water rights for the Klamath Basin. Since I own property on the Sprague River and lease a ranch on the Klamath River, I am greatly interested in this review and its outcome.

Accordingly, I would like to be informed of the status of this review with regard to the following streams in Klamath County, and would like a copy of the technical review when it is available:

- North Fork of the Sprague River
- Tributaries of the North Fork of the Sprague River
- South Fork of the Sprague River
- Tributaries of the South Fork of the Sprague River
- Klamath River between Klamath Falls and Keno

Additionally, I would be interested in background data on these instream reviews and the process which will be followed in evaluating the requested flows.

I appreciate the opportunity to provide input into this process.

Sincerely,



Bernard L. Simonsen,  
Owner

RECEIVED

JAN 19 1993

WATER RESOURCES DEPT.  
SALEM, OREGON

COPY

3286 E. Langell Vly. Rd.  
Bonanza, Or. 97623

Water Resources Dept.  
3950 Portland Road N.E.  
Salem, Oregon 97310

Gentlemen:

We are requesting a "technical review" for Instream Water Right applications which have been filed on Deming Creek, S Fork of the Sprague River, application 70808.

Also the following:

North Fork Sprague River, Application 70815  
North Fork Sprague River, Application 70816  
South Fork Sprague River, Application 70802  
South Fork Sprague River, Application 70801  
South Fork Sprague River, Application 70800  
South Fork Sprague River, Application 70799

Thank you for this courtesy.

Sincerely,

*William V. Hill*  
(L)

William V. Hill

3286 E. Langell Vly. Rd.  
Bonanza, Or. 97623



RECEIVED

FEB 28 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

**COPY**

*file in  
each*

Bonanza, Oregon

February 23, 1994

Mr. Steve Brown  
Water Resources Dept.  
3850 Portland Rd.  
Salem, OR 97310

Dear Sir:

We are asking that you send us a copy of the technical review of instream water rights for the following:

North Fork of the Sprague River, Klamath County

South Fork of the Sprague River, Klamath County

Deming Creek, Klamath County

Lost River, Klamath County

Thank you for your prompt response.

Sincerely yours,

*William V. Hill (L)*

William V. Hill  
3286 E. Langell Vly. Rd.  
Bonanza, Oregon 97623

M. Mattick

Borden

**COPY**

**SILVER LAKE IRRIGATION DISTRICT**

SILVER LAKE, OREGON 97638

2/6/91

RECEIVED

FEB 11 1991

WATER RESOURCES DEPT.  
SALEM, OREGON

Water Resource Dept -  
William Young, Director  
3850 Portland Rd. N.E.,  
Salem, Or - 97310.

Mr. Director

The Oregon Department of Fish & Wildlife  
has recently filed applications for instream  
water rights within Lake Co. with your department.  
The Silver Lake Irrigation Dist. has become  
aware of this request & protests the applications.  
Our streams in Lake Co. in the North  
end, Silver Creek, Buck Creek & Bridge Creek  
are fully appropriated now.  
Thank you for considering our requests &  
concerns.

Sincerely -  
Silver Lake Irrigation Dist  
P.O. Box 97 - Silver Lake, Ore - Marjorie Queman  
Sec.



**COPY**

BERNARD L. SIMONSEN

6847 ALTA VISTA • RANCHO PALOS VERDES, CALIFORNIA 90274

708/5  
RECEIVED

FEB 11 1991

WATER RESOURCES DEPT  
SALEM, OREGON

FEBRUARY 6, 1991

WATER RESOURCES DEPARTMENT  
APPLICATIONS & PERMITS SECTION  
3850 PORTLAND ROAD, NE.  
SALEM, OR 97310

GENTLEMEN.

I HAVE BEEN ADVISED THAT WATER RIGHTS HAVE BEEN APPLIED FOR BY THE ODFW FOR SEVERAL STREAMS IN THE STATE OF OREGON. AS THE OWNER OF LAND IN THE AREA NEAR BLY, OR, I WOULD BE INTERESTED IN ANY SUCH APPLICATION FOR EASTERN KLAMATH COUNTY.

AS A MATTER OF PRINCIPLE, I WOULD BE OPPOSED TO ANY SUCH CLAIMS ON WATERS WITHOUT FULL PUBLIC HEARINGS AND COMPENSATION FOR CURRENT HOLDERS OF WATER RIGHTS, AND WOULD VIEW ANY SUCH ACTION AS A TAKING OF PROPERTY UNDER THE U.S. CONSTITUTION.

PLEASE PUT ME ON YOUR MAILING LIST FOR INFORMATION AND NOTICES OF ANY MEETINGS. I WOULD ALSO LIKE TO OBTAIN A "REQUEST FOR REVIEW" AND COPIES OF FILINGS PERTAINING TO ANY APPLICATIONS PERTAINING TO THE UPPER SPRAGUE RIVER BASIN IN THE BLY AREA.

I AM ALSO INCLUDING A CHECK FOR \$26.00 FOR A SUBSCRIPTION TO YOUR MAILING LIST.

THANK YOU FOR YOUR ASSISTANCE.

SINCERELY

*B. Simonsen*

(213) 541-2311



WILLIAM GANONG, SR., (1919-1971)  
ERNEST F. GORDON (1960-1972)

**WM. M. GANONG**  
Attorney at Law  
of Counsel

**WM. GANONG (SR.)**

LAWYER

P.O. BOX 57

KLAMATH FALLS, OREGON 97601-0003  
November 30, 1990

HAND DELIVERED

*Bl. Krag*  
*9/11 Border*  
OREGON STATE BAR NO. 48030  
TELEPHONE: *Amegate*  
AREA CODE 503  
882-7228  
Law offices at  
1151 Pine Street

Oregon Water Resources Department  
700 Main Street  
Klamath Falls, OR 97601

RECEIVED  
DEC 3 1990  
WATER RESOURCES DEPT.  
GALILEO, OREGON

RE: Application of the Oregon Department of Fish  
& Wildlife for Instream Water Right No.s 70815  
& 70816 for the North Fork of the  
Sprague River

Greetings:

The undersigned, on behalf of the undersigned Wm. Ganong, P.O. Box 57, Klamath Falls, Oregon 97601; co-owner Frank F. Ganong, 323 Main Street, Klamath Falls, Oregon 97601; and GTB, Inc., an Oregon Corporation of which the undersigned is an Officer, Director and Shareholder, 323 Main Street, Klamath Falls, Oregon 97601; respectfully requests an extension of time to December 21, 1990 to review the above said applications and determine whether or not we should file objections to said applications.

This request is necessary because we were unaware of this application before today.

The subject North Fork Sprague River traverses land owned by Wm. Ganong and Frank Ganong, and additional land owned by GTB Corporation, located in Section 35, Twp. 35 S, Range 14 EWM, Klamath County, Oregon. Said land is zoned for forestry and farm use and is used as pasture and grazing land. The stock water for the cattle on our land and domestic water is provided by the Sprague River.

We have been advised by the Oregon Water Resources Congress that the granting of Instream Water Rights may preclude our historic appropriation of Sprague River water for domestic and stock water. Any such preclusion would substantially impair our use of our land. We believe that our use of said water is protected by our historic use and the Klamath River Compact.

Please provide to us copies of the above said applications and supporting materials. Also, please provide a copy of any Departmental rules and policies which are

NOV. 30, 1990

relevant to this matter. If there is a charge for providing said materials, please so advise.

Please provide said materials as soon as possible so that we will have an adequate opportunity to formulate a position. If for any reason, you are not able to grant this request, please consider this letter to be a formal objection to the above said applications and request for review.

Yours very truly,



Wm. Ganong

cc: Frank Ganong  
Bill Young, Director, Oregon Water Resources ✓  
Oregon Department of Fish & Wildlife

WMG:pr

WM. GANONG  
LAWYER  
OF COUNSEL

WILLIAM M. GANONG  
ATTORNEY AT LAW  
292 MAIN STREET  
KLAMATH FALLS, OREGON 97601

TELEPHONE: (503)  
882-7228  
OREGON STATE BAR ASSOC.  
NUMBER 78213

December 10, 1990

RECEIVED

DEC 12 1990

WATER RESOURCES DEPT.  
SALEM, OREGON

Michael J. Matlick  
Water Resources Department  
38250 Portland Rd., NE  
Salem, OR 97310

RE: Applications for Instream Water Rights No.s  
70816 and 70815 for the North Fork of the  
Sprague River, Klamath County, Oregon

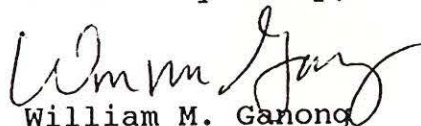
Dear Mr. Matlick:

On behalf of the J-Spear Ranch, we are reviewing the  
above referenced In Stream Water Rights Applications.

Please provide to us any information the Department has  
concerning the instream flows in the North Fork of the  
Sprague River for each month since January 1, 1980.

Our check for your invoice no. 0251 is enclosed  
herewith.

Yours very truly,

  
William M. Ganong

cc: J-Spear Ranch  
c/o Thomas J. Shaw

WMG:pr

WM. GANONG  
LAWYER  
OF COUNSEL

WILLIAM M. GANONG  
ATTORNEY AT LAW  
292 MAIN STREET  
KLAMATH FALLS, OREGON 97601

RECEIVED  
DEC 21 1990  
TELEPHONE: (503) 882-7228  
OREGON STATE BAR ASSOC.  
NUMBER 78213  
J.B. Borden  
D.K. Borden  
M. Borden

December 20, 1990

CERTIFIED RETURN RECEIPT REQUESTED

William Young, Director  
Department of Water Resources  
State of Oregon  
3850 Portland Road, NE  
Salem, OR 97310

RE: Applications for Instream Water Rights No.s  
70816 and 70815 for the North Fork of the  
Sprague River, Klamath County, Oregon

Dear Mr. Young:

On behalf of J Spear Ranch, we hereby object to the issuance of the Instream water rights requested in the above referenced applications. We further request that the Department hold a public hearing on said applications and that we be granted party status for said hearings.

J-Spear Ranch owns land in Klamath County through which the North Fork of the Sprague River flows. J-Spear Ranch holds water rights certificates for irrigation of its said water, and also uses the water of the North Fork of the Sprague River for stock, wildlife and other purposes. The Department of Fish and Wildlife, the applicants in the above referenced applications, does not know what the historic flows in the North Fork of the Sprague River are and is, therefore, unable to tell us what effect, the said applications may have on J-Spear Ranch's historic use of the property and the water flowing through the property.

We believe the granting of the said applications without a public hearing to review the impacts of the granting of said applications on existing water rights and vested water uses, violates the rights of J-Spear Ranch and is contrary to the public interests. In addition, granting an instream water right which may contain rights greater than those reserved for agricultural purposes under the Klamath River Basin Compact (ORS 542.610 to 542.630) will violate the terms of the compact and Oregon Law.

Please address any correspondence concerning this petition to J-Spear Ranch, in care of this office.

Yours very truly,  
J-Spear Ranch

By: William M. Ganong,  
Assistant Secretary

cc: J-Spear Ranch  
c/o Thomas J. Shaw  
Department of Fish & Wildlife  
WMG:pr

WM. GANONG  
LAWYER  
OF COUNSEL

WILLIAM M. GANONG  
ATTORNEY AT LAW  
292 MAIN STREET  
KLAMATH FALLS, OREGON 97601

RECEIVED

DEC 21 1990

TELEPHONE: (503)  
882-7228

WATER RESOURCES OREGON STATE BAR ASSOC.  
SALE NUMBER 78213

December 21, 1990

CERTIFIED RETURN RECEIPT REQUESTED

William Young, Director  
Department of Water Resources  
State of Oregon  
3850 Portland Road, NE  
Salem, OR 97310

RE: Applications for Instream Water Rights No.s  
70660 through 70663, inclusive for the streams  
located in Klamath and Lake Counties, Oregon

Dear Mr. Young:

On behalf of J-Spear Ranch, we hereby object to the  
above referenced applications for Instream Water Rights made  
by the Oregon Department of Fish & Wildlife.

We request that the Department of Water Resources  
conduct a public hearing on these requests and that J-Spear  
Ranch be granted party status.

J-Spear Ranch owns real property on the Chewaucan River  
in Lake County, Oregon. J-Spear Ranch holds water rights  
from the Chewaucan River for the irrigation of its said land  
and also uses water from the Chewaucan River for stock,  
wildlife and domestic purposes. The water of the Chewaucan  
River is currently over appropriated. The granting of  
Instream Water Rights as requested on the above referenced  
applications for the Chewaucan River and its tributaries  
will interfere with the vested rights of J-Spear Ranch for  
the use of the water in the Chewaucan River, particularly  
for its uses as stock, wildlife and domestic purposes.

We understand that the time for filing this request may  
have expired. However, you are advised that notwithstanding  
the fact that the Department of Water Resource's records  
reflect J-Spear Ranch's property right in its water rights  
on the Chewaucan River and the potential impact of these  
applications on the J-Spear Ranch's water rights, the  
Department of Water Resources and the Oregon Department of  
Fish and Wildlife failed to notify J-Spear Ranch of these  
applications and we have just become aware of these  
applications.


We submit that the granting of these applications  
without allowing public hearing and without allowing J-Spear  
Ranch standing as a party at said public hearing, will

DECEMBER 21, 1990

result in denial of our constitutional rights and may result in the taking of a property right without due process and compensation.

Please address any correspondence concerning this matter to J-Spear Ranch in care of this office.

Yours very truly,  
J-Spear Ranch

  
By: William M. Ganong,  
Assistant Secretary

cc: J-Spear Ranch  
Thomas J. Shaw  
Department of Fish & Wildlife

WMG:pr

December 8, 1990

Water Resources Department  
Applications and Permits Division  
3850 Portland Road NE  
Salem, Oregon 97310

70815  
DEC 11 1990  
WATER RESOURCES DEPT.  
SALEM, OREGON

Attn: Mike Mattick

Dear Mr. Mattick:

I am writing to request a review and hearing to object to the Instream Water Rights applications filed by the Oregon Department of Fish & Wildlife on the Sprague River (Application Nos. 70804 through 70806), the South Fork of the Sprague River (Application Nos. 70799 through 70802) and the North Fork of the Sprague River (Application Nos. 70815 and 70816). I own water rights which are diverted from the Sprague River and I believe that granting the excessive amounts of flow requested will adversely affect my water rights and will be prejudicial to the public interest.

I am also objecting to the ODFW applications because they will appropriate all the remaining water in these streams and the amounts applied for appear to be much higher than what is needed to support fish and wildlife. It seems to me from my experience on these streams that ODFW is asking for flow rates that are too high with the result being that only fish will have water and the greatest good for other water uses will not be served. Has ODFW submitted adequate facts to show that the flow rates they have requested are necessary? The instream water rights may also be in conflict with the Klamath River Basin Compact.

Hopefully this letter is not being sent too late to allow me to participate in the process by objecting to the ODFW applications. I was not aware that ODFW had filed for instream flow rights until very recently when I heard about it through the grapevine. In any case please enter my objection so that the ODFW applications will be thoroughly reviewed to be sure they are not applying for more water than is needed for fish and wildlife. Water left instream beyond the minimum necessary to support fish and wildlife is wasteful and prevents future appropriations and use of the water.

Yours truly,



Dr. Earl Harris  
P.O. Box 467  
Chiloquin, OR 97624



WM. GANONG  
LAWYER  
OF COUNSEL

WILLIAM M. GANONG  
ATTORNEY AT LAW  
292 MAIN STREET  
KLAMATH FALLS, OREGON 97601

RECEIVED

DEC 4 1990

TELEPHONE: (503)

882-7228

OREGON STATE BAR ASSOC.  
NUMBER 78213

WATER RESOURCES DEPT  
SALEM, OREGON

November 30, 1990

HAND DELIVERED

RECEIVED

NOV 30 1990

WATER RESOURCES DEPT

Oregon Water Resources Department  
700 Main Street  
Klamath Falls, OR 97601

RE: Application of the Oregon Department of Fish  
Wildlife for an Instream Water Right No. 70815  
for a reach of the North Fork of the  
Sprague River

Greetings:

The undersigned is the Assistant Secretary and General  
Counsel of J-Spear Ranch Co., an Oregon Corporation.

We respectfully request an extension of time to  
December 21, 1990 to review the above said application and  
determine whether or not we should file objections to said  
application.

This request is necessary because we were unaware of  
this application before today.

The subject stretch of the North Fork Sprague River  
traverses the J-Spear Ranch Co. holdings at Lee Thomas  
Meadows. J-Spear Ranch Co. appropriates water from the  
North Fork of the Sprague River for irrigation and stock  
water on its said land.

We have been advised by the Oregon Water Resources  
Congress that the granting of an Instream Water Right may  
preclude the historic appropriation of Sprague River Water  
from stock water. Any such preclusion would substantially  
impair J-Spear Ranch Co.'s use of its land. We believe that  
the use of said water for stock water is protected by our  
historic use and the Klamath River Compact.

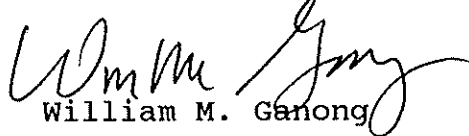
Please provide to us a copy of the above said  
application and supporting materials. Also, please provide  
a copy of any Departmental rules and policies which are  
relevant to this matter. If there is a charge for providing  
said materials, please so advise.

NOV. 30, 1990

Please provide said materials as soon as possible so that we will have an adequate opportunity to formulate a position.

If for any reason, you are not able to grant this request, please consider this letter to be a formal objection to the above said application and our request for review pursuant to form OAR 690-77-000 et. seq.

Yours very truly,

  
William M. Ganong

cc: J-Spear Ranch Co., Attn: Thomas J. Shaw  
Oregon Department of Fish & Wildlife  
Bill Young, Director  
Oregon Water Resources Department

WMG:pr

WM. GANONG  
LAWYER  
OF COUNSEL

WILLIAM M. GANONG  
ATTORNEY AT LAW  
292 MAIN STREET  
KLAMATH FALLS, OREGON 97601

TELEPHONE: (503)  
882-7228  
OREGON STATE BAR ASSOC.  
NUMBER 78213

November 30, 1990

HAND DELIVERED

RECEIVED  
DEC 3 1990  
WATER RESOURCES DEPT.  
GALLEN, OREGON

Oregon Water Resources Department  
700 Main Street  
Klamath Falls, OR 97601

RE: Application of the Oregon Department of Fish  
Wildlife for an Instream Water Right No. 70815  
for a reach of the North Fork of the  
Sprague River

Greetings:

The undersigned is the Assistant Secretary and General  
Counsel of J-Spear Ranch Co., an Oregon Corporation.

We respectfully request an extension of time to  
December 21, 1990 to review the above said application and  
determine whether or not we should file objections to said  
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This request is necessary because we were unaware of  
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The subject stretch of the North Fork Sprague River  
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historic use and the Klamath River Compact.

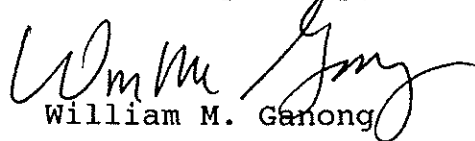
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a copy of any Departmental rules and policies which are  
relevant to this matter. If there is a charge for providing  
said materials, please so advise.

NOV. 30, 1990

Please provide said materials as soon as possible so that we will have an adequate opportunity to formulate a position.

If for any reason, you are not able to grant this request, please consider this letter to be a formal objection to the above said application and our request for review pursuant to form OAR 690-77-000 et. seq.

Yours very truly,

  
William M. Ganong

cc: J-Spear Ranch Co., Attn: Thomas J. Shaw  
Oregon Department of Fish & Wildlife  
Bill Young, Director  
Oregon Water Resources Department

WMG:pr



# WaterWatch

O F O R E G O N

December 3, 1990

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

Re: ODFW applications for Instream Water Rights, Klamath, North  
Fork of Sprague River, Permit numbers 70815 and 70816.

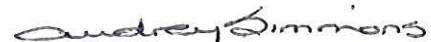
Dear Mr. Mattick,

We write in support of the Oregon Department of Fish and Wildlife's request for the above referenced Instream Water Rights. Establishment of Instream Water Rights for maintenance of fish life in this river is needed to ensure protection of this public use.

Please notify us of any protest, petition, or request for review received on this water right application. If we do not hear from the Department prior to action on this permit we will assume nothing has been received by the Department.

Thank you for consideration of this letter. Call if you have any questions.

Sincerely,



Audrey Simmons  
President

## APPLICATION PROCESSING OUTLINE

Basin: \_\_\_\_\_

Sub-basin: \_\_\_\_\_

Fees paid: \_\_\_\_\_ Examination fees: \_\_\_\_\_

Recording fees: \_\_\_\_\_

Totals: \_\_\_\_\_

Application No. 70815

Permit No. \_\_\_\_\_

RATE AND DUTY \_\_\_\_\_ for irrigation

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

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

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

yes	no	
_____	_____	Water Resources Commission classification limits or restrictions -- If yes, note:

\_\_\_\_\_ State Engineer's withdrawals -- If yes, note:

\_\_\_\_\_ Legislative withdrawals -- If yes, note:

\_\_\_\_\_ If policy statement is unclear check with Resources Management Division.

\_\_\_\_\_ Scenic Waterways:

\_\_\_\_\_ on \_\_\_\_\_ up-stream \_\_\_\_\_ w/in 1/4 mile

\_\_\_\_\_ Notify Parks and Recreation Department

\_\_\_\_\_ Out-of-basin diversion

\_\_\_\_\_ Need to route to Geology Section due to:

\_\_\_\_\_ well within one mile of a stream

\_\_\_\_\_ well within restricted surface water area

\_\_\_\_\_ wells with request for greater than 5 cfs

\_\_\_\_\_ well is for heating &/or cooling

\_\_\_\_\_ well constructed by land owner

\_\_\_\_\_ well is artesian

\_\_\_\_\_ artificial ground water recharge project

\_\_\_\_\_ ground water area under study

\_\_\_\_\_ Within Irrigation Districts:

\_\_\_\_\_ Notify \_\_\_\_\_ Need excerpt from District

\_\_\_\_\_ Legal description of property

\_\_\_\_\_ Ownership statement

\_\_\_\_\_ Other parties to Notify:

\_\_\_\_\_ Water Resources Commission review if:

\_\_\_\_\_ Request for greater than 5 cfs

\_\_\_\_\_ Dam height greater than 10 feet

\_\_\_\_\_ Storage of more than 9.2 acre-feet

\_\_\_\_\_ Out-of-basin diversion

\_\_\_\_\_ within or above a scenic waterway

\_\_\_\_\_ conditional uses under basin programs

\_\_\_\_\_ requests for larger rate or duty than allowed

\_\_\_\_\_ ground water recharge project

\_\_\_\_\_ other substantial public interest issues

\_\_\_\_\_ requests for review by an agency or person

\_\_\_\_\_ Watermaster consent form sent with copy of draft permit

\_\_\_\_\_ application and exp.

\_\_\_\_\_ Watermaster comments received

\_\_\_\_\_ Hydrographic section comments requested

\_\_\_\_\_ Hydrographic section comments received

\_\_\_\_\_ O.D.F.W. sent copy of application and exp(except

\_\_\_\_\_ groundwater) requesting comment

\_\_\_\_\_ O.D.F.W. comments received

\_\_\_\_\_ Report from D.E.C. received

\_\_\_\_\_ Publish application information in weekly public notice.

\_\_\_\_\_ Notify other owners of development

\_\_\_\_\_ PROTESTED

\_\_\_\_\_ filed

\_\_\_\_\_ resolved

OCT 26 1990

Application No. *127*

70815

Permit No. ....

Name ..... Oregon Dept Fish & Wildlife .....

Address ..... PO Box 59 Portland OR 97207 .....

Assigned .....

Address .....

Beginning construction .....

Completion of construction .....

Extended to .....

Complete application of water .....

Extended to .....