

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

Date filed 06/20/1990
 Priority _____
 Action suspended until _____

 Return to applicant _____
 Date of approval _____

CONSTRUCTION

Date for beginning

Date for completion

Extended to

.....

Date for application of water

Extended to

PROSECUTION OF WORK

Form "A" filed

Form "B" filed

Form "C" filed

FINAL PROOF

Blank mailed

Proof received

Date certificate issued

Application No. 70816

Permit No. _____

Certificate No. _____

Stream Index, Page No.

Klamath Co.

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

Dec 70722

T-11279 Vol 89 pg. 432 - 440 USE & POU

FEES PAID

Date	Amount	Receipt No.
	Cert. Fee	

FEES REFUNDED[illegible]

Mailing List for Commentor Letters

Application IS-70816

Certificate 98438

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

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 if you have any questions.

Sincerely,

Will Davidson
Protest Program Coordinator

CC: File



Oregon

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North Mall Office Building
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Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
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
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Fax (503) 986-0904
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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

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Will Davidson
Protest Program Coordinator

CC: File



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Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
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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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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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-70816

Certificate 98438

Copies Mailed
By: 
(SUPPORT STAFF)
On: <u>06/13/2020</u>
(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-70816
- 2. Applicant, Spencer Sawaske, Oregon Department of Fish and Wildlife – spencer.r.sawaske@odfw.oregon.gov
- 3. Applicant's attorney - Anika Marriott, Oregon Department of Justice – anika.e.marriott@doj.oregon.gov
- 4. Protestant Obenchain Cattle Co.'s attorney - Dominic Carollo, Carollo Law Group LLC – dcarollo@carollolegal.com
- 5. OWRD's attorney - Jesse Ratcliffe, Oregon Department of Justice – jesse.d.ratcliffe@doj.oregon.gov
- 6. OWRD's attorney's assistant - Denise Ruttan, Oregon Department of Justice – denise.ruttan@doj.oregon.gov

Protest Program Coordinator: Will Davidson

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

Water Right Application IS-70816 in the name)	FINAL ORDER
of OREGON DEPARTMENT OF FISH AND)	BY DEFAULT
WILDLIFE)	

Summary: Order approving Application IS-70816 and issuing Certificate 98438.

Authority

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

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

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

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

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

FINDINGS OF FACT

1. On October 26, 1990, the Oregon Department of Fish and Wildlife ("ODFW") submitted an application to the Department for an instream water right in 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 98438 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."

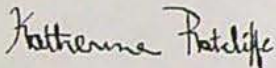
CONCLUSIONS OF LAW

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-70816 is approved, and Certificate 98438 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.d.davidson@water.oregon.gov or 503 507-2749.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503 986-0900.
-

STATE OF OREGON

COUNTY OF KLAMATH

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER ST NE SUITE A
SALEM OR 97301-1271

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

APPLICATION FILE NUMBER: IS-70816

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 SHEEPY CREEK AT RIVER MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24, TOWNSHIP 36S, RANGE 13E WM)

The right is established under Oregon Revised Statutes 537.341.

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

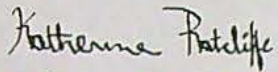
1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

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



Oregon

John A. Kitzhaber, MD, Governor

April 24, 2013

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

GREGORY BULKLEY
28850 IVORY PINE RD
PO BOX 46
BLY, OR 97622

REFERENCE: District Transfer T-11279

Enclosed is a copy of the final order approving your transfer.

If you have any questions related to the approval of this transfer, you may contact your caseworker by telephone at (503) 986-0890 or by e-mail at Dorothy.I.Pedersen@wrds.state.or.us.

Sincerely,

Codi Holmes
Water Right Services Support
Transfers and Conservation Section

cc: Scott White, Watermaster Dist. # 17
Chrysten Lambert, Agent

Enclosure



**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Instream Transfer)	FINAL ORDER APPROVING
Application T-11279, Klamath County)	CHANGES IN PLACE OF USE AND
)	CHARACTER OF USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicants

GREGORY BULKLEY
JACQUELINE GRAHAM
28850 IVORY PINE RD
PO BOX 46
BLY, OR 97622

Findings of Fact

Background

1. On August 10, 2011, Gregory Bulkley and Jacqueline Graham filed an application to change the place of use and character of use under Certificates 45158, 47296 and 68022 to instream use. The Department assigned the application number T-11279.
2. On November 27, 2012, the applicants' agent submitted a declaration by Greg Bulkley related to the water use on the property under Certificate 68022, and agreement to withdraw the portion of Klamath Basin Adjudication claim KL 131 that covers lands included in T-11279 concurrent with issuance of a final order for T-11279, provided the order approves the transfer, with no protests having been received during the protest period, or any protests having been satisfactorily resolved. Withdrawal of the applicable portion of claim KL 131 is a condition of transfer approval.

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 536.075 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.

3. The first right to be transferred is as follows:

Certificate: 45158 in the name of HEATON STEEL & SUPPLY INC. (perfected under Permit S-27145)
Use: IRRIGATION of 67.2 ACRES
Priority Date: JANUARY 16, 1961
Rate: 1.68 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: FIVE MILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	13 E	WM	2	NE NE	1

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	13 E	WM	1	NW NW		1.6
36 S	13 E	WM	1	SW NW		30.3
36 S	13 E	WM	1	SE NW		10.0
36 S	13 E	WM	2	NE NE	1	17.6
36 S	13 E	WM	2	SE NE		7.7

4. Certificate 45158 does not describe the location of the point of diversion more specifically than by $\frac{1}{4}$ $\frac{1}{4}$ section, however information is available from the transfer application and map, as well as from the map originally submitted for Application S-34563/Permit S-27145, indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
36 S	13 E	WM	2	NE NE	1	NORTH 28 DEGREES 7 $\frac{1}{4}$ MINUTES WEST, 2488.8 FEET FROM THE SE CORNER OF THE SE NE OF SECTION 2

5. A total of 201.6 acre-feet of water may be beneficially used annually under this existing right.
6. The second right to be transferred is as follows:

Certificate: 47296 in the name of HEATON STEEL & SUPPLY INC. (perfected under Permit S-27145)
Use: IRRIGATION of 14.0 ACRES
Priority Date: JANUARY 16, 1961
Rate: 0.35 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: FIVE MILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	13 E	WM	1	SE NW	536 FEET SOUTH AND 473 FEET WEST FROM THE NE CORNER OF THE SENW OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	13 E	WM	1	SE NW	14.0

7. A total of 42.0 acre-feet of water may be beneficially used annually under this existing right.
8. The third right to be transferred is as follows:

Certificate: 68022 in the name of PAUL WILLIAM SIMONSEN (perfected under Permit S-36624)

Use: IRRIGATION of 14.5 ACRES

Priority Date: DECEMBER 6, 1971

Rate: 0.36 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: FIVE MILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	13 E	WM	1	SE NW	1850 FEET SOUTH AND 2150 FEET EAST FROM THE NW CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	13 E	WM	1	SE NW	14.5

9. The T-11279 application indicates that the points of diversion for Certificates 68022 and 47296 are actually the same location, as described from two different survey corners.

10. A total of 43.5 acre-feet of water may be beneficially used annually under this existing right.
11. Application T-11279 proposes to change the character of use of these three rights to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
12. Application T-11279 proposes to change the places of use of the rights to create an instream reach from the points of diversion described in Findings of Fact #4, #6 and #8 to the confluence of Five Mile Creek with the North Fork Sprague River, through the North Fork Sprague River to its confluence with the mainstem Sprague River, if the transferred quantity would be measureable in the North Fork Sprague River.
13. The applicant proposes to transfer water instream at a reduced rate during the period July 1 through September 15 of each year. The quantities water proposed to be transferred instream would be protected as follows:

Originating Water Right Certificate	Period	Priority Date	Rate* (cfs)	Volume (acre-feet)
45158	7/1 through 9/15	1/16/1961	1.32	201.6
47296	7/1 through 9/15	1/16/1961	0.27	42.0
68022	7/1 through 9/15	12/6/1971	0.28	43.5
	Total Volume			287.1

* These rates have been reduced from the full face value rates of the rights, in order not to exceed the acre-foot annual volume limits of the rights during the requested period of use.

14. The applicant has requested that any instream water right established as a result of this instream transfer be additive to any instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
15. Notice of the application for transfer was published on August 16, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
16. On September 18, 2012, the applicant was requested via e-mail to respond to remedy the inadequacy of information submitted with the transfer application to describe the beneficial use under Certificate 68022, as well as notifying the applicant that Department records indicate that the lands under Certificates 45158 and 47296 are layered with a portion of Klamath Adjudication claim KL 131 and that the Department would not be able to approve the transfer unless the portion of claim KL 131 was withdrawn. The claim is not subject to transfer, but to allow the existing rights to be transferred instream

with the claim continuing to allow irrigation of the "from" lands would constitute enlargement, which is not allowed.

17. On November 27, 2012, the applicant's agent submitted a declaration by Greg Bulkley related to the water use on the property under Certificate 68022, and agreement to withdraw the portion of Klamath Basin Adjudication claim KL 131 that covers lands included in T-11279, concurrently with a Final Order for T-11279, provided the Department proposes to approve the transfer and no protests are filed.
18. On January 4, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11279 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 18, 2013, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
19. On February 8, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11279, and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 12, 2013, and in the Herald and News newspaper on February 14, 21 and 28, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
20. On April 16, 2013, the applicant submitted documentation (via e-mail) that a request to withdraw the pertinent portion of KL 131 had been filed with the Klamath County Circuit Court on April 16, 2013.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

21. Water has been used within the last five years according to the terms and conditions of the Certificates 45158 and 47296 and 68022 and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
22. Pumps, pipelines, ditches and sprinkler systems sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-11279.
23. Portions of the water rights proposed for transfer are appurtenant to the same lands that are included in Klamath Basin Adjudication claim KL 131. Transfer of the certificated water rights instream, while leaving the unadjudicated right on the land would result in enlargement of the transferred rights. The applicant has agreed to withdraw the portion of KL 131 on the lands proposed for transfer, concurrent with issuance of a Final Order approving T-11279, to prevent injury and enlargement.
24. The instream reach requested by the applicant for the right evidenced by Certificate 45158 will begin from the POD described in Finding of Fact #4. For consistency, the instream use proposed from the rights evidenced by Certificates 47296 and 68022, which

share a common POD that is differently described in Findings of Fact #6 and #8, will both begin at the POD location as described in Finding of Fact #8.

25. The instream reaches proposed by the applicant require modification. An instream reach may normally extend from the POD to the mouth of the source stream but may extend further if the quantity to be protected instream is measurable into the receiving stream (the North Fork Sprague River). The Department considered historical streamflows in the North Fork Sprague River and determined, based on the best available information, that the 1.87 cfs proposed for transfer would not be measurable in the North Fork Sprague River. Therefore, the reaches may not extend into the North Fork Sprague River and require modification as shown below:

Reach resulting from Certificate 45158: From the authorized POD on Five Mile Creek (as described in Finding of Fact #4) to the confluence of Five Mile Creek with the North Fork Sprague River.

Reach resulting from Certificate 47296: From the authorized POD on Five Mile Creek (as described in Finding of Fact #8) to the confluence of Five Mile Creek with the North Fork Sprague River.

Reach resulting from Certificate 68022: From the authorized POD on Five Mile Creeks (as described in Finding of Fact #8) to the confluence of Five Mile Creek with the North Fork Sprague.

26. The proposed changes, as modified, would not result in enlargement of the rights.
27. The proposed changes, as modified, would not result in injury to other water rights.
28. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
29. The protection of flows within the proposed reaches, as modified, is appropriate, considering:
 - a) The instream water rights begin at the recorded points of diversion;
 - b) The location of confluences with other streams downstream of the points of diversion. The reach for an instream water right is typically from the point of diversion on the source stream to the mouth of that source stream. However, water may be protected further downstream if the quantity of water is measurable in the receiving stream, in this case North Fork Sprague River. The quantity of water proposed to be protected instream is not measurable in North Fork Sprague River, consistent with OAR 690-077-0015(8), and therefore, the reaches may not extend into North Fork Sprague River to the mouth, but will end at the mouth of Five Mile Creek as described in Finding of Fact #25;

- c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - d) Any return flows resulting from the exercise of the existing water rights would re-enter the river downstream of the reaches of the instream water rights.
30. There is a pending instream water right application, IS-70816, submitted by Oregon Department of Fish and Wildlife under ORS 537.341, for a reach of the North Fork Sprague River that includes the portion of the North Fork Sprague proposed for the new instream water rights. This application proposes to protect water instream for anadromous and resident fish habitat.
31. By replacing a portion of any instream right established in the future under the state agency application process (including a right that may be established under Application IS-70816), the instream right will provide protection for streamflows previously identified as necessary for anadromous and resident fish habitat under an earlier priority date unless otherwise identified in a subsequent order establishing a new instream water right under the state agency instream application process.
32. In addition, by adding to any instream water rights established in the future under the instream transfer or allocation of conserved water process for the same location, the instream right will provide protection for additional streamflows necessary for aquatic life and fish habitat, unless otherwise identified in a subsequent order establishing a new instream water right under those statutes.
33. The total monthly quantities of water to be protected under the proposed instream rights in the reaches will provide for a beneficial purpose and do not exceed the estimated average natural flow in Five Mile Creek.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-11279 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-11279 are approved.
2. Water right certificates 45158, 47296 and 68022 are cancelled. New certificates confirming the instream water rights shall be issued.
3. The instream water rights shall provide for the protection of streamflows from the points of diversion described in Findings of Fact #4 and #8 to the confluence of Five Mile Creek with the North Fork Sprague River.

4. The quantities of water to be protected under the instream water rights are:

Reach resulting from Certificate 45158: From the authorized POD on Five Mile Creek (as described in Finding of Fact #4) to the confluence of Five Mile Creek with the North Fork Sprague.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
45158	1/16/1961	1.32	201.6	7/1 through 9/15

Reach resulting from Certificate 47296: From the authorized POD on Five Mile Creek (as described in Finding of Fact #8) to the confluence of Five Mile Creek with the North Fork Sprague.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
47296	1/16/1961	0.27	42.0	7/1 through 9/15

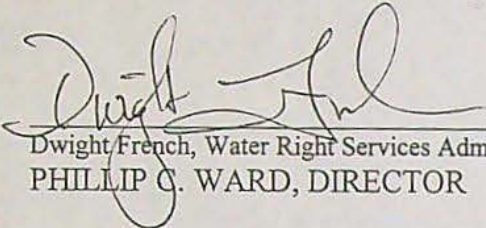
Reach resulting from Certificate 68022: From the authorized POD on Five Mile Creek (as described in Finding of Fact #8) to the confluence of Five Mile Creek with the North Fork Sprague River.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
68022	12/6/1971	0.28	43.5	7/1 through 9/15

5. Water rights upstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which these instream water rights are entitled at the original points of diversion.
6. Within the specified stream reach, the amount of water to which these rights are entitled shall not exceed the quantity of water legally available at the original points of diversion
7. The instream rights established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
8. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 45158, 47296, 68022 and any related decree.

9. The former places of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this 16 day of April, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date APR 25 2013

STATE OF OREGON
COUNTY OF KLAMATH
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of FIVE MILE CREEK, tributary to NORTH FORK SPRAGUE RIVER, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-27145. The date of priority is JANUARY 16, 1961. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 1.32 CUBIC FEET PER SECOND, or its equivalent in case of rotation, measured at the point of diversion, from July 1 through September 15.

The description of the stream reach in which flows are to be maintained is as follows:

From the location of the diversion authorized previously under Certificate 45158, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 T S	13 E	WM	2	NE NE	1	NORTH 28 DEGREES 7¼ MINUTES WEST, 2488.8 FEET FROM THE SE CORNER OF THE SE NE OF SECTION 2

To the mouth of Five Mile Creek.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate 45158, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 89, Page 432 approving Transfer T-11279, and supersedes Certificate 45158, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed April 16, 2013


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

STATE OF OREGON
COUNTY OF KLAMATH
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of FIVE MILE CREEK, tributary to NORTH FORK SPRAGUE RIVER, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-27145. The date of priority is JANUARY 16, 1961. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 0.27 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion, from July 1 through September 15.

The description of the stream reach in which flows are to be maintained is as follows:

From the location of the diversion authorized previously under Certificate 47296, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	13 E	WM	1	SE NW	1850 FEET SOUTH AND 2150 FEET EAST FROM THE NW CORNER OF SECTION 1

To the mouth of Five Mile Creek.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

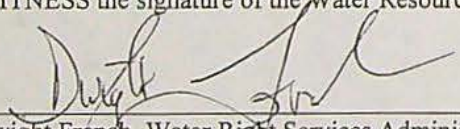
Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate 47296, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 89, Page 432, approving Transfer T-11279, and supersedes Certificate 47296, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed April 16, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

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STATE OF OREGON
COUNTY OF KLAMATH
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of FIVE MILE CREEK, tributary to NORTH FORK SPRAGUE RIVER, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-36624. The date of priority is DECEMBER 6, 1971. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 0.28 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion, from July 1 through September 15.

The description of the stream reach in which flows are to be maintained is as follows:

From the location of the diversion authorized previously under Certificate 68022, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	13 E	WM	1	SE NW	1850 FEET SOUTH AND 2150 FEET EAST FROM THE NW CORNER OF SECTION 1

To the mouth of Five Mile Creek.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

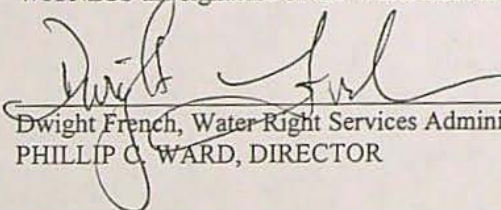
Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate under Certificate 68022, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 89, Page ~~432~~, approving Transfer T-11279, and supersedes Certificate under Certificate 68022, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed April 16, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

**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: <u>River Springs Ranch</u>	APPLICATION	
BY: _____	PERMIT	
	TRANSFER	

CASH: <input type="checkbox"/>	CHECK: # <u>X 24.12</u>	OTHER: (IDENTIFY) <input type="checkbox"/>	TOTAL REC'D	\$ <u>1,600.</u>
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0417 WRD MISC CASH ACCT

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

REDUCTION OF EXPENSE

CASH ACCT.	\$
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PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

70815-70816

MISCELLANEOUS <u>70802</u>	\$
0407 COPY & TAPE FEES <u>70799-70802</u>	\$
0410 RESEARCH FEES <u>70804</u>	\$
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	\$
	EXAM FEE		LICENSE FEE
0218 WELL CONSTRUCTION	\$	0219	\$
0218 WELL DRILL CONSTRUCTOR	\$	0220	\$
LANDOWNER'S PERMIT			

0223 OTHER (IDENTIFY) Protest #1,600. PC# 72235

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

LIC NUMBER

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

RECEIPT # **7351**

DATED: 10-9-96 BY: [Signature]

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

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON
WATER RIGHTS DIVISION

In The Matter Of Surface Water Application)	
IS 70816 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 and Lillian 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 70816.

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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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

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"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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SALEM, OREGON

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.

Protest P. 4.

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WATER RESOURCES DEPT.
SALEM, OREGON

William V. Hill, Sr. and Lillian M. Hill Trust
dated July 15, 1996
Lillian M. Hill - Trustee

Pierre A. Kern Trust

Pierre A. Kern - By: Mike Delmonico
Manager

Larry Olsen by agent Matt Muehly
Oberchain Cattle Co. - with Oberchain
Carolyn Oberchain Margant Jacobs

River Springs Ranch

Pierre A. Kern By: Mike Delmonico - 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 Delmonico
For Protestants

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WATER RESOURCES DEPT.
SALEM, OREGON

Oregon Water Resources Department
Water Rights/Adjudication Section

Water Right Application Number: IS 70816

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 tributary to SPRAGUE R

County: Klamath

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

To be maintained in:

NORTH FORK SPRAGUE RIVER FROM SHEEPY CREEK AT RIVER
MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E
WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24,
TOWNSHIP 36S, RANGE 13E WM)

The Department mailed the applicant notice of its Initial Review on January 23, 1996. Public notice of the application was provide in the Department's weekly public notice on February 6, 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
82.1	108.0	154.0	236.0	284.0	159.0	76.1	54.4	60.8	70.6	73.5	79.1

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.

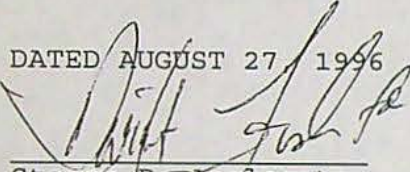
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

Recommendation

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

DATED AUGUST 27, 1996


 Steven P. Applegate
 Administrator
 Water Rights and Adjudications Division

Protest Rights

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

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

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

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

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

INTEROFFICE MEMORANDUM
Water Rights Section

~~TO: Dick Bailey~~

FROM: Dwight French, x268 *DF*

DATE: March 26, 1997

RE: Water Availability for ISWR applications/files

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

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

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

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

cc: Mike Mattick

All Protested ISWR Files

Stream Applications with Protests
4/2/97

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

2

OK 71556 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 2 : 1

4

OK 71793 W

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 71798 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72076 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72077 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72078 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72079 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72080 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72081 W

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 4 : 8

5

OK 70353 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70354 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70357 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70605 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70612 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

73199 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 5 : 13

6

Checked out to Dwight

69949 A

69949 S

69951 S

69951 A

69958 S

69958 A

69958 S

69959 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

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OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

8

9

18

74

2

1

3

9

19

2

12

12

Basin	App Num
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6

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

Total for Basin 6 : 38

9

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

Instream Applications with Protests

4/2/97

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

4/2/97

Page 4 of 6

Instream Applications with Protests

4/2/97

Basin	App Num
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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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Instream Applications with Protests

4/2/97

Basin	App Num	
17		
	70229	A
	70230	A
	70348	S
	70348	A
	70448	S
	70448	A
	70574	A
	70877	A
	70891	A
	70895	A
	70895	A
	70915	A
	71697	A
	80446	A

OREGON DEPARTMENT OF FISH & WILDLIFE
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OREGON DEPARTMENT OF FISH & WILDLIFE
OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 17 : 15

173

Bailey, IWR PFO Comments; Klamath and Lake Basins

Page 4

October 4, 1996

12) 70656

The source name should be: SILVER CR TRIB PAULINA MARSH.

13) 70658

The source name should be: BRIDGE CR TRIB PAULINA MARSH.

14) 70659

The source name should be: BUCK CR TRIB PAULINA MARSH.

15) 70664

The source name should be: ELDER CR TRIB DAIRY CR.

16) **Presumption Findings, Unappropriated Exceeds Requested: 70802, 70804, 70805, 70806, 70807, 70810, 70812, 70816, 70821, 70822, 70824, 70826, 70827, 70829**

The PFOs for these applications appears to be in error on the findings of whether the statutory presumption has been established. The PFOs conclude that the presumption is not established because:

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

However, requested flows do exceed EANF estimates during all months, as reported in the PFO. ODFW has reviewed WRD estimates of available flows at the 80% exceedence level also, and found that requested flows also exceed the 80% available flows during all months also. Therefore, flows ARE available to meet the proposed use and the correct finding should be that the statutory presumption HAS been established.

ODFW requests that WRD review the flow data in these applications and revise their findings. ODFW also requests that where WRD concludes that the presumption has in fact been established, that this new finding be reflected in the Final Order.

17) 70803

The PFOs for this applications is probably in error on the findings of whether the statutory presumption has been established. The PFO concludes that the presumption is not established because:

STATE OF OREGON
WATER RESOURCES DEPARTMENT
 158 12TH ST. N.E.
 SALEM, OR 97310-0210
 378-8455 / 378-8130 (FAX)

RECEIPT # **7540**

INVOICE # _____

RECEIVED FROM: Water Watch
 BY: _____

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 2412 OTHER: (IDENTIFY) **RECEIVED OVER THE COUNTER**

TOTAL REC'D \$ 750.50

0417 WRD MISC CASH ACCT

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

FOR DEPOSIT ONLY TO ACCT. OF
 STATE TREASURER-STATE OF ORE.
 WATER RESOURCES DEPARTMENT
 69000-00-40-1

\$
\$
\$
\$

REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS
 COPY & TAPE FEES
 RESEARCH FEES
 MISC REVENUE: (IDENTIFY)
 TC165 DEPOSIT LIAB. (IDENTIFY)

70801-02, 70804,
70815-16, 70799, 70809, 70808,
70809, 70807, 70810,
70819, 70829, 70830,
70831

\$
\$
\$
\$

WATER RIGHTS:

0201 SURFACE WATER
 0203 GROUND WATER
 0205 TRANSFER

PCA 71235

EXAM FEE
\$
\$
\$

0202
 0204
 0206

RECORD FEE
\$
\$
\$

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR
 LANDOWNER'S PERMIT

EXAM FEE
\$

0219
 0220

LICENSE FEE
\$
\$

0234 OTHER (IDENTIFY)

Request for Standing \$250.

0437 WELL CONST. START FEE

0211 WELL CONST START FEE
 0210 MONITORING WELLS

\$
\$

CARD #	
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 # **7540**

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

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

Water Watch

RIVERS NEED WATER

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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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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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.¹ 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.² 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

¹ 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.

² 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.³ 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.⁴

³ 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.

⁴ 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.

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.

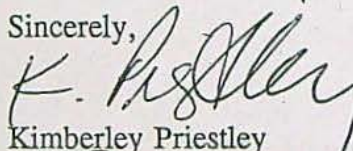
The Department has proposed a condition of use mandating measurement at the lower end of the stream reach to protect necessary flows throughout the reach. To ensure that flows are being protected throughout the reach, measurement must take place at both the upper and lower ends of the stream reach.

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.

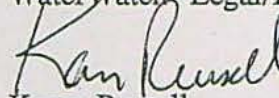
Conclusion

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.

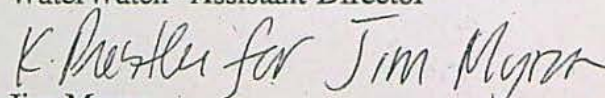
Sincerely,



Kimberley Priestley
WaterWatch--Legal/Policy Analyst



Karen Russell
WaterWatch--Assistant Director



Jim Myron
Oregon Trout--Conservation Director

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OCT 11 1996
WATER RESOURCES DEPT.
SALEM, OREGON

DATE: October 4, 1996

TO: Mike Ielmorini

FROM: Michael Mattick
Water Rights Division

SUBJECT: Instream Water Right Applications 70816 and 70818

This memo is in response to a phone conversation with Mrs. William Hill on October 4, 1996. Mrs. Hill expressed concern regarding the two referenced applications.

An error was made while preparing Application 70818 which requires a new Proposed Final Order (PFO) to be prepared. When the new PFO is signed, this will begin a new 45 day protest period. Application 70816 will continue on through the process as it stands.

Your name will be added to the list of commentators who will receive notice of the new PFO once it is available.

If you have any further questions, please feel free to contact me at 378-8455 extension 276.



COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 70816

WATERMASTER # DEL SPARKS

REGIONAL MANAGER: BOB MAIN

ODF&W - County: Klamath

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

January 23, 1996

WATER
RESOURCES
DEPARTMENT

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

Reference: Instream water rights in the Klamath Basin,
Files 70798, 70801 - 70807, 70810 - 70812, 70816,
70818, 70821 - 70829

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 Basin Compact;

1. Application 70798

Priority date: 10/26/90

CHERRY CR tributary to FOURMILE CR

CHERRY CREEK FROM THE HEADWATERS AT RIVER MILE 0.0
(TOWNSHIP 34S, RANGE 5E WM); TO THE MOUTH AT RIVER
MILE 0.0 (NWSW, SECTION 13, TOWNSHIP 34S, RANGE 6E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.0	10.0	15.0	15.0	15.0	10.0	5.0	3.0	3.0	15.0	10.0	10.0



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

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
27.9	34.2	28.9	33.4	49.5	28.2	12.5	10.0	9.3	10.1	13.9	21.9

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.0	10.0	15.0	15.0	15.0	10.0	5.0	3.0	3.0	10.1	10.0	10.0

2. Application 70801

Priority date: 10/26/90

S FK SPRAGUE R tributary to SPRAGUE R

SOUTH FORK SPRAGUE RIVER FROM WHITWORTH CREEK AT RIVER
MILE 21.6 (NWSW, SECTION 10, TOWNSHIP 37S, RANGE 16E WM);
TO ISH TISH CREEK AT RIVER MILE 12.2 (NESW, SECTION 9,
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
45.0	45.0	45.0	45.0	45.0	30.0	15.0	15.0	15.0	15.0	45.0	45.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.0	47.5	67.8	103.0	125.0	69.8	33.4	23.9	26.7	31.0	32.3	34.7

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.0	45.05	45.0	45.0	45.0	30.0	15.0	15.0	15.0	15.0	32.3	34.7

3. Application 70802

Priority date: 10/26/90

S FK SPRAGUE R tributary to SPRAGUE R

SOUTH FORK SPRAGUE RIVER FROM ISH TISH CREEK AT RIVER
MILE 12.2 (NESW, SECTION 9, TOWNSHIP 37S, RANGE 15E WM);
TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24,
TOWNSHIP 36S, RANGE 13E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
103.0	136.0	194.0	296.0	357.0	200.0	95.5	68.3	76.3	88.6	92.3	99.3

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

4. Application 70803

Priority date: 10/26/90

SPENCER CR tributary to KLAMATH R

SPENCER CREEK FROM TUNNEL CREEK AT RIVER MILE 12.0
(NWSW, SECTION 18, TOWNSHIP 38S, RANGE 6E WM); TO THE
MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 29, TOWNSHIP 39S,
RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
16.0	16.0	20.0	20.0	20.0	20.0	20.0	12.0	12.0	12.0	12.0	16.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
23.8	30.5	43.4	60.5	57.3	35.5	20.6	15.8	17.2	19.9	21.0	23.4

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
16.0	16.0	20.0	20.0	20.0	20.0	20.0	12.0	12.0	12.0	12.0	16.0

5. Application 70804

Priority date: 10/26/90

SPRAGUE R tributary to WILLIAMSON R

SPRAGUE RIVER FROM SOUTH FORK SPRAGUE RIVER AT RIVER
MILE 84.0 (SWNE, SECTION 24, TOWNSHIP 36S, RANGE 13E
WM); TO THE SYCAN RIVER AT RIVER MILE 70.5 (SWSW
SECTION 10, TOWNSHIP 36S, RANGE 12E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
100.0	100.0	100.0	100.0	100.0	80.0	60.0	60.0	60.0	60.0	100.0	100.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
201.0	266.0	375.0	564.0	675.0	382.0	184.0	131.0	147.0	172.0	179.0	194.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
100.0	100.0	100.0	100.0	100.0	80.0	60.0	60.0	60.0	60.0	100.0	100.0

6. Application 70805

Priority date: 10/26/90

SPRAGUE R tributary to WILLIAMSON R

SPRAGUE RIVER FROM SYCAN RIVER AT RIVER MILE 70.5 (SWSW, SECTION 10, TOWNSHIP 36S, RANGE 12E WM); TO ROAD CROSSING AT LONE PINE AT RIVER MILE 32.9 (NWSW, SECTION 11, TOWNSHIP 35S, RANGE 9E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
120.0	120.0	120.0	120.0	120.0	100.0	80.0	80.0	80.0	80.0	120.0	120.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
316.0	437.0	672.0	1040.0	1030.0	569.0	275.0	194.0	215.0	258.0	278.0	307.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
120.0	120.0	120.0	120.0	120.0	100.0	80.0	80.0	80.0	80.0	120.0	120.0

7. Application 70806

Priority date: 10/26/90

SPRAGUE R tributary to WILLIAMSON R

SPRAGUE RIVER FROM ROAD CROSSING AT LONE PINE AT RIVER MILE 32.9 (NWSW, SECTION 11, TOWNSHIP 35S, RANGE 9E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 3 TOWNSHIP 35S, RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
150.0	150.0	150.0	150.0	150.0	120.0	100.0	100.0	100.0	100.0	150.0	150.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
417.0	547.0	798.0	1160.0	1120.0	660.0	347.0	260.0	287.0	343.0	366.0	411.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
150.0	150.0	150.0	150.0	150.0	120.0	100.0	100.0	100.0	100.0	150.0	150.0

8. Application 70807

Priority date: 10/26/90

CROOKED CR tributary to WOOD R

CROOKED CREEK FROM HATCHERY SPRINGS (SESW, SECTION 1,
TOWNSHIP 34S, RANGE 7.50E WM); TO THE MOUTH AT RIVER
MILE 0.0 (SECTION 13, TOWNSHIP 34S, 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
15.0	15.0	25.0	25.0	15.0	15.0	15.0	15.0	15.0	25.0	15.0	15.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
84.7	85.0	93.0	93.2	83.1	82.5	77.2	79.5	80.1	92.4	90.4	89.6

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15.0	15.0	25.0	25.0	15.0	15.0	15.0	15.0	15.0	25.0	15.0	15.0

9. Application 70810

Priority date: 10/26/90

FORT CR tributary to WOOD R

FORT CREEK FROM THE HEADWATERS (SPRINGS) AT RIVER MILE
3.5 (NWNE, SECTION 23, TOWNSHIP 33S, RANGE 7.50E WM); TO
THE MOUTH AT RIVER MILE 0.0 (NE1/4, SECTION 34,
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
20.0	20.0	30.0	30.0	30.0	20.0	20.0	20.0	20.0	30.0	20.0	20.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
83.2	82.2	82.4	84.3	85.0	85.6	85.2	86.1	86.4	85.2	83.9	82.9

c. Allowable water use

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

10. Application 70811

Priority date: 10/26/90

JENNY CR tributary to KLAMATH R

JENNY CREEK FROM JOHNSON CREEK AT RIVER MILE 19.0
(NWSW, SECTION 23, TOWNSHIP 39S, RANGE 4E WM); TO
KEENE CREEK AT RIVER MILE 11.5 (SENE, SECTION 17,
TOWNSHIP 40S, RANGE 4E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.0	12.0	16.0	16.0	16.0	10.0	8.0	5.0	4.0	5.0	5.0	8.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.1	81.6	168.0	182.0	73.0	17.7	6.76	4.64	5.66	8.43	16.8	32.8

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.0	12.0	16.0	16.0	16.0	10.0	6.76	4.64	4.0	5.0	5.0	8.0

11. Application 70812

Priority date: 10/26/90

KLAMATH R tributary to PACIFIC OCEAN

KLAMATH RIVER FROM KENO DAM AT RIVER MILE 231.5 (NESW,
SECTION 36, TOWNSHIP 39S, RANGE 7E WM); TO THE HEAD OF
J C BOYLE RESERVOIR AT RIVER MILE 227.0 (SWNW, SECTION 28,
TOWNSHIP 39S, RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	300.0	400.0	400.0	400.0	300.0	250.0	250.0	250.0	250.0	250.0	250.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2130.0	2230.0	2730.0	3260.0	3140.0	2740.0	1880.0	1310.0	1140.0	1240.0	1470.0	1770.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
250.0	300.0	400.0	400.0	400.0	300.0	250.0	250.0	250.0	250.0	250.0	250.0

12. Application 70816

Priority date: 10/26/90

N FK SPRAGUE R tributary to SPRAGUE R

NORTH FORK SPRAGUE RIVER FROM SHEEPY CREEK AT RIVER
MILE 17.5 (SENE, SECTION 15, TOWNSHIP 35S, RANGE 15E
WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24,
TOWNSHIP 36S, RANGE 13E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
82.1	108.0	154.0	236.0	284.0	159.0	76.1	54.4	60.8	70.6	73.5	79.1

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

13. Application 70818

Priority date: 10/26/90

N FK SPRAGUE R tributary to SPRAGUE R

NORTH FORK SPRAGUE RIVER FROM SHEEPY CREEK AT RIVER
MILE 17.5 (SENE, SECTION 15, TOWNSHIP 35S, RANGE 15E
WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24,
TOWNSHIP 36S, RANGE 13E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
308.0	350.0	308.0	317.0	298.0	270.0	277.0	296.0	300.0	315.0	342.0	329.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

14. Application 70821

Priority date: 10/26/90

SYCAN R tributary to SPRAGUE R

SYCAN RIVER FROM PARADISE CREEK AT RIVER MILE 58.2 (SWNE, SECTION 22, TOWNSHIP 33S, RANGE 15E WM); TO AN UNNAMED TRIBUTARY AT RIVER MILE 36.8 (SWNE, SECTION 10, TOWNSHIP 33S, RANGE 13E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	15.0	15.0	20.0	20.0	20.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0
2nd½	15.0	15.0	20.0	20.0	10.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
41.4	68.4	135.0	239.0	202.0	85.5	38.6	27.9	27.6	30.5	40.2	44.1

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	15.0	15.0	20.0	20.0	20.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0
2nd½	15.0	15.0	20.0	20.0	10.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0

15. Application 70822

Priority date: 10/26/90

SYCAN R tributary to SPRAGUE R

SYCAN RIVER FROM AN UNNAMED TRIBUTARY AT RIVER MILE 36.8 (SWNE, SECTION 10, TOWNSHIP 33S, RANGE 13E WM); TO TORRENT SPRING CREEK AT RIVER MILE 23.0 (SENE, SECTION 33, TOWNSHIP 33S, RANGE 12E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
35.0	35.0	35.0	35.0	35.0	30.0	20.0	15.0	15.0	15.0	35.0	35.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
43.2	74.2	164.0	326.0	252.0	99.3	43.3	30.7	29.7	32.4	43.2	46.5

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
35.0	35.0	35.0	35.0	35.0	30.0	20.0	15.0	15.0	15.0	35.0	35.0

16. Application 70823

Priority date: 10/26/90

SYCAN R tributary to SPRAGUE R

SYCAN RIVER FROM TORRENT SPRING CREEK AT RIVER MILE
23.0 (SE1/4, SECTION 33, TOWNSHIP 33S, RANGE 12E WM);
TO THE MOUTH AT RIVER MILE 0.0 (NWSW, SECTION 10,
TOWNSHIP 36S, RANGE 12E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	30.0	20.0	20.0	20.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
45.2	79.1	185.0	386.0	287.0	110.0	47.1	33.0	31.6	34.3	45.8	48.7

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
45.2	50.0	50.0	50.0	50.0	40.0	30.0	20.0	20.0	20.0	45.8	48.7

17. Application 70824

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM HAED OR RIVER SPRING AT RIVER MILE
85.5 (SE1/4, SECTION 4, TOWNSHIP 33S, RANGE 11E WM); TO
ROCKY FORD AT RIVER MILE 69.5 (SWSW, SECTION 7, TOWNSHIP
31S, RANGE 11E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	30.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0
2nd½	40.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61.0	64.3	70.1	80.5	78.7	73.2	58.8	48.6	54.7	59.8	61.0	62.8

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	30.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0
2nd½	40.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0

18. Application 70825

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM USGS GAGE 11493500 AT RIVER MILE 27.0 (NWSW, SECTION 1, TOWNSHIP 33S, RANGE 7E WM); TO SPRING CREEK AT RIVER MILE 16.5 (SENE, SECTION 9, TOWNSHIP 34S, RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60.0	60.0	60.0	60.0	60.0	40.0	25.0	25.0	20.0	20.0	60.0	60.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
228.0	339.0	468.0	501.0	332.0	216.0	100.0	55.6	53.7	42.3	128.0	244.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60.0	60.0	60.0	60.0	60.0	40.0	25.0	25.0	20.0	20.0	60.0	60.0

19. Application 70826

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM SPRAGUE RIVER AT RIVER MILE 11.0 (NWNW, SECTION 3, TOWNSHIP 35S, RANGE 7E WM); TO THE MOUTH AT RIVER MILE 0.0 (NESE, SECTION 11, TOWNSHIP 36S, 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
300.0	300.0	300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	300.0	300.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
963.0	1250.0	1590.0	1990.0	1760.0	1160.0	731.0	616.0	646.0	708.0	844.0	993.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	300.0	300.0

20. Application 70827

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM SPRING CREEK AT RIVER MILE 16.5
(SENE, SECTION 9, TOWNSHIP 34S, RANGE 7E WM); TO SPRAGUE
RIVER AT RIVER MILE 11.0 (NWNW, SECTION 3, TOWNSHIP 35S,
RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	200.0	200.0	300.0	300.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
540.0	693.0	782.0	823.0	633.0	490.0	380.0	353.0	356.0	360.0	473.0	576.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	200.0	200.0	300.0	300.0

21. Application 70828

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM ROCKY FORD AT RIVER MILE 69.5
(SWSW, SECTION 7, TOWNSHIP 31S, RANGE 11E WM); TO USGS
GAGE 11493500 AT RIVER MILE 27.0 (NWSW, SECTION 1,
TOWNSHIP 33S, RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.0	30.0	40.0	40.0	40.0	30.0	20.0	20.0	15.0	15.0	15.0	15.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
210.0	319.0	447.0	480.0	313.0	198.0	85.0	41.8	39.0	25.6	112.0	226.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.0	30.0	40.0	40.0	40.0	30.0	20.0	20.0	15.0	15.0	15.0	15.0

22. Application 70829

Priority date: 10/26/90

WOOD R tributary to UPPER KLAMATH L

WOOD RIVER FROM WOOD RIVER SPRING AT RIVER MILE 17.0
 (NE1/4, SECTION 3, TOWNSHIP 33S, RANGE 7.50E WM); TO
 THE MOUTH AT RIVER MILE 0.0 (NE1/4, SECTION 25, TOWNSHIP
 34S, 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
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
347.0	335.0	336.0	376.0	439.0	471.0	442.0	398.0	383.0	390.0	365.0	362.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

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 February 6, 1996. For your convenience you may use the enclosed "STOP PROCESSING" form.

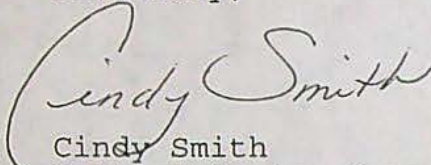
To Proceed With Your Application:

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
Initial Review Team

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

August 18, 1994

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

RECEIVED

COPY

*file in
encl*

FEB 28 1994

WATER RESOURCES DEPT.
SALEM, OREGON

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

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

RECEIVED

FEB 22 1994

WATER RESOURCES DEPT.
SALEM, OREGON

COPY

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.

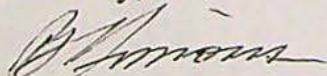
Accordingly, I would like to be informed of the status of this review with regard to the following streams in Klamath County, and would like a copy of the technical review when it is available:

- 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

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RECEIVED

JAN 19 1993

COPY

WATER RESOURCES DEPT.
SALEM, OREGON

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

William V. Hill (L)

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

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

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

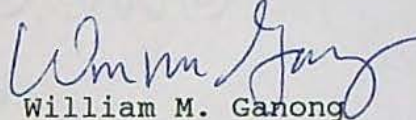
Dear Mr. Matlick:

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 24 1990

TELEPHONE: (503) 882-7228

WATER RESOURCES DEPT.
SALEM, OREGON

OREGON STATE BAR ASSOC.
NUMBER 78213

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 24 1990

WATER RESOURCES
SALEM, OREGON

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

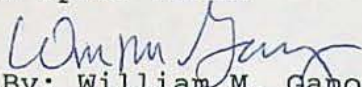
We submit that the granting of these applications
without allowing public hearing and without allowing J-Spear
Ranch standing as a party at said public hearing, will

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

DEC 11 1990
WATER RESOURCES DEPT.
VINTAGE SALEM, OREGON
SALEM, OREGON

December 8, 1990

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

Attn: Mike Mattick

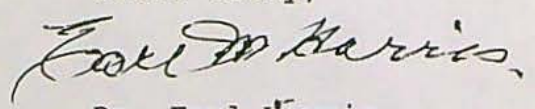
Dear Mr. Mattick:

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 to 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

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

RECEIVED
DEC 4 1990

WATER RESOURCES DEPT.
SALEM, OREGON

OREGON STATE BAR NO. 48030

TELEPHONE:

AREA CODE 503
882-7228

Law offices at
1151 Pine Street

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 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.

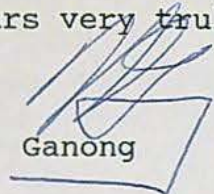
Please provide to us copies of the above said applications and supporting materials. Also, please provide a copy of any Departmental rules and policies which are

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

IWR Application # 70816

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 brown and rainbow trout and Klamath largescale sucker 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 rearing.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50	50	50	50	50	40	20	15	15	50	50	50

4. The reach of the stream identified for an instream water right is from (upstream end) 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...

Downstream to the mouth, river mile 0, within the SW quarter of the NE quarter of Section 24, Township 36S, Range 13E 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
ODFW (Fish, Wldlf, and Habitat)
Parks and Recreation Division

Date: October 4, 1990
Date: October 4, 1990
Date: October 4, 1990

IWR Application # 708116 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: There is a potential for bull trout to be present in this reach.

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.

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: 8/23/90

Oregon Department of Fish and
Wildlife

Signed: Nancy M. MacHugh

Assistant Director
Habitat Conservation Div.

File: NFSPRG2.APP

IWR Application # 70816 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

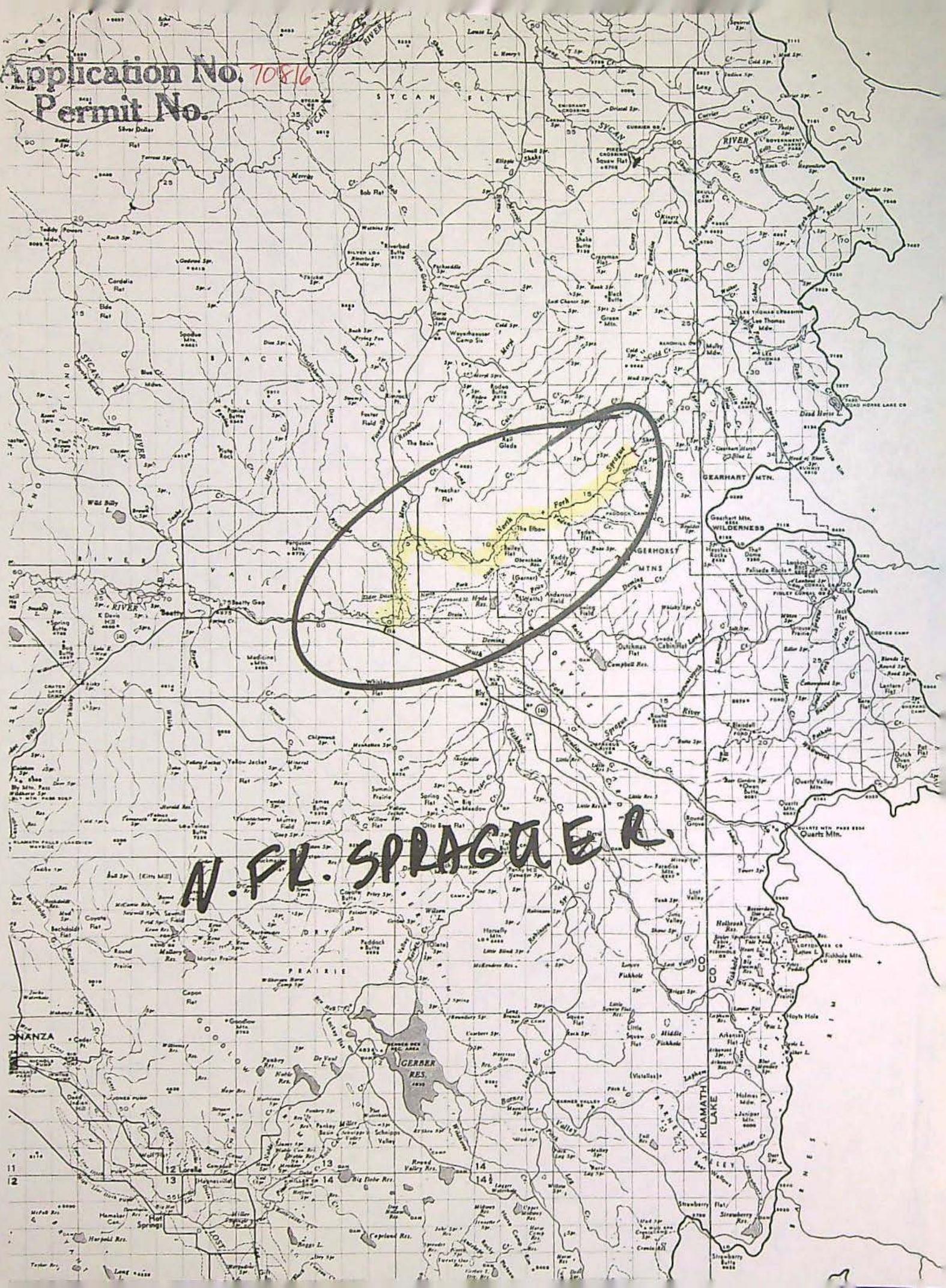
_____, 19____.

Date: _____, 19____.

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

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

Application No. 70816
Permit No.



APPLICATION PROCESSING OUTLINE

Basin: _____

Sub-basin: _____

Fees paid: Examination fee: _____

Recording fees: _____

Totals: _____

Application No. 70816
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
_____	_____	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 District:
-------	-------	-----------------------------

_____	_____	Notify _____ Need excerpt from District
_____	_____	Legal description of property

_____	_____	Ownership statement
-------	-------	---------------------

_____	_____	Other parties to Notify:
-------	-------	--------------------------

_____	_____	Water Resources Commission review if:
-------	-------	---------------------------------------

_____	_____	Request for greater than 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 program
_____	_____	requests for larger rate or duty than allowed
_____	_____	ground water recharge project
_____	_____	other substantial public interest issues
_____	_____	requests for review by an agency or person

_____	_____	Watermaster consent form sent with copy of draft permit
_____	_____	application and map

_____	_____	Watermaster comments received
-------	-------	-------------------------------

_____	_____	Hydrographic section comments requested
-------	-------	---

_____	_____	Hydrographic section comments received
-------	-------	--

_____	_____	O.D.F.V. sent copy of application and map (except groundwater) requesting comment
-------	-------	---

_____	_____	O.D.F.V. comments received
-------	-------	----------------------------

_____	_____	Report from D.E.G. received
-------	-------	-----------------------------

_____	_____	Publish application information in weekly public notice.
-------	-------	--

_____	_____	Notify other owners of development
-------	-------	------------------------------------

_____	_____	PROTESTED
-------	-------	-----------

_____	_____	filed
_____	_____	resolved

OCT 26 1990

Application No. *IWR* 70816

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